



**NEW YORK CITY  
BOARD OF CORRECTION**

**October 31, 2019 SPECIAL PUBLIC MEETING MINUTES**

**MEMBERS PRESENT**

Jacqueline Sherman, Interim Chair  
Stanley Richards, Vice-Chair  
Robert L. Cohen, M.D.  
Florentino Hernandez  
Jennifer Jones Austin, Esq.  
James Perrino  
Michael J. Regan  
Steven M. Safyer, M.D.

Michele M. Ovesey, Acting Executive Director

**DEPARTMENT OF CORRECTION (DOC)**

Cynthia Brann, Commissioner  
Brenda Cooke, Chief of Staff  
Peter Thorne, Deputy Commissioner of Public Information  
Cherae Hendy, Assistant General Counsel  
Melissa Guillaume, Assistant General Counsel  
Dana Wax, Deputy Chief of Staff  
Steven Kaiser, Executive Director of Policy and Intergovernmental Affairs  
Patrick Rocchio, Press Officer

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

Ross MacDonald, MD, Chief Medical Officer, Assistant Vice President  
Benjamin Farber, Chief of Staff  
George Axelrod, MD, Director of Health Information & Risk Management  
Jennine Ventura, Dir. of Communications and Public Affairs  
Giselle Cordero, Deputy Dir. of Communications and Public Affairs

**OTHERS IN ATTENDANCE**

Thomas Fahey, NYS Commission of Correction (SCOC)  
Susana Gonzales, SCOC  
Misaël Syldor, Independent Commission on NYC Criminal Justice and Incarceration Reform  
Victoria Phillips, Urban Justice Center (UJC)/Jails Action Coalition (JAC)  
Jennifer Parish, UJC/JAC  
Nikki Tourigny, UJC  
Elizabeth Meyers, JAC  
Alexa Adams, UJC  
Alex Abell, UJC  
Kayla Simpson, Legal Aid Society Prisoners' Rights Project

Sara Kerr  
Darlene Jackson, Women's Community Justice Association  
Kelsey De Avila, Brooklyn Defender Services (BDS)  
Simone Spirig, BDS  
Irene Cedano, BDS  
Gina Farinaccio, BDS  
Alison Dowdle, BDS  
Martha Grieco, Bronx Defenders  
Rashawn Brown, Gangtas Making Astronomical Community Changes  
Daniele Gerard, Children's Rights  
Alex Liao, Office of the NYC Public Advocate  
Peter Butler, NYC Council  
Alana Sivin, NYC Council  
Abigail Besler, NYC Council  
Kieshorne Dennie, NYC Council  
A. Speliotis, Columbia Justice Youth Ambassador  
Kim Joyce, NYC Law Department  
Christopher Boyle, New York County Defenders Services  
Freya Rigterink, NYC Mayor's Office  
Wendell Walters, Osborne Association  
Marco Barrios, JustLeadershipUSA (JLUSA)  
Trent Taylor, JLUSA  
Shanica Fogler, JLUSA  
Angel Tueros, JLUSA  
Marvin Mayfield, JLUSA  
Vidal Guzman, JLUSA  
Brandon Holmes JLUSA  
Harvey Murphy, JLUSA  
Winston Nguyen, Independent  
Darleen Jackson, Women's Community Justice Organization  
Jack Beck, NY Campaign for Alternatives to Isolated Confinement (CAIC)  
Scott Paltrowitz, CAIC  
Claudia Forrester, CAIC  
Charlotte Pope, Girls for Gender Equity  
Chelsia Marcius, NY Daily News  
David Brand, Queens Daily Eagle  
William Inmon  
Otis Blount, Corrections Captains Association

## **Updates**

### **► Proposed Restrictive Housing Rules**

Interim Chair Sherman announced that on Tuesday, October 29, 2019, the Board published the proposed restrictive housing rules on its website and distributed them to interested parties via email. The proposed rules package includes certification from the New York City Law Department and the Mayor's Office of Operations. The rules would establish a comprehensive structure for disciplinary and non-disciplinary housing options that, appropriately and in the least restrictive manner necessary, respond to gradations of safety risk, and/or punishment. As described by Acting Executive Director Michele Ovesey at the October 22, 2019 meeting, highlights of the new chapter of proposed rules include: (i) new limits on time spent in restrictive settings; (ii) creation of new categories of people excluded from restrictive settings; (iii) expansion of procedural due process protections to all restrictive housing types, including a hearing and a right to appeal; (iv)

enhanced access to medical and mental health services; and (v) new compliance metrics that will promote public transparency and allow the Department, the Board, and the public to evaluate the success of restrictive housing policies and programs.

Interim Chair Sherman said the Board would vote today on whether to formally propose these rules. If the Board votes to propose the rules, the Board will publish them in the City Record and begin the Citywide Administrative Procedure Act (CAPA) rulemaking process, which entails a public comment period of at least 30 days as well as a public hearing. The public hearing is scheduled for December 2, 2019, and during the public comment period, there will be opportunity to make further amendments as necessary. While the initial public comment period had been scheduled to end on December 2, 2019, the comment period will be extended to January 3, 2020 to accommodate the public's concerns that additional time is warranted to address such comprehensive rules. After the comment period, the Board will publish final rules on its website and schedule a vote to approve them. Following a vote to approve the final rules and their publication in the City Record, the rules would go into effect 30 days thereafter. The Interim Chair noted the tremendous effort by Board members, Board staff, DOC, CHS, and many stakeholders in developing the proposed rules, and expressed her hope that the Board would vote today to formally introduce them and commence the CAPA process.

#### ► **Separation Status Variance Request**

Interim Chair Sherman announced that the Board would not be considering the Department's Separation Status variance request<sup>1</sup> today but would instead address it at the November 12, 2019 public meeting. The Board and DOC had engaged in discussions over the past week; however, agreement was not yet reached on a blueprint for operation of Separation Status going forward. The Interim Chair committed the Board to working diligently over the next week and a half to develop a proposal for consideration at the November public meeting.

#### **Public Comment on Restrictive Housing Proposed Rules**

The Board heard public comment on the restrictive housing proposed rules from Daniele Gerard (Children's Rights), Kayla Simpson (Legal Aid Society Prisoner's Rights Project), Rashawn Brown (Gangtas Making Astronomical Community Changes (G-MACC)), Jennifer Parish (Urban Justice Center (UCJ)), Harvey Murphy (JustLeadershipUSA (JLUSA)/Jails Action Coalition (JAC)/New York Campaign for Alternatives to Isolated Confinement/HALT Solitary (CAIC)), Scott Paltrowitz (CAIC/JAC), Winston Nguyen (Independent), Alex Abell (UJC/JAC), Victoria Phillips (UJC/JAC), Marvin Mayfield (JLUSA), Vidal Guzman (JLUSA), and Brandon Holmes (JLUSA/JAC).

In response to public comment, the Interim Chair stated that the *Nunez Monitor's* Eighth Report would be on the agenda for the November public meeting.

The public comments are available here:

[https://www.youtube.com/watch?time\\_continue=4325&v=fmrsPTEIRC0](https://www.youtube.com/watch?time_continue=4325&v=fmrsPTEIRC0)

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<sup>1</sup> Separation Status refers to a housing unit where DOC currently holds people who have tested positive for contraband on a body scanner or have refused a body scan. Since mid-July 2019, the Department has instituted a practice of holding such individuals in Separation Status until they receive a negative body scan or post bail and are released from custody. Separation Status involves 24-hour lock-in, except for the offer of a daily shower. To operate the unit, DOC has requested variances from the Board on a wide range of Minimum Standards, including visiting, recreation, access to court, and access to reading material. The Department first submitted and then withdrew a variance request prior to the September 2019 public meeting. DOC submitted a new variance request prior to the October 22, 2019 public meeting. After public discussion by Board Members at the October 22nd meeting, the Board decided to table the variance request, pending the Department's reconsideration of whether its current operation of Separation Status is the least restrictive means necessary to accomplish the shared goal of safety for staff and people in custody.

### **Board Vote on Propose Restrictive Housing Rules**

Interim Chair Sherman called for a motion to consider the proposed restrictive housing rules. After Member Safyer moved the item and Vice Chair Richards seconded it, the Interim Chair opened the floor for Board discussion on the proposed rules.

#### **► Board Discussion**

Dr. Cohen stated that as some of the speakers had suggested during public comment, the context for today's vote on the proposed rules was the recently published Eighth Report of the *Nunez* Monitor, in which the Monitor was highly critical of DOC's management failures and "hyper-confrontational" staff. Dr. Cohen thanked Board staff for their work developing the rules and described the proposed Standards as an attempted critique of solitary confinement, an effort to ensure due process protections for people confined in restrictive housing, and a means to ensure that placements in restrictive housing are not indeterminate. While the proposed rules succeed in many of their stated objectives, the Board's *ad hoc* Committee on Restrictive Housing Rulemaking will need the public's help in the coming weeks to improve them. Dr. Cohen expressed his hope that the final rules would require the Department to provide adequate training to Correction Officers, guarantee sufficient staffing levels to manage restrictive housing units, and conduct uniform, structured, and meaningful data reporting. He recommended that the public carefully review the Statement of Basis and Purpose which accompanies the rules, as it provides a history of attempts to change segregation practices in the jails and lays out a roadmap for the future. Finally, Dr. Cohen implored City Hall to listen to the resounding critiques of solitary confinement heard during public comment today and support the rules to limit solitary confinement and modernize the Department's approach to addressing violence in the jails.

Member Jones Austin expressed gratitude that the proposed rules were now entering the CAPA process but added that today's vote was only a starting point, and that the rules that have been proposed require more work and are not "a done deal." She thanked the public and emphasized that the public's input during the CAPA process would be critical to getting the rules where they need to be.

Vice Chair Richards agreed that the vote today was a starting point. He said the City was at an historical moment, and the Board's work cannot stop because the Mayor and the City Council had reached agreement to close Rikers. He urged the Board to continue implementing change consistent with the City as a leader on criminal justice reform, and he characterized solitary confinement and restrictive housing as the next frontier in that effort. He asked the public to continue to speak out and provide input to inform the Board's rulemaking. Members Safyer and Hernandez concurred.

#### **► Board Vote**

After the Interim Chair called a roll call vote, the Board voted unanimously (8-0) to propose the restrictive housing rules and commence the CAPA process (Interim Chair Sherman, Vice-Chair Richards, and Members Regan, Safyer, Perrino, Hernandez, Cohen, and Jones Austin).

### **Executive Session**

Interim Chair Sherman moved to convene an executive session of the Board to update the Board on the Search Committee's efforts to hire a new Executive Director. Member Jones Austin seconded, and the Board unanimously voted 8-0 to go into Executive Session (Interim Chair Sherman, Vice-Chair Richards, and Members Regan, Safyer, Perrino, Hernandez, Cohen, and Jones Austin). Thereafter, the public portion of the meeting concluded.