



NEW YORK CITY
BOARD OF CORRECTION

Statement before the New York City Council

Committee on Criminal Justice
Keith Powers, Chair

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Good morning, Chair Powers and Members of the Committee on Criminal Justice. My name is Martha King, and I am the Executive Director of the New York City Board of Correction (the Board). The Board is the City's independent oversight agency for the jail system. It promulgates Minimum Standards, monitors compliance with these Standards, and provides general oversight for the Department of Correction (Department of DOC) and Health + Hospitals' Correctional Health Services. Today I am joined by Emily Turner, Deputy Executive Director of Research, and Nashla Rivas Salas, Senior Director of Research, who leads our assessments of DOC's grievance program.

When New Yorkers voted to strengthen the Board by codifying its mandates in the City Charter, those requirements included creating procedures to hear grievances by, or on behalf of, any person confined under the jurisdiction of the Department. Complaints from people in custody are often requests for help on urgent concerns, including healthcare, safety, connection to loved ones, and work. New Yorkers recognized that an effective grievance system would help to promote safety and fairness in the jails, identify institutional problems, and address individual issues before they turn into crises. Beginning in 1977, the Board collaborated with DOC to create and evaluate a grievance system for incarcerated people.

Our involvement continues in multiple ways. Today, when incarcerated people appeal to the highest level, the Board provides a recommendation on that grievance matter. The Board, per its Minimum Standards, also provides an appellate opinion in eight categories of DOC-issued restrictions. For instance, in 2018, the Board responded to approximately 400 appeals from people in custody or visitors about restrictions they believed had been unduly issued on their visits. Lastly, Board staff provide an impartial review of system patterns and make recommendations to improve the overall grievance system.

In June 2018, BOC released our second assessment of DOC's grievance program. We found a system that, despite a few improvements in recent years, had major structural problems,

including a lack of critical policies for responding to tens of thousands of 311 calls each year; unequal access and availability; and a confusing and underutilized appeal process. These structural problems lead to unmet needs, increased tensions, perceptions of unfairness, and unaddressed systemic issues in the City's jails. Today, I will summarize some of our key findings while discussing recent, significant improvements and three areas where DOC must still act.

Recent Improvements

Over the past year as DOC updated its grievance policy, the Board provided extensive feedback, and DOC made important improvements. For instance, DOC clarified their process for responding to 311 complaints. New policy requires that staff provide timely acknowledgment of all 311 complaints. Up until now, 311 complaints did not automatically initiate the formal grievance process. These are critical changes since recently 79% of DOC's complaints came through 311, and the number of calls to 311 increased 49% from FY16 to FY17.

DOC's new policy also requires they provide more information to people in custody about the process. Information on which complaints are grievable is now automatically provided with grievance forms. New forms have clearer instructions, specifying timeframes for appeal and response, and now clarify which DOC offices handle non-grievable matters. DOC also hired additional staff.

Since January 2017, DOC's grievance office has used an electronic system called Service Desk to track all complaints. Service Desk should help DOC to better comply with its policies and improve accountability. It will also assist in the Board's monitoring. The Department recently provided us with direct access to Service Desk, and Board staff can now check the status of complaints, review patterns, and sample complaints for future audits.

Areas for Improvement

Ensuring a Coordinated, Accountable, and Transparent System

Our assessments have found that an increasing number of complaints, and nearly 40 percent of complaints in FY17 are considered non-grievable, such as complaints about safety or staff unprofessionalism and misconduct. Over the last five years, the number of non-grievable complaints has nearly tripled and the portion of non-grievable complaints has nearly doubled. Complaints about DOC and CHS staff comprised 55% of non-grievable complaints in FY17.

In these cases, complainants are not entitled to a formal resolution or appeal. New policy requires the DOC grievance office to notify the grievant of a referral to a different office regardless of whether the complaint was made via 311 or on paper. However, grievants are not informed about what the investigation will entail or if they will receive a response. We continue to urge DOC to create a coordinated and transparent system to ensure that people receive written responses about the conclusion of the investigations into their non-grievable complaints. The electronic Service Desk system should allow for such coordination, regardless of which DOC office is investigating.

Simplifying the Process

Our assessment found that the grievance appeal process is broken. If someone files a grievable complaint, the person is entitled to an initial response and the opportunity to appeal three times. Yet, nearly 95% of complaints are closed after the initial DOC response. In FY17, only 20 grievances, or .4%, were appealed, and only 10 appeals received a decision at the Department's final stage of review.

Contrary to policy, none of those appeals were provided to the Board prior to DOC's decision. As further evidence of poor tracking and management of the appeals, we found that DOC's data shows that there were even more appeals at later stages than the earlier ones.

As part of our recent assessment, we audited 262 complaint files. Many of the grievance forms audited by the Board were incomplete. 41% of these cases were not timestamped, making it impossible to track compliance with response deadlines. 58% of audited complaints did not indicate if the grievant accepted or rejected the resolution, and, of these, 64% were also missing the signature of the complainant. Without this information, it is impossible to know if the grievant wanted to appeal or even received a response.

From start to finish, the full appeal process can take more than 10 weeks to complete. We have recommended that DOC shorten and simplify the grievance appeal process. DOC's new policy, instead of shortening the process, adds a new, opaque step called a preliminary evidentiary review, making it even more difficult to appeal.

Problem-Solving and Proactive Prevention

We found that five complaint categories made up nearly 50% of all grievances received by DOC. These areas have been the top complaints consistently for the past five years. These frequent complaints concern DOC staff; jail employment; financial accounts; jail sentence calculations; and personal property. Because such stark and persistent patterns signal areas of DOC operations that need to be reviewed and improved, we recommended DOC develop an action plan to evaluate and address these drivers of the top grievance categories. An effective grievance system must use its data to problem-solve to improve conditions and reduce the number of future complaints and potential lawsuits against the Department.

Complaints against DOC staff have grown most precipitously by 248% from FY13 to FY17. In FY17, staff complaints represented 13% of all complaints received by DOC. Therefore, we further recommended DOC develop a system-wide approach on this issue and one that is coordinated with the Department's significant staff development efforts and the Early Warning System required by the *Nunez* Consent Judgment. These action plans are needed to assist in preventing and decreasing the number of overall complaints, but DOC has not pursued.

Our next assessment will be released in June 2019. We look forward to working with DOC, CHS and the Council on efforts to improve the complaint system for people in custody. We thank you for taking up these important issues today, and we are happy to answer any questions and to discuss the proposed legislation.