



**NEW YORK CITY
BOARD OF CORRECTION**

OCTOBER 9, 2018 PUBLIC MEETING MINUTES

MEMBERS PRESENT

Derrick D. Cephas, Esq., Chair
Stanley Richards, Acting Vice-Chair
Robert L. Cohen, M.D.
Hon. Bryanne Hamill
James Perrino
Michael J. Regan
Steven M. Safyer, M.D.
Jacqueline Sherman, Esq.

Martha W. King, Executive Director

MEMBERS ABSENT

Jennifer Jones Austin, Esq.

DEPARTMENT OF CORRECTION (DOC)

Cynthia Brann, Commissioner
Brenda Cooke, Chief of Staff
Hazel Jennings, Chief of Department
Heidi Grossman, Deputy Commissioner for Legal Matters/General Counsel
Carleen McLaughlin, Director of Legislative Affairs and Special Projects
Sarena Townsend, Deputy Commissioner of the Investigation Division
Michael Tausek, Deputy Commissioner of Adult Programming and Community Relationships
Faye Yelardy, Assistant Commissioner for Sexual Abuse and Sexual Harassment Prevention
Peter Thorne, Deputy Commissioner
Timothy Farrell, Senior Deputy Commissioner
Jean-Claude LeBec, Executive Director
Maureen Sheehan, Deputy Director
Dana Wax, Senior Policy Advisor
Steven Kaiser, Policy Analyst
Elizabeth Seibold, Press Officer
Yolanda Canty, Bureau Chief of Security
Francis Torres, Assistant Commissioner for Education and Youth Advocacy Services

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
Carlos Castellanos, Director of Operations, CHS
Ashley Smith, Assistant Director of Policy & Planning, CHS
Zachary Rosner, Associate Executive Director, CHS
Veronica Lewin, Associate Director, CHS
Willa Xiong, M.D., Fellow, CHS

OTHERS IN ATTENDANCE

Jennifer Parish, Urban Justice Center
Kelly Grace Price, Jails Action Coalition (JAC)
Mary Lynne Werlwas, Legal Aid Society Prisoners' Rights Project (LAS)
Nancy Ginsburg, LAS
Kayla Simpson, LAS
Meghan Kacsmar, Children's Rights
Daniele Gerald, Children's Rights
Elissa Hyne, Children's Rights
Helen Rosenthal, NY City Council
Jin Lee, NY City Council
Taylor Jones, NY City Council
Alana Sivin, NY City Council
Ned Terrace, NY City Council
Kieshone, NY City Council
Tim Roche, Administration for Children's Services (ACS)
Stephanie Gendell, ACS
Felipe Franco, ACS
Joan Tannenbaum, ACS
Jennifer Romelien, ACS
Nora Daniel, ACS
Marsha Wright, ACS
Kwan-Lamar Blount-Hill, Mayor's Office of Criminal Justice
Bianca Scott, NYC Commission on Human Rights
Ashley Iodice, NYC Law Department
Chelsea Davis, NYC Office of the Mayor
Freya Rigterink, NYC Office of the Mayor
Julia Davis, Children's Defense Fund – NY (CDF-NY)
Charlotte Pope, CDF-NY
Elias Husamudeen, Correction Officers' Benevolent Association (COBA)
Al Craig, COBA
Marc Steier, COBA
Kelsey De Avila, Brooklyn Defender Services (BDS)
Simone Spirig, BDS
Becca Litwin, BDS
Brittany Cooper, BDS
Anna Arkin-Gallagher, BDS
Rachel Herzog, Crime Victims Treatment Center
Kate Rubin, Youth Represent
Casey O'Hara, New York University
Grace Dixon, New York University
Jan Ransom, NY Times
Victoria Law, Independent

Approval of September 14, 2018 Minutes

Chair Cephas asked for a motion to approve the September 14, 2018 meeting minutes. Upon Member Cohen moving the item and Member Safyer seconding it, the minutes were unanimously approved by all members present (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Perrino, Regan, Safyer, and Sherman).

Council Member Rosenthal's Remarks¹

Chair Cephas welcomed NYC Council Member Helen Rosenthal, who represents District 6, covering the Upper West Side of Manhattan. The Council Member is the Chair of the Council's Committee on Women and co-chaired the September 6, 2018 Council Oversight Hearing on sexual abuse and sexual harassment in NYC jails.

Council Member Rosenthal said the Council's hearing on sexual abuse and sexual harassment was informative and thanked Member Safyer² and Executive Director Martha W. King ("ED King") for their participation in the hearing. She has submitted requests for three pieces of legislation: (1) requiring the Department of Correction ("Department" or "DOC") to convene a community planning task force with community members to address the housing of transgender and gender non-conforming individuals; this bill would require DOC to make housing decisions on a case-by-case basis, including consideration of a person's gender identity rather than his or her external genital anatomy; (2) requiring DOC to provide appropriate staff with Forensic Experiential Trauma Interviewing (FETI) training, which is provided to officers and detectives at the Police Department's Special Victims Division; and (3) requiring DOC to establish an electronic case management system for sexual abuse investigations. The Council Member noted that Council Member Cumbo has introduced legislation that would require DOC to report on sexual abuse, and Council Member Dromm has introduced a bill that would require the Department to report on the sexual abuse of visitors.

Public Comment on Variances

Chair Cephas said DOC has requested a variance for additional time to complete a one-year pilot program involving video surveillance cameras in vehicles used to transport people in custody and to submit a written evaluation of it.

DOC also has requested a variance renewal allowing it to continue housing young adults ages 19-21 with people over the age of 21. The Chair noted that the Board has granted this variance continuously since September 2015. When the Board last voted on this variance in July 2018, it required DOC to submit a plan to house substantially all young adults in young adult housing — this plan was submitted to the Board last week.

Public comment about these variance requests was heard from Simone Spirig (BDS), Daniele Gerald (Children's Rights), and Kelsey De Avila (BDS). The public comments are available at: https://www.youtube.com/watch?time_continue=9814&v=DSrDp-LSHx4.

DOC's Plans for Housing by Gender Identity

► Introduction

ED King stated that in April 2018, DOC in coordination with the NYC Commission on Human Rights, announced that it would house people in custody consistent with their gender identity, unless otherwise required and as determined by an individualized safety assessment, or in response to the express preference or concern of the incarcerated person. The Board and many others have praised this action as an important step in the right direction. This change and plan should be in effect by October 13, 2018 and, when fully implemented, will bring DOC into compliance with portions of the Board's Minimum Standards on Sexual Abuse and Sexual Harassment ("Standards"). She invited DOC to update the Board on its plans and progress thus far.

¹ Although Council Member Rosenthal's remarks appear at the beginning of these minutes, she delivered them later in the meeting.

² Dr. Cohen appeared with ED King at the hearing.

► DOC's Presentation

Faye Yelardy, DOC's Assistant Commissioner for Sexual Abuse and Sexual Harassment Prevention ("AC Yelardy"), said DOC is in the final stages of developing policies and procedures to replace its Directive on the Transgender Housing Unit ("THU"). The Department is working diligently towards housing transgender individuals in units other than the THU, and has instituted instrumental changes towards housing people by gender identity.

On July 31, 2018, the THU was relocated from the Manhattan Detention Center ("MDC") (a male facility) to the Rose M. Singer Center ("RMSC") (the sole female facility, which is on Rikers Island). As a result, transgender women have access to expanded programming such as structured recreation, cooking classes, and a beauty salon. In addition to the four-hour PREA employee training, RMSC staff are receiving training focused on the LGBTI and gender nonconforming populations. This training — which was formulated by advocates who worked with DOC in developing the THU — focuses on professional interactions with transgender people in custody and DOC is integrating it with training from the PREA Resource Center.

On September 17, 2018, DOC opened a new admission housing unit for the transgender and intersex population where individuals may be housed pending completion of their housing assessment. DOC is also in the process of establishing a Housing Committee to determine housing for people who identify as transgender. Under the current intake process, DOC utilizes a screening tool to track individuals who identify as transgender, and the PREA team will be responsible for ensuring that people are not considered for housing based solely on their genital anatomy. Overall, housing determinations will be based on self-reporting, information provided by the PREA team, security concerns, and relevant information provided by Correctional Health Services ("CHS").

DOC has submitted two updates to the NYC Commission on Human Rights regarding its policy and procedural changes, which were shared with the Board. AC Yelardy affirmed that the Department will continue to work with the Commission to achieve custody management reforms by the October 13, 2018 deadline.

► Board Discussion

Dr. Cohen asked for the number of applications to the THU that DOC had rejected. AC Yelardy responded that between January 2018 and September 2018, DOC approved 68 applications, refused 15, and denied 13 for medical reasons. In response to Dr. Cohen's inquiry, Dr. Ross MacDonald, CHS' Chief Medical Officer, said while he was unfamiliar with the cases rejected for medical reasons, certain levels of care, such as the need for PACE, CAPS, or infirmary housing, would preclude assignment to the THU. In response to Member Regan's question, AC Yelardy said the 15 rejections may have been based on security concerns (e.g., the person is assaultive or sexually abusive toward others).

In response to Acting Vice-Chair Richards' inquiry, AC Yelardy said THU's total capacity is 40 beds; 12 individuals currently reside in the Unit; DOC is currently aware of 42 individuals who identify as transgender women; and transgender men are currently housed at RMSC. ED King asked when DOC expects its policy on the new admission unit to be issued. AC Yelardy responded that the new THU Directive, which will include the new admission unit's policy, is in the final draft stage.

Compliance with Minimum Standards on Sexual Abuse/Sexual Harassment

► Introduction

ED King said BOC last reported on the implementation of and compliance with these Standards in April 2018 and has committed to biannually reporting on them after each quarterly meeting where they are reviewed by DOC, CHS, and BOC. ED King invited BOC's Deputy Executive

Director of Research, Emily Turner (“DED Turner”), and Senior Director of Research (“SDR”) Cassandra Ramdath, to present the Board’s latest update.

► **BOC Presentation**³

DED Turner and SDR Ramdath presented as follows:

(i) Public Transparency

BOC has developed a system to track compliance with the Standards’ reporting requirements, which is available on the BOC website⁴, and will expand this system to track and report on compliance with all the Board’s Minimum Standards.

(ii) Minimum Standards on Implementation and Screening (§§ 5-17 and 5-18)

Following the Board’s October 2017 resolution,⁵ DOC fully implemented an electronic PREA screening tool in all facilities in February 2018, which enables the Department to, among other things, track and report on those at risk of sexual victimization and identify transgender and intersex individuals who may apply to be housed in the THU. As of Nov 1, 2017, DOC has been submitting reports on the placement and movement of these individuals on a consistent and timely basis.

On July 31, 2018, DOC moved the THU from MDC to RMSC where transgender women can more easily access gender responsive programming and preferred commissary items and toiletries. By Oct 15, 2018, DOC must come into compliance with Executive Order 16 and house individuals consistent with their gender identity. Successful compliance with this Executive Order will also bring DOC into compliance with the Board Standards in this area. The Board will continue to monitor DOC’s implementation of housing by gender identity, and next year, will complete a comprehensive analysis of DOC’s policy for housing transgender people.

(iii) Minimum Standard on Investigations (§ 5-30)

In June 2018, DOC submitted a corrective action plan⁶ aimed at closing 1,216 backlogged cases by February 2019. Since then, the Department has consistently submitted closing memos to BOC. While the Board received a total of 373 closing memos to date — 64 in 2017 and 309 in 2018 — BOC remains concerned with the timeliness and quality of these investigations.

(iv) Minimum Standard on Sexual Abuse Incident Review Reports (§ 5-39)

Sexual Abuse Incident Reviews (“SAIRS”), which must be completed for all substantiated and unsubstantiated cases, are intended to identify lessons learned and generate recommendations for reducing future risks. To date, the Board has received only five (5) SAIRS and, based on the number of closing memos, BOC is missing nearly all SAIRS. DOC was encouraged to update its corrective action plan and address this backlog as it works to close investigations on a timely basis.

³ The Board’s Presentation on the *Minimum Standards to Prevent Sexual Abuse and Harassment* (October 2018) is available here:

https://www1.nyc.gov/assets/boc/downloads/pdf/prea_update_board_presentation_oct_9_2018.pdf

⁴ The Board’s PREA Reporting Dashboards are available here: <https://www1.nyc.gov/site/boc/jail-regulations/sexual-abuse-and-harassment-standards-implementation.page>

⁵ This resolution is available at: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/Oct-10-2017/Board%20Resolution%20re%20DOC%20PREA%20Standards%20Violation%201>

⁶ DOC’s *PREA Investigations Corrective Action Plan* (June 2018) is available here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/June-12-2018/PREA%20Public%20Corrective%20Action%20Plan.pdf>

(v) Next Areas of Focus for BOC Oversight

Employee Training (§ 5-12). DOC reported that in 2017, 20% of its staff (n=1,960) received PREA training and 1,879 additional staff have been trained in 2018 to date. Between May and July 2018, 15 BOC staff observed DOC's PREA trainings and before the next update in March 2019, will submit a memo to DOC with its findings and recommendations on the training.

Supervision and Monitoring (§ 5-04). DOC submitted facility-specific staffing plans to the Board on March 27, 2018, and will provide its written feedback to DOC before March 2019.

Reporting (§ 5-40). Section 5-40 requires DOC to provide BOC with incident-level data on sexual abuse and sexual harassment allegations and publicly issue a self-assessment biannually. These "Section 5-40 Reports"⁷ make it difficult to identify and compare trends because they lack consistency in terms of reporting categories and time intervals; moreover, they omit key incident-level data. Before the March 2019 update, BOC staff will work with the Department to prepare a standard template for these Reports. The Board also recommends that DOC prioritize the development of a robust case management system and immediately dedicate staff towards data management and analysis for improved § 5-40 data reporting and self-assessments.

Compliance Managers (§ 5-03). Section 5-03 requires the Department to designate one PREA Compliance Manager ("PCM") to every DOC facility. PCMs play an important role in safe housing, training, and conducting SAIRS. Currently, however, only five (5) out of 10 facilities have a PCM. Two (2) additional PCMs were recently hired but have not yet been assigned to a facility and, while funding was requested for 12 PCMs, only eight (8) positions have been approved. BOC recommends that DOC move quickly to fund and fill all required PCM positions to come into compliance with this Standard.

(vi) Closing Memo Audit ^{8 9 10}

Purpose. At the time of PREA rulemaking, DOC investigations of allegations of staff-on-inmate sexual abuse were deficient in terms of timeliness, thoroughness, and objectivity, as only five (5) out of 294 allegations were substantiated in 2013-2015. For this reason, BOC incorporated the federal PREA Standard into its own rules requiring DOC to: (1) document "all investigations in a written report that contains a thorough description of physical, testimonial, and documentary evidence," and attach copies of all documentary evidence "where feasible"; and (2) prepare a closing memo summarizing the findings of the investigation. While DOC's improved closure of investigations since April 2018 is commendable, the number of closed investigations, in and of itself, does not reflect whether the investigations were thorough or objective. Therefore, BOC undertook an audit to determine the quality of DOC investigations.

⁷ DOC's *Minimum Standard § 5-40 Assessment Report* (received by the Board in August 2018) is available here: <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2016-PREA/Jan-June%202018%20Semi-Annual%20Report%20Received%2008-14-2018.pdf>

⁸ The Board's *Audit on the NYC Department of Correction's Sexual Assault and Sexual Harassment (PREA) Closing Reports* (September 2018) is available here:

https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/PREA_ClosingReports_FINAL_09.24.18_update.pdf

⁹ DOC's Response to the Board's Audit (September 2018) is available here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/NYC%20Department%20of%20Correction%20-%20Response%20to%20BOC%20Audit%20of%20PREA%20Investigations%20%2009.12.18.pdf>

¹⁰ DOC's Response to the Board's Audit (September 2018) is available here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/NYC%20Department%20of%20Correction%20-%20Response%20to%20BOC%20Audit%20of%20PREA%20Investigations%20%2009.12.18.pdf>

Audit Sample. The Board audited 42 closing memos, which were sampled to accurately reflect the types of allegations received by DOC:

- 29% (n=12) related to staff-on-inmate sexual abuse.
- 31% (n=13) related to staff-on-inmate sexual harassment.
- 24% (n=10) related to inmate-on-inmate sexual abuse.
- 17% (n=7) related to inmate-on-inmate sexual harassment.
- The majority — 76% (n=32) — of alleged victims were men.
- 12% (n=5) of allegations were from women.
- 12% (n=5) of allegations were from victims who self-identified as transgender women.

Timeliness. The Standards require that all persons in custody subject to alleged sexual abuse or sexual harassment must be interviewed within 72 hours of the referral date, and all investigations must be completed no later than 90 days of such date. Timely interviews were conducted with the majority (86%) of alleged victims within 72 hours; however, only one (2%) investigation was completed within 90 days; 28 were still open after 90 days; and it was impossible to determine from the closing memo the closing date of 13 investigations. In cases where the closing date could be determined, the average time from referral to completion was 510 calendar days.

Interviews. The Standards require that investigators interview alleged victims, perpetrators, and witnesses. Alleged perpetrators were interviewed in 55% (n=23) of the investigations audited, while witnesses were interviewed in 45% (n=19) of the cases. While there are instances where interviews of alleged perpetrators are not possible (i.e., they are not identified), BOC is concerned with the number of incarcerated perpetrators who refused to be interviewed and the number of staff who appeared to have avoided interviews — in five (5) cases of allegations against staff, the investigator relied on camera footage or statements rather than interviewing the staff member, as required.

Confidentiality. The Standards require that requests for statements or interviews of people in custody must be made off the living unit and cannot be made within sight of other incarcerated people or staff involved in the incident. Additionally, interviews of people in custody must be conducted in a private setting. It was impossible to determine from the closing memos whether interviews were generally conducted in private locations.

Post-Allegation Services. The Standards require that people in custody who are victims of sexual abuse must be provided with timely and unimpeded access to free emergency medical treatment and crisis intervention services. In most cases, alleged victims were reported as being offered some post-incident services after DOC received their allegation. These services include medical, mental health, and victim services, or some combination thereof.

Establishing a Crime Scene & Reviewing Evidence

The Standards and DOC policy require DOC to follow a uniform protocol that maximizes the potential for establishing crime scenes and obtaining usable physical evidence for administrative proceedings and criminal prosecutions. In 41% of the investigations involving allegations of sexual abuse (n=9), there was insufficient information recorded regarding the establishment of a crime scene. Just over half of the investigations — 55% (n=23) — included a review of physical evidence, while 26% (n=11) included a review of all available testimonial evidence, such as monitoring information, records, and witness statements.

Review of Prior Complaints & Credibility Assessments. The Standards require that investigators review prior complaints and reports of sexual abuse involving the alleged perpetrator. Generally, investigators failed to review prior allegations against perpetrators and did so in only four (4) cases. In half of the cases, the investigator adequately performed credibility assessments.

Substantiation. The Standards require that all investigations include an effort to determine whether staff actions or failures to act contributed to the sexual abuse/harassment, and that closing memos include a description of physical, testimonial and documentary evidence, as well as the reasoning behind credibility assessments, and investigative findings. In 50% of the cases (n=21), the investigator adequately explained what elements of the allegation were verified or not proved.

Determinations. Of the 42 investigations, almost all — 95% (n=41) — concluded that the allegations were unsubstantiated or unfounded while one determined that staff actions or failures to act had contributed to the incident. The Standards require that DOC inform the victim whether the allegation was substantiated, unsubstantiated, or unfounded. Victims were informed of the investigation results in 26% (n=11) of the cases. Most victims, 62% (n=26) were no longer in custody at the time of the determination and in some cases, DOC attempted to notify victims who had left custody.

Recommendations

Given the above findings, BOC recommended that DOC:

- Re-train investigators and supervisory staff to ensure that all staff are familiar with the requirements of the Standards and have a clear understanding of what constitutes complete and adequate reporting on investigations.
- Revise and improve the closing memo format to ensure completeness and compliance with the Standards.
- Audit investigations to identify and address reasons for delays.
- Ensure interviews are conducted in private locations.
- Notify alleged victims of the outcome of investigations, even if no longer in DOC custody.

The Board is committed to annual audits of closing memos to monitor progress and implementation of these recommendations.

► DOC's Presentation

Sarena Townsend, DOC's Deputy Commissioner of the Investigation Division ("DC Townsend") provided information and updates on BOC's audit, DOC's corrective action plan, and DOC's Section 5-40 Report for the six-month period January through June 2018.

BOC Audit. The BOC Audit reflected the Department's prioritization of potential victims over paperwork. Investigations are occurring within the first 72 hours but because of understaffing, DOC's Investigation Division has struggled to close cases administratively, and is thus facing a backlog. In most cases, initial investigative tasks are conducted promptly upon notification of an allegation. Moreover, the Department's corrective action plan calls for elimination of the backlog by early 2019. Last month, DOC submitted for BOC's review a revised template for the closing memo that prompts the investigator to provide more details about the investigation. When BOC conducts its next audit, it will have the reassurance that certain steps were taken before the case was closed.

DOC's Corrective Action Plan. Since the announcement of DOC's corrective action plan in June 2018, the Department has hired eight (8) additional PREA certified Investigators and, as of last week, closed over 250 additional cases. Nearly 350 cases have been closed since April 2018. With this month's addition of two (2) investigators and a second Deputy Director (a retired NYPD Detective with extensive special victims experience), DOC is on track to fulfill the staffing goals in its corrective action plan and tackle its backlog by early 2019.

Section 5-40 Report. This past summer, DOC submitted to BOC a Section 5-40 Report that compared the data for the six-month period January through June 2018 to data for the previous

six-month period July through December 2017 to ascertain changes, patterns, and progress. In the 2018 reporting period, allegations decreased in every category, except for allegations of inmate-on-inmate sexual abuse. Notably, allegations of staff-on-inmate sexual abuse decreased 22% and allegations of staff-on-inmate sexual harassment decreased by 74% as compared to the prior period.

Training. Four (4) DOC staff have registered for the FETI training, and DOC will send staff to special victims training with the NYPD. Since 2016, 7,900 staff have received the four-hour PREA training; over 5,600 security staff received the cross-gender pat frisk training; and approximately 1,100 staff received the two-hour refresher training that occurs every two years.

In conclusion, DOC will continue its efforts to become compliant with the Standards and will update the Board every six months on its progress.

► Board Discussion

Member Regan commended the Department for hiring a Deputy Director with specific investigative experience. He inquired into the 74% drop in staff-on-inmate sexual harassment allegations. DC Townsend said there are likely many reasons for this decline. The Moss Group informed DOC that once its reporting systems improved, the reporting would increase drastically at first and eventually level out. DOC is now in the leveling-out phase.

Chair Cephas asked what FETI training entails and how it differs from what DOC currently provides. DC Townsend said the FETI training is science- and neurology-based, and instructs how to conduct interviews of victims who have experienced trauma.

Judge Hamill asked why DOC does not have an electronic case management system in place to monitor compliance with the Standards. General Counsel (“GC”) Heidi Grossman responded that a case management system was developed for use of force cases, as required by the *Nunez* Consent Judgment. Phase two of this system development will include all other cases that DOC must track, such as cases handled by the Investigation Division (including sexual abuse/sexual harassment cases) and the Trials Division.

Acting Vice-Chair Richards referenced the Audit finding that only one of the 42 investigations found that staff actions or failures to act had contributed to the incident. He suggested that every closing memo include an assessment as to whether DOC staff could have done something differently. DC Townsend said additional staff training would assist in addressing this concern. She also clarified that the one case in which DOC determined that staff actions had contributed to the incident was substantiated and the staff person would be disciplined.

Dr. Cohen noted the Audit’s finding that essentially none of the SAIRS had been completed. He inquired about DOC’s plan to complete the SAIRS and the timeframe for completion. AC Yelardy responded that DOC is currently training PREA “ambassadors” (in addition to Compliance Managers, for a combined total of 15 staff) who will also conduct SAIRS.

Board Resolution re PREA Investigations

Dr. Cohen proposed a resolution to address Audit findings and recommendations about deficiencies in the timeliness and quality of investigations.¹¹ The resolution requires DOC to take corrective action to cure its violations of the Standards, including:

- By November 8, 2018, submit a written corrective action plan to improve the quality of these investigations and the quality of 5-40 data and assessment reporting, which shall include timelines and steps for implementing the Audit’s

¹¹ The resolution is available at:

https://www1.nyc.gov/assets/boc/downloads/pdf/october_2018_resolution_investigations_10_8_18.pdf

recommendations and achieving compliance with Minimum Standard § 5-30 (Investigations), and § 5-40 (Data Collection and Review). The corrective action plan shall also establish a timeline for implementing and using a computerized case management system for sexual abuse and harassment claims within the next twelve (12) months.

- Submit monthly written progress reports on the corrective action plan beginning December 1, 2018 and on the first day of each month thereafter.
- By November 8, 2018, provide all information related to training of PREA investigators and supervisors, including: copies of all training modules and materials detailing the content covered in training, the names of all Investigations staff required to be trained, and the dates each staff member completed training.
- By November 8, 2018, ensure that all interviews and requests related to investigations are conducted in private settings, and by December 1, 2018, include details on how the Department is complying with this requirement in its monthly written progress report.
- Effective immediately, require that all investigations include a review of all available evidence, including the alleged perpetrator's prior history of allegations as well as credibility determinations regarding complainants, alleged perpetrators, and other witnesses.
- By November 8, 2018, require signed supervisory review of all investigations at 15, 30, 60, and 90 days. If an investigation is not completed within the required 90 days, the supervisor must review the case every 15 days until completed.
- By December 1, 2018, submit a 5-40 assessment report template for BOC's review and approval.

Chair Cephas invited the Department to speak to the proposed resolution. GC Grossman stated that the Department "takes all of [its] obligations under the Minimum Standards seriously and [it] will take all of these recommendations under serious consideration."

► **Board Vote**

Chair Cephas called for a motion to vote on the proposed resolution. After the item was moved and seconded, the resolution was unanimously approved, 8-0 (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Perrino, Regan, Safyer, and Sherman).

Variance Request re Video Surveillance Cameras in Transportation Vehicles

Chair Cephas said that as a part of the effort to eliminate sexual abuse and harassment in the City's jails, the Standards require that by July 31, 2017, DOC institute a one-year pilot program to install video surveillance cameras in vehicles used to transport people in custody. The Standards also require the Department to submit an evaluation of the pilot by Sept 1, 2018. Chair Cephas explained that the Board required a pilot so that DOC could determine the benefits and challenges of installing cameras in transportation vehicles and whether all transportation vehicles should have camera coverage.

On Aug 17, 2018, DOC submitted a letter to the Board requesting an extension until March 1, 2019 for submission of its pilot and report. Chair Cephas said the Board is treating this letter as a variance request.

► **DOC Presentation**

Brenda Cooke, DOC's Chief of Staff, voiced the DOC's request for a six-month limited variance from Minimum Standard § 5-04(g), to allow additional time to complete the pilot and submit its report by March 1, 2019.

► Board Discussion

Noting that installation of cameras in vehicles operated by Uber and taxi drivers is common practice, Member Regan said he did not understand why installation of cameras in DOC vehicles was taking so long. Acting Vice-Chair Richards agreed and asked DOC to explain why it had been unable to comply within the prescribed timeframe.

Chief of Staff Cooke said that over a year ago, DOC mounted five (5) body worn cameras inside its transportation vehicles and recently mounted another nine (9). These cameras, which have limited technological advantages, have not captured any incidents to date and cost approximately \$540 each. In August 2017, DOC initiated a procurement for a Genetec mobile solution to be installed in one transportation bus. After a lengthy procurement process, the bus was outfitted and returned to DOC the first week of October 2018 with eight cameras inside and three on the outside of the bus. The Genetec solution costs approximately \$40,000 per bus. DOC is determining whether it should continue installation through the easily compatible, yet more expensive, Genetec solution, or proceed with the mounted body worn cameras. It would like to pilot both options to determine the best solution. In response to a question from Chair Cephas, Chief of Staff Cooke said DOC has approximately 200 buses in use. For additional context, she noted that in FY 2015, approximately 50 incidents occurred on or directly outside of a DOC transportation vehicle.

Member Regan emphasized that this Standard protects the safety of incarcerated people and staff and, therefore, he would not vote in favor of the Department's variance request. Member Cohen shared Member Regan's sentiments.

Member Sherman asked DOC to speak to its research on what other jurisdictions have done to outfit corrections vehicles with cameras. Chief of Staff Cooke said she did not have this information available, but is not aware of corrections vehicles being commonly outfitted with cameras.

Chair Cephas made a motion to vote on the variance, which was not seconded. Accordingly, the variance request was not approved by the Board.

Raise-the-Age Update

Chair Cephas announced that as of October 1, 2018, there are no longer any adolescents on Rikers Island. Noting that the number of adolescents in DOC custody had declined 61% over the last five years, he applauded the Department's transfer of 16 and 17-year-olds off-Island to Horizon Juvenile Center in the Bronx. He thanked DOC's uniform and civilian staff, the Administration for Children's Services (ACS), the Department of Education (DOE), the Mayor's Office of Criminal Justice (MOCJ), and the many contracted vendors who worked on this initiative. The Board appreciated the presentations by DOC, ACS and DOE at the July public meeting on the City's new vision for the treatment of young people in custody and hopes to assist these agencies in implementing new models and policies.

The Chair noted that while the first two weeks at Horizon have been difficult, the Board and its staff have observed ACS, DOE, and especially DOC, work around the clock to solve security and operational problems. However, urgent work is required to keep staff and adolescents safe; provide access to the Minimum Standards' mandated services; and fully implement the City's vision for a secure facility that provides individualized and age-appropriate programming and support for adolescents.

After noting that the Board would continue to closely monitor Horizon — and expects that it will be a regular agenda item at public meetings going forward — Chair Cephas asked DOC and ACS to provide an update on the opening of the facility.

► DOC Presentation

Yolanda Canty, DOC's Bureau Chief of Security ("Chief Canty"), reported that 93 adolescents were moved from DOC facilities to Horizon: 89 boys and four (4) girls. DOC worked with ACS over the past year and half to make this move as seamless as possible, and received assistance from the NY State Commission of Correction ("SCOC") and the NY State Office of Children and Family Services ("OCFS") to provide guidance on best practices and how to manage youth behavior. As of today, there are 92 adolescents at Horizon. DOC has made security improvements over the last few days, such as bolting down the desks; frosting the windows; securing the kitchen, mess hall, and serving line; and adding lighting outside the facility to ensure the perimeter is secure. DOC also implemented Visitor Express at the facility to expedite the visiting process. After experiencing obstacles with escorting youth to the clinic to receive their medications, DOC began giving them their medications on their way to breakfast and dinner, and while they are in the school area at noon. DOC also identified an outdoor courtyard area to use while the recreation area is under construction.

► ACS Presentation¹²

ACS Deputy Commissioner Felipe Franco ("DC Franco") presented on the opening of Horizon, as follows.

DOC and ACS worked closely to safely transfer the adolescents to Horizon. The agencies are continuously modifying procedures, improving practices, and adding new resources as needed, and DOC's staff are working diligently to prevent and address any incidents that occur.

Based on Horizon's first eight days: (1) four ACS program counselors were re-deployed to help with the morning transition and motivate youth to attend school; (2) roll call meetings and program staff presentations were held to familiarize officers with the program counselor role; (3) recreation staff assignments were staggered to ensure sufficient recreation staff from 7:00am to 9:00pm; (4) SCOC and OCFS approval was obtained to make changes to the physical plant to enhance safety, particularly in the classroom, cafeteria, and clinic; and (5) the phone system is shut off at 9:00pm to minimize disturbances at night.

ACS continues to work closely with DOE to create individualized work for youth who missed school and has re-deployed an ACS psychiatry and psychological resource to Horizon. As of October 5, 2018, every young person has developed an individualized safety plan, which helps the youth and staff better understand the youth's triggers and protective factors. ACS continues to work closely with DOC to expedite the visiting process, and the automated phone system is fully functional. ACS also re-deployed one of its child focus attorneys to be available 20 hours a week to support youth in their legal research and printing of documents. The attorney will also be conducting workshops. The use of dry cells continues to be monitored by DOC (and others) and is working well and, as noted numerous times by SCOC and OCFS, DOC staff has exhibited restraint with using force.

► Board Discussion

Judge Hamill commended all agencies that have been involved in this significant reform. She asked DOC what it believes is contributing to the current fights and assaults on staff at Horizon and how it plans to mitigate these incidents. Chief Canty attributed the increase in fights to the lack of space available (there are 92 adolescents and 107 beds) and the number of gang-affiliated youth. Assaults on staff may be a result of youth knowing which tools staff can and cannot use at Horizon, as many of them have previously been in ACS custody. To address these issues, DOC is collaborating with ACS case managers to coordinate interventions with youth and their families. The ACS Ombudsman also visits the facility to speak with youth.

¹² ACS' Deputy Commissioner Felipe Franco's written remarks are available at: https://www1.nyc.gov/assets/boc/downloads/pdf/dc_franco_rta_bocstatement_oct9_final.pdf

Chief Canty said DOC is considering adopting the ACS incentive program, which provides incentives to youth who are not involved in any incidents. DOC staff is also informing youth on how good behavior can improve their chances for release through City initiatives, such as bail reform. DOC is also teaching its staff different strategies and techniques for responding to violent incidents. DOC, OCFS, and SCOC have been analyzing video footage of incidents to identify and recommend appropriate responses by staff. SCOC and OCFS have also imparted wisdom on other tools that DOC can use, such as Room Restriction, which allows DOC to contain youth, who are not necessarily a part of the incident, until the situation is under control.

In response to Judge Hamill's inquiry, DC Franco said the Horizon leadership team includes Executive Director Susan Campos and Assistant Commissioner Louis Watts. There are 10 program counselors and four (4) were recently added to the morning shift. There are currently four (4) case managers and two (2) additional case managers starting this week. All case managers will be in the housing areas and will work closely with attorneys and families. ACS also has a director of recreation and twelve (12) providers who will provide a robust set of programs on motivational speaking, calisthenics, and music recording.

In response to Member Sherman's question, DC Franco said that currently, there is no plan to hire more than six case managers for Horizon. Member Sherman also asked how staff accesses medical attention, when necessary. Chief Canty said as of last week a nurse is assigned to see staff between 9:00am and 9:00pm and if necessary, will coordinate a tele-video with a physician.

Member Perrino expressed deep concern that DOC staff has been assaulted at Horizon. He voiced disappointment that ACS had yet to assume primary responsibility for the adolescents in the facility. DC Franco explained that initially, ACS's role is to provide programmatic support while DOC is responsible for daily safety and security operations. Member Perrino stressed that the adolescents are coming to Horizon predisposed to the Rikers environment, but the DOC staff working at Horizon do not have the same tools to manage youth that they had on Rikers. Chief Canty agreed that injuries to staff are disconcerting, and said two staff sustained serious injuries. She noted that DOC began using "in-house feeding" and dividing the movement of adolescents into smaller groups to reduce the incidence of violence.

Member Regan said Horizon is too small and poses a threat to safety; he asked whether DOC should consider other options for housing adolescents. DOC Commissioner, Cynthia Brann ("Commissioner Brann"), recounted the short timeframe under the State's Raise-the-Age Law for removing adolescents from Rikers and placing them elsewhere. As a result, DOC and ACS staff moved into Horizon on the same day as the adolescents, which impeded both agencies' ability to practice dry runs and become familiar with the space. She also noted that youth are impulsive and those who were previously in the ACS system know what tools staff can and cannot employ. DOC considered all possible locations for re-housing the adolescents; however, use of other state facilities was not provided as an option and relocation of youth to DOC's borough jails would have run counter to the spirit of the new Law. Commissioner Brann concluded by saying that the violent incidents at Horizon have decreased as of today, and ACS, DOE, medical staff, and DOC are all working together to make this transition a success.

Acting Vice-Chair Richards noted that ACS plans on hiring 600 youth development specialists to run the facility. He asked how and when ACS would integrate them into the operation of Horizon. DC Franco did not have the exact timeline available, but said ACS is currently hiring staff for the Crossroads facility, to comply with the Law's requirement that newly arrested youth to be housed there. In the next few months, ACS will begin working with DOC to acquire and deploy ACS staff to Horizon.

Variance Request re Young Adult Housing

ED King explained that the Board's Minimum Standards require DOC to house young adults (ages 18-21) separately and apart from people ages 22 and older and to provide young adults with age-appropriate programming. However, the Department has sought and the Board has repeatedly granted a variance on this requirement for the past few years. As of October 1, 2018, DO is housing 36% of young adults in young adult housing. This includes 27% of 19-21-year-olds and 93% of 18-year-olds. Because the Board remains committed to the vision of the young adult plan, it voted in July 2018 to grant a three-month variance instead of the requested six months, to assess DOC's progress towards its stated goal to have 60% of young adults housed in young adult housing at RND, and to review a new plan to house "substantially all" young adults in young adult housing. BOC received this plan ahead of deadline last week and it is published on the Board's website.¹³ ED King invited the Department to present its updated plan and variance request.

► DOC Presentation

Timothy Farrell, DOC's Senior Deputy Commissioner ("DC Farrell"), requested a six-month variance renewal from Minimum Standard §1-02, to allow the Department to comingle young adults ages 19-21 with adults 22 and over. He said DOC remains committed to a management approach that addresses the unique needs of young adults. DC Farrell continued his presentation, as follows.

When DOC first established the young adult plan several years ago, it deviated from the established punitive management model to one that incentivizes positive behavior with increased programming and staffing ratios. Since then, DOC has assessed and refined its model based on lessons learned. It became evident that a "dual housing" management construct was essential to a safe and comprehensive management approach. Specifically, in June 2016 DOC experienced a spike in violence when housing most young adults together. The comingling of 19-21-year-olds with adults has contributed to a reduction in violence and use of force incidents. From FY 2015 to FY 2018, young adult involvement in assaults on staff causing minor injuries decreased by 30%; young adult involvement in slashing and stabbings decreased by 18%; and young adult involvement in assaults causing serious injury decreased by 49%. These results are consistent with the *Nunez* Monitoring Team's experience utilizing a similar housing strategy in other jurisdictions.

On June 30, 2018, the Department closed GMDC and moved the young adults to various facilities, including both comingled and young adult ("YA")-only housing units. As of July 9, 2018, DOC had 684 male young adults and 35 female young adults in custody. Five hundred twenty-one (521) of the 684 males and 28 of the 35 females were non-special population status, and were therefore eligible for general population ("GP") housing. Of these totals, 43% of the males (n=221) and 96% of the females (n=27) were in YA-only units. As of October 1, 2018, there were 664 male and 37 female young adults in custody. Four hundred seventy (470) of the 664 males and 31 of the 37 females were eligible for general population; of these totals, 52% of the males and 90% of the females were in YA-only housing. In addition, when assignment of young adults to comingled units is necessary, DOC makes best efforts to prioritize assignment to comingled units with a population age cap of 19-25.

With respect to the existing variance condition that the Department house "substantially all" young adults in YA-only housing, DOC defines "substantially all" as those young adults who can be safely housed exclusively with others of the same age group. The Department has learned from experience and analysis that the exclusive housing of young adults cannot be defined by an

¹³ DOC's Young Adult Plan Update (October 2018) is published here: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/October-9-2018/Young%20Adult%20Plan%20Update.pdf>

arbitrary number, ignorant to the factors that influence safety. Based on prior experience, DOC believes that “substantially all” can be quantified as no less than 50% of the GP young adult population (both male and female) at any given time.

DC Farrell concluded by stating that DOC has made a good faith effort to comply with the conditions prescribed in the variance, but cannot do so as it would undermine the benefits and positive trends in violence reduction achieved to date. He reiterated DOC’s request that the commingling of young adults with adults be codified in restrictive housing rules to be proposed by the Board.

► Board Discussion

Judge Hamill stated that DOC had deviated from the young adult plan — as of today, only 27% of 19-21-year-olds are housed in YA-only housing and, as of August 1, 2018, 66% of 19-21-year-olds were housed in facilities that did not have a school on site. She asked why DOC had closed GMDC and transferred young adults to RNDC, a dilapidated facility. DC Farrell responded that the PEACE and Yes Centers at RNDC will be larger than they were at GMDC and the construction is set to be completed by early 2019. GC Grossman and DC Farrell said if any young adult requests DOE services, DOC would work to transfer the individual to RNDC or GRVC, where there is a full-time DOE presence to provide education services.

Judge Hamill expressed concern over the Department’s provision of educational services to those who are entitled to them. She referenced a survey conducted by BOC staff before the closure of GMDC showing that 67% of young adults surveyed said they did not have a high school diploma or high school equivalency. Of these respondents, 70% said they had completed a request to attend school and 38% had submitted such request more than once. However, only half of them ever attended school.

► Member Cohen’s Presentation¹⁴

Dr. Cohen said he did not understand why the Department had closed GMDC when the facility had a functioning school program with trained staff. DOC could have built programs and infrastructure at RNDC before transferring the young adults there. He visited RNDC several weeks after GMDC closed and discovered that the staff were different and had not received any training prior to being placed at RNDC.

Dr. Cohen presented 2018 data on assaults on staff and uses of force that occurred in RNDC after GMDC closed. The data showed that assaults on staff at RNDC increased from 12 in June to 40 in July, and 59 in August. Uses of force at RNDC increased from 69 in June to 111 in July, and 125 in August. He said the Board does not agree that housing 50% of young adults in YA-housing is compliant with the Board’s variance condition.

Michael Tausek, DOC’s Deputy Commissioner of Adult Programming and Community Relationships (“DC Tausek”), said that when school started, there were over 220 young adults enrolled, with 150 enrolled at RNDC. The actual participation numbers fluctuate based on various circumstances, such as enrolled students not attending consistently or missing school due to court appearances. He clarified that school is provided at RMSC, ESH in OBCC, and GRVC, and there is a small cohort of young adults at NIC. He added that the programming in co-mingled units is more focused on emotional and cognitive tolerance and development.

Judge Hamill said that correctional education and recreation has been proven to reduce violence and recidivism, and improves long-term outcomes. Other jurisdictions such as Connecticut and Middlesex County in Massachusetts have embraced the young adult housing model while NYC

¹⁴ Member Cohen’s presentation on *Why Has Violence Increased in RNDC* (October 2018) is available at: https://www1.nyc.gov/assets/boc/downloads/pdf/violence_in_rndc.PDF

has been decreasing the number of young adults placed in YA-only housing. Noting that the Vera Institute of Justice had led the work in Connecticut and Massachusetts, Judge Hamill asked about Vera's recommendations regarding DOC's young adult plan.

Francis Torres, DOC's Assistant Commissioner for Education and Youth Advocacy Services ("AC Torres"), said that Vera expects to provide a draft report of its analysis and recommendations to DOC in November 2018, and Vera's final report is expected to be completed by the end of this year. Additionally, DOE's East River Academy has been providing educational services on Rikers at EMTC, RNDC, RMSC, NIC, OBCC, and GRVC. Judge Hamill said she visited the YA-ESH Level 1 unit a few weeks ago, and was pleased with how the unit was running in terms of staff and teachers. However, she was concerned that people who choose not to go to school are permitted only four (4) hours of daily lockout notwithstanding the Minimum Standards' requirement that they be provided with seven (7) hours of out-of-cell time per day. AC Torres said that she did not know this was happening and would look into it.

Acting Vice-Chair Richards asked what DOC's vision for the young adult plan would look like in six months. DC Farrell responded that when the adolescents moved off Rikers Island, approximately 15-20 housing units became available for young adults. In October, the Department intends to refurbish these areas in line with young adult units at GMDC. Within the next two weeks, DOC will transfer the young adults in protective custody at BKDC to RNDC's protective custody units. Once renovations at RNDC are completed in November, DOC will move in young adults who have indicated an interest in receiving DOE services and who also show a willingness to participate in programming and behave well. DOC also intends to create a new admission processing unit for all 19-21-year-olds at RNDC. DC Farrell said DOC expects the final percentage of young adults in YA-only units to reach 65%.

Chair Cephas explained that several Board members believe there should be more discussion and collaboration on major policy issues regarding young adults. He said BOC and DOC need to meet on these issues and attempt to reach consensus by the beginning of next year.

► Board Vote

After Chair Cephas called a roll call vote, the Board voted to limit the variance to three (3) months, with seven (7) votes in favor (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Perrino, Safyer, and Sherman) and one (1) vote in opposition (Member Regan).

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 three-month variance with one condition, 8-0 (Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Perrino, Regan, Safyer, and Sherman).¹⁵

Public Comment and Adjournment

The Board heard public comment from Marc Steier (COBA), Al Craig (COBA), Rachel Herzog (Crime Victims Treatment Center)¹⁶, Kayla Simpson (LAS), Kelly Grace Price (JAC)¹⁷, and Mary Lynne Werlwas (LAS).¹⁸ Following public comment, Chair Cephas adjourned the meeting.

¹⁵ The final record of variance is available at:

https://www1.nyc.gov/assets/boc/downloads/pdf/2018_10_09_record_of_variance_action_ya_co_mingling.pdf

¹⁶ Written testimony from Rachel Herzog is available at:

https://www1.nyc.gov/assets/boc/downloads/pdf/herzog_boc_comment_10_9_18.pdf

¹⁷ Written testimony from Kelly Grace Price is available at:

https://www1.nyc.gov/assets/boc/downloads/pdf/October_8_2018_BOC_Testimony_KGP.pdf

¹⁸ The public comment is available at:

https://www.youtube.com/watch?time_continue=2897&v=DSrDp-LSHx4.