



NEW YORK CITY
BOARD OF CORRECTION

January 10, 2017 - Public Meeting Minutes

MEMBERS PRESENT

Derrick D. Cephas, Esq.
Gerard W. Bryant, Ph.D.
Honorable Bryanne Hamill
Jennifer Jones Austin, Esq.
Michael Regan
Stanley Richards
Steven M. Safyer, M.D.

Robert L. Cohen, M.D.: Absent

Martha King, Executive Director

DEPARTMENT OF CORRECTION

Joseph Ponte, Commissioner
Martin Murphy, Chief of Department
Jeff Thamkittikasem, Chief of Department
Winette Saunders, Deputy Commissioner
Cynthia Brann, Deputy Commissioner
Peter Thorne, Deputy Commissioner
Angela Tolosa, Assistant Commissioner
Fazal Yussuff, Assistant Commissioner
Phil Terwiel, Acting Assistant Commissioner, Adult Programs
James Walsh, Deputy Commissioner of Adult Programming
Shirvahna Gobin, Assistant Commissioner for Strategic Planning
Annie DiCaterino, Strategic Planning
Kwame Patterson, Assistant Commissioner of Public Information
Heidi Grossman, Esq., Deputy Commissioner of Legal Matters/General Counsel
Brenda Cooke, Deputy General Counsel
Gregory Kuczinski, Deputy Commissioner for Investigations
Danielle Leidner, Director of Intergovernmental Affairs
Turhan Gumusdere, Bureau Chief of Security
Yolanda Canty, Assistant Chief
Marisa Alberti, Policy Analyst
America Canas, Senior Policy Analyst
Janet Amaro, Project Manager Analyst
James Boyd, Director of Constituent Services
Eve Kessler, Director of Public Affairs
Meekaelle Copeland, Admin. Director of Social Services
Carleen McLaughlin, Director of Legislative Affairs and Special Projects
Dina Montes, Press Officer

William Barnes, Warden
Chantelle Johnson, Deputy Warden in Command
Luigi Ottaviano, Acting Deputy Warden
Louis Molina, Captain
Mackenzie Dancho, Intern

NYC HEALTH + HOSPITALS-CORRECTIONAL HEALTH SERVICES

Homer Venters, M.D., Chief Medical Officer of Correctional Health Services (“CHS”)
Dr. Elizabeth Ward, Senior Director, CHS
George Axelrod, Chief Risk Officer
Ross MacDonald, M.D., Chief of Service, Medicine, CHS
Patrick Alberts, Senior Director of Policy and Planning
Levi Fishman, Associate Director of Public Affairs
Carlos Castellanos, Director of Operations
George Strachan, Director of Employment Safety & Workplace Violence Prevention
Lucia Caltagirone, Associate Counsel
Nathaniel Dickey, Special Assistant

OTHERS IN ATTENDANCE

Alex Abell, Urban Justice Center
Paulette Bernard, Correction Officers’ Benevolent Association (COBA)
Angel Castro, COBA
Albert Craig, COBA
Mark Cranston, Middlesex County Department of Correction
Brian Crow, NY City Council (NYCC)
Kelsey Deavila, Brooklyn Defender Services (BDS)
Eddie DeGrand, Anti-Violence Project
Elizabeth DeWolf, Policy Associate at CUNY
Dennis Gonzales, Monitorship
Eugene Hillsman, JustLeadershipUSA
Kymane Hutchinson, Jail Action Coalition (JAC)
Sarah Kerr, Legal Aid Society (LAS)
Tanya Krupat, Osborne Association
Jin Lee, NYCC
Laura Limuli, BOC Director of Research, Emeritus
Amanda Masters, NYC Public Advocate – Hon. Letitia James
Elizabeth Mayers, JAC
M. Parish-Miller, JAC
Valentina Morales, Mental Hygiene Legal Services
Jennifer Parish, Urban Justice Center/JAC
Victoria Phillips, JAC
Charlotte Pope, Children’s Defense Fund –NY (CDF-NY)
Grace Price, JAC
Angel Resto, COBA
Steve Riester, NYC Council, Finance Division
Kathleen Rubenstein, Law Department
Rebecca Sanchez,
Mike Skelly, COBA
Jane Stanicki, JAC/Hour Children
Marc Steier, COBA
Amelia Warner, COBA
Gary Williams, Retired Correction Officer
Lorna Woodham, Osbourne Association

Public Remarks from Vice-Chair Cephias¹

Vice-Chair Cephias presided over the meeting. He informed the public that the agenda had changed and the request by the Department of Correction (“Department” or “DOC”) for a variance from Minimum Standard § 1-16(c)(1)(ii), which excludes young adults (ages 18-21) from Enhanced Supervision Housing (“ESH”) had been removed from the agenda.²

Officer Elections

The Board’s bylaws require the election of a Vice-Chair in January of every year. The Vice-Chair will serve for the term of one year, beginning February 1, 2017 and ending January 31, 2018. Member Safyer moved to nominate Member Cephias for another term as Vice-Chair, and Member Hamill seconded the motion. All members then present unanimously voted in favor of the motion (Members Bryant, Cephias, Hamill, Jones Austin, and Safyer).

In light of Stanley Brezenoff’s resignation as Board Chair in December 2016, the Board voted to fill the positions of Chair and Vice-Chair until the Mayor appoints a new Chair or until the next January 2018 Board meeting, whichever comes first. Member Hamill nominated Member Cephias as acting Chair and Member Safyer seconded the motion. All members then present unanimously voted in favor of the motion (Members Bryant, Cephias, Hamill, Jones Austin, and Safyer).

Later in the meeting, Member Jones Austin nominated Member Richards as acting Vice-Chair, and Member Hamill seconded the motion. The members present unanimously voted in favor of the motion (acting Chair Cephias and Members Bryant, Hamill, Jones Austin, Regan, Richards, and Safyer).

Approval of October 2016 and November 2016 Minutes

The acting Chair asked for a motion to approve the October 11, 2016 and November 15, 2016 minutes. The minutes were approved unanimously (acting Chair Cephias and Members Bryant, Hamill, Jones Austin, Regan, Richards, and Safyer).

Public Comment on DOC Variance Requests

The Board heard public comment on DOC’s variance requests from Mark Cranston (Special Adviser to COBA), Charlotte Pope (Children’s Defense Fund-NY), and Jennifer Parish (Director of Criminal Justice Advocacy at the Urban Justice Center Mental Health Project and JAC member). These comments are available [here](#).

Variance Requests

Acting Chair Cephias asked the Department to present its variance requests for (i) renewal of a limited variance from Minimum Standard § 1-17(d)(2), which requires a seven (7) day release from punitive segregation after an inmate has been held in punitive segregation for 30 consecutive days (“7-day requirement”); and (ii) renewal of a limited variance from Minimum Standard § 1-02(c)(1), which requires that inmates over the age of 22 be housed separate and apart from inmates ages 18-21.

► Limited Variance from 7-Day Waiver Rule

Chief Murphy presented DOC’s request for a six-month renewal of a limited variance, ending July 10, 2017, allowing DOC to waive the 7-day requirement. The Board first granted this variance in September 2015 for a period of ninety (90) days and renewed it for six (6) months at the June 14, 2016 public meeting. At the November 15, 2016 meeting, four (4) Board members

¹ Member Cohen was not in attendance at this Board meeting.

² The withdrawn request sought a variance that would permit DOC to house 19-21 year olds in ESH. A separate six (6) month limited variance for the use of ESH for 18 year olds was sought and approved by the Board on October 11, 2016 and is in effect until April 11, 2017.

voted in favor of renewal while two (2) members voted in opposition. Accordingly, the variance was not renewed,³ and expired on December 17, 2016.

Acting Chair Cephas opened the floor for discussion. Member Jones Austin asked what had transpired in the time since expiration of the variance. Chief Murphy responded that DOC had not had any incidents that required it to exercise the 7-day waiver. He noted that the Department historically has utilized the waiver only in highly exceptional circumstances where safety and security concerns justified the individual's immediate return to punitive segregation. Since they have had the ability to use the waiver, the Chief approved 19 out of 26 waiver requests.

Member Hamill asked why the Department requires a 7-day waiver given that it now places inmates into an ESH unit ("ESH Level 1") where they are restrained to desks whenever they are out of cell (i.e., up to seven (7) hours per day). Judge Hamill noted that criteria for placement in this unit includes having slashed or assaulted staff or other inmates. In her view, ESH Level 1 is tantamount to "punitive segregation light" where inmates are afforded seven (7) hours of lock-out and receive programming. She asked Chief Murphy whether he would agree that this unit is a form of punishment.

Chief Murphy responded that ESH Level 1 is not punitive because individuals are placed there as a result of their past acts of violence and not in response to an immediate violent infraction. In addition, unlike inmates sentenced to punitive segregation, inmates placed in ESH Level 1 are afforded programming. The 7-day waiver affords DOC the option to return an inmate in punitive segregation or place him in ESH Level 1.

Member Bryant asked Chief Murphy to provide examples of infractions committed by the 19 inmates for whom he approved a 7-day waiver and to explain why he did not approve seven (7) such requests. He responded that he approved overrides for inmates who had committed stabbings, slashings, or assaults that resulted in serious injury while they were in punitive segregation or during their 7-day break. The seven (7) inmates for whom he did not approve an override had not committed acts that fit the criteria for granting a waiver.

Executive Director Martha King ("ED King") read out loud three (3) proposed conditions to the variance (available [here](#)). Acting Chair Cephas called for a vote on the variance with conditions, after which the variance with all three (3) conditions was approved unanimously (acting Chair Cephas and Members Bryant, Hamill, Jones Austin, Regan, Richards, and Safyer).

Limited Variance Request Permitting Placement of 19-21 Year Olds in ESH

► Discussion of Blended Housing Units

Chief of Staff Jeff Thamkittikasem presented the Department's request for a six-month renewal of a limited variance (until July 13, 2017) from the Minimum Standards requirement that inmates ages 19-21 be housed separate and apart from inmates over the age of 22. The variance would allow DOC to continue co-mingling young adults ages 19-21 with adults age 22 and older in ESH and other types of housing ("blended units").

Acting Chair Cephas opened the floor for discussion. Member Hamill asked whether DOC is providing specialized training to officers who are assigned to blended units. She also inquired about the criteria for placement in these units. Acting Vice-Chair Richards asked what the ratio is of young adults to adults in such units. Mr. Thamkittikasem responded that there is no specific adult-to-young-adult ratio maintained in the blended units. Deputy Commissioner Saunders

³ Since the variance did not receive a vote of the majority of the whole number of the board (i.e., five or more votes), it failed to pass.

responded that before opening a blended unit at AMKC, DOC ensured that staff were appropriately trained to supervise young adults placed there. These inmates have chosen not to go to school and are offered programming in anger management, workforce development, re-entry, and structured recreation. They receive some elements of GMDC programming but not the entire package. In terms of placement criteria, there are a number of different factors considered, including the determination of DOC's classification unit (OSIU), specific needs of the blended population, and the safety and security of the facility.

Upon being advised that GMDC was undergoing some renovation, Member Hamill asked whether, upon its completion, young adults in the blended units would be moved back to GMDC. Commissioner Ponte responded that given the robust programming available at GMDC, it would be beneficial to return these young people to GMDC; moreover, as young adults express interest in attending school and other programming specifically tailored to their needs, DOC attempts to move them back to GMDC. The Commissioner lauded the implementation of the GMDC model by officers and other DOC staff and stated that the model is proving effective.

Member Hamill asked whether the Department planned to resubmit its request for a variance permitting it to house 19-21 year olds in ESH. Mr. Thamkittikasem responded that DOC plans on working with the Board to develop a policy regarding the operation of this housing model that would take into consideration the Board's concerns and recommendations.

► **Proposed Variance Conditions**

ED King read out loud the two proposed conditions to the variance, which are available [here](#). Acting Chair Cephas called for a vote on the variance with conditions. The variance with conditions was approved unanimously (Acting Chair Cephas, and Members Bryant, Hamill, Jones Austin, Regan, Richards and Safyer).

Executive Director's Update

ED King provided an update on the implementation of the Board's new rules on preventing, responding to, and prosecuting incidents of sexual abuse and sexual harassment in the City's jails. These rules are codified in Chapter 5 of the Board's Minimum Standards. The Board developed tools, and posted them on its website to facilitate transparency on implementation: (1) a list of each rule or rule provision that went into effect on January 2, 2017 (available [here](#)); and (2) a list of each rule or rule provision that goes into effect after January 2 and the effective date of each such rule or rule provision (available [here](#)).

ED King reported that the Board has formed an ad-hoc committee to develop and propose rules regarding restrictive housing. The committee will engage in fact-finding, which will include speaking with national and local experts, practitioners, and other stakeholders. Proposed rules will be subject to public comment and a public hearing in accordance with the requirements of the City's Administrative Procedure Act (CAPA).

Health+Hospitals Variance Requests

Acting Chair Cephas introduced NYC Health + Hospital's ("H+H") presentation on its request for renewal of three (3) six-month limited variances by noting that the Board has voted to approve repeated renewal of these variances since July 2006. He stated that the time had come to convert these variances into permanent rules. Dr. Homer Venters prefaced his presentation by stating that H+H stands ready to engage in such rulemaking.

► **H+H Presentation and Board Vote**

Dr. Venters presented on the renewal requests, which seek (1) a variance from Mental Health Minimum Standard § 2-05(b)(2) (i-ii) so that psychiatrists can continue seeing and evaluating stable adult patients on psychotropic medication in general population at least every 28 days, rather than every 14 days; (2) a variance from Minimum Standard § 3-04(b)(2)(v)(a) so that the

Correctional Health Services (CHS) can continue using either interferon gamma release assays (IGRA) or TST for tuberculosis screening, and exempting from repeat screening those individuals who have a documented negative test in the six months prior to their admission; and (3) a variance from Health Care Minimum Standard § 3-08(c)(3) so that health care staff can continue providing DOC with specific diagnoses relating to injuries sustained by individuals while in DOC custody (the reporting of diagnoses unrelated to such injury would remain prohibited).

Following Dr. Venters' presentation, acting Chair Cephas called for a vote on the three variances. All three passed unanimously (acting Chair Cephas, acting Vice-Chair Richards, and Members Bryant, Hamill, Jones Austin, Regan, and Safyer).

► **Rulemaking Resolution**

ED King read out loud a proposed resolution (available [here](#)) to move towards rulemaking on issues that are the subject of the three variances. Acting Chair Cephas called for a vote on the proposed resolution. The resolution passed unanimously (acting Chair-Cephas, acting Vice Chair-Richards, and Members Bryant, Hamill, Jones Austin, Regan, and Sayfer).

Young Adult Plan

► **DOC Presentation**

After providing a current breakdown of the young adult census, DC Saunders provided a descriptive summary of educational and other programming available to 18-21 year olds at GMDC. She also discussed recent program expansion at RMSC and GMDC; namely (1) the expansion of the young adult re-entry services program and the Rikers Rovers program to RMSC and a new partnership with St. John's University at this facility; and (2) reinstatement of the CUNY partnership at GMDC, and the development of cognitive behavioral therapy, job readiness, transition planning and skill building programs at GMDC through a partnership with SCO Family of Services.

► **Board-DOC Discussion on Young Adult ESH**

Member Hamill asked a series of questions about young adult ESH in light of DOC's withdrawal of its variance request regarding the placement of 19-21 year olds in ESH. This included whether the Department intends to continue housing 24 young adults in ESH, why DOC omitted reference to restraint desks in its recent report on the Young Adult Plan, and whether it is important for the Board, in evaluating a variance permitting young adults in ESH, to consider that a young person could be confined to a restraint desk for up to seven (7) hours each day. DC Saunders stated that DOC will work with the Board to develop an ESH policy that will address the needs of young people who pose serious safety concerns. Deputy Commissioner Grossman noted that DOC's restraints directive references restraint desks; the Department has been transparent about its use of restraint desks for young adults; Board members, advocates and the *Nunez Monitor* have visited young adult ESH units, and the Monitor has approved DOC's piloting of ESH as a safe alternative to punitive segregation. Member Hamill noted that young adults confined in desks can touch the shoulders of their peers sitting in desks immediately in front of them. DC Grossman responded that DOC is addressing this by creating more space between desks. She also noted that the number of violent incidents has gone down since the implementation of restraint desks.

Member Hamill asked why the Department had not consulted the Vera Institute of Justice ("Vera") before instituting desk restraints in ESH units housing young adults. Mr. Thamkittikasem responded that Vera's grant to study segregation reduction in the City's jails was confined to a specific time frame and thus did not cover the newly opened ESH Level 1 unit that utilizes restraint desks. He further noted that Vera has finalized its evaluation but not the report of its findings and recommendations.

Member Hamill asked the Department to describe the assessment component of ESH. DC Saunders responded that the young adult ESH assessment, currently in draft, focuses on developing an individualized comprehensive profile for young adults. The assessments are based on the individual's willingness to provide information such as the circumstances underlying violent acts, whether the individual was under the influence of drugs when he engaged in violence; and the person's individual programming needs. If a young person is not initially forthcoming with this information, this may result in his remaining in ESH Level 1 for more than 28 days. Acting Chair Cephas asked to see the questions asked at assessment and DC Saunders said she would provide them.

Member Hamill remarked that the criteria for placement in Secure and ESH are similar. She noted that the Board initially had authorized the placement of 74 young adults in Secure as an alternative to ESH and asked DOC to provide the Board with the number of young adults currently housed in Secure. She also inquired about the Department's reasons for placing 24 young adults in ESH when there is housing available at Secure. DC Saunders responded that 13 of the 14 young adults who have cycled through ESH had committed a slashing or stabbing and that placement of these individuals in Secure would have been detrimental to the safety and security of the inmates residing there. She reported that two (2) of the 14 individuals had progressed to ESH Level 2 and one had been released on bail. DC Grossman stated that the Department makes individualized determinations with respect to young adults' placement in ESH Level 1 by reviewing their history of slashings, stabbings, "persistent violence," and/or fights with other inmates. Vice-Chair Richards commented that the determination whether to place a young adult in Secure or ESH appears to be based on the degree of risk the young adult poses to the safety and security of staff and other inmates.

Member Hamill stated that, according to national standards, restraint desks are meant to be used as little as possible and for the shortest time possible until the Department obtains control over very difficult inmates. DC Grossman clarified that the *Nunez* Deputy Monitor had approved a DOC policy that permits up to four (4) consecutive hours of confinement in a restraint desk while allowing for bathroom breaks during this period. DC Saunders stated that in a written survey recently administered to young adults about their placement in ESH, four (4) out of eight (8) inmates reported that they finally felt safe and, as a result, started attending school. On a related note, acting Vice-Chair Richards said that during his visit to ESH Level 1 yesterday, some of the young adults told him they did not want to go to ESH Level 2 because such a transfer would result in their loss of priority for school.

► **Potential Health/Mental Health Risks of Restraint Desks**

Member Hamill asked Dr. Venters what role CHS has played in the placement of young adults in restraint desks. He responded that CHS has not considered restraint desks in its assessment of young adults for ESH. Dr. Venters said that the restraint desks used by DOC are marketed as "therapeutic chairs," and are used across jurisdictions to promote out-of-cell programming, such as group therapy or art therapy, for short periods of time (i.e., one to two hours). He described the physical and mental health risks associated with young adults' prolonged confinement in restraint desks, as including blood clots and related complications. Dr. Venters expressed his professional opinion that restraint desks should not be used for prolonged periods of time. He concluded by stating H+H's willingness to work with DOC in developing safe and productive alternatives to punitive segregation for young adults.

► **Member Hamill's Presentation on Young Adult ESH**

Member Hamill presented a series of photographs of young adults in restraint desks on January 7, 2017 when she visited an ESH Level 1 unit. She said that the young people expressed significant anger, frustration and stress at being shackled to desks whenever they are out of cell — a practice which was confirmed by officers assigned to the unit. A mental health counselor

and classroom instructor advised Member Hamill that it was difficult to engage productively with young people while they are shackled to desks for prolonged periods. Several young people also complained that the ankle restraints were painful and thus they were reluctant to leave their cell during lock-out. One of the photographs depicted what appeared to be an ankle abrasion supposedly caused by overtight application of the ankle cuff. Another photograph depicted ankle restraints placed over a young person's pants legs, which is prohibited by DOC policy. In conclusion, Member Hamill expressed her belief that the City of New York could do better by its young people than to restrain them in desks during their out-of-cell time.

Acting Vice-Chair Richards added his reflections regarding his visit to young adult ESH. He noted that although DC Saunders had followed through on the Department's promise to afford three (3) hours of additional lock-out time for young adults who attended school, it was unfortunate that they had to remain in restraint desks whenever out of cell. He also expressed his disappointment that Department officials had walked out of the instant meeting shortly after commencement of Member Hamill's presentation since the presentation provided a basis for further discussion between DOC and the Board about ESH for young adults. The acting Vice-Chair concluded that the Board and DOC would continue discussion on restraint desks at the Board's meeting on February 14.

Public Comment

The Board heard public comment from Valentina Morales (Mental Hygiene Legal Services), Liz Meyers (Visit Work Committee), Kelsey De Avila (Brooklyn Defender Services), Garrett Williams (correction officer) Rebecca Sanchez (family member of an incarcerated individual), Jennifer Parish (Director of Criminal Justice Advocacy at the Urban Justice Center Mental Health Project and JAC member), Sarah Kerr (Legal Aid Society, Prisoners' Rights Project), Victoria Phillips (Urban Justice Center), and Grace Price (JAC). The public comments are available [here](#).

Following public comment, acting Vice-Chair Richards stated that H+H would present the CHS Access Report for the period July-December 2016 at the February Board meeting. However, he noted that, as reflected in the Report, 82% of all "health encounters" and 30-40% of all off-island specialty encounters were seen during this period.⁴ Following these remarks, the Acting Vice-Chair adjourned the meeting.

⁴ The Report defines "health encounters seen" as all scheduled medical follow-up and nursing follow-up encounters that were conducted by a clinician or nursing staff (Report, p. 2); it defines "off-island specialty encounters seen" as encounters conducted at a hospital for off-island specialties (e.g., Cardiology, Dermatology, General Surgery, Oncology, etc.) (*Id.* p. 4).