NEW YORK CITY
BOARD OF CORRECTION

January 14, 2013

MEMBERS PRESENT
Gerald Harris, Chair
Alexander Rovt, PhD, Vice Chair
Greg Berman
Robert L. Cohen, M.D.
Michael J. Regan
Catherine M. Abate, Esq.

Excused absences were noted for Pamela S. Brier and Milton A. Williams, Jr., Esq.

DEPARTMENT OF CORRECTION
Dora B. Schriro, Commissioner
Evelyn A. Mirabal, Chief of Department
Lewis S. Finkelman, Esq., First Deputy Commissioner
Thomas Bergdall, Esq., Deputy Commissioner and General Counsel
Matthew Nerzig, Deputy Commissioner
Sara Taylor, Chief of Staff
Carmine LaBruzzo, Deputy Chief of Department
Martin Murphy, Deputy Chief of Staff
Erik Berliner, Associate Commissioner
Carleen McLaughlin, Legislative Affairs Associate
Raleem Moses, Deputy Warden

DEPARTMENT OF HEALTH AND MENTAL HYGIENE
Homer Venters, M.D., Assistant Commissioner, Correctional Health Services
Ross McDonald, M.D., Medical Director
Daniel Selling, Psy.D., Executive Director of Mental Health/Substance Abuse Treatment
George Axelrod, Director, Risk Management

OTHERS IN ATTENDANCE
Ariel Adams, Jails Action Coalition
Delicio Acosta, Jails Action Coalition
Felicia Branescu, Jails Action Coalition
Mathew Claiborne, Columbia University
Jay Cowan, Corizon
Megan Crowe-Rothstein, Jails Action Coalition
Laurie Davidson, Doctors' Council
Nicola DeMarco, State Commission of Correction
Emily Daughtry, United States Attorney
Allan Feinblum, Jails Action Coalition
Jennifer Gill, Urban Justice Center

Leah Gitter, Jails Action Coalition
Susan Goodwillie, Jails Action Coalition
Phyllis Harrison-Ross, State Commission of Correction
Jeng-Tyng Hong, Columbia University
Myra Hutchinson, Mental Health Alternatives to Solitary Confinement
Terry Hubbard, Jails Action Coalition
Sarah Kerr, Legal Aid Society
Becca Kinsella, Jails Action Coalition
Neil Leibowitz, M.D., Director, Mental Health, Corizon
William Longall, New York City Council
Jennifer Parish, Esq., Urban Justice Center/ Jails Action Coalition
M. Parish-Miller, Jails Action Coalition
Margaret Pletnikoff, Office of Management and Budget
Michelle Roach, The Correctional Association of New York
Regina Ryan, City Council
Richard Sawyer, Jails Action Coalition
Ron Schneider, Legal Aid Society
Luke Schram, Jails Action Coalition
Taeva Shefler, Jails Action Coalition
Alexandra Smith, Jails Action Coalition
William Stanford Jr., Jails Action Coalition
Hannah Wolfe, Jails Action Coalition
Milton Zelermyer, Esq., Legal Aid Society, Prisoners' Rights Project
Michael Zuckerman, Corizon

Chair Gerald Harris called the meeting to order at 9:10 a.m. A motion to adopt the minutes from the Board's previous meeting was approved without objection. Chair Harris congratulated and welcomed the new Chief of the Department of Correction (DOC), Evelyn A. Mirabal, and invited her to speak about her background and plans.

Chief Mirabel discussed her 33-year tenure with the Department, 25 of which she served as a supervisor. She reported having worked in almost every jail in the system. She presented her goals as follows: to make the Department an honorable and professional organization through ethical and innovative leadership, at all levels, to provide cost-effective and efficient best correctional services that result in productive people returning into the community, to ensure strict compliance with all court mandates, to provide a safe and humane environment for all staff and inmates, and to provide opportunities for spiritual and physical growth for the inmate population. Chief Mirabel added that her priorities are to ensure that inmates are properly housed according to status and classification, that constructive opportunities are provided to inmates for their successful return to the community, and that the necessary tools are made available to staff to enable them to be proficient in their duties and responsibilities. The Board Members welcomed the Chief to her new role.

Chair Harris stated that, as he expressed to Commissioner Schriro earlier, Board Members have a deep concern regarding recently reported incidents of violence by some staff on inmates. A fair amount of the incidents occurred on the Mental Health Unit for Infracted Inmates (MHAUII) at George R. Vierno Detention Center (GRVC), which is known to be a "troubled" unit. In an effort to obtain and analyze all relevant facts – and in the hope of being able to offer some suggestions for positive change – the Board staff has been directed to conduct an analysis of that program's functioning and formulate recommendations for changes and improvements. Chair Harris added that the study of punitive segregation for the mentally ill will likely be joined by some Board members and experts, and that the Board will share the findings in a report, and will cooperate with the Department in efforts to implement proposals for change that seem to be useful and appropriate.

Dr. Cohen stated that the Chair speaks for the entire Board, and that these issues go directly to the Minimum Standards, which require a safe and therapeutic environment for the mentally ill.

Chair Harris discussed the recently released report by the Mayor's Criminal Justice and Mental Health Initiative Steering Committee, which addresses the fact that even as jail populations have declined, the percentage of people with mental illness has increased, and that stays in jail for people with mental illness are substantially longer. He discussed the report as follows:

> The goal is to increase public safety and help connect individuals with mental illness to community resources. The Committee drew on enormous resources of knowledge and conducted a host of focus group meetings, including meetings with BOC Board Members. The result of the study is a set of recommendations intended to improve public

safety and treatment options and to reduce jail costs. The core of the recommendations is to better utilize mental health assessments and risk evaluations and community based supervision in order to provide options for greater use of pre-trial alternatives to detention, post-plea or post-trial alternatives to detention, and post-incarceration supervision in order to reduce the risk of recidivism. These goals are enabled by the creation of centralized "hubs" in the courts that will coordinate and communicate assessment information and provide options for community based treatments. The Commissioner of DOC has reported to the Chair that the Mayor has accepted the recommendations and is moving to implement them. The report suggests as many as 3,000 individuals may be diverted from jail to mental health programs.

Commissioner Schriro added that DOC hoped the pre-trial population at Rikers might be reduced by approximately 300 individuals after this new program is implemented.

Dr. Cohen stated that he had participated in -- and read -- the report, and it is a shame that the police are not mentioned because unnecessary arrests of people with mental illness are also a large problem. Furthermore, the care for people with mental illness provided on Rikers Island is not discussed in this report. Dr. Cohen explained that the report is remiss because it does not explore the reasons why people with mental illness spend so much longer on Rikers Island than others. Finally, Dr. Cohen mentioned that low bail is not addressed at all by the report. People with misdemeanor charges and bail less than a thousand dollars, particularly the mentally ill, are spending a long time on Rikers Island and there should be some system that gets them bail. Dr. Cohen opined that bail may be more effective than a program. Chair Harris noted that the implementation of the report might address many of the problems mentioned by Dr. Cohen.

Board Member Catherine Abate stated that the report is nothing new. She explained that the City has to begin to take these recommendations seriously and that every decade in the last 35 years or so, study after study has shown that people with mental illness spend more time in jail. Part of the problem is that judges don't know where to place them and what the options are. They are also likely to be coming from a less stable environment where they are less likely to make bail. Ms. Abate further stated that the City should seek alternatives to detention for this population, particularly because many people are being held for less serious crimes, but spending more time in detention, and have a great need for mental health services.

The Commissioner thanked Board Member Abate for her comments, and added that this study is significant because it identifies specific areas where some appreciable advancement can be made. She believes the opportunities are twofold: first, people who may be diverted back to the streets in as quickly as five days if the bail system can afford that opportunity to them, and second, those who have a greater risk of flight, but have a serious mental illness, need an alternative to incarceration. Commissioner Schriro further explained, with regard to the police, the City will "double-back" and look at additional opportunities to examine policies.

Ms. Abate added that training of officers on mental health issues is critically important. Officer training should be sustained, repeated, and qualitative.

Commissioner Schriro introduced Deputy Warden Raleem Moses, who is assigned to Robert N. Davoren Complex (RNDC). She gave the following presentation regarding TCR:

> In October, TCR was introduced to the staff as a tool to use when confronted with negative, non-violent behavior. The adolescents can opt to go into their cells for a maximum of two hours. It is like a time out, a time to de-escalate a situation, and a time to reflect. From a supervisory point of view, it was an opportunity to encourage the staff to identify problems at the earliest stages. For the adolescents, it would reduce the amount of time spent in punitive segregation. Initially staff was skeptical, because punitive segregation has been a tool they have used "forever." TCR opened a new dialogue with front-line uniform staff about dealing with adolescents differently because they are adolescents, and trying to reduce punitive segregation time. We trained on TCR at every roll-call for three weeks before we implemented it. We also held meetings with the adolescent council which represents every housing area, to inform and educate them about TCR. Feedback from housing unit representatives was positive. They liked any idea that was not "the bing." Signage was placed in every housing area, intake and visit areas. We also placed it on our website. We practiced scenarios with staff so they would see where TCR could be used. Since implementation we have had 11 instances of TCR. When a Captain offers an adolescent TCR, the Tour Commander is immediately notified. The Tour Commander then notifies all Deputy Wardens, the Warden, the Chief of the Department, the Commissioner, medical, and mental health, via email. We speak to the front line supervisors about TCR at roll calls and weekly meetings, and also re-train them on infraction directives, which clearly state that a supervisor is supposed to interview an inmate before a decision is made about a hearing. We have also examined all the grade two and three non-violent infractions from November and December, and interviewed all the authors of those infractions. We talked to them about TCR. We learned that staff thought TCR was mainly for horseplay. We also learned that two incidents where TCR was used, there was actually fighting going on. Of the 20 people who received TCR, 14 of them have been infracted, but for other incidents. We know we can increase our use of TCR. The agency would like to cut down on use of punitive segregation. This is a new tool, and we will continue to encourage its use.

Chair Harris noted that there appears to be under-utilization of the TCR process. He also noted that some inmates spent less than two hours in their cells. Deputy Moses confirmed that some inmates were released early because of good behavior. The Chair inquired as to why the total number of infractions had actually risen during the period of time TCR has been in place. Deputy Moses explained that 50 new recruits started in December, and education on TCR must be continual. Board Member Abate asked about the six inmates who did not infract. Deputy Moses explained that the individuals were interviewed. They were glad to have avoided punitive segregation. None of them have subsequently infracted. Deputy Moses added that no Minimum Standards as to program access were affected by the use of TCR.

Chair Harris noted that the Commissioner is seeking a six month renewal of the TCR variance. He invited members of the advocacy community to comment.

After thanking the Chair and Board Members for giving the Legal Aid Society (LAS) the opportunity to participate in the meeting, Milton Zelermeyer, an attorney with the Legal Aid Society's Prisoners Rights Project gave the following testimony:

> LAS obtained DOC monitoring reports via the Freedom of Information Law, and had an opportunity to review the reports, the TCR Operations Order and other TCR materials. The LAS believes that the monitoring reports do not demonstrate that the TCR program has met its stated objectives of reducing violence and reducing reliance on punitive segregation. Furthermore, the adolescent population is a very vulnerable population, and those vulnerabilities have not been adequately addressed or considered in evaluating the effectiveness of TCR. LAS believes that TCR has been used in some instances in response to behavior that might not have resulted in any segregation at all, and that TCR results in more people being segregated in some form. Concerns exist as to arbitrariness of the use of TCR, and decisions to allow early release. Although LAS does not believe the 2 hour time limit has been exceeded, there is concern that the early release option is not being used.

The Chair then mentioned that there are at least two or three instances on the face of the monitoring report where inmates were indeed released from their cells before the two hour period had elapsed -- some less than an hour. Mr. Zelermeyer replied that he believed the report showed that if an inmate was sentenced to two hours, the full two hours was served. The instances where less than two hours of confinement were reported appeared to him to be instances when the initial imposition of penalty was pre-set for less than two hours.

Mr. Zelermyer continued his presentation as follows:

> There was a large amount of fluctuation in the data, and it is difficult to spot trends, or trends over such a short period of time. The number of inmate fights increased from 62 to 106 in the month after TCR began. That is a 71% increase. The number of fights fell the following month, but the number of fights incurring serious injury rose from one to five between October and November. LAS does not believe TCR contributed to the increase in violence, but clearly it has not helped diminish violence. The Mayor's Citywide Initiative of Mental Health and Criminal Justice report described 42% of the adolescent population in the jails as having some level of mental illness. Therefore there is some likelihood that the adolescents in TCR are people with mental illness. The use of any segregation on such a vulnerable population is suspect. LAS believes that should be considered. The mental health notification column on the monitoring reports is confusing. LAS does not know if daily reporting of mental health concerns is being done or not and why the column for mental health notification says "n/a." Dr. Venter's letter on behalf of DOHMH suggested the mental health referrals were important, and so LAS would like some clarification on that point.

Dr. Venters explained as follows:

> As he stated in his letter, DOHMH takes the position that TCR is a punishment construct. It is a new and different punishment construct, but it is a punishment construct. DOHMH is here to care for patients. If a patient at any point displays signs of emotional or mental health distress, they are to be immediately referred to mental health and it does not matter where they are – if they are in their first minute of TCR or if they are in their last minute of TCR or if they are anywhere else in the jail system. So, what he wanted to emphasize in his letter regarding TCR was that we do not want some special new check in system for mental health clearance in the process because it is a very fast and fluid process. For instance, anything you are trying to schedule in the middle of a two hour process is likely not to happen. What we want is to continue to rely on our partners in corrections to immediately refer anyone who has mental health distress to us – wherever they are in the process. There has been a scant number of individuals that have gone through this process, and so the issue of mental health has not come up in those instances. What we continue to emphasize is that mental health is not part of this punishment process. But, any patient who shows any sign of needing mental health should have immediate access to it at any time.

Executive Director Cathy Potler added that it is her understanding from DOHMH that every day after someone has been placed in TCR, a list of individuals in TCR is distributed to DOHMH by ten o'clock the next morning. A check is in place to ensure scheduled medical appointments were not missed. Dr. Venters agreed, and explained a "safety valve" of the morning email supplements notification. Chair Harris asked Mr. Zelermyer whether he had received any complaints concerning TCR, and Mr. Zelermyer replied that LAS had not.

Chair Harris thanked Mr. Zelermeyer for his testimony and invited the Richard Sawyer and Dilcio Acosta, members of the Jails Action Coalition (JAC) to speak. Mr. Sawyer gave the following presentation:

> After thanking the Board for the opportunity to speak, he stated that written comments were distributed by JAC concerning the matters to be discussed today (attached). The JAC opposes any extension of the variances allowing TCR. The reason for this opposition is that TCR is a failed experiment that has reduced neither the number of violent incidents nor the use of punitive segregation. Punitive segregation should never be used against adolescents, who are individuals whose minds and bodies are still developing. Both the United Nations and American Academy of Child and Adolescent Psychiatry have recognized this. DOC continues to punish minor misconduct with punitive segregation, even while TCR has been in place. Punitive segregation is used for minor offenses such as failure to keep a living area clean and possessing tobacco. JAC opposes this practice.

Mr. Acosta stated that possibilities for officer abuse of TCR concerned him and that it did not redress the chronic misuse of solitary confinement in RNDC. Mr. Acosta urged the Board continue the data collection and reporting if it renewed the TCR variance. Mr. Acosta emphasized that punitive segregation should not be used on adolescents at all.

Vice-Chair Alex Rovt asked Mr. Acosta what proposals he would suggest to replace the DOC policies. Mr. Acosta responded that DOC is aware that the practice of confining adolescents to their cells for a 23-hour lock down is harmful, and so it should not be continued. He also noted that confining adolescents to their cells for a few hours to "cool down" has been a tacit policy of the Department for years, and TCR merely codifies something that has been going on, unreported. That is why, he added, JAC describes TCR as a failed experiment.

Chair Harris pointed out that if JAC is concerned that TCR has been going on in an unreported way, the new policy would seem to ameliorate that concern because it creates a control – reporting – which was not there before. Mr. Acosta responded that the Chair made a good point.

Board Member Abate asked if the penalty is being imposed on individuals who would not otherwise be subjected to punitive segregation. Commissioner Schriro responded that TCR is not intended to be punishment. She explained that an infraction is not written, it does not go onto a disciplinary record, and the inmate opts to go to his room rather than be infracted.

The Board Members thanked the presenters for their testimony.

Dr. Cohen noted that the reporting on use of punitive segregation generally, during this period, showed that more than a quarter of the top charges were for disobeying the verbal orders of staff, and the use of abusive language was another common top charge. He asked the Commissioner if TCR would be used for those sorts of conduct in the future. He further noted that often DOC staff themselves use abusive language and that on a recent visit to RNDC he observed DOC staff using inappropriate language toward a group of adolescents quietly walking down the corridor. Dr. Cohen added that everyone should treat each other more civilly.

The Commissioner agreed, and stated that horse-playing is not the only area where they would like to see TCR used. Her goal is to have staff use it for as many of the grade 2 and 3 "infractable" incidents as possible. The Commissioner confirmed that the variance request was for an additional six months during which reporting would continue. Executive Director Potler added that the variance request would carry the same conditions as imposed on the Department when the variances for TCR were originally granted in September.

The Board Members unanimously voted to renew the TCR variances for six months with all conditions continued.

Commissioner Schriro presented the Department's plans for the adolescents:

In accordance with plans to reduce the use of punitive segregation for adolescents, a housing area at RNDC, 3 Lower South, has been closed. It is being converted into a general population housing area. The Department is focused on preparing adolescents for their release to the street. The approach is five-fold. First, DOC is focused on diversion in the first 5-30 days of incarceration. This affects all inmates, including adolescents. Second, the ABLE program, using a social impact bond, has rolled out and since January 2, 2013 it is serving the adolescents.

Third, each adolescent is now assigned to his own cell, with the exception of two housing units which are dorms. This gives the adolescents an opportunity to secure their possessions in their own cell. Fourth, DOC has changed the curfew to 10 p.m., in consultation with the Department of Education. An earlier bedtime ensures that adolescents are better rested and able to participate in the school day. Fifth, DOC has focused on training and staffing. We are adding staff to ensure increase observation, including six additional captains, an ombudsman and an integrity control officer. The Department exchanged all personal clothing for uniforms. DOC has also piloted the Restrictive Housing Unit (RHU). The fifth graduation is being scheduled, and no individuals who have graduated have infracted after their graduations from the program. We have also instituted a hotline, which has not yet been particularly effective, but the ombudsman is working with the adolescents to explain how it can be used. The Department is hopeful that TCR will be an important first step to reduce use of punitive segregation. DOC staff is also working on sentencing guidelines that will provide more guidance and structure to the manner in which sentences are imposed for infractions.

Chair Harris added that his understanding is that alternatives to punitive segregation, such as community service, are being explored. Commissioner Schriro explained that there is a combination of intermediate sanctions, including community service, being considered as well as creating a more uniform sentencing grid. The Chair stated that the Board would look forward to seeing a proposal of that nature. Commissioner Schriro mentioned that the Department is creating ways to reinforce good behavior by offering the adolescents incentives such as a stipend to attend school, and games, haircuts and the use of microwaves.

Chair Harris asked the Commissioner to address the recent death at the NIC Infirmary. She responded that she would not be able to address that death during the public session because it is under investigation, within the DOC. However, she would address it during Executive Session. The Chair moved, without objection, for the matter to be discussed in Executive Session.

DOHMH Assistant Commissioner Homer Venters, M.D. welcomed the new Chief of the Department, and also introduced the new President of Corizon in New York City Dr. Zuckerman, a New York trained physician with experience running a large health system in Canada.

Dr. Venters discussed the topic of Bellevue as follows:

> Bellevue is scheduled to re-open on February 4, 2013. The "very fraught management of services" without Bellevue will hopefully come to an end next month. The mental health unit at Kirby provides care for approximately 25 inmates. As a result, there has been a significantly reduced acuity in the patients in C-71.

Board Member Michael Regan asked how things were proceeding with Bellevue closed. Dr. Venters explained that the new unit at Kirby was necessary because there was no room anywhere for the inmates. He said that it took four weeks to negotiate the opening of the new unit at Kirby, during which time inmates who were the sickest were held at C-71. Dr. Venters reported that ambulatory care has risen from around 5 to 25 visits per week since the last Board

meeting report, so the system is getting better, with more consistent ambulatory care spots. Dr. McDonald has been physically bringing specialists to Rikers Island. For the mentally ill, Dr. Venters stated that the most ill have a place to go. However, the patients who face morbidity but not mortality, are the reason why Bellevue re-opening is critical. He added that it has been incredibly challenging without Bellevue. Board Member Regan thanked Dr. Venters for the report.

Dr. Venters reported on the progress of the DOHMH RFP process. He stated that there is now a contract for all the jails, except VCBC. Corizon will be the provider for all of the jails and the Damian Family Care Centers, a Federally Qualified Health Center, will cover VCBC. Dr. Venters said that its contract is still under negotiation.

Dr. Venters discussed MHAUII as follows:

> For nine months, DOHMH has been "assiduously tracking" the provision of group therapy and individual therapeutic encounters at the MHAUII. Group therapy should consist of inmates coming out of their cells and receiving therapy in a group setting. Individual therapy should consist of inmates getting out of their cells and being seen in an office. Individual therapy is something that should happen in addition to the daily "cell-side" rounds that are made. As DOHMH tracked this, the numbers have been pretty consistent. Generally, 75% of the therapy encounters are occurring in an appropriate manner. The top reasons why the other 25% do not have therapy are refusals, lack of DOC staff, or other security-based reasons. Refusals are a complex issue. Since the last Board meeting, DOHMH has spent a lot of time working with health staff and DOC staff on the refusal issue. A practice has been implemented where medical staff will follow up the day after a refusal and ask again. There has been some limited success with that. However, the obstacle is that health staff are trying to provide mental health services in a security setting, and the more they put pressure on the security staff in the unit, the more they realize they are trying to do an impossible job. Health staff are trying to get more people out when DOC has an incredible security focus, and the security mission trumps the rules of the day. When health staff pressure DOC staff to bring people out of the cell for treatment that DOC staff do not want to bring out for security reasons, it is a problem. Additionally, health staff have not felt comfortable pushing the security staff. The number of refusals shines the light on a problem we have known about for a long time: it is hard to have a mental health mission in a pure security setting. This is why we need innovative approaches.

Chair Harris asked whether mental health care has worked better at Bellevue. Dr. Venters answered yes. He pointed out that many of these same patients who are kept in punitive segregation at Rikers have actually been in Bellevue, or Kirby, or other inpatient psychiatric facilities – and in the open wards where they have access to treatment and the setting does not focus on security above all else – the patients do well. This "chaotic environment" has been created on Rikers, with expectations that are contrary to a therapeutic environment, and the obstacles to providing adequate mental health care cannot be overcome.

Mr. Regan then asked whether technology like Skype could be used to improve access to psychiatrists. Dr. Venters responded that it would not be helpful in this setting because the reason people don't come out of their cells is they do not want to deal with the barriers created by an onerous and difficult interactions with security in order to get out of their cells to see a psychiatrist. One more barrier to seeing a live psychiatrist out of the cell would not be helpful.

Mr. Regan asked if there was any evidence that DOC or health personnel were discouraging inmates from coming out of their cells. Dr. Venters stated that on any given week there are examples of that, but he is loathe to focus on individual actors. This environment creates a situation where it is easier for everybody to leave the inmates in their cells. Because of the hassle, and the sheer logistics involved in getting out of the cell, it does not happen. Dr. Venters underscored the need for a different setting, with clear and open access to mental health care.

Dr. Cohen stated the following:

> On several occasions he has visited the MHAUII unit and seen mental health staff hanging out waiting to see patients and he has seen inmates who were supposed to be asked if they wanted to attend treatment not be asked. Mental health staff has told him that sometimes a refusal is real, and sometimes it is not true – the inmate did want care. It is the policy of DOC to not have more than three people in group therapy at any one time, even though the room can accommodate six or seven inmates at a time. This is a clear violation of our standards. From the perspective of some in corrections, MHAUII is believed to be a place that does not house truly mentally ill people. They say inmates are "bing-beaters." This culture hopefully can be changed to recognize that these are inmates in need of care.

Dr. Cohen reiterated the Chair's statement at the beginning of the meeting that the Board has decided to investigate and report on punitive segregation for people with mental illness in City jails, and may have hearings on the topic. Dr. Cohen added that punitive segregation for people with mental illness does not function in compliance with the standards of the Board of Correction.

Chair Harris turned to the issue of the renewal of variances. A motion to renew the variance allowing commingling of pregnant inmates, whether they are adult or adolescent, sentenced or pre-trial detainees, was approved without opposition. A motion to renew to renew the variance allowing the use of interferon gamma release assays (IGRA) for tuberculosis screening for male inmates was approved without opposition. Finally, a motion to renew DOC's existing variances was approved without opposition.

Chair Harris adjourned the meeting at 10:31 a.m. to convene the Executive Session.

New York City Jails Action Coalition
c/o Urban Justice Center
123 William Street, 16th floor
New York, NY 10038

Board of Correction Meeting
January 14, 2013
Statement Opposing Extension of Variances
Related to Temporary Cell Restriction

The NYC Jails Action Coalition ("JAC") opposes any extension of the variances allowing the Department of Correction's ("DOC") experimental use of "Temporary Cell Restriction" ("TCR") at the Robert N. Davoren Center ("RNDC").

TCR is a failed experiment that has reduced neither the number of violent incidents nor the use of punitive segregation.

When DOC requested the variance from the Board for the use of TCR, it said that it was "implementing a strategy to achieve compliance with minimal intervention and introducing an alternative to formal discipline." DOC asserted that TCR would address violence in RNDC and reduce the use of solitary confinement against adolescents. The preliminary evidence shows that TCR has failed to advance either goal.

DOC's data indicates no reduction in violent incidents during the TCR trial period. Worse, TCR has not stopped security staff from putting adolescents in solitary confinement. During the month of October 2012, DOC sent 195 adolescents to punitive segregation, a shockingly high number—the average adolescent population of RNDC hovers around 800.

DOC should not be authorized to continue its use of TCR on the adolescent population of RNDC.

DOC must develop a meaningful and effective alternative to punitive segregation for adolescents.

The DOC must take immediate steps to eliminate the use of solitary confinement at RNDC. Adolescents, whose bodies and minds are still developing, should never be subjected to solitary confinement, and alternatives to punitive segregation must be implemented.

The DOC data reveals that it uses punitive segregation indiscriminately to punish adolescents for minor misconduct. For example, in October 2012, DOC assigned 4,561 days of punitive segregation for infractions that did not involve the use of violence against another person. The DOC sentenced one adolescent to thirty days of solitary confinement for possessing tobacco. The DOC punished another adolescent with five days of solitary confinement for failing to keep his living area clean.

DOC must develop alternative disciplinary measures that are not harmful to adolescents in their care. The TCR did not redress the chronic misuse of solitary confinement in RNDC and is therefore, not the answer.

Should the Board authorize a continuation of the TCR variance, it should continue to require data collection and reporting.

If the Board chooses to authorize a continuation of the TCR program despite its lack of results, it should require DOC to continue reporting data on the program. As we expressed in our September 2012 comments in opposition to TCR, TCR offers too much discretion to individual line officers and represents an unnecessary risk of brutality to adolescents in RNDC. Reporting requirements will help the Board and DOC management to monitor usage and determine whether DOC staff misuse TCR to abuse adolescents in their care. Moreover, continued reporting will allow the Board to determine whether TCR is a useful tool to reduce violence and limit the use of punitive segregation against adolescents.

Thank you for the opportunity to comment on the renewal of this variance. We encourage the Board to provide time for public comment at its meetings as a matter of course.