



**NEW YORK CITY
BOARD OF CORRECTION**

October 10, 2017 Public Meeting Minutes

MEMBERS PRESENT

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

Martha W. King, Executive Director

MEMBERS ABSENT

Gerard W. Bryant, Ph.D.
James Perrino
Steven M. Safyer, M.D.

DEPARTMENT OF CORRECTION (DOC)

Cynthia Brann, Commissioner
Angel Villalona, Acting First Deputy Commissioner
Hazel Jennings, Acting Chief of Department
Jeff Thamkittikasem, Chief of Staff
Peter Thorne, Deputy Commissioner of Public Information
Timothy Farrell, Deputy Commissioner of Office of Classification and
Population Management
Winette Saunders, Deputy Commissioner of Youthful Offender and
Young Adult Programming
Kwame Patterson, Assistant Commissioner of Public Information
Faye Yelardy, Assistant Commissioner for Sexual Abuse and
Sexual Harassment Prevention
Danielle Leidner, Director for Intergovernmental Affairs
Mitchell Abramson, Admin. Public Information Specialist
Heidi Grossman, Deputy Commissioner for Legal Matters/General Counsel
Brenda Cooke, Deputy General Counsel
Wesley Bauman, Assistant General Counsel
Ingris Martinez, Investigation Division Investigator
Anna Marzullo, Senior Policy Advisor
Ruby Marin-Jordan, Deputy Risk Manager
William Hart, Chaplain

NYC HEALTH + HOSPITALS (H+H)-CORRECTIONAL HEALTH SERVICES (CHS)

Patsy Yang, DrPH, Senior Vice President, CHS
Ross MacDonald, M.D., Chief Medical Officer, Assistant Vice President, CHS
Sara Gillen, Chief Operating Officer, CHS
Jonathan Giftos M.D., Clinical Director of Substance Abuse Use Treatment, CHS
Patrick Alberts, Esq., Senior Director of Policy and Planning, CHS
Levi Fishman, Director of Public Affairs, CHS
Ashley Smith, Assistant Director of Policy & Planning, CHS
Lucia Caltagirone, Associate Counsel, H+H

OTHERS IN ATTENDANCE

Alex Abell, Urban Justice Center (UJC)
Susan Goodwillie, UJC
Laura Fettig, UJC
Elizabeth Mayers, Jails Action Coalition (JAC)
Caroline Hsu, Legal Aid Society Prisoners' Rights Project (LAS)
Autumn Soucy, LAS
Angel Castro, Correction Officers' Benevolent Association (COBA)
Marc Steier, COBA
Amelia Warner, COBA
Mark Cranston, COBA
Otica Rutledge, COBA
Albert Craig, COBA
Tanya Krupat, Osborne Association
Charlotte Pope, Children's Defense Fund – NY (CDF-NY)
Malita Picasso, Brooklyn Defender Services (BDS)
Kelsey De Avila, BDS
Miguel Medrano, BDS
Simone S., BDS
Chelsey Davis, Office of the Mayor
Hannah Walker, Sylvia Rivera Law Project (SRLP)
Ashley Iodice, New York City Law Department
Julia Geiger, New York Legal Assistance Group
Keith Zobel, New York State Commission of Correction (SCOC)
Roshan Abraham, City Limits
Amy Jung, John Jay College of Criminal Justice
Serena Maszak, John Jay College of Criminal Justice
Jason Kersten, Independent
Victoria Law, Independent
Laura Limuli, BOC Director of Research, Emeritus

Introductory Remarks, Announcements, and Updates

Acting Chair Cephas called the meeting to order by congratulating Cynthia Brann on her recent appointment as the Department of Correction's ("Department" or "DOC") Commissioner. He invited the Commissioner to discuss her transition into this role and her vision for the Department's next phase.

Commissioner Brann's Opening Statement

Cynthia Brann said she was honored to serve as the Department's new Commissioner and takes the responsibility of ensuring the safety of staff, volunteers, visitors and those in DOC custody, very seriously. She acknowledged the Department's significant impact on public

safety, and emphasized the importance of upholding the Board's Minimum Standards, the SCOC's regulations, and guidance from the federal court and its assigned Monitors. The Commissioner expressed confidence in DOC's staff and leadership team, and said the Department is committed to providing quality training, necessary tools and effective leadership at all levels to hold DOC accountable with integrity and professionalism. Commissioner Brann's goals are to build upon the correctional reform that began three years ago, to be compliant with all applicable rules and standards, and to have the agency released from the federal court-appointed Monitor's oversight. She said the agency and all relevant stakeholders have the same overarching goal — ensuring safer jails. To achieve this, there must be more public confidence in the agency's capabilities. She requested that DOC be held accountable in the "spirit of partnership and not as adversaries." To that end, Commissioner Brann guaranteed that DOC will be a more transparent agency that consistently and openly communicates with members of the Board.

Approval of September 2017 Minutes

Acting Chair Cephas asked for a motion to approve the September 12, 2017 meeting minutes. Upon Member Regan moving the item and Member Cohen seconding it, the minutes were unanimously approved, subject to one correction by Member Cohen regarding the Ad-Hoc Violence Committee's update on recent taser discharges (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, and Regan).

Minimum Standards on the Elimination of Sexual Abuse and Sexual Harassment

► Variance Request¹

Acting Chair Cephas announced that the Department withdrew its variance request prior to the meeting because it determined the Board would not support it. The withdrawn request had sought a variance from Minimum Standards § 5-17(f), § 5-17(g) and § 5-18, which require the Department to reassess individuals for risk of victimization and abusiveness within thirty (30) days and as otherwise warranted, and to utilize the assessment information when determining bed, work, education, and program assignments for the affected population. Four individuals scheduled to give public comment abstained from commenting due to the withdrawal of the variance request.

► Board Resolution on the Department's Violation of Minimum Standards § 5-17 and 5-18²

Member Cohen read a proposed Board resolution, citing the Department's violation of Minimum Standards § 5-17 and § 5-18 and identifying remedial actions the Department must take to cure the violations. He said the risk assessments — as required by Minimum Standard § 5-17, and the use of such assessments to protect people whom the Department has identified at high risk of being sexually victimized, as required by Minimum Standard § 5-18 — are a vital component of preventing sexual violence in the City's jails and a critical underpinning of the Minimum Standards regarding Elimination of Sexual Abuse and Sexual Harassment in Correctional Facilities. The proposed resolution specifies that DOC must

¹ The Department's Variance Request (withdrawn prior to the meeting) is available here:

<http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/Sep-12-2017/doc-six-month-lvr-sexual-abuse-sexual-harassment-minimum-standards-20170908.pdf>

² The Board's Approved Resolution dated October 10, 2017 is available here:

<http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/Oct-10-2017/Board%20Resolution%20re%20DOC%20PREA%20Standards%20Violation%2010.10.17%20.pdf>

submit to the Board, by October 24, 2017, a corrective action plan detailing how it intends to comply with Minimum Standards § 5-17 and § 5-18, as well as information related to the training of officers assigned to the Transgender Housing Unit (THU). Beginning October 16, 2017 and every month thereafter, the Department must also submit a written report detailing its progress toward development and implementation of an electronic screening tool for assessing each incarcerated person's risk of sexual victimization and/or sexual abusiveness. Commencing November 1, 2017, DOC must notify the Board of each placement of a transgender or intersex person, all information considered in making such determination, and the bases for the determination. The Department must also maintain a database of all transgender, gender non-conforming, and intersex people admitted to the City's jail system to track their housing placements and relevant incidents. Finally, by October 23, 2017, the Department must schedule weekly inmate council meetings in the THU and provide the Board with at least 24 hours' notice of such weekly dates and times.

The Acting Chair opened the floor to comments and questions from other Board members on the proposed resolution. Member Hamill prefaced her comments by congratulating the Commissioner on her appointment and voiced appreciation for her remarks, particularly regarding DOC's commitment to increasing transparency. Member Hamill reiterated that Chapter 5 of the Minimum Standards are based on the federal Prison Rape Elimination Act (PREA) Standards, which the Department has been subject to since before the promulgation of the Board's Standards. She stated that the Board would be unable to vote for any variance that exempts DOC from compliance with the federal law.

The Acting Chair called a roll call vote, and the resolution was unanimously approved (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, and Regan.)

DOC Response to the Board's ESH Adult and Young Adult Reports

► Introduction

Acting Chair Cephas explained that when the Board was debating punitive segregation reform in October 2014, the Department proposed a new restrictive housing unit, Enhanced Supervision Housing (ESH), which it believed to be critical to its punitive segregation reform and violence reduction plans. The Board approved a modified version of DOC's proposal in January 2015, creating ESH for adults only. In July 2016, the Board approved a variance allowing the Department to place young adults ages 18-21 in ESH ("YA-ESH"). This variance has been renewed multiple times, most recently in July 2017, and is set to expire on November 15, 2017. In April 2017, Board staff published a report analyzing the effectiveness of ESH for adults ("Adult ESH Report"), and in July 2017, staff published a second report offering a specific analysis of YA-ESH ("Young Adult ESH Report"). Both reports comprehensively analyzed the operations of these units and made important recommendations to improve compliance with the Standards, fairness and procedural justice, effectiveness, and safety. Following both publications, the Acting Chair requested the Department respond formally and in writing to the reports' recommendations. The Board intends to post the Department's response to its website. Acting Chair Cephas noted there are currently seven (7) ESH units housing 107 people, including 30 young adults; 45 (or 42%) of whom are in restraint desks whenever they are out of their cells, including 16 young adults. The Acting Chair invited DOC and Correctional Health Services (CHS) to present their responses to the ESH reports. CHS requested and was granted additional time to prepare a response.

► DOC Response

Chief of Staff, Jeff Thamkittikasem, voiced appreciation for the Board staff's constructive assessment of ESH. He stated that ESH was intended to provide the Department more options for managing its "most persistently violent population." Further, ESH's leveled management system is "good, natural correctional practice" that has helped the Department build a continuum of management options required by the *Nunez* Consent Judgment. He added that ESH helped the Department move away from a "one-size-fits-all" restrictive housing approach by affording correctional staff more opportunities to engage with people in custody.

The Chief of Staff noted that, prior to the establishment of ESH, general population and punitive segregation were the sole housing options available, creating an overreliance on punitive segregation. Since 2014, the punitive segregation population decreased from an average daily population of 600 individuals to a current average daily population of 102 people. Mr. Thamkittikasem attributed this reduction to higher staffing ratios, better training, and the implementation of management options such as ESH. He said there are currently 107 people placed in ESH, and all are provided 7, 10, or 14 hours of out-of-cell time per day, as opposed to the one (1) hour of out-of-cell-time allowed in punitive segregation; moreover, only 2.9% of DOC's entire population (approximately 265 out of 9,200 individuals) is currently housed in any form of restrictive housing.

Mr. Thamkittikasem acknowledged that incidents within ESH remain relatively high per capita, as noted in the Board's ESH report. However, he reported that beginning in Fiscal Year 2014, uses of force resulting in any injury have declined by 12%; uses of force resulting in the most serious injuries are down 53%; serious injuries to inmates due to inmate fights are down 13%; assaults on staff resulting in any injury are down 19%; and assaults on staff resulting in the most serious injuries are down 65%.

In response to the Adult ESH Report's recommendations, the Chief of Staff said the Department created a master schedule to deconflict daily activities, hired additional programming staff, and contracted providers to increase programming in ESH. He said DOC is addressing the issue of procedural justice by (1) adding dedicated programming staff to the ESH assessment team who makes placement and movement decisions; and (2) mandating placement reviews by the Chief of Department or her designee when a person has not progressed to another level after having two 45-day reviews (i.e., after 90 days). The Department is also considering revising the ESH passport book and FAQs to make them more informative for people in custody. In terms of data collection, Mr. Thamkittikasem noted that DOC is improving the way it assesses violence in the general population after individuals are moved to ESH, but developing electronic systems to capture all current paper-based information will take years to implement.

The Chief of Staff provided similar responses to the Young Adult ESH Report, as well as an additional commitment to work with CHS to identify the unique health-related needs of young adults in ESH. He said DOC is considering developing a passport book for young adults housed in the Entry Level Unit, as they currently do not receive information on ESH protocols and requirements for progressing out of that Unit. He acknowledged the overrepresentation of young adults in ESH — young adults are 30% of the ESH population but only 10% of the total incarcerated population — and said DOC has experimented with programs, such as "Cure Violence," to reduce violence among young adults. The Chief of Staff noted that 96% of the total incarcerated population, in contrast to the particularly violent population in ESH, has never been involved in a use of force incident or assault on

staff. He recognized the need to continue modifying ESH and requested the Board's flexibility in this endeavor; he added that DOC looks forward to participating in discussions on restrictive housing rulemaking.

► **Board Discussion**

ED King asked Mr. Thamkittikasem to address the ESH Reports' recommendations on recreation, specifically, what measures the Department has taken to incentivize and improve access to recreation, and any improvements it has made to the recreation area itself. The Chief of Staff responded that DOC (1) is developing master deconflicting schedules to encourage consistency in the time slots for recreation being offered; and (2) has installed dip-bars and pull-up bars in half of the recreation areas, the remainder of which will be completed by the end of the week. He said the Department is looking into ways to incentivize participation in recreation, but at this time, had limited information about the specifics of these efforts.

Member Cohen requested an update on the use of restraint desks in the Secure Unit. He referenced the variance condition imposed during the September 2017 Board meeting that limited the use of restraint desks by requiring DOC to make a case-by-case determination on whether a restraint desk was necessary to handle a specific safety or security threat. The Chief of Staff replied that there were very few instances requiring the use restraint desks since the last public meeting, and said on many days, restraint desks were not used at all. He attributed this to a lack of security issues necessitating restraint desks.

Member Hamill said the Board's Restrictive Housing Rulemaking Committee has spoken to correctional and academic experts who have indicated that restraint desks are "not a good practice," and restraining young adults for seven (7) hours a day for a 28-day assessment is likely to create more psychological harm and violent tendencies. She asked the Department to describe how it is assessing the effectiveness and appropriateness of such restraints. Mr. Thamkittikasem responded that DOC's goal has been to limit the use of restraints desks to those who are most violent. He explained that the reduction in the use of restraint desks in Secure was attainable because the most violent young adults are no longer placed there. He noted that DOC consulted with other jurisdictions and psychiatrists who provided varying evaluations on the use of restraint desks, some of whom said restraint desks are effective for 3 to 4 hours at a time, with breaks; however, the practice in other jurisdictions is not entirely analogous to New York City's, as individuals in other correctional systems may be placed back into punitive segregation when they act violently, which is not the case in NYC. He said that once the agency has more security precautions in place and staff feel safer about weapons (i.e., through the implementation of body scanners), it can make different choices about restraints. Member Hamill and Mr. Thamkittikasem expressed interest in meeting to share what the Board and DOC have each learned through discussions with correctional experts.

Member Cohen discussed the Department's practice of bringing criminal charges against individuals who commit a criminal act while incarcerated. He requested information on whether being charged with a criminal act while on Rikers substantially extends the amount of time a person spends there. The Chief of Staff said this data varies by individual, but DOC would look into it.

Acting Vice-Chair Richards asked the Department to discuss any progress it has made on ensuring that individuals progress through the various levels of ESH. Mr. Thamkittikasem acknowledged that many people leave ESH because they are being discharged from

Rikers, not because they have graduated through the levels. To address this, he said DOC has added dedicated programming staff to its multi-disciplinary ESH assessment teams. He indicated that the Department is also endeavoring to guard against bias in the placement review process by “kicking up” reviews to the Chief of Department (or designee) after an individual has been in ESH for 90 days. Mr. Thamkittikasem added that it will take the Department 90-120 days to assess the impact of these changes on individuals’ ability to matriculate more easily through ESH levels.

Member Hamill asked about the Department’s plan for 18-year-olds, who, under the *Nunez* Consent Judgment (and pursuant to DOC’s practice), are not to be housed with people over 21. She emphasized that, as a result, 18-year-olds often cannot progress out of the most restrictive levels of ESH because the less restrictive levels would require co-mingling with people over 21. The Chief of Staff said the Department is determining if it can create additional YA-ESH housing that would allow for the progression of 18-year-olds without violating the terms of the Consent Judgment. Additionally, these new housing areas would be subject to SCOC approval.

Satellite Intake and Closed Housing Area Plans

ED King reported that Board monitoring staff had discovered in recent months seven (7) closed housing areas where DOC had inappropriately housed people. Monitoring staff successfully intervened to have people moved to appropriate housing and to mitigate immediate safety concerns. BOC staff also addressed these issues with the respective facilities, the Chief of Department, and the Commissioner’s Office. ED King said DOC staff have described these housing areas alternatively and inconsistently as satellite intakes, 9-5 houses, mini- or alternative intakes, and intelligence gathering areas. She identified the following concerns about the closed housing areas: (1) people are effectively hidden when housed in these units. The units appear closed on the daily census. The official inmate information and management system does not list the people in their real location. The floor cards that should always accompany the person in custody, detailing health and security flags, often do not accompany the people in the closed units; (2) the units have been found to violate the Minimum Standards, as people are locked in and not afforded showers, visits, recreation, religious services, law library, and linen exchange, among other services; (3) in most instances, the conditions of the units are unacceptable for they are littered with trash, filthy, and flooded; (4) working conditions in these units are not safe as DOC staff often are not given basic information about the nature of these units and the reasons why people are housed there; and (5) health staff are not aware of the location of their patients in these units, which creates a dangerous barrier to medication and care. ED King asked the Department to present its plans to prevent this practice from continuing.

► DOC Response

Timothy Farrell, Deputy Commissioner (“DC”) of the Office of Classification and Population Management, said his team oversees the tracking of all housing units in the agency through the Bed Utilization Plan (BUPS) form. He explained that when a housing unit is closed, either by his office or an individual facility, it is reported to his team and the unit is taken “offline” on the BUPS form. If the unit is re-opened, the facility contacts his unit to place it back online. Deputy Farrell acknowledged that there are instances when this protocol has not been followed. He said DOC has established the following monitoring measures to ensure that no one is permanently housed in closed housing units: (1) staff from the Assistant Chief’s and Division Chief’s Offices walk through facilities each day and compare closed and open housing units to the BUPS list; and (2) DOC does random monitoring

through Genetec; this is reported to the Chief of the Department, who then creates a master report for the entire agency.

DC Farrell stated that satellite intakes are different than closed housing units because the former provide a location in each facility to temporarily hold an individual post-incident or post-housing transfer. Satellite intakes are typically closed housing units that have been taken offline, to hold individuals for up to three (3) hours with the Tour Commander's approval, or up to a maximum of six (6) hours with the Warden's approval. Satellite intakes relieve tension and congestion in the main intakes, are only opened on an "as needed basis," and are listed as "SI" on the BUPS. DC Farrell added that CHS is notified of an individual's placement in a satellite intake, and this area is monitored by the Tour Commander and Warden who ensure the log books track entry and reason for placement, the supervisor who approved the placement, and when and where individuals are placed upon exiting the satellite intake. He clarified that DOC's Operations Order regarding closed housing units and satellite intakes is being revised and that in the interim, a Teletype has been released informing all staff how satellite intakes must be operated and clearly stating that placement in there is limited to six (6) hours.

► Board Discussion

ED King requested clarification and analysis on why satellite intakes were established and what is causing the delays in housing individuals in the main intakes. She said there must be more support to ensure that the main intakes are operating efficiently, and more accountability when they are not, as these issues are directly related to the creation of satellite intakes.

Member Cohen confirmed that people are being held in satellite intakes for up to 24 hours. During a recent visit to MDC, he encountered a satellite intake where people were held without due process and without medical staff's knowledge of their whereabouts. He said the Department should improve efficiency in the main intakes rather than creating satellite intakes, which are likely depriving individuals of necessary services for extended periods of time (e.g., medical and mental health care, recreation, visits etc.) DC Farrell responded that satellite intakes were developed to provide a "smaller, less chaotic" environment to assess the best housing options for individuals following an incident or for those requesting protective custody. He explained that the main intakes serve new admissions, people going to court, and housing transfers, while satellite intakes play a vital role in subduing individuals after their involvement in an incident.

In response to a question from Acting-Vice Chair Richards, DC Farrell said an adult in pre-hearing detention status would be held in a satellite intake and then processed through the main intake. He noted that cameras are installed in all satellite intakes and when one is opened, officers are pulled from other posts to serve in them. An officer is required to make visual observations of individuals every 15 minutes and a supervisor is required to tour the area. DC Farrell said these intakes do not have mattresses, and individuals are provided the same accommodations afforded to those in main intakes. He concluded by saying that DOC intends to better inform staff on the appropriate uses of satellite intakes, and that these areas will expedite permanent housing decisions in a more controlled manner.

Public Comment

The Board heard public comment from Albert Craig (COBA) and Grace Kelly Price (JAC), available at: <https://www.youtube.com/watch?v=G XUuyV5nexM&feature=youtu.be>. Following public comment, Acting Chair Cephas adjourned the meeting.