



NEW YORK CITY
BOARD OF CORRECTION

December 16, 2015 Amended Minutes

MEMBERS PRESENT

Stanley Brezenoff, Chair
Derrick D. Cephas, Esq., Vice Chair
Jennifer Jones Austin, Esq.
Robert L. Cohen, M.D.
Honorable Bryanne Hamill
Michael Regan.
Stanley Richards
Steven M. Safyer, M.D.

Martha W. King, Executive Director

DEPARTMENT OF CORRECTION

Joseph Ponte, Commissioner
Martin Murphy, Chief of Department
Timothy Farrell, Deputy Commissioner
Winette Saunders-Halyard, Deputy Commissioner
Peter Thorne, Deputy Commissioner
Shirvahna Gobin, Assistant Commissioner for Strategic Planning
Heidi Grossman, Esq., Deputy Commissioner of Legal Matters/General Counsel
Danielle Leidner, Director for Intergovernmental Affairs
Jeff Thamkittikasem, Chief of Staff
Eve Kessler, Director of Public Affairs
Dina Montes, Press Officer
Elizabeth Seibold, Press Officer
Marsha Elliot, Captain

Health and Hospital Corporation

Homer Venters, M.D., Assistant Commissioner, Bureau of HHC
Patrick Alberts, Agency Attorney, Division of Prevention and Primary Care
Lucia Caltagirone, Agency Attorney
Nathaniel Dickey, Special Assistant

OTHERS IN ATTENDANCE

Jack Beck, New York Correctional Association
Mary Benjamin, U.J.
Kristen Black, Bronx Defenders
Chris Bollinger, Vera Institute

Meredith Borner, Paul, Weiss, Rifkind
Barry Campbell, Fortune Society
Angel Castro, Correction Officers' Benevolent Association (COBA)
Carla Cubit, Resist Rikers
Laurie Davidson, Doctors, SEIU
Julia Davis, Children's Rights
Kelsey Deavila, Bronx Defender Services (BDS)/ Jails Action Coalition (JAC)
Riley Doyle Evans, BDS
Beverley Goddard, JAC
Xena Grandichelli, JAC/ Sylvia Rivera Law Project
Gina Bull, Public Advocate's Office
Candie Hailey-Means, JAC
Colby Hamilton, Politico NY
Elissa Hyne, Children's Rights
Lindsay Ireland, Columbia Journalism
Christine Japley, Quakers NYC 15th Street/ JAC
Dana Kaplan, Mayor's Office of Criminal Justice
David Karopkin, NYC City Council
Constantine Kehaya, Prison Association of New York
Michael Kinney, Office of Management & Budget
Sarah Kerr, Legal Aid Society (LAS)
Deandra Khan, New York Civil Liberties Union (NYCLU)
Joshua Kiel, Public Advocate's Office
Monica Klein, Office of the Mayor
Tanya Krupat, Osborne Association
Victoria Law, Independent
Alex Lesman, NYC Bar Association
Laura Limuli, BOC Director of Research, Emeritus
Evelyn Litwok, JAC
Jeff Mailman, NYC City Council
Rachel Maremont, Bronx Defenders
Kayla McCarroll, Osborne Association
Valeriya Metla, Fortune Society
Amir Montgomery, Bronx Defenders
Vedan Anthony North, Vera Institute
Jennifer Parish, JAC
Dylisa Penton, Retired DOC
Charlotte Pope, CDF-NY
Elizabeth Mayers, JAC
Lotosha Rainey, JAC
Steve Riestler, NYC Council, Finance Division
Michael Schwirtz, New York Times
Jane Stanicki, JAC/Hour Children
Marc Steier, COBA
Gale Weiner, JAC
Mercedes Williams, NY1
Michael Winerip, New York Times
Michelle Zhang, Children's Rights

Chair Brezenoff began the meeting by explaining that the intention of the meeting was to conclude the rulemaking process but that there has since been another variance request added to the meeting agenda. He said that the Board wanted to ensure that there was a public comment period since the Board planned to vote today. Chair Brezenoff began the public comment period. The full public comment period can be viewed at: <https://youtu.be/bREInoRx3fY?t=157/>. Comments were given by David Karopkin (Office of City Council Member David Dromm), Barry Campbell (Fortune Society), Sarah Kerr (Legal Aid Society), Christine Japley (Quakers NYC 15th Street/ JAC), Constantine Dean (Public), Xena Grandichelli (JAC/ Sylvia Rivera Law Project), Deandra Khan (New York Civil Liberties Union), Carla Cubit (Resist Rikers), Jennifer Parish (JAC), Evelyn Litwok (JAC), Riley Doyle Evans (Brooklyn Defender Services), Tonya Krupat (Osborne Association), Jack Beck (Correctional Association of New York) and Candie Hailey-Means (JAC).

The Chair said that the Board will discuss the Limited Variance to BOC Minimum Standard 1-17. Member Regan moved the item. Chair Brezenoff seconded. Member Cohen said that there is no need for this variance because the Department does not need the authority it provides. Member Hamill said that she has recently learned about NIC and the West Facility which are alternatives to punitive segregation and that may mitigate some of the harm of extreme isolation that occurs in punitive segregation. She said that consequently she cannot support a waiver of the seven day variance. Member Regan said that he would vote for the variance. Chair Brezenoff said that he wanted to note that this is an extension of a limited time frame carrying conditions with it and that, if the Board passes it, the Board will continue to monitor and evaluate it.

Member Cohen said that he hoped they would vote against the variance but that if the Board votes for it he would like to add conditions that anyone serving more than 30 days in solitary confinement gets at least four hours a day out of solitary confinement. Chair Brezenoff said that he would treat that as a proposed amendment and he would ask the Department if they wished to comment. Commissioner Ponte said that the Department does not have safe alternatives to punitive segregation and they rarely need to use the seven day waiver. Chair Brezenoff asked for a second to Member Cohen's proposal. Vice Chair Cephas seconded but asked about the time frame. The Commissioner said that they would like to involve many people in the planning of the alternatives. He said that the process would start right after the first of the year. Vice Chair Cephas asked how the Commissioner's plan fits with the variance only lasting for six months. Chair Brezenoff said that within the timeframe of the variance they would expect the Department to report on the development of plans and what the end product would look like. The Commissioner agreed. The Chair asked Member Cohen if he would consider this as an alternative to the amendment. Member Cohen said that he would.

Member Hamill said that she did not think this variance was necessary but that there were other conditions some Board members had discussed as well. Chair Brezenoff said that regardless, the Board expects to get concrete plans with clear goals and timelines. Chair Brezenoff said that he would call into question the variance. Vice Chair Cephas asked how this fit with Member Cohen's mention of the four hours out of cell time. Member Safyer said that that would need to be built in because the Board does not want to have the same discussion in six months. Member Jones Austin said that she wanted to clarify that the Board is voting on a six month variance for the seven day waiver and that after six months the variance will not be in place unless they renew it. She said that in that time the Department will need to come up with a plan for providing four hours of out of cell time. She said that the Department will be spending the next six months exploring alternatives so that the seven day variance would not be required. Commissioner Ponte

agreed and said that the Department will have a plan in six months but that physically building a structure or renovating will take longer. Chair Brezenoff called the variance into question. Five members voted in favor: Chair Brezenoff, Vice Chair Cephas, Member Jones Austin, Member Regan, and Member Safyer. Three members opposed: Member Cohen, Member Hamill, and Member Richards. The motion carried.

Chair Brezenoff said that he would like to have a motion to move the rule. Member Regan moved and Chair Brezenoff seconded. Member Hamill said that people raised issues with the rule during the public comment period that she did not have time to think through so she would prefer to delay the vote. She continued that she would not be voting for the rule. Member Richards said that he was concerned about the seven day variance and the impact on the rule. Member Cohen said that he would have preferred that we had not spent months negotiating on the rule that the Board never intended to pass and that the rule has clear contradictions. Member Jones Austin said that all Board members are concerned about prolonged solitary confinement but also about safety of staff. Member Richards asked about what would trigger a seven day waiver. Commissioner Ponte said that it would typically be a violent act but that the inmate would also have to already owe more punitive segregation time. Board discussion followed.

Member Jones Austin said that in the current rule it does not say that the inmate has engaged in persistent “serious” acts of violence. Chair Brezenoff said that they could add that word in an amendment. Member Jones Austin moved to amend. Member Cephas seconded. The Chair asked for a vote. All voted in favor except for Member Cohen. The amendment failed.

Member Cohen explained that he voted against the amendment because he wanted to include a requirement that there be a review for an inmate kept in punitive segregation for more than 30 or 45 days. The Board discussed whether Member Cohen’s amendment was already in the rules. The Chair said that he thought the Board had agreement on a 45 day review. He asked for a call to question to approve the amendments. All Board members voted in favor. The amendment passed.

He then asked for a motion to approve the amended version of the rule. Member Regan moved the item. Member Richards seconded. Six members voted in favor: Chair Brezenoff, Member Cephas, Member Jones Austin, Member Richards, Member Regan and Member Safyer. Two members opposed: Member Hamill and Member Cohen. The rule passed.

The Chair invited Mr. Castro (COBA) to comment since he wished to share comments unrelated to the rule. His comment can be viewed here: <https://youtu.be/bREInoRx3fY?t=5641> .

The Chair said that they would now move to a variance that addresses the deadline of December 31st for young adult housing. Member Hamill explained that the Board got a request for a variance from the Department of Correction yesterday that asks to amend the regulation that requires housing young adults separate and apart by the end of December. She said that she had just learned the previous week that there has been a plan to change the young adult plan and that some young people had been housed in severe isolation. She said that she would move that the Board grant the extension on the variance but only until January 12th in order to give interested parties an opportunity to comment. She also said that she would propose that the extension require that the Department of Correction shall not transfer any young adult into NIC, West Facility, or equally restrictive housing area other than punitive segregation and Enhanced Supervision Housing (which is available to young adults until February 29). Inmates can only be

moved to punitive segregation and enhanced supervision after these young adults have been afforded the due process required. She said that, by January 7, the Department will provide the Board with an operational plan that shall include but not be limited to: the descriptions of the physical layouts for proposed young adult housing including restrictive housing with photographs of: the cell, day room, recreation areas, other program space; the nature of inmates access to outdoor and indoor recreation, law library, classrooms, medical and mental health services, religious services, programmatic services; restrictions on individual inmates, including visiting; and programmatic services for inmates. She said that she would also like to add a requirement that the Department shall submit a young adult plan no later than January 7th and that the plan shall include but not be limited to a detailed description and discussion of secure housing alternatives to punitive segregation for the inmates. She also wanted to add a condition that the Department shall discontinue its practice of housing high classification 18 year old inmates with low classification 18 year old inmates at RNDC, pending their transfer to GMDC. The Chair asked if the Commissioner wanted to comment. The Commissioner said that the Department wants to and is reducing the punitive segregation population but that they need a safe place to house dangerous inmates.

The Chair explained that no one wants to rush the decisions so the Board wants to delay the deadline that currently exists until the January Board meeting and to the January 7th committee meeting where the matters can be more fully discussed in the context of information, possibilities, and implications of the current thinking. Member Hamill, Commissioner Ponte and Chair Brezenoff discussed the conditions and the Chair asked for a vote. All remaining Board members voted in favor: Chair Brezenoff, Vice Chair Cephas, Member Cohen, Member Hamill, Member Safyer, and Member Richards (Member Jones Austin and Regan were no longer present). The Chair asked Member Hamill to provide an update on the state of the young adult plan and the young adults who were put in secure housing. The Chair asked for a vote on the November meeting minutes with the five remaining Board members voting in favor: Chair Brezenoff, Vice Chair Cephas, Member Cohen, Member Hamill and Member Safyer (Members Jones Austin, Regan, and Richards were no longer present). The Chair adjourned the meeting.