

NEW YORK CITY
BOARD OF CORRECTION

July 9, 2012

MEMBERS PRESENT

Gerald Harris, Chair
Alexander Rovt, PhD, Vice Chair
Pamela S. Brier
Robert L. Cohen, M.D.
Michael J. Regan

Excused absences were noted for Members Catherine M. Abate, Esq., Greg Berman, Rosemarie Maldonado, Esq., and Milton A. Williams, Jr., Esq.

DEPARTMENT OF CORRECTION

Dora B. Schriro, Commissioner
Michael Hourihane, Chief of Department
Lewis S. Finkelman, Esq., First Deputy Commissioner
Thomas Bergdall, Esq., General Counsel
Sharmen Stein, Associate Commissioner
Sara Taylor, Chief of Staff
Martin Murphy, Deputy Chief of Staff
Erik Berliner, Associate Commissioner
Maggie Peck, Director, Office of Constituent Services
Carleen McLaughlin, Legislative Affairs Associate

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Amanda Parsons, M.D., Deputy Commissioner
Homer Venters, M.D., Assistant Commissioner, Correctional Health Services
George Axelrod, Director, Risk Management

OTHERS IN ATTENDANCE

Dilcio Acosta, Urban Justice Center
Joseph Antonelli, Office of Management & Budget (OMB)
Shae Cali, Solitary Watch
Luis Cintron, MD, Corizon
Christina Fiorentini, Independent Budget Office
Rachel Gerson, Jails Action Coalition
Allegra Glashausser, NYC Bar Association
Susana Guerrero, State Commission of Correction
Courtney Gross, reporter, NY1
David Harris, Rights of Imprisoned People with Psychiatric Disabilities (RIPPD), Police Reform Organizing Project (PROP)

William Hongach, City Council
Lucas Koehler, OMB
Neil Leibowitz, M.D., Mental Health Director, Corizon
Danielle C. Louis, OMB
Jennifer Parish, Urban Justice Center
Justin Pate, Doctors Council
Jeffery Powell, Assistant United States Attorney, SDNY
Michael Rooney, no affiliation
Nashla Salas, Independent Budget Office (IBO)

Chair Gerald Harris convened the meeting at 9:12 a.m. by welcoming Cathy Potler as the new Executive Director and Amanda Masters, as the new Deputy Executive Director. Because there was no quorum at the May Board meeting, Chair Harris explained that no official minutes were taken; however, he noted that the minutes from the March 13, 2012 meeting have yet to be approved. A motion to approve the March minutes was approved without objection.

Chair Harris reported that a civil lawsuit was filed against the City, the Commissioner, and other members of the Department, on behalf of 11 plaintiffs, who are described as present and former inmates, and that the suit seeks certification as a class action. He summarized the allegations of the suit as asserting a pattern and practice of excessive force inflicted on inmates confined to the City jails by the Department of Correction (DOC). He added that the plaintiffs are seeking declaratory, injunctive, and compensatory and punitive damages.

Chair Harris also reported that the United States Attorney's Office has undertaken an investigation of DOC, examining similar allegations to those in the civil lawsuit. He stated that Board staff is cooperating with the investigation, and as is DOC staff. The Chair also noted that this morning outside of the Board's office building, there was a peaceful protest by the Jail Action Coalition in opposition to solitary confinement in New York City (NYC) jails.

Because of the recent heat wave, Chair Harris requested that the Department of Health and Mental Hygiene (DOHMH) Assistant Commissioner Homer Venters, MD report on the effect of these conditions on inmate health. Dr. Venters responded that mitigation efforts were undertaken by DOC, DOHMH and Corizon. He reported that DOC distributed ice and water to the housing areas, DOHMH conducted extra screening of patients, especially those confined to a cell for 23 hours each day, and with the cooperation of DOC, arranged for those individuals who needed relief from the heat to be removed from their cells. Chair Harris asked whether there have been any adverse outcomes or serious incidents related to the heat. Dr. Venters stated that as of this morning, none had been reported that were directly attributed to the heat.

Member Pamela S. Brier asked whether there were fans and air conditioning in the housing areas, and noted that it is hard for her to understand how anyone could deal with the recent heat wave without these items. Commissioner Schriro responded that fans are available, but most cells are not air-conditioned. The Chair asked whether there were any plans to add air conditioning in the capital budget. The Commissioner stated that the *Benjamin* consent decree addresses ventilation issues, and over the next 18 months, ventilation is scheduled to be improved. Ms. Brier asked that the Department provide a "one-pager" describing the availability of air conditioning throughout the jails.

Dr. Cohen reported on his recent visit to the punitive segregation unit at OBCC as follows:

The temperature measured at 92 and 93 degrees in the cells. Although it is important for everyone to stay cool, Dr. Cohen noted that the only two fans in the punitive segregation units visited were exclusively pointed at staff -- rather than toward the inmate cells. One fan was pointed into a room that was described by DOC staff as a "Captain's lounge." The room was empty. The other fan was pointed at the officer's desk at the front of the

cell block. Meanwhile, no fans were pointed toward the inmate cells. This fan condition was virtually the same on both CPSU floors visited.

Commissioner Schriro stated that she visited the facility last weekend and the fans were not pointed at staff. The windows in all cells were operable and open. She added that she walked in the cells and felt they were appreciably cooler than the center areas where the staff are located.

Commissioner Schriro presented a report on the new classification system, as follows:

The new three-tier classification system has completed its first 60-day cycle. Every inmate has been classified with the new instrument. A one-for-one comparison between the old and new system cannot be done because the systems do not mirror each other. The previous system had four custody levels, while the new system has three. For the most part, the new system is represented in the form of a bell-shaped curve, with less than a quarter of the population classified as “high” custody. It follows national best practices, and not only sorts people by the three categories, but also assigns them to low, medium, and high housing levels. One of the serious operational challenges of the previous classification system was that it had approximately 16 categories, but had become “out of calibration”. The high ends of classification could go much higher than 16 – even into the several hundreds -- and there had never been a recalibration to bring those very high numbers down. Therefore, the inmates 0-17 tended to be “amalgamated” into “composite” housing together. The old system had become logistically unworkable, blurring everyone who was classified 17 and above into the “high” category

Chair Harris asked how the system had re-distributed inmates during the first 60 days. Commissioner Schriro responded that currently minimum is approximately a third of the population, medium is about half, and maximum is 23% of the population. Under the old system, she stated that low was 16%, low-medium was 40%, and medium-high was 28% and high was 17%. The Commissioner reiterated that low through medium high were most often assigned to the same housing areas, which was highly problematic. She added that the new system applies to both men and women and is being used in all housing units.

Dr. Cohen asked whether gang affiliation factored into the new system, and if so, why adolescents were represented at a disproportionately higher rate in the medium and high security levels.

The Commissioner responded as follows:

Gang involvement is included in the assessment instrument. However, adolescents are less likely to be SRG-involved than adults. It is not the SRG identifier, but rather another factor that accounts for their higher maximum security numbers. The majority of adolescents are admitted with some of the most serious charges. Approximately 4/5 of the adolescents were charged with a person-on-person felony crime, and the type of charge the inmate faces is a part of the classification matrix. An important aspect of the new classification instrument is that a person may be reclassified at a lower level for engaging in good behavior or participating in programs.

Dr. Cohen then asked what the due process rights are for this classification system, and whether an inmate has the opportunity to discuss the classification level with staff before it is affixed. Commissioner Schriro responded that a meeting is held with each inmate where the score is discussed and explained. She stated that DOC staff are trained on how to hold that discussion.

Chair Harris asked whether low, medium, and high classification inmates were treated the same with regard to lock-out, and whether gang members would be segregated by gang affiliation. Commissioner Schriro responded that the classification system allows DOC to make the best use of its housing. She explained that nationwide, generally low custody inmates would be assigned to dormitory housing with greater freedom of movement, whereas high custody inmates may start off in cell housing with more restrictions. The Commissioner stated that a unique facet of the City's jail system is that low, medium, and high inmates are all managed the same: everyone has the choice to lock out of their cell for 14 hours a day. However, she added that in other jurisdictions, high custody inmates are afforded the opportunity to work their way toward more lock out time, but are not afforded that much lock out time so early in their incarceration.

Chair Harris asked if the Board were to decrease lock-out time, how would that affect the inmates' ability to participate in programs, which could help lower their custody level? Commissioner Schriro replied that lock-out for participation in programs should be accommodated. The Chair then asked if it might be feasible to restrict higher custody inmates' lock-out time to participation in programs. Commissioner Schriro responded that although high usage of programs is optimal, constraints on resources would make that limitation unworkable. She added that lock-out time changes need not necessarily be that restrictive. According to the Commissioner, the core issue is that DOC is not able to adjust lock-out time to fit the individual inmate's situation. She then went on to explain the fluidity involved in evaluating security risk. For example, during a recidivist inmate's first weeks in the system, DOC might learn that his life circumstances and risk level have changed since the last time he was arrested. It is thus important to become re-acquainted with individuals and give them a chance to get oriented again, before deciding how much lock-out time is appropriate. Commissioner Schriro stated that the universal 14-hour lock-out rule creates real management challenges.

Dr. Cohen then pointed out that the majority of detainees held at Rikers are not yet convicted of any crime. He emphasized caution in the exploration of changes to the 14-hour lock-out rule, because the removal of basic rights is problematic. He suggested that behavior in the system should guide the classification more than a static number that might be assigned upon entry. Commissioner Schriro noted that assigned classifications have been "highly predictive" when one looks at national norms. She stated that the vast majority of the incidents in NYC jails involve the high custody inmates.

Commissioner Schriro presented a report on the adolescents, as follows:

High custody and SRG inmates have an elevated propensity for violence. Adolescents are only about 7% of the population, but they are particularly "active". Adolescents

comprise 28% of the incidents, mostly fights, which typically do not involve weapons, but do result in injuries and great harm. We have taken several “big bites” to improve their management. Even though adolescents come into the system with very high charges, their conviction rate is as low as adults who have lesser charges, but longer criminal histories. Generally one in ten adolescents is sentenced to New York State Department of Correctional Services (NYSDOCS). Because discharge planning has typically been the province of prison systems and not jails, it was clear that the Department needed to revamp. DOC created a strategy, which incorporates the Department of Education (DOE), and has added additional program opportunities, including skill-building funded by the private sector. The Department also has created incentives to attend school for those young people who are no longer required to attend school. Outdoor activities have also been enhanced. RNDC adolescent inmates are being reassigned to cells rather than dormitory housing. DOC has placed additional cameras in RNDC. The nightly lock-in to cells has reduced the amount of fighting that had previously occurred in dormitory housing. Adolescents can better secure their property at night in their cells. The Department will continue to look for alternatives to achieve safety and security.

Chair Harris asked the Commissioner to discuss punitive segregation. Commissioner Schriro reported, as follows.

The Department found that inmates who owed punitive segregation time, but had yet to serve it, were most often involved in acts of violence. By increasing punitive segregation beds, the Department was able to successfully clear that backlog. As the back log diminished, DOC was ready to roll back part of the punitive segregation bed increase and instead introduce new programming for mentally ill adolescents and adult males. Both DOC and DOHMH have been working diligently together to address infracted inmates with the “M” designation. The first 30 of the 90 beds designated as the Restrictive Housing Unit (RHU) have been taken off-line for “M” adolescents who have engaged in manipulative behaviors and serious rule violations resulting in harm to staff and other inmates. A three phase program in RNDC’s adolescent RHU was established whereby participants can earn an earlier release by as much as 50% if they adhere to expectations and actively participate in the programming.

The Commissioner handed out written materials about punitive segregation and RHU. Ms. Brier asked for more time to review the documents, and to put these items on the agenda for the next meeting.

Member Michael J. Regan noted that the RHU is a mental health driven program, and that is important to highlight. Dr. Cohen mentioned that many recent news articles, editorial boards and the U.S. Senate have raised the issue of solitary confinement for the mentally ill. He suggested that Board members review testimony given at the Senate hearing.

Chair Harris asked the Commissioner whether the Mayor’s Steering Committee on Citywide Justice and Mental Health Initiative was close to having a report. She stated it was, and

that the Committee will be issuing its final draft of its report to the Mayor sometime this week or next.

Chair Harris requested that Commissioner Schriro discuss the most recent suicide. She responded that the number of suicides remains low. With respect to DOC's general reporting practice for deaths, Commissioner Schriro explained that until facts are established, they are not included in the 24-hour report, and that a preliminary assessment by the responding medical staff is provided. If a death is a suicide, the Commissioner added that the next step in verification is at the autopsy. Chair Harris and Mr. Regan both expressed their concerns that the initial death report did not include facts that were highly suggestive of a suicide, and would have resulted in a quicker response by Board staff. Commissioner Schriro stated that changes were made. Chair Harris raised questions about the DOC response to the most recent suicide. It was decided that the details of the suicide should be discussed in executive session immediately following the meeting because it is under investigation.

Dr. Venters requested that the Board renew a variance allowing the use of QuantiFeron (QFT) tuberculosis screening blood test for female inmates and approve a new variance to make the QFT test available to all other facilities. Dr. Venters noted that the blood test has been more useful than the traditional skin test in detecting people who are infected. A motion to approve the variance was approved without opposition. Dr. Cohen asked why the blood test was finding more positivity than the skin test on Rikers. Dr. Venters responded that DOHMH is looking into that issue closely and has had discussions with the Centers for Disease Control, but does not yet know why the positivity rates are so different.

A motion to renew all existing DOC variances and a motion to renew a limited variance permitting the commingling of all pregnant inmates at RMSC for medical reasons were approved without opposition.

Chair Harris adjourned the meeting at 10:15 a.m. for an Executive Session.