NEW YORK CITY
BOARD OF CORRECTION

March 12, 2012

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

Excused absences were noted for Members Rosemarie Maldonado, Esq., Hildy J. Simmons, and Milton L. Williams, Jr., Esq...

DEPARTMENT OF CORRECTION
Dora B. Schriro, Commissioner
Michael Hourihane, Chief of Department
Lewis S. Finkelman, Esq., First Deputy Commissioner
Thomas Bergdall, Esq., General Counsel
Sharman Stein, Deputy Commissioner
Sara Taylor, Chief of Staff
Martin Murphy, Deputy Chief of Staff
Eric Berliner, Associate Commissioner
Maggie Peck, Director, Office of Constituent Services
Carleen McLaughlin, Legislative Affairs Associate

DEPARTMENT OF HEALTH AND MENTAL HYGIENE
Amanda Parsons, M.D., Deputy Commissioner
Homer Venters, M.D., Assistant Commissioner, Correctional Health Services (CHS)
Daniel Selling, M.D., Director, Mental Health, CHS
George Axelrod, Director, Risk Management

OTHERS IN ATTENDANCE
Joseph Antonelli, Office of Management & Budget (OMB)
Michael Cassidy, OMB
David Cloud, Columbia University Mailman School of Public Health, student
Jay Cowan, M.D., Medical Director, Corizon
Emily Daughtery, U.S. Attorney's Office, SDNY
Jim Dwyer, NY Times
Christina Fiorentini, Independent Budget Office (IBO)
Susana Guerrero, State Commission of Correction
William Hongach, City Council
Neil Leibowitz, M.D., Mental Health Director, Corizon
Jennifer Parish, Urban Justice Center

Frank Proscia, M.D., Doctors Council, SEIU
Michael Rooney, Alkermes, Inc.
Nashla Salas, IBO
Milton Zelermyer, Esq., Legal Aid Society, Prisoners' Rights Project

Chair Gerald Harris convened the meeting at 9 a.m. A motion to approve minutes from the January 9, 2012 Board meeting was adopted without opposition. Chair Harris presented a report, as follows:

> On February 23, Chair Harris and Members Catherine Abate, Dr. Robert Cohen, and Michael Regan, and BOC staff members attended a focus group meeting of the Mayor's Steering Committee on Citywide Justice and Mental Health Initiative. The session was conducted by Michael Thompson of the Council of State Governments' Justice Center. DOC Commissioner Schriro and State Commission of Correction (SCOC) member Phyllis Harrison-Ross also attended. Other focus group meetings have included, or will include, DOHMH, Prison Health Services, DAs offices, the Legal Aid Society, groups of judges, the Department of Probation, and others.
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> The committee is examining the question of the rising number of inmates in the City's jails with mental illness, even as the overall jail population has decreased. The increase is driven by the fact that inmates with an "M" designation have lengths of stay nearly twice as long as inmates who are not so classified, particularly among detainees. This is true across all boroughs. 46% of adolescent inmates are classified as having mental illness. The study seeks to learn the reasons for the length-of-stay (LOS) disparity. It is not driven by the need for Article 730 competency examinations, which are ordered in only 1% of the cases, or by the presence of large numbers of inmates with serious, persistent mental illness (SPMI). SPMI represents 43% of the "M" designation inmates, but SPMI inmates have shorter LOS than do non-SPMI "M"-designated inmates.
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> Among prisoners with LOS greater than 3 days, those with no M indicator have an average LOS of 61 days; the average LOS for those with an M indicator is 128 days; the average LOS for those with an SPMI diagnosis is 91 days. Differences in LOS do not appear to be related to the nature of criminal charges or the risk of rearrest, which do not differ significantly among the three groups. LOS differences are most pronounced among young prisoners and pre-trial prisoners. Another factor affecting LOS is the failure to make bail (79%). M prisoners score lowest on "ties to the community", although the bail amounts of M prisoners are virtually the same as non-M prisoners (approximately $1000 on misdemeanor charges). It takes M prisoners five times longer to make bail than non-M prisoners. Speculation about this at the focus group included concern by family that M prisoners would not appear in court, or fear of domestic violence if an M prisoner were to be released.
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> The Steering Committee is exploring pre-trial release with supervision and treatment in the community as an alternative to cash bail or bond, post-adjudication expedited disposition with an alternative to a sentence of incarceration, and post-release follow-up and treatment for prisoners who complete a sentence of incarceration.

The Committee is expected to deliver its report between April and June.

Chair Harris asked if anyone who participated in the focus group wished to add anything. Dr. Cohen said he agreed with the Chair's presentation, adding that he found striking the fact that 30% of prisoners get out of jail within 3 days. He said these prisoners should not be sent to jail in the first place. He said that mentally-ill prisoners remain in jail five times as long, and for bails of less than $1000, and noted that only 1% of prisoners who are offered bail make bail. He said that the Commissioner had submitted a PEG to improve bail functioning, but that "failed, and he had no sense from the focus group that there had been any discussion by the Mayor's Committee, or by Deputy Mayors Feinblatt or Gibbs about bail. Dr. Cohen said there also was no discussion about how programs for the mentally ill on Rikers Island affect their LOS, noting that mentally-ill prisoners are disproportionately represented in both CPSU and MHAUII. Member Catherine Abate said another point to emphasize is that people are spending longer time in jail because there aren't solutions for them in the community. She said planners need to look at Brad H and discharge planning, and there is a task force of community-based organizations working with the mentally-ill incarcerated population. She said it costs much more to keep people in jail than to provide services in the community, and she would like to see a report on efforts in this area. Chair Harris said that some of the community groups are part of the focus process, and hopefully their contributions will be incorporated into the Committee's report. Commissioner Schriro said that some 30 focus groups have been convened, with a wide range of organizations represented. She said she would provide a list of participants. She said it was striking that the SPMI prisoners had shorter LOSs than mentally-ill prisoners without that designation, agreeing with discussion at the BOC focus group that money available for services for SPMI prisoners helps "move them along". Ms. Abate lauded the report, but noted that the problem has persisted for decades. Chair Harris said this is not the final report. Commissioner Schriro said the goal is to implement some substantive recommendations in time for the new budget cycle.

Commissioner Schriro presented a report, as follows:

> At the City Council hearing last week on the Mayor's Proposed 2013 budget, DOC discussed its proposed $1.05 billion budget, with an authorized headcount of 8854 uniformed and 1693 civilian employees. For this year only, DOC's budget reflects an additional $28 million for overtime, which was needed to offset shortages in headcount. DOC reported to OMB that it needs an additional 838 officers to be fully staffed. The new budget calls for $41 million to hire 332 new officers.

Member Pamela Brier asked how the proposed budget compares to last year. Commissioner Schriro said this year's budget provides increases in staff and funding. She continued her report, as follows:

> The new budget includes $1.03 billion for capital improvements to maintain existing facilities, to complete important projects, including fire safety. When the current DOC administration began, no jail had an operating fire safety system. Instead, "workarounds" were used, relying on training while lacking warning systems. Now, three jails have operating systems and a fourth is 75% completed. All jails will have fully operational systems by the end of calendar year 2013. The largest capital replacement project is the new 1500-bed facility, which will be a new-admission facility using the recalibrated risk-assessment instrument and objective assessments for SRG (security risk group) affiliation.
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> The Department held an open house at the Brooklyn Detention Complex (BDC) the Saturday before the first inmates arrived. 625 community residents came through the jail and met the staff. [The Commissioner distributed a flyer, attached.]
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> DOC has obtained SCOC approval to occupy the 800-bed addition to the Rose M. Singer Center (RMSC) beginning the week of March 19th. 206 uniformed and 26 civilian positions are authorized in the budget for the planned January 2013 reopening of the Queens Detention Complex. This will add to DOC's "swing" space and enable the Department to speed repairs and renovations to existing capacity. All ventilation, shower, lighting and fire safety projects will be completed by the end of 2013.

Mr. Regan complimented on its BDC open house. Commissioner Schriro said DOC solicits questions and comments from the community, and posts additional information on the DOC website. Mr. Regan asked about plans for retail space at the base of the jail building. Commissioner Schriro confirmed that the plan had been tied to expanding the jail's footprint and capacity, and therefore will not happen.

Dr. Cohen asked when the new medical clinic at AMKC would open. Assistant Commissioner Eric Berliner said DOC was awaiting delivery of some needed equipment. Commissioner Schriro distributed to the Members copies of "DOC At a Glance" with data updates through the second quarter of the fiscal year (attached), and continued her report, as follows:

> Design plans for the new facility have been registered with the Comptroller. The SCOC will consider plans for the interim central intake facility later this month. The objective instrument for identifying SRG members has been implemented, and DOC will begin using the new risk assessment instrument on March 16th. DOC has provided additional information in response to BOC requests.

Dr. Cohen said that with respect to DOC's response regarding pillows, the Department says it has pillows in the storehouse in sufficient supply, but on two separate occasions he inspected CPSU and there were no pillows available, and DOC staff said they had not seen pillows. He said that either DOC staff members are lying to the Commissioner and saying they are providing pillows when they are not, or they are

punishing prisoners by withholding pillows. He said DOC should explain why inmates had no pillows when he inspected the facilities, and should indicate whether DOC is now providing them. Commissioner Schriro said it would be helpful for her to receive a "real-time notification" so she could respond. Dr. Cohen said BOC did not keep the information to itself. BOC Executive Director Richard Wolf said the Board asked for an update at the January BOC meeting and received it only on Friday, March 9th. He said that BOC staff, as it is trained to do, attempted to solve the problem at the facility level. Commissioner Schriro said the practice has been for DOC to respond to BOC requests for information in time for the next meeting. She said DOC can respond sooner, if that is what the Board would like. Mr. Wolf said the Board has been asking for responses to be provided sooner for some time. Ms. Brier said it would be helpful to receive updates sooner. Chief of Department Michael Hourihane said pillows have been delivered and are being given out, and that 3000 pillows are going out to jails that have not received them. He said that CPSU is "unique because it is a transient population", and this can cause breakdowns.

Commissioner Schriro next discussed visits, noting that Visitor Express is fully operation. She reported that the need for cover-ups for visitors whose dress is deemed inappropriate is at its lowest level: 3% of all visitors. She said only one visitor refused to wear the cover-up. She said that DOC continues to find large quantities of contraband introduced during the visiting process, and showed pictures of recently-recovered contraband, including one photo of four titanium blades. Mr. Wolf asked about available technology that detects titanium. Commissioner Schriro said DOC had field-tested a full-body-imaging scanner, with "terrific success". She said it distinguishes an inmate who may have a rod in his leg from an inmate who has secreted a shank on his person. The Commissioner said that heretofore, if an inmate was believed to have contraband inside his body, he would be taken to an emergency room and x-rayed. She said five of the six new scanners will be placed in the intake areas of facilities with the highest numbers of high custody inmates, which happen to be the jails with the most contraband confiscated. She said the sixth will be placed in a visit house. Mr. Wolf asked why DOC was not purchasing scanners for all facilities. Commissioner Schriro said DOC had purchased all machines currently available, noting that some jails will require modifications to accommodate the scanner's temperature control requirements.

Dr. Cohen said DOHMH should examine the machines to determine whether they are safe. He said there are questions about these low-dose radiation scanners, particularly for people who have to go through them on a daily basis. Mr. Regan asked if the scanners are the ones used by the Transportation Safety Administration. Commissioner Schriro said they are similar, but these do a better job. Dr. Cohen said an expert at Columbia University said scanners raise health concerns. He said he would get more information. The Commissioner said Exacto blades in the wrong hands also are health dangers. BOC Vice Chair Alex Rovt said he has not heard any conclusive proof that scanners are dangerous to health. Dr. Venters said each scan emits 25 millireds, which is what is used for a chest x-ray. He said that he is uncertain as to whether it is as safe as in the airports. Ms. Abate said that perhaps officers operating the machines need to wear something for protection. Commissioner Schriro said DOC would find out, noting that

TSA employees do not wear anything special. Dr. Cohen said it was important to learn whether the employees were protected by shielding.

Chair Harris remarked that the Commissioner has raised before the issue of visits and the interdiction of contraband. He said perhaps the Board should create a subcommittee to meet with the Commissioner and discuss her concerns and proposals. He said he would email the Members to determine their interest.

Mr. Wolf asked the Commissioner to discuss DOC's plans to expand MHAUII, noting that she had discussed the plans at a recent City Council hearing. Commissioner Schriro responded as follows:

> There has been a longstanding backlog of prisoners who committed infractions and were awaiting beds in punitive segregation (PS). Some committed additional infractions before a bed became available. The vast majority of the backlog of prisoners who had committed violent infractions has been cleared. Prisoners with mental health histories and those with an "M" designation must be cleared for segregation by mental health providers. Since 1998, some PS beds have been devoted to a specialized, clinical approach. The MHAUII capacity has been expanded to its present 200 and includes a 50-bed Intensive Treatment Unit (ITU).
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> The planned expansion will include a revisiting of ITU, and may include a second version to better distinguish the population's various clinical diagnoses. As DOC prepared for the recent City Council hearing, the "M" backlog awaiting clearance was 550 prisoners, including 193 who committed serious offenses. Sixteen of the 193 acquired their "M" designation shortly after an infraction conviction. There will be a temporary 90-bed expansion of MHAUII to address the backlog, and MHAUII's method of operation will change before the expansion occurs.

Dr. Cohen asked how long the "temporary" expansion will last. Commissioner Schriro said it should take six months to resolve the violent-offense backlog. She said there will be a "new-generation" delivery of custody and clinical care. She said that 55% of the backlog would likely be cleared by mental health for CPSU, with the remaining 45% requiring a clinical setting. Dr. Cohen asked for the average length of stay for someone in MHAUII. He then made the following comments:

> People who have trouble following orders are often unable to modify their behavior. It is disturbing and sad that when the New York Times has a cover story about the horrors of isolation and Jim Austin, DOC's own expert, speaks about decreasing isolation, the City increased isolation by 50% in the past year and plans to increase it another 50%. The system is treating people who are "mad" as "bad". That this causes deterioration is understood by DOC and by medical and mental health staff.

The saddest place is punitive segregation for young people. Juan Mendez, the Special U.N. Rapporteur on Torture said that adolescents and mentally-ill prisoners should never be in punitive segregation, yet on Rikers Island there is a policy of expanding PS for both populations.

The most horrific place is MHAUII, which "sounds like bedlam". People in MHAUII often do not get to their clinic appointments. DOC decides who goes to appointments. Bellevue is concerned that expanding MHAUII will only increase problems. The original unit consisted of 12 temporary beds in 1990, then expanded to a "temporary" 24-bed unit in 1994, then to 50 beds, 100 beds, 200 beds, and now will expand to a "temporary" 290-bed unit.

The solution from DOC and DOHMH should be to eliminate MHAUII. There are prisoners with serious mental illness who are dangerous to themselves and to others. They make running the jails very complicated. But expanding segregation at this time in this country is the wrong idea. There are aspects of the operations that violate BOC's Standards, and we will work with DOC and DOHMH to identify and remedy these.

30% of prisoners who go to Rikers stay for three days. None of these prisoners should be there. Many mentally-ill do not make the SPMI classification, perhaps as Dr. Harrison-Ross believes, because they have been under-diagnosed. People who are "mad" are being punished for it, and New York City can do better than this.

Chair Harris asked Commissioner Schriro to distinguish between PS and MHAUII. The Commissioner responded as follows:

The NY Times article addressed super-max prisons and death row, which are different from PS in the jails. The issue is putting preventive measures in place to have a flexible continuum that reduces the need for back-end responses. The majority of "M"-class prisoners is in general population. DOC does not have much clinical guidance as to how to adapt custody management to address their clinical needs. DOC provides staff training, but it does not provide a wide enough range of coping skills. DOC does not control who comes to jail, but in partnership with others, it must achieve conditions of detention based on good sense and good science. It does not do this on its own.

6% of the prisoner population is in mental observation housing, which is not all of the SPMI population, and DOC continues to seek increases in MO housing. When [Commissioner Schriro] arrived, MO housing "was not done well". Due to the efforts of DOC and DOHMH, the level of incidents in MO housing has been reduced. Officers are included as parts of clinical teams, and this promotes a maintenance of behavior contracts 24/7, and has reduced violence by 25%.

The jails have an excellent 200-bed detox effort, staffed by DOH. 100 beds will be added, and more are needed.

The Standard requiring all prisoners to be afforded 14 hours of lockout per day is well-intended, but ill-advised. DOC goes to extraordinary lengths to identify prisoners with a high propensity for violence, but then must manage them the same way as those with a low propensity. They are assigned to cells, but then they get to decide whether to lock out. When these decisions are left to prisoners and not to DOC, the need for punitive segregation increases.

Ms. Abate said she remembers when the system had 1000 treatment beds and more services for people with mental health issues. She asked how the Board might be help with advocacy. DOHMH Assistant Commissioner Homer Venters, M.D. said that the number of MO beds is sufficient when compared with the number of prisoners with SPMI diagnoses. He said the shortage is in drug-treatment beds, noting that DOC and DOHMH together are seeking funding to make the entire Queens Detention Complex a drug treatment facility. Ms. Abate said the Board should write a letter of support to the Mayor. Chair Harris said this is a task that might be undertaken by the subcommittee he discussed earlier. Commissioner Schriro reiterated that the issue was with two or three Standards provisions, and that more conversations about the Standards would be valuable.

Dr. Venters said DOHMH agrees that the MHAUII system has been a complete failure in meeting the needs of patients and the needs of DOC. He said that with the support of the Board, DOC and DOHMH will together build a better system. He said there is a short-term need to increase capacity, but the plan is to build-in joint administration of units with joint decision-making about lock-in/lock-out times and bing sentence reductions – elements that are in place in other jurisdictions. Dr. Venters said the new units will not look like the current MHAUII. He said it is gratifying that both agencies are looking at a new system, because the current one has failed.

Ms. Abate said the fear is that the temporary MHAUII beds could become permanent. She asked if there are studies indicating what CPSU length of stay is effective in managing violent behavior. DOHMH Deputy Commissioner Amanda Parsons, M.D. said it will be important to figure out length of stay and develop appropriate programs to ensure that discharged patients return to housing areas and not to other punitive settings. Commissioner Schriro said the mode is 20 days. Dr. Parsons said MHAUII will not be expanded. She said new capacity will be built to treat people in new ways, and hopefully new techniques will result in reductions to capacity. She added that the Deputy Mayor is only interested in a temporary expansion of MHAUII capacity. Dr. Parsons said the goal is to replace the existing MHAUII with a new kind of system, along the lines of the successful joint administration of the MO units. Mr. Wolf asked if additional provider staff will be required. Dr. Venters said yes, noting that the reason MHAUII is an abject failure for patients is because of the difficulties encountered in getting patients to provider staff. Mr. Wolf asked about the longstanding need for

additional escort officers. Commissioner Schriro said additional escort officers are now in place.

Ms. Brier asked about funding for staff. Dr. Venters said DOHMH will meet the provider funding need. Commissioner Schriro said the temporary 90-bed expansion is an opportunity to roll-out something different, while simultaneously revisiting operation of the existing beds. Dr. Venters said DOC's strong commitment to staffing for the current beds will yield some gains to existing units, and reiterated that new units will operate in a completely different manner and do not become "parking lots for people with mental illness", which is what exists now. He said the vision is that the new units will replace MHAUII in 12 to 18 months. Ms. Brier said she would like to see progress reports every six months, and would favor a time limit on the new beds and the transformation process. Commissioner Schriro said that, based upon estimates from DOHMH, the temporary expansion will be needed for six months to reduce the backlog. She said that DOHMH recommends once-a-week hourly group sessions and one-hour individual sessions, and escort staffing is available to accomplish this. Dr. Venters said that statistics will be maintained on participation. Ms. Brier asked if statistics will track length of stay. Commissioner Schriro said the present ITU program was established as a 90-day program, which was estimated to be the time to achieve behavioral results, rather than be matched to a PS penalty length. Dr. Venters said Commissioner Schriro has suggested that program participation and good behavior could lead to increased time out of cell and to sentence reductions.

Chair Harris asked Commissioner Schriro to present DOC's request for a new variance. She responded as follows:

> On the day the variance letter was prepared, there were two high-custody City-sentenced male adolescent prisoners in the system; on Friday there were 11. The census is always very low. The *Fisher* case agreement requires that high-custody City-sentenced prisoners be afforded cell housing, but there are insufficient cells in EMTC, the sentenced facility. Consequently, for some time high-custody City-sentenced adolescents have been housed at RNDC, where they have access to school, but they have lived in a separate housing area from detainees. The request is to house the high-custody sentenced adolescents with high-custody detainee adolescents in the same housing unit. DOC would provide the sentenced adolescents with the same privileges as the detainees, including wearing personal clothing rather than uniforms. There is no risk to the sentenced prisoners because they are the same custody classification as the detainees.
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> If granted, the variance would free up a housing unit, enabling DOC to improve safety and security by spreading out the population among more units, and thereby facilitating needed separations.

Chair Harris noted that the variance request was circulated to interested parties for comment. Mr. Wolf said the variance request also was posted on the BOC website. He said two comments were received: one in support from the Deputy Wardens/Assistant

Deputy Wardens Association, and one from the Prisoners' Rights Project (PRP), which objected on procedural, rather than substantive grounds. Dr. Cohen said he supported the variance, noting that PRP's objection was longstanding: variances should be available only when a serious reason justifies a request. He said he supports the variance request only because it will provide additional privileges to the affected sentenced prisoners. Commissioner Schriro said the issue is not efficiency – it is about improving safety and security by being able to better disperse the population. Chair Harris said PRP feels the Board should amend its Standard, rather than grant a variance, because the situation is not amenable to a variance. He said the argument is that a variance is available when DOC "cannot comply", and DOC *has* complied. Chair Harris said there is an exception (1) when compliance creates an extreme impracticality and (2) there would be no adverse impact on inmates. He said it is his view that the instant request falls within the exception and that it would be appropriate to grant the variance request. A motion to grant the variance was approved without objection.

Mr. Wolf asked Dr. Venters to present two DOHMH variance renewal requests, both of which had been distributed to the Members. Dr. Venters said the first request was to renew the variance authorizing the QuantiFeron (QFT) tuberculosis screening blood test project at the Rose M. Singer Center. He said the test has yielded a positivity rate of 9.5%, which is higher than the rate using the "old" skin test (TST). He said all positive results were for latent TB, and all positives are tested to confirm that they do not have pulmonary TB. Dr. Venters said DOHMH does not know why the positivity rate is higher using the blood test. Mr. Wolf asked if DOHMH intends to expand the test to other jails. Dr. Venters said if possible DOHMH would expand use of QFT when central intake opens, because centralization would lessen costs somewhat. He said that expanding use of QFT in individual jails would result in significant new budget costs. Dr. Cohen said the higher positivity rate could be due to one of two possibilities: it is a better test and yields fewer false negatives, or there is an actual increase in exposure to TB. Dr. Venters asked that DOHMH be allowed to provide six-month reports on data, rather than reporting every two months. He said he would bring Dr. Cohen into discussions with TB control as DOHMH attempts to better understand the data. A motion to approve the variance, as amended, was approved without opposition. A motion to approve DOHMH's second variance request, for renewal of a longstanding variance authorizing the writing of 28-day prescriptions for psychotropic medications, rather than the 14-day limit in the Standards, was approved without opposition.

A motion to renew DOC's existing variances was approved without opposition.

Chair Harris adjourned the meeting at 10:28 a.m.