



**NEW YORK CITY
BOARD OF CORRECTION**

July 10, 2018 Public Meeting Minutes

MEMBERS PRESENT

Derrick D. Cephas, Esq., Chair
Stanley Richards, Acting Vice-Chair
Robert L. Cohen, M.D.
Hon. Bryanne Hamill
Jennifer Jones Austin, Esq.
James Perrino
Michael J. Regan
Steven M. Safyer, M.D.
Jacqueline Sherman, Esq.

Martha W. King, Executive Director

DEPARTMENT OF CORRECTION (DOC)

Cynthia Brann, Commissioner
Jeff Thamkittikasem, Chief of Staff
Winette Saunders, Deputy Commissioner of Youthful Offender and
Young Adult Programming
Hazel Jennings, Chief of Department
Timothy Farrell, Senior Deputy Commissioner
Steven Kaiser, Policy Analyst
Danielle Leidner, Executive Director of Intergovernmental Affairs
Heidi Grossman, Deputy Commissioner for Legal Matters/General Counsel
Brenda Cooke, Deputy Chief of Staff
Michael Tausek, Deputy Commissioner for Adult Programming and
Community Relationships
Elizabeth Seibold, Press Officer
Peter Thorne, Deputy Commissioner of Public Information
Jean-Claude LeBec, Executive Director
Kwame Patterson, Assistant Commissioner
D. Brown, Correction Officer

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

Ross MacDonald, M.D., Chief Medical Officer, Assistant Vice President, CHS
Patsy Yang, DrPH, Senior Vice President, CHS
Dr. Jonathan Giftos, Clinical Director of Substance Use Treatment, CHS
Carlos Castellanos, Director of Operations, CHS
Ashley Smith, Assistant Director of Policy & Planning, CHS

George Axelrod, Senior Director
Jonathan Giftos, M.D., Associate Executive Director, CHS
Patrick Alberts, Esq., Senior Director of Policy and Planning, CHS

OTHERS IN ATTENDANCE

Cynthia Diaz, New York State Commission of Correction (SCOC)
Jennifer Parish, Urban Justice Center (UJC)
Rosa Jaffe, UJC
Elizabeth Mayers, Jails Action Coalition (JAC)
Kai Fiske, Legal Aid Society, Legal Aid Society Prisoners' Rights Project (LAS)
Shayan Mirzahaidor, LAS
Brandon Scheck, LAS
Dori Lewis, LAS
Nancy Ginsburg, LAS
Heather McLinn, LAS
Al Craig, Correction Officers' Benevolent Association (COBA)
Steven Isaacs, COBA
Charlotte Pope, Children's Defense Fund – NY (CDF-NY)
Julia Davis, CDF-NY
Sophie Thackrdy, Children's Rights
Kelsey De Avila, Brooklyn Defender Services (BDS)
Simone Spirig, BDS
Chelsea Davis, NYC Office of the Mayor
Shevani Patel, NYC Mayor's Office of Operations
Ashley Iodice, New York City Law Department (Law)
Kim Joyce, Law
Jin Lee, NY City Council
Taylor Jones, NY City Council
Shanjida Chowdhury, NY City Council
Sarah Joseph Kurien, NY City Hall
Tanya Krupat, Osborne Association
Chantla Stokes, Osborne Association
Jane Stanicki, Hour Children
Christina Reagan, Just Leadership USA
Dan F., Just Leadership USA
Dylan Hayne, Just Leadership USA
Vidal Guzman, Just Leadership USA
Dana Kaplan, Mayor's Office of Criminal Justice
Felipe Franco, Administration for Children's Services (ACS)
Tim Roche, ACS
Jennifer Romelien, ACS
Susan Campos, ACS
Joan T., ACS
Joseph Cardieri, ACS
Marsha Wright, ACS
Trish Marsik, Services for the Underserved
Kimberly McKenzie, Sylvia Rivera Law Project (SRLP)
Becki Marcus, Women's Community Justice Project

Introductory Remarks

Chair Cephas commenced the Meeting by welcoming Jacqueline (Jackie) Sherman to the Board. Ms. Sherman is the Chief Legal and Administrative Officer for JCCA — a prominent child welfare and family support organization that provides comprehensive care to thousands of children, young people, and families who come from New York’s diverse communities. Prior to JCCA, Ms. Sherman was the Associate Commissioner for Planning, Policy and Performance at the City’s Administration for Children’s Services (“ACS”). Chair Cephas announced that Ms. Sherman was nominated to the Board by the Presiding Justices of the Appellate Division of the Supreme Court, First and Second Judicial Departments, and was appointed by the Mayor. Today, Ms. Sherman begins her six-year term as a member of the Board.

BOC’s Executive Director Martha W. King (“ED King”) announced that the Mayor has appointed Derrick Cephas as the Chair of the Board. Chair Cephas served as Acting Chair of the Board since January 2018 and as a Board Member since October 2014. From February 2015 to January 2018, he served as Vice Chair. ED King thanked Chair Cephas for his continued service and leadership on the Board.

ED King noted that due to a travel conflict, Member Jones Austin would be joining the Board Meeting later this morning.

Approval of June 12, 2018 Minutes

Chair Cephas asked for a motion to approve the June 12, 2018 meeting minutes. Upon Acting Vice-Chair Richards’ moving the item and Member Regan’s seconding it, the minutes were unanimously approved by all members present (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Perrino, Regan, Safyer, and Sherman).

CHS Update on Substance Use Treatment

► Introduction

Chair Cephas said New York City has long been a leader and a model for its substance use treatment in the jails, which have the oldest jail-based methadone maintenance program in the country, titled the Key Extended Entry Program (“KEEP”). Since the early 1990’s, the Board’s Minimum Standards have required observation and treatment to prevent complications resulting from intoxication, withdrawal, and associated conditions. The Minimum Standards also require CHS to make education and referral services related to substance use available to people in custody. Chair Cephas invited Dr. Jonathan Giftos, the Clinical Director of Substance Use Treatment for CHS, to address the Board. Dr. Giftos oversees diversion, harm reduction, treatment and reentry services for incarcerated patients with substance use disorders.

► CHS Presentation¹

Dr. Giftos introduced himself as CHS’ Clinical Director of Substance Use Treatment and Medical Director of the Opioid Treatment Program; he also sees patients clinically in the jails. He delivered the following presentation.

Drug use is very common in the City’s jail system. When drug use rises to a clinically significant level, it is referred to as a “substance use disorder.” This disorder is marked by

¹ CHS’ presentation on *Substance Use & Incarceration* (July 2018) is available here: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10/2018/POST/BOC%20SUT%20Service%20Overview%20-%20July%202018%20-%20FINAL.pdf>.

escalating use over time, a loss of control, continued use despite negative consequences, a buildup of tolerance, and withdrawal when the patient stops using. In the NYC jail system, approximately half of all patients admitted have clinical evidence of a substance use disorder. Approximately 20% have a cocaine use disorder; approximately 20% have an opioid use disorder or are using heroin; and approximately 20% have an alcohol use disorder.

DOC facilities with a higher prevalence of mental health and drug treatment services have a larger proportion of people with substance use disorders. For example, at AMKC (the City's largest jail), 70% of patients have a substance use disorder and nearly 50% have an opioid use disorder. Opioid use disorder is a particularly important diagnosis to make and treat in a correctional setting because it is associated with high post-release mortality. When patients enter custody with an opioid use disorder and are taken off of opioids, it reduces their tolerance and poses a risk of a fatal overdose if the individual uses again after release.

Harms of substance use include withdrawal symptoms, infections from sharing injection equipment, social isolation, acquisitive crime, incarceration, overdose, and death. CHS' goal is to reduce these harms in the jail system through its core services: (1) comprehensive medical intake for all new patients entering the jail system that screens for a variety of substance use disorders and provides timely medical attention and referrals; and (2) supervised withdrawal with evidence-based treatments for people with a physical dependence on opioid, alcohol, or benzodiazepines. This reduces harm and misery of early incarceration that drives dangerous self-medicating behavior and violence.

CHS has the nation's oldest and largest jail-based opioid treatment program, which provides methadone and buprenorphine maintenance to patients with an opioid use disorder. In the last fiscal year, CHS treated nearly 4,000 patients with methadone or buprenorphine maintenance. These treatments are associated with a marked reduction in post-release mortality; however, they are rarely available in correctional settings across the country. Of the 5,000 correctional facilities in the U.S., less than 40 offer methadone or buprenorphine to patients with an opioid use disorder.

CHS also operates A Road Not Taken ("ARNT"), a jail-based diversion program operating in seven (7) housing areas in AMKC, RMSC, and VCBC. This program provides a therapeutic community with on-site counselors, case management, and daily support groups for patients.

Forty percent of patients with a substance use disorder are followed by mental health services, and those in mental observation units are assigned court liaisons. All patients with substance use disorders receive comprehensive reentry planning. As of 2014, CHS has distributed 7,000 naloxone kits to families visiting their incarcerated loved ones. Recently, CHS did a follow-up study on 300 family members who were given naloxone kits and found that 50 family members had used the naloxone to reverse an overdose.

Within the last year, CHS expanded access to methadone and buprenorphine for patients with an opioid use disorder. This effort was driven by many factors, including a retrospective review of deaths of CHS patients who had left the jail system. In 2011 and 2012, CHS reviewed post-release mortality and found that opioid overdose remained the number one cause of death during the post-release period — 19 of the 22 patients who died during this period had not treated with methadone or buprenorphine maintenance while in jail.

Previously, CHS used arraignment charges as a predictor of whether a person in DOC custody was going to be transferred to the State prison system. CHS then did an analysis of

its 2016 admissions with opioid addiction (approximately 8,200 patients) and found that 46% were eligible for methadone or buprenorphine treatment because they had been charged with a misdemeanor, while more than half had been charged with a felony. Of the 54% with felony charges, only 28% actually went into the State system, while 72% were released back into the community — thus representing a large population of people who were not offered treatment while in the City’s jail system. To address this issue, CHS partnered with the NYC Court system (the Office of Court Administration, the various District Attorney’s Offices, and the Mayor’s Office of Criminal Justice) to improve communication on criminal case outcomes for patients with felony charges. This allowed CHS to provide everyone who enters the jail system with methadone or buprenorphine treatment and then coordinate with the court if the patient was expected to be sentenced to State prison. As a result, over the past year, CHS expanded the number of people in the opioid treatment program from 250 to nearly 1,000.

CHS’ second expansion effort was to improve reentry services for patients with a substance use disorder. CHS built a service called Substance Use Reentry Enhancement (“SURE”), which seeks to extend key reentry services to patients with a potential substance use disorder. The key reentry services consist of: (1) court services, where CHS assigns a court liaison to patients; (2) overdose prevention and training, which informs patients on how to use naloxone to reverse an overdose; (3) jail-based referrals to ensure that patients are connected to the right treatment services provided by CHS; and (4) completing Medicaid applications so that patients have insurance when they reenter the community. CHS also developed a partnership with the Fortune Society to provide patients with substance use disorders additional transition-care services.

► Board Discussion

Dr. Cohen stated that Dr. Giftos and his team are doing extraordinary work and he is proud to witness this tremendous effort. Member Regan thanked Dr. Giftos for the important work he and his team are doing to help this population.

Public Comment on Variances

ED King said the Board is scheduled to vote on ten (10) variance requests today — three (3) from CHS and seven (7) from DOC (or “Department”). CHS’ variance requests, which are long-standing, relate to psychotropic medication schedules, tuberculosis screening, and the sharing of injury information with DOC. DOC’s variance requests include variance renewals permitting the Department to waive the required 7-day respite from punitive segregation after 30 days, and to co-mingle 19-21-year-olds with adults (22 and older). DOC submitted five (5) new variance requests related to the City’s implementation of the State’s Raise-the-Age legislation and the associated re-opening of the Horizon Secure Detention Facility (“Horizon”) in October 2018.

Public comment about these requests was heard from Julia Davis (CDF- NY), Charlotte Pope (CDF-NY)², Dori Lewis (LAS-PRP)³, Kate Rubin (Youth Represent), Kelsey De Avila (BDS),

² Written testimony from the Children’s Defense Fund-NY is available here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/POST/BOC%20Letter%20-%20Comingling%20SSD%20Variances%20July%202018%20FINAL.pdf>.

³ Written testimony from the Legal Aid Society-Prisoner’s Rights Project is available here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/POST/LAS%20Comments%20for%20July%202018%20BOC%20Meeting%20final.pdf>.

Nancy Ginsburg (LAS), Jennifer Parish (UJC), Jane Stanicki (Hour Children), Rosa Jaffe (UJC), and Shanjida Chowdhury (NY City Council).⁴

Public comment on the variance requests is available here:
https://www.youtube.com/watch?time_continue=5&v=maZlu9k2icc.

CHS Variance Requests

Chair Cephas stated that the Board has renewed CHS' three variance requests every six months for some years. In 2017, the Board voted unanimously to plan to integrate these variances into its Minimum Standards.

► Psychotropic Medication

Chair Cephas said CHS is requesting a six-month variance to allow psychiatrists to see and evaluate stable adult patients on psychotropic medication in general population at least every 28 days, rather than every 14 days. This variance was first granted by the Board in 2005 and has been repeatedly renewed.

CHS reports that there are approximately 2,470 patients in NYC jails (about 30% of the current population) with psychotropic medication orders and of those, approximately 1,330 are on a 28-day prescription schedule. Of the remaining patients with psychotropic medication orders, 21% are in mental observation housing units and, by policy, are on prescription schedules of 14 days or less, and 26% are in general population and on a 14-day prescription schedule.

Chair Cephas called for a motion to vote on the variance request. After Member Regan moved and Acting Vice-Chair Richards seconded, the six-month variance was unanimously approved, 9-0 (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, Perrino, Regan, Safyer, and Sherman).⁵

► Tuberculosis Screening

Chair Cephas stated that CHS seeks renewal of a variance to use either interferon gamma release assays ("IGRA") or TST ("tuberculin skin test") for tuberculosis screening, and to exempt from repeat screening people in custody who have a documented negative test in the six months prior to their admission.

CHS reports that they have many years of experience with IGRA and it is a valuable and effective tool in controlling tuberculosis in the jails. This variance was first granted by the Board in 2013 and has been repeatedly renewed.

Chair Cephas called for a motion to vote on the variance request. After Member Regan moved and Member Safyer seconded, the six-month variance was unanimously approved, 9-0 (Chair

⁴ Written testimony from NYC Council Member Daniel Dromm is available here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/POST/BOCvariancesJuly102018.pdf>.

⁵ The final record of variance is available at:

[https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/POST/2018.07.10%20-%20Record%20of%20Variance%20Action%20-%202018-05\(b\)\(2\)\(i-ii\)%20psychotropic%20medication%20POST.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/POST/2018.07.10%20-%20Record%20of%20Variance%20Action%20-%202018-05(b)(2)(i-ii)%20psychotropic%20medication%20POST.pdf).

Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, Perrino, Regan, Safyer, and Sherman).⁶

► Injury Information

ED King said CHS seeks renewal of a variance allowing health care staff to provide DOC with specific diagnoses related only to injuries sustained by individuals while in DOC custody; the reporting of diagnoses unrelated to an injury remains prohibited. CHS reports that such injury information is an essential component of DOC investigations of violent incidents. ED King said this variance has been granted by the Board since 2013.

ED King added that BOC staff are currently engaged in fact-finding and data review on policies and procedures related to the tracking and reporting of serious injuries. This work will allow the Board to better understand how DOC and CHS respond to, track, and report injuries of people in DOC custody as well as the rates and types of serious injuries occurring in the jails. BOC staff has been pursuing this work since March 2018 and expect to provide a full report and recommendations to the Board in advance of the expected renewal of this variance in six months.

Chair Cephas called for a motion to vote on the variance request. After Vice-Chair Richards moved and Member Regan seconded, the six-month variance was unanimously approved, 9-0 (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, Perrino, Regan, Safyer, and Sherman).⁷

Commissioner Brann's Remarks

DOC Commissioner, Cynthia Brann ("Commissioner Brann"), discussed the fatal injury of a person in custody that occurred yesterday, July 9, 2018. At approximately 2:30 p.m., a detainee at AMKC was fatally injured after being attacked, without warning, by another person in custody. Corrections officers acted quickly in separating the individuals, rendering aid to the victim, and calling for medical assistance, but the victim could not be revived. The suspect has been identified and DOC is collaborating with the NYC Police Department and the Bronx District Attorney's Office on this active investigation. The Commissioner stated that DOC takes this incident very seriously, and noted that this tragic event is devastating to everyone.

DOC's Recurring Variance Requests

► Seven-Day Waiver

ED King stated that in September 2015, the Board first granted a variance from Minimum Standard §1-17(d)(2) to allow the Department, in highly exceptional circumstances presenting safety concerns, to waive the requirement that people in custody be immediately released from punitive segregation for seven (7) days after they have been in punitive segregation for 30 consecutive days. She noted that the Board has renewed this variance multiple times, each time on the condition that the Chief of Department approve each request and state why placement in a less restrictive setting is not a safe option. The Board last renewed this variance on January 9, 2018 and DOC now seeks a six-month renewal of this variance.

⁶ The final record of variance is available at:

[https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/POST/2018.07.10%20-%20Record%20of%20Variance%20Action%20-%203-04\(b\)\(2\)\(v\)\(a\)%20post.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/POST/2018.07.10%20-%20Record%20of%20Variance%20Action%20-%203-04(b)(2)(v)(a)%20post.pdf).

⁷ The final record of variance is available at:

[https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/POST/2018.07.10%20-%20Record%20of%20Variance%20Action%20-%203-08\(c\)\(3\)%20POST.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/POST/2018.07.10%20-%20Record%20of%20Variance%20Action%20-%203-08(c)(3)%20POST.pdf).

ED King said BOC staff had published a report on the Department's use of this variance. Since the variance was first approved in September 2015, DOC has granted 27 and denied 10 waivers. In the last six months, the Chief of Department denied one (1) waiver and approved none.

(i) DOC's Presentation

DOC's Chief of Department, Hazel Jennings ("Chief Jennings"), requested renewal of the six-month variance and said the Department recently added as further explanation for each waiver, why safety and security concerns prevented a person from remaining in a less restrictive setting.

Member Cohen asked why DOC could not house an individual in NIC during the 7-day respite period. Chief Jennings responded by describing the factors considered in making the waiver determination: (1) the egregiousness of the act committed; (2) the person's history of violence; (3) the person's time spent in punitive segregation; (4) feedback from counselors who engage the person to determine safety risks; and (5) video evidence and reports.

Acting Vice-Chair Richards acknowledged the progress that Chief Jennings has made as her office has approved zero waivers in the last six (6) months. Members Cohen, Regan, and Perrino shared this sentiment and thanked Chief Jennings for her work.

(ii) Board Vote

ED King read out loud the existing condition that was approved in January 2018.

Chair Cephas called a roll call vote and the Board voted unanimously to renew the existing condition, 9-0 (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, Perrino, Regan, Safyer, and Sherman).

Chair Cephas called for a motion to vote on the variance with the condition. After the item was moved and seconded, the Board approved the six-month variance with the condition, with eight (8) votes in favor (Chair Cephas, Acting Vice-Chair Richards, and Members Hamill, Jones Austin, Perrino, Regan, Safyer, and Sherman) and one (1) vote in opposition (Member Cohen).⁸

► Young Adult Co-Mingling

Chair Cephas stated that in 2015, the Board created a unique category of incarcerated people — young adults ages 18 through 21 — who were to be housed separately and apart from adults, in housing units with specially trained staff and resource-rich, age-appropriate programming. The Chair explained that these reforms were intended to allow for a comprehensive young adult plan that would mitigate trauma and disproportionate impact on young people of color, and reduce violence.

Since July 2016, 18-year-olds may not be commingled with adults. However, this rule has never been in effect for 19-21-year-olds. Since 2015, the Board has approved variances allowing 19-21-year-olds to be housed with adults. The Board last renewed this variance in January 2018, and DOC now asks the Board to renew this variance for another six months. The Department has also asked the Board to consider amending the Minimum Standards to incorporate this variance permanently.

⁸ The final record of variance is available at: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/POST/2018.07.10%20-%20Record%20of%20Variance%20Action%20-%207%20day%20waiver%20post.pdf>.

Chair Cephas said that in Fall 2015, the Department announced it would house all young adults in one facility, GMDC. It planned to provide age-appropriate programming and train staff to work with this population. By June 2016, DOC housed about 75% of young adults in GMDC. However, around this time, violence at GMDC spiked over a two-week period. As a result, DOC immediately moved some young adults out and ultimately kept only 50% of young adults in this facility.

The Department closed GMDC on June 27, 2018 and is currently housing all general population 18-year-old detainees in young-adult-only (“YA-only”) housing at RNDC. DOC reports that it will add more young adult units at RNDC once the Raise-the-Age legislation (“Raise-the-Age” or “RTA Law”) is implemented in October 2018 and the adolescents (16-17-year-olds) are moved off Rikers Island. Chair Cephas stated that last month, DOC informed the Board that a majority of young adults would be housed at RNDC. As of July 2, 2018, 34% of young adults were in young adult housing — this includes 96% of 18-year-olds (132 out of 137 people) and 19% of 19-21-year-olds (111 out of 582 people).

Chair Cephas said the Board applauds the closing of a jail on Rikers Island and the progress toward reform that this step represents. However, the Board is concerned about the impact of GMDC’s closing on young adults and implementation of DOC’s young adult plan. Specifically, the Board seeks to ensure that education and programming access is improved and that appropriately trained staff are working with young adults. Chair Cephas invited the Department to present its variance request and update the Board on its current plan for young adults.

(i) DOC Presentation

Timothy Farrell, DOC’s Senior Deputy Commissioner of Classification and Population Management (“DC Farrell”), provided an update on the Department’s young adult housing plan. As of July 9, 2018, there were 684 young adults in DOC’s custody — 84 are City-sentenced and 600 are pre-trial detainees. Of this total number: (i) 163 are in some form of special population status (e.g., mental observation units, new admission processing units, protective custody units, infirmary or specialized units for problematic behavior); (ii) 211 are housed in YA-only units in AMKC, RNDC, GRVC, and EMTC; and (iii) 300 are co-mingled with adults in other units across the jail system.

There are two (2) YA-only housing units at EMTC (4 Main and 10 Main) and three (3) such units at GRVC (4A, 4B, and the Secure Unit). Additionally, there are two (2) young adult mental observation units at AMKC (Quad Upper 5 and Quad Upper 7); and 16 YA-only housing units at RNDC.

DC Farrell said the Department plans to replicate at RNDC the young adult housing and program structure previously at GMDC. DOC received approval from the NY State Commission on Correction (“SCOC”) to begin restructuring RNDC and it has a preliminary timeline of 24 weeks to operationalize programming centers at RNDC. When adolescents (ages 16 and 17) move to the Horizon Detention Center in October 2018, the Department will gain approximately 15-20 additional housing units for young adults. DOC anticipates having a YA-only general population housing area at RNDC within the next four (4) weeks.

(ii) Board Discussion

Judge Hamill asked what percentage of 18-year-olds is housed in 18-year-old-only housing units. DC Farrell said he did not have data on this, but all 18-year-olds are housed with other 18-year-olds or 19-21-year-olds. He noted that as DOC increased the young adult population

at RNDC and as space became available, it began housing some 18-year-olds with 19-21-year-olds.

Judge Hamill recounted the enormous amount of work devoted to renovating GMDC and developing age-appropriate programming for young adults housed there. She asked what percentage of young adults DOC intends to house in YA-only units going forward. DC Farrell responded that until Raise-the-Age is fully implemented, the Department expects to move 60% of the young adults into YA-only units at RNDC and GRVC. After full implementation, DOC plans to increase this number. In determining the extent of the increase, DOC will take into account safety and security considerations.

Chair Cephas asked DC Farrell to describe the factors considered when placing young adults in YA-only versus co-mingled housing units. DC Farrell responded that currently, newly admitted 18-year-olds are processed in new admissions units at RNDC, while 19-21-year-olds can be processed at any facility. When the adolescents move to Horizon in October 2018, the Department will begin processing all newly admitted 19-21-year-olds at RNDC. He added that separation orders, protective custody concerns, and mental health factors require DOC to co-mingle some young adults with adults in specialized units.

Member Jones Austin asked what assurance the Board would have that young adults who require separation (e.g., placement in protective custody), would not be housed with adults were this variance to be renewed per DOC's request. DC Farrell responded that in moving young adults to YA-only units at RNDC, the Department had demonstrated its commitment to keeping these populations separate. DOC also has invested many resources into this plan and maintains its goal of providing age-specific care to the young adult population.

Dr. Cohen stated that, to comply with the *Nunez* Consent Judgment, the Department separated the 18-year-olds from young people ages 19-21 and treated this cohort differently than the 19-21-year-olds. Further, DOC staffed and provided age-appropriate programming and housing to the 18-year-olds as the Board expected it would do for the entire young adult population. Dr. Cohen said the data analyzed by the Board's research team does not show that co-mingling decreases violence in the young adult population, as DOC has suggested. He urged the Department to manage the violence associated with YA-only housing units by staffing them with extra security and providing more age-appropriate programming to the young people housed there.

Member Perrino said he was initially concerned that the co-mingling of young adults with adults would be used as a custody management tool. However, after DC Farrell's presentation today, he believes that the Department intends to uphold the goals of the young adult plan. Member Perrino said co-mingling should focus heavily on safety and that it is impressive that 43% of the young adult population is currently housed in YA-only units. He also applauded the Department for having obtained approvals from SCOC. DC Farrell said that in addition to the PEACE and Yes Centers, DOC has requested SCOC approval to increase the outdoor recreation yards ("the Chevron yards") so that each facility has its own outdoor recreation yard.

ED King clarified that the 43% of young adults in YA-only housing does not include young adults in new admission units, mental observation units, and other specialized housing. Thus, the percentage of all young adults in the jail system who are housed separately and apart from adults is, in fact, 34%. In addition, while 96% of 18-year-olds are housed in YA-only units, only 19% of 19-21-year-olds are housed in YA-only units.

Acting Vice-Chair Richards asked DOC to discuss the supportive services currently offered at RNDC and the level of young adult engagement in them. Winette Saunders, DOC's Deputy Commissioner of Youthful Offender and Young Adult Programming ("DC Saunders"), said the full suite of young adult services provided at GMDC was transferred to RNDC, with the exception of the YES and PEACE Centers. Some workforce development courses are currently being held in the trailer (i.e., the sprung), until the PEACE Center is available at RNDC.

Dr. Cohen asked Health + Hospitals if it would be setting up mental observation, CAPS or PACE units at RNDC. Dr. Ross MacDonald, Chief Medical Officer and Assistant Vice President for CHS, responded that AMKC Upper 5 and Upper 7 have been identified as potential mental observation units for young adults. Dr. Cohen requested that Dr. MacDonald investigate the possibility of having a mental observation unit at RNDC.

(iii) Time Limit and Conditions

Member Cohen proposed that the variance be limited to three (3) instead of six (6) months. He then read out loud the existing variance condition and proposed the following condition:

By October 9, 2018, DOC shall submit a Young Adult Housing plan which will result in the Department housing all young adults (18-21) in young adult housing, consistent with Minimum Standard § 1-02(c). The plan shall include goals and a timeline for: offering and providing school; recreational and programmatic capacity; appropriate staffing of young adult housing units; young adult-specific training for staff working with young adults, including specific training offered and number/percent of staff working with young adults who have received the training; evaluating young adult housing's impact on system-wide violence, young adult education engagement, and young adult program engagement; and monitoring plan progress. The plan shall additionally include the Department's plan for identifying, monitoring, and reporting to the Board the rare exceptions in which the Department needs to house a young adult in adult housing (e.g. the Board's variance allowing the Department to house young adults with adults in specialized mental health units, NIC infirmary, and the West Facility communicable disease unit).

Chair Cephas asked the Department for its response to the proposed three-month variance limit and proposed condition. Jeff Thamkittikasem, DOC's Chief of Staff, expressed concern with a three-month limit. He explained that the Department was requesting a six-month variance so it would have enough time to establish YA-only housing at RNDC after implementation of Raise-the-Age. He also expressed concern with the proposed condition because it requires DOC to house 100% of young adults in YA-only housing areas.

Judge Hamill addressed the Department's concern with a three-month variance. DOC chose to close GMDC and, as a result, the young adult population lost many benefits of the young adult plan. She recommended that the variance be limited to three months so the Board could follow up on DOC's plan to house 60% of young adults in RNDC by October 1, 2018. Member Regan and Acting Vice-Chair Richards agreed that the three-month variance would provide an important opportunity to revisit the young adult plan. Dr. Cohen said the three-month variance would allow the Board to evaluate DOC's progress and to impose more specific conditions if the variance is renewed at the end of the three-month period.

Member Jones Austin asked the Department to discuss the challenges it anticipates with a three-month variance in conjunction with Raise-the-Age implementation. Mr. Thamkittikasem stressed the magnitude of the effort in moving the adolescents off Rikers Island and working with ACS to oversee this population. He said there would be very little change in the housing of young adults until Raise-the-Age is implemented.

With respect to the proposed variance condition, the Chief of Staff said the Department has no issue with developing a plan, but is concerned about the requirement that “all” young adults be housed in YA-only units by October 9, 2018. Chair Cephas suggested changing “all” to “substantially all,” and DOC agreed to the proposed condition as so revised.

(iv) Board Vote

After Chair Cephas called a roll call vote, the Board voted to renew the existing condition and limit the variance to three months, with eight (8) votes in favor (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Perrino, Regan, Safyer, and Sherman) and one (1) abstention (Member Jones Austin).

After Chair Cephas called a roll call vote, the Board voted to approve the proposed condition, with eight (8) votes in favor (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Perrino, Regan, Safyer, and Sherman) and one (1) abstention (Member Jones Austin).

Chair Cephas called for a motion to vote on the variance with conditions. After the item was moved and seconded, the Board unanimously approved the three-month variance with the two conditions, 9-0 (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, Perrino, Regan, Safyer, and Sherman).⁹

DOC’s Raise-the-Age Variance Requests

► Presentation by the Mayor’s Office of Criminal Justice¹⁰

Dana Kaplan, Deputy Director for Justice Initiatives and Close Rikers at the Mayor’s Office of Criminal Justice (“MOCJ”), presented on the City’s implementation of “Raise-the-Age,” as follows.

Since passage of the Raise the Age (“RTA”) Law, which the City was very much in support of, the City has focused on an overlying set of goals in its implementation efforts. These goals are: (1) to ensure that the criminal justice system is age-appropriate and responsive to the needs of youth; (2) juveniles are treated as juveniles; (3) the City operates a best-in-class juvenile justice system that ensures fair and just outcomes for children 17 years of age or younger without compromising public safety; (4) the transition to new facilities occurs safely and with an appropriate level of trained staff; (5) the City continues to reduce the detention, jail and prison populations and does not detain or incarcerate more people after Raise-the-Age goes into effect; and (6) crime levels remain at historic lows. The City has seen some great strides in its juvenile system and believes that the RTA Law should, and can, build off these achievements and accomplish even greater progress moving forward.

⁹ The final record of variance is available here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/POST/2018.07.10%20-%20Record%20of%20Variance%20Action%20-%20YA%20Co-mingling%20POST.pdf>.

¹⁰ The Mayor’s Office of Criminal Justice *Raise the Age* presentation (July 2018) is available here:

https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/POST/Raise%20the%20Age_BOC%20Meeting%20Presentation_7.9.18.pdf.

There is a specific provision of Raise-the-Age that is unique to New York City — by October 1, 2018, all 16- and 17-year olds must be moved off Rikers Island. Between October 1, 2018 and October 1, 2019, all 17-year-olds will be detained in the juvenile justice system but their cases will move through the adult system. On October 1, 2019, the final implementation date, the RTA Law will go into effect for all youth under the age of 18.

A key component of Raise-the-Age is that the vast majority of cases of 16- and 17-year-olds will be heard in Family Court, either originating there or being transferred there from the new Youth Part of the adult Criminal Court. Youth whose cases are heard in Family Court will be processed in accordance with existing juvenile delinquency laws. Starting with 16-year-olds arrested after October 1, 2018 and 17-year-olds arrested after October 1, 2019, the processing of all felony cases will start in the Youth Part, which will be staffed by specially trained Family Court judges.

The RTA Law creates a new category of 16- and 17-year olds charged with a felony — Adolescent Offender (“AO”) —whose cases will remain in Criminal Court. Cases for all 13-15-year-old juvenile offenders and all Adolescent Offenders will start in the Youth Part.

There are two types of facilities mandated by the RTA Law: the Specialized Secure Detention (SSD) Facility and the Specialized Juvenile Detention (SJD) Facility. The SSD houses youth who are alleged or convicted Adolescent Offenders (i.e., 16-17-year-olds charged with felonies). The SJD will houses 16-and 17-year-olds who have been removed from Rikers Island (“Rikers youth”).

MOCJ has worked with relevant public and non-profit stakeholders to implement Raise-the-Age in New York City. A steering committee was formed and is comprised of four working groups: (1) Court Processing; (2) Programming and Diversion; (3) Data Analytics and Risk Assessment; and (4) Facilities. The goal of the Facilities Working Group is to ensure that children in custody are housed in safe, age-appropriate settings that foster positive development and well-being. During facility planning, the workgroup reviewed over 70 potential sites. The group recognized that a juvenile-oriented environment was the most appropriate place to house youth, so it focused on renovations to Horizon and Crossroads. Currently, there are significant renovations underway to enhance programmatic, recreational, and educational space, maximize capacity, and make health and safety improvements in these two facilities. Ultimately, ACS will be the primary operator of Horizon, but the initial phase will require staffing support from DOC, as ACS builds its internal capacity.

Deputy Director Kaplan described the five variance requests related to Raise-the-Age, which seek exemption from certain BOC Minimum Standards because (1) the Minimum Standard directly conflicts with a Raise-the-Age regulation and, therefore, is preempted by that State regulation; or (2) the Minimum Standard cannot be complied with due to the physical design and space limitations in in the SSD and SJD facilities.

► **Presentation by ACS**

ACS’ Deputy Commissioner for the Division of Youth and Family Justice, Felipe Franco (“DC Franco”), made the following presentation.

His Division oversees services and programs for youth at every stage of the criminal justice process. The Division was established in 2010 through the merger of the NYC Department of Juvenile Justice and ACS. Its services continuum includes community-based prevention services and diversion programs for youth who are at risk of delinquency detention. The

Division also provides residential services and aftercare services upon a juvenile's return to the community.

For the last two years, ACS has worked with local and national experts (the Missouri Youth Services Institute, the developers of Safe Crisis Management, and a Bellevue Hospital team) to develop a wraparound system of care, managed by a multidisciplinary team. The team reinforces positive behaviors, employs a wide range of crisis prevention and de-escalation techniques, and teaches trauma-responsive skills.

ACS and DOC plan to share responsibility for Horizon for the next two (2) years while ACS develops capacity to serve youth age 16 and older. DOC will provide intermediate staffing support in the facility and ACS will maintain responsibility for the delivery and coordination of medical services, mental health services, case management, programming, and recreational services.

Due to Raise-the-Age, ACS is making significant new investments to improve family and community support within the facilities. ACS' partners at Bellevue have developed the capacity to conduct family therapy and workshops for youth and caretakers in secure detention. In partnership with the NYC Department of Probation, ACS has developed trainings for parents of youth currently in the juvenile justice system, led by parents whose children were previously in the system. ACS facilities provide visiting hours four (4) days a week including weekdays, evenings, and weekends, which will expand to five (5) days per week by October 1, 2018. Youth can call their families at least once per week, and can earn additional calls based on their behavior and stage of treatment.

When a youth enters detention, they are assigned a case manager who works with the youth to develop an authorized contact list. During phone calls, the case manager remains nearby to deescalate any conflict during the call and to ensure that the conversation remains appropriate. DC Franco noted that youth are allowed to make unlimited phone calls to their attorneys.

Pregnant youth receive comprehensive medical services 24 hours a day, seven (7) days per week. This includes prenatal care and nutrition counseling. As part of Raise-the-Age, ACS is making significant new investments for pregnant and parenting youth, such as nurse-family partnerships and other services to assist teens in accessing medical and prenatal care; lactation consultations, family planning, employment, early intervention, daycare, educational programs, and parenting skills classes. ACS also provides services to young fathers, such as co-parenting skills classes and coaching, to create a healthy co-parenting relationship and reconnect, strengthen, and maintain the parental bond with their children.

► **Dry Cell Variance**

On behalf of DOC, General Counsel Grossman requested a continuing variance from Minimum Standard § 1-04(b)(2) to allow the Rikers youth and AO populations to be housed in single occupancy dry cells, i.e., cells that do not contain either a toilet or a sink. She explained that the physical plant of Horizon cannot accommodate individual wet cells: this change in design would require extensive reconstruction and additional space that is not available. In addition, the variance is needed so that the incoming AO population and Rikers youth can be housed in a manner more consistent with nationally recognized best practices for juvenile detention.

Tim Roche, Associate Commissioner and Chief Implementation Officer for Raise-the-Age at ACS (“AC Roche”), explained that Horizon was designed as a youth facility without toilets and sinks in the rooms to maintain a home-like environment. He said youth are only locked in their rooms during the evenings, and if they need access to a sink or toilet during this time, they can push a button in their cell that projects a red blinking light above their door. This alerts the housing unit staff to open the door/deactivate the light, and escort the youth to the bathroom or for a drink of water. This has been a standing practice for decades and according to surveys of staff and youth, takes approximately five (5) minutes for staff to respond to such a request. AC Roche added that the current staffing ratio is six to one in the housing units — i.e., in a 15-bed housing unit, there are at least three (3) staff.

Acting Vice-Chair Richards asked if there is a way to record how much time it takes for staff to open a young person’s door after the person presses the button. AC Roche responded that there are over 100 cameras in the facility to capture this interaction, but there is no mechanism in the alert system to capture this information. Dr. Cohen asked whether DOC or ACS staff would be responding to these requests. AC Roche responded that DOC will staff the facility during the night/lock-in shift until ACS takes over in a few years; therefore, DOC staff will respond to these requests. Dr. Cohen added that historically, dry cells were considered punitive, but he does not believe this was the intent when Horizon was built.

(i) Proposed Conditions

ED King read the following proposed conditions:

- With respect to youth locked in dry cells, housing unit staff will escort residents of Horizon to the unoccupied housing area bathroom and will provide residents with drinking water within five (5) minutes of the request.
- Housing unit staff will document when a bathroom escort or drinking water is requested. Documentation will include the time of the request and the time escorting begins.
- Horizon staff shall not retaliate against residents who request bathroom access or drinking water.
- Notice of the specific terms and conditions of this Variance and the right to notify the Board of any related violations shall be provided to Horizon residents.
- The Department shall provide the Board with a monthly audit on its compliance with the implementation of this Variance and foregoing conditions. Commencing on November 15, 2018, the Department shall provide its first monthly public audit to the Board with respect to the previous month (i.e., October 2018) and within 15 days of the end of each month thereafter.

On behalf of DOC, General Counsel Grossman requested that the first proposed condition be modified to require a response within five minutes “absent extenuating circumstances.” She explained that Horizon is expected to operate at full capacity and, therefore, staff might need more time to respond under certain circumstances (e.g., several young people request to use the bathroom at the same time). Chair Cephas asked General Counsel Grossman to describe what other extenuating circumstances the Department foresees and she said there could also be a use of force or other incidents, such as an alarm, that results in someone not being escorted to the bathroom on time. The Board agreed to incorporate the Department’s requested language into the first condition.

Judge Hamill asked if DOC and ACS anticipate lock downs at Horizon comparable to those at Rikers, which stop all movement, including access to the bathroom. AC Roche responded

that lock downs are not a practice within ACS juvenile detention facilities, and ACS does not anticipate incorporating this practice in its facilities. Additionally, full facility or unit lock downs would appear to violate Raise-the-Age regulations on room confinement.

Dr. Cohen asked whether ACS or DOC staff would decide when a youth is placed in room confinement or a locked down housing area (if that practice is implemented). General Counsel Grossman responded that OCFS¹¹ and SCOC have enacted very specific rules governing the transition of Rikers youth to ACS facilities, and DOC and ACS are committed to ensuring that their policies and procedures comply with these rules. AC Roche said that ACS policies are drafted based upon juvenile-justice best practices and standards and are reviewed and approved by its internal hierarchy as well as OCFS.

(ii) Board Vote

Chair Cephas called a roll call vote and the Board voted unanimously to approve the proposed conditions, 9-0 (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, Perrino, Regan, Safyer, and Sherman).

Chair Cephas clarified that DOC has requested a continuing variance (i.e., a variance of unlimited duration), but the Board is treating this request as one for a six-month variance.

Chair Cephas called for a motion to vote on the variance with the conditions. After the item was moved and seconded, the Board unanimously approved the six-month variance with the two conditions, 9-0 (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, Perrino, Regan, Safyer, and Sherman).¹²

► Law Library Variance

On behalf of DOC, General Counsel Grossman requested a continuing variance from Minimum Standard § 1-08(f) to allow the Rikers youth and AO populations to be housed in facilities that do not have a “properly equipped and staffed law library.” Horizon’s physical plant cannot accommodate a full library, which would require extensive reconstruction and additional space that is not available.

(i) Discussion

AC Roche explained that ACS has not maintained a law library in part due to the physical plant, but also because the agency prefers that the young people in its custody receive legal guidance directly from their attorneys. ACS understands that with Raise-the-Age it will be working with an older population and the agency is committed to developing law library and legal services for them. It plans to have LexisNexis available on tablets at least two (2) hours a day, seven (7) days per week. Such access will be managed by the individual’s case manager and Department of Education staff. ACS is also contemplating hiring an on-site law library coordinator to work part time (20 hours per week) and is exploring contractual relationships with other entities for legal coordination services.

Member Jones Austin stated that, as a lawyer, she believes LexisNexis would be challenging for youth to navigate on their own. She asked about ACS’ timeline for contracting with a coordinator or other entity to provide legal research support to youth. AC Roche responded that ACS has not yet formulated a clear idea of who will serve in this capacity and the agency

¹¹ “OCFS” refers to the NYS Office of Children and Family Services.

¹² The final record of variance is available here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/POST/2018.07.10%20-%20Record%20of%20Variance%20Action%20-%20RTA%20Dry%20Cells%20POST.pdf>.

may experience challenges with the City's procurement process. Drawing upon her experience in City government, Member Jones Austin said this type of contract could be procured in three (3) months.

Acting Vice-Chair Richards sought clarification of a statement in Commissioner Brann's letter request for this variance; namely, that the juvenile justice system does not allow youth to do their own legal research because it may be detrimental to their defense. AC Roche said that young people are prone to making impetuous decisions and, therefore, ACS has preferred directing youth to their attorneys for legal guidance. ACS Executive Director Jennifer Romelien ("ED Romelien") added that ACS works closely with juvenile defense counsel, such as Legal Aid, to ensure discussion not only about young people's individual cases, but also how their behavior while in detention can affect their cases and how the court process works.

(ii) Proposed Conditions

ED King read the following proposed conditions:

- Horizon residents will be provided access to Lexis/Nexis research capacity via tablets, upon their request.
- Horizon residents will be able to access the tablets for at least two (2) hours per day, seven (7) days a week. Access shall be afforded to residents during daytime hours that do not conflict with schooling, programming, counseling, therapy sessions, and other required daily activities.
- Horizon will have a skilled legal coordinator whose duties will include supporting Horizon residents in meeting their requests for assistance in performing legal research.
- The legal coordinator will be on-site at Horizon at least five (5) days per week for a total of 20 hours per week.
- The Department shall provide the Board with a monthly audit on its compliance with the implementation of this Variance and foregoing conditions. Commencing on November 15, 2018, the Department shall provide its first audit to the Board with respect to the previous month (i.e., October 2018) and within 15 days of the end of each month thereafter.

(iii) Board Vote

Chair Cephas called a roll call vote and the Board voted unanimously to approve the proposed conditions, 7-0 (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, Perrino, and Sherman).¹³

Chair Cephas called for a motion to vote on the variance with the conditions. After the item was moved and seconded, the Board unanimously approved a six-month variance with the five conditions, 7-0 (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, Perrino, and Sherman).¹⁴

¹³ Members Regan and Safyer did not participate in this vote or any subsequent votes because they left the Board Meeting at this time.

¹⁴ The final record of variance is available at:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/POST/2018.07.10%20-%20Record%20of%20Variance%20Action%20-%20RTA%20Law%20Libraries%20POST.pdf>.

► Nursery Program Variance

(i) Discussion

On behalf of DOC, General Counsel Grossman requested a continuing variance from Minimum Standard § 3-06(e)(5) to allow the Rikers youth and AO populations to be housed in facilities that do not have “necessary child care” and a “nursery program.” The Department requests this variance in part, because the physical plant cannot accommodate a nursery and this change in design would require extensive reconstruction and additional space that is not available.

AC Roche stated that ACS seeks this variance in part, due to physical plant limitations, but also believes that infants should not be in the detention system and mothers and their children deserve the best care available. He said ACS will work diligently to create individualized settings that are appropriate to the needs of the mother and her child. ED Romelien explained that as soon as a pregnant teen enters the system, ACS coordinates the teen’s pre-natal care and other medical/mental health care. By the time the teen delivers, there is a plan developed by all relevant parties (medical providers and attorneys) for the mother and child. She noted that in the last ten years, only one child was born to a pregnant youth who was shortly released into a mother-baby program.

(ii) Vote on Proposed Conditions

ED King read the following proposed conditions:

- DOC shall submit a written plan to BOC by the October 2018 Board meeting that will include a description of the wrap-around model of support services ACS shall offer to pregnant youth and to all young mothers and fathers residing in Horizon; the service providers who shall provide such support services; and the timeline for procurement of such services.
- DOC shall notify the Board, in writing, of each admission of a pregnant youth to a facility within three business days of such admission and such notification shall include a description of the steps to be taken to seek her transfer to a facility where she can reside with her baby.

Member Cohen appreciated hearing ACS’ plan but from his perspective, ACS has prevented women from boarding with their children in the jail system. Member Jones Austin noted that ACS has worked to develop programs to keep teenage mothers with their children in maternity shelters and foster boarding homes. AC Roche stated that while he could not speak to ACS practices regarding women on Rikers Island, he managed the ACS Children’s Center, which made every effort to keep young women connected to their babies. Judge Hamill echoed Member Jones Austin’s sentiments and proposed the following condition recommended by the Children’s Defense Fund:

- DOC shall ensure that the agencies maintain appropriate placements outside of the SSD facility for pregnant and parenting girls where these youths could be placed without being separated from their children.

Member Perrino voiced that he would be voting against this variance because there should be an adequate space in the facility for this necessary engagement between mothers and their children. Member Cohen said he, too, would be voting against this variance because he believes ACS should provide a more detailed plan on how it would provide child care and nursery services to youth who give birth while in custody.

(iii) Board Vote

Chair Cephas called a roll call vote and the Board voted to approve the three proposed conditions, with five (5) votes in favor (Chair Cephas, Acting Vice-Chair Richards, and Members Hamill, Jones Austin, and Sherman) and two (2) votes in opposition (Members Cohen and Perrino).

Chair Cephas called for a motion to vote on the variance with the conditions. After the item was moved and seconded, the Board approved a six-month variance with the three conditions, with five (5) votes in favor (Chair Cephas, Acting Vice-Chair Richards, and Members Hamill, Jones Austin, and Sherman) and two (2) votes in opposition (Members Cohen and Perrino).¹⁵

► Correspondence Variance

On behalf of DOC, General Counsel Grossman requested a continuing variance from Minimum Standard § 1-11 to allow for a modified model of correspondence for AOs and Rikers youth that more closely aligns with ACS' existing juvenile detention model. Under this system, there would generally be no restriction on the amount of correspondence received or on the language used by youth in correspondence. However, procedures will exist for identifying individuals for whom mail correspondence is prohibited or restricted based on the security of the youth, the facility, and or consistent with any existing court orders.

(i) Discussion

AC Roche explained that ACS creates an approved contact list through collaboration with the youth, their parents, and their case manager. This practice is codified in an OCFS regulation. The purpose of the list is to protect youth from individuals who have a negative and harmful influence on their lives. The list is revisited every three months with input from the young person.

Member Cohen said the Board should not approve a variance that limits with whom a youth can correspond. Acting Vice-Chair Richards requested that ACS describe its list-making process. AC Roche said the contact list can be unlimited in terms of length, and the objective is to ensure that youth are speaking with people who have their best interests at heart. DC Franco added that issues associated with specific individuals with whom youth communicate resulted in promulgation of this regulation. Judge Hamill stated that she fully supports this variance as it is in the best interest of youth.

(ii) Board Vote

Chair Cephas called for a motion to vote on the variance. After the item was moved and seconded, the Board approved a six-month variance with six (6) votes in favor (Chair Cephas, Acting Vice-Chair Richards, and Members Hamill, Jones Austin, Perrino, and Sherman) and one (1) vote in opposition (Member Cohen).¹⁶

► Telephone Calls Variance

On behalf of DOC, General Counsel Grossman requested a six-month variance from Minimum Standard § 1-10(c), (f), (h), and (i) to allow phasing in one call per day per youth.

¹⁵ The final record of variance is available at:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/POST/2018.07.10%20-%20Record%20of%20Variance%20Action%20-%20RTA%20Nursery%20POST.pdf>.

¹⁶ The final record of variance is available at:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/POST/2018.07.10%20-%20Record%20of%20Variance%20Action%20-%20RTA%20Correspondence%20POST.pdf>.

The Department has been informed that ACS is attempting to procure an automated phone system and in the interim, ACS has proposed a modified model for telephone calls that aligns with its existing juvenile detention model. Under this system, all youth are provided a minimum of three (3) seven-minute phone calls per week. The frequency and duration of additional phone calls would be directly tied to a positive behavior management system. All calls are facilitated by ACS case managers and are conducted in their presence.

(i) Discussion

Chair Cephas asked if the three, seven-minute phone calls include calls made to the youth's attorney and AC Roche responded that there is no limit on calls made to counsel. AC Roche added that ACS' mental health team facilitates contact with the youth's family and these phone calls are not limited either. In addition, the limit on calls only applies to calls that result in a conversation; attempted phone calls are not counted towards this limit. ED Romelien explained that the youth's case manager brings the youth into the case manager's office, reviews the young person's case record and approved contact list, dials the phone number, asks for the contact on the phone, and then hands the phone to the youth. This practice will be in place until the automated phone system is implemented. ED Romelien noted that if a young person was struggling and needed to speak with loved ones, the youth would be afforded a phone call that would not count toward the limit. AC Roche stated that once ACS has an automated system, it will move toward daily phone calls.

Acting Vice-Chair Richards asked if ACS' automated system will record phone calls. ED Romelien responded that ACS' automated system will have the capacity to record phone calls, but ACS has not decided whether to record calls. AC Roche said ACS has never practiced recording youth phone calls but it reserves the right to do so in some instances. The Acting Vice-Chair requested that ACS not adopt this practice. Chair Cephas requested that ACS update the Board on its decision to record phone calls and inform the Board on its intent to notify youth if their phone calls are recorded.

Dr. Cohen said the Board should not agree to a policy that restricts whom an adolescent can call and provides less than one phone call per day.

(ii) Proposed Conditions

ED King read the following proposed conditions:

- DOC shall submit a written plan to the Board that includes: (a) a detailed description of the telephone call model DOC proposes to use pending implementation of an automated phone system at Horizon; and (b) a plan and timeline for implementation of the automated system.
- The Department shall submit its written plan to the Board by September 7, 2018.
- All Horizon youth shall be allowed a minimum of three, seven-minute calls per week until the automated phone system is available.
- Upon implementation of the automated phone system, all youth shall be allowed a minimum of one seven-minute phone call per day.
- All telephone calls will be at the expense of the facility.

(iii) Board Vote

Chair Cephas called a roll call vote and the Board voted unanimously to approve the proposed conditions, 7-0 (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, Perrino, and Sherman).

Chair Cephas called for a motion to vote on the variance with the conditions. After the item was moved and seconded, the Board approved the six-month variance, with six (6) votes in favor (Chair Cephas, Acting Vice-Chair Richards, and Members Hamill, Jones Austin, Perrino, and Sherman) and one (1) vote in opposition (Cohen).¹⁷

Public Comment

The Board heard public comment from Vidal Guzman (Close Rikers Campaign) and Al Craig (COBA).

The public comments are available at: <https://www.youtube.com/watch?v=maZlu9k2icc>.

Following public comment, Chair Cephas adjourned the meeting.

¹⁷ The final record of variance is available at: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/July-10-2018/POST/2018.07.10%20-%20Record%20of%20Variance%20Action%20-%20RTA%20Telephone%20POST.pdf>.