

**NEW YORK CITY
BOARD OF CORRECTION**

November 13, 2008

MEMBERS PRESENT

Hildy J. Simmons, Chair
Stanley Kreitman
Rosemary Maldonado, Esq.
Milton L. Williams, Jr., Esq.
Paul A. Vallone, Esq.

Excused absences were noted for Vice-Chair Michael Regan and Members Pamela S. Brier and Alexander Rovt.

DEPARTMENT OF CORRECTION

Martin Horn, Commissioner
Carolyn Thomas, Chief of Department
Stephen J. Morello, Deputy Commissioner for Public Information
Florence Hutner, Esq., General Counsel & Deputy Commissioner for Legal Matters
Mark Cranston, Dep. Chief of Staff/Commanding Officer, Office of Policy & Compliance (OPC)
Ronald Greenberg, Director of Inspections, OPC

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Louise Cohen, Deputy Commissioner
Jason Hershberger, M.D., Assistant Commissioner, Correctional Health Services (CHS)
George Axelrod, Esq., Director, Risk Management, CHS

OTHERS IN ATTENDANCE

William Hongach, Government Affairs Division, City Council
Caroline Hsu, Prisoners' Rights Advocacy Project, Fordham Law School
Trevor Parks, M.D., Medical Director, Prison Health Services (PHS)
Timothy Rudd, Analyst, Office of Management and Budget (OMB)
Kate Perry, State Street Houses
Kerry Spitzer, Budget and Policy Analyst, Independent Budget Office (IBO)
Eisha Williams, Legislative Financial Analyst, Finance Division, City Council
Milton Zelermyer, Esq., Legal Aid Society, Prisoners Rights Project (PRP)

Chair Hildy Simmons called the meeting to order at 9:34 a.m. The minutes of the September 11, 2008 Board meeting were approved without opposition.

Chair Simmons reported on the Board's October Rikers Island facilities inspection, saying its success proved that visits to Department sites enable a more substantive review of any subject matter than is possible in the BOC conference room. She said the tour validated the Board's decision at its July meeting to modify the annual meeting schedule so as to accommodate more frequent field visits. She noted that discussions with inmates participating in a drug treatment group session helped the Members learn about the program, and she recommended that other Members visit the program. Chair Simmons thanked BOC Director of Field Operations, Kenneth Armstead, for arranging an on-Island meeting with the Board's Field Representatives, and expressed regret for the brevity of the meeting. Board Member Paul Vallone thanked DOC Commissioner Martin Horn for arranging the tour.

Chair Simmons reported that she attended an event entitled "NYC Discharge Planning Collaboration", and distributed to the Members literature from the event (copy attached). She noted that attendance was high but should have included more representatives of the philanthropic community. She complimented DOC, and praised the level of cooperation among City agencies and non-profit programs, adding that the City's discharge planning model will be replicated elsewhere. Chair Simmons voiced concern that programs often are reduced or lost during a budget crisis. Commissioner Horn said that he was very pleased with the event, which he described as a discharge planning "Whole Earth Catalog" for interested philanthropists. He said that private funding may help to insulate DOC's discharge planning from budget cuts. He pointed out that philanthropic organizations interested in criminal justice require base funding from DOC before they provide grants.

Chair Simmons reported that the BOC budget will not be reduced in the current round of budget cuts. She noted that cuts in prior years already stripped BOC's staff to "bare bones".

Deputy Commissioner Louise Cohen reported that the Department of Health & Mental Hygiene (DOHMH) is required to absorb budget cuts of 2.5% in FY09 and 5% in the out years. She said the agency is expecting additional cuts as the Executive Plan is developed, but noted that Correctional Health Services (CHS) is not slated to take cuts in the first round. She said that personnel budgeting is difficult for jail-based operations, and noted that PHS is negotiating cost-of-living increases with its employees. Ms. Cohen said this will create a budget shortfall since such increases are not covered by the contract. She reported that she is working with PHS to identify new service-provision efficiencies to preserve services while compensating for the shortfall. She gave as an example substituting generic for proprietary drugs.

Ms. Cohen said that she had hoped to display the CHS electronic health record system at this meeting, but the technological requirements are better met in DOHMH

offices or at the Rose M. Singer Center (RMSC). Chair Simmons asked BOC Executive Director Richard Wolf to arrange with Ms. Cohen two opportunities in December for members to come to DOHMH's office for a demonstration and discussion. She said that such meetings will be in line with the Board's intention to examine jail-based operations and programs during months when public BOC meetings are not scheduled. Ms. Cohen said that by the next regular Board meeting, she hopes to report the system live in at least one jail, a goal she is committed to achieving by the end of the calendar year.

CHS Assistant Commissioner Dr. Jason Hershberger thanked the Board for visiting the "A Road Not Taken" (ARNT) program at the Anna M. Kross Center (AMKC) during BOC's October inspection. In response to requests from the Members, Dr. Hershberger reported on program recruitment and placement, as follows:

From January through May 2008 DOHMH implemented the jail-based equivalent of residential treatment for male adult detainees in dorms One and Two Top. The next goal is establishing the program for female prisoners.

There are few inmate fights in ARNT dorms. 325 inmates have participated thus far. A discharge plan, coordinated with attorneys and court officials, has been established for each participant. As a result of program staff working with the courts, 23% of ARNT clients received a sentence or mandate to enter a residential program in lieu of incarceration. All went to the designated residential program and 85% remained, a high success rate. The program's Director provided to each client who received a prison term a letter of support describing the client's program participation. The letter recommends that the State Department of Correctional Services (DOCS) place program clients in a prison where treatment will be continued.

Asked by Mr. Vallone if there is a waiting list of interested inmates, Dr. Hershberger said that there is a waiting list but, since listed applicants may leave DOC custody quickly, staff constantly recruit throughout AMKC, and screen applicants on the basis of strict criteria, security clearance and personal motivation. Commenting on the inherent downside of offering a 60-day treatment program to detainees, Dr. Hershberger said that staff now are trying more actively to locate inmates whose records indicate they will be in custody long enough to benefit from a program that makes them treatment-ready. Toward this end, he said ARNT is seeking more inmates charged with lesser crimes, whose sentences may be more amenable to non-prison alternatives. Ms. Cohen said that ARNT staff successfully advocated with the State Division of Parole to keep HIV-positive parole violators from being returned to prison, and identified parole violators as a target group for the program. Mr. Wolf asked about the direct effect of program participation on a client receiving a community-based program placement rather than a prison sentence. Dr. Hershberger said DOHMH had not developed comparative data, noting that thorough evaluation generally is not performed until a program has been operating for a year.

Mr. Vallone commented that Board Members did not feel unsafe during their 30 to 45 minutes in a program dorm filled with high-risk offenders. Ms. Cohen said that the first goal is to create an environment where inmates feel safe. Mr. Vallone noted that many inmates in the group seemed eager for advice from people whom they saw as successful, such as the Board Members. He asked if participants released to residential treatment return to AMKC to speak to program groups. Ms. Cohen responded that an addict must participate drug-free in a residential program for a considerable period before he is considered an actual success, worthy of touting his recovery to addicted inmates. She said she would contact established forensic peer-counseling organizations to have successful, trained members speak to ARNT groups.

Board Member Stanley Kreitman voiced concern that money for such programs may be seen as wasted on men who are going to State prison, since the immediate public-safety value of sobriety will not be felt by the public. He suggested that City budget planners might target ARNT as financial times worsen. Ms. Cohen agreed, and said that discussions are being pursued with DOCS and the Parole Division to ensure that more program participants can continue treatment after leaving DOC custody.

Returning to budget concerns, Member Vallone asked if clinic personnel can be supplemented with medical students receiving school field credits. Dr. Hershberger responded that CHS already has a forensic psychiatry fellowship from Albert Einstein Medical Center for psychiatrists who completed psychiatric training but are seeking more training, and some psychology-training internships. Ms. Cohen cited CHS' experience with trainees as an expense rather than a budget savings, because a clinician must be pulled off direct clinical care in order to train and supervise. She reported, however, that DOHMH is working with at least one medical school to see how better to implement such a process on the medical side, not the psychiatric side. Dr. Hershberger said that DOHMH is preparing applications seeking Federal designation of Rikers Island as an "underserved neighborhood" on the grounds that there is an official "health professional service area shortage". He said that, with the designation, a doctor can receive credit and school loan forgiveness for serving a medical internship on Rikers Island. Ms. Cohen explained that, since the CHS ratio of doctors to inmates is higher than the ratio in the general community, the jail system now falls outside the Federal "underserved" parameters.

Commissioner Horn presented a report, as follows:

DOHMH's ARNT program is impressive. The electronic health record should help to reduce expenses by identifying redundant care, should help to identify gaps in treatment, and will lead to improved continuity of care when jail and community-based doctors are able to access the same records.

DOC is being asked to cut 2.5% of its \$980 million budget for the balance of FY09, and 5% for FY10. This is a targeted reduction of \$46 million. DOC has offered the Office of Management (OMB) \$31.6 million cuts for FY10, and has informed OMB that further cuts would seriously jeopardize the health, safety and

welfare of everyone in the jails, and would cause DOC to run afoul of laws and regulations, including the Minimum Standards. Between \$18 and \$20 million could be saved if a plan to improve coordination between DOC and DOCS on the use of confinement capacity were to be implemented. Bed space is a fungible commodity about which DOC and DOCS began a dialogue because both agencies currently have excess capacity. DOCS is trying to consolidate and close space, but several thousand inmates held in City jails each day instead could be in DOCS' custody. This group includes 500 to 1000 inmates who are Court-ordered returns with open cases, parole violators awaiting hearings, or State-ready prisoners awaiting transfer to State prison. Additionally, the Department houses convicted felons sentenced to one year or less. The City long has argued for a larger daily reimbursement from the State for housing these prisoners.

If DOC does not have a satisfactory agreement with DOCS by January, OMB will demand that DOC find another means of cutting \$18 to \$20 million. DOC has identified only approximately \$15 million in other cuts to propose to OMB. The Department already has informed OMB that the only source of major savings would be to house fewer inmates. However, even if the City could eliminate housing inmates who usually remain in custody only three days, the population would be reduced by only 300 inmates. DOC cannot control police arrest policies or the number of defendants who cannot afford to post bail, but the City can review with the judiciary and District Attorneys whether their bail policies are wise or foolish. Currently DOC is reviewing inmates with bails of \$500 or less for purposes of negotiating their release with judges, District Attorneys and Alternative-to-Incarceration (ATI) programs.

Since 1998, the number of inmates admitted to DOC custody has declined, but the length-of-stay (LOS) has increased because, although felony arrests are down, courts take ten days longer to dispose of felony cases: adjournments are more frequent and the time between adjournments is longer. The ten additional days added to the average LOS costs DOC \$10 million annually, and require approximately one hundred staff positions. The City is seeking commitment from Unified Court System officials for more efficient, speedy case processing.

The City is seeking ways to reduce new admissions to DOC custody by diverting defendants into programs at arraignment. Unfortunately, although the Mayor's Executive Budget allocated \$1 million for Alternative-to-Detention programs, the City Council cut its own ATI funding for DOC by much more than \$1 million, reducing the number of early discharges from DOC custody.

None of the almost \$15 million in cuts proposed by DOC will be taken from inside the jails. Should OMB demands jail-based staff cuts, DOC will refuse to implement them. DOC already reduced jail staffing by consolidating kitchens to serve more than one jail, by allocating a set number of escort and intake officers, and by allocating minimal staffing to housing areas. Special Category housing areas have the best staffing level, three officers. Lower classification houses have

only a centralized control station and one officer floating between sides of the housing area. Of DOC's approximately 11,000 employees, 10,000 work in the jails. 1000 employees work in Headquarters and in support functions, and DOC has proposed eliminating 146 of these positions. These positions will be eliminated through transfers and attrition, not layoffs. Reorganizing Headquarters to accommodate a 10% reduction in administrative positions should not affect jail operation today but, if DOC's ability to manage data or use TEAMS to hold managers accountable is diminished, then a negative impact will be evident within three years, perhaps with a sliding-back on achievements in violence-reduction.

DOC should get credit budget-wise for bearing an expense no other City agency bears: a "Rikers Island tax" to operate jails there. This "tax" includes costs of security posts around and on the Rikers Island bridge and waters, on-Island bus service for staff and professional visitors, a central visitor processing center and one at each jail, on-Island inmate visitor bus service, weekday transport of 1500 inmates to more than twenty (20) court sites then return of most to Island jails, and inmate transport on and off-Island to specialty clinics and hospitals. Fully 1/3 of the 1500 inmates brought to court each day never appear before a judge yet DOC must bear the costs associated with transporting them. One reason for unnecessary court productions is the late transmittal to DOC of superceding court orders, which notify DOC that a court date was cancelled. Also, DOC transports 75 to 100 inmates daily for the sole purpose of meeting with attorneys, at an annual cost to DOC of \$500,000. This is a courtesy, rather than a mandate, which DOC provided in recognition of the fact that Rikers Island is remote. The Benjamin Consent Decree required DOC to invest in major improvements to jail-based attorney visit areas, which are rarely used by attorneys. DOC spent \$1 million for a confidential teleconferencing system in every jail and in each courthouse that handles criminal cases, and made arrangements with some legal services organizations for teleconferencing in their offices and even on some attorneys' desktops. DOC no longer will transport inmates to court for meetings with attorneys: attorneys will have to use teleconferencing or visit clients at jails.

The Department of Design and Construction is registering the contract for an architect selected to do the legally-required environmental assessment for plans to renovate and expand the Brooklyn Detention Complex. DOC may need to use existing space for housing even before such outside work begins, and will do so, despite community opposition, because the City always used this space as a jail and it is proper to do so. A pending \$30 million renovation of the Police Department's Central Booking facilities inside the Schermerhorn Street Criminal Court will affect the jail, which is attached by an underground tunnel. Renovations cannot be allowed to disrupt operation of Central Booking because the City is committed to the 24 hour arrest-to-arraignment rule. Consequently, renovation will take place in one-half of the existing booking sites while activities normally occurring there will take place in the jail; when the first half of the project is completed, renovation will occur in the other half of Central Booking

while those activities take place in the jail. During the renovation, jail intake and housing cells will be used as holding pens for police cases.

Regarding amendments to the Minimum Standards, DOC's "Do Not Record" list includes 91,177 telephone numbers for attorneys, and 8,688 phone numbers for staff members from oversight agencies. Thus far, DOC has recorded more than 900,000 phone calls, but it might be another month before DOC can record at every facility. Installation of monitoring technology is not moving as expeditiously as hoped. Nonetheless, DOC has monitored phone calls in response to formal requests, as follows: 48 requests from DOC officials, 648 requests from District Attorneys' offices, ten requests from the Police Department, and two requests from U. S. Attorneys' Offices. Telephone monitoring does not violate anyone's rights, and is proving more beneficial than expected. Requests from DOC officials yielded intelligence about matters such as violence among inmates and contraband being introduced. [Note: A document entitled "Success Stories" was distributed to the Board.] Changes to the telephone Standard were especially controversial, and the Board is to be commended for having the courage and wisdom to amend.

DOC will begin on December 1st to confiscate all inmate personal footwear for replacement with black slip-on sneakers over which inmates will not fight. This is the first step in implementing the amendment to the Personal Hygiene Standard on inmate clothing. Formal notification was made to inmates that, if they possessed more than one pair of shoes, they should send them home or place them in DOC property storage because, after December 1st, DOC will confiscate extra shoes.

On October 18th, an adolescent inmate named Christopher Robinson died in the Robert N. Davoren Center (RNDC) under circumstances that lead to the conclusion that the cause was neither natural nor an accident. Robinson was a parole violator who had been in DOC custody since August 26th. The incident immediately was referred to the District Attorney's Office, and a representative responded that afternoon. The case is being actively pursued by the Department of Investigation and the Bronx DA's Office. More cannot be discussed publicly.

Chair Simmons advised Board Members that the matter would be discussed in Executive Session.

A motion to renew existing variances was approved without opposition.

Chair Simmons adjourned the public meeting at 10:35 a.m. The Board was in Executive Session from 10:40 until 10:55 a.m.