



NEW YORK CITY
BOARD OF CORRECTION

July 12, 2016 - Public Meeting Minutes

MEMBERS PRESENT

Stanley Brezenoff, Chair
Derrick D. Cephas, Esq., Vice Chair
Robert L. Cohen, M.D.
Honorable Bryanne Hamill
Michael Regan
Stanley Richards
Steven M. Safyer, M.D.

Gerard W. Bryant, Ph.D.: Absent
Jennifer Jones Austin, Esq.: Absent

Martha W. King, Executive Director

DEPARTMENT OF CORRECTION

Joseph Ponte, Commissioner
Martin Murphy, Chief of Department
Dr. Nichole Adams, Deputy Commissioner
Winette Saunders-Halyard, Deputy Commissioner
Dina Simon, 1st Deputy Commissioner
Timothy Farrell, Deputy Commissioner
Peter Thorne, Deputy Commissioner
James Walsh, Deputy Commissioner of Adult Programming
Shirvahna Gobin, Assistant Commissioner for Strategic Planning
Kwame Patterson, Assistant Commissioner of Public Information
Brenda Cooke, Deputy General Counsel
Heidi Grossman, Esq., Deputy Commissioner of Legal Matters/General Counsel
Douglas Zeigler, Executive Agency Counsel
Danielle Leidner, Director for Intergovernmental Affairs
Jeff Thamkittikasem, Chief of Staff
Turhan Gumusdere, Bureau Chief
Hazel Jennings, Bureau Chief
Angel Villalona, Bureau Chief of Administration
Clayton Augustus, Assistant Chief of Division II

Yolanda Canty, Assistant Chief
Karen Collins, Assistant Chief
Sean Jones, Assistant Chief
Kenneth Stukes, Assistant Chief
Marisa Alberti, Policy Analyst
Melissa Andre, Compliance Analyst
America Canas, Senior Policy Analyst
Anna Martzullo, Senior Policy Advisor
Nina Edwards, Director of Disability Rights for Inmates
Mahsa Forkin, Project Management Analyst
Carleen McLaughlin, Director of Legislative Affairs and Special Projects
Frances Taormina, Project Management Analyst
Francis Torres, Director of Education
Benjamin Seebaugh, Staff Analyst
Eve Kessler, Director of Public Affairs
Elizabeth Seibold, Press Officer
Briana Lombardo, Press Officer Intern
Charlton Lemon, Warden
Jacqueline Brantley, Deputy Warden
Brian Calloway, Deputy Warden
Michelle Hallett, Deputy Warden
Horace Hill, Deputy Warden
Miguel Melendez, Deputy Warden
Luigi Ottaviano, Assistant Deputy Warden
Nathan Bialik, Captain
Marsha Elbourne, Captain
Mackenzie Dancho, Intern

NYC HEALTH + HOSPITALS-CORRECTIONAL HEALTH SERVICES

Elizabeth Ford, M.D., Chief of Service, Psychiatry
Homer Venters, M.D., Assistant Commissioner, Bureau of Correctional Health Services
Ross MacDonald, M.D., Medical Director
Elizabeth Ward, Senior Director Correctional Health
Ashley Smith, Assistant Director
Patrick Alberts, Agency Attorney, Division of Prevention and Primary Care
George Axelrod, Chief Risk Officer
Nancy Arias, Chief Nursing Officer
Levi Fishman, Associate Director of Public Affairs
Lucia Caltagirone, Agency Attorney Intern
Anne Sieger, Researcher

OTHERS IN ATTENDANCE

Alex Abell, Urban Justice Center
Angel Castro, Correction Officer's Benevolent Association (COBA)
Brittney Cavalier, New York City Council (NYCC)

Tara Chauson, Brooklyn Defender Services (BDS)
Shiva Darshan, Petey Greene Program
Julia Davis, Children's Rights
Kelsey De Avila, BDS
Riley Doyle Evans, BDS/JAC
Sophia Eisenberg, BDS
Ellen Eng, NYCC
Nia Fung, Mental Hygiene Legal Services
Abigail Gellman, BDS
Erin George, JustLeadershipUSA (JLUSA)
Elizabeth Gewirtz, JAC
Dennis Gonzalez, Nunez Mentorship
Susana Guerrero, State Commission of Correction
David Hafetz, Institute for State and Local Government (ISLC)
Bianca Herlitz-Ferguson, Children's Rights
Elissa Hyne, Children's Rights
Sara Kerr, Legal Aid Society (LAS)
Monica Klein, City Hall
Tanya Krupat, Osborne Association
Victoria Law, Independent
Alex Lesman, NYC Bar Association
Laura Limuli, BOC Director of Research, Emeritus
Hetty Lu, BDS
Jeff Mailman, NYCC
Luca Marzorati, Law Department
Amanda Masters, NYC Public Advocate – Hon. Letitia James
Marin, COBA
Elizabeth Mayers, JAC
Rodrigo Moreno, BDS
Shevani Patel, Mayor's Office
Jennifer Parish, Urban Justice Center /JAC
Ben Parker, BDS
G. Pazmino, Politico, Reporter
Bunnard Phan, BDS
Joan Pleune, Granny Peace Brigade
Charlotte Pope, Children's Defense Fund –NY (CDF-NY)
Jeffrey Powell, US Attorney, Southern District
Grace Price, JAC
Jacqueline Prosky, CDF-NY
Corinne Ramey, Wall Street Journal
Steve Riester, NYC Council, Finance Division
Kathleen Rubenstein, Law Department
Emily Sasso, BDS
Jordan Singer, Intern
Jane Stanicki, JAC/Hour Children
Marc Steier, COBA

Vivian Velasquez, JAC
Rachel Weiner, Urban Justice Center
Mary Lynne Werlwas, Legal Aid Society
Maria Wilkerson, CMW

June Board Meetings

Chair Brezenoff asked for a motion to approve the minutes of the June Board meetings. There were no amendments. Chair Brezenoff asked for a vote on approving the minutes and they were approved unanimously (Chair Brezenoff, Vice-Chair Cephas, Members Bryant, Hamill, Richards, Regan, Safyer, and Cohen).

Public Comment on DOC Variance Requests

Sarah Kerr (Legal Aid Society), Angel Castro (COBA), Jennifer Parish (Urban Justice Center/JAC), Charlotte Pope (Children's Defense Fund – New York), Kelsey De Avila (Brooklyn Defender Services/JAC), Riley Doyle Evans (Brooklyn Defender Services/JAC), and Ruthie Epstein (New York Civil Liberties Union) addressed the Board regarding the Department's request for a limited variance allowing DOC a six-month extension of time to house inmates ages 19-21 separately and apart from inmates over the age of 21 and to exclude inmates ages 19-21 same age group from punitive segregation. Their comments are available at https://youtu.be/PKZsA8_mLwQ?t=1m30s.

Ad Hoc Adolescent and Young Adult Committee Update

► Committee Chair

Member Hamill provided a chronology of events leading to DOC's most recent request for a six-month variance to end punitive segregation for 19-21 year olds. She noted the Department's repeated assurances that it would end punitive segregation by June 30, 2016. In June, after the Board put DOC on notice that it was in violation of the Board's Minimum Standards (including excessive lockdowns), the Department took remedial action, as stated in its June 27 letter to the Board. In its letter, DOC assured the Board that it was on course to end punitive segregation by month's end.

Member Hamill stated that, on June 28, DOC hosted a tour of the Secure Unit for the Adolescent and Young Adult Advisory Board during which Advisory Board members were assured that punitive segregation would end on June 30. At that time, the Unit housed only three inmates. Member Hamill noted her understanding that the union opposed the opening of this Unit.

On June 30, Member Hamill first learned that punitive segregation would not be ending. She noted the Department's filing of an emergency declaration and request for an emergency variance, and the Board's issuance of a Notice of Violation of the Board's Minimum Standard requiring the end of punitive segregation by June 30. Member Hamill also discussed the lengthy rule-making process the Board had conducted in 2014-2015, which resulted in a new rule ending punitive segregation for young adults, and the repeated variances that DOC was granted to accomplish this. At the same time, she also noted the Department's successes — ending punitive segregation for 16-18 year olds; improved programming for 16-21 year olds; much better training of officers, expansion of direct supervision, and a significant reduction in the punitive segregation census. Member Hamill concluded by asking Commissioner Ponte to speak.

► The Department

Commissioner Ponte stated that in December 2014, the Department ended punitive segregation for 16-17 year olds long before the Board's adoption of a rule to that effect and that this was truly historic.

Moreover, DOC had moved with lightning speed — in January 2016, 190 young adults (ages 18-21) were in punitive segregation whereas today, only 15 or 16 young adults (ages 19-21) are housed there.

The Commissioner said that the Department had worked very hard to meet the June 30 deadline but, ultimately, he decided that to end punitive segregation on that date would jeopardize the safety and security of staff and inmates. He explained that the Department was doing fine at GMDC until the first week of June. At that point, as more problematic inmates were housed there, DOC encountered problems across the board, including lockdowns and disruption of services.

The Commissioner then gave the floor to Chief Murphy who said that after increasing GMDC's population to approximately 700, including high-classification inmates, the jail experienced more than one alarm per hour, resulting in a complete shutdown of programs and services. He was followed by Chief Canty who said that 20% of the incidents involved high-risk inmates and 36% involved inmates who had come from TRU and Second Chance. She discussed remedial measures DOC took to get GMDC back up and running, such as including wardens, deputy wardens and other supervisors on tours from lock-out to lock in; assigning ESU officers to the facility respond to alarms; the transfer of 75 young adults from GMDC to a young adult area in AMKC; and assigning each of the 160 new officers an experienced officer to serve as a mentor.

Commissioner Ponte resumed his remarks by saying that DOC kept pushing forward until it became clear that continuing to do so would cause more harm than delaying punitive segregation's end for 19-21 year olds. Commissioner Ponte said they expected too much too soon and had not provided enough skills building or mentors for the 160 new officers assigned to GMDC. He noted that the Secure Unit was in its third week of operation and the Department wanted to monitor its operation for a longer period of time. He asked the Board to support the variance requests in order to move the Department to a place where it could safely end punitive segregation for 19-21 year olds, which no other correctional agency in the country has done.

Member Hamill asked the Commissioner why the Department had not moved more inmates, especially those housed in punitive segregation, into the Secure Unit. He responded that four inmates from punitive segregation were being transferred there today and that the Secure Unit is operating much better than expected. Member Hamill asked the basis for DOC's reservation about using ESH for young adults. Commissioner Ponte responded that his initial concern was with mixing young adults with older offenders and providing age appropriate programming to young adults; however, the Department now wanted to explore this housing option for young adults.

Member Richards asked Commissioner Ponte about, during this transition period, moving young adults who infract into the Secure Unit and, only if that does not work, move them into punitive segregation. The Commissioner responded that it is a matter of building staff confidence that the Secure Unit is a safe alternative to punitive segregation.

DOC's Variance Requests

Chair Brezenoff then declared a recess to allow the Department to review the Board's proposed conditions for granting the requested variances. Upon reconvening, the Chair announced that the Board would consider the three variance requests, with proposed conditions, one at a time.

► Limited Variance from Minimum Standard § 1-16(c)(ii)

Chief Murphy presented the Department's request for a limited variance allowing the Department a three-month extension of time, ending on October 11, 2016, to exclude inmates ages 19 through 21 from Enhanced Supervision Housing (ESH).

Executive Director King then read the Board's three (3) proposed conditions for this variance, which are available [here](#). Member Hamill moved the variance with the attached conditions. Member Regan seconded.

Member Cohen asked if inmates would serve any remaining punitive segregation time in ESH after release from punitive segregation. Chief Murphy responded no because an inmate's punitive segregation sentence ends once he is released from punitive segregation. Judge Hamill confirmed that ESH would be used only as an alternative to punitive segregation. Chief Murphy said that was correct. The Department's Chief of Staff, Jeff Thamkittikasem, said DOC would assess ESH as an option during this time period and, if the Department determines it to be a suitable long-term option, DOC will discuss it with the Board.

Chair Brezenoff then called for a vote on the variance with conditions. The variance passed unanimously (Chair Brezenoff, Vice-Chair Cephas, Members Bryant, Hamill, Richards, Regan, Safyer, and Cohen).

► Limited Variance from Minimum Standard § 1-02(c)(1)

Chief Murphy presented the Department's request for a limited variance allowing the Department a six-month extension of time to house inmates ages 19-21 separately and apart from inmates over the age of 21. Member Hamill moved the variance and Member Regan seconded.

Member Hamill asked the Department whether it sought this variance because housing all young adults in one building created too much tension or whether it wanted to revisit the Young Adult Plan. Commissioner Ponte responded that DOC needed to figure out how to handle this problematic population and to that extent, it may have to revise the Plan. Member Hamill noted that the Board's Minimum Standards do not require consolidation of all young adults in one facility and expressed her view that a six-month extension of time is reasonable.

Member Cohen said he was impressed with all the work the Department had done toward implementation of the Young Adult Plan but questioned why its efforts in this regard had collapsed in June. He noted a markedly decreased access to services at GMDC and, unbeknownst to the Board, creation of a unit without mattresses or running water.

Chief Murphy responded that the Department had set up a modular intake at GMDC to accommodate the large influx of inmates into the facility. In June, as a result of the increased number of alarms, DOC placed inmates involved in incidents in this new intake (3 Upper A), rather than GMDC's main intake. During the inmate's time in 3 Upper A, he said, the Department assessed if and where he should be re-housed. Chief Murphy explained that the inmates were not staying overnight and thus, there was no need for mattresses, although he acknowledged that depending on the time of the incidents, some inmates may have spent overnight hours there. He further stated that the area is emptied of inmates every three hours. The Chief explained that due to a flooding condition, staff sometimes turns the water on and off. Executive Director King responded that Board staff intervened because the water had been turned off for some time and worked with DOC staff to rectify the situation. She expressed the Board's concern with the Department's oversight of this unit.

Chari Brezenoff then called for a vote on the variance request with conditions. The variance passed unanimously (Chair Brezenoff, Vice-Chair Cephas, Members Bryant, Hamill, Richards, Regan, Safyer, and Cohen).

Limited Variance from Minimum Standard § 1-17(b)(1)(ii)

Chief Murphy presented the Department's request for a variance allowing the Department a three-month extension of time, ending on October 11, 2016, to exclude inmates ages 19-21 from punitive segregation. Executive Director King then read the proposed conditions for this variance, which are available [here](#).

Mr. Thamkittikasem responded that one of the proposed conditions — providing young adults in punitive segregation with four hours of daily lockout — could not be implemented immediately because the Department requires 30 days to construct a new area for this purpose.

Member Hamill said she needed to find justification for continuing punitive segregation for young adults and asked Mr. Thamkittikasem what the Department could do to mitigate the harm to those still housed there. He responded that the creation of alternatives to punitive segregation, and offering of out-of-cell time, extended recreation, and congregate programming would hopefully address the Board's concerns.

Judge Hamill noted that the number of young adults in punitive segregation had doubled in the last week and asked how that had occurred. Mr. Thamkittikasem attributed this to a number of inmates who had engaged in multiple incidents, including slashings, upon their release from TRU.

Noting that there would always be young adults who disrupt the facility, Member Cephas asked whether the Department would seek another variance in three months' time. Mr. Thamkittikasem responded that time is needed to give the 160 new officers comfort that they can safely and effectively supervise this most violent population. In response to Member Cephas' question whether three months was sufficient to obtain officers' confidence in this alternative housing, Chief Murphy responded that the Department would have to move faster than originally planned.

Member Cohen asked how many young adults currently in punitive segregation could be moved based on the Department's criteria. Chief Murphy said, based on initial review, six of the 12 young adults would be moved out of punitive segregation.

Chari Brezenoff then called for a vote on the variance request with conditions. (Executive Director King re-read one of the conditions, which was revised to afford DOC thirty days to construct a new lock-out area for inmates released from punitive segregation). The variance passed unanimously (Chair Brezenoff, Vice-Chair Cephas, Members Bryant, Hamill, Richards, Regan, Safyer, and Cohen).

Health+Hospitals' Variance Requests

► Limited Variance from Minimum Standard § 2-05(b)(2)(i-ii)

Dr. Venters presented Health+Hospital's (H+H) renewed request for a limited variance, ending on January 13, 2017, allowing psychiatrists to see and evaluate stable adult patients on psychotropic medication in general population at least every 28 days, rather than every 14 days. He stated that these inmates have been seen by mental health and are known to be stable. Member Safyer moved the variance and Member Richards seconded. Member Richards asked if the Board should effect this change permanently through rulemaking rather than renewing this variance every six months. Dr. Venters replied in the affirmative.

Chari Brezenoff then called for a vote on the variance request. The variance passed unanimously (Chair Brezenoff, Vice-Chair Cephas, Members Bryant, Hamill, Richards, Regan, Safyer, and Cohen).

► Limited Variance from Minimum Standard § 3-04(b)(2)(v)(a)

Dr. Venters presented H+H's renewed request for a limited variance, ending on January 13, 2017, allowing the Correctional Health Services to use either interferon gamma release assays (IGRA) or TST for tuberculosis screening, and to exempt from repeat screening inmates who have a documented negative test in the six months prior to their admission. He also advocated permanent adoption of this change through rulemaking. Member Safyer moved the variance and Member Hamill seconded.

Chari Brezenoff then called for a vote on the variance request. The variance passed unanimously (Chair Brezenoff, Vice-Chair Cephas, Members Bryant, Hamill, Richards, Regan, Safyer, and Cohen).

► **Limited Variance Request from Minimum Standard § 3-08(c)(3)**

Dr. Venters presented H+H's renewed request for a limited variance, ending on January 13, 2017, allowing health care staff to provide the Department with specific diagnoses related only to injuries sustained by prisoners while in correctional custody while the reporting of diagnoses unrelated to an injury would remain prohibited. Member Safyer moved the variance and Member Hamill seconded.

Chari Brezenoff then called for a vote on the variance request. The variance passed unanimously (Chair Brezenoff, Vice-Chair Cephas, Members Bryant, Hamill, Richards, Regan, Safyer, and Cohen).

Agenda

Chair Brezenoff moved the H+H/DOC monthly progress report on Correctional Health Care Access and DOC's report on West Facility report to the next monthly Board meeting.

Public Comment

The Board heard public comment from Tanya Krupat (Osborne Society, DOC Visiting Working Group), Liz Meyers (JAC, Visiting Working Group), and Vivian Velasquez, which is available at https://youtu.be/PKZsA8_mLwQ?t=2h17m45s.