



**NEW YORK CITY
BOARD OF CORRECTION**

June 12, 2018 Public Meeting Minutes

MEMBERS PRESENT

Derrick D. Cephas, Esq., Acting Chair
Stanley Richards, Acting Vice-Chair
Robert L. Cohen, M.D.
Hon. Bryanne Hamill
James Perrino
Steven M. Safyer, M.D.

Martha W. King, Executive Director

MEMBERS ABSENT

Jennifer Jones Austin, Esq.
Michael J. Regan

DEPARTMENT OF CORRECTION (DOC)

Cynthia Brann, Commissioner
Jeff Thamkittikasem, Chief of Staff
Hazel Jennings, Chief of Department
Timothy Farrell, Senior Deputy Commissioner, Classification and
Population Management
Peter Thorne, Deputy Commissioner of Public Information
Winette Saunders, Deputy Commissioner of Youthful Offender and
Young Adult Programming
Faye Yelardy, Assistant Commissioner for Sexual Abuse and Sexual Harassment
Prevention
Anna Marzullo, Senior Policy Advisor
Dr. Nicole Adams-Flores, Deputy Commissioner of Health Affairs
Danielle Leidner, Executive Director of Intergovernmental Affairs
Heidi Grossman, Deputy Commissioner for Legal Matters/General Counsel
Sarena Townsend, Deputy Commissioner, Trials and Investigation Division
Brenda Cooke, Deputy Chief of Staff
James Boyd, Director of Constituent and Grievance Services
CarLeen McLaughlin, Director of Legislative Affairs and Special Projects
Mitchell Abramson, Public Information Specialist

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

Patrick Alberts, Senior Director of Policy and Planning, CHS

Ashley Smith, Assistant Director of Policy and Planning, CHS

Lucia Caltagirone, Esq., CHS

OTHERS IN ATTENDANCE

Alex Abell, Urban Justice Center-Mental Health Project

Chantla Stokes, Osborne Association

Dori Lewis, Legal Aid Society Prisoners' Rights Project (LAS)

Leanne Finelli (LAS)

Kai Fisher (LAS)

Brandon Scheck (LAS)

Dale Wilker (LAS)

Rebecca Martin (LAS)

Otica Rutledge, Correction Officers' Benevolent Association (COBA)

Marc Steier (COBA)

Sophie Thackray, Children's Rights

Marliese Dalton, Children's Rights

Taylor Jones, City Council

Amanda Gallear, Independent Budget Office

Kimberly Joyce, Esq., New York City Law Department (Law)

Ashley Iodice, Esq. (Law)

Keith Zobel, New York State Commission of Correction (SCOC)

Allen Riley (SCOC)

William Benjamin (SCOC)

Chloe Sarnoff, Crime Lab New York

Dana Krausher, Crime Lab New York

Melissa Barosy, Connelly McLaughlin & Woloz

Elizabeth DeWolf, CUNY Institute for State and Local Governance

Julia Davis, Children's Defense Fund NY (CDF-NY)

Charlotte Pope (CDF-NY)

Ryan Chikoraishi, New York Public Library (NYPL)

Yanek Ortega (NYPL)

Nicholas Higgins, Brooklyn Public Library (BPL)

Ofia Ali (BPL)

Chloe Wasserman (BPL)

Michael Carey (BPL)

Veronica Lewin, NYC Department of Health and Mental Hygiene

Kevin Jason, New York Civil Liberties Union

Shevani Patel, NYC Office of the Mayor

Chelsea Davis, NYC Office of the Mayor

Freya Rigterink, NYC Office of the Mayor

Jessie Workman, Youth Represent

Thais Saunders, Youth Represent

Rene Alpert, Youth Represent

Malika Worrall, New York Times

Naiti Gamez, New York Times

Introductory Remarks

Acting Chair Cephas announced that Members Jones Austin and Regan were unable to attend today's meeting due to work conflicts.

Approval of May 2018 Minutes

Acting Chair Cephas asked for a motion to approve the May 8, 2018 meeting minutes. Upon Member Hamill moving the item and Member Cohen seconding it, the minutes were unanimously approved (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Perrino, and Safyer).

Correctional Health Services (“CHS”) Update

► Introduction

Acting Chair Cephas invited Dr. Patsy Yang, CHS' Senior Vice President, to provide an update on CHS' recent work in the jails. The Acting Chair recapped that CHS is a division of Health + Hospitals that provides medical, mental health, and dental health services to people incarcerated in the New York City jails.

► CHS Presentation¹

Dr. Yang commenced her presentation by noting that CHS had updated the Board one year ago and since then, has made improvements to its infrastructure and has undergone a cultural shift to create a system of staff and vendor accountability. She continued her presentation as follows.

CHS hired 120 mission-driven clinicians and has affiliations with 34 academic training programs. It created an incident management system to track its response reports and investigations of complaints and workplace violence. CHS also consolidated substance use treatment services into the mental health service, and Dr. Jonathan Giftos, Clinical Director of Substance Use Treatment, will speak about this in greater detail at the next public meeting.

CHS improved the way it provides mental health services, which led to growth of the Program to Accelerate Clinical Effectiveness (PACE) and Clinical Alternatives to Punitive Segregation (CAPS) units. CHS also enhanced its care modeling in the Mental Observation (MO) units and in its 730 Mobile Team that serves individuals who return to DOC custody from state hospitals. These improvements have resulted in a NYC record — there have been no suicides of people in custody in over nine (9) quarters.

The Enhanced Pre-Arrest Screening Program screened over 63,000 people within the first 16 months since CHS began providing this service on a 24/7 basis. Twenty-four percent (24%) of the people served avoided an unnecessary hospital run and 58% of them had better court outcomes as a result of CHS screening summaries. CHS is also working with the Criminal Justice Agency to increase defense counsel use of these summaries with respect to court outcomes.

CHS currently has six PACE units and expects to open six (6) more by 2020. CHS also quadrupled the number of in-jail treatments for Hepatitis C; doubled the number of people on

¹ The presentation is available here: <https://www1.nyc.gov/assets/boc/downloads/pdf/CHS-Update-to-BOC-06-12-18-final.pdf>

methadone; and tripled the number of people on buprenorphine. CHS continues to expand the telehealth program and currently has 22 satellite clinics. As a result of the NYC first lady's initiatives, CHS has increased health services provided to women by bringing mental health services to this population and providing counseling on intimate partner violence.

As of April 1, 2018, the Queens and Brooklyn court clinics for forensic psychiatric evaluation transferred management to CHS. In July 2018, the Manhattan and Bronx clinics will be transferred to CHS. CHS is also working with the Mayor's Office of Criminal Justice (MOCJ) to launch a pilot that will streamline the 730 evaluation process from about 43 days on average to 7 and 14 days (for misdemeanors and felonies, respectively) for completion of the evaluation process. In an effort to reduce the population and avoid recidivism, CHS is working closely with patients upon their admission to jail. Fifty-five percent (55%) of the people entering jail have active Medicaid or an application in process. The City's Human Resources Administration (HRA) estimates that 95% of re-entrants' Medicaid is reactivated within two (2) business days of their discharge. CHS is working with HRA to ensure that anyone who is released with their Medicaid-fee-for-service for four (4) months is provided a managed care plan before they lose their coverage.

In December 2017, CHS started its own pilot to focus on the 45% of people who do not have Medicaid when they enter the jail system. In this pilot, CHS seeks to offer Medicaid application assistance within the first 24-48 hours of an individual's admission. At AMKC, in just two shifts, 50% of new admissions expressed interest in the application, of which 40% obtained an application through CHS. This two-tour, one-jail pilot, accounted for one-fifth of the applications CHS has submitted, and CHS is expanding the pilot to three (3) tours at AMKC and implementing it at RMSC in July 2018.

► Board Discussion

Dr. Cohen thanked Dr. Yang for her presentation and said he was impressed with CHS' progress. In response to his inquiry about the transitioning of people out of MO units, Dr. Yang said CHS would be converting MO units into (6) additional PACE units. Dr. Cohen asked whether there were sufficient New York State beds for competency evaluation and restoration. In response, Dr. Yang said CHS has worked with the State on this issue, and the State is opening a 25-bed unit at Kirby that will reduce the waiting time for a 730 evaluation by one or two weeks. Lastly, Dr. Cohen asked how CHS' budget is currently protected in the face of H+H's substantial budget deficit. Dr. Yang responded that CHS is funded directly by the City and protected by a separate multi-agency agreement that was entered into when correctional health transitioned from DOHMH to H+H.

Acting Vice-Chair Richards asked why only 47% of people in custody were being seen at the on-island specialty clinics. Dr. Yang responded that as a result of BOC's recent report on access to services, CHS is reviewing how it captures information on its provision of services. CHS continues to work with DOC on production issues and to expand Telehealth installations. The Acting Vice-Chair asked how CHS' strategies would be carried over to a smaller, fairer jail system when Rikers Island closes. Dr. Yang responded that CHS intends to expand upon its positive practices when the City establishes borough-based facilities.

Council Member Powers' Remarks

Acting Chair Cephas introduced Council Member Powers, who represents NYC's District 4, covering the east side of Manhattan and midtown. The Acting Chair invited the Council

Member to speak about his role as the Chair of the Criminal Justice Committee. Council Member Powers delivered the following remarks.

Council Member Powers assumed his position on the Council and as Chair of the Criminal Justice Committee on January 1, 2018. He thanked the Board for welcoming him today, and said he has become acquainted with several Board members and Board staff. He also thanked DOC's Commissioner and her team, with whom he has had the opportunity to work. He anticipates the dynamic between the Criminal Justice Committee and DOC will be collaborative, and trusts that all parties in attendance at the public meeting have a shared mission to improve the lives of all New Yorkers.

There are two core committees in City Council that oversee the criminal justice system: (1) the Justice System Committee, which oversees the court system and the City's District Attorneys; and (2) the Criminal Justice Services Committee ("CJS Committee" or "Committee"), which is chaired by Council Member Powers and oversees DOC, the Department of Probation, and the Board. On February 14, 2018, the CJS Committee announced the locations for the new borough-based facilities. This was a significant step for the Mayor and City Council as it actualized the plan to close Rikers. Recently, the CJS Committee toured Rikers with Acting Vice-Chair Richards and DOC staff. This experience further convinced the Committee that closing Rikers and moving towards smaller, modernized jails offers opportunities to improve health care services to people in custody, strengthen community ties, and enhance safety and security.

The CJS Committee has invested significant resources in its oversight function. Toward this end, it held hearings in March and May 2018 to review the \$1.4-billion budget, which will be passed on June 14. Immediately thereafter, the Committee will begin work on the budget for the next fiscal year. The Committee has also held hearings on safety and security in the jails, and the Council Member thanked Dr. Cohen and Executive Director ("ED") Martha King for attending these hearings and discussing the measures BOC has taken to balance safety and security with the responsibility of caring for people in custody. The Committee will continue to hold oversight hearings into fall 2018. Going forward, the Committee's oversight work will include addressing the healthcare system in the jails and evaluating the City's compliance with city, state and federal mandates, including BOC mandates.

The City Council supports the recommendations set forth in the Board's grievance report, and will work with BOC and DOC on modifying the grievance process to ensure that people in custody are heard, and that grievances do not escalate into large-scale crises.² The City Council is also working on proposed legislation regarding fees for services, such as phone calls, commissary, and vending machines. The Council acknowledges that these fees are extremely burdensome for people in custody and their families, and it does not want these fees to be treated as a source of revenue for the City.

The City Council continues to review reporting on lockdowns, use of force incidents, and other areas of concern, as this information helps the Council propose legislation and make better

² The June 13, 2018 letter of NYC City Council Members re BOC's Grievance Assessment is available here: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/June-12-2018/grievances-letter-to-doc-06-13-18-1.pdf>

recommendations. In conclusion, the Council is committed to keeping people in custody connected to their communities and promoting their successful reentry upon release.

► **Board Discussion**

Member Hamill asked Council Member Powers to discuss the City Council’s perception on moving the youth off of Rikers to comply with the State’s “Raise the Age” (“RTA”) legislation. He responded that the Council allocated \$100 million to RTA because it believes that moving adolescents off Rikers is a necessary reform. The Council also believes the City’s Administration for Children’s Services (ACS) is the most appropriate agency to manage adolescents and is hopeful that the two-year transition of adolescents from joint ACS/DOC management to sole ACS oversight will proceed expeditiously.

DOC Sexual Abuse/Sexual Harassment Investigations: A Follow-up

► **Introduction**

ED King presented a follow-up on DOC investigations of sexual abuse and sexual harassment allegations, as follows.

The Board’s newest Minimum Standards, adopted in November 2016, were designed to prevent and respond to sexual abuse and sexual harassment of people in custody. These Standards require prompt, thorough, and objective investigations and provide specific criteria for how these investigations must be conducted. At the Board’s April 2018 meeting, ED King provided the Board and the public with an update on DOC’s compliance with these Standards. These investigations are still not being completed within 90 days, as required.

Ninety-four percent (94%) of the 2016 and 2017 investigations of sexual abuse and sexual harassment remain open and pending (1,851 open cases out of 1,974 complaints). Additionally, rates of substantiation in NYC remain much lower than national averages — in 2016 and 2017, a total of four (4) complaints were substantiated in NYC. In contrast, according to a 2011 U.S. Department of Justice Survey of adult correctional facilities, an estimated 21% of allegations of staff sexual misconduct and 15% of allegations of staff sexual harassment in the jails were substantiated.

At the conclusion of the April discussion, the Board committed to working with the Department to finalize a corrective action plan on how DOC would come into compliance with these Standards. The Deputy Commissioner of DOC’s Investigation and Trials Division, Sarena Townsend, and her team have been actively working with Board staff on this plan. ED King thanked DC Townsend for her work in this area and invited her to present DOC’s corrective action plan.

► **DOC Presentation**

DC Townsend prefaced that she spoke to this issue at the April 20, 2018 public meeting, and today would share the progress the Department has made in the last six weeks as well as its plan for compliance.

DOC identified the current Prison Rape Elimination Act (PREA) reportable caseload as 1,295 cases, all of which have been investigated by PREA certified investigators within the first 72 hours of the allegation. Out of the 1,295 cases pending closure, 1,216 are allegations that are older than 90 days. To expedite the closure of cases, DOC reformatted its PREA closing

memorandum by shortening it without omitting important details that would compromise the integrity of the investigation. The Investigation and Trials Division began using this revised memorandum on April 16, 2018. DOC also leveraged the merger between the Trials and Investigation Divisions by relying on investigator supervisors from both Investigation and Trials to close older cases using the revised memorandum. As of April 23, 2018, DOC closed 64 PREA cases using these strategies.

Last month, a group of investigators were hired and are receiving weeks of training and PREA certification. The PREA investigations team is staffed with 19 investigators, two (2) supervising investigators, and one (1) deputy director. Investigator caseloads average 90 cases, and investigators respond to “call outs” within 72 hours of an allegation. At a minimum, the Investigation and Trials Division needs a total of 30 investigators, six (6) supervising investigators, and two (2) deputy directors to meet the Board’s Minimum Standards. The increased staffing would provide investigators sufficient time to close out old cases, work on new ones, and maintain a workable caseload of approximately 30 cases each. DOC intends to add the requisite managerial staff to the PREA team by September 2018 and, on a rolling basis, DOC will add investigators to the team with a target completion date of January 2019.

By August 2018, the Trials and Investigation Division expects to close 300 additional cases, and by February 2019, to close all cases that are older than 90 days, thereby achieving substantial compliance with the 90-day closing requirement in Minimum Standard § 5-30(m). The Department will keep the Board updated on its progress every six months, as mandated by the Minimum Standards.

► Board Discussion

Dr. Cohen asked for clarification on the difference between the 10-page and 5-page closing memorandum. DC Townsend clarified that the closing memorandum underwent a formatting change that requires less narrative and has more check boxes. The streamlined version expedites case closures while maintaining investigative integrity.

Member Cohen expressed concern that DOC’s fast-track approach toward completing investigations might put the Department at a disadvantage when cases become the subject of OATH proceedings. In response, DC Townsend said most of the fast-track cases concern use of force incidents, where the misconduct is clearly documented (e.g., a use of force captured by Genetec video) and no additional investigation is necessary to determine what occurred.

Member Perrino asked whether the Department’s PREA team staffing issues are due to a lack of funding or difficulty in recruiting the best candidates. DC Townsend responded that DOC has the means to hire additional staff and her team is actively hiring — 11 new staff were hired yesterday.

Acting Vice-Chair Richards asked how the Investigation and Trials Division will prevent new case investigations from adding to the backlog. DC Townsend responded that her team will handle the cases that are over 90 days old aggressively, and new cases will be tackled by new staff. Additionally, DOC’s Core Stat process will facilitate discussions on best practices for handling cases approaching the 90-day limit. DC Cohen remarked that the Core Stat process has often encouraged a substantial manipulation of figures by other agencies. He

asked if the Board would be invited to the DOC's Core Stat meetings, and DC Townsend confirmed that the Board would be invited.

BOC's Study of DOC's Inmate Grievance System

► Introduction

ED King stated that in the 1970s, in the wake of violence and uprisings in the City's jails, voters revised the NYC Charter to create stronger oversight of the jails in the form of BOC. One of the primary mandates of the revitalized Board was to establish a system to hear grievances or requests for assistance from people in custody and staff. This move was recommended by the State Senate Committee on Crime and Correction and was in-line with prison reform across the country. The idea was to create systems that could respond to issues in jails and prisons before they build to violence.

In testimony to the Charter Revision Commission in 1975, then-Board Chair Peter Tufo outlined four purposes of the grievance system that remain as purposes of the system today: (1) address problems that might otherwise fester unnoticed except by those aggrieved within the jails. These include problems meeting the core needs of people in custody, including access to religious services, telephone calls and correspondence, visits, and legal services; (2) promote tranquility of the jails and foster better morale for staff and people in custody; (3) provide a unique and valuable source of insight into problems within the jail system; and (4) indicate to people in custody that we all recognize the fallibility of any large bureaucratic structure and are, as a city, willing to attempt to minimize these flaws.

ED King noted that a grievance system effective at problem-solving should decrease lawsuits filed against DOC as well as subsequent payouts. From Fiscal Year ("FY") 2014 to FY 2017, the number of claims filed against the Department increased over 50% and settlement and judgment costs increased 236% to \$37.3 million in FY 2017.

ED King announced that yesterday, Board staff published its second assessment of the Department's inmate grievance system ("Report").³ The Board found that the system, despite a few improvements in recent years, has major structural problems, including a lack of critical procedures for responding to the tens of thousands of 311 calls each year; unequal access and availability; and an opaque, confusing, and underutilized appeal process. She noted that while these findings are apparent in the data, similar concerns are frequently raised at public hearings and in phone calls directed to BOC. Too frequently, people tell the Board stories of having called 311 or having filed a grievance about a matter important and personal to them — but having never received a response. These structural problems lead to unmet needs, increased tension, perceptions of unfairness, and unaddressed systemic issues inside the jails.

ED King said the Board's Report makes recommendations and provides extensive related comments on DOC's draft grievance directive, and BOC looks forward to continuing to work with the Department in fixing the grievance program. ED King then invited the Board's Deputy Executive Director of Research, Emily Turner ("DED Turner"), to present the Board's second Report on the inmate grievance system.

³ The Board's *Second Assessment of the New York City Department of Correction Inmate Grievance System* (June 2018) is published here: https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/June-12-2018/GrievanceAuditReport_Final_2018.11.06.pdf

► BOC Presentation⁴

DED Turner thanked the Board for the opportunity to present the Report's findings and recommendations and BOC's Director of Research and Implementation, Nashla Rivas Salas, who worked on the Report. She also thanked James Boyd and the entire staff of the Office of Constituent and Grievance Services ("OCGS") as well as CHS' Patrick Alberts and Patricia Morgese for their commitment and ongoing collaboration to improve the grievance system. She added that BOC looks forward to working with these individuals to implement many of the recommendations set forth in the Report.

DED Turner presented on the Report as follows.

The Department defines a grievance as a complaint about an issue or circumstance that directly and personally affects a person in custody. DOC's Inmate Grievance and Request Program (IGRP) provides a process for a person to file a complaint, guidelines for the investigation, resolution, and communication with the grievant, and an appellate process should the grievant disagree with DOC's decision. The complaint must be related to one of 29 categories of issues deemed "grievable" by the Department. If the complaint does not fall within one of these categories, staff deems it either "non-grievable" or a "request," and refers it to a separate office where it is *not* subject to the IGRP. Thirteen (13) of the 29 grievance categories overlap directly with BOC's Minimum Standards, such as classification, law library, visits, and laundry. Complaints related to grievable matters are entitled to a response from the Department within five (5) business days and resolutions provided by DOC may be appealed. Non-grievable complaints that fall outside the 29 categories include matters such as staff complaints, assault allegations, and complaints related to the disciplinary process. These complaints are handled by entities and pursuant protocols outside the IGRP.

The Department receives notification that friends, family, and advocates as well as people in custody have called 311. In 2015, calls to 311 became free of charge for people in custody and in spring 2017, DOC created and disseminated posters throughout the jails informing incarcerated people about the grievance program with instructions on how to call 311. All 311 complaints from people in custody are forwarded to DOC's Office of Constituent and Grievance Services ("OCGS"), which oversees the IGRP. CHS also takes complaints directly, outside of the DOC complaint system, and receives complaints from 311.

People in custody must utilize the IGRP process to obtain a final response from the Department with regard to any grievance or request, unless there is an identified alternative process for resolving a particular issue. As a matter of law, individuals are often required to exhaust administrative remedies, such as those available through the IGRP, before seeking relief from the judicial system or any other external agency. Hence, failure to file a grievance or request with the IGRP may prevent an individual from seeking external relief, which is one of the reasons why it is critical for the grievance system to operate effectively.

There are many different entities who handle complaints by people in custody, including BOC, which reviews appeals for eight (8) different types of complaints related to its Minimum

⁴ The Board staff's presentation on the Second Assessment of the Inmate Grievance System is available here: <https://www1.nyc.gov/assets/boc/downloads/pdf/Second-Assessment-of-the-Inmate-Grievance-System-ppt-June-12-Mtg.pdf>

Standards. Several entities are responsible for addressing complaints that are not subject to the grievance process. For example, facility leadership, including Wardens and Division Chiefs, address complaints related to matters such as security designations, protective custody, and the disciplinary process. DOC's Trials and Investigation Division is responsible for investigating complaints regarding assaults, PREA allegations, and allegations of staff misconduct.

Director Rivas Salas presented the Board's findings and DED Turner presented BOC's recommendations, as follows.

In conducting its second assessment of the grievance system, BOC's research staff reviewed aggregate reports prepared by OCGS for fiscal years 2016 and 2017, reviewed data on grievable complaint resolutions for FY 2017, and conducted a Case File Audit of 262 complaints filed in FY 2016, of which 149 were grievable and 113 non-grievable. BOC also reviewed aggregate complaint data from CHS for fiscal years 2016 and 2017.

The Board's findings centered around four key areas:

- The volume and types of complaints from people in custody;
- Access to the grievance process;
- Resolutions and appeals; and
- Quality assurance and oversight.

► Findings and Recommendations re Volume and Types of Complaints

Findings

In FY 2017, nearly four times as many complaints were filed via 311 than with the grievance system. The number of calls to 311 with complaints about the City's jails increased 49%, from FY 2016 to FY 2017, while the number of complaints filed directly with OCGS at DOC facilities decreased by 15%, over the same period. Whether or not related to a grievance category, a 311 complaint does not automatically initiate the formal grievance process. OCGS staff must follow up with the person in custody to file a grievance. It is unclear how many of these complaints are duplicative, i.e., an incarcerated person filed a written complaint and also called 311 about the same issue. It is also unclear how the Department tracks and communicates timely resolution of 311 complaints.

Nearly 40% of all complaints filed with the grievance system were not subject to the grievance process. This included over 2,293 "non-grievable" complaints and 669 requests for information. In these cases, OCGS notified grievants that it had referred the complaint to a different office, but did not inform them when to expect a response. People in custody were also not informed about what the investigation would look like for complaints not subject to the grievance process.

Over the past five (5) years, complaints have fallen into five (5) top categories, and in FY 2017, complaints in these categories made up nearly 50% of complaints filed with OCGS by people in custody:

- Complaints about DOC staff;
- Employment (which typically includes complaints about an individual's payroll or workload, while incarcerated);

- Inmate financial accounts (which tend to be related to account pin numbers and the proper crediting of money to accounts from any source except DOC employment);
- Jail time calculations (which are generally filed to challenge the accuracy of a person’s projected date of release or transfer); and
- Personal Property.

Recommendations

DOC should develop a written grievance policy that clarifies how complaints to 311 interact with the grievance system. This policy should: (1) explain the role of OCGS staff in following up on complaints made via 311; (2) ensure that all 311 complaints receive a response; (3) educate people in custody about which complaints are not subject to the grievance process; and (4) implement a central system for tracking the resolution of complaints not subject to the IGRP process.

The Department should also develop a system-wide approach to addressing complaints about staff and coordinate with DOC’s ongoing staff development efforts, including the Early Warning System required by the *Nunez* Consent Judgment.

► Findings and Recommendations re Access to the Grievance Process

Findings

BOC found that people in custody have unequal access to the complaint system depending in large part on the jail in which they are housed. For example, facilities range in the number of grievance boxes they have — from one (1) box at GRVC to 25 boxes at MDC. Additionally, grievance coordinators’ workloads vary dramatically depending on the facility to which they are assigned. Additionally, people in custody are not informed about protections against retaliation for filing complaints, which may negatively influence individuals’ likelihood to use the grievance system.

Recommendations

The Department should ensure equal access to the grievance process, which may require developing caseload guidelines for grievance coordinators and officers, and securing additional resources to meet these guidelines.

► Findings and Recommendations re Resolutions and Appeals

Findings

If a person in custody files a complaint that falls into one of the 29 grievable categories, the person is entitled to an initial response from OCGS and three (3) levels of appeal. Ninety-five percent (95%) of complaints were closed after the initial OCGS response. Only 20 people appealed any grievance decision and out of these 20, 10 people received a decision from the Central Office Review Committee (“CORC”), which is DOC’s final stage of review. None of the appeals that made it to the CORC were provided to the Board prior to the CORC decision. It is unclear from the data how many people completed all levels of appeal.

Recommendations

The Department should shorten and simplify the appeals process by eliminating one of its steps so a grievant need only appeal twice to receive a final determination. DOC should also clarify resolution forms to clearly indicate the process to initiate appeal. Finally, the

Department should share with BOC appeals that reach the CORC, as is currently required by DOC policy, so that Board recommendations can help inform CORC decisions.

► **Findings and Recommendations re Quality Assurance and Oversight**

Findings

The Board reviewed quality assurance and oversight in the grievance system through its audit of 262 complaints. BOC found that many of the forms appeared incomplete. Forty-one percent (41%) of all cases audited were not time-stamped, making it difficult to track compliance with response deadlines. The resolution form itself is not designed to clearly indicate when a grievant wishes to appeal a resolution. Fifty-eight percent (58%) of audited complaints did not indicate if the grievant had accepted or rejected the resolution, and of these, 64% lacked the grievant's signature. Without this indication, it is impossible to know whether the grievant wanted to appeal or had received DOC's informal response. This is problematic because it could be interpreted as a waiver of appellate rights.

Since January 2017, OCGS has implemented the use of an electronic system called "Service Desk," to track all complaints received. This system makes it easier to track the lifecycle of a complaint. The Board requires access to Service Desk to audit cases in real time as many complaints and resulting investigations relate to BOC's Minimum Standards.

Recommendations

The Department should update and provide the Board with direct access to Service Desk. DOC should also develop policies and an internal OCGS monitoring process to ensure: grievances are appropriately time-stamped by grievance staff; responses are provided to grievants within five (5) business days; and all appropriate data and documentation are entered into and saved in Service Desk. Finally, DOC should develop an action plan to evaluate and address the drivers of the top grievance categories, which remain ongoing areas of concern for people in custody.

► **Board Discussion**

Dr. Cohen thanked Board staff and said he was interested in hearing the Department's response to the Report. He also asked DOC when the Board would be provided access to Service Desk.

James Boyd, the Department's Director of Constituent and Grievance Services, thanked the Board for its support and hard work in conducting this study and producing the Report. He said DOC continues to share the Board's goals to make a more efficient, transparent, and responsive grievance system. Further, in 2017, the Office of Constituent Services and the IGRP merged to create OCGS, and the grievance unit now reports to the Office of the Commissioner. Over the last few years, DOC improved the grievance system by streamlining the process, creating a technological system to track the life cycle of complaints, increasing responsiveness to complaints, and adding additional resources to support this effort. Director Boyd said DOC will provide the Board with routine access to Service Desk in the near future.

Acting Vice-Chair Richards asked DOC for a formal response to the Board's recommendations. Brenda Cooke, DOC's Deputy Chief of Staff, said DOC had provided a

formal written response to the Report,⁵ and will present its response at the next or subsequent public meeting.

In response to Dr. Cohen's question whether the Department supports the Report's recommendations, Deputy Cooke said DOC is in significant alignment with them and looks forward to collaborating with the Board on enhancements to the grievance process. Director Boyd added that the Department is in the process of creating new grievance forms and new communication plans. Member Cohen asked what DOC is doing to ensure that non-grievable complaints are addressed, and whether DOC has sufficient staff to do this. Deputy Cooke responded that DOC has sufficient staff to address non-grievable complaints. Additionally, she clarified that all 311 complaints come into OCGS and are entered into Service Desk. Director Boyd added that Service Desk combines 311 and grievance complaints to ensure that complainants receive a resolution. Dr. Cohen asked what DOC would expect the appeal rate to be in an optimal grievance system. Director Boyd said he would not speculate about appeal rates, but knowledge of the grievance system and continued engagement between the grievance staff and people in custody would create a better system overall.

Member Perrino asked if uniformed staff (e.g., Captains) can assist with quality assurance for matters such as timestamps and grievant signatures. Director Boyd responded that DOC has a quality assurance team actively reviewing compliance with these and other procedures. ED King expressed concern that 58% of the Board's audited complaints did not indicate if the grievant had accepted or rejected the resolution, and 65% of forms lacked a signature. She asked what happens to a complaint when the grievant neither accepts, rejects, nor signs the form. Director Boyd said there is likely a verbal exchange between the grievant and the grievance coordinator. In any event, the grievant is permitted to take his grievance to the next step even if the grievant fails to indicate his acceptance or rejection of DOC's resolution by signing the form.

Update re GMDC Closure, Young Adult Plans, and Programming

► Introduction

Acting Chair Cephas introduced the Department's update on the closure of GMDC, the Young Adult Plan, and young adult programming, as follows.

In 2015, the Board amended its Minimum Standards to create a unique category of people in custody — young adults ages 18 through 21 who were to be housed separately and apart from people in custody age 22 or older. The Board also required the Department to provide young adults with age-appropriate programming. These amendments were intended to reduce violence by segregating developmentally distinct age groups, providing age-appropriate rehabilitative opportunities, and conforming the Board's Standards to the requirements of New York State law and PREA.

⁵ DOC's written response to BOC's Second Study of the Inmate Grievance System is available here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/June-12-2018/NYC%20Department%20of%20Correction%20-%20Letter%20Regarding%20BOC%20Second%20Grievance%20Report%206.8.18.pdf>

As of July 12, 2016, 18-year-olds could only be housed with 18-21-year-olds, with few exceptions for special mental health housing, in accordance with a continuing variance granted to CHS. However, since fall 2015, BOC has continuously granted variances permitting the Department to commingle 19-21-year-olds with adults. The Department has requested that the Board consider a rule change allowing them to permanently house 19-21-year-olds with adults. The Board last granted a variance in January 2018 allowing the comingling of 19-21-year-olds with adults and expects to consider a renewal request at the July public meeting.

In January 2018, the Department announced that by the end of June, it would close GMDC that houses a large number of young adults. As the GMDC census decreased, so have the number of young adults in young adult housing. Currently, only 37% of young adults are in young adult housing, down from a high of 75% in June 2016.

► **DOC Update**

Timothy Farrell, DOC's Senior Deputy Commissioner of Classification and Population Management, presented the following update.

At the end of 2017, the Department began reviewing which Rikers facilities to close. After determining that GMDC would be the first to close, DOC formed several subcommittees and a main steering committee that included staff from programming, administration, operations, and health services, to devise a transition plan.

All 18-year-olds will be housed in RNDC by the end of June 2018. As the adolescents (16-17-year-olds) transition off Rikers pursuant to Raise the Age, DOC will create more young adult housing units in RNDC. RNDC has an abundance of programming and educational space, as well as staff experienced in working with the young population. The State Commission on Correction (SCOC) will review the Department's plans to reconfigure three (3) areas in RNDC to accommodate the PEACE Center and Yes Center staff and other programs. DOC also opened two (2) young adult housing units in GRVC and EMTC, and transferred programming staff to these facilities. The Department has six (6) vacancies for young adult programming counselors and expects to fill them shortly.

► **Board Discussion**

Judge Hamill discussed the historical context in which the young adult population (ages 18-21) was created. The Board amended its Minimum Standards to create this category in response to New York State's adoption of PREA, which required that any person under the age of 18 be housed separate and apart from people age 18 and older. At the same time, then-DOC Commissioner Ponte developed the Young Adult ("YA") Plan to treat 18-21 year olds more like adolescents than adults, based on neurological science showing that young adults' brain development was closely akin to that of adolescents.

Around the same time or shortly before the Board adopted the PREA age requirement and the Young Adult Plan was implemented, the U.S. Department of Justice filed a lawsuit alleging civil rights violations against young people ages 16-18, resulting from correction officers' excessive use of force against them. This lawsuit was consolidated with existing *Nunez* litigation, and both lawsuits were settled by the litigants' agreement to enter into the *Nunez* Consent Judgment.

While all those involved in the YA Plan were aware that concentrating young adults in the same housing area posed a risk of increased violence, the guiding principles of the Plan were to (1) mitigate the proven effects of trauma experienced by young adults in custody by housing them separately from adults and providing them with education and programming tailored to their unique needs; (2) reduce the foster care-to-prison and the school-to-prison pipelines; and (3) reduce the disproportionate incarceration of young people of color. These goals were balanced against the security risks posed by housing young adults together and mitigation of those risks through training of DOC staff to work with this population, young adult programming and education, and implementation of a young adult disciplinary system.

There has been a lot of great work done for adolescents and young adults under the YA Plan and Chief Perrino helped lead this effort when he was at DOC. However, we must be very mindful of the fact that the only reason 18-year olds are separated out is because the *Nunez* Consent Judgment requires this and the Deputy Monitor has said it is much more difficult for DOC to comply with this requirement if DOC is housing 19-21-year-olds with 18-year-olds. Thus, the Board granted DOC's request for a variance permitting the housing of 19-21-year-olds, but not 18-year-olds, with adults. This is why 18-year-olds continue to benefit from the YA Plan, but it appears that we are losing some of the benefit of the Plan for 19-21-year-olds.

With that historical background in mind, Judge Hamill asked whether DOC was reversing course and abandoning the YA Plan. In response, DOC General Counsel Heidi Grossman clarified that the housing of the 18-year-olds with the 19-21-year-olds was not done solely to meet the requirements of the *Nunez* Consent Judgment, but also to meet this population's similar needs for programming and other resources.

DC Farrell affirmed that the Department is not abandoning the YA Plan, and has taken steps to improve upon it. For example, RNDC has greater space for recreation, programming, and education than GMDC, and there will be 18-year-old housing units at RNDC, separate and apart from the 19-21-year-olds.

Judge Hamill recalled that the Department had previously been concerned about housing all 18-year-olds together in the belief that the incidence of violence would rise sharply. She asked what changed DOC's perspective on this issue and inspired it to implement 18-year-old-specific housing units at RNDC. DC Farrell responded that at GMDC, the majority of the young adult population is comprised of 18-year-olds and the rate of incidents there has been relatively low.

Judge Hamill asked whether the Vera Institute of Justice had completed its assessment of the YA plan and whether DOC had consulted with Vera about establishing housing units at RNDC for 18-year-olds. DOC's Deputy Commissioner of Youthful Offender and Young Adult Programming, Winette Saunders ("DC Saunders"), responded that Vera expects to complete its assessment of the Plan within the next few months. Further, the Department did not consult with any entity about creating 18-year-old housing units, and instead relied on the lessons learned since its implementation of the YA Plan. Judge Hamill asked if the resources allocated to 18-21-year-olds would be diverted to the 18-year-old-only units. DC Saunders replied that the resources would be distributed equally among the entire young adult population. DC Farrell said the majority of young adults in general population at GMDC would be transferred to RNDC.

Member Perrino recalled that he had questioned the Department's choice of GMDC as the facility to house young adults because RNDC had better infrastructure. Nonetheless, DOC directed significant efforts and resources toward developing GMDC in accordance with the YA Plan. He asked why the Department chose to close GMDC first. DC Farrell responded that the young adult population has dropped by a third since DOC started implementing the YA Plan two years ago. RNDC is the best facility to house young adults because it has a \$5-million door replacement project, and Raise the Age has created space to transition young adults to RNDC. Additionally, the existing space at RNDC will accommodate sufficient programming and will be improved once DOC obtains SCOC's approval of construction plans by the end of June 2018.

Acting Vice-Chair Richards asked for the exact timeframe for closing GMDC. DC Farrell responded that on June 30, 2018, there will no longer be anyone housed at GMDC. The last people transferred out will be those completing their educational programs. Member Perrino expressed concern about creating a large concentration of young adults at RNDC, as it may pose difficulties for staff. DC Farrell clarified that RNDC would also house an older population thereby replicating GMDC's mentorship model.

Dr. Cohen asked DC Farrell and Commissioner Brann to comment on the Department's commitment to the YA Plan. He noted that during the Board's hearings, evidence-gathering, and discussion with DOC, there was an understanding that the young adult population should be increased to include people ages 22 through 24. Commissioner Brann responded that, during private and public meetings, the Department articulated its commitment to the young adult population, and that commitment has not changed. She noted that in the move to borough-based facilities there will be young adult units but not young adult facilities. Dr. Cohen asked the Commissioner if she believes in extending the young adult population through age 24, and she responded that DOC would look into this concept.

Updates on Tele-visiting and the Visit Bus

► DOC Televisiting Update

Acting Vice-Chair Richards stated that in 2014, the Brooklyn Public Library introduced televisiting for families and individuals with loved ones incarcerated on Rikers. This program has since been expanded and he asked the Department to present on its progress thus far and on future plans for the program.

Jeff Thamkittikasem, the Department's Chief of Staff, said the televisiting program formally started in 2012 with a pilot program — roughly 14 visits were conducted at that time and the program was facilitated by community-based organizations. With funding from the City Council, the New York Public Library has expanded the televisiting program to approximately 25 different locations, and DOC has provided 47 kiosks to serve the program.

Between December 2014 and May 2018, DOC conducted approximately 2,500 televisits through the New York Public Library program alone, and 500 televisits with other community-based organizations. Mr. Thamkittikasem said DOC is currently renegotiating a memorandum of understanding with the public libraries on televisiting. He said televisiting supports, but does not replace in-person contact visits.

Acting Vice-Chair Richards asked how the Department informs the public about televisiting. The Chief of Staff responded that DOC partners with the public libraries and community-

based organizations on information sharing. While DOC has signage and a kiosk in the jails, televisits must be scheduled by family members through the libraries or community-based organizations. In response to the Acting Vice-Chair's inquiry whether televisiting is used as an incentive for people in custody, Mr. Thamkittikasem said the program is not used for that purpose but is simply simply afforded to family members and inmates who request it. He also noted that it includes a programming component, such as the Daddy and Me Program. Acting Vice-Chair Richards asked whether individuals who are infracted can use televisiting in lieu of contact visits. The Chief of Staff responded that, similar to contact visits, if there are security concerns about a person's televisits (i.e., engaging in salacious acts or sharing concerning information) DOC will not permit a person to televisit.

► **DOC Update on the Visit Bus**

The Chief of Staff reported that the free-visit bus pilot is going very well and ridership has increased to about 30-80 individuals per day. The wide range in ridership means that on some days, the buses are filled while on other days they are empty. By June 2018, the Department will add two (2) buses to address delays related to traffic. Mr. Thamkittikasem stated that DOC has not yet explored other locations for pick-ups and is committed to further developing the program.

Public Comment

The Board heard public comment from Dale Wilker (LAS), Ted Jack (NYU Law School's Prison Reform and Education Project), and Dori Lewis (LAS).⁶

Following public comment, Acting Chair Cephas adjourned the meeting.

⁶ The public comments are available here: <https://www.youtube.com/watch?v=GoPa3feD3m8&t=2773s>.