



NEW YORK CITY
BOARD OF CORRECTION

July 14, 2015

MEMBERS PRESENT

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

DEPARTMENT OF CORRECTION

Joseph Ponte, Commissioner
Martin Murphy, Chief of Department
Michael Blake, Deputy Commissioner
Timothy Farrell, Deputy Commissioner
Peter Thorne, Deputy Commissioner
James Dzurenda, First Deputy Commissioner
Winette Saunders-Halyard, Acting Deputy Commissioner for Youthful and Adult Offender Programs and Assistant Commissioner for Community Partnerships and Program Development
James Walsh, Deputy Commissioner of Adult Programming
Shirvahna Gobin, Assistant Commissioner for Strategic Planning
Heidi Grossman, Esq., Deputy Commissioner of Legal Matters/General Counsel
Brenda Cooke, Executive Agency Counsel
Danielle Leidner, Director for Intergovernmental Affairs
Jeff Thamkittikasem, Chief of Staff
Sean Jones, Deputy Chief of Staff
Marisa Alberti, Policy Analyst
America Canas, Senior Policy Advisor
Anna Martzullo, Senior Policy Advisor
James Perrino, Acting Assistant Chief
Carleen McLaughlin, Director of Legislative Affairs and Special Projects
Francis Torres, Director of Education
Faye Yelardy, Director of Special Projects

Jeff Jacomowitz, Press Officer
Eve Kessler, Director of Public Affairs
Tonya Hayes, Deputy Warden
Wayne C. Allen, Captain
Marsha Elliot, Captain
Steven Ramkissoon, Captain
Damien Brown, Correction Officer
Tamia Brown, Program Counselor
Luis Damian, Program Counselor
Marie Laude, Program Counselor
Donell Mills, Program Counselor
Matthew Novak, Program Counselor
Liza Peterson, Program Counselor
Yolanda Rose, Program Counselor
Mark Thomas, Program Counselor
Pamela Washington, Program Counselor
Gabelle Acosta, Counselor
Tennille Anthony, Counselor
Edward Harrison, Counselor
Andre Johnson, Counselor
Kizzy Ann Levers, Counselor
Jessica Medard, Counselor
Jamil Muhammad, Counselor
Jenny Rodriguez, Counselor
Kaylin Williams, Counselor
Mackenzie Dancho, Intern
Isaiah Henderson, Intern
Carla Lewis, Intern
Jeffrey Liautaud, Intern
Ayanna Miller, Intern
Bianca Tylek, Intern

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Elizabeth Ford, Executive Director
Homer Venters, M.D., Assistant Commissioner, Bureau of Correctional Health Services
Patsy Yang, DrPH, Executive Deputy Commissioner and Chief Operating Officer
George Axelrod, Chief Risk Officer
Carolyn Bancroft, Project Manager
Lucia Caltagirone, Agency Attorney Intern
Semmie Kim, EPI Scholar
Lauren Stossel, Volunteer

OTHERS IN ATTENDANCE

Alex Abell, Urban Justice Center
Lucas Acosta, NY City Council

Melissa Almonte, Children's Rights
Rene Alpert, Children's Rights
Rekha Arulanantham, Legal Aid Society (LAS)
Tarisha Augustin, Osborne Association
Lucy Bacon, LAS
Gina Bull, Office of the Public Advocate
Ashleigh Cartwright, Correctional Association
Dahiana Castillo, Office of Management and Budget (OMB)
Alexandra Cephas, Vassar College
Daisy Cephas, Duke University
Susie Choi, LAS
William Clareman, Paul Weiss
Deanna Clugston, LAS
David Condliffe, NYC Bar Association
Megan Crowe, Urban Justice Center (UJC)
Michael D'Ambrosio, LAS
Chelsea Davis, Vera Institute of Justice
Julia Davis, Children's Rights
Kelsey Deavila, Brooklyn Defender Services
Donna Deutsch, Moss Group
Margaret Egan, CUNY
Molly Engel, Correctional Association
Anastacia Erriksson, NY City Council
Scott Fenstermaker, Esq. Defense Attorney
Nina Goepfert, NY Civil Liberties Union (NYCLU)
Rosa Goldensohn, DNA Info
Felipe Goncalves, Princeton
Colby Hamilton, Capital New York
Luis Hernandez, Public
Terry Hubbard, Jails Action Coalition (JAC)
Jacob Hutt, Southern District of NY
Elissa Hyne, Children's Rights
Karen Imas, Weintaub, Connelly, McLaughlin & Woloz
Christine Japely, 15th Street Quakers
Xiwen Jiang, Columbia University
Nicole Jolicoeur, UJC
Kacy Jones, Sylvia Rivera Law Project (SRLP)
Michael Kenney, OMB
Deandra Khan, NYCLU
Mik Kinkead, SRLP
Kim Korn, Columbia University
Tanya Krupat, Osborne Association
Sierra Kuzava, Stony Brook University
Elena Landriscina, Disability Rights New York
Victoria Law, Independent
Evelyn Litwok, JAC

Sebastian Maguire, NY City Council
Kyla Magun, LAS
Jeff Mailman, NY City Council
Amanda Masters, NYC Public Advocate – Hon. Letitia James
Andre Moss, Moss Group
Celia Rhoads, Law Department
Lillian Rivera Matos, Community Disability Activist
Elizabeth Mayers, JAC
Scott Paltrowitz, Correctional Association
Jennifer Parish, Urban Justice Center /JAC
Steve Riestler, NYC Council, Finance Division
Katie Rosoff, Office of the Public Advocate
Nashla Salas, Independent Budget Office
Patrick Sands, Sands House Inc.
Brian Sevilla, NY City Council
Deirdre Shore, JAC
Alicia Smith, Public
Erica Stewart, Columbia University
Eric Stone, Paul Weiss
David Thompson, OMB
Vi Tran, Children’s Rights
Amelia Warner, Correction Officers’ Benevolent Association
Gale Weiner, JAC
Michelle Zhong, Children’s Rights

The Board meeting began at approximately 9 AM with introductions from the Board members. A motion was made to approve the minutes of the May and June meeting minutes.

Executive Director Martha King issued two updates. She explained that the Board would be moving to a new office at 1 Centre Street. Additionally, she noted that the Board received an increase in funding. She offered thanks to the City Council and the Mayor for recognizing the importance of the Board even in a time of reform, to the Board members for making the case, and to Legal Aid and other advocates for publicly supporting further funding for the Board.

Chair Brezenoff moved agenda item four, the presentation of continuing variance requests from DOHMH and DOC, to agenda item three.

The Department of Corrections Chief of Department Martin Murphy presented its proposals to the Board. DOC requested continuing variances on the commingling of adolescents sentenced and detained at RNDC; personal hygiene regarding suicide smocks and suicide blankets for inmates on suicide observation; for limited recreations for inmates confined to communicable

disease unit; and commingling sentenced and detained pregnant inmates at Rosie M Singer. Member Regan moved the item, Bobby Cohen seconded, and the motion carried unanimously.

The Department of Health's Homer Venters presented DOH's proposals to the Board. DOH requested variances on using interferon gamma release assays (IGRA) or tuberculin skin test (TST) for tuberculosis testing; authorizing doctors to see and evaluate stable adult patients on psychotropic medication in general population at least every 28 days, rather than every 14 days; and allowing health care staff to provide the DOC with specific diagnoses related only to injuries sustained by prisoners while in correctional custody. Member Regan moved the item, multiple Board members seconded, and the motion carried unanimously.

Chair Brezenoff then transitioned to agenda item 6, the limited public comment period on the DOC petition or variance request. Chair Brezenoff explained that there had been many requests to speak before the Board considered rulemaking and these items. He went on that ordinarily he would not have permitted public comment in the midst of a business meeting and that the fact that we are doing so was not be precedential in any way. He noted that the issue and phases of development of the issue warranted special handling this time. Chair Brezenoff then began the public comment period.

Sarah Kerr, a staff attorney at Legal Aid's Prison Rights Project and a member of the Jails Action Coalition, recommended the Board engage in rulemaking on suicide prevention. She explained that the Board should not revisit rulemaking on visiting, punitive segregation, or packages.

City Councilmember Daniel Dromm spoke in support of a letter he sent to the Board along with fellow council members. He objected to the DOC rule proposals on visitation and packages, as well as to the emergency variance proposal on punitive segregation.

Jennifer Parrish of Urban Justice Center's Mental Health Project and Jails Action Coalition urged the Board to reject the variance request and vote against beginning a process to weaken minimum standards.

Kelsey DeAvila, a social worker at Brooklyn Defender Services and a member of DOC's visitation working group, explained that the working group had only just begun so she was apprehensive about the vote on visitors and packages. She requested that the Board, instead, support the work of the visitation working group.

Nicole Jallaker, a legal intern at UJC's Mental Health Project, read the statement of Robert Rivera, an inmate on Rikers Island.

Jane Staniche, Hour Children / JAC, asked why the Board would subject children to non-contact visits.

Finally, Evie Litwock, a formerly incarcerated member of the Jails Action Coalition, asked the Board to vote against considering the proposals and to give itself more time to think.

The full public comment period can be viewed at <https://www.youtube.com/watch?v=jVbyZFrBcGw>.

Chair Brezenoff then invited the presentation of the DOC petition and emergency variance request. Commissioner Ponte detailed some of the work the agency has done over the past year, including beginning the implementation of the 14 point plan. He said the DOC proposals are not the sole solution to reducing violence and contraband but that they are piece of that. He explained that he thinks when people are talking about rolling back reforms that they can't be talking about his agency.

He explained that the DOC continues reform efforts. Regarding punitive segregation, DOC has reduced its punitive segregation backlog from 1100 to 700, eliminated historic time, and created three tiers of punitive segregation. He also explained reform efforts regarding staff and contraband. Commissioner Ponte said further that staff safety is a priority and also a legal obligation – and that the rule change is asking for the ability to carry out that duty.

Regarding the seven day override, he noted that the number of people that would be affected is between 22 and 30 per year. He explained that while this is a very small number, it is clearly a population that requires a higher level of custody than can be delivered. He said that the DOC needed to do something that limits those inmates ability to do harm. He said that he believes it was a BOC oversight at the time to not allow for that.

Regarding visits, Commissioner Ponte explained that the DOC strongly support visits and started a committee on the issue. He said there will not be a prohibition on the holding of children. He said that they want to look at who is coming to visit. He explained that every day of the week, the DOC arrests a visitor. He said the proposed visitation table with six inches of Plexiglas does not prohibit reaching across to touch. On the packages proposal, Commissioner Ponte noted that the need for packages will largely decrease because inmates will not need clothing from home once DOC finishes the switch to all inmates wearing uniforms. He briefly mentioned the rule change on due process for ESH re-transfers within 45 days.

Judge Hamill commended Commissioner Ponte on his 14 point plan and reforms regarding adolescence. She said that the Board had, however, heard from a lot of people opposed to the changes. She asked why enhanced supervision is not an option for inmates transferring out of punitive segregation within those seven days. She explained that when the Board was having discussions about ESH, she thought the purpose was to transfer the truly dangerous there but now Commissioner Ponte said that was not an option. Commissioner Ponte responded that ESH still is an option, but someone that is extremely assaultive could commit that assault in ESH and they can't be maintained in that housing unit. The safest alternative that we have, he said, is to put them back in punitive segregation.

Vice Chair Cephas asked Commissioner Ponte what the experience has been so far with inmates that have committed a violent infraction within those seven days. Commissioner Ponte explained that they have some other housing options and cell configurations, but these do not eliminate staff coming into contact with some of these individuals who sometimes will continue to commit additional assaults in those environments. There have been two instances of an inmate assaulting staff twice within the seven days, a DOC staffer noted.

Chair Brezenoff asked what the DOC plans are to monitor, count, and examine the cases when they occur. Commissioner Ponte explained that the DOC would build monitoring into the rule; the decisions would be made at a very high level; and they would define very specifically who would fall into this category so it couldn't be expanded.

Member Jones Austin clarified that if the BOC changed this to not include the seven days then the length of stay for could be extended up to 60, 67 days. Commissioner Ponte said yes. Member Richards clarified that it would extend the cap of sixty days in six months and the Commissioner said yes. Member Richards then noted that 14 of the 20 inmates that the DOC says would have been eligible have been designated as Brad-H. He asked what the DOC has done to define whether or not the behavior they are exhibiting is attributed to their mental illness. Commissioner Ponte explained that one of the things DOC does better than anyone is that inmates don't go to punitive segregation if they have mental conditions. He said they have a better process than anywhere he's ever been to make sure that doesn't happen. DOH's Homer Venters explained that it's their job to do before someone gets on a list like this. He said that when there are problems in the jail, DOH should be screening to see if people need a higher level of care.

Member Richards asked how many of the 20 cases resulted in staff injuries and how many were the result of the staff using force. Commissioner Ponte explained that UOF is not a staff assault but that a staff assault could result in a UOF. There has to be intent to harm.

Member Jones Austin asked if there is another alternative, a better alternative. Commissioner Ponte said that all of these people had been screened and if they needed to be moved, they would have been.

Judge Hamill said that punitive segregation is meant to be punitive and that's due to the harm. She explained that's why the Board has limited the practice. She said that the Commissioner is saying now that certain inmates are so dangerous that he wants to use punitive segregation for security reasons to prevent any further violence. Commissioner Ponte said that it is to prevent any continuing violence and it is the safest option at the time. He explained though that there would have to be an infraction, they would not just house someone there. Judge Hamill asked if there is an alternative plan underway to come up with another type of unit to deal with these types of inmates. Commissioner Ponte responded that it is a small number of people that are very problematic. He said that how we manage them is a dialogue that we need to have.

Member Regan asked that Commissioner Ponte speak to child visitation and enhancing that process. Commissioner Ponte explained that what is most troubling is the length of time it takes for people to get to visitation. DOC admits that has to get a lot better and that there are a lot of things it can do to improve visitation process and encourage healthy interaction.

Judge Hamill asked if there is a type of inmate DOC is trying to target in its removal of due process for ESH within 45 days. Commissioner Ponte explained it's a work flow issue. Of all the things DOC proposed, he said, this is the one where he thinks will have the most dialogue about because he thinks there are other options they could work on that would be equally effective.

Vice Chair Cephas asked how many visitors there are per day. An unidentified DOC employee said about 2000.

Chair Brezenoff said that the Board has 60 days to consider the DOC petition so, one way or another, the Board has to decide the matter. Vice Chair Cephas moved the item, Member Regan seconded. Chair Brezenoff opened the floor for discussion.

Judge Hamill said that, as written, the visitation proposal raises constitutionality questions. Additionally, she explained, that when doing a balancing test, the tremendous harm to many, many inmates who are not posing a risk at all would outweigh the limited benefit to preventing those few weapons coming through. She said that the DOC has not satisfied her inquiry as to the visitation rulemaking being necessary. On the punitive segregation proposal, she said that there are tools available. On the elimination of due process within 45 days of ESH release, she said the proposal is not narrowly drawn and would result in a revolving door. She said that the proposals are premature and not necessary. She explained that she is opposed and would feel constrained to vote against the petition.

Member Regan said that he agreed with many of Judge Hamill's points and that he listened to Member Jones Austin, the coalition, and the councilmembers. He said he also listened to the spirit of reform that this commissioner has shown. He explained that he listened to ED Martha talk about this administration, this speaker, this city council that are committing dollars to this organization and committing dollars to the DOC to continue reform agenda. Because of this, he said he would vote in favor of the proposals.

Member Richards said that rulemaking is very special for this body to engage in and for the department to engage in. Based on what he's heard over the last month and a half, he said it really doesn't justify going into rulemaking for these various items. Around punitive segregation, the department already has the tools necessary. On visits, he said that they have a visitation work group to find alternative ways to enhance visits and stop contraband from coming in. He said packages are an issue that will largely go away as soon as uniforms are implemented. At this particular point, he said he doesn't see a justification to go into rulemaking.

Member Cohen explained that he wanted to recognize and applaud the department's efforts on solitary confinement. He said that we've set a national bar, that it's not high enough, but it's extraordinary. He said the DOC should be more than congratulated, but he said he would speak against this petition. He said the BOC is being asked to roll back part of its decision in January. It could result in up to 60 days or more of solitary confinement. He said he does not think the Board of Correction should open this discussion ever and certainly not at this point. He explained that BOC put in the seven day break because they wanted to mitigate harm caused by 30 days of solitary confinement. He then went on to explain the BOC has already reviewed policy on packages and visits previously. Most importantly, he said we need to reduce the population. Our goal and the city's goal, he said, should be to close down Rikers Island. He urged the Board to reject the petition in the meantime.

Member Jones Austin explained there are no easy solutions to the petitions that have been brought forward. During rulemaking on ESHU, she said that many questions she had were answered. Many questions remain about visitation, about the seven day variance, and about due process. She said that, through rulemaking, the Board can get to those answers and resolve them in a way that it needs to. She said that as an independent, she is willing to go into rulemaking to have these conversations.

Member Cephas said he would support the petition for rulemaking because the Board does need to start CAPA process, not because he has any real agreement with the substance of the petition. On the seven day variance, he said that he was not inclined to support it and that the Board could reconsider it next month.

Member Safyer said he would support what Members Cephas and Jones Austin said. Regarding the seven day variance, he said that he thought some of Homer Venters answers missed the point that an inmate could be floridly mentally ill but still have mental health issues that punitive segregation would only worsen.

Chair Brezenoff said that the commissioner's record of achievement and progress is extraordinary and that part of his thinking on these issues has to stem from that. He explained that the initiation of the rulemaking process is the start of substantive review so that the end product gets the benefit of that process. He said he also supports the emergency variance. He explained that he believes the need for this change is a product of some fault in the first process and that it is illogical to have a set of penalties with a period that no matter what happens you cannot impose an additional penalty.

Member Cohen said that the last sixty day rulemaking process was terrible because it was too rushed. He said the Board should at least do it effectively and judiciously and not under a timeline that does not respect its needs.

The petition for rulemaking was moved and seconded. Five (Brezenoff, Safyer, Cephas, Jones Austin, and Regan) voted in favor and the motion carried.

The petition for emergency variance was moved and seconded. Four voted in favor (Brezenoff, Safyer, Jones Austin and Regan), four opposed and the motion failed.

Chair Brezenoff then asked for updates from the Departments. DOC said it had no further updates. DOH's Homer Venters gave two updates. He said that Health and Hospital Corporation had hired Dr. Patsy Yang as Senior Vice President to form a new division. He said that DOHMH staff will migrate over in August and that, at the end of the calendar year, the Corizon contract would end and those staff will be reviewed and incorporated. Secondly, he said the crisis intervention teams (CIT) would roll out in a few weeks. He explained that CITs are crucial because right now they only have a probe team which is an escalating response. This will be, he said, the first time for them to have a joint security and health response that is top to bottom focused on deescalating and resolving without use of force and without punishing people for having a bad day.

Member Cohen asked if mental health staff is currently involved in planned UOF in mental observation units. Venters said the policy is that mental health staff will be called to come de-escalate, but DOH does not want them to be a part of the UOF. He said depending on circumstances mental health staff cannot always get there in time. He also said that when both the officer and the inmate know a UOF is about to happen, it's an uphill battle for mental health staff.

Chair Brezenoff then asked for a report from the ad hoc adolescent and young adult committee. Judge Hamill began by commending the incredible efforts and success regarding adolescents. She said the Nunez settlement could become effective on October 21 and includes improved training, staffing, cameras, use of force policy, programming, alternative disciplinary systems for youth, due process review by outside consultant, inmate discipline, inmate housing and programming for young adults, de-escalation in TRU, monitoring compliance, and using best efforts to move 16-17 year olds off of Rikers. She further explained that by August 1, DOC will give to BOC a plan on age appropriate programming and the committee will be reviewing the plan with Commissioner Ponte and his team. She said the Department, quite extraordinarily, would, depending on financial feasibility, plan to input DOJ changes for 19-21 year olds and not just 18 year olds. Judge Hamill then detailed additional new DOC programs for adolescents and young adults.

Chair Brezenoff then commenced the public comment period. The second public comment period included comments from the Sylvia Rivera Law Project, Jails Action Coalition, and other members of the community. The full public comment period can be viewed at <https://www.youtube.com/watch?v=jVbyZFrBcGw>. Chair Brezenoff then adjourned the meeting.