



**NEW YORK CITY  
BOARD OF CORRECTION**

**March 13, 2018 Public Meeting Minutes**

**MEMBERS PRESENT**

Derrick D. Cephias, Esq., Acting Chair  
Stanley Richards, Acting Vice-Chair  
Robert L. Cohen, M.D.  
Honorable Bryanne Hamill  
James Perrino

Martha W. King, Executive Director

**MEMBERS ABSENT**

Jennifer Jones Austin, Esq.  
Michael J. Regan  
Steven M. Safyer, M.D.

**DEPARTMENT OF CORRECTION (DOC)**

Cynthia Brann, Commissioner  
Angel Villalona, Acting First Deputy Commissioner  
Hazel Jennings, Chief of Department  
Jeff Thamkittikasem, Chief of Staff  
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  
Steven Kaiser, Policy Analyst  
Michael Tausek, Acting Deputy Commissioner of Adult Programs  
Danielle Leidner, Executive Director of Intergovernmental Affairs  
Brian Sullivan, Bureau Chief of Security  
Heidi Grossman, Deputy Commissioner for Legal Matters/General Counsel  
Luigi Ottaviano, Assistant Deputy Warden  
Maureen Danko, Deputy Commissioner  
Brenda Cooke, Deputy Chief of Staff  
Dionne McKenzie, Assistant Deputy Warden  
CarLeen McLaughlin, Director of Legislative Affairs and Special Projects  
Robert Mitchell, Supervisor of Maintenance  
Marshall Rivers, Correction Officer  
Leon Britton, Captain

Alston Britton, Correction Officer  
Fred Barns, Captain  
Kwame Patterson, Assistant Commissioner  
Antasha Butters-Britton, 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  
Levi Fishman, Director of Public Affairs, CHS  
Ashley Smith, Assistant Director of Policy & Planning, CHS  
Elizabeth Ford, M.D., Senior Director of Operations, CHS  
Sara Gillen, Senior Assistant Vice President  
George Axelrod, Esq., Chief Risk Officer, H+H  
Rachael Bedard, M.D., Director of Geriatrics and Complex Care Services  
Zachary Rosner M.D., CHS  
Lucia Caltagirone, Esq., CHS

**OTHERS IN ATTENDANCE**

Alex Abell, Urban Justice Center-Mental Health Project (UJC)  
Victoria Phillips, Jails Action Coalition (JAC)  
Elizabeth Mayers (JAC)  
Kelly Grace Price (JAC)  
Dori Lewis, Legal Aid Society Prisoners' Rights Project (LAS)  
Ginger Lopez, (LAS)  
Jillian Gonzalez (LAS)  
Elias Husamudeen, Correction Officers' Benevolent Association (COBA)  
Otica Rutledge (COBA)  
Albert Craig (COBA)  
Michael Skelly (COBA)  
Mark Steier (COBA)  
Angel Castro (COBA)  
Watts R. (COBA)  
Elizabeth Castro (COBA)  
Amelia Warner (COBA)  
J. Rodriguez (COBA)  
Benny Boscio (COBA)  
Paulette Bernard (COBA)  
Kenyatta Johnson (COBA)  
Frederic Fusco (COBA)  
Steven Isaacs (COBA)  
Tony Herbert, Advocates without Borders  
Charlotte Pope, Children's Defense Fund – NY (CDF-NY)  
Maya Brown, Children's Rights  
Catherine Frizell, Children's Rights  
Kelsey De Avila, Brooklyn Defender Services (BDS)  
Brooke Menschel (BDS)  
Chelsey Davis, Office of the Mayor  
Ashley Iodice, New York City Law Department (Law)  
Kim Joyce (Law)  
Keith Zobel, New York State Commission of Correction (SCOC)  
Dennis Gonzalez, *Nunez* Monitoring Team

Jin Lee, NYC Council  
Abigail Bessler, NY City Council  
Josh Kinglsey, NY City Council  
Tanya Krupat, Osborne Association  
Patrick Ferraiuolo, Correction Captain Association (CCA)  
Otis Blount, (CCA)  
Paul Idlett (CCA)  
William Inman, (CCA)  
Joseph Ferramosca (CCA)  
Vincent Capers, NYC Correction Guardians Association, Inc.  
Faisal Zouhbi, Assistant Deputy Wardens/Deputy Wardens Association  
Kim Konopka, Steps to End Family Violence  
Sanye Tennell, Bronx District Attorney's Office  
Jean Walsh, Bronx District Attorney's Office (Bronx DA)  
Derek Lynton (Bronx DA)  
Darcel Clark (Bronx DA)  
Stuart Levy (Bronx DA)  
Deanna Logan (Bronx DA)  
Ellen Dunn, Crime Lab NY  
Kristin B., Mayor's Office of Criminal Justice  
Jeff Johnson, (Independent)  
Edwin Tablada, NYC Commission on Human Rights

### **Introductory Remarks, Announcements, and Updates**

Acting Chair Cephas announced that Dr. Gerard Bryant recently resigned as a member of the Board due to increased job demands and a new appointment. This resignation is effective February 28, 2018. The Acting Chair thanked Dr. Bryant for his service to the City and his contributions to the Board over the past two years.

Next, Acting Chair Cephas requested that all Board members and the public hold themselves to the highest standards of dialogue, collaboration, and professionalism during Board meetings. He stated that the issues discussed each month have a real and serious impact on the lives of New Yorkers, including people in custody, staff, and their families, friends, and communities. While all parties involved in the meetings will not always agree, he requested that everyone debate these challenging issues respectfully and with great care for the people impacted by the decisions made. To that end, the Acting Chair asked all Board members and members of the public always to conduct themselves in a courteous, professional, and orderly manner. In addition, he specified that obscene, threatening or harassing language, or personal attacks of any kind are prohibited at all Board meetings. He also requested that participants refrain from displaying signs or placards in a disruptive manner, applauding in an unruly manner, or engaging in any other kind of disorderly behavior that might distract from the proceedings. He thanked the Board and all parties involved for their service and their cooperation with these requests.

Acting Chair Cephas addressed last month's brutal assault on New York City Correction Officer Jean Souffran, which led the Board to cancel its February Board meeting. He stated that this act of violence is one of far too many, endangering both staff and people in custody. This violence is unacceptable and requires a recommitment from all parties, including this Board, to improve and expand violence prevention programs. He noted that this problem demands fresh ways of thinking and new initiatives to interrupt and dismantle the cycle of

violence. The Acting Chair said the Board's thoughts continue to be with the officer and his family throughout his recovery.

### **Approval of January 2018 Minutes**

Acting Chair Cephas asked for a motion to approve the January 9, 2018 meeting minutes. Member Cohen made a motion to approve them and Acting Vice-Chair Richards seconded the motion. Member Hamill abstained from the vote because she was absent from the January meeting. Without a quorum of five (5) members to vote on the meeting minutes, Acting Chair Cephas rescheduled the vote for the April 20, 2018 meeting.

### **New President and CEO of H+H**

#### **► Introduction**

Acting Chair Cephas welcomed Dr. Mitchell Katz, who in January 2018 succeeded former Board Chair Stanley Brezenoff as the new President and CEO of H+H. Prior to this appointment, Dr. Katz was the Director of the Los Angeles County Health Agency, which manages public health and mental health services, and now provides medical care in the LA County Jail. He was born and raised in Brooklyn, NY.

#### **► Dr. Katz's Remarks**

Dr. Katz noted his experience as a primary care doctor serving incarcerated patients in the City and County of San Francisco. He also spoke to his experience serving incarcerated patients in LA County, where the public-sector health services manage medical services for the County and its jail system. In his new role, Dr. Katz looks forward to ensuring that there is quality health care for all incarcerated people in New York City. He also strives to provide excellent discharge services and aftercare to decrease the likelihood of recidivism. Dr. Katz concluded that effective mental health and addiction treatment has a significant, positive impact on the jail population, and he expressed enthusiasm about working with the Board to achieve these goals.

### **Commissioner Brann's Remarks**

DOC Commissioner Brann voiced her support of the Department's executive team, the presidents of the three unions representing uniformed staff, and all corrections officers and non-uniformed staff. She stated that everyone at DOC, the members of the Board, and other stakeholders, should work towards the shared goal of creating and maintaining safer jails. She noted, however, that a "widespread practice of confirmation bias" hinders effective collaboration, and "if the only objective is to get our own way," the parties will "continue down a path of discord and resistance."

Commissioner Brann applauded NYPD's "precision policing" and "community policing" initiatives, noting that when these preventive measures are unsuccessful, "police officers stop the continuation of violent and/or criminal behavior through arrest and removal from the neighborhood." She analogized the City's jails to DOC's "neighborhoods," and the Department's restrictive housing to "precision policing" — i.e., incarcerated people who commit crimes or engage in violent acts are removed from the "neighborhood" or, in corrections terms, general population. Commissioner Brann questioned why the police are praised but DOC is criticized for taking the same approach to reducing criminal activity and increasing safety.

Noting that her staff would later be presenting on Young Adult (YA) ESH, the Commissioner said ESH and YA-ESH were carefully designed and implemented in response to the

elimination of punitive segregation (PSEG) for certain populations and other PSEG reforms. No other correctional agency has implemented PSEG to the extent the Department has and, therefore, there were no suitable models of alternatives for DOC to replicate or adopt. The Department relied on its own staff expertise and consultation with correctional professionals around the country to develop ESH, which DOC continues to analyze and remains hopeful will work. Commissioner Brann remarked that rather than affording DOC sufficient time to work with people placed in ESH, the Board appears intent on modifying, and then codifying, what it believes is the best way to deal with this small but violent group. In her view, when the Board renders decisions that weaken or remove DOC's ability to control violent behavior, without operational data to support its decisions, the safety of inmates and staff is put at risk.

The Commissioner concluded her remarks by asking the Board to be mindful of confirmation bias as BOC enters rulemaking on restrictive housing. She also noted that while the Department has a plethora of individual and group incentives to grant as a reward for good behavior, DOC's current ability to impose meaningful consequences for infractions are "severely limited."

## **Rikers Island Prosecution Bureau**

### **► Introduction**

BOC Executive Director (ED) Martha King introduced Darcel Clark, the Bronx District Attorney (DA). DA Clark is the first woman to hold this office in Bronx County, and the first African American woman to serve as a DA in New York State. Shortly after assuming office, DA Clark opened the Rikers Island Prosecution Bureau, which is dedicated to prosecuting crimes committed on the Island. In the last two years, the Bureau has secured indictments against fourteen correction officers on charges ranging from assault to smuggling, and has almost doubled the arrests of incarcerated persons who assaulted staff. ED King noted that the Board's rulemaking committee on restrictive housing had recently met with DA Clark, and welcomed her to address the entire Board.

### **► DA Clark's Presentation**

DA Clark thanked the Board for the opportunity to speak, noted her past experiences working with Judge Hamill as an Assistant DA in the Bronx and as a member of the judiciary, and introduced members of her executive staff. She then recounted meeting with the Board's rulemaking committee last month, three days after a correction officer on Rikers had been brutally assaulted by four gang members. She urged all key stakeholders, including the Board, the Department, DOI, and the unions, to work together to address safety in the jails.

DA Clark said when she took office, she discovered there were three times as many investigators to review officer misconduct and use of excessive force as there were to review inmate-on-inmate and inmate-on-staff violence, and visitor introduction of contraband. Noting a backlog of arrests and investigations, she decided to open the Rikers Island Prosecution Bureau in September 2016. She also created the Public Integrity Bureau, which focuses on officers' official misconduct, sexual assaults, and excessive force. Last year, her Office prosecuted 1,100 crimes committed on Rikers of which approximately 350 were felonies and over 700 were misdemeanors. Those charged included incarcerated persons, visitors, and DOC staff. In the last two years, her Office has convicted 20 officers for excessive force, smuggling contraband, and official misconduct.

DA Clark remarked that while brutality committed by officers makes headlines, officers are also victims of violent attacks. During August 2017, in an unprecedented initiative, her Office

arrested and indicted 29 current and former inmates on Rikers for assaults on staff. Her Office is also obtaining consecutive sentences for inmates convicted of violent crimes they committed while incarcerated. At the same time, DA Clark said we “cannot prosecute our way out of the violence and dysfunction that is happening on Rikers,” and prosecution should be the last, not the first, resort. In this regard, she noted her creation of an Alternative to Incarceration Bureau, which provides programs for misdemeanor and felony defendants who have mental health or drug addiction issues, her membership on the Executive Committee of the Mayor’s Implementation Task Force to close Rikers, and her personal involvement in working on bail reform and diversion programs to decrease the jail population.

Noting her separate meetings with Commissioner Brann, Chief of Department Jennings, DOI Commissioner Peters, the Board’s restrictive housing rulemaking committee, and union leaders, DA Clark said that all parties are committed to the goal of securing safety on Rikers. Toward that end, the flow of contraband, such as weapons, narcotics, cell phones, and tobacco, must be eradicated. This can better be achieved by using scanners to detect contraband secreted in bodily cavities — which is the way more than half the contraband is introduced on Rikers. DA Clark expressed her hope that in this year’s legislative session, New York would enact legislation permitting the Department’s use of body scanners in the jails. She also stated that law enforcement’s targeted efforts to combat gang activity in the streets has led to a concentration of gangs on Rikers. Utilizing intelligence-driven prosecution and correctional strategies, her Office is committed to working with DOC, DOI, and the NYPD to identify and target the four percent of the population (approximately 150 inmates) who “wreak havoc” on the Island.

DA Clark said that while Minimum Standards are needed to ensure a humane jail system, with the elimination of PSEG for young adults, alternative tools to deter violence must be employed. She suggested, for example, that the Board consider the establishment of graduated sanctions, particularly for misdemeanor offenses, that DOC can impose. Prosecution of these offenses is often not a deterrent because by the time the defendant’s underlying case is ready for trial, the defendant has already served time for the misdemeanor or the misdemeanor sentence is merged with the sentence on the underlying charge. She said her Office is available to discuss this issue as well as the research her Office has done on criminal justice reform.

#### **► Board Discussion**

Member Hamill remarked that DA Clark is most qualified to take on the issue of violence on Rikers, commended her forward thinking on tackling this issue, and expressed appreciation of her offer to convene a coalition of key stakeholders to address it. Member Perrino commended DA Clark on the focused prosecution efforts of her Office, which undoubtedly has led to a reduction of violence on the Island. He also suggested that the Board meet with DOC to discuss safety on Rikers and that the meeting include the unions and representatives from the ranks of officers, captains and Assistant Deputy Wardens.

### **Health Care and Services for the Older Population in Custody**

#### **► Introduction**

Acting Chair Cephas said that jails create serious challenges to the health of older people in custody and to the delivery of healthcare to them. This includes a physical environment poorly designed for this population, social isolation, and separation from their regular health care providers. In the past year, CHS has had a physician on staff, Dr. Rachel Bedard, who is fully

dedicated to geriatrics and palliative care. The Acting Chair invited Dr. Bedard to present on the delivery of CHS services to older people in custody.

#### ► **Dr. Bernard's Presentation<sup>1</sup>**

Dr. Rachael Bedard differentiated between the geriatric population in the community (65 and older) and the geriatric population in the correctional setting (55 and older). She discussed the phenomenon of “accelerated aging” where the correctional population often appears 10 to 15 years older than their actual age because of adverse exposures to contributors of poor health, accumulation of chronic diseases, etc. Dr. Bedard referenced a study from 2001-2009 conducted on mortality in the NYC jail system. Over that period, the population of 55-64-year-olds on Rikers had increased by 88% and those over 65 had increased by 34%. From 2001-2009, the over-55 population was disproportionately represented in the total number of deaths in the jails.

Referencing unpublished data from 2009-2017, Dr. Bedard said these trends have continued. From 2015-2017, the over-55 population represented approximately 7% of total admissions, of which 0.8% was over 65. This age group was more likely to be homeless, have higher rates of serious mental illnesses, and have more chronic medical conditions than people under 55. Dr. Bedard also described jail-specific risk factors associated with geriatric syndromes, such as weight loss and frailty, which are difficult to control in the correctional setting. She believes there is a fundamental disconnect between incarceration and providing community-standard-of-care palliative care. Such care for people in the community addresses existential distress and symptoms at the end of life to ensure that people are dying with dignity. Providing this in a correctional setting is difficult due to barriers between patients and their families, lack of privacy, and many of the negative emotions reinforced by incarceration.

Dr. Bedard stated that, to H+H's knowledge, she is CHS's first dedicated jail-based geriatrician and palliative care physician. CHS built the first phase of the geriatric program this year, which includes geriatric assessments, ongoing management for people with geriatric syndromes, advanced care planning, intra-facility and hospital care coordination, discharge planning for people with complex medical needs, and engagement with court liaisons to expedite cases for people with short prognoses. Over the first year, Dr. Bedard provided care to 120 unique patients and CHS is expecting to increase the program's patient capacity next year.

#### ► **Board Discussion**

Acting Vice-Chair Richards asked what the plan is for expanding this program. Dr. Bedard responded that CHS intends to bring on staff to expand the program's capacity for medical discharge planning for people with complex medical needs. She plans to work with a nurse to help expand her capacity to see patients early on who need this type of evaluation. Dr. Bedard sees patients on Rikers three (3) days a week, and next week, she will be doing her first telehealth visit. She expects to conduct telehealth visits with patients in the borough-based jails soon.

Member Perrino reflected on the plan to close Rikers and develop new borough based-facilities. He suggested that the new facilities house the older population in one area to more

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<sup>1</sup> CHS's Presentation titled “*Geriatrics and Palliative Care in the Correctional Health Setting*” is available here <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/March-13-2018/RachaelBedardGeriComplexCareBOCPresentation3%202018FINAL%20rm.pdf>

efficiently focus services and treatment. Dr. Bedard said that CHS's leadership team is discussing how to appropriately care for patients once Rikers is closed, but it is difficult to predict the population that will be in the system at that time. She said cohorting older people as Member Perrino suggested could be a viable option. Member Cohen thanked Dr. Bedard for her presentation and CHS's impressive work in setting up a geriatric program. He noted that the lack of a focused geriatric service was an issue the Board had identified in its review of deaths of older people in custody.

## **Punitive Segregation (PSEG) Backlog**

### **► Introduction**

ED King turned to a discussion of the backlog for placement in PSEG. The Board first discussed the PSEG backlog over 25 years ago and this is the ninth Board Meeting in six years to address it. The PSEG backlog is a list of people who, during their current incarceration, have been found guilty of an infraction and sentenced to PSEG as punishment for the infraction, but have not yet served their sentence. On any given day, there is an average of 757 people on the backlog list.

ED King reported that many people on the backlog list will never serve their PSEG sentence. In its recent study of DOC's restrictive housing practices, the Vera Institute of Justice found that nearly 50% of approximately 9,800 infractions committed in 2015 that resulted in a segregation sanction, did not result in admission into segregation by the end of the year. Those who do serve their sentenced PSEG time also wait a considerable amount of time between their adjudication and placement in segregation. Vera found that, in 2015, for those who were eventually admitted to segregation, the average length of time between the issuance of a sanction and admission into PSEG was 13 days.

Since 2013-2018, the total number of people on the backlog list has decreased 17% from 914 to 757 people. The number of people with a mental health designation or "M-Status" on the list has also decreased and now, 65% of the people on the list fall into this category. Most adults who are "M-Status" do not have a serious mental illness and thus are eligible for punitive segregation if they do not have other contraindications as determined by CHS.

The Board — along with the State Commission of Correction (SCOC), the correction officers' union, the Vera Institute of Justice (Vera) and others — have expressed serious concerns over the years about the backlog's negative impact on the effectiveness of the disciplinary system in the jails. Best practices show that if consequences are to have a positive effect on offenders and/or the community, they should be swift, certain, and fair. ED King said the Department has conducted an analysis of its current PSEG backlog to better understand who is on the list and the reasons why.

### **► DOC Presentation**

Brian Sullivan, DOC's Bureau Chief of Security, confirmed that there are approximately 700 individuals on the PSEG backlog list on any given day. The list is automatically generated by DOC's Inmate Information System and it includes inmates who have received sentencing time for a recent or past adjudicated infraction. DOC recently developed a policy to expunge from the list people with historical time. The list distinguishes between those eligible for general population punitive segregation and those with a potential M-Status who qualify for placement in a Restrictive Housing Unit (RHU).

Chief Sullivan stated that there are many reasons why people on the backlog list never make it into PSEG. Upon evaluation of the list in February 2017, DOC determined that of the approximately 700 people on the list, approximately 332 had Grade 1 infractions and were eligible for PSEG I (i.e., 23-hour daily lock-in) while approximately 372 with Grade 2 infractions were eligible for PSEG II (i.e., 7-hour daily lock-out). Of the 332 with Grade 1 infractions, 238 were on M-Status and were eligible for placement in the RHU but not PSEG; while 94 were placed into PSEG alternatives or were in hospital, detox, CAPS or PACE programs.

#### ► Board Discussion

ED King asked Chief Sullivan about DOC's plan to reduce the number of people on the backlog list. He responded that DOC is adopting Vera's recommendation that DOC alter its sentencing grid for nonviolent Grade 1 and Grade 2 infractions, which will reduce PSEG time for certain infractions. He said there are also space constraints limiting DOC's ability to further reduce the list.

Member Perrino asked if there are plans to reduce the backlog for the small population of individuals awaiting discipline after committing a violent Grade 1 infraction. Chief Sullivan responded that in most cases, individuals who have committed a Grade 1 violent infraction are placed in PSEG. Acting Vice-Chair Richards asked how many additional beds DOC would need to address the current backlog of people who have committed a Grade 1 violent infraction. Chief Sullivan responded that DOC would need approximately 50 PSEG beds to accommodate them.

### **BOC's Splashing Report**

#### ► Introduction

ED King stated that in recent years, correction officers and officials in jail systems in New York City, Los Angeles, Cook County and in other correctional systems have shared and publicized the negative impact that splashing have on staff and the challenges these incidents pose to correctional safety and operations. In January 2018, COBA submitted to the Board a set of grievances from officers who had been subject to splashing. To establish an understanding of such incidents and their prevalence in the jails, BOC staff reviewed all splashing reported in 2017.<sup>2</sup> ED King explained that DOC defines a splashing as "any incident wherein a person in custody intentionally causes an employee to come into contact with any fluid or any fluid-like substance." Per DOC's policy, any person who commits a splashing is charged with an assault-on-staff infraction.

BOC's review of 2017 data revealed a total of 1,335 splashing incidents committed by 744 unique individuals. Nine (9) individuals were responsible for 13% of all splashing incidents last year. ED King reported that of the people who committed a splashing, 74% committed a splashing only once; 21% splashed 2 to 5 times; 4% splashed 6 to 10 times; and 1% splashed 11 or more times. Additionally, 84% of all splashing involved at least one perpetrator on M-Status and 20% of all such incidents occurred at OBCC. Of the 1,335 splashing in 2017, 16% occurred in intake pens, 13% in ESH, 12% in general population, and 9% in PSEG and RHUs. Finally, 96% of all staff splashed were correctional officers and in 26% of these incidents, officers elected to turn in their clothing for testing.

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<sup>2</sup> BOC's Splashing Report is available at: <http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/Splashing%20Report%20FINAL%20Feb%202018.pdf>.

Although preliminary, the Board's Splashing Report represents the most comprehensive public empirical analysis on splashing in the country. However, there remains tremendous data challenges to tracking these incidents effectively in the City's jails. The Board recommended that DOC update its approach to tracking splashing so that the number of such incidents can be more easily, accurately, and routinely reported and reviewed to address needed policy and practice improvements.

DOC's Chief of Staff, Jeff Thamkittikasem, thanked the Board for its Slashing Report. He said the Department is working closely with the Bronx DA and the unions to review DOC policy on testing clothing following splashing incidents. The Department continues to work on the data issues described in the Board's Report and is assessing how to make necessary data collection and tracking changes.

Member Perrino said the Board and DOC should discuss how to house people who have committed a splashing by accounting for the number of times they have committed one. In his experience, a splashing is a "mind assault" that degrades the victim. Acting Vice-Chair Richards asked for clarification of the Chief of Staff's response to the Board's Report. Mr. Thamkittikasem responded that DOC's policy involves assessing the article of clothing to determine if the splashing constitutes a crime and, if so, whether it is a felony. He added that DOC is looking to develop potential sanctions, as described by the Bronx DA, so that officers have more immediate tools available to respond to and deter these incidents.

### **The Board's Report on the Transgender Housing Unit**

Acting Chair Cephas announced that Board staff recently published an assessment of the Department's Transgender Housing Unit (THU),<sup>3</sup> and invited Emily Turner, the Board's Deputy Executive Director (DED) of Research, to present its findings.

#### **► Key Findings**

DED Turner began her presentation by recognizing the work of the Board's research and monitoring team members. She then provided background to the THU, explaining that DOC's THU Directive was issued in December 2014 and addresses procedures for placement, application, admission and access to services within the Unit, staffing, programs, and removal from the Unit. DOC policy requires transgender men to be housed in protective custody at the Rose M. Singer Center (RMSC) and transgender women to be housed in a facility designed for male occupancy. The THU opened in April 2015 at North Infirmity Command (NIC) and since July 2015, has been located at the Manhattan Detention Center (MDC), a men's facility. The THU is available exclusively to transgender women, but is not guaranteed for all who seek placement there.

In November 2016, the Board promulgated Minimum Standards on the elimination of sexual abuse and sexual harassment in the jails, which include incorporation of national PREA Standards regarding assessment and placement of transgender and intersex people in custody. Specifically, these Standards require DOC to make individual determinations about how to ensure inmate safety; to consider housing placements of transgender and intersex individuals on a case-by-case basis; not to assign them to facilities based solely on their external genital anatomy; and to consider the individual's own views on safety when making housing placements (Minimum Standard §5-18(b)-(e)).

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<sup>3</sup> The Board's THU Report can be found at: <http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/THU%20FINAL%20Feb%202018.pdf>

Board Staff undertook this assessment with the goal of analyzing the data to inform ongoing discussion regarding the THU's operations, plans for the Unit, and implementation of and compliance with the new Minimum Standards. Staff received and analyzed 118 applications to the THU from September 2015 through July 2017, 167 placements into the THU from April 2015 through July 2017, and 166 complaints BOC received from April 2015 through July 2017 (including complaints about housing placement, harassment based on transgender status, and access to hormone treatment). Staff also conducted nine (9) observations of the THU from June through August 2017, and two (2) observations of THU community meetings in October and December 2017.

DED Turner noted that the Report does not fully describe the experiences of all transgender individuals in DOC custody, as the data focused primarily on those who applied for placement in the Unit and those who were placed there. Also, during the study period, DOC had yet to implement the screening tools necessary to identify and track individuals in DOC custody who self-identify as transgender. She noted that the Department reports that the electronic system for PREA screening currently being implemented will capture data on individuals who self-identify as transgender during screening and will allow for a more distinct analysis moving forward.

DED Turner highlighted the Report's key findings:

- The THU is an important option for the safe placement of transgender and gender nonconforming individuals in DOC custody, as 95% of applicants reported that they would feel more comfortable living in the THU rather than general population or protective custody;
- DOC does not have an effective system for managing applications and placements into the THU, as 84% of applications had no recorded decision, and 73% of placements had no application associated with the placement;
- Policies related to the application process have not been consistently practiced, as many reported not being informed about THU at intake, and applicants spent an average of 86 days in custody prior to completing an application;
- There is no meaningful, independent appeals process;
- Staff and inmates involved in the THU both report that there is no effective mechanism to address conflict between people in the Unit, such as alternative housing, steady staff, and specialized staff training.

#### ► **Key Recommendations**

Based on these findings, the Report includes the following recommendations:

- Provide information about the THU at intake;
- Ensure the PREA intake questionnaire triggers appropriate follow-up for individuals identifying or appearing to be transgender;
- Create mechanisms to systematically manage and track THU applications and placements;
- Develop criteria and processes so that transgender people are not automatically placed in facilities that are at odds with their gender identity;
- Reform the process for appealing THU placement denials;
- Provide THU staff with ongoing transgender-competent training;
- Educate staff and people in custody about the THU and how to apply for placement there;
- Clarify CHS policy regarding access to hormone therapy; and

- Establish a task force to develop specific short-term and long-term improvements to THU operations in the areas of management, programming, staffing, and conflict resolution.

#### ► **DOC's Response**

Faye Yelardy, DOC's Assistant Commissioner (AC) for Sexual Abuse and Sexual Harassment (PREA), thanked the Board for its Report. She stated that although the Department does not agree with some of the Report's findings (and has provided written comments to the Board on several of the issues raised in the Report), DOC appreciates that the Report has sparked some important conversations. She reported that DOC is still reviewing the recommendations, and implemented some of them prior to publication of the Report. This included employing steady staff and offering specialized training at MDC. She said that all individuals who self-identify as transgender through the new screening tool are now afforded a THU application at intake in each facility, and that a Captain on the PREA team conducts a twice-weekly check for persons newly admitted to DOC custody who self-identifies as transgender. This ensures that they will be offered a THU application. AC Yelardy also reported that pursuant to the Report's recommendation, DOC instituted weekly council meetings in the THU.

#### ► **Board Discussion**

Member Perrino asked whether there is a process to appeal one's denial of placement into the THU. AC Yelardy responded that there is such a process, but most people reapply rather than appeal. She said DOC has vastly improved the turnaround time for THU applications, and that applicants can now expect a response within 3 to 5 business days. She confirmed to Acting Vice-Chair Richards that information about the THU is not currently in the Inmate Handbook, but said DOC is currently discussing its inclusion. In response to a question by Member Hamill about whether staff can apply directly to a post in the THU, AC Yelardy and First Deputy Chief Angel Villalona explained that currently they cannot because such assignment is not an "awarding of post," which is a category of posts negotiated with the unions.

Member Hamill asked whether the Department's considerations for transgender placement have changed given the recent guidance of the NYC Law Department to the effect that transgender individuals must be housed according to their gender identity, absent identified safety or security risks. DOC's General Counsel, Heidi Grossman, said such guidance was currently under consideration. In response to Member Cohen's inquiry about DOC's plans for maintaining the THU, the General Counsel responded that this subject is also under discussion.

#### **Recent Death in Custody**

Acting Chair Cephas reported two deaths in custody: a 60-year-old man died on January 30, 2018 and a 53-year-old man died on March 4, 2018. These are the second and third deaths in DOC custody in 2018. Board Staff is investigating these deaths on behalf of BOC's Death Review Panel. On behalf of the Board, the Acting Chair shared condolences with the gentlemen's families.

#### **Public Comment**

The Board heard public comment from Elias Husamudeen (COBA), Dori Lewis (LAS), Ginger Lopez (LAS), Patrick Ferraiuolo (CCA), Kim Konopka (Steps to End Family Violence), Catherine Frizell (Children's Rights), Maya Brown (Children's Rights), Kelsey De Avila (BDS), Alex Abell (UJC), Al Craig (COBA), Tony Herbert (Advocates Without Borders),

Vincent Capers (NYC Correction Guardians Association, Inc.), Victoria Phillips (UJC), and Kelly Grace Price (JAC).

The public comments are available at:

<https://www.youtube.com/watch?v=tBnwqZh9bCo&t=4026s>.

Following public comment, Acting Chair Cephas adjourned the meeting.