



**NEW YORK CITY
BOARD OF CORRECTION**

September 12, 2017 Public Meeting Minutes

MEMBERS PRESENT

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

Martha W. King, Executive Director

MEMBERS ABSENT

Steven M. Safyer, M.D.

DEPARTMENT OF CORRECTION (DOC)

Cynthia Brann, Acting 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
Sean Cussen, Deputy Director of Investigations
Winette Saunders, Deputy Commissioner of Youthful Offender &
Young Adult Programming
Fazal Yussuff, Assistant Commissioner
Faye Yelardy, Assistant Commissioner for Sexual Abuse and Sexual Harassment
Prevention
Dr. Nichole Adams-Flores, Deputy Commissioner of Health Affairs
Francis Torres, Assistant Commissioner of Education and Youth Advisory Services
Heidi Grossman, Deputy Commissioner for Legal Matters/General Counsel
Brenda Cooke, Deputy General Counsel
Wesley Bauman, Assistant General Counsel
Damien Brown, Correction Officer
America Canas, Senior Policy Analyst
Steven Kaiser, Policy Analyst
Carleen McLaughlin, Director of Legislative Affairs and Special Projects
Ingris Martinez, Investigation Division Investigator
Anna Marzullo, Senior Policy Advisor

Alex Foard, Performance Analyst

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

Elizabeth Ford, M.D., Chief of Psychiatry, CHS
Elizabeth Ward, Senior Director of Operations, CHS
Nancy Arias, Senior Director of Nursing, H+H
Ross MacDonald, M.D., Chief Medical Officer, Assistant Vice President, CHS
Benjamin Farber, Director of Planning and Analysis, 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
Zachary Rosner M.D., CHS

OTHERS IN ATTENDANCE

Ummer Ali, Urban Justice Center (UJC)
Rhona Amorado, UJC
Roy Meredith, UJC
Susan Goodwillie, UJC
Laura Fettig, UJC
Grace Kelly Price, Jails Action Coalition (JAC)
Jennifer Parish, UJC/JAC
Elizabeth Mayers, JAC
Victoria Phillips, JAC
Veronica Vela, Legal Aid Society Prisoners' Rights Project (LAS)
Dori Lewis, LAS
Clara O'Brien, LAS
Marlen Bodden, LAS
Maya Brown, Children's Rights
Melissa Barosy, Connelly, McLaughlin & Woloz
Angel Castro, Correction Officers' Benevolent Association (COBA)
Albert Craig, COBA
Marc Steier, COBA
Elias Hanks, COBA
Kelsey De Avila, Brooklyn Defender Services
Ashley Lodice, NYC Law Department
Tanya Krupat, Osbourne Association
Jin Lee, NY City Council
Brian Crow, NY City Council
Dennis Gonzalez, *Nunez* Monitoring Team
Charlotte Pope, Children's Defense Fund – NY (CDF-NY)
Valentina Morales, Fedcap Rehabilitation Services, Inc. (Fedcap)
Amanda Brown, Fedcap
Victoria Law, Independent
Margaret Egan, City University of New York (CUNY) Institute for State and Local Governance
Michael Jacobson, CUNY Institute for State and Local Governance
Courtney Bryan, Center for Court Innovation (CCI)
Nora McDonough, CCI
Tyler Nims, Latham & Watkins LLP
Dana Kaplan, Office of the Mayor

Shevani Patel, Office of the Mayor
Chelsey Davis, Office of the Mayor
Dahianna Castillo, Office of Management and Budget (OMB)
Xiao Wang, OMB
Zach Honoroff, Crime Lab New York
David Hafetz, Crime Lab New York
Elena Weissmann, The Bronx Freedom Fund
Hannah Walker, Sylvia Rivera Law Project (SRLP)
Mik Kinhead, SRLP
Jeff Coltin, City & State New York
Andie Moss, The Moss Group, Inc. (TMG)
Shannon Murphy, TMG
Tom Faust, TMG
Mara Dodson, TMG

Introductory Remarks, Announcements, and Updates

Acting Chair Cephas called the meeting to order and announced the Board would vote today on one variance renewal request by the Department of Correction (DOC) to continue operating the Secure Unit for young adults.

Approval of July 2017 Minutes

The Acting Chair asked for a motion to approve the July 11, 2017 meeting minutes. Upon Member Regan moving the item and Acting Vice-Chair Richards seconding it, the minutes were unanimously approved (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Bryant, Cohen, Hamill, Jones Austin, Perrino, and Regan, and Perrino).

Presentations on Independent Commission Report & Roadmap to Closing Rikers

► Introduction

Acting Chair Cephas welcomed the Independent Commission on New York City Criminal Justice and Incarceration Reform (“Commission”) and the Mayor’s Office of Criminal Justice (“MOCJ”). The Acting Chair congratulated both groups on their work in orchestrating a vision and plan for future criminal justice and incarceration reform in New York City. He acknowledged the breadth of work ahead and reiterated the Board’s commitment to being an active partner in this effort. The Board requested that both groups brief them on their recent reports and provide insight on the Board’s potential role in the plan to close Rikers Island (“Rikers”).

► Independent Commission Presentation

Dr. Michael P. Jacobson, a Subcommittee Chair and member of the Commission and the Executive Director of the CUNY Institute for State & Local Governance, provided an overview of the Commission’s recommendations set forth in its Report, *A More Just New York City*.¹ The Commission, chaired by Hon. Jonathan Lippman, has been in existence for over a year and is charged with developing a blueprint for reforming the City’s criminal justice and jail systems. The diverse, 27-member Commission is divided into three Subcommittees — Rethinking Incarceration, The Future of Jails, and Reimagining the

¹ Dr. Jacobson’s presentation is available at:

http://www1.nyc.gov/assets/boc/downloads/pdf/commission_slides_mj.pdf.

The Commission’s full Report is available at:

<https://static1.squarespace.com/static/577d72ee2e69cfa9dd2b7a5e/t/595d48d1e6f2e1e5bcaa411a/1499285717652/Lippman+Commission+Report+FINAL+Singles.pdf>

Island — that prioritized the following guiding principles in creating its blueprint: ensuring dignity and justice; promoting safety; creating humane and accessible facilities; thinking long-term; and engaging the community. The Commission met intensively for a year, taking witness testimony and hosting various community meetings.

The Subcommittee on Rethinking Incarceration identified a series of policy changes to reduce the City's jail population over the next ten years, from 9,500 to under 5,000 — comparable to Scandinavian rates of incarceration. These changes involve pursuing alternatives to incarceration, pretrial reform, expanding supervised release, bail reform, speedier case processing, and sentencing reform. The Subcommittee on Future of Jails, working within the framework of the Commission's guiding principles, soon concluded that Rikers must be closed. Dr. Jacobson identified Rikers' fundamental problems as infrastructure, transparency, and transportation. He also noted the fundamental deficiencies in the borough jails, which precludes their serving as an alternative to Rikers once it closes. The Commission recommends co-locating, to the extent possible, new modernized jail facilities near courthouses in all five boroughs, and developing a new state-of-the-art corrections training academy offering 32 weeks of training. Conservative fiscal estimates put the costs of construction at \$10.7 billion; however, the Commission estimates that a smaller, more efficiently staffed jail system would ultimately yield an annual savings of \$1.5 billion. Lastly, the Subcommittee on Reimagining Rikers identified the 420 acres of land available on Rikers as being strategically positioned to support regional growth by expanding LaGuardia Airport, incorporating green infrastructure, and relocating some other City infrastructure, which could be backfilled with housing.

► Board Discussion

In response to Member Regan's inquiry, Dr. Jacobson confirmed that the Commission's recommendations would fund themselves while benefitting both the criminal justice system and urban planning; he said it would operate at a cost for the first 8-9 years before evening out, and after 13 years, would pay for itself, eventually saving the City half a billion dollars per year. Member Regan asked whether the impact of the Commission's recommendations on families and the support networks of those in custody was capable of measurement. Dr. Jacobson estimated that the impact would be great, as 75-80% of people in DOC custody are pretrial detainees and should have much easier access to their loved ones than Rikers currently provides.

Acting Vice-Chair Richards inquired about New York State's involvement in the Commission's work. Dr. Jacobson responded that while some of the Commission's recommended changes are within the City's jurisdiction (e.g., bail and pretrial reform), speedier court processing is a critical component of reducing the jail population and involves every actor in the criminal justice system, including state prosecutors, state court judges, and the defense bar. Member Jones Austin asked how people in custody would be impacted by these changes. Dr. Jacobson replied that modernized jails (e.g., Denver and San Diego) are safer, calmer, and less stressful due to their physical design. Additionally, jails located in the community make it easier for families and attorneys to visit and for a broader range of programming to be offered. Modernized facilities also make it easier to provide direct supervision, thereby reducing violence. Dr. Jacobson further stated the violence rate is low in the Scandinavian/German/Netherlands correctional systems because the facilities' physical environments are dignified and safe, with access to services.

Acting Chair Cephas asked about the Commission's plans for implementation of its recommendations. Dr. Jacobson responded that the Mayor's Office would spearhead

implementation efforts. He said that closing Rikers and reducing the jail population are critical reforms on which both the Mayor and Governor agree. Executive Director (ED) Martha King asked what the Board's role should be in implementing the Commission's recommendations. Dr. Jacobson stated that the Board would be uniquely involved in reviewing implementation plans and determining how the new facilities comport with the Board's current or new Minimum Standards. Member Perrino expressed his view that new facilities would end many of the excessive shackling practices currently being debated by the Board. He further stated that security staff (e.g., wardens, captains, officers) should be included in implementation discussions, as they possess significant knowledge about and experience in the City's jails. Dr. Jacobson reiterated that the Mayor's Office would lead project implementation and agreed that input from DOC staff and COBA is relevant to project success.

► **Mayor's Office Presentation**

Dana Kaplan, MOCJ's Executive Director of Youth and Strategic Initiatives, acknowledged the efforts of the Board, community members, and elected officials in prioritizing the closure of Rikers, and stressed the importance of maintaining this momentum as the City proceeds toward implementation. Ms. Kaplan stated that New York City has the lowest incarceration rate of all large cities in the country, and that the jail population has declined by 21% since Mayor de Blasio took office in 2014. While the City's jail population continues to decline, the Mayor's *Roadmap to Closing Rikers Island* ("Roadmap") outlines a set of commitments and new investments.

The Roadmap summarizes the plan to close Rikers by making the City's jails smaller, safer, and fairer. The strategy for creating smaller jails involves reducing the population by 25% to approximately 7,000 in 2021, and eventually to 5,000. The City has committed a three-year investment of \$30 million to achieve this goal. Ms. Kaplan explained that this effort would involve partnerships with the courts, defense attorneys, service providers, and the State to facilitate bail reform, alternatives to incarceration, and speedier case processing.

The strategy for creating safer conditions for staff and people in custody involves repairing existing jails within the next five years and investing \$1 billion to construct new, modernized facilities. This strategy would also include investing \$100 million in a new training academy, tripling the number of housing units for people with serious mental illness, ensuring full camera coverage in all jails, and piloting an improved electronic grievance system.

The strategy for creating fairer jails involves expanding professional development opportunities and supportive services for officers and people in custody. This entails offering reentry planning, further reducing the use of punitive segregation, and improving the visitation program. The Mayor's Office is also developing a Justice Implementation Task Force to help identify and implement strategies that would reduce the jail population to 5,000 over the next 10 years while working to close Rikers.

► **Board Discussion**

Member Cohen emphasized the urgency of closing Rikers. He encouraged the City to think broadly about reforming the criminal justice and jail systems by developing risk assessment instruments that consider the risk that detainees pose to the community and the risk that incarceration poses to detainees and their families. He also encouraged the City to eliminate incarceration for individuals charged with misdemeanors, and to install cameras in court pens to monitor and reduce the persistent violence that occurs there. Ms. Kaplan agreed that implementing the City's plan in a timely manner is essential to addressing these

ultimate goals. Ms. Kaplan clarified that the \$30 million investment for population-reduction strategies is one piece of the long-term vision, and the City will consider additional investments that may be necessary to reduce the jail population. She further explained that the \$1 billion in capital funds for building new jails is a new investment, and advised that DOC's Chief of Staff Jeff Thamkittikasem can discuss how it relates to the Department's past investments and capital budget overall. Acting Vice-Chair Richards added that the NYPD Commissioner is participating in the Justice Implementation Task Force's steering committee. The Acting Vice-Chair believes this level of commitment from the Police Commissioner will improve conditions for persons in custody and others interacting with the criminal justice system, as NYPD will be involved in discussions about diversion from arrest and incarceration.

Access to Health and Mental Care Action Plan

► Introduction

ED King announced that beginning in April 2016, the Board asked H+H to publish a monthly report on access to health services across several categories: sick call, health visits, mental health visits, and on- and off-Island specialty encounters. Board staff recently collaborated with H+H and DOC to improve the monthly access report that is published on the Board's website. Last week, an enhanced report was published that reviews metrics for each of DOC's 12 facilities and overall, and monitors each month's approximately 55,000 scheduled health and mental health visits, 10,000 sick call visits, 4,000 health intakes, 600+ mental health referrals, and various other health encounters. ED King stated this is the most comprehensive, real-time reporting on correctional health and mental health care access in the nation. She added that DOC had made noteworthy progress in monitoring access to sick call and reasons for non-participation. The Board is working with DOC to further solidify these necessary monitoring systems. She said that upon DOC's and H+H's joint review of access data, they developed a joint action plan for improving access to health and mental health services in the City's jails. ED King thanked agency partners Ben Farber, Patrick Alberts, Nichole Adams, Fazal Yussuff, and Ruel Huffstead for their work and their commitment to this endeavor.

► H+H and DOC Presentation

Dr. Nichole Adams (DOC) and Dr. Patsy Yang (H+H) reported that both agencies focused on two strategies to maximize access to care: (1) coordinated patient-scheduling, to schedule multiple appointments for a patient during one clinic visit; and (2) cohort housing for patients with select medical diagnoses. These strategies were rolled out as two collaborative pilot projects, and required staff training on joint communication. Dr. Adams said they expect to have better data in the future for enhancing the agencies' ability to track and report sick call utilization. Further, DOC is working with BOC's Deputy Executive Director of Research, Emily Turner, to expand metrics for tracking and reporting access to care. The agencies expect that such enhanced data tracking and reporting will improve service delivery and decision-making going forward.²

► Board Discussion

Member Cohen thanked ED King for requesting that DOC and H+H produce this data report. Member Cohen and Acting Vice-Chair Richards thanked both agencies for their work; and the Acting Vice Chair commended them for the increase in the overall number of

² The joint presentation is available at:

http://www1.nyc.gov/assets/boc/downloads/pdf/updated_health_care_access_doc_and_chs_presentation.pdf

people being seen. Acting Vice-Chair Richards expressed concern that the percentage of people being seen in off-Island specialty clinics is still below 50%. He asked what the standards are for scheduling appointments in these clinics, and what barriers exist to seeing patients there. ED King said that Board staff and agency partners are currently analyzing the data about the percentage of patients who are seen, as the issue is complex. Patrick Alberts, Senior Director of Policy and Planning for H+H, added that this requires a larger conversation on how DOC measures this kind of data. The Acting Vice Chair reiterated the importance of access to off-Island specialty care, and Member Cohen added that both agencies must ensure that individuals who need medical care are being scheduled for appointment according to their availability.

Secure Unit Variance Request

Acting Chair Cephas explained that in May 2016, the Board first granted variances from Minimum Standards § 1-05(b) and § 1-08(f) to permit DOC to provide young adults in the Secure Unit with 10 hours of daily lock-out and access to law library services by means of a law library kiosk and typewriter in the Unit. The Board renewed this variance in November 2016 for six months. At BOC's May, June, and July public meetings, the Board provided the Department additional months to operate Secure, upon certain conditions, including that (1) restraint desks must be used in the Unit in the same manner as they are used in ESH; and (2) DOC must develop a plan for complying with and reporting on Minimum Standards § 1-05(b) (lockout) and §1-08(f) (law library).

Acting Chair Cephas stated that DOC now seeks a six-month renewal of this variance and requests that the Board amend its Minimum Standards to incorporate this variance permanently. He said the Board would vote on the variance request today and review proposed amendments as part of the rulemaking process re restrictive housing.

► Public Comment on Secure Unit Variance

The Board heard public comment from Jennifer Parish (UJC/JAC), Dori Lewis (LAS), Charlotte Pope (CDF), Miguel Medrano (BDS), and Catherine Frizell (CR/JAC). The public comments are available at: <https://www.youtube.com/watch?v=ds1Fz9VZpOQ&t=2367s>.

► DOC Presentation on Young Adult Plan

Deputy Commissioner ("DC") Winette Saunders updated the Board on the Department's compliance with the Young Adult Plan. She reported that there are currently 9,305 people in custody of whom 10% (or 933) are young adults (i.e., 871 males and 62 females), and 87% are pre-trial detainees. Approximately 416 (44%) of the young adult males are housed in GMDC, with 207 having a high classification. Thirty-six (36) housing areas in GMDC are currently operable, of which 32 are dedicated to young adults and 16 are down due to fire safety and sewer projects.

DC Saunders stated that 65 young adults (about 7% of the young adult population) currently reside in supportive structured housing, with seven (7) in Secure, 19 in TRU, eight (8) in Second Chance, and 31 in ESH. Of the young adults in ESH, 18 have committed slashings, one has committed a stabbing, and 11 committed assaults resulting in serious injury. The six (6) young adults in the ESH Entry Unit and the ten (10) in ESH Level 1 are placed in restraint desks during their out-of-cell time. Fifteen (15) young adults are in ESH Level 2. DC Saunders stated that program participation in the Entry Unit remains high, at 84%.

DC Saunders reported that the average school attendance for the 2016-2017 school year school was five (5) students. She stated that school ended in late June 2017, and was not required to be offered in the summer except to students with IEPs (individualized education plans). School recommenced on September 7, 2017 except for people in the Secure Unit, who started on September 11. Manhattan College commenced its school-year program at Rikers on August 29, and St. John's began its program on September 6; both college programs operate with an inside-out model, i.e., 10 young adults in the community attend some classes with 10 incarcerated youth at Rikers.

DC Saunders said that program participation for August 2017 was high, at over 85% for young people in GMDC. She reported that 1,263 adolescents and young adults were receiving reentry services, and that of those who have been discharged, 372 (about 30%) have remained engaged with services after discharge. She noted that workforce development numbers continue to rise. For FY 2017, 699 young adults completed programming in Trading Futures, with modules in criminal background-friendly areas such as cosmetology, culinary arts, carpentry, electrical wiring, plumbing, and automotive training. In terms of industry-recognized training credentials, 1,615 young adults earned certifications in occupational safety and health, building maintenance, scaffolding, CPR, food handling, and pet safety. For FY 2018, DOC projects 3,050 programming slots for young people.

DC Saunders addressed the use of restraint desks in the Secure Unit. She stated that in May 2017, DOC ended the use of the desks in the housing quads. Since then, restraint desks have only been used for school, and thus were not used after school had ended in June.

► Board Discussion

Member Hammill thanked DOC for accommodating the tours of the New York Advisory Committee to the U.S. Commission on Civil Rights as well as international jurists who are studying the City's correctional system. She noted that the jurists were particularly impressed with the Rikers Rovers dog-training program, and were interested in replicating it in their own countries.

Member Hamill asked DOC to clarify the criteria for placement in Secure such as "escalation of behavior" while in Second Chance or TRU. DC Saunders responded that young adults in Second Chance or TRU who act violently may be placed in Secure. Member Hamill asked about the criteria regarding "involvement in the organization" of violence, and asked how this is determined. DC Saunders explained that such involvement is gleaned from intelligence obtained by, e.g., monitoring of telephone calls, that indicates a young adult's calling for a hit on one of his peers. Member Hamill requested that DOC work on making its criteria for Secure clearer so that it is evident that a young adult's involvement in planning a violent act must lead to actual violence before he is eligible for placement in Secure.

Member Hamill questioned why there was no mention of restraint desks in the variance request. DC Grossman responded that the variance is tailored to the Board's Minimum Standards, and since there is no Standard addressing restraint desks, the variance does not mention them. Member Hamill said that when DOC first requested a variance to operate the Secure Unit, it said that 10 hours of lock-out was necessary to maintain safety and security. She noted that the Department now extends lock-out for some individuals up to 14

hours to incentivize positive behavior, and queried whether this meant that the 10-hour lock-out was, in fact, punitive. DW Saunders responded that the lock-out range serves two purposes — to ensure safety and security and to incentivize good behavior.

Acting Chair Cephas called for a motion to vote on the variance. Member Bryant moved the item and Member Jones Austin seconded it.

► **Votes on Proposed Conditions**

Acting Chair Cephas called for a motion to vote on the variance. Member Bryant moved the item and Member Jones Austin seconded it.

1. Length of Variance

Acting Vice-Chair Richards proposed renewing the Secure variance until the November Board meeting — instead of for six months, as DOC had requested — so that the variance could be considered in conjunction with the ESH variance, which is up for renewal in November. DOC's Chief of Staff, Jeff Thamkittikasem, responded that the Department was awaiting SCOC approval of physical adjustments to Secure, which could take months. Member Cohen and the Acting Vice-Chair emphasized that reducing the length of the Secure variance was meant solely to align discussion of, and determination whether, the variances should be renewed. Such determinations are not related to whether construction is completed by the November meeting. Thereafter, Acting Chair Richards moved to extend the variance through November 21, 2017, and Member Cohen seconded the motion. Acting Chair Cephas conducted a roll call vote of all members present, and the Board voted 8-0 to approve this condition (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Bryant, Hamill, Jones Austin, Perrino, and Regan).

2. Restraint Desks

Acting Vice-Chair Richards proposed a condition prohibiting the use of restraint desks except in school, and then only in cases where there is credible evidence of a specific security threat and the Deputy Warden approves use of the desks in writing. He noted that he had visited the Secure Unit last week and believes the program is starting to come together, with the young people and officers fully engaged. He said the next few months provided an opportunity for DOC to alter its approach, while retaining the ability to use restraint desks if necessary.

Member Hammill said she too was impressed with the level of engagement and the number of staff in Secure. She questioned the need for restraint desks in school given that the Unit is richly staffed. Further, DOC has not demonstrated a benefit to shackling that outweighs its potential harmful effects, including the creation of negative associations with school that deter young people from pursuing education. Member Hamill stated that in cases of credible intelligence of specific threats, de-escalation should be used instead of restraint desks.

Member Cohen said that when he visited the Secure Unit twice this summer, school was not being offered, even though 85% of the young people have IEPs. He saw this as a missed opportunity to engage idle young people and prevent violence. He said that DOC's increased use of restraint desks over the past year normalizes a certain kind of brutality that has come to characterize the jail environment. With nine (9) to 11 staff in the Unit and only two (2) to three (3) students in school at any given time, Member Cohen said there were more than enough staff to maintain safety and security in the school area without the use of restraint desks. He asked the Department to explain why it was not possible to have either

two school sessions during the day or increase the number of staff in school so that restraint desks could be avoided. He emphasized that the Department of Education (DOE) had never requested that students be shackled.

DW Saunders voiced DOC's agreement with the Board that the use of restraint desks should be reduced and used only when there is credible intelligence of a security threat. She clarified that school attendance is not required for young adults (ages 18-21). She further noted that even though the average number of young adults in Secure who have attended school is only two, the Department asked DOE whether additional school sessions could be added and is awaiting DOE's response. Member Perrino endorsed the idea of additional sessions, which would allow for the grouping of young adults from the same quad in the same school session, thereby avoiding the need for restraint desks.

Mr. Thamkittikasem emphasized that DOC is not looking to expand the use of restraint desks, and is committed to minimizing their use. He said that only a small number of young adults — about 20 — would be placed in restraint desks, either in the ESH Entry Unit or ESH Level 1, or in school in the Secure Unit. He stated that DOC does not yet have an alternative prevention strategy and therefore needs the ability to use restraint desks under certain circumstances.

Member Regan said that he had visited the Secure Unit with Acting Vice-Chair Richards this summer and encountered a young adult who would not attend school unless his classmates were shackled, for fear of being stabbed. DW Saunders said that of the 20 youth who decided to go to school in Secure, 10 of them had not attended school in general population due to safety concerns, leading the Department to conclude that these students felt safer in restraint desks.

Member Perrino said that students will learn a lot more without restraint desks in school, and it is worth whatever financial cost to separate them even if it means holding school sessions with only one student at a time. He said other alternatives could be employed, such as sending particularly threatening individuals to ESH, but that terminating the use of restraint desks must be accomplished safely and should not be rushed without a viable alternative strategy in place. Member Perrino endorsed the proposed condition because it reduces the use of restraint desks without tying DOC's hands.

Member Jones Austin stated that no one is in favor of restraint desks, and everyone has similar concerns about avoiding unnecessary use of restraints and effectively maintaining safety and security. She stated that this same conversation takes place every time the Secure variance comes up for renewal, without the Board and DOC engaging in any significant discussion about alternatives. She also questioned whether any serious work was being done to develop such alternatives. Acting Vice-Chair Richards strongly agreed with Member Jones Austin's comments.

Acting Vice-Chair Richards read the proposed condition: "During the pendency of this Variance, the Department shall not use restraint desks in Secure Units except in the Secure Unit school area and only when (a) extenuating safety or security circumstances, or specific, credible intelligence of a safety or security threat, require their use; and (b) the Deputy Warden of Secure approves their use in writing. The Department shall provide written notice to the Board on a weekly basis stating whether restraint desks were used and specifying the circumstances that required their use."

Acting Chair Cephas conducted a roll call vote of all members present, and the Board voted 6-1 to approve the condition (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Bryant, Hamill, Jones Austin, and Perrino voted in favor while Member Cohen voted against the condition).³

3. Lock-Out

Member Hamill expressed concern that lock-out in the Secure Unit is not occurring as required. She proposed the following condition: "During the pendency of this Variance, the Department shall notify the Board, in writing, every time the lock-out period in Secure Units does not start at 5:00 a.m. and the reasons therefor. The Department shall provide written notice to the Board within 24 hours of such occurrence."

Acting Vice-Chair Richards conducted a roll call vote of all members present, and the Board voted 6-0 to approve the condition (Acting Vice-Chair Richards and Members Cohen, Bryant, Hamill, Jones Austin, and Perrino).⁴

4. Outcomes Analysis

Member Hamill stated that the Board has been asking the Department for an assessment of Secure since BOC first granted the variance over a year and a half ago, at which time an assessment was supposed to be provided in 60 days. She noted that the Board has yet to receive an assessment, and proposed a condition that the Department provide a thorough outcomes analysis of Secure by November 21, 2017. Mr. Thamkittikasem said that such a full analysis could not be accomplished in two months and, in response to further questions from Member Hamill, proposed six months.

After more debate with the Department about the timeframe for analysis, Member Hamill proposed her original condition: "By November 21, 2017, the Department shall submit an analysis of the Secure Units that will include a discussion of specific outcomes that were used to measure the success of these Units and the specific metrics that were used to determine whether these outcomes were met. These metrics shall be in line with national best practices and address the Department's compliance with Minimum Standards and the conditions therein."

Acting Vice-Chair Richards conducted a roll call vote of all members present, and the Board voted 6-0 to approve the condition (Acting Vice-Chair Richards and Members Bryant, Cohen, Hamill, Jones Austin, and Perrino).

5. School

ED King read the following proposed condition: "During the pendency of this Variance, the Department will make every effort to (a) increase the number of staff present and supervising young adults during Secure Unit school sessions; and (b) keep the number of students to a safely manageable number without restraint desks by adding multiple school sessions if necessary."

Acting Chair Cephas conducted a roll call vote of all members present, and the Board voted 7-0 to approve the condition (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Bryant, Hamill, Jones Austin, and Perrino).

³ Member Regan left the meeting before the vote was taken.

⁴ Acting Chair Cephas was not in the meeting room at the time the vote was taken.

6. Prohibition of Three- or More Point-Restraints

ED King read the following existing condition: “During the pendency of this Variance, the Department shall not use three- or more point-restraints in Secure Units.” Acting Chair Cephias conducted a roll call vote of all members present, and the Board voted 7-0 to approve the condition (Acting Chair Cephias, Acting Vice-Chair Richards, and Members Bryant, Cohen, Hamill, Jones Austin, and Perrino)

7. Lock-out, Due Process, and Exclusions

ED King read the following existing condition: “During the pendency of this Variance, the Department shall (a) provide all young adults housed in Secure Units with a minimum out-of-cell time of ten (10) hours per day, except for instances of de-escalation, as set forth in the Department’s written directive concerning Secure Units (“Directive”); (b) provide all young adults with due process in connection with their placement in Secure Units; and (c) exclude all young adults with serious mental or serious physical disabilities or conditions from placement in Secure Units.” Acting Chair Cephias conducted a roll call vote of all members present, and the Board voted 7-0 to approve the condition (Acting Chair Cephias, Acting Vice-Chair Richards, and Members Bryant, Cohen, Hamill, Jones Austin, and Perrino).

8. Evaluation

ED King read the following existing condition: “During the pendency of this Variance, where the Department is permitted to consider a young adult’s activity occurring or actions committed prior to the instant incident, such activity or actions must have occurred within the preceding year.” Acting Chair Cephias conducted a roll call vote of all members present, and the Board voted 7-0 to approve the condition (Acting Chair Cephias, Acting Vice-Chair Richards, and Members Bryant, Cohen, Hamill, Jones Austin, and Perrino).

9. Presumption of Advancement

ED King read the following proposed condition: “If the young adult in a Secure Unit has not committed an infraction within the preceding 28 days, the young adult will advance to a less restrictive level or unit.”

Mr. Thamkittikasem stated that this condition should mirror the analogous condition of the ESH variance by stating that a young adult will advance to less restrictive housing if he has not committed an infraction in 28 days, unless the young adult has been placed in the Secure Unit more than once, and/or engaged in disruptive, violent or aggressive behavior in the preceding 28 days, and/or there is credible intelligence that he may engage in additional violence in a less restrictive unit.

Member Cohen inquired about the meaning of the phrase “credible intelligence that he *may* engage in additional violence.” Mr. Thamkittikasem explained that if the Department receives intelligence from, e.g., monitored phone calls indicating a young adult is planning a hit on another person, DOC needs to proactively prevent the violence

Member Perrino said the Board should add this additional language in order not to tie the Department’s hands. Acting Vice-Chair Richards agreed. The Board restated the proposed condition as follows: “If the young adult in a Secure Unit has not committed an infraction within the preceding 28 days, the young adult will advance to a less restrictive level or unit, subject to ESH analogous requirements.”

Acting Chair Cephas conducted a roll call vote of all members present, and the Board voted 6-0 to approve the condition (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Bryant, Cohen, Jones Austin, and Perrino).⁵

10. Monthly Public Report

ED King read the following existing condition: “The Department shall provide the Board with a monthly public report on the implementation of the Variance and foregoing conditions. The requirements for this report are outlined in a document posted on the meeting page of our website.” Acting Chair Cephas conducted a roll call vote of all members present, and the Board voted 6-0 to approve the condition (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Bryant, Cohen, Jones Austin, and Perrino).

11. Reporting on Lock-In and Library

ED King read the following proposed condition: “The Department shall adhere to the terms of DOC’s June 9, 2017 Written Plan for Complying with and Reporting on the BOC Minimum Standards § 1-05(b) (Lock-in) and § 1-08(f) (Access to Courts and Legal Services, including Law Library).” Acting Chair Cephas conducted a roll call vote of all members present, and the Board voted 6-0 to approve the condition (Acting Chair Cephas, Acting Vice Chair Richards, and Members Bryant, Cohen, Jones Austin; and Perrino).

12. Board Access to Documentation

ED King read the following proposed condition: “During the pendency of this Variance, on at least a monthly basis, the Department shall provide the Board access to all documentation considered in each Secure placement and review decision. This includes, but is not limited to, all records reviewed or created by Secure adjudication, Health + Hospital’s placement review, the Chief’s reviews, and the Secure Unit Support Team. The Department shall transmit monthly a list of all Secure placements and reviews. The Department shall provide the documentation by the tenth business day of August, September, October, November, and December 2017, and the fifth business day of January 2018.” Acting Chair Cephas conducted a roll call vote of all members present, and the Board voted 7-0 to approve the condition (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Bryant, Cohen, Hamill, Jones Austin and Perrino).

► Voting on the Variance with Conditions

Acting Chair Cephas took a roll call vote to approve the variance with the twelve conditions. The Board voted 6-0 to approve the variance with conditions (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Bryant, Hamill, Jones Austin and Perrino in favor; with Member Cohen abstaining).⁶

Implementation of and Compliance with Chapter 5 of the Minimum Standards

► Update from ED King

ED King stated that since the Board’s Minimum Standards on “Elimination of Sexual Abuse and Sexual Harassment in Correctional Facilities” went into effect at the beginning of 2017, Board staff have worked with DOC and H+H on implementing them. The Board is pursuing four approaches to monitoring implementation: (1) convening quarterly meetings with DOC

⁵ Member Hamill was outside the meeting room at the time the vote was taken.

⁶ The Record of Variance Action is available at:

<http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/Sep-12-2017/2017-09-12-Record-of-Variance-Action.pdf>

and H+H to review the status of implementation and compliance; (2) analyzing BOC's and DOC's reports on the Standards' impacts and discussing outcomes at Board meetings following BOC's review of the Department's major data reports that are required by the Standards; (3) analyzing compliance data and conducting structured observations and compliance audits; and (4) conducting ongoing observations, investigations, interviews, and fact-finding related to individual complaints submitted to the Board's monitoring staff.

ED King highlighted the following areas of progress thus far: DOC and H+H policies broadly reflect the Standards' requirements. Many staff have received DOC's Prison Rape Elimination Act (PREA) training and all H+H staff have completed the online National Institute on Correction PREA training; DOC has successfully separated adolescents from those 18 and older, and the impending relocation of adolescents off Rikers should further support compliance. DOC's PREA Compliance Managers, now stationed at four facilities, have played a critical role in implementing the Standards, and there has been better implementation at these facilities. Education on and reporting of the zero tolerance policy has greatly improved; and confidential services through the Safe Horizon hotline has been positive, though requires additional focus on privacy.

ED King raised five areas of Board concern requiring immediate attention and response from the Department and H+H. First, complaints of sexual abuse have increased. During the first half of 2016, DOC received 350 complaints of sexual abuse and sexual harassment leading to one substantiation; during the second half of 2016, DOC received 478 complaints of sexual abuse and harassment, with zero substantiations thus far. Second, DOC's timeline for completing investigations is too long, and its low substantiation rate suggests other problems with the Department's investigative process. Additionally, during the period 2013-2015, DOC substantiated only three (3) out of nearly 300 allegations.

Third, H+H is required to develop and offer rape crisis intervention and counseling services to people in custody by June 2018; however, H+H has not submitted its written plan to the Board, which was due June 1, 2017, nor has it submitted its first quarterly report of progress toward this goal. A fourth concern is that while the Department has implemented a new screening tool to assess and reassess inmates for the risk of victimization, it is not utilizing the information from the screening nor documenting reasons for housing determinations. Specifically, DOC has failed to notify the Board of each placement of a transgender or intersex person and its basis for each such placement. Further, the Department's submission of all completed PREA intake screening forms from all facilities for the month of June raised concerns over DOC's inadequate review and tracking of the placement and housing of transgender and intersex people. These forms also showed DOC's lack of systems in place to monitor the housing placement of this population. ED King said it appears facilities are determining a person's gender based on the person's genital anatomy, and there is no evidence that DOC is currently considering gender identity, safety and security concerns, and the person's own views on an individualized basis. Also, the housing placements of transgender people are not being reassessed twice per year as the Standards require. Due to these findings, ED King recommended that the Transgender Housing Unit (THU) remain open until DOC comes into compliance with these Standards.

The fifth area of concern is DOC's violation of the Standards' critical information-sharing requirements. This effectively obstructs the Board's efforts to monitor the Department's compliance with them. ED King stated that 80 closing memoranda on PREA investigations have been completed since the Standards took effect, but to date, DOC has shared only two of them with the Board. Additionally, seven (7) sexual abuse incident reviews should

have been completed thus far, but of the six (6) that have been completed, only two (2) were submitted to the Board. ED King said that, commencing August 1, 2017, the Department must share detailed data with the Board, every six months, concerning each allegation of sexual abuse and issue a public self-assessment of its compliance with the Standards. So far, DOC has failed to produce the data or assessment.

► DOC Response

Cynthia Brann, Acting Commissioner of DOC, remarked on the agency's recent leadership changes, updated hiring practices, elimination of punitive segregation for several populations, and the Department's progress toward a more technology-based systems approach. She stated that DOC is subject to 316 unique provisions under the *Nunez* Consent Judgment, and is in substantial or partial compliance with 75% of them. Acting Commissioner Brann expressed pride in the Department's progress to date, but recognized the substantial amount of work ahead toward achieving full compliance. She welcomed the Board's assistance in finding creative solutions to implementation and compliance issues.

Faye Yelardy, the Department's Assistant Commissioner ("AC") for Sexual Abuse and Sexual Harassment Prevention, provided the following update on DOC's implementation of and compliance with the Standards. The Department has met the requirement of training 20% of its staff by December 31, 2017, and as of June 30, 2017, has trained 40% of staff. DOC's reporting mechanisms (311, Safe Horizons, and the PREA hotline) are functioning properly and are available to persons in custody. During the first six months of 2017 (January 2017-June 2017), 520 sexual assault or harassment allegations were reported — an increase AC Yelardy attributed to better communication and signage informing people of DOC's zero-tolerance policy and mechanisms for reporting sexual abuse and harassment. Written response plans are also available in each facility to assist staff with coordinating and responding to sexual abuse and harassment incidents.

AC Yelardy stated that the Department of Justice (DOJ) released a FAQ explaining that housing, such as the THU, is noncompliant with PREA requirements. She noted that DOC continues to postpone changes to the THU as it continues to collaborate with advocates and The Moss Group in developing compliant housing alternatives. AC Yelardy said the current paper-based screening tool used to identify individuals who are vulnerable to sexual violence and to house them safely must be replaced with an electronic screening system. The Department estimates that such a system will be implemented by the end of October 2017, and that by early February 2018, DOC will introduce the new system Department-wide. For this reason, DOC plans to request a six-month limited variance from the Board's Minimum Standards §5-17(f), §5-17(g), and §5-18. AC Yelardy stated this variance will allow DOC the time and resources it needs to become compliant with using the screening results to inform housing, bed, work, education and programming assignments, and reassessing inmates within 30 days.

► Board Discussion

Acting Chair Cephas asked the Department to explain the low substantiation rate given the considerable number of complaints. AC Yelardy responded that DOC's rate is comparable to the national average. DOC's Deputy Director of Investigations, Sean Cussen, said the Department is hiring five new investigators to investigate sexual abuse/harassment complaints. Acting Vice-Chair Richards requested clarification on DOC's inability to comply with the requirement to use the screening tool to inform housing placements and conduct 30-day reassessments of these placements. AC Yelardy responded that because the screening tool is not electronically based, it is difficult for facilities to share screening

information when an individual is transferred from one facility to another. Members Hamill and Cohen expressed concern over DOC's unresponsiveness to the Board's data and information requests concerning its compliance with the Standards.

Death Review Committee

Member Jones Austin explained that the Board is required by local law to review all deaths that occur while in custody, and this has led to critical, systemic reforms in the City's jail system since 1970. The Board's impartial death review process identifies policy and practice improvements needed to prevent future deaths. She said the Board has played a major role in examining all aspects of deaths in custody, and in developing, in collaboration with DOC and the health authority, prudent changes to minimize preventable deaths. Member Jones Austin reiterated that the Board's death review findings and recommendations have influenced a broad range of policies and procedures over the years, including: (1) enhancing observation for individuals suffering from mental illness who are believed to be at increased risk of suicide; (2) increasing the number of staff assigned to mental health housing units; and (3) developing communication mechanisms between police officers, district attorneys, and DOC staff. As the Board is also charged with overseeing care in the jails, Member Jones Austin emphasized that there is no event more concerning or relevant to this responsibility as the death of someone in custody. Oversight of medical care in jails requires an active and comprehensive review process which analyzes all deaths in custody, identifies systemic problems, and develops and enforces solutions.

Member Jones Austin said the Board's Mental Health and Health Care Minimum Standards were promulgated to ensure that lessons identified through individual deaths reviews were incorporated in permanent requirements for appropriate care. She stated that over the last several months, the Board has not had access to the medical records necessary to conduct these reviews. Five (5) deaths have occurred since H+H determined that it could not grant the Board access to these records. BOC's inability to review deaths in custody places all men and women incarcerated in the City's jails at greater risk of harm. She said the Board, in collaboration with the Law Department and H+H, is pursuing multiple routes for obtaining these records and expects to resume this essential work shortly. Member Jones Austin concluded by saying that over the past year, the Board conducted a comprehensive review of its death review process, which will enable the Committee and BOC to re-start this work in accordance with a significantly strengthened process. The Board will soon notify DOC and H+H of the changes it has made and its expectations for the process, which will resume as soon as possible.

Ad-Hoc Violence Committee Update

Member Cohen reported that the Ad-Hoc Violence Committee had previously investigated and spoke to DOC about the "weaponization" of DOC activity — specifically, its use of tasers. He stated that in March 2017, an incarcerated person was ordered into immediate lockdown by Bronx Supreme Court Justice Steven Barrett. The court's lock-down order denied the individual access to recreation, visits, and interaction with other persons in custody. In addition, the individual was tasered by DOC once in June 2017 and again the following month. Member Cohen said the Committee has requested reports and videos of the taser incidents, but DOC has refused to provide them. DOC's General Counsel clarified that the District Attorney's Office requested the lockdown order. She stated that DOC would like to provide the Board access to the reports and video footage, but wants to establish protocols for sharing such information.

Public Comment

The Board heard public comment from Elias Hanks (COBA), Tanya Krupat (Osbourne Association), Mik Kinkead (SRLP), Grace Kelly Price (JAC), Candi (“Solitary Survivor”), Victoria Phillips (JAC), and Elena Weissmann (The Bronx Freedom Fund). The public comments are available at: <https://www.youtube.com/watch?v=ds1Fz9VZpOQ&t=2367s>

Following public comment, Acting Vice-Chair Richards adjourned the meeting.

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