



**NEW YORK CITY
BOARD OF CORRECTION**

November 13, 2018 PUBLIC MEETING MINUTES

MEMBERS PRESENT

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

Martha W. King, Executive Director

MEMBERS ABSENT

Michael J. Regan
Steven M. Safyer, M.D.

DEPARTMENT OF CORRECTION (“DEPARTMENT” or “DOC”)

Hazel Jennings, Chief of Department
Heidi Grossman, Deputy Commissioner for Legal Matters/General Counsel
Carleen McLaughlin, Director of Legislative Affairs and Special Projects
Michael Tausek, Deputy Commissioner of Adult Programming and Community Relationships
Peter Thorne, Deputy Commissioner
Timothy Farrell, Senior Deputy Commissioner
Dana Wax, Senior Policy Advisor
Steven Kaiser, Policy Analyst
Francis Torres, Assistant Commissioner for Education and Youth Advocacy Services
Jean Rene, Deputy Warden
Fazal Yussuff, Assistant Commissioner
James Laraque, Correction Officer
Kenneth Harrison, Correction Officer
Emily Testwuide, Assistant Commissioner
Kwame Patterson, Assistant Commissioner
Kai Chan

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

Ross MacDonald, M.D., Chief Medical Officer, Assistant Vice President, CHS
Patrick Alberts, Esq., Assistant Vice President for Policy and Planning, CHS
Patsy Yang, DrPH, Senior Vice President, CHS
Carlos Castellanos, Director of Operations, CHS
George Axelrod, Senior Director
Zachary Rosner, Associate Executive Director, CHS
Elizabeth Ford, M.D., Senior Director of Operations, CHS
Veronica Lewin, Associate Director, CHS

OTHERS IN ATTENDANCE

Jennifer Parish, Urban Justice Center
Kelly Grace Price, Jails Action Coalition (JAC)
Elizabeth Meyers, JAC
Emily Dindial, JAC
Nancy Ginsburg, Legal Aid Society (LAS) - Prisoners' Rights Project
Kayla Simpson, LAS
Elizabeth Bender, LAS - Decarceration Project
Jane Stanicki, Hour Children
Daniele Gerald, Children's Rights
Jin Lee, NY City Council (NYC Council)
Taylor Jones, NYC Council
Alana Sivin, NYC Council
Cristy Dwyer, NYC Council
Ashley Iodice, Esq., NYC Law Department
Kim Joyce, Esq., NYC Law Department
Chelsea Davis, NYC Office of the Mayor
Elias Husamudeen, Correction Officers' Benevolent Association (COBA)
Al Craig, COBA
Angel Castro, COBA
Kelsey De Avila, Brooklyn Defender Services (BDS)
Simone Spirig, BDS
Brittany Cooper, BDS
Elena Weissman, Bronx Freedom Fund
Chantla Stokes, The Osborne Association
Maggie Green, Columbia University School of Journalism
Ananya Kumar-Banerjee, Yale University
Misael Sylder, Independent Commission on NYC Criminal Justice and Incarceration Reform
Michael Nolan

Opening Remarks

Chair Cephas commenced the meeting by stating that today's agenda has been slightly modified. Voting on the variance requests will be moved to the end of the meeting so that Member Sherman (who will be joining the meeting shortly) can participate in the voting process.

Chair Cephas said the Board planned to address its resolution calling for corrective action regarding the Minimum Standards on Sexual Abuse and Sexual Harassment ("PREA Standards"). However, DOC Commissioner Cynthia Brann is unable to attend today's meeting and requested that the Board move this item to the January public meeting so that she can be a part of the discussion. Chair Cephas recapped that in October 2018, the Board passed a resolution calling for corrective action regarding its PREA Standards. The Board found that the Department was out of compliance with portions of Standards § 5-30 and § 5-40 and issued a resolution identifying actions for DOC to cure these violations; the resolution included the submission of a corrective action plan by November 8, 2018. The Department neither submitted a plan nor provided any additional information about its efforts to come into compliance with these Standards. Due to the Commissioner's absence at today's meeting, the Board moved discussion of the resolution and corrective action plan to the next public meeting scheduled for January 2019.

Approval of October 9, 2018 Minutes

Chair Cephas asked for a motion to approve the October 9, 2018 meeting minutes. Upon Acting Vice-Chair Richards moving the item and Member Perrino seconding it, the minutes were

unanimously approved by all members present (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, and Perrino).

Public Comment on Variances

Chair Cephas said today's agenda includes three DOC variance requests allowing the Department to: (1) modify the visiting schedule on Thanksgiving Day to conduct visiting on a day rather than an evening schedule; (2) house young adults (i.e., 18-21-year-olds) in Enhanced Supervised Housing (ESH); and (3) reduce out-of-cell time to a minimum of ten (10) hours per day in the Secure Unit and for alternative access to legal services and materials in that Unit.

Public comment on these variance requests was heard from Jennifer Parish (UJC), Daniele Gerard (Children's Rights), and Al Craig (COBA). The public comments are available at: <https://www.youtube.com/watch?v=j1diDJeNXDE&t=661s>.

DOJ/SDNY ADA Compliance Settlement

► Introduction

BOC's Executive Director, Martha W. King ("ED King"), stated that on August 20, 2018, DOC, H+H, and the US Attorney for the Southern District of New York ("SDNY") announced an out-of-court settlement regarding DOC compliance with the Americans with Disabilities Act (ADA).

The SDNY investigation found widespread violations of architectural accessibility standards in NYC jails, and the Department failed to respond in a timely or adequate manner to accommodation requests from incarcerated people with disabilities. DOC facilities consistently failed to: (1) place people with mobility and visual impairments in accessible housing; (2) provide people with mobility impairments access to appropriate mobility devices; and (3) provide people with hearing impairments equal access to telecommunications services.

ED King requested that DOC and CHS update the Board on the settlement agreement and their plans for implementing its requirements.

► DOC Update

DOC General Counsel, Heidi Grossman ("GC Grossman"), stated that on August 18, 2018, the Department entered into a voluntary compliance agreement with the US Attorney's Office that memorialized DOC's and the City's commitment to equal treatment of incarcerated people with disabilities, including compliance with the ADA. The agreement requires architectural and structural changes and abatement work, and a commitment to providing incarcerated persons with disabilities equal access to services, programs, and activities. GC Grossman outlined these requirements as follows.

(i) *Architectural and Structural Changes*

The architectural work is limited to facilities that house people with disabilities (e.g., NIC and RMSC), and public spaces like Central Visits and the visiting areas in each facility. The structural work falls into three categories: (1) minor work, such as changing the height of mirrors, small fixtures, and grab bars. This work will be completed within nine (9) months; (2) a heightened level of work, which involves insulating pipes, moving structures such as shelves and desks, and increasing the length of handrails on ramps. This will be handled by DOC's Facility Maintenance and Repair Division; and (3) more complicated structural repairs, including building new ramps, changing slopes in certain facility areas, moving toilets, and creating larger turnaround space for some bathrooms and water fountains. This more complex structural work requires DOC to obtain an outside consultant. The deadlines for completing structural repairs are for Central Visits by May 15, 2021; RMSC by May 15, 2022; and NIC by May 2023.

(ii) Access to Services, Programs, and Activities

The Department is in the process of revising its Directive to incorporate the settlement agreement, is tracking reasonable accommodation requests through Service Desk; and is working on sharing information with CHS so that CHS can consider and grant accommodations as necessary. In terms of telecommunication, the Department plans to install video relay services in the coming months. Additionally, DOC is committed to hiring a Disability Rights Coordinator and a Senior Program Manager who will ensure that incarcerated people with disabilities receive the services they need. The Department has also developed a plan for training staff as it finalizes new academy materials and develops a training video.

► Board Discussion

Acting Vice-Chair Richards said the layout of the visiting floors, specifically, the setup of the partitions, does not appear wheelchair accessible. He asked GC Grossman if any work would be done on this aspect of the layout. GC Grossman replied that the Department of Justice (“DOJ”) did an inspection of the visits areas and identified items that DOC is working toward completing. She was unsure if these items include the partition and would get back to the Board about it at a later date.

Dr. Cohen asked what concerns DOJ had about CHS practices, such as providing hearing aids, crutches, and wheelchairs, what policies CHS changed as a result of the settlement, and requested that BOC be provided with copies of these policies. CHS’ Assistant Vice President for Policy and Planning, Patrick Alberts, responded as follows.

While CHS voluntarily joined the settlement to support the Department, there was no finding of wrongdoing on CHS’ part. CHS’ work in this area began two years ago. It implemented the Patient Complaint System and received over 2,200 patient complaints in Fiscal Year 2017; many of these complaints came from patients via 311. CHS also tracks “ADA-style complaints” for reporting and evaluation purposes. CHS is also required to report to DOJ on how many patients have auxiliary devices and the policies and process for resolving issues that patients experience with them. The areas where CHS must improve involve communication and training. In that regard, CHS is looking to centralize information on who has access to assisted devices (e.g., wheelchairs and canes) both at the facility level and at a higher level, and is devising ADA training for staff.

Dr. Cohen said the Board would be requesting reports that CHS referenced. He also noted that in the Infirmary, people in wheelchairs have experienced difficulty transferring to their beds. He asked whether this is an issue on which CHS and DOC disagree. Mr. Alberts responded that CHS can order specialty wheelchairs and there is little restriction on what CHS can order for an individual who requires a specialty wheelchair.

Update on DOC Bail Reforms

► Introduction

ED King reported on DOC bail reforms as follows.

In the first three months of Fiscal Year 2019, 78% of the approximately 8,250 people in jail were pretrial detainees who could not post bail or were remanded (detained with no bail set); 76% of these people in custody will be discharged directly back to the community.

The Department is responsible for accepting, recording, depositing, and processing bail to release detained people to the community. As such, DOC plays an important role in making recent bail reforms work. The Department is also responsible for conducting periodic, non-scheduled audits of bail processing and accounts.

In June 2017, the New York City Council passed three bills that changed DOC requirements and process for handling bail: (1) Local Law 123 requires the Department to accept cash bail payments immediately and continuously after an individual is admitted to custody and requires DOC accept bail in or near all courthouses and online. It further mandates the release of an individual within three (3) hours after bail is posted, absent extreme, unusual circumstances; (2) Local Law 124 permits DOC to delay the transportation of an individual for admission by no less than four (4) hours and no more than 12 hours following arraignment in order to facilitate the posting of bail; and (3) Local Law 125 requires the Department to (a) give individuals access to their personal property to assist in making bail, (b) provide individuals with a written summary of their bail and payment options, and (c) designate “bail facilitators” who must meet with eligible individuals within 48 hours of admission to explain the process and fees related to posting bail or bond.

Bail practices have historically been a Board concern, particularly when these practices have contributed to overcrowding and over-incarceration. Complaints received by BOC and those reported by the defense bar and bail funds, have prompted BOC to ask the Department to provide an update on implementation of the City Council laws, including the training of staff on these changes and compliance successes and challenges.

► **DOC Update**

Hazel Jennings, DOC’s Chief of Department (“Chief Jennings”) provided the following update.

In April 2018, the Department undertook major bail reform by: (1) implementing the online bail system and the Bail Expediting Program that permits detainees to remain in court until their bail is paid; (2) facilitating the “black-out,” which allows people to pay bail for detainees who are in transit; (3) establishing bail facilitators; and (4) adding televisions to the new admission holding areas at new admission facilities and each court house. The televisions will play videos in English and Spanish about how bail can be paid. In the courts, the videos will be shown after people are arraigned and are in DOC custody. The Department is also implementing kiosks inside the courts so that people in custody can pay their own bail with their credit cards, and DOC recently opened a bail payment center in Queens. Chief Jennings affirmed that the Department is expected to be in compliance with Local Laws 123, 124, and 125 by mid-December 2018.

► **Board Discussion**

Dr. Cohen asked if DOC has a bail payment center in the Bronx. Chief Jennings responded no, but the Office of Court Administration accepts bail and DOC is looking into adding kiosks to the civilian areas of the courts so that people can post bail for detainees; there is no anticipated date for the implementation of these civilian-side kiosks.

Dr. Cohen asked if the Department increased staffing to comply with Local Laws 123, 124, and 125. Chief Jennings said DOC increased staffing at the Queens courts. Additionally, the Officers working in the new admission areas have been identified as the bail facilitators, and they will be receiving training. In response to Dr. Cohen’s inquiry as to how many people the bail facilitators have helped thus far, Chief Jennings said DOC just created this function and expects to “go live” by mid-December 2018.

Chair Cephas requested that DOC describe the general functions of the bail facilitators. Chief Jennings said they will provide specific court information to people in custody consisting of a copy of the Inmate Information System page listing their next court date, their book and case number, and bail conditions. The bail facilitators will also assist those who want to self-bail with credit cards while in court. The Chair said it appears that bail facilitators will work one-on-one with detainees to address their particular bail issues.

Dr. Cohen asked if DOC is tracking the amount of time between the posting of a person's bail and the person's release from custody. Chief Jennings said the Department is currently working on a system for tracking this. Dr. Cohen asked if DOC has developed any plans for the bail amounts set at one dollar. Chief Jennings said there is a daily email sent to the Chaplains listing all detainees with a one-dollar bail to ensure their bails are paid. Dr. Cohen concluded that the bail reform process is just beginning for the Department, and the Board would like to hear more about it in the near future.

Acting Vice-Chair Richards asked Chief Jennings to describe the process when someone requests to be held in the courthouse to pay bail. She responded that detainees must notify DOC that a civilian is expected to come pay the detainee's bail and the detainee is held in court until payment is made.

ED King asked what the process is for fielding bail-related complaints from family members and people in custody (e.g., concerns about the time it takes for bail to be processed). Chief Jennings said these complaints are currently filtered through the Mayor's Office of Criminal Justice and then forwarded to her office. If there is an issue with the time it takes for bail to be processed, DOC addresses it in "live time."

Acting Vice-Richards asked how the Department ensures that someone is released from custody within four (4) hours after the person's bail is posted. Chief Jennings responded that DOC sends "live emails" from the online bail system and the central cashier to the Tour Commander and Warden of the facility as the "two-hour window" approaches. This email serves as a notification to complete the release process in a timely manner.

Dr. Cohen asked if the Department has any procedures for reviewing instances in which a person's bail was posted but was not released after 24 hours. Chief Jennings responded that when DOC is notified that such violation has occurred, the facility conducts an investigation and DOC holds staff accountable and imposes discipline if warranted. In response to Dr. Cohen's inquiry, the Chief said DOC has reports on this issue.

Thanksgiving Day Variance Request

► Introduction

Chair Cephas stated that, as the Department has requested in the past, it now requests a variance from Minimum Standard § 1-09(c)(1)(i), to allow DOC to conduct Thanksgiving Day visiting on a day rather than an evening schedule.

ED King read out loud the proposed condition to the variance: "November 15, 2018, the Department will notify people in custody and visitors of the change in schedule via inmate council meetings and posters in housing areas, visit areas, libraries, and intakes."

Chief Jennings said DOC would be in compliance with this condition by November 15, 2018.

► Board Vote

After Chair Cephas called a roll call vote, the Board unanimously approved the variance condition, 6-0 (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, and Perrino).

Chair Cephas called for a motion to vote on the variance with the condition. After the item was moved and seconded, the Board unanimously approved the variance with the condition, 6-0

(Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, and Perrino).¹

Young Adult ESH Variance Request

► Introduction

ED King said the Department's public monthly reports required by the ESH variance conditions have yielded important information to ground the Board's discussion today. She thanked DOC for its significant and continuing efforts to collect and share more data that helps all parties have a factual and productive understanding of what is occurring in ESH. She also thanked the Board's staff for reviewing these reports. She then reported on what the reports show about young adults in ESH.

- As of August 1, 2018, there were 163 young adults placed in ESH since it opened in September 2016. In the last six months (March 1, 2018 to September 1, 2018), there were 40 placements of young adults in ESH: 68% in ESH Level 2 and 32% in ESH Level 1. During July and August 2018, DOC increased its young adult placements in ESH, i.e., 12 and 13 placements as compared to an average of four (4) placements during March-June 2018.
- Young adults are spending less time in restraint desks. The proportion of total time in the desks has also decreased.
- Young adults have been in the Department's custody much longer than most people in DOC's custody. The average time in custody for the recent census of 20 young adults in ESH was 400 days (or one year and one month) and their median time in custody was 316 days.
- Young adults are being recommended for progression, but are not always moving to less restrictive units. In the recent six (6) months, a total of 87 young adult placement reviews occurred 40% of which resulted in a recommendation to progress, but only 34% resulted in a person moving to a less restrictive level or unit. Regarding the reasons for non-progression, 56% did not progress for security concerns or pending housing determinations, while 40% did not progress because they preferred to stay in a more restrictive unit. ED King said the Board intends to update the reporting requirements to better monitor this particular issue.

ED King reported that since 2017, the Board has required the Department to audit its compliance with key provisions of the ESH Minimum Standard (§ 1-16) and publish its findings in these monthly audits. This is an important tool for DOC, the Board, and others to monitor compliance with the Minimum Standards and to monitor conditions in these units. She explained that each month, DOC chooses four (4) random dates and reviews log book entries on those dates to determine out-of-cell time, recreation, law library access, and programming. Additionally, DOC must notify the Board whenever there is a late lock-out in young adult ESH. In the six-month period March 1, 2018 to September 1, 2018, BOC was notified 158 times of late lockouts in the unit, which from 15 minutes to 36 hours. The data shows that late lockouts have decreased since the Department has been reporting to the Board: 52% of the 158 late lock outs were due to use of force incidents; 27% to investigation of an incident; and 13% to inmate tension.

¹ The final record of variance is available at:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/November-2018/2018.11.14%20-%20Final%20Record%20of%20Variance%20Action-Thanksgiving.pdf>

The audit also showed that: (1) in this six-month period, the average out-of-cell time for young adults in ESH Level 1 was four hours and 53 minutes; in ESH Level 2, six hours and 16 minutes; and In ESH Level 3 (where young people must be offered 10 hours out-of-cell) 11 hours and 48 minutes; and (2) law library coordinators were present in ESH on 75% of the audit dates and were there for about four hours on each of those dates. Recreation was also offered on all of the audit dates.

ED King said the Department made a number of excellent recommendations in each of its audits. The Board intends to work with DOC to make these audits even more useful and thanked the Department for its timely dedication to date. ED King invited DOC to present its young adult ESH variance request.

► **DOC Presentation**

Timothy Farrell, DOC's Senior Deputy Commissioner ("DC Farrell"), requested a renewal of the six-month limited variance to Minimum Standard § 1-16(c)(1), which requires that 18-21-year-olds be excluded from ESH as of January 1, 2016.

► **Board Discussion**

(i) Restraint Desks

Dr. Cohen asked the Department to change the language in the variance request referencing "program and activity desks" to "restraint desks" and said he would not consider a variance that does not identify the apparatus solely as restraint desks. Judge Hamill asked if the desks are still used for all lock-out time, regardless of whether school or an activity is in session. DC Farrell replied: "Yes, for ESH Level 1."

Dr. Cohen said on his recent visit to ESH, the staff was very supportive and caring, and ESH has seen much progress in the past six months. However, he believes the Board should not "normalize something as profoundly degrading as shackling when [young people in custody] locked out." He added: "Every time we say that we are going to keep [renewing the variance for another few months], it legitimizes bad things."

Member Perrino reflected on the reduced use of punitive segregation (PSEG) in recent years and the elimination of PSEG for adolescents and young adults. He believes the Department should build a secure facility to safely house people separately without the use of restraint desks. DOC "did a great job in ending punitive segregation" for young adults but ESH "was not enough because there are some violent individuals and no matter what you do, they're going to hurt other people." Member Perrino said he would continue supporting this variance because there must be a different plan in place to safely house violent individuals before the use of restraint desks are eliminated.

(ii) School and Out-Of-Cell Time

Dr. Hamill reflected on her recent experience visiting ESH and commended the Department on its operation of the unit. She specified that the unit has well-trained staff who are very respectful to the young adults and she saw teachers providing education. However, according to DOC's audit, young people are averaging less than five (5) hours out-of-cell. She expressed disappointment as the ESH Minimum Standard requires seven (7) hours of daily lock-out, which the Department and the Board agreed to in rulemaking. ESH's Deputy Warden, Jene Rene ("Dep. Warden Rene"), said there were many reasons for the low lock-out numbers and it may reflect people who choose not to come out of their cells. He noted that people have the option of exiting their cells every hour.

Through questioning of the Deputy Warden, Judge Hamill clarified that young adults in ESH Level 1 attend school in the afternoon (12:30 p.m.) while young adults in other ESH units attend

school in the morning. Young adults who choose not to attend school are afforded only four (4) hours out of cell per day instead of the seven (7) hours required by the Minimum Standards. Judge Hamill noted that this was a violation of the Standards and one of the conditions of the ESH variance; namely, that the three (3) hours of school are to be *in addition* to the seven (7) hours; currently it is the reverse, i.e., the seven (7) hours is inclusive of the three (3) hours. In response, Dep. Warden Rene said the Department has identified alternative school space in OBCC 1 South. Judge Hamill said that was good to hear but suggested relocating young adults in Level 2 and Level 3 now so that those in Level 1 (the most restrictive unit) would have access to three (3) hours of school in the morning and seven hours (7) out of cell the afternoon. This would be consistent with the variance condition to which the Department agreed and the young adults in Level 1 would have a much better chance of rehabilitation. Michael Tausek, DOC's Deputy Commissioner of Adult Programming and Community Relationships ("DC Tausek"), said DOC would look into this possibility and if it is logistically feasible, would implement it.

In response to Chair Cephas' inquiry, DC Tausek said the Department was aware of its noncompliance with this variance condition and has been struggling to comply. Judge Hamill said she has repeatedly raised this issue with DOC. She reiterated that ESH could be a successful unit but the lack of out-of-cell time hinders rehabilitation for young adults who will likely be released back to the community. She noted that the Department's inability to move the school area does not appear to be a staffing problem as she saw 10 Officers in the unit when she was there.

Dr. Cohen said the Board and DOC have been discussing plans for another school area for one year, but he has not been given an update on the Department's plans. He noted that teachers believe their ability to teach is compromised by not having a classroom. DC Farrell responded that the Department had submitted design plans to construct an enclosed classroom within the housing unit, but the State Commission of Correction ("SCOC") rejected them. DOC's design team will be submitting another set of plans for SCOC approval. DC Farrell noted that he would prefer to construct a classroom in a housing area rather than converting an entire housing unit into school space. In the interim, the Department will be using OBCC 1 South as an additional school area (where ESH's multidisciplinary hearings are held) because it is a closed unit where the scheduling for hearings and ESH can be coordinated.

(iii) Progression Out of ESH

Judge Hamill said while the Department is conducting 15-day reviews and recommending progression of young adults to less restrictive levels or other units, the young adults in ESH are not being moved. DC Farrell responded that this population is heavily influenced by gangs and DOC is limited in finding safe and compatible housing for them as they progress through ESH. Although the multidisciplinary team has conducted over 800 reviews to date, some young adults fear that if moved, their safety will be threatened if they refuse to commit violence or other illegal acts upon placement in a less restrictive level or unit. The multidisciplinary team engages with these young adults to understand how to prevent this. DC Farrell noted that Cure Violence programming will hopefully be offered in December 2018. Judge Hamill asked if the young people who are recommended to progress to Level 2 could be moved to the Secure Unit, as it appears to be underutilized. DC Farrell said DOC moves young adults to Secure from ESH Level 2, but not from Level 1.

Dr. Cohen remarked that the Department created a system of progression in ESH that does not work. He noted there were four young adults in ESH Level 1 as of August 1, 2018 and their average time in custody was 410 days and the median 307 days. The minimum time in custody for these young people was 308 days while the maximum was 515 days. In his experience, "the people who end up getting in trouble are the people who get stuck on Rikers Island" and this leads to more violence.

Acting Vice-Chair Richards said that failing to move young adults out of ESH Level 1 after they have been recommended for progression perpetuates a situation that could result in more violence, anger and frustration. He asked what the Department's solution is to this problem. DC Farrell responded that DOC is looking for a suitable housing unit/space that can house these young adults without disrupting the general population. He explained that every time the Department creates another ESH housing area, it must take 50 general population beds "off line." He also said the Department is looking to increase the number of ESH Level 2 and Level 3 units.

Chair Cephas expressed the Board's frustration in the Department's lack of success in addressing the issue of restraint desks and the lack of progression within and out of ESH. He urged the Department to swiftly develop a solution to these problems.

► Proposed Conditions

After ED King read out loud the proposed variance conditions, Chair Cephas proposed that the variance be renewed for three (3) rather than (6) months so that the Department would be required to address issues within a shorter time frame. DC Farrell responded that while DOC preferred a six-month renewal it would accept three months.

Member Jones Austin asked how the Department would address Condition No. 8, which requires movement of a young adult to a less restrictive unit after the person has been recommended for progression.² DC Farrell said this would require identifying additional housing units for ESH participants, such as the Secure Unit. Member Jones Austin asked if DOC "accepts this condition and intends to be in compliance with it." DC Farrell responded: "Yes."

Judge Hamill asked if the Department accepts Condition No. 10, which requires DOC to provide young adults with a minimum of seven (7) hours out-of-cell per day, not inclusive of school hours. She reiterated that DOC has been in violation of this condition and asked if it would develop a plan to remediate this violation. DC Farrell replied that OBCC 1 South will serve as an interim school space until DOC establishes a permanent school space for ESH.

Dr. Cohen proposed and read out loud the following condition: "By three months, the Department shall eliminate the use of restraints other than for escorting or transporting people in custody, including restraint desks during out-of-cell time in young adult ESH."

GC Grossman requested that this condition be deferred because DOC was not made aware of it prior to this meeting, and Commissioner Brann should be present for the discussion on this important topic. She noted that engaging with the Board on the variance conditions in the week prior to the meeting allowed the Department to review and respond thoughtfully to the other proposed conditions. Judge Hamill said the Department has been aware of the Board's interest in this condition as it is consistent with other conditions the Board approved based on the ABA Standards on the Treatment of Prisoners. GC Grossman said that this condition would require conferring with the *Nunez* Monitor on how it would impact the provisions of the *Nunez* Consent Judgment. Member Hamill said the Consent Judgment sets a constitutional minimum that the Board has the authority to exceed by affording more rights to people incarcerated in NYC jails.

Chair Cephas said the Department must use the three-month timeframe to address the restraints issue and, as Member Perrino suggested, may need to utilize limited restraints or a separate housing area to safely house individuals that DOC believes must be restrained. The Chair said that he would not support Dr. Cohen's proposed condition, but expects the

² Proposed Condition No. 8 states: "A young adult recommended to progress to a less restrictive level or unit shall not remain in their current unit solely due to lack of available housing elsewhere (e.g., progression recommended to Level 2; however, a co-defendant is already in Level 2).

Department to develop a substantive plan ready to be implemented by the time the three-month variance expires. Acting Vice-Chair Richards also expressed hope that DOC would develop a plan to move ESH issues forward and address the restraint desks issue.

► Board Vote

After Chair Cephas called a roll call vote, the Board unanimously approved 16 variance conditions read by ED King, 7-0 (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, Perrino, and Sherman).

After Chair Cephas called a roll call vote, the Board did not approve the variance condition proposed by Member Cohen, with two (2) votes in favor (Members Cohen and Hamill) and five (5) votes in opposition (Chair Cephas, Acting Vice-Chair Richards, and Members Jones Austin, Perrino, and Sherman).

Chair Cephas called for a motion to vote on the three-month variance with conditions. After the item was moved and seconded, the Board approved the variance with conditions, with five (5) votes in favor (Chair Cephas, Acting Vice-Chair Richards, and Members Jones Austin, Perrino and Sherman) and two (2) votes in opposition (Members Cohen and Hamill).³

Secure Unit Variance Request

► Introduction

ED King reported on the Secure Unit as follows.

As of September 1, 2018, the Department placed 62 young adults in Secure since June 2016. The average daily population through July 2018 was between six (6) and seven (7) young adults and the average length of stay for young adults exiting Secure was 83 days and the median was 76 days. Since the last update to the Board and the last vote on this variance, 13 young adults exited Secure —54% exited upon completing all phases of the program, while 25% were discharged from custody. Between March 1, 2018 and August 1, 2018, 26 placement reviews were conducted of which 61% recommended progression. These young adults were placed in less restrictive units or in general population housing.

Since September 2017, the Board has mandated that the Department refrain from using restraint desks in the Secure Unit school area. Per the Board's variance condition, restraints should only be used under extenuating and individualized circumstances, and DOC must notify the Board on a weekly basis of their use in the unit. The Department has provided these weekly reports to the Board as required, and the last documented use of restraint desks during school in Secure was September 14, 2017. DOC's monthly audits of the Secure Unit have also shown that from March 2018 to August 2018, young adults in Secure consistently spent less time out of cell than the mandated minimum lock-out DOC must afford them. In Phase 1 (where DOC must offer 10 hours of out-of-cell time) on average, the young adults received seven (7) hours and 29 minutes of daily lock-out.

The law library coordinator was consistently in the Secure Unit and spent on average three (3) hours and 45 minutes each day in the unit — well beyond the requirement of two (2) hours of law library each day. Recreation was also afforded every day and young adults were consistently participating in all of the activities afforded to them. ED King said that DOC is making important recommendations each month and the Board looks forward to hearing about

³ The final record of variance is available here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/November-2018/2018.11.14%20-%20Final%20Record%20of%20Variance%20Action-ESH.pdf>

the status of these recommendations and having discussions with DOC about other ways to improve its audits.

► **DOC Presentation**

On behalf of the Department, DC Farrell requested a six-month limited variance from Minimum Standards § 1-05(b) and § 1-08(f) for the purposes of maintaining the use of the Secure Unit.

► **Board Discussion**

Judge Hamill asked what the Secure Unit's maximum capacity was. DC Farrell responded that according to the "beds at standards," the Department has space for eight (8) young adults per quad, but DOC houses only four (4) young adults per quad. Judge Hamill asked why the daily census in Secure is low and if it has been low since the Board authorized ESH. Francis Torres, DOC's Assistant Commissioner for Education and Youth Advocacy Services ("AC Torres"), said that since DOC opened the Secure Unit, it has prioritized keeping only four (4) young adults in each quad where there are two uniformed staff and one program counselor as well. She reminded the Board that there are no restraints used in the quads and DOC reviews specific information before making placements, which includes the young adult's history with one another, Security Risk Group affiliations, and the primary and secondary reasons for placement in Secure. For this reason, there are instances where one young adult is in a quad by himself, which is likely if the young adult has transitioned out of ESH Level 2.

AC Torres further stated that the Department recently transferred 11 young adults into Secure as a "step down" from ESH Level 2. Secure has a weekly meeting known as the "high risk meeting" where DOC staff, including programming and health affairs staff, discuss every young adult that will be placed in Secure or ESH. A thorough discussion is also held with the Bureau Chief of Security and the Chief of the Department regarding placements. Member Hamill asked if DOC has done any analysis to ascertain why Secure seems to be functioning better than ESH in terms of progression and completion. AC Torres responded that the Department has not evaluated this but will look into it.

Chair Hamill reiterated that young adults are not receiving the full lock-out time provided by the Minimum Standards in both ESH and Secure. AC Torres responded that the young adults in Secure are afforded their lock-out, but some choose not to lock out. She noted that DOC recently maximized programming in Secure by bringing program counselors in an hour earlier so that they could have more interaction with the young adults. Chair Hamill said the Board's information is consistent with the *Handberry* report, which reflects that young adults are not receiving three (3) hours of education. In response, AC Torres asserted that young adults are currently receiving three hours of education, five days per week. ED King noted that the Board's information is from six months ago and BOC's staff will re-analyze this issue when it obtains information requested in the new variance condition.

Acting Vice-Chair Richards asked who makes the decision to move a young adult to ESH Level 2 versus the Secure Unit. He noted that moving people into Secure from ESH Level 1 would create more capacity in ESH to house people who are recommended for progression out of Level 1. DC Farrell responded that the high-risk review committee makes a recommendation for placement in Secure, which is forwarded to the Bureau Chief of Security's office for final determination. He noted that the committee's recommendation is usually accepted by that office. Acting Vice-Chair Richards requested to review this information for a specific period of time (e.g., three or six months).

Dr. Cohen said Secure is an important unit and should be expanded. He noted that structurally, the Unit has an education problem because young adults in different quads go into the school area separately, and school is not held throughout the entire day to accommodate three-hour

school sessions for all young adults. He urged DOC to consider expansion of the Secure Unit with a more appropriate architectural model.

► Board Vote

After ED King read out loud the 11 proposed variance conditions, Chair Cephas called a roll call vote on them. The Board unanimously approved the conditions 7-0 (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, Perrino, and Sherman).

Chair Cephas called for a motion to vote on the six-month variance with the conditions. After the item was moved and seconded, the Board unanimously approved the variance with the conditions, 7-0 (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, Perrino, and Sherman).⁴

Public Comment and Adjournment⁵

The Board heard public comment from Kenneth Harrison (DOC), Elizabeth Bender (LAS-Decarceration Project), Elena Weissman (Bronx Freedom Fund), Elias Husamudeen (COBA), Al Craig (COBA), Emily Dindial (JAC), and Kayla Simpson (LAS)⁶. The public comments are available at: https://www.youtube.com/watch?time_continue=6756&v=j1diDJeNXDE.

Following public comment, Chair Cephas adjourned the meeting.

⁴ The final record of variance is available at:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/November-2018/2018.11.14%20-%20Final%20Record%20of%20Variance%20Action-Secure.pdf>

⁵ Written testimony from Kelly Grace Price (JAC) is available at:

https://www1.nyc.gov/assets/boc/downloads/pdf/close_rosies_november_13_boc_testimony.pdf

⁶ Written testimony from JAC re voting rights for people in NYC jails is available at:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/November-2018/jac-testimony-boc-hearing-111318.pdf>