



CORRECTION OFFICERS' BENEVOLENT ASSOCIATION, INC.
"PATROLLING THE TOUGHEST PRECINCTS IN NEW YORK"

January 30, 2020

VIA Email

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Members, NYC Board of Correction

**Re: COBA's Final Submission on
"Restrictive Housing" Rulemaking**

Dear Board:

COBA has now made 6 written submissions since October 31, 2019 on the subject of creating and amending rules impacting the safety of COBA's members (denominated Rulemaking on "Restrictive Housing" but going further). These most recent letters, ignored just as those many prior, are as follow: ¹

- November 4, 2019 dealing with CAPA irregularities;
- November 21, 2020 requesting a six-month moratorium to study years of submissions by all channel partners;
- November 27, 2019 again requesting a tempered and less hasty rule-making process in light of false figures coming out of the Department of Correction;
- November 19, 2019 FOIL request (resent on December 3, 2019); and,
- January 29, 2020mnletter from the President of COBA regarding the Board's bias and partiality.

The Board has not only usurped the right of the Correction Commissioner, but invaded matters central to collective bargaining currently underway between the City and the union. This has forced the hand of the union's General Counsel to protect the rights of COBA members by filing an Improper Practice Petition against the City.²

The concerted rush by this Board's members – some more than others – and of the vast majority of advocates of so-called reform – some of whom sit on this Board (manifesting a conflict of interest) – is clearly intended to implement a jail security system that does not reflect the realities in this country and specifically in New York City.

While principled, reflecting goals rooted in aspirations about the best of humanity, these rules are based on dangerous misunderstandings. The United States is not Norway,

¹ Attachment 1, COBA Letters; included are two earlier letters ignored by the BOC.

² Attachment 2, Improper Practice Petition.

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UN Guidelines aimed at despotic oligarchs are inapplicable, and New York State does not mirror those states where reforms have been made to house a minority of egregiously violent inmates who deviate from the normal person in custody awaiting trial. Nor do the rules proposed echo those jurisdictions such as Los Angeles,³ as has been claimed.

Changes made by the BOC since 2015 to safety-related rules in the DOC have undeniably resulted in the opposite of “safe reform.” We have seen greater injuries to staff and inmates alike; greater costs per inmate; greater numbers of mentally ill inmates not being treated – certainly not humanely - by CHS; greater pay outs to lawyers and consultants. The results of “changes” in the past 5 years would all indicate a flamed-out social experiment based on the data, and yet this Board’s new rules and amendments to rules would add fuel to the failure. So much for evidence – based solutions so loudly demanded and touted in 2014 and 2015 by advocates for “reform.”

These changes have ignored all recommendations by those who most intimately understand the system – members of this union. The union has inexplicably been kept out of all advisory committees. It is simply a lie (double actually) as the Board claims on its website and in publications: the “Board’s rulemaking process commenced in 2017 and included discussions with . . . COBA.⁴ The Jails Action Coalition – yes. COBA – no. Nor any other union whose members face violence daily in the jails.

The proposed changes even gloss over the recommendations of the federal monitor on how jails must place primacy on safety.⁵ The changes ignore the reality of decreased safety and feeling of security repeatedly reported by this union to the Board for years.⁶ This Board has continued to act as if staff were not humans also deserving humane treatment – even ignoring that a crime committed in the jails is not reported as a “Criminal Act” unless the victim is a non-uniformed staff member. The changes are predicated on debunked “voodoo statistics” which go back years. Most recently they were either justified or created by a highly paid private firm championed by the former Chief of Staff and current kitchen cabinet member of DeBlasio – Jeff Thamkittikasem.⁷ These are changes that run against the expert opinions of such seasoned correctional professionals as (former Commissioner) Joseph Ponte, Dr. David Fullard, Martin F. Horn and Dan Pacholke.⁸

³ See Attachment 3, LA County Materials - result of FOIL request to the BOC.

⁴ <https://www1.nyc.gov/site/boc/jail-regulations/rulemaking-2017.page>

⁵ See Second Monitor’s Report at 142, questioning the wisdom of eviscerating the tool of segregation without properly fleshing out other disciplinary sanctions.

⁶ See Monthly Video “testimony” at the BOC’s website.

⁷ See Attachment 4, September, 2019 Article and August, 2016 Article.

⁸ See Attachment 5, Expert Materials.





The Department – a creature of this mayoral administration no less than the Board– has itself ignored the numerous submissions to take on this Board’s continued usurpation of the role of the DOC Commissioner.⁹ If only the DOC could have the courage to mount a legal challenge of this Board largely made up of jail abolitionists with a staff of young well-educated and well-meaning amateurs.

The sweeping rulemaking ignores the pre-emptive authority of the State Commission on Correction.¹⁰ In this regard the staffing of that State Agency or perhaps a lack of knowledge or will by it and the Governor may soon be rectified by making that Agency oversee this jail system as is intended by its mandate.

It ignores a state Court judge finding that

the [Department of Correction] has not shown that the DOC has implemented the controls mandated by the [Workplace Violence Prevention Law] WVPP, or conducted risk assessments for incidents of violence, or diffused areas of concern by taking mitigating steps, such as considering the propensities of a part of the jail population, as well as properly training and equipping correction officers to address some of these problems. This court's interpretation of the WVPP is that the statute was implemented to ensure that agencies like DOC meet their statutory obligations, allowing for limited judicial review.¹¹

One most glaring blow to safety presented is pretending that the Department of Correction can or will house inmates within 30 days of being properly adjudicated to be placed in segregation. Ever since the announcement by Joseph Ponte in October 2016 that the City had reduced those in segregation to roughly 125 persons¹², the DOC has kept this number artificially low by allowing an ever-mounting backlog of people who – under the proposed rule changes- will receive a “get out of segregation card” if still not placed in segregated housing in 30 days.

Why is there not a facility run by CHS dedicated to the extremely large population of mentally ill persons in custody like in enlightened jurisdictions? Where is the Academy promised for years by multiple administrations and directed by the current Monitor? Where is the *actual* Crisis Intervention Training that has been utilized in other jurisdictions? Where are the robust programs and mental health collaborations to reduce poor outcomes with the mentally ill and marginalized persons in custody? Where is the post-release follow-up with both those mentally ill and those whose situation in the “real world” may lead to recidivism?

⁹ See Attachment 6, COBA submissions to DOC.

¹⁰ See Attachment 7, SCOC materials.

¹¹ See Attachment 8, Order of Judge Ruben Franco.

¹² See Attachment 4, Op Ed of Joseph Ponte.





Why is Mayor DeBlasio able to instantly send to Bellevue a broken woman needing medication and observation - in an abbreviated “William Horton” move that allowed fascicle attacks on bail reform- but Correction Staff cannot as a matter of course?¹³ Being able to do so would guarantee the jails would be half as full as now, but forced medication is frowned upon. Why is this subject of security and humanity being abused for political gain? All but the decision makers are going to suffer the outcome ahead.

As for the actual rules proposed, as it is likely that this matter will end up resolved in a judicial forum, COBA offers the following – place a moratorium on this rule-making for robust investigation into alternatives rather than winnow down and throw out discipline needed to keep order in the jails.

The first lie or lack of transparency comes in the very beginning of the “Statement of Basis and Purpose.” No collaboration with COBA or another Unions was had. See. Pp. 1-5 Rulemaking package.

Second, the alternatives to segregation are not evaluated: Second Chance Housing Unit (“Second Chance”), Transitional Restorative Unit (“TRU”) (adolescents and young adults ages 18-21), Secure Unit (“Secure”), and Young Adult ESH (“YA-ESH”) (young adults ages 18-21). How well are these programs working as alternatives? What is their Capacity? Again, no transparency. Id. at 5

Third, the BOC claims that Vendors are being evaluated for operation tracking and “corrective action” (discipline). This impacts terms and conditions of employment of COBA’s members and needs to be bargained by the City of New York. It is void ab initio.

The first of the 4 Core principles is to protect the safety of people in DOC custody and the staff who work in DOC facilities. pp. 6 – 9 What is the evidence based or objective correlation between respect, dignity, demeaning custody, etc. with the stated goal of creating SAFETY? How are these implemented on a two-way spectrum (inmate to staff/ staff to inmate)? As this impact’s safety directly, it too is subject to bargaining by the City, and is therefore not appropriate for rulemaking. The second core principle aims to place people in custody into restrictive housing or restrictive statuses in accordance with due process and procedural and restorative justice principles. The third core principle strives to promote the rehabilitation of people in custody and reintegrate them into





the community. The 3 “ways to achieve” the second and third core principles are redundant. They exist already in the Standards or the case state regulations and statutory law. Indeed, they are already the subject of prior consent decrees about reintegrating inmates- all ignored by the City for decades and largely in the hands of agencies not part of the BOC’s “advisory” purview.

The Definitions section is a shamble of administrative rule-making. Vague. Subject to arbitrary and capricious application and unscientific. This is all that should be said at this time as much of the 128 pages published by the BOC will, as previously said, end up on the desk of a Judge. That said, COBA’s favorite (and that of one of the attorneys at Legal Aid who went on the record at one CAPA hearing to applaud it, is “Structurally Restrictive.” This reminds lawyers of the infamous definition of pornography “I know it when I see it.” The very epitome of vague and overbroad.

Sections 6-04 through 6-06 are particularly disruptive of safety considerations. Id. pp. 10-16. These sections make clear that the Board wishes to run the DOC. Policies sometimes have to change, and some flexibility is required in housing (“unregulated housing”) both “normal” detainees and the incredible minority that deviate from “normal.” This overreaching paternalistic imposition of values over reality may be largely to blame for the mass exodus of those uniformed staff who have climbed high enough to leave, or have opportunities with other agencies. Who knows? But a Warden or Chief with enough service to retire is making the most insightful move possible, and more will follow should BOC have what they seek.

Another disturbing section deals with EMERGENCY lock-ins. They are called EMERGENCY for a reason, and yet the Board’s tabulating cadre of staff find “58%, (n=768) of all emergency lock-ins still resulted in nine (9) or more hours of continuous lock-in time . . . Board analyses find that lock-ins contribute to perceptions of unfair and excessive punishment.” Yet another is where the Board orders the DOC to “do something.” They know not what, but DOC and CHS are supposed to issue a written directives to staff regarding the requirements of § 6-06 and provide the directive to the Board for its review and feedback prior to finalization. Again, this is not only poorly conceived and worded but also runs afoul of collective bargaining rights of COBA. I suggest at this juncture that Bobby Cohen take over and see if he still perceives the world through the smudged lenses of someone who has no relevant experience when faced with 21st Century realities of gangs and the millennially ultraviolent.

For all of the voodoo math utilized by the BOC staff in justifying these rule changes, the most flagrant statistical nonsense concerns populations in segregation “Between 2012 — when the average daily population (“ADP”) in PSEG reached its peak (n=868) — and the first three quarters





of 2019 -- when the ADP in PSE was 123 people.” Id. at 16. The metrics are faulty. Comparing 2012 with 2018 ignores the artificial suppression by the DOC. Only a certain number of beds have been “given” to segregate inmates and the rest lie in a state of stasis, which now will evaporate if the Board and HALT has their way¹⁴. Why is BOC not challenging the numbers provably false when dealing with this discrete matter?¹⁵

Much can be said of the clever rule change that those not placed in restrictive custody in 30 days walk free. Pp. 36-37

The Department reported that, as of July 31, 2019, 815 people in custody were waiting to be held in PSEG I, PSEG II, and RHU. Historically, people in DOC custody have experienced significant delays between adjudication and placement into segregation, which result in a disciplinary system that “appears arbitrary” and negatively “impact[s] transparency and perceptions of fairness and legitimacy.”

Vera analyzed 9,793 infractions committed in 2015 that resulted in a segregation sanction and discovered that by the end of 2015 nearly half of those cases had not resulted in an admission into PSEG. For those who were eventually admitted to PSEG, the average time between the issuance of a sanction and admission into PSEG was 13 days. One third of admissions into PSEG came after two or more infractions had been adjudicated

...

To address this issue, proposed rule § 6-30(e)(2) requires that placement in disciplinary segregation occur within 30 days of adjudication of guilt. **If the Department does not place a person** into punitive segregation within this 30-day period, **DOC may not place the person in PSEG at a later time**. The purpose of this rule is to ensure that, in keeping with procedural justice and due process principles underlying Chapter 6, punishment is “swift, certain, and fair.”

While it is true that swift certain and fair repercussions should be meted out, this Board knows that the DOC has not had the intention to make it so since Ponte took over. This approach actually violates SCOC regulations. This is evidenced in the prior findings under this administration and the leadership of Ponte that the backlog of inmates not being made to serve their time in segregation was a violation of the law. This is clear from a 2014 admonition by the SCOC, attached in 7.

¹⁴ See p. 17, fn. 55, inserting language created by someone not employed by the Board – Scott Victor Palkowitz.

¹⁵ See McKinsey article, Attachment 4.





Delaying imposition of sanctions indefinitely undermines both the legitimacy of the Department's disciplinary program and the ability of staff to meaningfully enforce the Department's rules of inmate conduct. It by no means punishes misbehavior fairly, impartially or consistently. Allowing violent and otherwise serious rule offenders whose offense(s) warrant confinement away from the general population to continue at large in the general population threatens the general safety and security of the facility and the well-being of inmates and staff alike.

The language as written in this rule completely absolves inmates if they are not placed in segregation by the DOC in a timely fashion - thus inverting the purpose of the State regulations. Playing on the failings of the DOC and the orders coming down on the Commissioner from "on high" is very very clever. And pernicious.

The expansion of "serious mental illness" exclusions at § 6-07(A)(1) and § 6-07(B)(1) could be welcome if properly defined and CHS did their jobs and **REMOVED** from Rikers all those with Serious Mental Illness. Id. at 17. What are the ill-defined (not defined actually) "People with 'Intellectual Impairments?'" This is strangely unscientific and – while the CHS may do what they wish in their current practice – should ramp up their presence and remain in residence in the MO units where their charges live eat and have programming. Dr. Cohen should acknowledge this before he recuses himself from voting if he values his skills as a clinician.

CHS, in consultation with the Board, has agreed to identify certain medical conditions and corresponding markers of acuity and advancement of disease for which separation could present a higher level of risk. Such conditions include, but are not limited to, asthma, seizure, diabetes, heart disease, lung disease, liver disease, kidney disease, organ transplants, treatment with anticoagulants, and involuntary hospitalizations. **The Board will approve this list of conditions and markers, and all future modifications to it.**

CHS has expressed concern that despite Board Standards meant to exclude individuals at elevated risk in segregation, there is no body of medical literature that reliably guides the assignment of risk to any individual patient. **Therefore**, proposed rules §§ 6-07(a)(1)(iv) (PSEG I) and 6-07(b)(1)(iv) (PSEG II) require that DOC provide **one-on-one constant supervision** for anyone placed in disciplinary housing units (and other restrictive housing units, discussed below), for the first 24 hours of their placement into such units. The proposed rules also make clear that after an individual is placed into PSEG I or II, **CHS has the authority to determine if that person should be transferred to a therapeutic unit.** “

Id. at 18-19.

Finally, CHS argues that health staff to undue pressure from DOC. This claim is outrageous and the accusation betrays a bias that mirrors that of some members of the Board. Indeed, it

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underscores the reason why this Board cannot make rules objectively and without prejudice. Let the Board take over the Bulova Building and the CHS care for the 40-50% of ill, deficient, and impaired. That is the only fair proposal that should be considered. Either that, or that the entire board resign and allow an objective balanced and fair group to take sober reflection before endangering further the inmate staff safety that is the natural outcome of this work of aspirational fiction.

In conclusion it is clear that some on this Board have shown prejudgment in matters that require objective and sober reflection. They know who they are and should resign or recuse themselves from *any* rule-making while sitting on this advisory Board. It is also clear that the fait accompli laid out in the 128 page proposal published on October 31, 2019 (claiming to go back to 2017 somehow) is rife with aspects that warrant a judicial review. Finally, were the Board serious and not a creature of jail abolitionists and fantasists in office, it would have exhaustive studies done by those who are truly disinterested in the outcomes – except placing a primacy on safety and security in a jail setting unlike any in the world.

Respectfully Submitted,

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Andrea Stewart-Cousins, NYS Senate Speaker

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December 2, 2019

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**Re: COBA's 3rd submission in Response to
BOC's Draft Restrictive Housing Rulemaking**

To Interim Chair Sherman, Ms. Ovesey and Members of the Board:

I am the President for the Correction Officers' Benevolent Association, Inc. ("COBA"). Neither I nor the legal Director of COBA have gotten acknowledgments of receipt of prior Emails, let alone received substantive requests requesting that the Board be more deliberate in the rule-making process and put off the dates announced for public comment and hearings.

2014 to 2016- THE EXPERTS SPEAK

It would be too easy to dust off old letters and white papers produced by COBA over the years to try to convince the DOC to take back its power from the Board of Correction. The BOC, and others without the power or expertise to run a large system let alone a jail system, have run roughshod over an imperfect system. However, it is a system which worked better fifteen years ago than today. We do not want- yet again - to parade opinions from COBA. The Board should tap experts in the field. It claims to do so but none are cited and provided in the rule-making package. Therefore, COBA will tap predecessors of Ms. Brann and others who were qualified candidates for her job.

The following is from former Commissioner Martin Horn to former BOC Commissioner Gordon Campbell.¹ This erudite letter did, and continues to, support the position that COBA has maintained:

When the Board first adopted its rules, it included Sec 1-02 (e) (v) that states, "Prisoners placed in the most restrictive security status shall only be denied those rights, privileges and opportunities that are directly related to their status and which

¹ A copy of Martin Horn's December 11, 2014 letter to former BOC Chairman Gordon Campbell is annexed as Ex. "D."

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cannot be provided to them at a different time or place than provided to other prisoners.” It is clear that the Board acknowledged that there might well be **a classification of prisoners whose management would require limitation of the rights, privileges and opportunities afforded general population prisoners.**

...

In many jails throughout the U.S. and even within New York State, prisoners are not routinely out and about for more than an hour a day. New York City is an anomaly by providing that prisoners are allowed to “lock out” of their cell for up to 16 hours a day. The Minimum Standards **of the State Commission on Corrections that govern the operation of the City’s jails** and those of all other jails in the State nowhere require that length of “lock out” time. Only New York City affords that “privilege” to its prisoners.

The proposal for ESH is most definitely not solitary confinement and should not be seen as such. **Those, like the Jail Action Coalition who conflate what the Department is proposing for ESH with solitary confinement do a disservice to the campaign against solitary confinement. They diminish the importance of our national conversation about solitary confinement** by alleging that ESH is, and they misguidedly imperil the very prisoners they purport to care about by trying to deprive the Department of this sensible tool.

Indeed, Joseph Ponte, the very person picked by Mayor DeBlasio to make the changes envisioned found the tool of segregation a necessity in 2016²:

The Department continues to make a good faith effort to comply with the minimum standards, but additional time is needed to develop alternative options to ensure the safety and security of the facilities. **In the interim, it is imperative that the Department be equipped with the various tools necessary to immediately and safely respond to violent acts.** We therefore ask that the Board take up for immediate consideration the requested limited variance renewal for six (6) months.

² See June 3, 2016 letter from Commissioner Ponte to Chairman Brezenoff, Limited Variance Regarding Implementation of Young Adult Plan, Ex. “E.”





Still and all, neither the BOC nor the DOC have developed any “alternative options.”

Again, at the very time when false numbers were being reported out by the DOC, at the July 2016³ BOC meeting Commissioner Ponte still asked the Board allow him to do his job of maintaining safe jails:

However . . . a marked shift occurred shortly after the first week in June when the Department started to increase the number past 700 of young adults housed together in GMDC. In particular, this included **an exceptionally high increase in the number of high-risk young adults (young adult inmates with particularly violent histories or strong gang involvement)** When daily alarms remain low, they can be addressed without significantly affecting day-to-day operations, however as the number of incidents and alarms increased exponentially it had a facility-wide impact.

...

Since the beginning of June 2016, **there was a pronounced spike in the number of incidents, particularly concerning, the rise in serious and violent incidents. This rise in incidents -- ranging from inmates refusing orders to slashings -- has been attributed to the increased number of “high risk of violence” young adults moved to GMDC in early June.**

...

The Monitor and his team of experts - who have experience eliminating the use of punitive segregation in other jurisdictions - *have continuously advised the Department on the need to be thoughtful and deliberate in our approach to punitive segregation reforms, and have cautioned that moving too quickly towards the ultimate goal of ending punitive segregation can undermine the success the Department has already achieved*

...

³ Id.





When Ponte resigned amidst the scandal of his “no show” leave-taking and abuse of city resources, the first name floated for his possible replacement was a corrections innovator -- Dan Pacholke. Lacking “jailing” experience like Ponte before him, he yet had a seeming willingness to follow the Mayor’s insistence on being the first system in the nation to rid a jail system of a necessary tool. However, not unlike Ponte prior to his seeing the scale of the problem outlined above, Pacholke co-wrote a thoughtful paper U.S. Department of Justice.

Dan Pacholke⁴ described his many suggestions for segregation reform that undercut the Mayor’s reactionary rush to be first at all costs. That paper tacitly critiqued the Mayor’s knee-jerk abolition of punitive segregation as merely “emptying beds.” Published in 2016, “*More Than Emptying Beds: A Systems Approach to Segregation Reform*”⁵, acknowledges the need for segregation as a tool *even while seeking its abolition*:

Segregation has been and will continue to be a tool that is necessary to manage legitimate safety concerns. Reforms in the use of this practice will only be successful if the safety of inmates and staff is maintained or improved in the process. To impact the health and well-being of people under correctional control, reducing the use of segregation on its own by only “emptying beds” is of limited value. To make an impactful change, a systems approach to this complex issue is essential.

THE ROLE AND POWER OF THE BOARD OF CORRECTION

The Board does not have the power it has self-ascribed. The members of that body as a whole, and their entire staff (surprisingly few of which have any corrections experience), certainly do not have the skillset needed to oversee one of the largest jail system (not a “prison”) in the world. However, the Board misses this distinction between a jail and a prison, and insists that somehow reforms can be made to detainees in the six-week average

⁴ Regrettably Mr. Pacholke has himself been implicated just this year in controversies with the premature release of inmates leading to poor – even fatal -- results for the public. See, <https://www.spokesman.com/stories/2019/feb/25/corrections-agency-discovers-sentence-calculation-/> and <https://www.injurytriallawyer.com/blog/report-on-doc-early-release-scandal-finds-state-employees-to-blame.cfm>, both last accessed December 2, 2019.

⁵ See “F,” Dan Pacholke and Sandy Felkey Mullins, J.D., *More than Emptying Beds: A Systems Approach to Segregation Reform*, NCJ-24958, BJA.





stay of an increasingly mentally ill and criminally culpable population in custody. This is – of course- absurd, but adding insult to injury the Board would “vet” practical correction methods against their aspirations of a more humane jail system. More to the point, it is insulting that the DOC itself will not assert itself as the NYPD does when anti policing methods are imposed.

As a case in point, look to the criticism leveled by Dr. Bobby Cohen during the Board’s May, 2017⁶ discussion of restraints placed on inmates for their protection and that of their co-detainees. As taken from the Board’s edited minutes (rather than the shriller soundtrack better seen/heard in the live video of that meeting):

Member Cohen said he was glad that DOC had agreed to implement a due process procedure regarding the use of restraints in Secure; however, he was disturbed to find out that the Department had been using three-point restraints in the Unit without any discussion with the Board or medical staff. A while ago, DOC did not place anyone in desk restraints, but now, an increasing number of people were being placed in two-point restraints, and the Board just found out that young adults were being placed in three-point restraints in the Secure Unit. Member Cohen said he found this practice very disturbing, particularly since it occurred without any directive describing the use of such restraints and, he believed, without any discussion with medical staff. He also noted that the Department’s restraint policy permits the use of restraint chairs, which is a very dangerous device.

Taking another case in point – this one a legal case previously mentioned in another letter– the Legal Aid Society and the Board of Correction wanted legal “assistants” to be given access to the jails. The Commissioner denied access based wholly on a safety analysis of those individuals. The Court held “We conclude that at least in this area the decisions of the Board of Correction can have *no more than advisory force*.” Legal Aid Soc. v. Ward, 457 N.Y.S.2d 250 (1982), *aff’d*, 61 N.Y.2d 744 (1984). Rather than being found to be acting arbitrarily and capriciously, the powers granted to the Commissioner were analyzed on the basis of basic rationality. Moreover, the powers of the Board to circumscribe the Commissioner’s primary goal of gainsaying safety in the jails were affirmed by New York State’s highest Court.

⁶ See Minutes of BOC May 2017 meeting at page 5.

<http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/May-9-2017/May%209%20202017%20Board%20Meeting%20Minutes%20-%20APPROVED.pdf>





Although not limited to Dr. Cohen, nearly monthly he or another of our Board members expresses surprise and consternation at not *first being asked* for permission to keep jails safe. This is infuriating to watch when those at COBA in this business since before Board Staff were born know that the responsibility and rights lay with the Commissioner of the DOC. Period. Can the BOC litigate or enjoin Department action or inaction? No. Can the BOC put a halt to necessary safety policies and directives that are accepted practice in jails around the world? No. Are the U.N.'s Mandela Rules reasonably related to the population in our jails? No. What is more it is insulting to utter Mandela's name in the same breath as the kind of population the advocates seek to apply those rules to.

**THE BOARD OF CORRECTION IS NOT A THRESHOLD "COURT"
TO JUDGE SAFETY MATTERS DETERMINED
BY THE DEPARTMENT OF CORRECTION.**

The BOC is an *advisory body only*. And, at that, to the City Council and to the Mayor, who in turn are supposed to take actions and make laws. The Board of Correction is meant to make recommendations and set "minimum standards" for conditions of confinement and correctional health and mental health care in all City correctional facilities. However, the advisory nature of the Board seems to have suffered from "mission creep" when compared to the traditional supervision of the SCOC – which ironically was the subject of an Article 78 proceeding filed by DeBlasio on March 5, 2018. Notwithstanding, the powers of the Board of Correction are limited:

The board, or by written designation of the board, any member of it, the executive director, or other employee, shall have the following powers and duties:

The preparation for submission to the mayor, the council, and the commissioner of proposals for capital planning and improvements; studies and reports concerned with the development of the department's correctional program planning; and studies and reports in regard to methods of promoting closer cooperation of custodial, probation, and parole agencies of government and the courts; and, the evaluation of departmental performance.

New York City, N.Y., Charter § 626, New York City, N.Y., Charter § 626 (c)(3)(4).





Although this may be excessive, by means of comparison with the above it is worth quoting (with emphasis) the language of the City's Charter granting Brann the authority that has been given away to the BOC.

The commissioner shall have:

- 1. Charge and management of all institutions** of the city, including all hospital wards therein for the care and custody of felons, misdemeanants, all prisoners under arrest awaiting arraignment who require hospital care, including those requiring psychiatric observation or treatment and violators of ordinances or local laws and for the detention of witnesses who are unable to furnish security for their appearance in criminal proceedings, except such places for the detention of prisoners or persons charged with crime as are by law placed under the charge of some other agency.
- 2. Sole power and authority** concerning the care, custody and control of all court pens for the detention of prisoners while in the criminal courts of the city of New York, the family court of the state of New York within the city of New York, the supreme court in the counties of New York, Bronx, Kings, Queens and Richmond and of all vehicles employed in the transportation of prisoners who have been sentenced, are awaiting trial or are held for any other cause.
- 3. Charge and management** of persons or any other institution of the city placed under his jurisdiction by law.
- 4. All authority**, except as otherwise provided by law, concerning the care and custody of felons, misdemeanants and violators of local laws held in the institutions under his charge.
- 5. All authority in relation to the custody and transportation of persons held for any cause in criminal proceedings and all prisoners** under arrest awaiting arraignment who require hospital care, **including those requiring psychiatric observation or treatment**, in any county within the city.
- 6. General supervision and responsibility** for the planning and implementation of re-training, counseling and rehabilitative programs for felons, misdemeanants and violators of local laws who have been sentenced and are held in institutions under his charge.

N.Y.C. Charter, Chapter 25 Section 623.

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The Commissioner and the Chief of the Department MISTAKENLY believe that they have to answer to this Mayoral Agency, and that often actually boils down to the recommendations by inmates' rights advocates (with combined budgets and staffs far exceeding that of the Board of Correction). Why would one of the largest City Agencies need to "kowtow" to a tiny oversight group unlike any other uniformed service in The City of New York (or other large agencies like the departments of Education, Mental Health and Hygiene or Housing)? The answer is - - - THE DOC DOES NOT. Just imagine the FDNY or NYPD sitting monthly for the type of scolding unqualified appointees give the DOC.

The Appropriate agency for monitoring the actual running of jails is the SCOC. As was recently shown, (and was in litigation) that body and the Governor have the power to shutter jails, deny plans to build housing units and make architectural/ engineering changes, (and as they have done several times), and find the City DOC in violation of long published and enforced STATE minimum standards. Indeed, the State Commission on Correction has issued violation letters to the New York City Department of Correction for the failure to properly punish violative inmates and maintain a backlog of hundreds who owe "bing" time. This was during this very administration under Ponte. And yet, the backlog of inmates who – after due process hearings- owe time in segregation continues at staggering rates.

Moreover, in a New York Times article dated May 5, 2017 it was announced that New York City jails were considered so dangerous that the state ceased allowing inmates in state custody to be transferred into the custody of the City.⁷ The State Commission of Correction ordered a halt to all inmate transfers from county jails outside the five boroughs. Such transfers typically involve special categories of inmates, like former correction officers or gang leaders, who face an increased risk of violence at jails in their home counties.

MENTAL HEALTH ISSUES

New York City Correction Officers are not Health Care professionals. Even though best practices, as outlined by Dan Pacholke in his paper referenced above, would expand the information shared with COs – this is not done. It is asidiously avoided by the DOC. And yet – despite being kept in the dark about individual triggers and diagnosis— my members are caring for more mentally ill human beings than anyplace on the East Coast of the United States. And yet they are deprived of critical information when dealing with this population.

⁷ <https://www.nytimes.com/2017/05/05/nyregion/rikers-island-transferred-inmates.html?mtrref=undefined&gwh=F1C26863BAFB4789A1CDD68CC7D33933&gwt=pay>





At a talk at New York Law School's "Citylaw" breakfast⁸ former Commissioner Ponte admitted to New York City running the largest mental health hospital on the East Coast. He stated that DOC is "managing well" with mentally ill offenders. To the extent that certain new programs may be experiencing positive outcomes for a few inmates this claim is true. That said, it does not take into account the majority who are mentally ill but go untreated, or the extremely violent who may be deemed to have need of psychiatric treatment in a proper non-jail facility.

At a Board of Correction meeting at of September 13, 2016 the DOC was sharply criticized for failing in managing the mental health needs of inmates. The DOC/HHC /DOHMH partnership⁹ was standing still or moving at a snail's pace at getting those in need to their mental health appointments. This has not changed. However, and crucially - nowhere in the discourse are persistent violent offenders discussed. Here we reference those unfortunate few who have scant chance at being rehabilitated in one of the model units touted by Correctional Health and are not one of those lucky few handpicked due to predictions that they may benefit. Nonetheless, the most violent >100 individuals like "John Doe" are certainly in need of a mental health solution for their persistent acts of destruction of property and assaults on other persons.

With the largest mental health institution on the East Coast, why is it that the "Doe" inmates are not being diagnosed and appropriately housed in a mental health facility where illness may be treated? We now have the capacity to have entire jails dedicated to the spectrum of mentally ill in the system. But the mental health staff at the DOC has been unable to grapple with these most violent inmates and the proposed rules do not help. Rather the powers that be unrealistically expecting miracles of minimally trained Correction Officers rather than mental health professionals *according to BOC minimum standards*. Why have we not investigated medical solutions to these violent mentally unsound individuals? The violence caused, as well as destruction to city property exhibited, are NOT the actions of individuals NOT suffering from mental health problems – though untreated/ undiagnosed. Can we not find mental health solutions such as they do with violent inmates in other jurisdictions? After all, it is your CHARGE to deal with these individuals: "Charge and management of all institutions of the city, including all hospital wards therein for the care and custody of felons, misdemeanants, all prisoners under arrest awaiting arraignment **who require** hospital care, including those requiring **psychiatric observation or treatment.**" See, N.Y.C. Charter, Chapter 25 Section 623.

⁸<http://nyls.mediasite.com/mediasite/Play/7431d6d421434e46aa43dd11c38075941d> at 23:00 - 26:00.

⁹ <https://www.youtube.com/watch?v=mJ8NQ0lkECM&feature=youtu.be> beginning at 44:00.





Sincerely,

Elias Husamudeen,
President

Enclosures

Cc: Marc Alain Steier, Esq. Director of Legal Affairs of COBA
NYC Board of Correction Members
DOC Correction Captain's Association
DOC Warden and Deputy Warden's Association
New York City Police Benevolent Association
New York City Corporation Counsel
DOC Commissioner Cynthia Brann
NYC Mayor's Office of Criminal Justice
Steve Martin, Esq., Nunez Monitor
DOC non- uniformed unions

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Chaplain

WILLIAM KWASNICKI
Retiree Consultant

KOEHLER & ISAACS, LLP
COBA Attorney

May 15, 2019

VIA Email
Martha W. King
Executive Director
NYC Board of Correction
1 Centre Street - 2213
New York, New York 10007

Re: Violence at Rikers Island

Dear Ms. King:

I write on behalf of Elias Husamudeen, President, in order to ask of the Board a modest request to follow-up on the meeting held at your Office in April 2019. If you will recall, that meeting was aimed at a program rolled out by the Department to monitor the violence fueled by housing inmates by Security Risk Group status. This does play a big piece in fueling violence no matter the actual population (i.e. total count) but COBA feels that it can contribute far more to the Board and public's understanding of the bigger puzzle.

President Husamudeen has requested the Board grant COBA 10-15 minutes at the regular June meeting to make a presentation similar in nature to those routinely made at Board meetings. With this real insider's view to possible solutions to persistent problems the cooperation we began at the April meeting can be expanded with a proactive demonstrative presentation.

Please feel free to reach out to me or to the President's office with any questions. I look forward to your anticipated reply. On behalf of the union, and the thousands of men and women it represents, I thank you for courtesies extended by you and the Board in this matter.

Sincerely yours,

/s/
Marc Alain Steier
Director of Legal Affairs

Cc: Elias Husamudeen, President

REQUEST DENIED

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November 19, 2019 (resent 12/3/19)

VIA Email

Records Access/ FOIL Officer
NYC Board of Correction

Re: FOIL REQUEST

Dear Records Access Officer:

Under the provisions of the Personal Privacy Protection Law, Article 6-A of the Public Officers Law, the New York Freedom of Information Law, N.Y. Pub. Off. Law sec. 84 et seq, the Correction Officers' Benevolent Association hereby requests any and all information concerning the Board of Correction's noticed rule making and rule amendments denominated "Restrictive Housing in Correctional Facilities" (however reaching far beyond restrictive housing itself) including but not limited to:

- All submissions, correspondence, data, documents, draft rules submitted or offered by "30 organizations and individuals — the local defense bar, criminal justice advocates, national criminal justice organizations and oversight entities, Correction Officers' Benevolent Association (COBA), correctional experts, and academics — and (y)our City partners, DOC and CHS" during the "extensive fact-finding in 2017-2018;"
- All items referred to in the rule making and amending package concerning "literature review and examination of DOC directives, policies, and reports" and rule drafts submitted by any individuals or organizations;
- All "[b]oard staff research, analyses, and reports; consultation of model restrictive housing standards at the national and international level; and study of restrictive housing in jails and prisons nationwide."

If all or any part of this request is denied, please cite the reason(s) which you think justifies your refusal to release the information. As you know, the Personal Privacy Protection Law requires that an agency respond to a request within five business days of its receipt. Also, please inform me of your agency's appeal procedure. Should any or all of this material be available in electronic form we would prefer to receive it in that form at marc.steier@cobanyc.org.

Very truly yours,
/s/
Marc Alain Steier

Cc: Elias Husamudeen, President, COBA
Steven Isaacs, COBA General Counsel

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BISHOP WILLIAM
RAYMOND WHITAKER II
Chaplain

WILLIAM KWASNICKI
Retiree Consultant

KOEHLER & ISAACS, LLP
COBA Attorney

January 29, 2020

Via Email

Margaret Egan, Executive Director
Jacqueline Sherman, Interim Chairperson
Stanley Richards, Vice Chairperson
Members, NYC Board of Correction

Re: Stakeholding Parties

Dear Board:

First, I offer congratulations to Ms. Egan for her courage in taking a posting which seems to have a built-in revolving door at an agency that has become the surrogate of jail abolitionists. This was never so clear as in the closing minutes of the last December, 2019 CAPA hearing when Vice Chair Richards went out of his way to address, on live video^[1], the small ad-hoc group sitting in the auditorium known as the Jails Action Coalition ("JAC"), stating that something "crystalized for me **when We went and met with** the Jails Action Coalition." Although an off-shoot of the Urban Justice Center, which otherwise does good work for the under-represented, the "JAC" is not a legal organization that even has any clients in the criminal justice system. And yet "members" sit on City-sponsored committees, advisory boards, and meet in secret private meetings with the BOC and other policy makers.

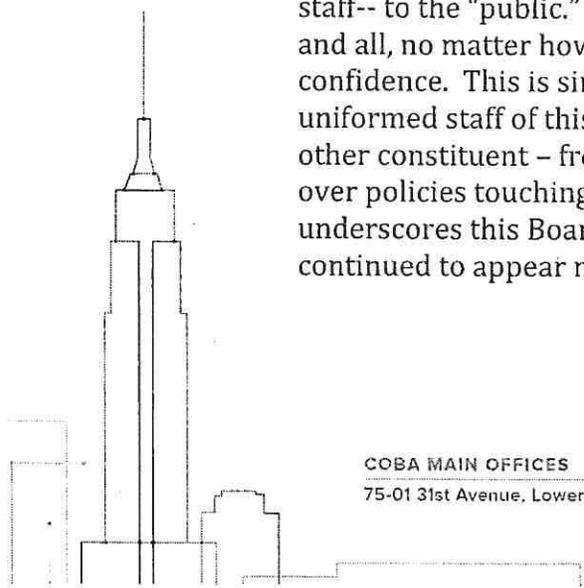
As far back as 2015 COBA demanded to know the procedure that the Board is bound by law to establish "for the hearing of grievances, complaints or requests for assistance . . . (2) by any employee of the department." Then-Chair Brezenoff's response was a snub. He relegated a Chartered constituency of the Board - DOC staff-- to the "public." He indicated that the public comment period is open for one and all, no matter how confidential the need for employees of the DOC to speak in confidence. This is simply unacceptable as COBA is the representative of 90% of the uniformed staff of this Department. This is especially true in light of how JAC and other constituent - free "groups" of overlapping memberships have undue influence over policies touching on the safety of others. This denigrates the role of staff, and underscores this Board's disdain for the rule of law. Yet since 2013 this union has continued to appear monthly before the Board.

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No longer. The BOC Is not an adjudicatory and does not employ any criminal justice experts. COBA will no longer give legitimacy to what an advisory body is doing to usurp the DOC's Chartered obligation. Submissions on rulemaking and litigation made necessary shall continue (just as Legal Aid's Prisoner Rights' project finds necessary) but BOC meetings do not warrant this union continuing to denigrate its members by appearing at the "public" comment period to air concerns of 10,000 people in 3 minutes.

The BOC has abdicated its responsibilities under the New York City Charter to the DOC's *employees*. It is for this reason that COBA was obliged to bring an action in New York State Supreme Court – to which the City of New York's response was not to address dangerous inmates but rather seek dismissal of the suit as "assaults on staff are completely unavoidable and inherent dangers."

The City lost that Motion months ago, and has yet to seek to sit down and negotiate the dangers pointed out by COBA in attempts to settle the case.

The City has systematically failed to do what is necessary to keep City workers safe. The Board – as another agency of the City - is a hair's breadth from reaffirming itself as being part of that system that the Judge found so inadequate. As such, COBA is weighing its legal options concerning any set of jail-abolitionist inspired rules which will only see a furtherance of the past four year's increase in serious injuries to staff, increased payouts in Workers' Compensation, increased costs in the jails, larger pay-outs to inmates due to violence in the jails, and continued disdain for the job of the Commissioner of the Department of Correction to run Her jails without undue social experimental interference.

In closing, should the BOC want to take its charge under the City Charter seriously, and forge a future that is truly respectful of "stakeholders," I suggest a complete moratorium until we meet outside of the public comment period to discuss the serious security concerns raised by these changes just like the Board met with JAC.

Very truly yours,

Elias Husamudeen
President

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Cc:

Carl Heastie, NYS Assembly Speaker

Andrea Stewart-Cousins, NYS Senate Speaker Patrick Ferraiuolo, CCA President

Joseph Russo, DWA/WA President

Frederic Fusco, Legislative Chairman, COBA

Mayor's Office of Criminal Justice

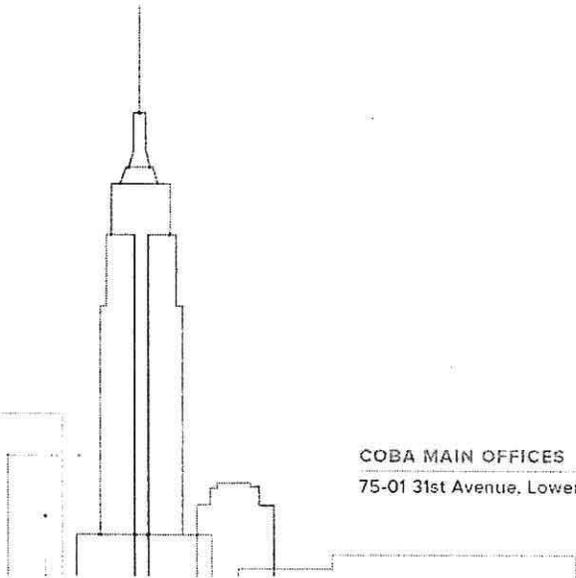
NYC First Deputy Mayor Dean Fuleihan

New York State Commission on Correction

Scott Stringer, NYC Comptroller

Chief of Department Hazel Jennings

Department of Correction Commissioner Cynthia Brann



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WILLIAM KWASNICKI
Retiree Consultant

KOEHLER & ISAACS, LLP
COBA Attorney

February 9, 2018

Martha King
Director, NYC Board of Correction
1 Centre Street
New York, NY 10007

Dear Director King,

As President of the Correction Officers Benevolent Association, I have watched with great disappointment, the continued struggles of the Department of Correction. I have listened to the constant rhetoric of government officials, outside consultants, federal monitors, corporations with their own agendas and the news media denigrate the officers of the New York City Department of Correction. While there has been much talk, there has been little accomplished. The time to end this cycle of insanity is now. The safety and security of every officer, every civilian and every inmate is at stake. The time has come to engage in serious conversations, to put egos and ideology aside, and act in the best interests of the citizens you have sworn to serve.

I have attached to this letter an outline of what we believe to be a path to a safe and secure environment within every facility operated by the New York City Department of Correction. I hope you will take the time to carefully read our proposals. I also will be asking you, in the near future, to attend a summit of stakeholders so we can meet and discuss ways to improve the safety, security and the overall mission of the Department of Correction.

Sincerely,



Elias Husamudeen
President

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INTRODUCTION

It's been said that the definition of insanity is doing the same thing over and over again and expecting a different result.

It's also been said that we reproduce what we don't resolve.

The Department of Correction is guilty of both these principles. First, the Department of Correction is still attempting to resolve the issue of jail violence through the creation of so called specialized inmate housing units/programs. However, regardless of whether we call them restrictive housing units, enhanced supervision housing, enhanced housing, transitional-restorative units, secure unit, enhanced supervision-restart, these housing units have done nothing to decrease jail security during the last four years. Further, in many cases, these units and how they are run have led to an increase in jail violence. The Department of Correction thinks that the mere creation of housing units/programs with fancy names somehow means they are creating something different or new. **They are not.** They have changed nothing during the last four years and continuing these units/programs and expecting a change is the definition of insanity.

Second, despite the fact that these units and other "reform policies" have been in place for four or more years, very little progress has been made to ensure jail safety. (Mayor's Management Report 2013-2017). Correction Officers, staff and inmates continue to be assaulted at alarmingly increasing rates on a daily basis without accountability or sanctions placed upon the inmates committing these assaults (Federal Monitor's Reports I-IV). The Department of Correction has been unable to lower the violence across every major category. (Mayor's Management Report 2013-2017). Astoundingly, despite a clear record of these policies, the Department of Correction continues to stand by them and have not developed any new or effective initiatives. Thus, the Department of Correction has failed to learn from recent history and continues to repeat its mistakes --- at the expense of Correction Officers, staff, inmates, and the public.

Correction Officers have been doing this job for decades. We've been dealing with the same population for decades. We are dealing with an age-old problem (jail violence) that is not new to anyone, except to those who have never faced it. Thus, Correction Officers deserve leadership that understands how to deal with an age-old problem in different ways. The Department deserves leadership that can not only think outside of the box, but can also think inside of the box as well. It deserves leaders and managers who are not pre-programmed with an ideology that has accomplished zero results. It deserves leaders that will actually work to accomplish what should be the Department of Correction's number one priority: safer jails.

We believe the foremost reason the Department of Correction has been unable to reduce the violence in the jails is because it has failed to implement deterrents to criminal behavior in the absence of punitive segregation, and continues to implement faulty policies that only serve to embolden those that would do us harm. Simply put, inmates should be held accountable when they violate the law or rules established to maintain safe jails.

So far, there's been a lot of talk about solving the problem and that's great; everyone's been great at talking about it. But, virtually **no one** has been able to actually fix the problem. More resolve must be shown for the Officers behind the gate. For four years, the Department of Correction has churned out policies that look good on paper and present good optics to those on the outside but it's been a living hell to those subject to these policies --- both Correction Officers, civilians and inmates alike.

Here are some of the other things the Department of Correction has failed to effectively address in the last four years:

- Making each individual jail accountable for its own problematic inmates.
- Empowering Wardens to be responsible for running their own facilities
- Creating more front-line supervisors, specifically Captains and ADWs

The one light of hope in these dark times is that the Department is now re-arresting inmates who commit criminal acts and the Bronx DA is now prosecuting inmates who commit acts of violence while in jail. **However, we cannot rely on the DA's office to address the root causes of the problem.** That responsibility falls on the Department of Correction and the solution begins with *disciplinary sanctions and restrictive measures for inmates when rules are broken or not adhered to.*

Case in point: *On January 21, 2018, inmate Kaymel Taylor, 20, was accused of slashing another inmate. He slashed former inmate Joseph Troiano, 28, who needed 22 stitches to close a 6-inch slash across his face. Inmate Taylor, 20, because of his age, cannot be placed in punitive segregation. Although he will be re-arrested, he can only be placed in programs such as ESH, TRU, Secured Unit and Second Chance which are void of any real disciplinary sanctions to address the reason for being placed in such a program. He will still be allowed Visits, Commissary, Barbershop, Law Library, Recreation, Property, Telephones, Television, Religious Rights, Attorney Access, Mail, Magazines, Newspapers and Packages. **The Board of Correction's Rules and the Department of Correction's own misguided policies are responsible for allowing him the opportunity to cut another inmate. Because OF HIS AGE, he can't be segregated from other inmates. It defies logic that there are more restrictions placed on Correction Officers rather than on violent inmates who commit crimes while incarcerated.***

OVERVIEW

The Department should no longer look outside of itself to fix its problems. It shouldn't have to outsource the management, operations, and control of our agency to private companies exacting large price tags who don't know anything about jailing. The Commissioner and uniformed managers needs to take responsibility and ownership of the Department and not be bullied into doing something that fully jeopardizes the safety and security of the jails. It also needs to use what they have available to address the behavior of the inmates in our custody before we create more programs and policies that in the last four years have been proven unsuccessful in ensuring our number one priority: safer jails.

The Commissioner of the New York City Department of Correction is authorized by Sections 389, 623 and 1043 of the City Charter and Section 9-114 of the Administrative Code to adopt rules relating to the management of the Department of Correction facilities and the conduct of inmates in such facilities. However, a review of Directive 6500R-D entitled "Inmate Disciplinary Due Process" as well as a review of the "Inmate Rule Book" reveals that the department has failed to enforce its own written policies, thus leaving line staff without any means, support or recourse when dealing with inmates who commit infractions and violate Department rules.

Recently released **Directive 4495 "Solo Housing"**, which sets forth the reasons an inmate may be placed into solo housing, nowhere mentions as a basis for placement into solo housing violent acts by adolescents and young adults who against Correction staff. The only criteria in regard to violence, addresses violence against other inmates, or fear of reprisals from violence from other inmates. See Section IV (A) (1) a-e.

Former Department of Correction's policies expressly made clear that inmates would be accountable for violating the rules of conduct or law. Use of Force policy #5005 dated 8/30/90 stated; *"The Department expects all inmates to obey the law and Department/Facility rules of conduct. Those inmates who do not comply with the rules face disciplinary sanctions including punitive segregation and/or the loss of good time. Those inmates who violate the law also face arrest and criminal prosecution"*. For some reason this common-sense statement reflecting New York State Law was removed from the new Directive.

Although this policy has been superseded, in no way should anyone think the same expectations of accountability do not apply. However, the Department's **current** policies leave much to be desired in terms of inmate accountability.

When an inmate violates the jail rules, the process available to the department is detailed in Directive 6500R-D (Inmate Disciplinary Due Process), Section III "Procedures". Under this policy, if inmate infractions are proven, the recourse is the following:

- 1) Reprimand
- 2) Loss of privileges
- 3) Loss of good time if sentenced
- 4) Punitive Segregation for up to thirty (30) days per each applicable individual charge
- 5) Restitution for intentionally damaging or destroying city property, a twenty-five (\$25) dollar disciplinary surcharge will be imposed on all inmates found guilty of a Grade I or Grade II offense, as found in Directive 6500R-D (page 20) and in Inmate Rule Book (10/12/2007) under penalties 1-05.

There are no other *disciplinary* sanctions placed upon inmates' privileges who commit infractions and crimes while incarcerated. Inmates have the privileges of Law Library, Recreation, Property, Visits, Telephones, Television, Religious Rights, Attorney Access, Mail, Magazines, Newspapers, Packages and Commissary. Thus, regardless of the violence or crimes an inmate commits while in jail, none of their privileges are revoked and if they are, it is done in only very narrow circumstances or with unreasonable stipulations *from the Board of Correction and at times the Department of Correction itself* that renders it an ineffective means of punishment. The clear lack of collaboration between the Board of Correction and the Department has resulted in a dilemma that has *increased* violence.

Indeed, the New York State Commission on Correction has previously issued violation letters to the New York City Department of Correction for the failure to properly punish violent inmates. This was during this very administration. And yet, the backlog of inmates who – after due process hearings- continues to owe time in segregation at staggering rates.

PROPOSALS

COBA PROPOSAL #1: Inmate Disciplinary Sanctions on Inmate Privileges

In an all-out effort to reduce violence while holding inmates *accountable* for committing crimes and infractions during incarceration, COBA recommends placing disciplinary sanctions upon inmate privileges. We recommend that the Department of Correction Task Managers with effectively and judiciously utilizing the existing inmate discipline measures and analyzing their effectiveness. They should begin tracking COBA's proposed sanctions in like manner to those indicators tracked on the Monthly Facility Management Reports so that their effectiveness can be comparatively evaluated. The use of COBA's proposed inmate disciplinary sanctions will serve as a powerful deterrent – the sheer perception to the inmates is that it is just not worth it to engage in such activity. *If inmate disciplinary sanctions have their desired effect, either in whole or in part, we can envision a Department with less restrictive housing, greater compliance, fewer injuries to staff and inmates, and a real change in morale and culture.* Implementing these disciplinary sanctions may even have an impact on recidivism.

By way of a few examples:

Visits

We must consider that certain aspects of the Board of Correction Minimum Standards and Directive 2007R-C, "Inmate Visit Procedures", effectively work against the Department and its efforts to deter violence and directly puts staff, visitors and members of the public at risk. The Department cannot limit or deny a visit to an inmate or visitor unless the criminal act is committed (or reasonably expected to be committed) in conjunction with a visit.

We can only limit or deny a visit if a litany of parameters is met and then there is the appeal process where the Board too often acts as an inmate/visitor advocate than an objective entity.

The Board must relax the constraints put on the Department and permit it to temporarily suspend visits even in cases where the inmates offending act of is not directly or indirectly in conjunction with the visit. This type of inmate disciplinary sanction will serve as a powerful deterrent. This will help to send the message that it is just not worth it to engage in acts the violate inmate rules. It may even have an impact on recidivism. *That would be a great joint Board of Correction-Department of Correction initiative that would have a direct impact on safety.* The impact we can have here is beyond measure.

Telephones

Let's consider telephone use by the detainee population. The Board mandates that detainees be permitted one call per day at a minimum of six minutes per call. Beyond arguably the right to speak by telephone to counsel, phone use is a privilege. This privilege should be curtailed when inmates commit acts of violence. Such action would serve to deter violent criminal activity.

The Department should be able to deny or limit access to telephones for rule violations.

Haircuts

Currently, the Board of Correction mandates that inmates must be afforded haircuts. It does not, however, stipulate where and when these haircuts take place. The Department of Correction should be able to remove the privilege aspect of taking a trip to the barbershop.

We recommend that when found guilty of rule violations, inmates be charged for haircuts except when going to court.

Commissary

Commissary access is a privilege. Immediate sanctions to deny commissary access to any inmate who commits any act of violence should be implemented or commissary being limited to personal hygiene products. Such denial should be extended for violent acts committed during a denial period.

We recommend that the Department implement disciplinary sanctions to deny commissary access for inmates that violate Department rules and regulations.

Recreation

Currently, the Board of Correction mandates, "recreation may only be denied only upon conviction of an infraction for misconduct on the way to, from, or during recreation." This rule is outdated. As a deterrent to violence, the Department needs to have the ability to deny or limit recreation for any violation of inmate rules.

We recommend the Department of Correction have the ability to deny or limit recreation as a disciplinary sanction for violation of inmate rules and regulations.

Law Library

The COBA does not seek to limit or deny any inmate the right to legally defend him or herself. We believe the Board's current rule that inmates be permitted access for at least two hours each day the law library is open to be sufficient. Currently the Department of Correction may only deny access to the Law Library for disrupting the orderly function of the Library or using it for a purpose other than for what it is intended. Even if an inmate is prohibited from physically accessing the Law Library, the Board permits the Department of Correction to develop alternate access to legal materials for effective legal research. The Department of Correction needs more latitude to effectively deter the violent inmate.

We recommend the Department of Correction be able to deny or limit access to the Law Library for rule violations even if such violations do not occur in the Library itself.

Disciplinary Sanctions for Splashing and Spitting Incidents

While no crimes against a Correction Officer should be tolerated, particularly egregious and sadly frequent are splashing and spitting incidents. To be clear these are incidents where inmates assault Correction Officers with hot water, saliva, urine, semen, and feces. The Board and the Department must take these incidents seriously and impose serious deterrence measures like the above proposed inmate disciplinary sanctions. The Department of Correction needs to be able to sanction an inmate's use of telephone, recreation, visits, law library, and haircuts when an inmate subjects our staff to potential pathogens. *Inmates who splash or spit on staff should be denied everything except basic minimum standards for a finite period of time.* Only this way will the Department of Correction be able to truly stop the increasing incidents of spitting and splashing.

COBA PROPOSAL #2: Restoration of Punitive Segregation in Limited Circumstances

The City of New York widely publicized its goal of “reforming” the Department of Correction. One of these “reform” measures was to eliminate the use of punitive segregation --- a tool widely misrepresented as solitary confinement ---- for 16-21-year olds. The use of punitive segregation for the adult inmate population over age 21 was also severely limited. ***We do not seek to debate the pros and cons of punitive segregation.*** However, the elimination and limitation of punitive segregation has directly led to an increase in violence (as reported in the Mayor’s Management Report 2013-2017). The problem is clear: **in an unbelievable display of poor management and oversight** both the Department of Correction and Board of Correction eliminated punitive segregation – an effective violence deterrence tool --- **without a plan to fill the void that was left.** The Department of Correction failed to implement any alternate measures that could effectively deter violence and violation of the rules. ***Programs such as Secured Unit, ESH, the Transitional Restorative Unit (TRU) or Second Chance*** are void of disciplinary sanctions and fail to address the underlying reason for why an inmate is being placed in such programs or units. *Thus, the Department of Correction’s mission to reduce the use of punitive segregation has actually empowered inmates to further commit crimes while incarcerated because they know that there is no further penalty, accountability or deterrent to his/her unlawful behavior beyond being detained in jail or criminally prosecuted.*

COBA recommends that the Department of Correction consider reinstating some form of punitive segregation for 19 to 21-year-old inmates in very limited circumstance – against those who commit serious offenses. We recommend this measure be used only when absolutely necessary and for the shortest duration and in the least restrictive manner possible. We also ask that its use be coupled with what we refer to above as “inmate disciplinary sanctions”. For example, if inmate disciplinary sanctions don’t work then and only then should punitive segregation be used on inmates 19-21 years of age. ***Further, if punitive segregation doesn’t work inmates (regardless of age), should be removed from our custody and turned over to the DOH/MH or a separate facility should be created to house them.*** This facility should be operated by the DOH/MH and other health care professionals with Correction Officers providing security and escort only (Los Angeles has a model of such a facility).

COBA PROPOSAL #3: Inmate Idleness Reduction

As an incentive and deterrent, COBA recommends that the Board of Correction consider standards for idleness reduction for inmates. Too often Department of Correction programs come and go with little measurable effect. In fact, the Department of Correction implements many of its programs in a bubble. Further, we understand that the Department of Correction has earned a less than optimal track record for submitting Monthly Management Reports in a timely and accurate manner and has been reluctant to enact measures to truly measure program effectiveness. We urge the Board of Correction to hold the Department of Correction accountable for that.

If programs are to be continued, we need programs that will stand longer than any one administration and provide stability for staff and inmates. The Department of Correction should mandate programs that foster teamwork and good sportsmanship.

COBA PROPOSAL #4: Other Disciplinary Sanctions

There are many other disciplinary sanctions such as 1.) Being locked in their cells for 4, 6, 8 hours or an entire tour 2.) Receiving a non-contact visit for a specified number of times and other disciplinary sanctions to be explored by all parties involved.

COBA PROPOSAL #5: A Summit of all Stakeholders

While we believe that our overview accurately reflects how to improve the security and safety for Correction Officers, staff and inmates alike, it is time for all the stakeholders to be in the same room, at the same time to discuss these issues of great importance. Through real conversation and dialogue, we are confident we can obtain great results and stop the insanity. In the near future we will be inviting each of you to attend a meeting of all stakeholders to address these issues.

In closing, we urge you to say “NO” to the current slate of failing programs and policies, and say “YES” to true progress as embodied in COBA’s proposals. These proposals are the real deterrents. These proposals are real measures that will effectively curb jail violence and increase safety. These proposals will, if given a chance to succeed, have a tremendous positive impact on the New York City Department of Correction. Please give these proposals serious consideration.

References:

Operations Order #04/14 (effective 4/25/14)

Directive 4104R-C (effective 3/24/17)

Directive 6500R-D (effective 10/5/16)

Directive 2007R-C (effective 7/14/17)

Directive 4016R

SCOC Minimum Standards

Board of Correction, Minimum Standards- Section 10

Board of Correction, Title 40 Chapter 1 Correctional Facilities

Federal Monitor's Reports I-IV

COBA's NIC Proposal July 2017

Mayor's Management Reports (2013-2017)

Directive 4495 – Solo Housing



CORRECTION OFFICERS' BENEVOLENT ASSOCIATION, INC.
"PATROLLING THE TOUGHEST PRECINCTS IN NEW YORK"

November 27, 2019

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Chairman

JOHN KWASNICKI
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Attorney

VIA EMAIL

New York City Board of Correction
One Centre Street
New York, NY 10007

**Re: COBA's 2nd submission in Response to
BOC's Draft Restrictive Housing Rulemaking**

To Interim Chair Sherman, Ms. Ovesey and Members of the Board:

I am the Director of Legal Affairs for the Correction Officers' Benevolent Association, Inc. ("COBA"). I write on behalf of President Elias Husamudeen. Neither I nor the President of COBA have received any reply to our November 20, 2019 letter requesting that the Board be more deliberate in the rule-making process and put off the dates announced for public comment and hearings.

This submission is the second of several concerning the proposed rulemaking first announced on October 29, 2019 with public comment extended until January 3, 2020 and a public hearing inexplicably scheduled prior to the end of the written comment period on December 2, 2019. The analysis and critique of the actual rules shall come once other voices have been heard. However, the union still maintains this process is rushed and therefore flawed.

INTRODUCTION: SEGREGATION

Segregating inmates for infractions should only be used as a last resort where it will adjust aberrant behavior or keep others safe. It was a practice often overused by the New York City Department of Correction ("DOC") for a wider degree of infractions than necessary, and the backlash in rulemaking at the New York City Board of Correction ("BOC") during the past several years has been just as exaggerated as its prior overuse.

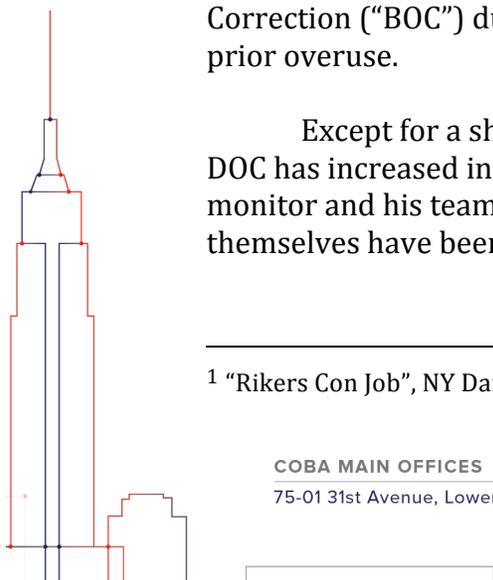
Except for a short time in mid-summer 2017, the rate of violent incidents at the DOC has increased in each period documented by the Judicially appointee *Nunez* monitor and his team. Then again, we have all recently learned that the DOC's figures themselves have been questioned *within* the DOC as bogus.¹

¹ "Rikers Con Job", NY Daily News, September 10, 2018, Annexed as Ex. "A."

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According to the DOC, the rate of violence is calculated using a facility's average daily population. That rate now stands at twice what it was when the consent decree went into effect in 2015.

This is not correlated to increased violence at the hands of staff towards inmates at all. So, what are the other variables that have changed besides the decreased number of inmates? One factor is that the remanded detainee population face more egregious charges and often gang affiliated. Another aspect is that young detainees – mostly men - have been moved into an environment for their improvement and benefit. However the violence statistics for youth have spiked as well.

Of course, segregation has been abolished, reduced, and expunged in many cases. COBA has long warned that this removal of consequences could give free rein for inmates to hurt one other and staff. Could there be a correlation, let alone some causation mixed in? To ignore this possibility continues a factually false and flawed revisionist narrative. This, in the face of reformers insisting upon evidenced-based solutions. The evidence is in and should end for the moment any discussion of revising any housing changes for violent inmates unless it is to restore more restrictive housing alternatives. As discussed below, the very falsified figures propelling further change needs a deep dive before any security-impacting changes are made.

THE LAW

The principled approach informing the zeitgeist against incarceration is not misplaced. However, not everyone has gotten the message and people continue to be arrested for some very serious matters. Judges often remand them into the custody of the DOC without bail for a variety of issues – largely based on keeping the public safe. Insofar as safety in jails, the DOC is legally bound to take reasonable measures to protect ALL inmates from violence. Historically, and throughout this country and similarly situated countries, violent individuals have been controlled by separation, restricted movement and limited access to vulnerable inmates and staff.

The United States Supreme Court has ruled that if jail officials know of a substantial risk of harm to a person in custody, but knowingly disregard the risk by failing to take reasonable measures to abate it, the officials may be found liable. Indeed, federal courts in New York have squarely addressed this as concerns the DOC and Rikers.²

² See, Shuford v. City of New York, 09 Civ. 0945 (PKC)(SDNY) and Fisher v. Koehler, 83 Civ. 2128 (MEL)(SDNY).





As the record of settlements and suits against the City have borne out, the inability to take reasonable measures to protect inmates from violence in this “reform era” has cost law-abiding taxpayers more than ever before.

Constitutional protections for inmates aside, state law applies to protect DOC employees – Correction Officers – according to a recent decision by Hon. Ruben Franco in Correction Officers’ Benevolent Association v. City of New York:

[The] DOC has failed to address what is a small population of predatory inmates who cause the largest number and gravest types of injuries to correction officers, as well as others within the system.

...

[The City] has not shown that DOC has implemented the controls mandated by the WVPP, or conducted risk assessments for incidents of violence, or diffused areas of concern by taking mitigating steps, such as considering the propensities of a part of the jail population . . .

These propensities for violence were the subject of that 2016 lawsuit. These issues were of particular concern since October 11, 2016. That is the date on which Mayor DeBlasio usurped his own Commissioner’s authority and unilaterally announced an end to punitive segregation for young adults aged 19-21.³

Lawsuits and settlements against the City and DOC workman’s compensation claims have spiked. And yet the Mayor has offered no effective replacement, and no replacement has since been found. Yet all indications suggest this shuttering of restrictive housing, as an option is at least one factor upon which the spike of violence has hinged.

While DeBlasio’s press release⁴ touted it as a reform -- “*New York City becomes first in nation to reform practice for young adults*”-- it ought to have been titled “*New York City recklessly abolishes crucial tool relied upon to keep City workers safe.*”

³ See, Ex. “B” – annexed- Opinion by Joseph Ponte (Fmr. Commissioner NYC DOC) *Leading the Way on Ending Punitive Segregation*, Gotham Gazette, October 11, 2016.

⁴ See Mayor’s Press Release of October 11, 2016, annexed as Ex. “C.”





The rushed reform enterprise was undermined by the data we know now proves how wrong the term “reform” was in this case. As one sorely missed New York politician put it, “everyone is *entitled* to his own *opinion*, but *not entitled* to his own *facts*.” Again, it bears pointing out that only by “fudging” the facts was the opinion even “entitled” to be uttered.

To date neither the Mayor nor any of those “assuming” supervisory and security roles over the DOC have had even a spark of an effective suggestion to replace segregating violent individuals. Indeed, the BOC itself in its rulemaking is inert. Throughout the lengthy rule-making package the Department is directed to “do something” in the most difficult of areas. They expect this in the face of the DOC’s inability to have reform options work during the 2015 – 2019 period. The Board then has the temerity to reserve the right to “veto” security measures. This, based on the thinking of those like Dr. Bobby Cohen – a professional amateur in the world of Jail oversight.

These issues will be further discussed when appropriate in a future submission by COBA. However others have yet to be heard in pointing out the deficiencies of these proposed changes to how inmates are housed. And, again, it would be useful to this ongoing public comment period to know what correction professionals have informed the Board’s principled rule-making in order to weigh those opinions properly.

The Mayor, so-called “reform” advocates and the BOC have a fuzzy goal in mind. They just don’t have a soupçon of a hint of how to achieve that goal besides turning New York City into Oslo⁵. And, while all of this uncertainty continues, the City of New York continues to rack up larger and larger pay-outs in inmate lawsuits because the DOC has little will and fewer tools to keep inmates safe as the law requires.

THE FACTS

It comes as no surprise to DOC staff that since 2015 a tiny and violent population has ramped up assaults since “reform.” After spending \$27 million dollars on private consultants the City was left holding a bag of hot air and little else. Hired in 2015, and concluding their magic act in 2017, the McKinsey group produced figures showing a drop in violence that were unable to be verified. Expensive Smoke and Mirrors.

⁵ New York’s Jails Are Failing. Is the Answer 3,600 Miles Away?, New York Times November 12, 2019, last accessed November 19, 2019. <https://www.nytimes.com/2019/11/12/nyregion/nyc-rikers-norway.html>





In the same period when an expensive private contractor was making facts up, the DOC lost almost its entire senior staff:

- * DOC Commissioner Joseph Ponte;
- * Chief of Staff Jeffrey Thamkittikasem;
- * Chief of Department Martin Murphy;
- * Chief of Security Turhan Gumusdere;
- * Deputy Commissioner for Strategic Planning Shirvahana Gobin;
- * Deputy Commissioner of the Investigative Division Gregory Kuczinski;
- * Senior Deputy Commissioner Charles Daniels;
- * Deputy Commissioner of Operations Errol Toulon;
- * Assistant Commissioner Keith Taylor; and,
- * Deputy Commissioner Nichole Adams-Flores.

It is more than fair to aver that the results of the “Restart” and other programs paraded by the above individuals during the 2015 – 2018 period were lies, failures and downplayed a rise in jail violence which put everyone in DOC’s facilities at serious risk. In fact, according to the Nunez Monitor’s April 2017 report, the five jails where the “Restart” program was a crowning jewel “account for the largest amount of missing documentation for incidents analyzed from August to October 2016 . . . (and) account for the largest number of incidents.” Indeed, Ponte and Thamittikasem testified to the City Council in March 2017 during budget hearings using these already questioned and debunked numbers. Those figures were never since used to support reform efforts.

The perverse fact is that the historic removal of a necessary tool – punitive segregation for the tiny (>100) minority of very violent young adults and adults – has since caused the increased need to use of punitive segregation. Under the Bloomberg administration the BOC tried to tie the use of punitive segregation to an increase in violence. Now, Bloomberg is going national and all that is clear from that period is that the drop in punitive segregation has been met with an increase in serious violence against staff. This is because – notwithstanding the valid argument that the mental health of a NORMAL young person may be impacted by segregation – the mentality of these young mostly gang-affiliated members is already well set.





To ignore out of hand the possibility that these offenders defy the studies relied on by principled critics is provable brinksmanship. And yet the only option offered is to head further down the rabbit hole.

So, notwithstanding reform efforts, the poor oversight and pretended management of the DOC by the BOC (and reliance upon input by anonymous inmate advocates) has resulted in **increased** violence. The irony is not missed on Correction Officers that the attempt to reform and “humanize” the jails has led to increased infractions where inmates dehumanize themselves and others– especially where inmate-on-inmate violence is concerned. Four years into this social experiment, academic arguments about the wholesale ineffectiveness of segregation have now been tested and found wanting.

COBA finds that the DOC and BOC have failed to keep people safe. This current rule-making process is rushed. Such a security matter is being rushed. That rush is very dangerous. It is not rooted in best outcomes for those concerned and only can benefit some individuals and politicians who never interact with the jails or their population.

Respectfully Submitted,

/s/

Marc Alain Steier, Esq.
Director of Legal Affairs, COBA

Encl.

Cc: Elias Husamudeen, President of COBA
COBA Executive Board
NYC Board of Correction Members
DOC Correction Captain’s Association
DOC Warden and Deputy Warden’s Association
New York City Police Benevolent Association
DOC Commissioner Cynthia Brann
Steve Martin, Esq., Nunez Monitor





EXHIBIT “A”



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Staff concerns about sketchy data ignored in McKinsey's mysterious \$27 million mission to rein in violence on Rikers Island

By [Chelsia Rose Marcus](#) and [Stephen Rex Brown](#)
New York Daily News |
Sep 09, 2019 | 10:00 PM

Department of Corrections Commissioner Joseph Ponte (right) and his chief of staff, Jeff Thamkittikasem (left) at a hearing on Corrections issues in 2017. (Jefferson Siegel/New York Daily News)



Department of Correction brass publicly touted data showing a sharp decline in jail violence produced by the controversial consulting firm McKinsey &

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Company — and ignored internal concerns that the numbers were bogus, emails obtained by the Daily News reveal.

Then-Commissioner Joseph Ponte hired consultant McKinsey in 2015 to help implement “an anti-violence reform agenda” as the troubled agency adjusted to oversight by a federal monitor. The first contract with the consulting firm was for \$5.9 million. By the time McKinsey’s work was complete in April 2017, its contract had ballooned to \$27 million.

But internal DOC emails and court documents obtained by The News show staffers repeatedly questioned the McKinsey figures showing a drop in violence in some Rikers jails — including one stat touted by Ponte and Chief of Staff Jeff Thamkittikasem that reported a miraculous 70% decline in violence through what was called the “Restart” initiative at two Rikers facilities.

Senior DOC staff, including current Commissioner Cynthia Brann, appear to have given up referring to the 70% figure. The Restart program hasn’t been referenced publicly by the agency since mid-2017.



In this file photo, New York City Mayor Bill de Blasio, second from left, listens as Department of Corrections Commissioner Joseph Ponte speaks during a news conference on Rikers Island in New York, Thursday, March 12, 2015. The mayor unveiled a comprehensive plan to curb jail violence after a visit to the problem-plagued Rikers Island jail complex. (Seth Wenig/AP)

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“We found there were significant errors in the McKinsey formulas,” a former senior DOC official said.

“We realized these numbers were not accurate.”

The “Restart” project involved emptying and renovating portions of troubled jail facilities. In theory, McKinsey’s sophisticated metrics helped determine the ideal inmate population that would return to a gleaming new facility overseen by retrained staff offering new programs and services.

Behind the scenes, emails show Thamkittikasem and Ponte were included in discussions in early 2017 about McKinsey’s “erroneous metrics” that could not be reproduced by DOC staff.

“We are waiting on the documentation related to the nature of the queries and the methodology used to manipulate the data,” then-Deputy Commissioner Shirvahana Gobin wrote in an email to McKinsey senior partner Benjamin Cheatham, in April 2017. She copied the note to Ponte and Thamkittikasem.

“As you can imagine, frustrations are brewing and time is running out.”

Two months later, DOC project specialist Kyle McDonnell wrote colleagues that serious disparities between McKinsey and Correction Department data sets “still persist.”

“Validity of currently reported data is questionable, and is not liable to stand up to audit,” he wrote.

Correction officials alerted McKinsey to the “erroneous metrics as early as March 2017,” he noted.

Gobin was among at least five DOC staffers who argued an invoice from McKinsey should not be paid because problems with its data were not resolved, emails show.

Despite the concerns, Thamkittikasem signed off on a \$973,941 payment to McKinsey on June 5, 2017.

“We stand by the 70% number and consider this matter closed. Any allegation that DOC falsified data is patently false,” a DOC spokesman told The News on Monday. The agency said it could not withhold payments to McKinsey because the firm had fulfilled the terms of its contract.





Gobin, who resigned and was recently [fined \\$20,000](#) for misuse of city resources in an unrelated matter, declined comment.

Thamkittikasem, now the director of the Mayor's Office of Operations, is part of a [task force](#) dedicated to one of Mayor de Blasio's most important initiatives: closing Rikers Island.

He played dumb in a Nov. 2018 deposition when asked if staff had ever questioned the data.

"Did anyone at DOC ever tell you that they did not believe the numbers or they thought the numbers were not accurate in any way?" attorney Rocco Avallone asked.

"No," Thamkittikasem replied.

Avallone, questioning Thamkittikasem in connection with a discrimination suit brought by [three high-ranking former DOC officials](#), continued to prod.

"Did anybody complain that the numbers were inaccurate?" Avallone asked. "Internally, I don't believe so," he answered.

"Whatever data we brought we believed was accurate," he added, referring to City Hall briefings on violence.

The emails and deposition were provided by former DOC sources who wished to remain anonymous. Thamkittikasem declined comment.

A top correction officer union official said it should have been a crime for Correction Department officials to play down the seriousness of Rikers violence with inaccurate data.

"If one of our Correction Officers did this, they would have been fired and immediately charged with a crime," said Elias Husamudeen, president of the Correction Officers Benevolent Association. "Downplaying the rise in jail violence puts the lives of everyone in our facilities at serious risk."

Sources working for DOC at the time said Thamkittikasem's advocacy for McKinsey perplexed colleagues who questioned the quality of the firm's work.





The company, which made \$10 billion in revenue in 2018, has recently faced scrutiny for helping polish the image of authoritarian governments around the world.

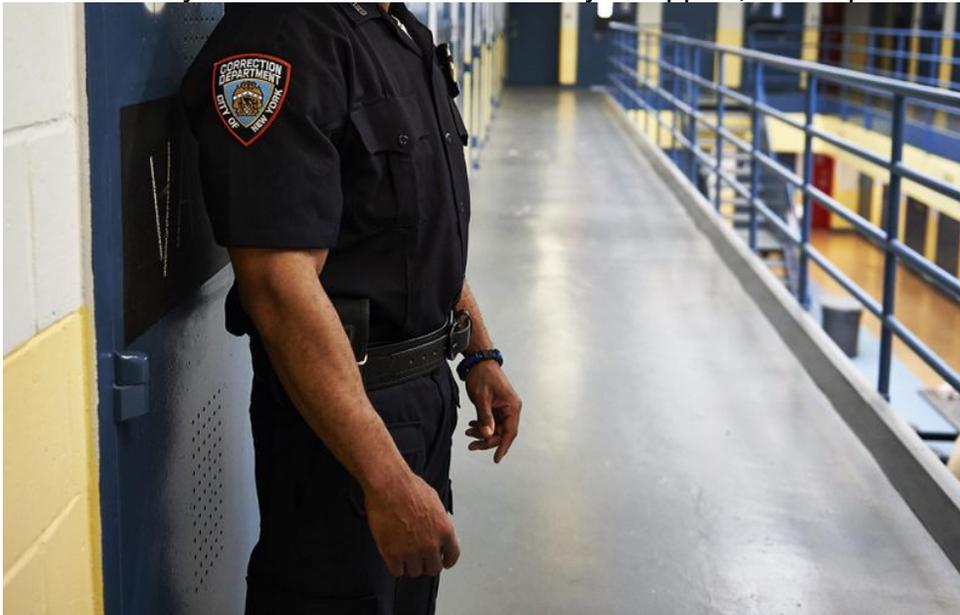
McKinsey did not respond to requests for comment.

In public testimony, Thamkittikasem touted the incredible decline in violence at the George R. Vierno Center and George Motchan Detention Center, which were pilots for the Restart model.

Thamkittikasem “reported violence in these units is down by over 70% and assaults on staff are down by 82%, as compared to other housing units,” according to minutes from an [Oct. 2016 Board of Correction meeting](#).

The sketchy stat was cited again in a March 2017 budget report by the City Council’s Committee on Fire and Criminal Justice Services.

“Violence was down approximately 70% in the GRVC [George R. Vierno Center] Model Facility units in 2016 with McKinsey’s support,” the report noted.



A correction officer at Rikers Island's George R. Vierno Center. (James Keivom/New York Daily News)

On May 8, 2017 – over a month after being alerted to the issues with the violence stats — Ponte went [before the same committee](#) and cited the same figure to describe declines in violence at four Rikers facilities.

A source said DOC abandoned those stats only one month later. The News was

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unable to find any mention of the figures in public testimony or reports to various oversight agencies after that period.

Commissioner Brann described a “sudden spike in violence” at GMDC [George Motchan Detention Center] in the summer of 2016 in a July letter to the Board of Correction, seemingly contradicting earlier statements about the decline in bloodshed.

The claim of a 70% reduction in violence does not appear in any of the federal monitor reports.

Around the same time Ponte and Thamkittikasem touted the decline in violence through the Restart model to the Board of Correction and City Council, the federal monitor reported violence in many of those same facilities was up — and missing documentation.

Rikers facilities involved in the Restart program were among five jails that “account for the largest amount of missing documentation for incidents analyzed from August to October 2016. Not surprisingly, they also generally account for the largest number of incidents,” the monitor, Steve Martin, [wrote in April 2017](#).



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Leading the Way on Ending Punitive Segregation

by [Joseph Ponte](#)

Today, the New York City Department of Correction formally ended the practice of punitive segregation for young adults ages 19 through 21 years old, resulting in the complete elimination of punitive segregation, which some call solitary confinement, for inmates ages 16 through 21 in our custody. This is an unprecedented milestone in New York State correctional history and, even more important, across the nation. To date, no other city or state has accomplished comparable punitive-segregation reforms for the 19-21 year-old age group.

As Commissioner of the NYC Department of Correction, I understand this has not been easy, and something that has required us to methodically implement, test, and refine options that ensure the safety of our staff and inmates. However, I am extremely proud of what our uniform and non-uniform staff have accomplished by reforming our punitive-segregation practices and policies.

When I became Commissioner in April 2014, there were almost 600 people in punitive segregation and a backlog of over 1,700 people. And violence in our jails was on the rise. On October 6, we had 124 inmates in all forms of punitive housing -- a reduction of nearly 80% over two years. We accomplished this by creating non-punitive, incentive-based alternatives to safely manage inmate behavior.

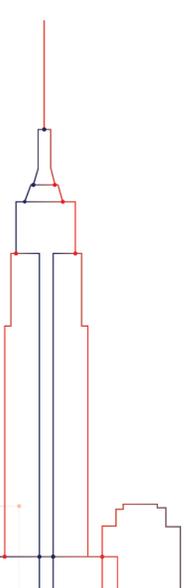
And we have done all this while still reducing violence in our jails.

We started our reforms even before the U.S. Attorney for the Southern District, Preet Bharara, issued a report in August 2014 that concluded that “DOC relies far too heavily on punitive segregation as a disciplinary measure” and before we negotiated the agreement in the federal lawsuit *Nunez v. City of New York*, which was approved by a judge in October 2015.

Through a raft of initiatives, we fundamentally transformed the use of punitive segregation for all age groups.

When we ended punitive segregation for adolescent inmates aged 16-17 in December 2014, and later, for 18-year-old inmates in June 2016, we created therapeutic alternatives to help them manage their behavior.

For the adolescents, these comprise Second Chance Housing and Transitional Restorative Units (TRU), which feature higher staffing levels – one officer to five inmates in Second Chance and one to two or even one to one in TRU. The officers in these units receive training on youth brain development, crisis prevention and management, and trauma-informed care practices for adolescents.



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Inmates in these programs are afforded enhanced programming and counseling to better their life skills and job prospects and a behaviorally based incentive system enables them to earn privileges and commissary points.

For young adults aged 18-21, we have also created Second Chance and TRU units, but we have added two levels of management.

“Secure Housing” is designed to safely house young adults who are engaging in serious violence and assaultive behavior -- closely supervising them while providing individualized therapeutic programming for their behavioral needs.

For persistently violent young adult offenders, such as those who have seriously assaulted staff or stabbed or slashed other inmates, we have created special young adult units of Enhanced Supervision Housing, where inmates spend seven structured hours daily out of cell. Similar to adolescents, they are provided a behaviorally based incentive system that enables them to earn more privileges and eventually move back into the general population.

Using punitive segregation less means using it as a more targeted and meaningful tool. Through rule-making with our partners at the Board of Correction, our oversight body, we have made punitive segregation more effective and fair.

Inmates no longer serve any time that was accrued during a previous incarceration. A tiered system ensures that only serious, violent infractions earn full punitive-segregation time. With few exceptions, we have capped the maximum sentence to 30 days and have limited the number of days one can spend in segregation to 60 days in any single six-month period.

It's a significant accomplishment to have done this while continuing to push a downward trend in violence throughout the Department through comprehensive reform.

In the first eight months of the year, from January to August, the most serious assaults on staff have dropped 40% compared to the same period last year. Overall assaults on staff dropped 17% in that period. Even one assault on our staff is one too many, so we have a lot of work to do, but the trend is moving in the right direction.

These reforms also increase inmate safety. Uses of force by officers on inmates that result in serious injury dropped by 40% in the first eight months of the year, largely because of our de-escalation training.

The bottom line is that, contrary to the assertions of some, you don't need overwhelming numbers of inmates in punitive segregation to make jails safer. Heavy use of segregation does not prevent violence or deter it, particularly in the younger age groups. In fact, it may make matters worse. The latest research on brain development shows that punitive segregation is inappropriate for individuals aged 21 and under.

In New York, we are proud to have made history by ending punitive segregation for our youngest offenders and curtailing its overuse for all others – all while providing safer alternatives that support both staff and inmates.

Joseph Ponte is New York City Correction Commissioner. On Twitter [@CorrectionNYC](https://twitter.com/CorrectionNYC).

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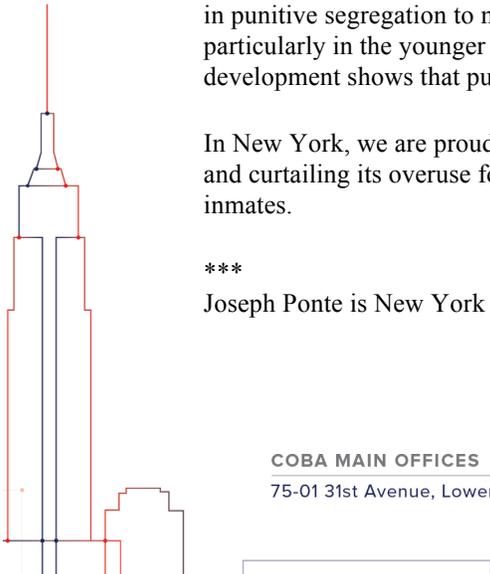




EXHIBIT “C”

Mayor de Blasio and Commissioner Ponte Announce NYC Department of Correction has Ended Punitive Segregation for Inmates 21 and Under

October 11, 2016

New York City becomes first in nation to reform practice for young adults

NEW YORK—Mayor Bill de Blasio and Commissioner Joseph Ponte today announced the Department of Correction has ended the practice of punitive segregation for inmates 21 years old and under. The Department of Correction has created alternative, rehabilitative approaches for managing young inmates’ behavior that have paved the way for ending a practice that can be counterproductive to the development of young adults.

“Today’s announcement shows that New York City is leading the nation down a new path toward rehabilitation and safety. Commissioner Ponte has established viable options for managing and disciplining young inmates that can bring about better outcomes while reducing violence – and has done so years ahead of other jurisdictions. New Yorkers can be proud that their correctional facilities are pioneering these smarter, more humane approaches,” said **Mayor Bill de Blasio**.

“This accomplishment culminates much hard work on the part of our dedicated staff. During the last two years, the Department created and tested a number of models for safely managing our youngest inmates. Each step of the way, we assessed our progress and setbacks with safety for staff and inmates foremost in mind.

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Our ending of punitive segregation today is founded upon thoughtful evaluation, flexibility and adjustments with the needs and safety concerns of staff and young adults front and center,” said **Correction Commissioner Joseph Ponte**.

This announcement represents an unprecedented milestone in New York State correctional history and puts the DOC at the forefront of correctional reform across the nation. No other state has accomplished comparable punitive-segregation reforms for inmates ages 19 through 21.

The Department ended punitive segregation for 16 and 17 year olds in December 2014 and in June 2016 ended punitive segregation for 18 year olds. The number of inmates serving punitive segregation sentences has dropped almost 80 percent since Commissioner Ponte arrived on the job in April 2014, from about 600 to 123 as of October 6. Along with the elimination of punitive segregation for inmates ages 21 and under, the Department has capped punitive-segregation sentences. The reform comes as violence is dropping throughout the City’s jails, with two of the most serious violence indicators down 40 percent this year as compared to a year earlier.

The Department accomplished the reform by creating three therapeutically oriented alternative housing models for managing the behavior of young inmates, who are responsible for a disproportionate amount of jail violence. Each housing option – Second Chance, Transitional Restorative Unit (TRU) and Secure – provides a progressively therapeutic and structured approach for incentivizing positive behavior, with heightened staffing, programming, and inmate engagement. Today, the Department announced that it is working to adapt its Enhanced Supervision Housing (ESH) to meet the needs of 18-21 year olds. Transferring the last few young adults into ESH officially ends punitive segregation for the Department. Young adults ages 18-21 comprise about 10-12 percent of the jail population but commit about a third of the violence in the City’s jails.

After years of departmental neglect and rising violence under previous administrations, Mayor de Blasio and Commissioner Ponte embarked on a [14-point anti-violence reform agenda](#) in March 2015. Through an unprecedented \$200 million investment in officer safety reforms to reduce violence in specific facilities and throughout the Department, DOC has registered a 40 percent drop in the most serious assaults on staff and uses of force through the first eight months of 2016 as compared to the same period in 2015. “Even a single assault on staff is unacceptable, but our numbers are moving in the right direction,” said Commissioner Ponte.

Mayor de Blasio and Commissioner Ponte announced a series of [officer safety measures](#) in September, including new contraband scanners, Tasers for supervisors in the Emergency Service Unit and an infusion of 1,200 recruits – the largest class of new officers ever – to decrease overtime

“When young people interact with the correctional system, the stakes are the highest they can be – lives can be restored or irrevocably derailed by what happens in our jails,” said **Manhattan Borough President Gale A. Brewer**. “I thank the mayor and Commissioner Ponte for working to promote more rehabilitative approaches and phasing out policies that we know have done more harm than good.”

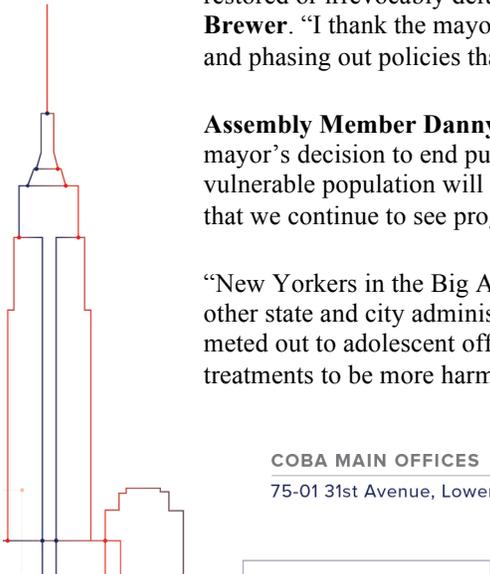
Assembly Member Danny O’Donnell, Chair of the Committee on Corrections, said, “I support the mayor’s decision to end punitive segregation for young adults in New York City. With this change, this often vulnerable population will instead participate in rehabilitative programming. I applaud these efforts and hope that we continue to see progressive changes for young incarcerated adults across the state.”

“New Yorkers in the Big Apple can be proud of today’s announcement which separates New York City from other state and city administrations where punitive segregation is unfortunately the cruel but usual treatment meted out to adolescent offenders in their prison systems. Empirical research has repeatedly found such treatments to be more harmful than useful in positively altering behavior.

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The new approach will not only reduce violence, but will also make our terrible prison systems more humane and safer for employees who must interact with prisoners regularly throughout their time of incarceration. It is the right thing to do, and I commend the Mayor and the New York City Department of Corrections for this bold initiative, which certainly makes New York City a leader in ensuring the respect of human rights in our prison system,” said **Assembly Member Nick Perry, Chair of the Black, Latino and Asian Caucus.**

“As a member of the state Assembly Committee on Correction and chair of the Subcommittee on Transitional Services for released inmates, I applaud this historic move by Mayor de Blasio and Correction Commissioner Ponte. For too long, our city's correctional system has lagged behind in dealing with serious issues that affect not only inmates, but the reputation of our city as a forward thinking, progressive urban center. I look forward to working with Mayor de Blasio and his administration to bring about even further – and much needed – reforms to the city's correctional system,” said **Assembly Member Luis Sepulveda.**

"I commend Mayor De Blasio and the NYC Department of Correction for ending punitive segregation for our incarcerated young adults. This is a well thought out, thoroughly examined plan that brings meaningful reforms to confinement. **Said Assembly Member Jeffrion Aubry.** "The torture of punitive confinement and its negative effects on our youngsters in particular are damaging, long-lasting, and can significantly permeate their adult years. I'm thrilled that the Mayor and the Commissioner have put forth a plan that balances the safety of staff and the rehabilitation of our youth. Though this change has been a longtime coming, it is no doubt a significant milestone on the road to a more humane form of confinement."

“Ending punitive segregation for our youngest inmates is a victory for due process and prisoners’ rights,” said **Council Member Corey Johnson, Chair of the Committee on Health.** “Our goal must be to build a correctional system that reduces recidivism. Inhumane punishments will not help us bring down rates of recidivism and they do not make our City safer, so this reform is wise and much needed. I commend Mayor de Blasio, Commissioner Ponte and our City’s correctional officers for leading our city in the direction of progress and justice.”

“JustLeadershipUSA (JLUSA) and our allies have adamantly called for the Mayor to eliminate the practice of punitive segregation for young adults. Prolonged segregation for anyone, but especially for young people, is counter-productive as well as cruel. This form of confinement makes people suffer without making Rikers safe for detainees or correction officers. While we continue to demand the closure of Rikers Island, JLUSA thanks the Mayor for his leadership in moving New York City’s jail system towards being more fair, humane and just,” said **Glenn E. Martin, President of JustLeadershipUSA.**

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CORRECTION OFFICERS' BENEVOLENT ASSOCIATION, INC.
"PATROLLING THE TOUGHEST PRECINCTS IN NEW YORK"

November 20, 2019

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**Re: COBA's 1st submission in Response to
BOC's Draft Restrictive Housing Rulemaking
Request to Extend Rulemaking Period**

To Interim Chair Sherman, Ms. Ovesey and Members of the Board:

I am the Director of Legal Affairs for the Correction Officers' Benevolent Association, Inc. ("COBA") whose 10,000 plus active members are continuing to bear the brunt of the myopic and lemming-like march into the abyss that this Board confuses with real jail reform.

This submission is the first of several from this union concerning the proposed rulemaking first announced on October 29, 2019 with public comment extended until January 3, 2020 and a public hearing inexplicably scheduled prior to the end of the written comment period on December 2, 2019.

COBA again – after repeated emails, conversations and one published letter to this Board– respectfully requests that the Board publicly announce that it will extend this process at least 6 months – until June, 2020 – so as to weigh the many issues at play. This is a process, like the prior one in 2014-15, that requires thoughtful and careful analysis prior to improvidently making any rules that may make things worse for all concerned. The BOC proposes a package of comprehensive rule changes that clearly took many months to put together; so why the need to cram down rule-making in two months? Is this rush by the Board fueled by purely political considerations? If so it is almost certain to spur litigation by either or both inmate advocates and the unionized workers. What is certain is that the unions and their membership have had no say in the complex process thus far prior to announcing a rushed process.

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These concerns include but are hardly limited to:

- *- Historic highs of violence by inmates on staff and other inmates;¹
- *- Flawed self-serving mis-reporting of violence figures by the Department of Correction;²
- *- COBA's recent victory in defeating the City's Motion to Dismiss in a State Supreme Court matter concerning the Department's failure to keep its workers safe;³ and,
- *- The complete failure of the Board of Correction to disclose to the public the identity and input from the "30 organizations and individuals" mentioned⁴ in the BOC's Housing Revision package.

The published claims by the BOC that input was had from this union is disingenuous. Once again the Board's narrative begins on a false and sour note. In addition to being untrue, the BOC also ignores over 20 unions in the DOC's system. Nothing in the 128 pages posted the day before the October BOC meeting reflects anything that might be considered to protect the rights of workers to a safe workplace – let alone any non-existent input from the uniformed members of service so thoroughly vilified in and out of Board meetings and in the press.

Were COBA to have *had* any input, it would have included working correction professionals, and not only academics. Instead, the Board seemingly relied on cherry-picked information such as what was gleaned in the recent bizarre junket to visit the

¹ Correction Bd., Others Upbraid DOC Reply to Federal Monitor's Report, November 14, 2019, The Chief Leader last accessed November 19, 2019. https://thechiefleader.com/news/news_of_the_week/correction-bd-others-upbraid-doc-reply-to-federal-monitor-s/article_bc426c56-0746-11ea-8dc5-3b500e3fa4cc.html

² "Rikers Con Job", NY Daily News, September 10, 2018 last accessed November 19, 2019. <https://www.nydailynews.com/new-york/ny-mckinsey-rikers-violence-data-20190910-3mwj7vmocha35cqh4wto2sqpa-story.html>

³ See Decision of Judge Ruben Franco in Correction Officers v. City of New York, Bronx Supreme, 0024054/2016, a true and correct copy of which is annexed.

⁴ Page 4, "(t)he proposed rules are the result of extensive fact-finding in 2017-2018, including discussions with 30 organizations and individuals . . . [and the] Correction Officers' Benevolent Association (COBA). A list of these individuals and organizations would be useful – for the sake of actual transparency – and are the subject of a FOIL request on the Board of Correction.





prisons (not jails) in Norway—a country whose civil society in every way is the polar opposite of that here in New York City.⁵

The request here is simple: please announce a robust and realistic period for actual debate and discussion of the values and expected outcomes at play in current rule-making by the Board. The safety of real people – not volunteer board members and politicians- is at stake in the criminal justice system in New York City.

Respectfully Submitted,

/s/

Marc Alain Steier, Esq.
Director of Legal Affairs, COBA

Encl.

Cc: Elias Husamueen, President of COBA
NYC Board of Correction Members
DOC Correction Captain's Association
DOC Warden and Deputy Warden's Association
New York City Police Benevolent Association
New York City Corporation Counsel
DOC Commissioner Cynthia Brann
NYC Mayor's Office of Criminal Justice
Steve Martin, Esq., Nunez Monitor
DOC non- uniformed unions

⁵ New York's Jails Are Failing. Is the Answer 3,600 Miles Away?, New York Times November 12, 2019, last accessed November 19, 2019.
<https://www.nytimes.com/2019/11/12/nyregion/nyc-rikers-norway.html>





CORRECTION OFFICERS' BENEVOLENT ASSOCIATION, INC.
"PATROLLING THE TOUGHEST PRECINCTS IN NEW YORK"

December 2, 2019

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**Re: COBA's 3rd submission in Response to
BOC's Draft Restrictive Housing Rulemaking**

To Interim Chair Sherman, Ms. Ovesey and Members of the Board:

I am the President for the Correction Officers' Benevolent Association, Inc. ("COBA"). Neither I nor the legal Director of COBA have gotten acknowledgments of receipt of prior Emails, let alone received substantive requests requesting that the Board be more deliberate in the rule-making process and put off the dates announced for public comment and hearings.

2014 to 2016- THE EXPERTS SPEAK

It would be too easy to dust off old letters and white papers produced by COBA over the years to try to convince the DOC to take back its power from the Board of Correction. The BOC, and others without the power or expertise to run a large system let alone a jail system, have run roughshod over an imperfect system. However, it is a system which worked better fifteen years ago than today. We do not want- yet again - to parade opinions from COBA. The Board should tap experts in the field. It claims to do so but none are cited and provided in the rule-making package. Therefore, COBA will tap predecessors of Ms. Brann and others who were qualified candidates for her job.

The following is from former Commissioner Martin Horn to former BOC Commissioner Gordon Campbell.¹ This erudite letter did, and continues to, support the position that COBA has maintained:

When the Board first adopted its rules, it included Sec 1-02 (e) (v) that states, "Prisoners placed in the most restrictive security status shall only be denied those rights, privileges and opportunities that are directly related to their status and which

¹ A copy of Martin Horn's December 11, 2014 letter to former BOC Chairman Gordon Campbell is annexed as Ex. "D."

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cannot be provided to them at a different time or place than provided to other prisoners.” It is clear that the Board acknowledged that there might well be **a classification of prisoners whose management would require limitation of the rights, privileges and opportunities afforded general population prisoners.**

...

In many jails throughout the U.S. and even within New York State, prisoners are not routinely out and about for more than an hour a day. New York City is an anomaly by providing that prisoners are allowed to “lock out” of their cell for up to 16 hours a day. The Minimum Standards **of the State Commission on Corrections that govern the operation of the City’s jails** and those of all other jails in the State nowhere require that length of “lock out” time. Only New York City affords that “privilege” to its prisoners.

The proposal for ESH is most definitely not solitary confinement and should not be seen as such. **Those, like the Jail Action Coalition who conflate what the Department is proposing for ESH with solitary confinement do a disservice to the campaign against solitary confinement. They diminish the importance of our national conversation about solitary confinement** by alleging that ESH is, and they misguidedly imperil the very prisoners they purport to care about by trying to deprive the Department of this sensible tool.

Indeed, Joseph Ponte, the very person picked by Mayor DeBlasio to make the changes envisioned found the tool of segregation a necessity in 2016²:

The Department continues to make a good faith effort to comply with the minimum standards, but additional time is needed to develop alternative options to ensure the safety and security of the facilities. **In the interim, it is imperative that the Department be equipped with the various tools necessary to immediately and safely respond to violent acts.** We therefore ask that the Board take up for immediate consideration the requested limited variance renewal for six (6) months.

² See June 3, 2016 letter from Commissioner Ponte to Chairman Brezenoff, Limited Variance Regarding Implementation of Young Adult Plan, Ex. “E.”





Still and all, neither the BOC nor the DOC have developed any “alternative options.”

Again, at the very time when false numbers were being reported out by the DOC, at the July 2016³ BOC meeting Commissioner Ponte still asked the Board allow him to do his job of maintaining safe jails:

However . . . a marked shift occurred shortly after the first week in June when the Department started to increase the number past 700 of young adults housed together in GMDC. In particular, this included **an exceptionally high increase in the number of high-risk young adults (young adult inmates with particularly violent histories or strong gang involvement)** When daily alarms remain low, they can be addressed without significantly affecting day-to-day operations, however as the number of incidents and alarms increased exponentially it had a facility-wide impact.

...

Since the beginning of June 2016, **there was a pronounced spike in the number of incidents, particularly concerning, the rise in serious and violent incidents. This rise in incidents -- ranging from inmates refusing orders to slashings -- has been attributed to the increased number of “high risk of violence” young adults moved to GMDC in early June.**

...

The Monitor and his team of experts - who have experience eliminating the use of punitive segregation in other jurisdictions - *have continuously advised the Department on the need to be thoughtful and deliberate in our approach to punitive segregation reforms, and have cautioned that moving too quickly towards the ultimate goal of ending punitive segregation can undermine the success the Department has already achieved*

...

³ Id.





When Ponte resigned amidst the scandal of his “no show” leave-taking and abuse of city resources, the first name floated for his possible replacement was a corrections innovator -- Dan Pacholke. Lacking “jailing” experience like Ponte before him, he yet had a seeming willingness to follow the Mayor’s insistence on being the first system in the nation to rid a jail system of a necessary tool. However, not unlike Ponte prior to his seeing the scale of the problem outlined above, Pacholke co-wrote a thoughtful paper U.S. Department of Justice.

Dan Pacholke⁴ described his many suggestions for segregation reform that undercut the Mayor’s reactionary rush to be first at all costs. That paper tacitly critiqued the Mayor’s knee-jerk abolition of punitive segregation as merely “emptying beds.” Published in 2016, “*More Than Emptying Beds: A Systems Approach to Segregation Reform*”⁵, acknowledges the need for segregation as a tool *even while seeking its abolition*:

Segregation has been and will continue to be a tool that is necessary to manage legitimate safety concerns. Reforms in the use of this practice will only be successful if the safety of inmates and staff is maintained or improved in the process. To impact the health and well-being of people under correctional control, reducing the use of segregation on its own by only “emptying beds” is of limited value. To make an impactful change, a systems approach to this complex issue is essential.

THE ROLE AND POWER OF THE BOARD OF CORRECTION

The Board does not have the power it has self-ascribed. The members of that body as a whole, and their entire staff (surprisingly few of which have any corrections experience), certainly do not have the skillset needed to oversee one of the largest jail system (not a “prison”) in the world. However, the Board misses this distinction between a jail and a prison, and insists that somehow reforms can be made to detainees in the six-week average

⁴ Regrettably Mr. Pacholke has himself been implicated just this year in controversies with the premature release of inmates leading to poor – even fatal -- results for the public. See, <https://www.spokesman.com/stories/2019/feb/25/corrections-agency-discovers-sentence-calculation-/> and <https://www.injurytriallawyer.com/blog/report-on-doc-early-release-scandal-finds-state-employees-to-blame.cfm>, both last accessed December 2, 2019.

⁵ See “F,” Dan Pacholke and Sandy Felkey Mullins, J.D., *More than Emptying Beds: A Systems Approach to Segregation Reform*, NCJ-24958, BJA.





stay of an increasingly mentally ill and criminally culpable population in custody. This is – of course- absurd, but adding insult to injury the Board would “vet” practical correction methods against their aspirations of a more humane jail system. More to the point, it is insulting that the DOC itself will not assert itself as the NYPD does when anti policing methods are imposed.

As a case in point, look to the criticism leveled by Dr. Bobby Cohen during the Board’s May, 2017⁶ discussion of restraints placed on inmates for their protection and that of their co-detainees. As taken from the Board’s edited minutes (rather than the shriller soundtrack better seen/heard in the live video of that meeting):

Member Cohen said he was glad that DOC had agreed to implement a due process procedure regarding the use of restraints in Secure; however, he was disturbed to find out that the Department had been using three-point restraints in the Unit without any discussion with the Board or medical staff. A while ago, DOC did not place anyone in desk restraints, but now, an increasing number of people were being placed in two-point restraints, and the Board just found out that young adults were being placed in three-point restraints in the Secure Unit. Member Cohen said he found this practice very disturbing, particularly since it occurred without any directive describing the use of such restraints and, he believed, without any discussion with medical staff. He also noted that the Department’s restraint policy permits the use of restraint chairs, which is a very dangerous device.

Taking another case in point – this one a legal case previously mentioned in another letter– the Legal Aid Society and the Board of Correction wanted legal “assistants” to be given access to the jails. The Commissioner denied access based wholly on a safety analysis of those individuals. The Court held “We conclude that at least in this area the decisions of the Board of Correction can have *no more than advisory force*.” Legal Aid Soc. v. Ward, 457 N.Y.S.2d 250 (1982), *aff’d*, 61 N.Y.2d 744 (1984). Rather than being found to be acting arbitrarily and capriciously, the powers granted to the Commissioner were analyzed on the basis of basic rationality. Moreover, the powers of the Board to circumscribe the Commissioner’s primary goal of gainsaying safety in the jails were affirmed by New York State’s highest Court.

⁶ See Minutes of BOC May 2017 meeting at page 5.

<http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/May-9-2017/May%209%20202017%20Board%20Meeting%20Minutes%20-%20APPROVED.pdf>





Although not limited to Dr. Cohen, nearly monthly he or another of our Board members expresses surprise and consternation at not *first being asked* for permission to keep jails safe. This is infuriating to watch when those at COBA in this business since before Board Staff were born know that the responsibility and rights lay with the Commissioner of the DOC. Period. Can the BOC litigate or enjoin Department action or inaction? No. Can the BOC put a halt to necessary safety policies and directives that are accepted practice in jails around the world? No. Are the U.N.'s Mandela Rules reasonably related to the population in our jails? No. What is more it is insulting to utter Mandela's name in the same breath as the kind of population the advocates seek to apply those rules to.

**THE BOARD OF CORRECTION IS NOT A THRESHOLD "COURT"
TO JUDGE SAFETY MATTERS DETERMINED
BY THE DEPARTMENT OF CORRECTION.**

The BOC is an *advisory body only*. And, at that, to the City Council and to the Mayor, who in turn are supposed to take actions and make laws. The Board of Correction is meant to make recommendations and set "minimum standards" for conditions of confinement and correctional health and mental health care in all City correctional facilities. However, the advisory nature of the Board seems to have suffered from "mission creep" when compared to the traditional supervision of the SCOC – which ironically was the subject of an Article 78 proceeding filed by DeBlasio on March 5, 2018. Notwithstanding, the powers of the Board of Correction are limited:

The board, or by written designation of the board, any member of it, the executive director, or other employee, shall have the following powers and duties:

The preparation for submission to the mayor, the council, and the commissioner of proposals for capital planning and improvements; studies and reports concerned with the development of the department's correctional program planning; and studies and reports in regard to methods of promoting closer cooperation of custodial, probation, and parole agencies of government and the courts; and, the evaluation of departmental performance.

New York City, N.Y., Charter § 626, New York City, N.Y., Charter § 626 (c)(3)(4).





Although this may be excessive, by means of comparison with the above it is worth quoting (with emphasis) the language of the City's Charter granting Brann the authority that has been given away to the BOC.

The commissioner shall have:

- 1. Charge and management of all institutions** of the city, including all hospital wards therein for the care and custody of felons, misdemeanants, all prisoners under arrest awaiting arraignment who require hospital care, including those requiring psychiatric observation or treatment and violators of ordinances or local laws and for the detention of witnesses who are unable to furnish security for their appearance in criminal proceedings, except such places for the detention of prisoners or persons charged with crime as are by law placed under the charge of some other agency.
- 2. Sole power and authority** concerning the care, custody and control of all court pens for the detention of prisoners while in the criminal courts of the city of New York, the family court of the state of New York within the city of New York, the supreme court in the counties of New York, Bronx, Kings, Queens and Richmond and of all vehicles employed in the transportation of prisoners who have been sentenced, are awaiting trial or are held for any other cause.
- 3. Charge and management** of persons or any other institution of the city placed under his jurisdiction by law.
- 4. All authority**, except as otherwise provided by law, concerning the care and custody of felons, misdemeanants and violators of local laws held in the institutions under his charge.
- 5. All authority in relation to the custody and transportation of persons held for any cause in criminal proceedings and all prisoners** under arrest awaiting arraignment who require hospital care, **including those requiring psychiatric observation or treatment**, in any county within the city.
- 6. General supervision and responsibility** for the planning and implementation of re-training, counseling and rehabilitative programs for felons, misdemeanants and violators of local laws who have been sentenced and are held in institutions under his charge.

N.Y.C. Charter, Chapter 25 Section 623.

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The Commissioner and the Chief of the Department MISTAKENLY believe that they have to answer to this Mayoral Agency, and that often actually boils down to the recommendations by inmates' rights advocates (with combined budgets and staffs far exceeding that of the Board of Correction). Why would one of the largest City Agencies need to “kowtow” to a tiny oversight group unlike any other uniformed service in The City of New York (or other large agencies like the departments of Education, Mental Health and Hygiene or Housing)? The answer is - - - THE DOC DOES NOT. Just imagine the FDNY or NYPD sitting monthly for the type of scolding unqualified appointees give the DOC.

The Appropriate agency for monitoring the actual running of jails is the SCOC. As was recently shown, (and was in litigation) that body and the Governor have the power to shutter jails, deny plans to build housing units and make architectural/ engineering changes, (and as they have done several times), and find the City DOC in violation of long published and enforced STATE minimum standards. Indeed, the State Commission on Correction has issued violation letters to the New York City Department of Correction for the failure to properly punish violative inmates and maintain a backlog of hundreds who owe “bing” time. This was during this very administration under Ponte. And yet, the backlog of inmates who – after due process hearings- owe time in segregation continues at staggering rates.

Moreover, in a New York Times article dated May 5, 2017 it was announced that New York City jails were considered so dangerous that the state ceased allowing inmates in state custody to be transferred into the custody of the City.⁷ The State Commission of Correction ordered a halt to all inmate transfers from county jails outside the five boroughs. Such transfers typically involve special categories of inmates, like former correction officers or gang leaders, who face an increased risk of violence at jails in their home counties.

MENTAL HEALTH ISSUES

New York City Correction Officers are not Health Care professionals. Even though best practices, as outlined by Dan Pacholke in his paper referenced above, would expand the information shared with COs – this is not done. It is asidiously avoided by the DOC. And yet – despite being kept in the dark about individual triggers and diagnosis— my members are caring for more mentally ill human beings than anyplace on the East Coast of the United States. And yet they are deprived of critical information when dealing with this population.

⁷ <https://www.nytimes.com/2017/05/05/nyregion/rikers-island-transferred-inmates.html?mtrref=undefined&gwh=F1C26863BAFB4789A1CDD68CC7D33933&gwt=pay>





At a talk at New York Law School's "Citylaw" breakfast⁸ former Commissioner Ponte admitted to New York City running the largest mental health hospital on the East Coast. He stated that DOC is "managing well" with mentally ill offenders. To the extent that certain new programs may be experiencing positive outcomes for a few inmates this claim is true. That said, it does not take into account the majority who are mentally ill but go untreated, or the extremely violent who may be deemed to have need of psychiatric treatment in a proper non-jail facility.

At a Board of Correction meeting at of September 13, 2016 the DOC was sharply criticized for failing in managing the mental health needs of inmates. The DOC/HHC /DOHMH partnership⁹ was standing still or moving at a snail's pace at getting those in need to their mental health appointments. This has not changed. However, and crucially - nowhere in the discourse are persistent violent offenders discussed. Here we reference those unfortunate few who have scant chance at being rehabilitated in one of the model units touted by Correctional Health and are not one of those lucky few handpicked due to predictions that they may benefit. Nonetheless, the most violent >100 individuals like "John Doe" are certainly in need of a mental health solution for their persistent acts of destruction of property and assaults on other persons.

With the largest mental health institution on the East Coast, why is it that the "Doe" inmates are not being diagnosed and appropriately housed in a mental health facility where illness may be treated? We now have the capacity to have entire jails dedicated to the spectrum of mentally ill in the system. But the mental health staff at the DOC has been unable to grapple with these most violent inmates and the proposed rules do not help. Rather the powers that be unrealistically expecting miracles of minimally trained Correction Officers rather than mental health professionals *according to BOC minimum standards*. Why have we not investigated medical solutions to these violent mentally unsound individuals? The violence caused, as well as destruction to city property exhibited, are NOT the actions of individuals NOT suffering from mental health problems – though untreated/ undiagnosed. Can we not find mental health solutions such as they do with violent inmates in other jurisdictions? After all, it is your CHARGE to deal with these individuals: "Charge and management of all institutions of the city, including all hospital wards therein for the care and custody of felons, misdemeanants, all prisoners under arrest awaiting arraignment **who require** hospital care, including those requiring **psychiatric observation or treatment.**" See, N.Y.C. Charter, Chapter 25 Section 623.

⁸<http://nyls.mediasite.com/mediasite/Play/7431d6d421434e46aa43dd11c38075941d> at 23:00 - 26:00.

⁹ <https://www.youtube.com/watch?v=mJ8NQ0lkECM&feature=youtu.be> beginning at 44:00.





Sincerely,

Elias Husamudeen,
President

Enclosures

Cc: Marc Alain Steier, Esq. Director of Legal Affairs of COBA
NYC Board of Correction Members
DOC Correction Captain's Association
DOC Warden and Deputy Warden's Association
New York City Police Benevolent Association
New York City Corporation Counsel
DOC Commissioner Cynthia Brann
NYC Mayor's Office of Criminal Justice
Steve Martin, Esq., Nunez Monitor
DOC non- uniformed unions

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Chaplain

WILLIAM KWASNICKI
Retiree Consultant

KOEHLER & ISAACS, LLP
COBA Attorney

May 15, 2019

VIA Email
Martha W. King
Executive Director
NYC Board of Correction
1 Centre Street - 2213
New York, New York 10007

Re: Violence at Rikers Island

Dear Ms. King:

I write on behalf of Elias Husamudeen, President, in order to ask of the Board a modest request to follow-up on the meeting held at your Office in April 2019. If you will recall, that meeting was aimed at a program rolled out by the Department to monitor the violence fueled by housing inmates by Security Risk Group status. This does play a big piece in fueling violence no matter the actual population (i.e. total count) but COBA feels that it can contribute far more to the Board and public's understanding of the bigger puzzle.

President Husamudeen has requested the Board grant COBA 10-15 minutes at the regular June meeting to make a presentation similar in nature to those routinely made at Board meetings. With this real insider's view to possible solutions to persistent problems the cooperation we began at the April meeting can be expanded with a proactive demonstrative presentation.

Please feel free to reach out to me or to the President's office with any questions. I look forward to your anticipated reply. On behalf of the union, and the thousands of men and women it represents, I thank you for courtesies extended by you and the Board in this matter.

Sincerely yours,

/s/
Marc Alain Steier
Director of Legal Affairs

Cc: Elias Husamudeen, President

REQUEST DENIED

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CORRECTION OFFICERS' BENEVOLENT ASSOCIATION, INC.
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November 19, 2019 (resent 12/3/19)

VIA Email

Records Access/ FOIL Officer
NYC Board of Correction

Re: FOIL REQUEST

Dear Records Access Officer:

Under the provisions of the Personal Privacy Protection Law, Article 6-A of the Public Officers Law, the New York Freedom of Information Law, N.Y. Pub. Off. Law sec. 84 et seq, the Correction Officers' Benevolent Association hereby requests any and all information concerning the Board of Correction's noticed rule making and rule amendments denominated "Restrictive Housing in Correctional Facilities" (however reaching far beyond restrictive housing itself) including but not limited to:

- All submissions, correspondence, data, documents, draft rules submitted or offered by "30 organizations and individuals — the local defense bar, criminal justice advocates, national criminal justice organizations and oversight entities, Correction Officers' Benevolent Association (COBA), correctional experts, and academics — and (y)our City partners, DOC and CHS" during the "extensive fact-finding in 2017-2018;"
- All items referred to in the rule making and amending package concerning "literature review and examination of DOC directives, policies, and reports" and rule drafts submitted by any individuals or organizations;
- All "[b]oard staff research, analyses, and reports; consultation of model restrictive housing standards at the national and international level; and study of restrictive housing in jails and prisons nationwide."

If all or any part of this request is denied, please cite the reason(s) which you think justifies your refusal to release the information. As you know, the Personal Privacy Protection Law requires that an agency respond to a request within five business days of its receipt. Also, please inform me of your agency's appeal procedure. Should any or all of this material be available in electronic form we would prefer to receive it in that form at marc.steier@cobanyc.org.

Very truly yours,
/s/
Marc Alain Steier

Cc: Elias Husamudeen, President, COBA
Steven Isaacs, COBA General Counsel

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BISHOP WILLIAM
RAYMOND WHITAKER II
Chaplain

WILLIAM KWASNICKI
Retiree Consultant

KOEHLER & ISAACS, LLP
COBA Attorney

January 29, 2020

Via Email

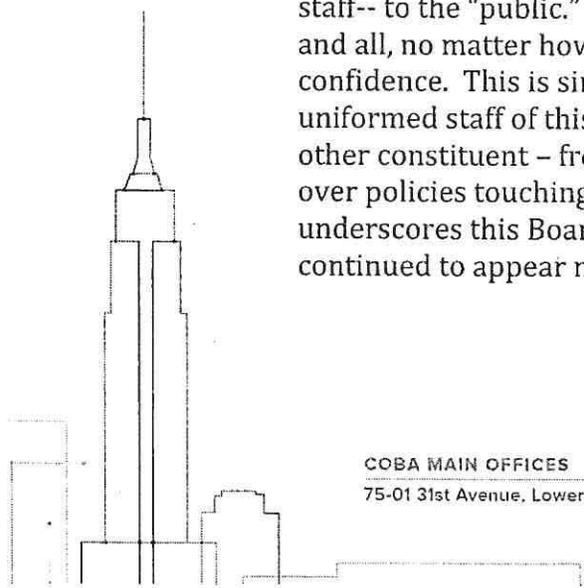
Margaret Egan, Executive Director
Jacqueline Sherman, Interim Chairperson
Stanley Richards, Vice Chairperson
Members, NYC Board of Correction

Re: Stakeholding Parties

Dear Board:

First, I offer congratulations to Ms. Egan for her courage in taking a posting which seems to have a built-in revolving door at an agency that has become the surrogate of jail abolitionists. This was never so clear as in the closing minutes of the last December, 2019 CAPA hearing when Vice Chair Richards went out of his way to address, on live video^[1], the small ad-hoc group sitting in the auditorium known as the Jails Action Coalition ("JAC"), stating that something "crystalized for me **when We went and met with** the Jails Action Coalition." Although an off-shoot of the Urban Justice Center, which otherwise does good work for the under-represented, the "JAC" is not a legal organization that even has any clients in the criminal justice system. And yet "members" sit on City-sponsored committees, advisory boards, and meet in secret private meetings with the BOC and other policy makers.

As far back as 2015 COBA demanded to know the procedure that the Board is bound by law to establish "for the hearing of grievances, complaints or requests for assistance . . . (2) by any employee of the department." Then-Chair Brezenoff's response was a snub. He relegated a Chartered constituency of the Board - DOC staff-- to the "public." He indicated that the public comment period is open for one and all, no matter how confidential the need for employees of the DOC to speak in confidence. This is simply unacceptable as COBA is the representative of 90% of the uniformed staff of this Department. This is especially true in light of how JAC and other constituent - free "groups" of overlapping memberships have undue influence over policies touching on the safety of others. This denigrates the role of staff, and underscores this Board's disdain for the rule of law. Yet since 2013 this union has continued to appear monthly before the Board.



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No longer. The BOC Is not an adjudicatory and does not employ any criminal justice experts. COBA will no longer give legitimacy to what an advisory body is doing to usurp the DOC's Chartered obligation. Submissions on rulemaking and litigation made necessary shall continue (just as Legal Aid's Prisoner Rights' project finds necessary) but BOC meetings do not warrant this union continuing to denigrate its members by appearing at the "public" comment period to air concerns of 10,000 people in 3 minutes.

The BOC has abdicated its responsibilities under the New York City Charter to the DOC's *employees*. It is for this reason that COBA was obliged to bring an action in New York State Supreme Court – to which the City of New York's response was not to address dangerous inmates but rather seek dismissal of the suit as "assaults on staff are completely unavoidable and inherent dangers."

The City lost that Motion months ago, and has yet to seek to sit down and negotiate the dangers pointed out by COBA in attempts to settle the case.

The City has systematically failed to do what is necessary to keep City workers safe. The Board – as another agency of the City - is a hair's breadth from reaffirming itself as being part of that system that the Judge found so inadequate. As such, COBA is weighing its legal options concerning any set of jail-abolitionist inspired rules which will only see a furtherance of the past four year's increase in serious injuries to staff, increased payouts in Workers' Compensation, increased costs in the jails, larger pay-outs to inmates due to violence in the jails, and continued disdain for the job of the Commissioner of the Department of Correction to run Her jails without undue social experimental interference.

In closing, should the BOC want to take its charge under the City Charter seriously, and forge a future that is truly respectful of "stakeholders," I suggest a complete moratorium until we meet outside of the public comment period to discuss the serious security concerns raised by these changes just like the Board met with JAC.

Very truly yours,

Elias Husamudeen
President

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Cc:

Carl Heastie, NYS Assembly Speaker

Andrea Stewart-Cousins, NYS Senate Speaker Patrick Ferraiuolo, CCA President

Joseph Russo, DWA/WA President

Frederic Fusco, Legislative Chairman, COBA

Mayor's Office of Criminal Justice

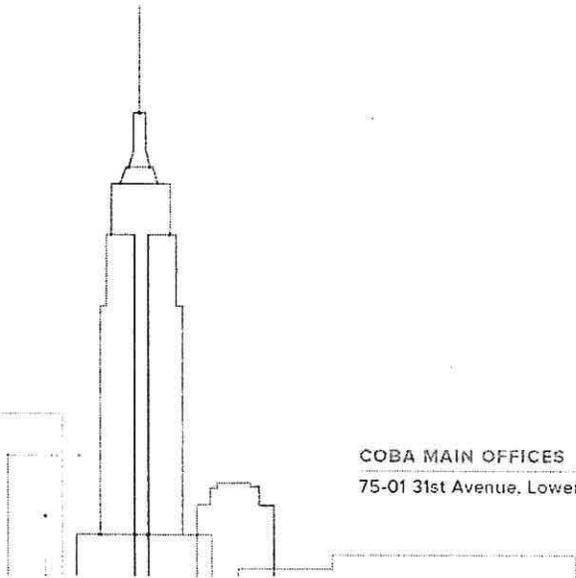
NYC First Deputy Mayor Dean Fuleihan

New York State Commission on Correction

Scott Stringer, NYC Comptroller

Chief of Department Hazel Jennings

Department of Correction Commissioner Cynthia Brann



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COBA Attorney

February 9, 2018

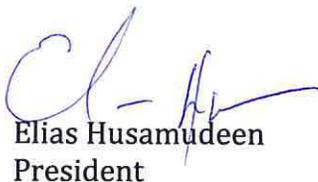
Martha King
Director, NYC Board of Correction
1 Centre Street
New York, NY 10007

Dear Director King,

As President of the Correction Officers Benevolent Association, I have watched with great disappointment, the continued struggles of the Department of Correction. I have listened to the constant rhetoric of government officials, outside consultants, federal monitors, corporations with their own agendas and the news media denigrate the officers of the New York City Department of Correction. While there has been much talk, there has been little accomplished. The time to end this cycle of insanity is now. The safety and security of every officer, every civilian and every inmate is at stake. The time has come to engage in serious conversations, to put egos and ideology aside, and act in the best interests of the citizens you have sworn to serve.

I have attached to this letter an outline of what we believe to be a path to a safe and secure environment within every facility operated by the New York City Department of Correction. I hope you will take the time to carefully read our proposals. I also will be asking you, in the near future, to attend a summit of stakeholders so we can meet and discuss ways to improve the safety, security and the overall mission of the Department of Correction.

Sincerely,



Elias Husamudeen
President

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INTRODUCTION

It's been said that the definition of insanity is doing the same thing over and over again and expecting a different result.

It's also been said that we reproduce what we don't resolve.

The Department of Correction is guilty of both these principles. First, the Department of Correction is still attempting to resolve the issue of jail violence through the creation of so called specialized inmate housing units/programs. However, regardless of whether we call them restrictive housing units, enhanced supervision housing, enhanced housing, transitional-restorative units, secure unit, enhanced supervision-restart, these housing units have done nothing to decrease jail security during the last four years. Further, in many cases, these units and how they are run have led to an increase in jail violence. The Department of Correction thinks that the mere creation of housing units/programs with fancy names somehow means they are creating something different or new. **They are not.** They have changed nothing during the last four years and continuing these units/programs and expecting a change is the definition of insanity.

Second, despite the fact that these units and other "reform policies" have been in place for four or more years, very little progress has been made to ensure jail safety. (Mayor's Management Report 2013-2017). Correction Officers, staff and inmates continue to be assaulted at alarmingly increasing rates on a daily basis without accountability or sanctions placed upon the inmates committing these assaults (Federal Monitor's Reports I-IV). The Department of Correction has been unable to lower the violence across every major category. (Mayor's Management Report 2013-2017). Astoundingly, despite a clear record of these policies, the Department of Correction continues to stand by them and have not developed any new or effective initiatives. Thus, the Department of Correction has failed to learn from recent history and continues to repeat its mistakes --- at the expense of Correction Officers, staff, inmates, and the public.

Correction Officers have been doing this job for decades. We've been dealing with the same population for decades. We are dealing with an age-old problem (jail violence) that is not new to anyone, except to those who have never faced it. Thus, Correction Officers deserve leadership that understands how to deal with an age-old problem in different ways. The Department deserves leadership that can not only think outside of the box, but can also think inside of the box as well. It deserves leaders and managers who are not pre-programmed with an ideology that has accomplished zero results. It deserves leaders that will actually work to accomplish what should be the Department of Correction's number one priority: safer jails.

We believe the foremost reason the Department of Correction has been unable to reduce the violence in the jails is because it has failed to implement deterrents to criminal behavior in the absence of punitive segregation, and continues to implement faulty policies that only serve to embolden those that would do us harm. Simply put, inmates should be held accountable when they violate the law or rules established to maintain safe jails.

So far, there's been a lot of talk about solving the problem and that's great; everyone's been great at talking about it. But, virtually **no one** has been able to actually fix the problem. More resolve must be shown for the Officers behind the gate. For four years, the Department of Correction has churned out policies that look good on paper and present good optics to those on the outside but it's been a living hell to those subject to these policies --- both Correction Officers, civilians and inmates alike.

Here are some of the other things the Department of Correction has failed to effectively address in the last four years:

- Making each individual jail accountable for its own problematic inmates.
- Empowering Wardens to be responsible for running their own facilities
- Creating more front-line supervisors, specifically Captains and ADWs

The one light of hope in these dark times is that the Department is now re-arresting inmates who commit criminal acts and the Bronx DA is now prosecuting inmates who commit acts of violence while in jail. **However, we cannot rely on the DA's office to address the root causes of the problem.** That responsibility falls on the Department of Correction and the solution begins with *disciplinary sanctions and restrictive measures for inmates when rules are broken or not adhered to.*

Case in point: *On January 21, 2018, inmate Kaymel Taylor, 20, was accused of slashing another inmate. He slashed former inmate Joseph Troiano, 28, who needed 22 stitches to close a 6-inch slash across his face. Inmate Taylor, 20, because of his age, cannot be placed in punitive segregation. Although he will be re-arrested, he can only be placed in programs such as ESH, TRU, Secured Unit and Second Chance which are void of any real disciplinary sanctions to address the reason for being placed in such a program. He will still be allowed Visits, Commissary, Barbershop, Law Library, Recreation, Property, Telephones, Television, Religious Rights, Attorney Access, Mail, Magazines, Newspapers and Packages. **The Board of Correction's Rules and the Department of Correction's own misguided policies are responsible for allowing him the opportunity to cut another inmate. Because OF HIS AGE, he can't be segregated from other inmates. It defies logic that there are more restrictions placed on Correction Officers rather than on violent inmates who commit crimes while incarcerated.***

OVERVIEW

The Department should no longer look outside of itself to fix its problems. It shouldn't have to outsource the management, operations, and control of our agency to private companies exacting large price tags who don't know anything about jailing. The Commissioner and uniformed managers needs to take responsibility and ownership of the Department and not be bullied into doing something that fully jeopardizes the safety and security of the jails. It also needs to use what they have available to address the behavior of the inmates in our custody before we create more programs and policies that in the last four years have been proven unsuccessful in ensuring our number one priority: safer jails.

The Commissioner of the New York City Department of Correction is authorized by Sections 389, 623 and 1043 of the City Charter and Section 9-114 of the Administrative Code to adopt rules relating to the management of the Department of Correction facilities and the conduct of inmates in such facilities. However, a review of Directive 6500R-D entitled "Inmate Disciplinary Due Process" as well as a review of the "Inmate Rule Book" reveals that the department has failed to enforce its own written policies, thus leaving line staff without any means, support or recourse when dealing with inmates who commit infractions and violate Department rules.

Recently released **Directive 4495 "Solo Housing"**, which sets forth the reasons an inmate may be placed into solo housing, nowhere mentions as a basis for placement into solo housing violent acts by adolescents and young adults who against Correction staff. The only criteria in regard to violence, addresses violence against other inmates, or fear of reprisals from violence from other inmates. See Section IV (A) (1) a-e.

Former Department of Correction's policies expressly made clear that inmates would be accountable for violating the rules of conduct or law. Use of Force policy #5005 dated 8/30/90 stated; *"The Department expects all inmates to obey the law and Department/Facility rules of conduct. Those inmates who do not comply with the rules face disciplinary sanctions including punitive segregation and/or the loss of good time. Those inmates who violate the law also face arrest and criminal prosecution"*. For some reason this common-sense statement reflecting New York State Law was removed from the new Directive.

Although this policy has been superseded, in no way should anyone think the same expectations of accountability do not apply. However, the Department's **current** policies leave much to be desired in terms of inmate accountability.

When an inmate violates the jail rules, the process available to the department is detailed in Directive 6500R-D (Inmate Disciplinary Due Process), Section III "Procedures". Under this policy, if inmate infractions are proven, the recourse is the following:

- 1) Reprimand
- 2) Loss of privileges
- 3) Loss of good time if sentenced
- 4) Punitive Segregation for up to thirty (30) days per each applicable individual charge
- 5) Restitution for intentionally damaging or destroying city property, a twenty-five (\$25) dollar disciplinary surcharge will be imposed on all inmates found guilty of a Grade I or Grade II offense, as found in Directive 6500R-D (page 20) and in Inmate Rule Book (10/12/2007) under penalties 1-05.

There are no other *disciplinary* sanctions placed upon inmates' privileges who commit infractions and crimes while incarcerated. Inmates have the privileges of Law Library, Recreation, Property, Visits, Telephones, Television, Religious Rights, Attorney Access, Mail, Magazines, Newspapers, Packages and Commissary. Thus, regardless of the violence or crimes an inmate commits while in jail, none of their privileges are revoked and if they are, it is done in only very narrow circumstances or with unreasonable stipulations *from the Board of Correction and at times the Department of Correction itself* that renders it an ineffective means of punishment. The clear lack of collaboration between the Board of Correction and the Department has resulted in a dilemma that has *increased* violence.

Indeed, the New York State Commission on Correction has previously issued violation letters to the New York City Department of Correction for the failure to properly punish violent inmates. This was during this very administration. And yet, the backlog of inmates who – after due process hearings- continues to owe time in segregation at staggering rates.

PROPOSALS

COBA PROPOSAL #1: Inmate Disciplinary Sanctions on Inmate Privileges

In an all-out effort to reduce violence while holding inmates *accountable* for committing crimes and infractions during incarceration, COBA recommends placing disciplinary sanctions upon inmate privileges. We recommend that the Department of Correction Task Managers with effectively and judiciously utilizing the existing inmate discipline measures and analyzing their effectiveness. They should begin tracking COBA's proposed sanctions in like manner to those indicators tracked on the Monthly Facility Management Reports so that their effectiveness can be comparatively evaluated. The use of COBA's proposed inmate disciplinary sanctions will serve as a powerful deterrent – the sheer perception to the inmates is that it is just not worth it to engage in such activity. *If inmate disciplinary sanctions have their desired effect, either in whole or in part, we can envision a Department with less restrictive housing, greater compliance, fewer injuries to staff and inmates, and a real change in morale and culture.* Implementing these disciplinary sanctions may even have an impact on recidivism.

By way of a few examples:

Visits

We must consider that certain aspects of the Board of Correction Minimum Standards and Directive 2007R-C, "Inmate Visit Procedures", effectively work against the Department and its efforts to deter violence and directly puts staff, visitors and members of the public at risk. The Department cannot limit or deny a visit to an inmate or visitor unless the criminal act is committed (or reasonably expected to be committed) in conjunction with a visit.

We can only limit or deny a visit if a litany of parameters is met and then there is the appeal process where the Board too often acts as an inmate/visitor advocate than an objective entity.

The Board must relax the constraints put on the Department and permit it to temporarily suspend visits even in cases where the inmates offending act of is not directly or indirectly in conjunction with the visit. This type of inmate disciplinary sanction will serve as a powerful deterrent. This will help to send the message that it is just not worth it to engage in acts the violate inmate rules. It may even have an impact on recidivism. *That would be a great joint Board of Correction-Department of Correction initiative that would have a direct impact on safety.* The impact we can have here is beyond measure.

Telephones

Let's consider telephone use by the detainee population. The Board mandates that detainees be permitted one call per day at a minimum of six minutes per call. Beyond arguably the right to speak by telephone to counsel, phone use is a privilege. This privilege should be curtailed when inmates commit acts of violence. Such action would serve to deter violent criminal activity.

The Department should be able to deny or limit access to telephones for rule violations.

Haircuts

Currently, the Board of Correction mandates that inmates must be afforded haircuts. It does not, however, stipulate where and when these haircuts take place. The Department of Correction should be able to remove the privilege aspect of taking a trip to the barbershop.

We recommend that when found guilty of rule violations, inmates be charged for haircuts except when going to court.

Commissary

Commissary access is a privilege. Immediate sanctions to deny commissary access to any inmate who commits any act of violence should be implemented or commissary being limited to personal hygiene products. Such denial should be extended for violent acts committed during a denial period.

We recommend that the Department implement disciplinary sanctions to deny commissary access for inmates that violate Department rules and regulations.

Recreation

Currently, the Board of Correction mandates, "recreation may only be denied only upon conviction of an infraction for misconduct on the way to, from, or during recreation." This rule is outdated. As a deterrent to violence, the Department needs to have the ability to deny or limit recreation for any violation of inmate rules.

We recommend the Department of Correction have the ability to deny or limit recreation as a disciplinary sanction for violation of inmate rules and regulations.

Law Library

The COBA does not seek to limit or deny any inmate the right to legally defend him or herself. We believe the Board's current rule that inmates be permitted access for at least two hours each day the law library is open to be sufficient. Currently the Department of Correction may only deny access to the Law Library for disrupting the orderly function of the Library or using it for a purpose other than for what it is intended. Even if an inmate is prohibited from physically accessing the Law Library, the Board permits the Department of Correction to develop alternate access to legal materials for effective legal research. The Department of Correction needs more latitude to effectively deter the violent inmate.

We recommend the Department of Correction be able to deny or limit access to the Law Library for rule violations even if such violations do not occur in the Library itself.

Disciplinary Sanctions for Splashing and Spitting Incidents

While no crimes against a Correction Officer should be tolerated, particularly egregious and sadly frequent are splashing and spitting incidents. To be clear these are incidents where inmates assault Correction Officers with hot water, saliva, urine, semen, and feces. The Board and the Department must take these incidents seriously and impose serious deterrence measures like the above proposed inmate disciplinary sanctions. The Department of Correction needs to be able to sanction an inmate's use of telephone, recreation, visits, law library, and haircuts when an inmate subjects our staff to potential pathogens. *Inmates who splash or spit on staff should be denied everything except basic minimum standards for a finite period of time.* Only this way will the Department of Correction be able to truly stop the increasing incidents of spitting and splashing.

COBA PROPOSAL #2: Restoration of Punitive Segregation in Limited Circumstances

The City of New York widely publicized its goal of “reforming” the Department of Correction. One of these “reform” measures was to eliminate the use of punitive segregation --- a tool widely misrepresented as solitary confinement ---- for 16-21-year olds. The use of punitive segregation for the adult inmate population over age 21 was also severely limited. ***We do not seek to debate the pros and cons of punitive segregation.*** However, the elimination and limitation of punitive segregation has directly led to an increase in violence (as reported in the Mayor’s Management Report 2013-2017). The problem is clear: **in an unbelievable display of poor management and oversight** both the Department of Correction and Board of Correction eliminated punitive segregation – an effective violence deterrence tool --- **without a plan to fill the void that was left.** The Department of Correction failed to implement any alternate measures that could effectively deter violence and violation of the rules. ***Programs such as Secured Unit, ESH, the Transitional Restorative Unit (TRU) or Second Chance*** are void of disciplinary sanctions and fail to address the underlying reason for why an inmate is being placed in such programs or units. *Thus, the Department of Correction’s mission to reduce the use of punitive segregation has actually empowered inmates to further commit crimes while incarcerated because they know that there is no further penalty, accountability or deterrent to his/her unlawful behavior beyond being detained in jail or criminally prosecuted.*

COBA recommends that the Department of Correction consider reinstating some form of punitive segregation for 19 to 21-year-old inmates in very limited circumstance – against those who commit serious offenses. We recommend this measure be used only when absolutely necessary and for the shortest duration and in the least restrictive manner possible. We also ask that its use be coupled with what we refer to above as “inmate disciplinary sanctions”. For example, if inmate disciplinary sanctions don’t work then and only then should punitive segregation be used on inmates 19-21 years of age. ***Further, if punitive segregation doesn’t work inmates (regardless of age), should be removed from our custody and turned over to the DOH/MH or a separate facility should be created to house them.*** This facility should be operated by the DOH/MH and other health care professionals with Correction Officers providing security and escort only (Los Angeles has a model of such a facility).

COBA PROPOSAL #3: Inmate Idleness Reduction

As an incentive and deterrent, COBA recommends that the Board of Correction consider standards for idleness reduction for inmates. Too often Department of Correction programs come and go with little measurable effect. In fact, the Department of Correction implements many of its programs in a bubble. Further, we understand that the Department of Correction has earned a less than optimal track record for submitting Monthly Management Reports in a timely and accurate manner and has been reluctant to enact measures to truly measure program effectiveness. We urge the Board of Correction to hold the Department of Correction accountable for that.

If programs are to be continued, we need programs that will stand longer than any one administration and provide stability for staff and inmates. The Department of Correction should mandate programs that foster teamwork and good sportsmanship.

COBA PROPOSAL #4: Other Disciplinary Sanctions

There are many other disciplinary sanctions such as 1.) Being locked in their cells for 4, 6, 8 hours or an entire tour 2.) Receiving a non-contact visit for a specified number of times and other disciplinary sanctions to be explored by all parties involved.

COBA PROPOSAL #5: A Summit of all Stakeholders

While we believe that our overview accurately reflects how to improve the security and safety for Correction Officers, staff and inmates alike, it is time for all the stakeholders to be in the same room, at the same time to discuss these issues of great importance. Through real conversation and dialogue, we are confident we can obtain great results and stop the insanity. In the near future we will be inviting each of you to attend a meeting of all stakeholders to address these issues.

In closing, we urge you to say “NO” to the current slate of failing programs and policies, and say “YES” to true progress as embodied in COBA’s proposals. These proposals are the real deterrents. These proposals are real measures that will effectively curb jail violence and increase safety. These proposals will, if given a chance to succeed, have a tremendous positive impact on the New York City Department of Correction. Please give these proposals serious consideration.

References:

Operations Order #04/14 (effective 4/25/14)

Directive 4104R-C (effective 3/24/17)

Directive 6500R-D (effective 10/5/16)

Directive 2007R-C (effective 7/14/17)

Directive 4016R

SCOC Minimum Standards

Board of Correction, Minimum Standards- Section 10

Board of Correction, Title 40 Chapter 1 Correctional Facilities

Federal Monitor's Reports I-IV

COBA's NIC Proposal July 2017

Mayor's Management Reports (2013-2017)

Directive 4495 – Solo Housing



CORRECTION OFFICERS' BENEVOLENT ASSOCIATION, INC.
"PATROLLING THE TOUGHEST PRECINCTS IN NEW YORK"

November 27, 2019

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Attorney

VIA EMAIL

New York City Board of Correction
One Centre Street
New York, NY 10007

**Re: COBA's 2nd submission in Response to
BOC's Draft Restrictive Housing Rulemaking**

To Interim Chair Sherman, Ms. Ovesey and Members of the Board:

I am the Director of Legal Affairs for the Correction Officers' Benevolent Association, Inc. ("COBA"). I write on behalf of President Elias Husamudeen. Neither I nor the President of COBA have received any reply to our November 20, 2019 letter requesting that the Board be more deliberate in the rule-making process and put off the dates announced for public comment and hearings.

This submission is the second of several concerning the proposed rulemaking first announced on October 29, 2019 with public comment extended until January 3, 2020 and a public hearing inexplicably scheduled prior to the end of the written comment period on December 2, 2019. The analysis and critique of the actual rules shall come once other voices have been heard. However, the union still maintains this process is rushed and therefore flawed.

INTRODUCTION: SEGREGATION

Segregating inmates for infractions should only be used as a last resort where it will adjust aberrant behavior or keep others safe. It was a practice often overused by the New York City Department of Correction ("DOC") for a wider degree of infractions than necessary, and the backlash in rulemaking at the New York City Board of Correction ("BOC") during the past several years has been just as exaggerated as its prior overuse.

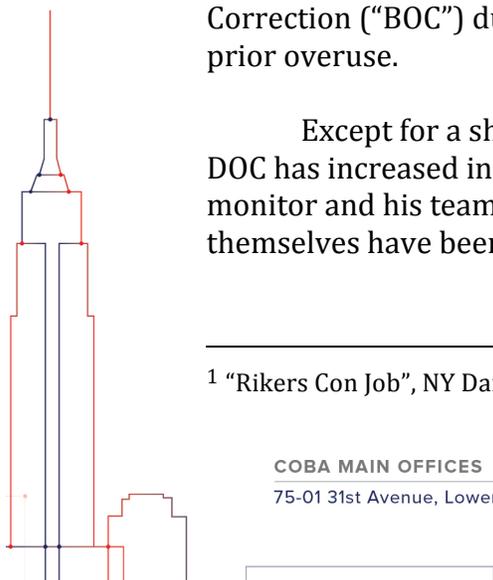
Except for a short time in mid-summer 2017, the rate of violent incidents at the DOC has increased in each period documented by the Judicially appointee *Nunez* monitor and his team. Then again, we have all recently learned that the DOC's figures themselves have been questioned *within* the DOC as bogus.¹

¹ "Rikers Con Job", NY Daily News, September 10, 2018, Annexed as Ex. "A."

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According to the DOC, the rate of violence is calculated using a facility's average daily population. That rate now stands at twice what it was when the consent decree went into effect in 2015.

This is not correlated to increased violence at the hands of staff towards inmates at all. So, what are the other variables that have changed besides the decreased number of inmates? One factor is that the remanded detainee population face more egregious charges and often gang affiliated. Another aspect is that young detainees – mostly men - have been moved into an environment for their improvement and benefit. However the violence statistics for youth have spiked as well.

Of course, segregation has been abolished, reduced, and expunged in many cases. COBA has long warned that this removal of consequences could give free rein for inmates to hurt one other and staff. Could there be a correlation, let alone some causation mixed in? To ignore this possibility continues a factually false and flawed revisionist narrative. This, in the face of reformers insisting upon evidenced-based solutions. The evidence is in and should end for the moment any discussion of revising any housing changes for violent inmates unless it is to restore more restrictive housing alternatives. As discussed below, the very falsified figures propelling further change needs a deep dive before any security-impacting changes are made.

THE LAW

The principled approach informing the zeitgeist against incarceration is not misplaced. However, not everyone has gotten the message and people continue to be arrested for some very serious matters. Judges often remand them into the custody of the DOC without bail for a variety of issues – largely based on keeping the public safe. Insofar as safety in jails, the DOC is legally bound to take reasonable measures to protect ALL inmates from violence. Historically, and throughout this country and similarly situated countries, violent individuals have been controlled by separation, restricted movement and limited access to vulnerable inmates and staff.

The United States Supreme Court has ruled that if jail officials know of a substantial risk of harm to a person in custody, but knowingly disregard the risk by failing to take reasonable measures to abate it, the officials may be found liable. Indeed, federal courts in New York have squarely addressed this as concerns the DOC and Rikers.²

² See, Shuford v. City of New York, 09 Civ. 0945 (PKC)(SDNY) and Fisher v. Koehler, 83 Civ. 2128 (MEL)(SDNY).





As the record of settlements and suits against the City have borne out, the inability to take reasonable measures to protect inmates from violence in this “reform era” has cost law-abiding taxpayers more than ever before.

Constitutional protections for inmates aside, state law applies to protect DOC employees – Correction Officers – according to a recent decision by Hon. Ruben Franco in Correction Officers’ Benevolent Association v. City of New York:

[The] DOC has failed to address what is a small population of predatory inmates who cause the largest number and gravest types of injuries to correction officers, as well as others within the system.

...

[The City] has not shown that DOC has implemented the controls mandated by the WVPP, or conducted risk assessments for incidents of violence, or diffused areas of concern by taking mitigating steps, such as considering the propensities of a part of the jail population . . .

These propensities for violence were the subject of that 2016 lawsuit. These issues were of particular concern since October 11, 2016. That is the date on which Mayor DeBlasio usurped his own Commissioner’s authority and unilaterally announced an end to punitive segregation for young adults aged 19-21.³

Lawsuits and settlements against the City and DOC workman’s compensation claims have spiked. And yet the Mayor has offered no effective replacement, and no replacement has since been found. Yet all indications suggest this shuttering of restrictive housing, as an option is at least one factor upon which the spike of violence has hinged.

While DeBlasio’s press release⁴ touted it as a reform -- “*New York City becomes first in nation to reform practice for young adults*”-- it ought to have been titled “*New York City recklessly abolishes crucial tool relied upon to keep City workers safe.*”

³ See, Ex. “B” – annexed- Opinion by Joseph Ponte (Fmr. Commissioner NYC DOC) *Leading the Way on Ending Punitive Segregation*, Gotham Gazette, October 11, 2016.

⁴ See Mayor’s Press Release of October 11, 2016, annexed as Ex. “C.”





The rushed reform enterprise was undermined by the data we know now proves how wrong the term “reform” was in this case. As one sorely missed New York politician put it, “everyone is *entitled* to his own *opinion*, but *not entitled* to his own *facts*.” Again, it bears pointing out that only by “fudging” the facts was the opinion even “entitled” to be uttered.

To date neither the Mayor nor any of those “assuming” supervisory and security roles over the DOC have had even a spark of an effective suggestion to replace segregating violent individuals. Indeed, the BOC itself in its rulemaking is inert. Throughout the lengthy rule-making package the Department is directed to “do something” in the most difficult of areas. They expect this in the face of the DOC’s inability to have reform options work during the 2015 – 2019 period. The Board then has the temerity to reserve the right to “veto” security measures. This, based on the thinking of those like Dr. Bobby Cohen – a professional amateur in the world of Jail oversight.

These issues will be further discussed when appropriate in a future submission by COBA. However others have yet to be heard in pointing out the deficiencies of these proposed changes to how inmates are housed. And, again, it would be useful to this ongoing public comment period to know what correction professionals have informed the Board’s principled rule-making in order to weigh those opinions properly.

The Mayor, so-called “reform” advocates and the BOC have a fuzzy goal in mind. They just don’t have a soupçon of a hint of how to achieve that goal besides turning New York City into Oslo⁵. And, while all of this uncertainty continues, the City of New York continues to rack up larger and larger pay-outs in inmate lawsuits because the DOC has little will and fewer tools to keep inmates safe as the law requires.

THE FACTS

It comes as no surprise to DOC staff that since 2015 a tiny and violent population has ramped up assaults since “reform.” After spending \$27 million dollars on private consultants the City was left holding a bag of hot air and little else. Hired in 2015, and concluding their magic act in 2017, the McKinsey group produced figures showing a drop in violence that were unable to be verified. Expensive Smoke and Mirrors.

⁵ New York’s Jails Are Failing. Is the Answer 3,600 Miles Away?, New York Times November 12, 2019, last accessed November 19, 2019. <https://www.nytimes.com/2019/11/12/nyregion/nyc-rikers-norway.html>





In the same period when an expensive private contractor was making facts up, the DOC lost almost its entire senior staff:

- * DOC Commissioner Joseph Ponte;
- * Chief of Staff Jeffrey Thamkittikasem;
- * Chief of Department Martin Murphy;
- * Chief of Security Turhan Gumusdere;
- * Deputy Commissioner for Strategic Planning Shirvahana Gobin;
- * Deputy Commissioner of the Investigative Division Gregory Kuczinski;
- * Senior Deputy Commissioner Charles Daniels;
- * Deputy Commissioner of Operations Errol Toulon;
- * Assistant Commissioner Keith Taylor; and,
- * Deputy Commissioner Nichole Adams-Flores.

It is more than fair to aver that the results of the “Restart” and other programs paraded by the above individuals during the 2015 – 2018 period were lies, failures and downplayed a rise in jail violence which put everyone in DOC’s facilities at serious risk. In fact, according to the Nunez Monitor’s April 2017 report, the five jails where the “Restart” program was a crowning jewel “account for the largest amount of missing documentation for incidents analyzed from August to October 2016 . . . (and) account for the largest number of incidents.” Indeed, Ponte and Thamittikasem testified to the City Council in March 2017 during budget hearings using these already questioned and debunked numbers. Those figures were never since used to support reform efforts.

The perverse fact is that the historic removal of a necessary tool – punitive segregation for the tiny (>100) minority of very violent young adults and adults – has since caused the increased need to use of punitive segregation. Under the Bloomberg administration the BOC tried to tie the use of punitive segregation to an increase in violence. Now, Bloomberg is going national and all that is clear from that period is that the drop in punitive segregation has been met with an increase in serious violence against staff. This is because – notwithstanding the valid argument that the mental health of a NORMAL young person may be impacted by segregation – the mentality of these young mostly gang-affiliated members is already well set.





To ignore out of hand the possibility that these offenders defy the studies relied on by principled critics is provable brinksmanship. And yet the only option offered is to head further down the rabbit hole.

So, notwithstanding reform efforts, the poor oversight and pretended management of the DOC by the BOC (and reliance upon input by anonymous inmate advocates) has resulted in **increased** violence. The irony is not missed on Correction Officers that the attempt to reform and “humanize” the jails has lead to increased infractions where inmates dehumanize themselves and others– especially where inmate-on-inmate violence is concerned. Four years into this social experiment, academic arguments about the wholesale ineffectiveness of segregation have now been tested and found wanting.

COBA finds that the DOC and BOC have failed to keep people safe. This current rule-making process is rushed. Such a security matter is being rushed. That rush is very dangerous. It is not rooted in best outcomes for those concerned and only can benefit some individuals and politicians who never interact with the jails or their population.

Respectfully Submitted,

/s/

Marc Alain Steier, Esq.
Director of Legal Affairs, COBA

Encl.

Cc: Elias Husamudeen, President of COBA
COBA Executive Board
NYC Board of Correction Members
DOC Correction Captain’s Association
DOC Warden and Deputy Warden’s Association
New York City Police Benevolent Association
DOC Commissioner Cynthia Brann
Steve Martin, Esq., Nunez Monitor





EXHIBIT “A”



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Staff concerns about sketchy data ignored in McKinsey's mysterious \$27 million mission to rein in violence on Rikers Island

By [Chelsia Rose Marcus](#) and [Stephen Rex Brown](#)
New York Daily News |
Sep 09, 2019 | 10:00 PM

Department of Corrections Commissioner Joseph Ponte (right) and his chief of staff, Jeff Thamkittikasem (left) at a hearing on Corrections issues in 2017. (Jefferson Siegel/New York Daily News)

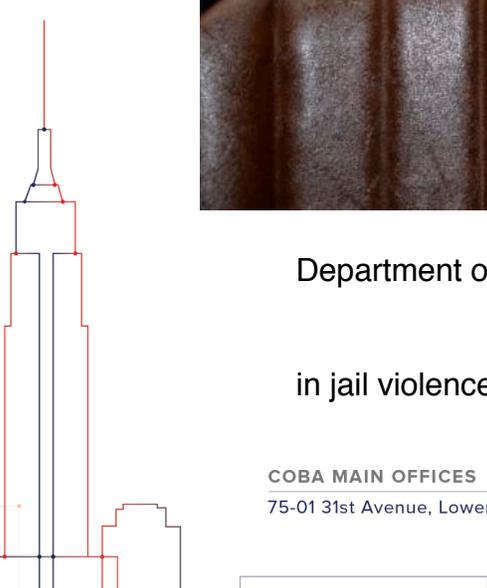


Department of Correction brass publicly touted data showing a sharp decline in jail violence produced by the controversial consulting firm McKinsey &

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Company — and ignored internal concerns that the numbers were bogus, emails obtained by the Daily News reveal.

Then-Commissioner Joseph Ponte hired consultant McKinsey in 2015 to help implement “an anti-violence reform agenda” as the troubled agency adjusted to oversight by a federal monitor. The first contract with the consulting firm was for \$5.9 million. By the time McKinsey’s work was complete in April 2017, its contract had ballooned to \$27 million.

But internal DOC emails and court documents obtained by The News show staffers repeatedly questioned the McKinsey figures showing a drop in violence in some Rikers jails — including one stat touted by Ponte and Chief of Staff Jeff Thamkittikasem that reported a miraculous 70% decline in violence through what was called the “Restart” initiative at two Rikers facilities.

Senior DOC staff, including current Commissioner Cynthia Brann, appear to have given up referring to the 70% figure. The Restart program hasn’t been referenced publicly by the agency since mid-2017.



In this file photo, New York City Mayor Bill de Blasio, second from left, listens as Department of Corrections Commissioner Joseph Ponte speaks during a news conference as on Rikers Island in New York, Thursday, March 12, 2015. The mayor unveiled a comprehensive plan to curb jail violence after a visit to the problem-plagued Rikers Island jail complex. (Seth Wenig/AP)

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“We found there were significant errors in the McKinsey formulas,” a former senior DOC official said.

“We realized these numbers were not accurate.”

The “Restart” project involved emptying and renovating portions of troubled jail facilities. In theory, McKinsey’s sophisticated metrics helped determine the ideal inmate population that would return to a gleaming new facility overseen by retrained staff offering new programs and services.

Behind the scenes, emails show Thamkittikasem and Ponte were included in discussions in early 2017 about McKinsey’s “erroneous metrics” that could not be reproduced by DOC staff.

“We are waiting on the documentation related to the nature of the queries and the methodology used to manipulate the data,” then-Deputy Commissioner Shirvahana Gobin wrote in an email to McKinsey senior partner Benjamin Cheatham, in April 2017. She copied the note to Ponte and Thamkittikasem.

“As you can imagine, frustrations are brewing and time is running out.”

Two months later, DOC project specialist Kyle McDonnell wrote colleagues that serious disparities between McKinsey and Correction Department data sets “still persist.”

“Validity of currently reported data is questionable, and is not liable to stand up to audit,” he wrote.

Correction officials alerted McKinsey to the “erroneous metrics as early as March 2017,” he noted.

Gobin was among at least five DOC staffers who argued an invoice from McKinsey should not be paid because problems with its data were not resolved, emails show.

Despite the concerns, Thamkittikasem signed off on a \$973,941 payment to McKinsey on June 5, 2017.

“We stand by the 70% number and consider this matter closed. Any allegation that DOC falsified data is patently false,” a DOC spokesman told The News on Monday. The agency said it could not withhold payments to McKinsey because the firm had fulfilled the terms of its contract.





Gobin, who resigned and was recently [fined \\$20,000](#) for misuse of city resources in an unrelated matter, declined comment.

Thamkittikasem, now the director of the Mayor's Office of Operations, is part of a [task force](#) dedicated to one of Mayor de Blasio's most important initiatives: closing Rikers Island.

He played dumb in a Nov. 2018 deposition when asked if staff had ever questioned the data.

"Did anyone at DOC ever tell you that they did not believe the numbers or they thought the numbers were not accurate in any way?" attorney Rocco Avallone asked.

"No," Thamkittikasem replied.

Avallone, questioning Thamkittikasem in connection with a discrimination suit brought by [three high-ranking former DOC officials](#), continued to prod.

"Did anybody complain that the numbers were inaccurate?" Avallone asked. "Internally, I don't believe so," he answered.

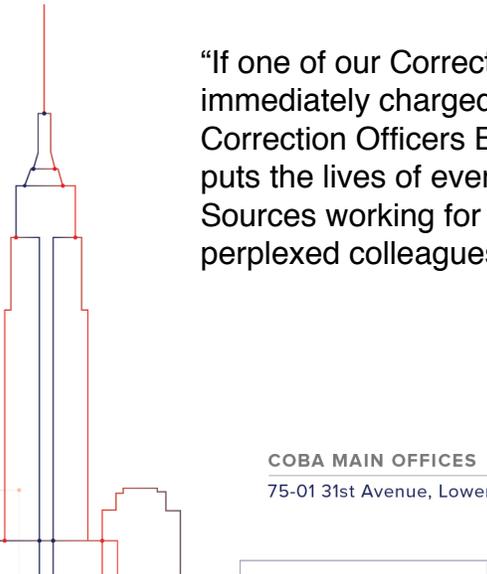
"Whatever data we brought we believed was accurate," he added, referring to City Hall briefings on violence.

The emails and deposition were provided by former DOC sources who wished to remain anonymous. Thamkittikasem declined comment.

A top correction officer union official said it should have been a crime for Correction Department officials to play down the seriousness of Rikers violence with inaccurate data.

"If one of our Correction Officers did this, they would have been fired and immediately charged with a crime," said Elias Husamudeen, president of the Correction Officers Benevolent Association. "Downplaying the rise in jail violence puts the lives of everyone in our facilities at serious risk."

Sources working for DOC at the time said Thamkittikasem's advocacy for McKinsey perplexed colleagues who questioned the quality of the firm's work.





The company, which made \$10 billion in revenue in 2018, has recently faced scrutiny for helping polish the image of authoritarian governments around the world.

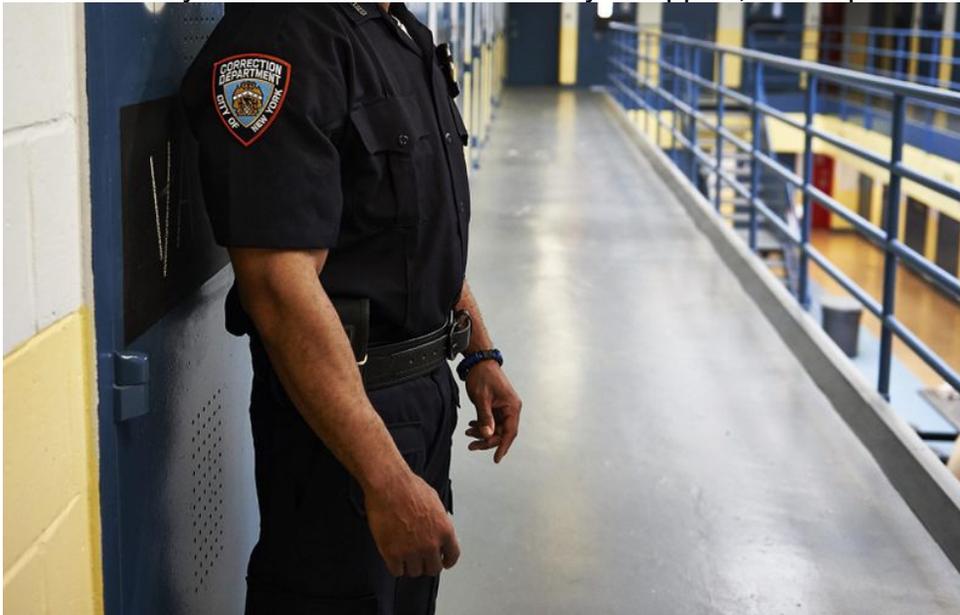
McKinsey did not respond to requests for comment.

In public testimony, Thamkittikasem touted the incredible decline in violence at the George R. Vierno Center and George Motchan Detention Center, which were pilots for the Restart model.

Thamkittikasem “reported violence in these units is down by over 70% and assaults on staff are down by 82%, as compared to other housing units,” according to minutes from an [Oct. 2016 Board of Correction meeting](#).

The sketchy stat was cited again in a March 2017 budget report by the City Council’s Committee on Fire and Criminal Justice Services.

“Violence was down approximately 70% in the GRVC [George R. Vierno Center] Model Facility units in 2016 with McKinsey’s support,” the report noted.



A correction officer at Rikers Island's George R. Vierno Center. (James Keivom/New York Daily News)

On May 8, 2017 – over a month after being alerted to the issues with the violence stats — Ponte went [before the same committee](#) and cited the same figure to describe declines in violence at four Rikers facilities.

A source said DOC abandoned those stats only one month later. The News was

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unable to find any mention of the figures in public testimony or reports to various oversight agencies after that period.

Commissioner Brann described a “sudden spike in violence” at GMDC [George Motchan Detention Center] in the summer of 2016 in a July letter to the Board of Correction, seemingly contradicting earlier statements about the decline in bloodshed.

The claim of a 70% reduction in violence does not appear in any of the federal monitor reports.

Around the same time Ponte and Thamkittikasem touted the decline in violence through the Restart model to the Board of Correction and City Council, the federal monitor reported violence in many of those same facilities was up — and missing documentation.

Rikers facilities involved in the Restart program were among five jails that “account for the largest amount of missing documentation for incidents analyzed from August to October 2016. Not surprisingly, they also generally account for the largest number of incidents,” the monitor, Steve Martin, [wrote in April 2017](#).



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Leading the Way on Ending Punitive Segregation

by [Joseph Ponte](#)

Today, the New York City Department of Correction formally ended the practice of punitive segregation for young adults ages 19 through 21 years old, resulting in the complete elimination of punitive segregation, which some call solitary confinement, for inmates ages 16 through 21 in our custody. This is an unprecedented milestone in New York State correctional history and, even more important, across the nation. To date, no other city or state has accomplished comparable punitive-segregation reforms for the 19-21 year-old age group.

As Commissioner of the NYC Department of Correction, I understand this has not been easy, and something that has required us to methodically implement, test, and refine options that ensure the safety of our staff and inmates. However, I am extremely proud of what our uniform and non-uniform staff have accomplished by reforming our punitive-segregation practices and policies.

When I became Commissioner in April 2014, there were almost 600 people in punitive segregation and a backlog of over 1,700 people. And violence in our jails was on the rise. On October 6, we had 124 inmates in all forms of punitive housing -- a reduction of nearly 80% over two years. We accomplished this by creating non-punitive, incentive-based alternatives to safely manage inmate behavior.

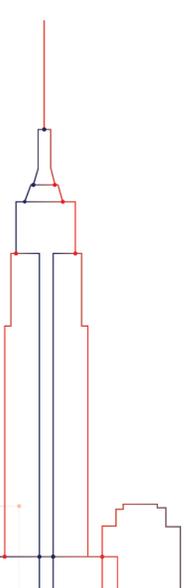
And we have done all this while still reducing violence in our jails.

We started our reforms even before the U.S. Attorney for the Southern District, Preet Bharara, issued a report in August 2014 that concluded that “DOC relies far too heavily on punitive segregation as a disciplinary measure” and before we negotiated the agreement in the federal lawsuit *Nunez v. City of New York*, which was approved by a judge in October 2015.

Through a raft of initiatives, we fundamentally transformed the use of punitive segregation for all age groups.

When we ended punitive segregation for adolescent inmates aged 16-17 in December 2014, and later, for 18-year-old inmates in June 2016, we created therapeutic alternatives to help them manage their behavior.

For the adolescents, these comprise Second Chance Housing and Transitional Restorative Units (TRU), which feature higher staffing levels – one officer to five inmates in Second Chance and one to two or even one to one in TRU. The officers in these units receive training on youth brain development, crisis prevention and management, and trauma-informed care practices for adolescents.



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Inmates in these programs are afforded enhanced programming and counseling to better their life skills and job prospects and a behaviorally based incentive system enables them to earn privileges and commissary points.

For young adults aged 18-21, we have also created Second Chance and TRU units, but we have added two levels of management.

“Secure Housing” is designed to safely house young adults who are engaging in serious violence and assaultive behavior -- closely supervising them while providing individualized therapeutic programming for their behavioral needs.

For persistently violent young adult offenders, such as those who have seriously assaulted staff or stabbed or slashed other inmates, we have created special young adult units of Enhanced Supervision Housing, where inmates spend seven structured hours daily out of cell. Similar to adolescents, they are provided a behaviorally based incentive system that enables them to earn more privileges and eventually move back into the general population.

Using punitive segregation less means using it as a more targeted and meaningful tool. Through rule-making with our partners at the Board of Correction, our oversight body, we have made punitive segregation more effective and fair.

Inmates no longer serve any time that was accrued during a previous incarceration. A tiered system ensures that only serious, violent infractions earn full punitive-segregation time. With few exceptions, we have capped the maximum sentence to 30 days and have limited the number of days one can spend in segregation to 60 days in any single six-month period.

It's a significant accomplishment to have done this while continuing to push a downward trend in violence throughout the Department through comprehensive reform.

In the first eight months of the year, from January to August, the most serious assaults on staff have dropped 40% compared to the same period last year. Overall assaults on staff dropped 17% in that period. Even one assault on our staff is one too many, so we have a lot of work to do, but the trend is moving in the right direction.

These reforms also increase inmate safety. Uses of force by officers on inmates that result in serious injury dropped by 40% in the first eight months of the year, largely because of our de-escalation training.

The bottom line is that, contrary to the assertions of some, you don't need overwhelming numbers of inmates in punitive segregation to make jails safer. Heavy use of segregation does not prevent violence or deter it, particularly in the younger age groups. In fact, it may make matters worse. The latest research on brain development shows that punitive segregation is inappropriate for individuals aged 21 and under.

In New York, we are proud to have made history by ending punitive segregation for our youngest offenders and curtailing its overuse for all others – all while providing safer alternatives that support both staff and inmates.

Joseph Ponte is New York City Correction Commissioner. On Twitter [@CorrectionNYC](https://twitter.com/CorrectionNYC).

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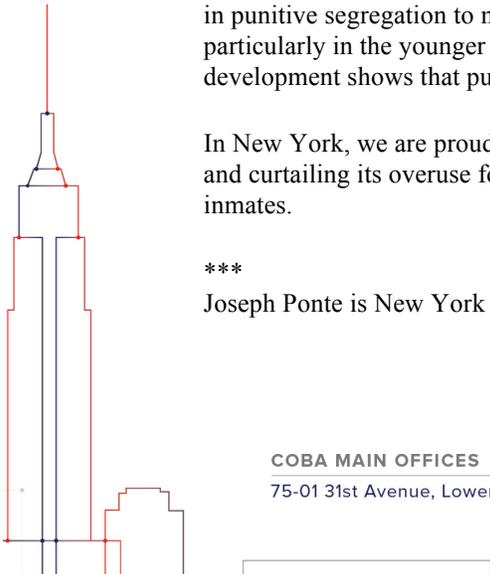




EXHIBIT “C”

Mayor de Blasio and Commissioner Ponte Announce NYC Department of Correction has Ended Punitive Segregation for Inmates 21 and Under

October 11, 2016

New York City becomes first in nation to reform practice for young adults

NEW YORK—Mayor Bill de Blasio and Commissioner Joseph Ponte today announced the Department of Correction has ended the practice of punitive segregation for inmates 21 years old and under. The Department of Correction has created alternative, rehabilitative approaches for managing young inmates’ behavior that have paved the way for ending a practice that can be counterproductive to the development of young adults.

“Today’s announcement shows that New York City is leading the nation down a new path toward rehabilitation and safety. Commissioner Ponte has established viable options for managing and disciplining young inmates that can bring about better outcomes while reducing violence – and has done so years ahead of other jurisdictions. New Yorkers can be proud that their correctional facilities are pioneering these smarter, more humane approaches,” said **Mayor Bill de Blasio**.

“This accomplishment culminates much hard work on the part of our dedicated staff. During the last two years, the Department created and tested a number of models for safely managing our youngest inmates. Each step of the way, we assessed our progress and setbacks with safety for staff and inmates foremost in mind.

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Our ending of punitive segregation today is founded upon thoughtful evaluation, flexibility and adjustments with the needs and safety concerns of staff and young adults front and center,” said **Correction Commissioner Joseph Ponte**.

This announcement represents an unprecedented milestone in New York State correctional history and puts the DOC at the forefront of correctional reform across the nation. No other state has accomplished comparable punitive-segregation reforms for inmates ages 19 through 21.

The Department ended punitive segregation for 16 and 17 year olds in December 2014 and in June 2016 ended punitive segregation for 18 year olds. The number of inmates serving punitive segregation sentences has dropped almost 80 percent since Commissioner Ponte arrived on the job in April 2014, from about 600 to 123 as of October 6. Along with the elimination of punitive segregation for inmates ages 21 and under, the Department has capped punitive-segregation sentences. The reform comes as violence is dropping throughout the City’s jails, with two of the most serious violence indicators down 40 percent this year as compared to a year earlier.

The Department accomplished the reform by creating three therapeutically oriented alternative housing models for managing the behavior of young inmates, who are responsible for a disproportionate amount of jail violence. Each housing option – Second Chance, Transitional Restorative Unit (TRU) and Secure – provides a progressively therapeutic and structured approach for incentivizing positive behavior, with heightened staffing, programming, and inmate engagement. Today, the Department announced that it is working to adapt its Enhanced Supervision Housing (ESH) to meet the needs of 18-21 year olds. Transferring the last few young adults into ESH officially ends punitive segregation for the Department. Young adults ages 18-21 comprise about 10-12 percent of the jail population but commit about a third of the violence in the City’s jails.

After years of departmental neglect and rising violence under previous administrations, Mayor de Blasio and Commissioner Ponte embarked on a [14-point anti-violence reform agenda](#) in March 2015. Through an unprecedented \$200 million investment in officer safety reforms to reduce violence in specific facilities and throughout the Department, DOC has registered a 40 percent drop in the most serious assaults on staff and uses of force through the first eight months of 2016 as compared to the same period in 2015. “Even a single assault on staff is unacceptable, but our numbers are moving in the right direction,” said Commissioner Ponte.

Mayor de Blasio and Commissioner Ponte announced a series of [officer safety measures](#) in September, including new contraband scanners, Tasers for supervisors in the Emergency Service Unit and an infusion of 1,200 recruits – the largest class of new officers ever – to decrease overtime

“When young people interact with the correctional system, the stakes are the highest they can be – lives can be restored or irrevocably derailed by what happens in our jails,” said **Manhattan Borough President Gale A. Brewer**. “I thank the mayor and Commissioner Ponte for working to promote more rehabilitative approaches and phasing out policies that we know have done more harm than good.”

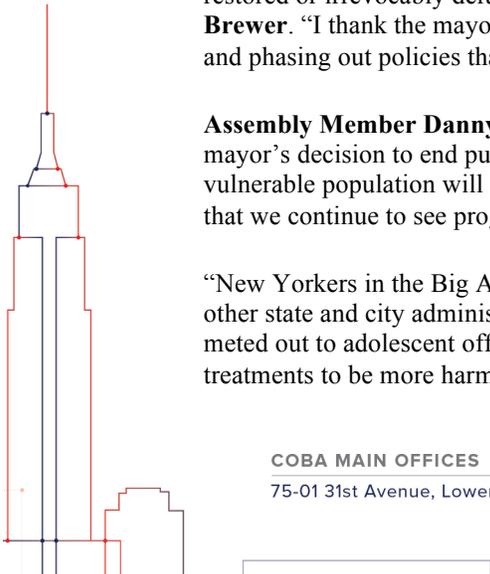
Assembly Member Danny O’Donnell, Chair of the Committee on Corrections, said, “I support the mayor’s decision to end punitive segregation for young adults in New York City. With this change, this often vulnerable population will instead participate in rehabilitative programming. I applaud these efforts and hope that we continue to see progressive changes for young incarcerated adults across the state.”

“New Yorkers in the Big Apple can be proud of today’s announcement which separates New York City from other state and city administrations where punitive segregation is unfortunately the cruel but usual treatment meted out to adolescent offenders in their prison systems. Empirical research has repeatedly found such treatments to be more harmful than useful in positively altering behavior.

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The new approach will not only reduce violence, but will also make our terrible prison systems more humane and safer for employees who must interact with prisoners regularly throughout their time of incarceration. It is the right thing to do, and I commend the Mayor and the New York City Department of Corrections for this bold initiative, which certainly makes New York City a leader in ensuring the respect of human rights in our prison system,” said **Assembly Member Nick Perry, Chair of the Black, Latino and Asian Caucus.**

“As a member of the state Assembly Committee on Correction and chair of the Subcommittee on Transitional Services for released inmates, I applaud this historic move by Mayor de Blasio and Correction Commissioner Ponte. For too long, our city's correctional system has lagged behind in dealing with serious issues that affect not only inmates, but the reputation of our city as a forward thinking, progressive urban center. I look forward to working with Mayor de Blasio and his administration to bring about even further – and much needed – reforms to the city's correctional system,” said **Assembly Member Luis Sepulveda.**

"I commend Mayor De Blasio and the NYC Department of Correction for ending punitive segregation for our incarcerated young adults. This is a well thought out, thoroughly examined plan that brings meaningful reforms to confinement. **Said Assembly Member Jeffrion Aubry.** "The torture of punitive confinement and its negative effects on our youngsters in particular are damaging, long-lasting, and can significantly permeate their adult years. I'm thrilled that the Mayor and the Commissioner have put forth a plan that balances the safety of staff and the rehabilitation of our youth. Though this change has been a longtime coming, it is no doubt a significant milestone on the road to a more humane form of confinement."

“Ending punitive segregation for our youngest inmates is a victory for due process and prisoners’ rights,” said **Council Member Corey Johnson, Chair of the Committee on Health.** “Our goal must be to build a correctional system that reduces recidivism. Inhumane punishments will not help us bring down rates of recidivism and they do not make our City safer, so this reform is wise and much needed. I commend Mayor de Blasio, Commissioner Ponte and our City’s correctional officers for leading our city in the direction of progress and justice.”

“JustLeadershipUSA (JLUSA) and our allies have adamantly called for the Mayor to eliminate the practice of punitive segregation for young adults. Prolonged segregation for anyone, but especially for young people, is counter-productive as well as cruel. This form of confinement makes people suffer without making Rikers safe for detainees or correction officers. While we continue to demand the closure of Rikers Island, JLUSA thanks the Mayor for his leadership in moving New York City’s jail system towards being more fair, humane and just,” said **Glenn E. Martin, President of JustLeadershipUSA.**

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CORRECTION OFFICERS' BENEVOLENT ASSOCIATION, INC.
"PATROLLING THE TOUGHEST PRECINCTS IN NEW YORK"

November 20, 2019

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**Re: COBA's 1st submission in Response to
BOC's Draft Restrictive Housing Rulemaking
Request to Extend Rulemaking Period**

To Interim Chair Sherman, Ms. Ovesey and Members of the Board:

I am the Director of Legal Affairs for the Correction Officers' Benevolent Association, Inc. ("COBA") whose 10,000 plus active members are continuing to bear the brunt of the myopic and lemming-like march into the abyss that this Board confuses with real jail reform.

This submission is the first of several from this union concerning the proposed rulemaking first announced on October 29, 2019 with public comment extended until January 3, 2020 and a public hearing inexplicably scheduled prior to the end of the written comment period on December 2, 2019.

COBA again – after repeated emails, conversations and one published letter to this Board– respectfully requests that the Board publicly announce that it will extend this process at least 6 months – until June, 2020 – so as to weigh the many issues at play. This is a process, like the prior one in 2014-15, that requires thoughtful and careful analysis prior to improvidently making any rules that may make things worse for all concerned. The BOC proposes a package of comprehensive rule changes that clearly took many months to put together; so why the need to cram down rule-making in two months? Is this rush by the Board fueled by purely political considerations? If so it is almost certain to spur litigation by either or both inmate advocates and the unionized workers. What is certain is that the unions and their membership have had no say in the complex process thus far prior to announcing a rushed process.

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These concerns include but are hardly limited to:

- *- Historic highs of violence by inmates on staff and other inmates;¹
- *- Flawed self-serving mis-reporting of violence figures by the Department of Correction;²
- *- COBA's recent victory in defeating the City's Motion to Dismiss in a State Supreme Court matter concerning the Department's failure to keep its workers safe;³ and,
- *- The complete failure of the Board of Correction to disclose to the public the identity and input from the "30 organizations and individuals" mentioned⁴ in the BOC's Housing Revision package.

The published claims by the BOC that input was had from this union is disingenuous. Once again the Board's narrative begins on a false and sour note. In addition to being untrue, the BOC also ignores over 20 unions in the DOC's system. Nothing in the 128 pages posted the day before the October BOC meeting reflects anything that might be considered to protect the rights of workers to a safe workplace – let alone any non-existent input from the uniformed members of service so thoroughly vilified in and out of Board meetings and in the press.

Were COBA to have *had* any input, it would have included working correction professionals, and not only academics. Instead, the Board seemingly relied on cherry-picked information such as what was gleaned in the recent bizarre junket to visit the

¹ Correction Bd., Others Upbraid DOC Reply to Federal Monitor's Report, November 14, 2019, The Chief Leader last accessed November 19, 2019. https://thechiefleader.com/news/news_of_the_week/correction-bd-others-upbraid-doc-reply-to-federal-monitor-s/article_bc426c56-0746-11ea-8dc5-3b500e3fa4cc.html

² "Rikers Con Job", NY Daily News, September 10, 2018 last accessed November 19, 2019. <https://www.nydailynews.com/new-york/ny-mckinsey-rikers-violence-data-20190910-3mwj7vmocha35cqh4wto2sqpa-story.html>

³ See Decision of Judge Ruben Franco in Correction Officers v. City of New York, Bronx Supreme, 0024054/2016, a true and correct copy of which is annexed.

⁴ Page 4, "(t)he proposed rules are the result of extensive fact-finding in 2017-2018, including discussions with 30 organizations and individuals . . . [and the] Correction Officers' Benevolent Association (COBA). A list of these individuals and organizations would be useful – for the sake of actual transparency – and are the subject of a FOIL request on the Board of Correction.





prisons (not jails) in Norway—a country whose civil society in every way is the polar opposite of that here in New York City.⁵

The request here is simple: please announce a robust and realistic period for actual debate and discussion of the values and expected outcomes at play in current rule-making by the Board. The safety of real people – not volunteer board members and politicians- is at stake in the criminal justice system in New York City.

Respectfully Submitted,

/s/

Marc Alain Steier, Esq.
Director of Legal Affairs, COBA

Encl.

Cc: Elias Husamueen, President of COBA
NYC Board of Correction Members
DOC Correction Captain's Association
DOC Warden and Deputy Warden's Association
New York City Police Benevolent Association
New York City Corporation Counsel
DOC Commissioner Cynthia Brann
NYC Mayor's Office of Criminal Justice
Steve Martin, Esq., Nunez Monitor
DOC non- uniformed unions

⁵ New York's Jails Are Failing. Is the Answer 3,600 Miles Away?, New York Times November 12, 2019, last accessed November 19, 2019.
<https://www.nytimes.com/2019/11/12/nyregion/nyc-rikers-norway.html>



NEW YORK CITY BOARD OF COLLECTIVE BARGAINING

-----X
CORRECTION OFFICERS' BENEVOLENT
ASSOCIATION,

**VERIFIED IMPROPER
PRACTICE PETITION**

Petitioner

-against-

THE CITY OF NEW YORK,

Respondent.

-----X

CORRECTION OFFICERS' BENEVOLENT ASSOCIATION ("COBA" or "union"), by its attorneys, KOEHLER & ISAACS LLP, as and for a Verified Improper Practice Petition pursuant to Section 12-306 of the New York City Collective Bargaining Law ("CBL") and Section 1.07 of Title 61 of the Rules of the City of New York, aver and allege as follows:

INTRODUCTION

1. This Verified Improper Practice Petition seeks an order from the New York City Board of Collective Bargaining requiring New York City ("City") and its Board of Corrections ("BOC" or "Department") to cease and desist from considering, passing or enforcing its proposed rule pertaining to Restrictive Housing. The proposed rule will continue the BOC's several year practice of tying the hands of Department of Correction ("DOC") officials in attempting to reign in the most violent individuals subject to DOC detention. The BOC has restricted the use of punitive segregation without adequate alternatives and, as documented the City's own management reports violence against COBA represented Correction Officers continues unabated in the City's jails. This violence is directly related to the absence and limitations on punitive segregation and threatens everyone in the jail community, whether civilian employees, uniformed staff or other incarcerated

persons. As there are direct, present, ongoing and substantial threats to the safety of COBA represented Correction Officers, the City must bargain with the union prior to the adoption or implementation of any rules by the BOC, a City agency, that restricts or eliminates this valuable safety tool. For these reasons, as explained in greater detail below, this Petition should be granted.

PARTIES

2. COBA is certified employee organization as that term is defined by Section 12-303(l) of the CBL representing DOC employees in the civil service title of Correction Officer.
3. The City is a public employer as that term is defined by Section 12-303(g) of the CBL and the sole employer of COBA-represented employees.

AS AND FOR A VIOLATION OF THE CBL

4. The BOC is a nine member panel with three appointees of the Mayor, three appointees of the New York City Council and three appointees selected by the Mayor following joint nomination by the presiding justices of the First and Second Departments of Appellate Division of the New York State Supreme Court. NYC Charter, § 626(a).
5. The BOC is empowered under the New York City Charter to establish “minimum standards” for the operation of the municipal jails under the DOC’s jurisdiction. NYC Charter, § 626(e). Specifically,

The board shall establish minimum standards for the care, custody, correction, treatment, supervision, and discipline of all persons held or confined under the jurisdiction of the department; and it shall promulgate such minimum standards in rules and regulations after giving the mayor and commissioner [of Correction] an opportunity to review and comment on the proposed standards, or amendments or additions to such standards.

6. The BOC is an agency of the City under applicable provisions of the City Charter. *See* NYC Charter §§ 1041(2), 1150(2).
7. The BOC has long disregarded the safety and security of Correction Officers. It has done so by removing disincentives and preventative measures to prevent inmates from assaulting Correction Officers without providing meaningful replacements. The seminal act, which has had wide ranging repercussions, in this pattern of disregard was the adoption of Rule 1-17 (effective February 20, 2015). 40 RCNY § 1-17. That Rule eliminated punitive segregation for adolescents and young adults and provided no substitute punitive measures. 40 RCNY 1-17(b)(1). Rule 1-17 also limited the amount of time inmates eligible for punitive segregation could be placed there. 40 RCNY 1-17(d). Although the Rule permits extensions of time in punitive segregation, the burdens placed on management and BOC's general hostility to punitive segregation has had a chilling effect on DOC management's willingness to extend the time spent in punitive segregation. Rule 1-17 also prevents the DOC from implementing punitive segregation on re-incarcerated inmates from violations occurring from prior incarcerations. 40 RCNY 1-17(g). Thus, even though DOC management may know, based on a prior incarceration, that an inmate has a propensity for assaultive behavior, the DOC may not place that inmate in punitive segregation until s/he commits a current violation.
8. An inmate in punitive segregation is "held under lock in for up to twenty three (23) hours a day, except when participating in daily recreation or other mandated services." *See* Exhibit A, at p. 1. This lock-in severely limits the inmate's opportunity for interaction with others consequently limiting the opportunity to assault others, including, obviously, Correction Officers. Punitive segregation is the "most restrictive security status." *Id.*, at p.

17. Inmates in punitive segregation receive their meals while locked in their cells through a food slot with a device designed to “prevent inmates from disturbing the institutional feeding by placing their hands in the food slots. *Id.*, at pp. 17, 22. These inmates are subject to heightened search requirements including strip and electronic searches of their person and “regular and frequent” searches of their living quarters. *Id.* Additionally, when leaving their cell, these inmates are subject to behind the back handcuffing. *Id.* at p.

18. All of these precautions significantly limit the likelihood of an assault on staff and, consequently, restrictions or exclusions from punitive segregation creates a less safe work environment for officers.

9. Having drastically curtailed the effective tool of punitive segregation, the BOC was forced to develop alternatives so that highly assaultive inmates could be housed in a manner that would separate them from more compliant inmates. 40 RCNY § 1-17. Rule 1-16 (also effective February 20, 2015) established “Enhanced Supervision Housing” (“ESH”) for such inmates. Rule 1-16, however, contains no punitive component either as a response to the conduct that caused the ESH assignment or for misconduct committed while housed in ESH. Even assuming ESH housing to constitute a punitive action, the Rule contains an arbitrary cap of 250 inmates who may be housed in ESH at any time. 40 RCNY § 1-17(c)(4). This cap eliminates whatever minimal deterrent effect ESH may have. Additionally, adolescents and young adult inmates, who were and are responsible for a disproportionate amount of jail violence, are excluded from ESH again limiting the rule’s deterrent effect. 40 RCNY § 1-17(c)(1). Instead, inmates prone to violence are placed in programs with a reward component, programs not available to those inmates who refrain from violent activities. These programs reward assaults with pizza parties,

guest speakers, including former National Football League quarterback Colin Kaepernick, drama lessons from the Stella Adler Studio of Acting, video games and cable television.

10. Under pressure from the BOC, the DOC, has failed to use punitive segregation even where it is available. The DOC's effort to instill alternatives to punitive segregation through the adoption of special housing units, its decision to house particularly violent inmates in a former infirmary, and its use of a reward without punishment system to incentivize inmates have all failed to quell violent behavior, failed to protect officers, and failed to prevent intradepartmental recidivism. The DOC's reform agenda, known as the "14 Point Plan," adopted under former Commissioner Joseph Ponte and continued under current Commissioner Cynthia Brann further disregards officer safety. The DOC's reluctance to place inmates accused of violating jail rules, including assaults on staff and weapon possession, in pre-hearing detention pending infraction hearings further empowers them to commit acts of violence against officers. All these acts of neglect are a result of the BOC's failed efforts with respect to punitive segregation.
11. The absence of punitive segregation and effective alternative housing directly immediately lead to assaults on staff. Examples are many and a review of inmate assaults on officers since the adoption of Rule 1-17 reveals a disturbing pattern of diminished officer safety.
12. On March 3, 2015, eleven days after the adoption of Rule 1-17, inmate Raleek Young, who was convicted for raping a 13 year old girl broke into the "control bubble," physically assaulted a female correction officer and attempted to rape her. Ultimately, the officer was rescued by other inmates. Upon information and belief Young would have

been eligible for punitive segregation on the dates of the assaults absent Rule 1-17 and, consequently, but for the rule, the assaults would not have occurred

13. On or about June 9, 2016, Anthony Romano was assaulted by inmate Sentwali Laviscount at the Manhattan Detention Center when Romano attempted to conduct a search of Laviscount prior to a court appearance. However, Laviscount ignored multiple orders and became hostile, striking Romano in the face. Romano sustained lacerations to his arm, neck, and face, a knot on forehead (contusion) and ultimately had to be treated for concussion-like symptoms. Four days later Romano was leaving the MDC clinic while Laviscount was being evaluated by a doctor. Upon seeing Romano, Laviscount ran up to him and punched him in the face. Romano fell to the ground and the inmate continued to assault him. As a result, Romano sustained a fractured nose, laceration to lip requiring 8 stitches, and a head contusion. Upon information and belief Laviscount would have been eligible for punitive segregation on the dates of the assaults absent Rule 1-17 and, consequently, but for the rule, the assaults would not have occurred
14. On August 6, 2016, inmate Mathew Whittington, who was incarcerated on several charges including assault and arson, assaulted Correction Officer Brian Nurse at the West Facility, punching him and causing his face to hit the cell door. The next day, Whittington attacked two more Correction Officers in West Facility. First, he punched Correction Officer Malik Medina and knocked him unconscious. Then, when Correction Officer Corey Hughes arrived to assist, Whittington slashed Hughes across his right arm with a scalpel creating a gash requiring at least 16 stitches. Upon information and belief Whittington would have been eligible for punitive segregation on the dates of the assaults

absent Rule 1-17 and, consequently, but for the rule, the assaults would not have occurred.

15. On October 14, 2016, inmate Jose Hernandez attacked Correction Officer Tiffani Dublin in the Eric M. Taylor Center ("EMTC"). Hernandez came up to Officer Dublin, and without any provocation attacked her and knocked her out by throwing multiple punches hitting her above the left eyebrow, above the right eye, on her left cheek, her right cheek, her mouth and chin. As a result of this attack, Officer Dublin sustained two black eyes, a concussion and permanent injuries to her cervical and thoracic spine including several bulging discs and inversion of the cervical spine. According to Officer Dublin's doctors, Hernandez's punches "shook her brain" and they have warned that if she is hit again she will become paralyzed. Upon information and belief, Hernandez would have been eligible for punitive segregation on the date of the assault absent Rule 1-17 and, consequently, but for the rule, the assault would not have occurred.

16. On Tuesday, May 9, 2017, there were four assaults at the DOC's Vernon C. Bains Center. Upon information and belief all the assailants would have been eligible for punitive segregation on the date of the assaults absent Rule 1-17 and, consequently, but for the rule, the assault would not have occurred. During August, 2017, inmate Joseph Cannon attacked a Correction Officer. Upon information and belief, Cannon would have been eligible for punitive segregation on the date of the assault absent Rule 1-17 and, consequently, but for the rule, the assault would not have occurred. On Wednesday, September 6, 2017, Inmate James Casey attacked an officer with a razor blade at Manhattan Criminal Court. Upon information and belief, Casey would have been eligible for punitive segregation on the date of the assault absent Rule 1-17 and, consequently, but

for the rule, the assault would not have occurred. On Thanksgiving Day, 2017 fifteen gang members, led by Jason Reid, Maurice Hennigan and Lyemel Summerville, engaged in a coordinated assault on Correction Captain Awais Ghauri. Upon information and belief, Reid, Hennigan and Summerville, among other involved in this assault, would have been eligible for punitive segregation on the date of the assault absent Rule 1-17 and, consequently, but for the rule, the assault would not have occurred. On December 6, 2017, Elvin Hernandez led a gang attack at the Anna M. Kross Center with two other inmates during which he threw an officer to the floor and repeatedly punched him in the face. Upon information and belief, Hernandez and the other assailants would have been eligible for punitive segregation on the date of the assault absent Rule 1-17 and, consequently, but for the rule, the assault would not have occurred. During February 2018, Correction Officer Jean Souffrant was brutally attacked by five inmates affiliated with the Bloods gang, including Steven Espinal, at the George Motchan Detention Center, breaking his back and causing life threatening brain bleeding. Upon information and belief, Espinal, among others involved, would have eligible for punitive segregation on the date of the assault absent Rule 1-17 and, consequently, but for the rule, the assault would not have occurred. During March 2018, a Correction Officer sustained a broken nose when attacked by Xavier Blount who punched her in the face when she tried to break up an inmate fight at the George R. Vierno Center. Upon information and belief, Blount would have been eligible for punitive segregation on the date of the assault absent Rule 1-17 and, consequently, but for the rule, the assault would not have occurred. A week later, two other Correction Officers were assaulted inside the George R. Vierno Center, with one being slashed several times by inmate Benjamin McMillan. Upon

information and belief, McMillan would have been eligible for punitive segregation on the date of the assault absent Rule 1-17 and, consequently, but for the rule, the assault would not have occurred. On March 17, 2018, Inmate J'von Johnson, attacked an officer and threw scalding water on him causing the officer a broken nose and first and third degree burns. Upon information and belief, Johnson would have been eligible for punitive segregation on the date of the assault absent Rule 1-17 and, consequently, but for the rule, the assault would not have occurred.

17. On June 6, 2018, inmate Sebastian Colin came out of his cell at the Brooklyn Detention Center and choked Correction Officer Eric Li. Two weeks later, on June 24, 2018, Colin was being disruptive in the RNDC gymnasium and officer Bryan Ashendorf attempted to apply restraints on him. Colin punched Ashendorf on the left side of his head, requiring a trip to the clinic to tend to injuries in his neck and headaches. Upon information and belief, Colin would have been eligible for punitive segregation on the dates of the assaults absent Rule 1-17 and, consequently, but for the rule, the assault would not have occurred
18. During the weekend of August 4, 2018, a Correction Officer at the Robert N. Davoren Center was assaulted by Makik Quick and two other inmates. Upon information and belief, Quick and the other assailants would have been eligible for punitive segregation on the date of the assault absent Rule 1-17 and, consequently, but for the rule, the assault would not have occurred. On August 7, 2018, a correction officer was beaten unconscious by a gang affiliated inmate nearly twice his size at the Brooklyn Detention Center. Upon information and belief, these inmates would have been eligible for punitive segregation on the date of the assault absent Rule 1-17 and, consequently, but for the rule,

the assault would not have occurred. That same day, several other officers were assaulted in various facilities on Rikers Island. Upon information and belief, these assailants would have been eligible for punitive segregation on the date of the assault absent Rule 1-17 and, consequently, but for the rule, the assault would not have occurred. The following day, Wednesday, August 8, 2018, a Correction Officer was beaten with a cane by five gang members at the Anna M. Kross Center. Upon information and belief, these inmates would have eligible for punitive segregation on the date of the assault absent Rule 1-17 and, consequently, but for the rule, the assault would not have occurred. On August 15, 2018, three inmates assaulted a Correction Officer at the Otis Bantum Correctional Center, slashing his forehead and other parts of his body. Upon information and belief, these inmates would have been eligible for punitive segregation on the date of the assault absent Rule 1-17 and, consequently, but for the rule, the assault would not have occurred.

19. Steven Sidbury, also known as "John Doe," terrorized staff and inmates with dozens of violent assaults over a period of several years while incarcerated in DOC facilities following the elimination of punitive segregation. Sidbury, according to DOC records, was responsible for no less than forty violent acts in a fourteen month period and a host of other violent incidents during his six years in DOC custody. Many of these attacks occurred at times, where, but for Rule 1-17, he would have been segregated and, consequently, but for the rule, the assaults would not have occurred. News media reports pertaining to the assaults described in paragraphs 10 through 17 are annexed hereto as Exhibit B.

20. The most recent Mayoral Management Report provides glaring evidence that punitive segregation limitations has a direct impact on officer safety. Included in that report, is a chart detailing a decline in serious injuries to staff as a result of inmate assaults on staff. *See* Exhibit C, at p. 72. After a significant 42.9% decrease during fiscal year 2015, such assaults have increased each year since the adoption of Rule 1-17 to the point where current rates of such injuries now outnumber the rates in fiscal year 2015. *Id.* This is particularly glaring considering the report’s detailing the significant decrease in the average daily inmate population during that time, from over ten thousand during fiscal year 2015 to under eight thousand during fiscal year 2019. *Id.* Earlier management reports for the period following the adoption of Rule 1-07 support the conclusion that the DOC is without tools necessary to control an inmate population that, although declining in numbers is “made up of individuals with more serious offenses.” *See Id.* The fiscal year 2017 report noted an increase in inmate assaults on uniformed staff. *See* Exhibit D, at p. 84. The report concedes that inmate violence challenges “developed alongside the implementation and modification of ambitious initiatives including punitive segregations reform...” *Id.* The 2018 report noted a 9.5% increase assaults on staff and a 75% increase in serious injuries caused by such assaults. Exhibit E, at p. 82.
20. The Restrictive Housing proposal was published on October 29, 2019 and scheduled for BOC consideration on December 3, 2019. The title is a misnomer as the rule does not create Restrictive Housing. Instead, under the guise of “minimum standards” for such housing, the proposed rules continue the BOC assault on punitive segregation which, as documented above has a direct effect on officer safety. Although the proposed provision

would create an entirely new Chapter of the BOC rules with eleven subchapters and forty sections, the provisions effecting Correction Officers would:

- a. create a maximum punitive segregation sentence of 15 days, a reduction from the prior 30 day maximum.
- b. create good behavior reduction of punitive segregation time for “serious assaults on staff.
- c. provide “lock out” time increase from one to four hours for adult inmates and an increase from seven to ten for young adults in the failed restrictive housing areas.
- d. mandate forfeiture of a punitive segregation sentence where the DOC fails to enforce the sentence within 30 days.
- e. Eliminate the previously existing automatic \$25 fine for guilty infractions.

The complete proposed amendment is attached hereto as Exhibit F.

21. As each of these proposals would create time periods where inmates eligible for punitive segregation would, instead, be free to interact with a wider array of staff without the extensive security precautions provided by DOC policy for punitive segregation inmates, such staff, upon implementation, will see an immediate increase in the threat to their safety.
22. In spite of the direct impact the safety of officers, a mandatory subject of bargaining, the City did not negotiate with COBA prior to the publication or adoption of this rule.
23. In light of the foregoing, the City has failed to collectively bargain with COBA prior to the change in terms and conditions of employment in violation of the New York City Collective Bargaining Law.

ARGUMENT¹

Where a unilateral change by the employer impacts bargaining unit members' safety, the change modifies terms and conditions of employment and the change must be negotiated in advance. Even in circumstances where a management right may be at issue, the BCB balances the employer's interest against that of the union or employees. District Council 37, 77-OCB-8 (2006)("[T]his Board must balance the interests of the employer and of the employees." citing County of Montgomery, 18 PERB ¶ 3077, at 3167 (1985)("Thus, we must weigh the need for the particular action taken by the employer against the extent to which that action impacts on the employees' working conditions.")). In District Council 37, the BCB held that the employer failed to bargain over a new cell phone prohibition policy where the prohibition prevented the employees from making or receiving emergency calls. Similarly, bargaining demands that employees not be required to use unsafe equipment and to maintain a safe and healthful workplace are also a mandatory subject of bargaining. Scarsdale PBA, 8 PERB ¶ 3075 (1976)(safe equipment); CSEA, 14 PERB ¶ 3049 (1981)(safe and healthful workplace).

Also mandatory are demands for the public employer to protect public employees from dangers presented by members of the public for whom the public employer is responsible. Specifically, in Somers Faculty Assn., 9 PERB ¶ 3014 (1976), PERB held as mandatory a teachers' union demand to protect teachers from student acts of violence. The analogy to correction officers defensive tactics is self evident as the union, here, seeks to ensure that punitive segregation remain a viable tool to protect them from inmate violence.

¹ The board's rules permit argument to be provided in a separate brief or in the Petition. See 61 RCNY § 1-07(c)(1)(i)(E).

Bargaining is also required under the CBL even though no physical injury has yet to be caused by the challenged employer action. In CIR v. HHC, 37 OCB 38, at 21 (1986), the BCB explained that where there is a “clear present or future threat” there is a “*Per se*” safety impact. “*Per se* impact situations are those in which [the Board] deem[s] the potential consequences of the exercise of a management right to be so serious as to give rise to an obligation to bargain *before actual impact has occurred.*” (Emphasis added). A finding of such consequences “does not require a showing of actual injury. Thus, it is clear that, if COBA can demonstrate a legitimate health and safety issue, Respondents had a duty to bargain over the decision.

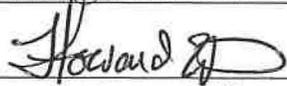
Clearly, the restrictions contained in the BOC Restrictive Housing rules present a *per se* safety situation in light of the extensive history of inmates who would otherwise have been in a heightened security environment assaulting officers and causing serious injury. The City’s management reports confirm that serious injuries have resulted, at least in part, from prior restrictions on the use of punitive segregation. As a result, it cannot credibly be asserted that the BOC’s action will not endanger officers in a *per se* manner requiring advance negotiations.

Wherefore, the New York City Board of Collective Bargaining must order the City to cease and desist from implementing the Restrictive Housing rule and reinstate the prior rules with respect to punitive segregations.

Dated: December 4, 2019

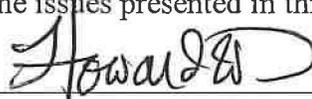
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hwien@koehler-isaacs.com

By:


Howard Wien

VERIFICATION

Howard Wien affirms under penalty of perjury and in accordance with CPLR § 2106 that, pursuant to CPLR § 3020(d)(3), I am the attorney for petitioner in this matter, that petitioner is not in the County where I have my office, that I have read the annexed Verified Petition and that I am familiar with the facts alleged herein, which I know to be true, except as to those matters alleged upon information and belief, which matters I believe to be true. My knowledge comes from my representation of petitioner with respect to the issues presented in this proceeding.

A handwritten signature in cursive script, appearing to read "Howard Wien", is written over a horizontal line.

Howard Wien

NY Board of Corrections Restrictive Housing Response

- 1. We're aware that LA county maintains disciplinary segregation for minor infractions, carrying a maximum sentence of 10 days, and that the restrictive housing division functions as the long-term segregation in LA jails (please correct me if I'm mistaken in these characterizations). If someone commits a more serious infraction (i.e. serious enough to carry a sentence longer than 10 days in disciplinary seg), are they sentenced directly to the restrictive housing division? If so, are they sentenced to a specific amount of time/is there a maximum sentence they can receive in the restrictive housing unit (and if so, what is it)? If there's some sort of infraction/sentence schedule, it'd be great to see that.*

LASD utilizes a Discipline Schedule for imposition of discipline time. This schedule is divided into three sections; offenses against persons, offenses against property, and security violations. The discipline time ranges from 1 to 30 days depending on the violation. The Discipline Schedule applies to all inmates.

Offenses which carry discipline time greater than 10 days do not automatically result in the inmate being housed in restrictive housing. Each discipline incident is weighed on its own merits, as is the need for placement into restrictive housing. We reserve sending inmates directly into restrictive housing for the most egregious violations, such as gassing, staff assaults, and felonious assaults on other inmates. These offenses all carry a maximum of 30 days of discipline. Inmates who have had multiple violations, like the above, or are a threat to staff or other inmates will be evaluated for our Restrictive Housing unit. We classify these inmates as Keep-Away level 10 (K-10 – our highest level of classification). These inmates are evaluated every 90 days. They are housed in single-man cells and transported according to their history (threat to staff/other inmates, protected custody) which may require waist and/or leg chains, some have a sergeant escort.

- 2. Terri McDonald referenced a step-down unit in restrictive housing. Who gets to go there, and when do they go there?*

Custody Division created the *Behavior Based Reintegration "STEP" Program* for those inmates who commit egregious discipline violations, are chronic violators of jail rules, or are classified at a K-10. There are 4 steps in the program. This program is not discipline, but an opportunity for inmates to earn increased programming and out of cell time through good behavior, and positive program participation. Placement into the STEP program occurs for all the Restricted Housing inmates (not including those in mental health housing).

- Step 1 begins upon the completion of discipline housing for egregious acts. Generally, the inmates that display good behavior will progress

from Step 1 to Step 2 fairly quick. For those inmates with poor behavior, they will stay in Step 1 for up to 30 days.

- Step 2 allows for full privileges; however, they are not allowed to program with other compatible K-10 inmates.
- Step 3 adds programming for inmates with good behavior with other compatible inmates in small groups.
- Step 4 adds programming with larger groups of compatible inmates.
- At the completion of the STEP program, the inmate will be re-evaluated for general population housing or appropriate housing if in protected custody.

3. *We were told that in the most restrictive phases of the restrictive housing program, handcuffs are required during lockout. Is it just handcuffs, or are additional restraints applied (waist chains, leg irons, etc.)?*

Inmates in the most restrictive phases of the restrictive housing are transported/moved utilizing waist chains. On rare occasions, we do have participants who require leg chains based on their propensity for violence using their legs. Some require a sergeant/video escort.

4. *Is there any congregate programming offered in the most restrictive phases of restrictive housing? If so, are restraint chairs/desks used?*

Yes, we do offer congregate programming in the most restrictive phase of the restrictive housing program. As part of the Behavior Based Reintegration Program, Steps 3 and 4 offer the inmates the opportunity to program (dayroom/yard/classes) with compatible inmates. Step 3 is small groups (up to 5), Step 4 are larger groups (up to 10). This programming is conducted in a large multipurpose room, which has six permanently affixed treatment chairs. These chairs allow multiple inmates to participate in programming, but afford a very high level of security to the inmates and programming facilitator.

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT
CUSTODY OPERATIONS
RESTRICTIVE HOUSING PROGRAM

Background

The history of placing inmates in Administrative Segregation goes back decades and was used as a tool to separate inmates who had special welfare concerns. The Los Angeles County Sheriff's Department (LASD) followed this National and State trend and has segregated housing units. Our Administrative Segregated inmates are considered the highest security level and are referred to as (K10). The K stands for Keep Away, 10 – Level 10. Currently, LASD's yearly average of inmates classified as K10 is 613. Of that approximately, 8 percent are females. K10 housing is only located at the following jails: Men's Central Jail (MCJ), Twin Tower Correctional Facility (TTCF), North County Correctional Facility (NCCF), and Century Regional Detention Facility (CRDF – Women's Facility).

Initially, the program was designed to protect the inmates who could be potential victims as well as segregate the most violent inmates, and those suspected or convicted of crimes repugnant to the inmate population. Also needing protection were inmates who supported law enforcement activities through informing. These informant inmates were actively targeted for assault by members of the inmate population. Years later, the program evolved to include active prison gang members and those who self-aligned themselves to continue criminal activity within the jails. In addition to this, there are also inmates that were extremely violent and too disruptive to house in general population.

Inmates placed in Administrative Segregation are housed in single man cells and do not have physical contact with other inmates. All transportation and out of cell time is separated from other inmates. Because of this, Administrative Segregation Housing is staff intensive and limits the types of programs available to the inmates. Over the past several years, LASD has experienced an increase of those inmates either requiring Administrative Segregation and/or requesting this type of housing. Generally, the increase is caused by more inmates wanting single man housing. This stems from fear that they will be harmed in general population, which could be caused by drug debts and/or they are in bad standing with other inmates. We are also seeing a higher trend due the types of inmates we are now housing. There are more inmates charged with violent crimes as well as the steady increase of mentally ill inmates now in the system. There is a daily struggle to find space for this population because single man cells are limited within LASD jails, with the majority of them being at MCJ and the poor design at MCJ has created safety concerns for inmates and staff.

In early 2015, with the increasing trend of K10 inmates, LASD began the path to completely revamp the system relating to Administrative Segregation. State and National trends were leaning towards a less restrictive approach based on studies of long term isolation and how that affects inmates' overtime. In response to these new studies and being a National leader in law enforcement, LASD created a Restrictive Housing Program based on National best practices and to date is the first large jail to embark on this practice. This new program will reclassify the high security inmates, allow them more out of cell and programming time, help reduce violence, and reintegrate them back into general population or equivalent housing.

The goals of the new program are:

1. Increase "out of cell time" and socialization through the programming of compatible inmates – new dayroom at MCJ – 1800.
2. Introduce Education Based Incarceration classes.
3. Reduce reliance on "single person" housing as only option.
4. Give inmates a path/opportunity to return to general population.
5. Reduce violence in the jails.

To serve the best interest of Los Angeles County by providing a secure, safe, and constitutionally managed jail environment for both staff and inmates.

– Custody Division Mission Statement –

The Behavior Based Reintegration “STEP” Program

In an effort to reduce violence, reliance on administrative segregation and to support and encourage inmates to reintegrate into the general population, the Los Angeles County Sheriff’s Department has created a Behavior Based Reintegration Program”, also known as the “STEP” Program.

The “STEP” Program is **NOT DISCIPLINE**, but an opportunity for inmates to earn increased programming and out of cell time through good behavior, and positive program participation. It is an opportunity for inmates to learn life skills that will benefit them while in custody, prison or when they return to the communities in which they live.

Placement

All High-Security - Administrative Segregation Inmates, (Classifications K17 – K20) will be placed into the “STEP” Program. Placement is based on an inmate's criminal history, institutional behavior, and future risk indicators.

Deputies assigned to Jail Liaison will interview and recommend the appropriate placement to the Restrictive Housing Panel, who will make a ruling on the classification and “STEP” placement.

Participation and Performance

Participation is encouraged; however, inmates can choose to opt out. Those who do participate will have the opportunity to graduate through the steps in less time than those not willing to participate.

Programming and performance within the “STEP” Program will be documented by staff working the High-Security modules as well as the Education Based Incarceration (EBI) staff. In addition to Jail Liaison personnel visiting “STEP” program housing locations on a weekly basis.

Re-evaluation

Inmates will be re-evaluated by Jail Liaison every 30, 60 or 90 days. Upon review of their performance and participation in the program, inmates will progress through the steps. However, violation of the jail rules could delay an inmate’s movement. The eventual goal of the “STEP” Program is to re-integrate the inmate safely into the General Population or equivalent housing.

Benefits of the “STEP” Program

- Greater access to EBI programs and classes
- Group learning sessions
- Group dayroom and outdoor recreation
- More out of cell time
- Behavior management skills
- Reintegration to General Population
- Video Visits – 7 days a week access (provided visitors go to other more accessible remote stations) – see: <https://visit.lasjd.org> for more location and information

Phases of the Program

- **Step 1** – Designated for inmates who have demonstrated disruptive behavior and are transitioning from disciplinary housing.

- **Step 2** – Designated for inmates that have successfully graduated from step 1 and are being evaluated for step 3 based on behavior and risk.
- **Step 3** – Designated for inmates that have demonstrated a desire to participate in a small group of compatible inmates in dayroom and yard activities.
- **Step 4** – Designated for inmates who successfully program with a smaller group and are reintegrating to General Population or equivalent housing by participating in dayroom and yard activities with a larger group of inmates.

Appeals

Inmates will be able to file an appeal of their placement by filing an Inmate Request Form and directing it to the Jail Liaison Unit. Jail Liaison Supervisors will conduct an inquiry of the appeal with a review by the Restrictive Housing Panel.

Questions

Questions regarding the “STEP” Program may be directed to the Jail Liaison office through an Inmate Request Form. Information regarding an inmate’s placement may be confidentially provided to the inmate.

	Step 1	Step 2	Step 3	Step 4	General Population
Day room & outdoor time	Somewhat limited*	Limited	Limited	Limited	Full access
Group time & Recreation time	Groups of 1	Groups of 1	Small Groups	Larger Groups	Unlimited
Housing	Single person cell	Single person cell	Single to Multi-person cell (1 to 4)	Single to Multi-person cell (1 to 4)	Cells or dorms
Commissary	Limited to \$40 + Vending = \$40	Same as GP	Same as GP	Same as GP	High limits
Television	Limited*	Full access	Full access	Full access	Full access
Visiting	Video visits	In-Person or Video visits	In-Person or Video visits	In-Person or Video visits	Full access
Telephones	Limited*	Full access, based on housing	Full access, based on housing	Full access, based on housing	Full access
EBI Classes & In-Cell Self Study	Available	Available	Available	Available	Available

**Privileges and programming are not guaranteed and are based on security, facility, availability and other factors. All housing and jail privileges will meet or exceed minimum Title-15 requirements.*

Notice to the inmate:

Inmate _____,

Booking #: _____,

You have been identified as a candidate for the Behavior-Based Reintegration "STEP" Program. Your classification will remain the same. You are being placed at the below level:

- Step 1 Step 2
- Step 3 Step 4

The "STEP" Program will meet and may exceed Title 15 requirements.

You acknowledge and are expected to understand the following:

- Your participation in the "STEP" Program is encouraged.
- Lack of participation, disruption or other violations of jail rules may subject you to a lower step level with a decreased amount of privileges and possibly to appropriate discipline.
- **Your person, property, and cell are subject to search on a regular basis and potentially every time you leave your cell.**
- Title 15 allowable inmate property will be strictly enforced.

Positive and on-going participation in the "STEP" Program as well as on a day-to-day basis with your module officers and all jail staff will contribute to your eligibility to successfully graduate to the next step.

The following **Behavior Improvement Skills** are available and will be provided to you. You are encouraged to participate and positively contribute to your success and the success of other inmates within the program:

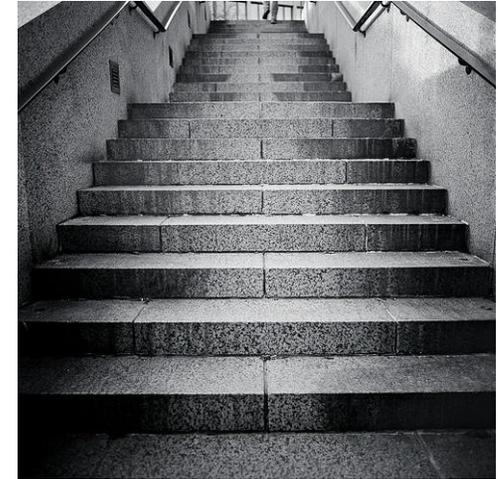
- Chaplin programs and visits
- Counseling classes
- EBI resources
- Cage of Rage programming
- Group Activities

This program and the involved inmates will be continuously monitored and re-evaluated for improvement. If you have any questions or suggestions, please complete an Inmate Request Form, directed to the Jail Liaison office, and make your ideas known.

Los Angeles County Sheriff's Dept.
 Custody Operations
 450 Bauchet Street, Room E-801
 Los Angeles, CA 90012
 www.LASD.Org



Los Angeles County
Sheriff's Department

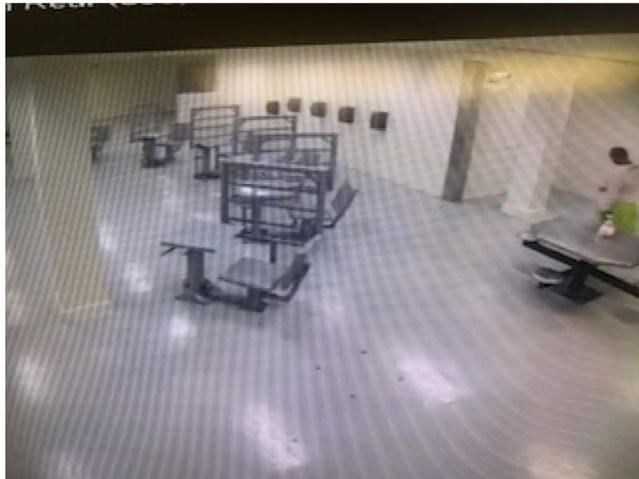


Behavior Based Reintegration Program

To maintain a constitutionally sound and rehabilitative approach to the reintegration of inmates, while providing the highest possible quality of life.

- Program Mission Statement -

Jim McDonnell
 Sheriff



NYC BOARD OF CORRECTION

10/25/17 AGENDA

Telephone Conference with Dr. David Fullard [with my raw notes]

II. Restrictive Housing for Young Adults

What is your view about the following features of restrictive housing for young adults?

- 1. Should desk restraints be used and if so, for how many hours per day and for what length of time? Currently, restraint desks are used in the most restrictive levels of ESH ("Entry Unit" and "Level 1;" collectively, "restrictive levels") whenever young adults are locked out, i.e., 7 hours daily, and for a compulsory 30-day stay.**

DF: It's pretty clear that I'm not a fan of the restraint desk being used with adolescents and young adults on Rikers Island. Research tells us that using these types of tactics and the coercive techniques escalates rather than reduces violence, although in some instances you may have a short-term down-turn in violence and then it will go up. In some cases, I suspect, the violence will increase exponentially once the person is no longer being restrained. It makes much more sense to provide meaningful programs such as educational programs, vocational programs, and prison industry as a means of providing inmates with something meaningful to occupy their time. When the inmates' time is occupied with something that is meaningful to them you have a demonstrated reduction in violence. Also, being engaged in valuable programs means that inmates don't want to lose access to these activities, which is what happens when they are involved in a violent event. This means that inmates avoid violence in order to be allowed to continue with these programs.

To specifically answer your question I don't believe the restraint desk should be used, except with extremely violent inmates who have failed to change their behavior after serious attempts to address that behavior by the Department of Correction (through engagement in alternative programs), and psychotherapeutic interventions by the mental health staff, have failed.

I really do believe that the Department of Corrections has an opportunity to think truly outside of the box when it comes to attempting to reduce violence among adolescent and young adult inmates. I believe that having a

program where the inmates are performing some kind of labor for a salary (\$3.00 per hour), combined with mental health treatment, substance abuse treatment, conflict resolution, interpersonal skills training, and good solid correctional treatment -- will result in a statistically significant reduction in violence. In the language of the youth, "you have to have some skin in the game in order to care about the game." Having a job within the correctional institution that pays \$3.00 an hour is of value to the adolescent and young adult inmate. They will want to hold on to this particular job, and these jobs are linked to good behavior in order to keep the job; if bad behavior is reported they would lose their job. It is important to note that while to us \$3.00 an hour is nothing, to an inmate it's a great deal of status. They do not want to lose that status. As such they will conform to our wishes, follow the rules of the institutions, and avoid violent altercations.

Members of the Department of Correction will most likely not like this idea. They (the NYCDOC) will say that we are paying the inmates for good behavior. In fact, this is a form of "token economy" which has been used to change poor adolescent inmate behavior for decades. The idea will have been sold to the NYCDOC. Part of the sales tactic will involve explaining to the DOC that if they are able to show a statistically significant reduction in violence, they will have fewer staff injuries, fewer inmate injuries, fewer lawsuits, and will be able to say proudly to the national correctional community: "We found an effective solution to reducing violence among our adolescent and young adult inmate population."

It is also important to note that you need to have very good supervision in order to make this work. Captains and Assistant Deputy Wardens have to buy into the program. If they buy into the program, they will do everything in their power to make it work. Further, I think the correctional staff working in this program should be hand-selected by an interdisciplinary/multidisciplinary team, not just correctional staff. They should want to work in this program. They should have a positive attitude and be program minded. I also believe they should be paid a little bit more. They should receive ongoing regularly scheduled training. And if the program works well, they should be applauded, recognized, and rewarded.

In situations where serious attempts to change extremely dangerous and violent behavior by the Department of Correction (through engaging inmates in valuable programs such as those described above) and psychotherapeutic

interventions by the mental health staff have failed, an interdisciplinary/multidisciplinary team needs to assemble and examine each case individually, to determine when and how long the restraint desk will be utilized. While the restraint desk is being used in these situations, Department of Corrections and the mental health staff need to come up with a plan for this specific case going forward when the inmate is released from the restraint desk – otherwise the inmate will return to the same violent behavior, which may be even worse after a period of such physical restraint.

2. Currently, DOC performs a housing assessment of young adults in the Entry Unit and says that it needs 30 days to complete this assessment. Should this assessment take 30 days to complete?

DF: I don't know the procedure that the Department of Correction is currently using to complete the assessment process. 30 days does seem like a bit much. The question that comes to mind is, "do they (DOC) have dedicated (regularly assigned/steady post officer) staff to perform this assessment? Or, are staff members doing multiple tasks in addition to the assessment process?" Another question that comes to mind is, "who is supervising the assessment process? Are these supervisors assigned (regularly assigned/steady post supervisors) just to supervise those doing the assessments? Or, are these supervisors being rotated into the area with little knowledge of the assessment process?"

The best case scenario would be to have officers who are specially selected, trained, and regularly assigned to the duties of assessing young adult inmates in the entry unit. The same holds true for those who supervise the offices in this area. The supervisor should be specially selected, trained, and regularly assigned to the duties of supervising the correctional officers who are assessing young adult inmates in the entry unit. Where officers have multiple duties, and/or supervisors are rotating into the area, this could make the process more cumbersome, inefficient, and worse, inaccurate.

It also seems to make sense that this assessment would be performed by a team of interdisciplinary / multidisciplinary staff. If this is currently the case that might account for the 30 day assessment period since it takes time to engage multiple staff in the assessment process. However, if this is not the case 30 days does seem to be a rather long period of time to perform the assessment task for dedicated officers and supervisors assigned to the task.

3. Should dogs be present in the classroom space during school sessions?

DF: No.

The dogs utilized on Rikers Island search for drugs and escaped inmates. They have no other purpose.

Using the dogs in the classrooms spells coercion. We all remember the photographs from Abu Ghraib and the use of German Shepard dogs!



I don't think I need to say much more in reference to dogs being present in the classroom space during school sessions. I think it's beyond problematic!

4. What kinds of programming should be offered? Currently, the following programming is available in the restrictive levels: Dialectical Behavioral Therapy, Interactive Journaling, Youth Communication, Creative Expression Arts and Crafts, Overcome Life's Struggles (IDOL), skill building, reentry services program, and Cage Your Rage.

DF: Any psychotherapeutic therapeutic program that is Interactive will have a better chance of being effective than psychotherapeutic programs that are static. With that in mind, I would seriously consider interactive journaling, youth communications, creative expression arts and crafts, and interactive skills building that utilizes role play.

5. Should mental health clinicians be involved in placement/exit/level progression decisions? (Currently, involvement of mental health staff is limited to daily cell-door check-ins and deciding whether a person should be excluded from YA-ESH due to serious mental illness or serious physical disability).

DF: Correctional mental health staff should be involved in every single aspect of restrictive housing unit placement. But not just "involvement" -- they must have the line authority and power to effect change and make changes where necessary. As you know, the Department of Correction will resist this. If the inmate has a mental health issue, a clinician should be making many of the decisions concerning placement in restrictive housing. With this, comes a great deal of responsibility and accountability for the mental health clinician. Under competent clinical supervision, this can be effective and quite useful.

6. Should young adults/adults be commingled in ESH? Should all young adults be in one facility? (Currently, young adults ages 19-21 are commingled with adults in Level 1 and in less restrictive levels (where desks are not used)).

DF: No. Under no circumstances should young adults age 19 through 21 commingle with adults over the age of 21. The rationale behind this is as follows: young adults (when around older inmates) want to prove themselves - they want to prove their masculinity - they want and sometimes need to at least appear to be a tough guy - as such, they may act out in an effort to prove themselves. In other cases, the young adult between the age of 19 and 21 may end up being the victim of the older adult. This may take place as a simple assault or a sexual assault.

Because the population Rikers Island is quite low at this time, the Department of Correction has plenty of dorm and cell space to spread people out. Through classification, they can separate groups of inmates who should not be housed together. This certainly includes separating younger inmates from those over the age of 21. The Department of Corrections may resist this and state that spreading inmates out into various housing areas via classification may be a good thing but it is also costly. The Department of Correction will also note that they will need additional staff for those housing areas.

The department will have to decide whether it wants to spend money and have a safer environment or spend less money and have an unsafe environment.

7. Should placement criteria be only for violent acts that cause serious injury or also for weapons possession/threat of violence to staff?

In Re: Placement in restrictive housing for acts of violence that cause serious injury (to anyone).

DF: When an inmate causes serious injury to anyone several things should take place. First and foremost, the inmate would have to be housed and managed in an area where he or she will not be able to injure another person, including themselves. Currently, in the Department of Correction it would seem that placement in restrictive housing would be necessary and appropriate in this very specific situation.

In addition to placement in restrictive housing, the Department of Correction and the mental health staff would need to form an interdisciplinary / multidisciplinary team of people to examine what happened, why it happened, and how to prevent it from happening in the future with this specific inmate. The Department of Correction should examine its classification system, and ask the question: "Was this inmate properly classified and properly housed?" The mental health staff should be examining the inmate to determine if he has a serious mental health condition that would increase his propensity to act out in a very violent manner or has a mental health condition that would make him more vulnerable to commit acts of extreme violence. Because the inmate will not spend the rest of his time in restrictive housing (or indeed, the rest of his life behind bars), both the mental health staff and the correctional staff need to create a plan for this particular inmate that would guide his release into an appropriate housing unit (after a term of confinement in restrictive housing) that has a support system built into the housing unit to prevent the violent behavior from reoccurring – and even more important, to reduce the likelihood that such behavior would occur after release back into the community.

On another note, a multidisciplinary / interdisciplinary team of staff should interview the inmate in an effort to determine why the violent behavior occurred in the first place. There are times when an inmate is attempting to protect himself from being assaulted by another inmate. During these times, an inmate may resort to acts of extreme violence in order to save his own life. This is one of the reasons why inmates carry weapons. They simply do not feel safe! This needs to be assessed and addressed. During my time with the Department of Correction this was always an issue that was never resolved. The department should move towards helping each inmate feel safer in its environment. This in and of itself will help to reduce violence because

inmates won't feel the need to carry a weapon (or as the inmates say, "be strapped"). It's important to note that oftentimes inmates will behave violently as a means of proving to the rest of the inmates that they will not be taken advantage of. This is simply a reality of being locked up in a correctional institution.

In Re: ... Placement in restrictive housing for weapons possession.

DF: Restrictive housing should be utilized only for inmates who have acted out in a very violent manner and cause serious physical injury to another person. In the case of weapons possession, the inmate should be issued an infraction or have some other punishment levied against the inmate. He/she should not be placed in restrictive housing. Further an interdisciplinary/multidisciplinary team of correctional and mental health staff should interview the inmate in an effort to determine why he/she felt the need to carry a weapon. Once again, the Department of Correction needs to make certain that the inmates under their supervision feel at least somewhat safe in the correctional institution.

One of the things this team of correctional and mental health staff should be looking for are the inmate's thoughts on his own safety in the correctional institution. Specifically they should be asking, "Do you have a specific enemy (or enemies) that you feel the need to protect yourself against?"

In Re: Placement in restrictive housing for threats of violence to staff.

DF: Responding to this question is a bit challenging when we're talking about verbal threats to civilian or correctional staff members. If an inmate identifies a particular staff member that he or she is planning to harm, staff must consider the inmate's words and take some kind of action in a proactive manner to avoid an assault on staff. Many times correctional staff are threatened by inmates, yet nothing actually happens. There are other times when an inmate makes a threat against a correctional staff member, and it's important to know the reasons behind this threat. The question becomes what you do when you have information directly from an inmate stating that he's going to hurt a staff member. This will have to be dealt with on a case-by-case basis. I think the first line of defense would be simply to transfer the inmate to another institution or another area where the inmate will not come in contact with threatened staff member. Using this method, good tracking of both the inmate and be threatened staff member are necessary. Supervisors must be made aware of the separation so there is no accidental contact or transfer. I guess what it boils down to is simply good correctional supervision of both the staff and the inmates.

Specifically, I do not think that an inmate should be placed in restrictive housing for a threat to a specific staff member. He or she should receive an infraction and some other form of punishment should be levied against that inmate. Further, I think the inmate should be assessed by an interdisciplinary / multidisciplinary team of people in an effort to figure out what went wrong and how best to deal with this issue. I guess what I'm saying is we need to function in a highly professional manner and address individual inmates as separate individuals who may have unique problems that need to be addressed.

8. Young adults have a right to a hearing to challenge their placement in YA-ESH. Who should serve as adjudicators? Currently, uniformed staff serve in this role.

DF: It's my very strong opinion that a member of the department's legal divisions should be the adjudicator for these hearings. Uniformed members of service should not serve in this capacity.

A lawyer or a highly competent legal assistant will be the best person able to look at the evidence and determine if the challenge to placement is warranted. Although correctional staff are trained for this particular duty it is very difficult. Correctional staff are not lawyers or legal assistants. If, in fact, you do come across correctional officers who have studied law or are legal assistants, they may be appropriate for that position if they can be completely objective and not be co-opted or influenced by their fellow officers.

Another reason that you want someone who is not a uniformed member of service to perform this particular duty is based on the fact that "blue tends to stick with blue." Believe me, as a person who is a member of the uniformed force it is hard for me to make this statement. But, as a person who wore blue the 30 years I am aware of situations where correctional staff have whispered to the adjudication officers their desire to have a negative outcome to a hearing. Painful to state, but it is simply a fact. As I noted elsewhere in these comments, the Department of Correction must increase its level of professionalism.

I hope this was useful.

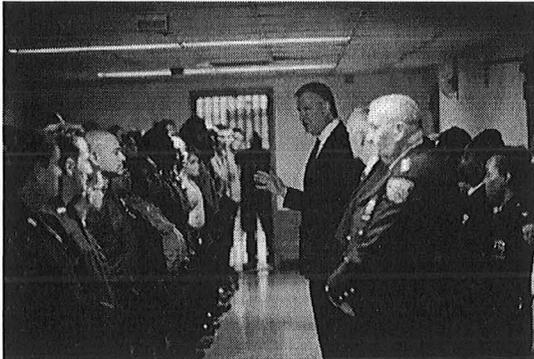
David Fullard, Ph.D., LMHC, CRC

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CityViews: The Three Questions NYC Must Answer if it is Serious About Closing Rikers

By David A. Fullard | 3 hours ago



Michael Appleton/Mayoral Photography Office

Mayor de Blasio during a 2016 visit to Rikers Island.

In 2016, Mayor De Blasio said closing Rikers was a “noble concept... but dead in the water.”

Just a year later, he promised to close Rikers in 10 years, calling this a “very serious, sober, forever decision.” Was De Blasio supporting the move to close Rikers because he truly believes in criminal justice reform, or just to get reelected?

If the mayor is serious about closing Rikers in a decade—and even more so if officials calling for a three-year closure timeline mean what they say—then work towards that goal starts right now.

The mayor’s spokesperson agrees that Rikers should be closed as soon as possible, but note they need to bring down the population first.

But it’s even more complicated than that. Shutting down Rikers without putting critical services and structures in place first will lead to critics of criminal justice reform saying “I told you so” – and more suffering by those caught in the mass incarceration crisis.

What needs to be put in place before closing Rikers? Beyond building smaller, more modern jails close to the courthouses in each borough, there must be:

- 1) Reduction in prison population through alternatives to incarceration, sentencing reform and new bail policies;
- 2) New protocols for selecting and hiring staff, training methods, and more humane use of force and punitive segregation policies;
- ③ Implementation of effective programs and services – including mental health, wellness, drug treatment, and stress management training for both inmates and officers;
- 4) Education, job training, job placement, housing, and health care assistance for returning citizens after release and during release-planning process to reduce recidivism;
- ⑤ Improvement of conditions of confinement, risk assessment, reducing inmate-to-staff ratio, providing phone/internet services to inmates, and more.

Furthermore, Rikers itself needs to be repaired now. Correction officers' and inmates' lives are at stake.

The case for closure

As a correction officer and captain for 29 years on Rikers, I saw how dangerous it is for officers and how dreadful conditions are for inmates: I know we must close it as soon as possible. Now an assistant professor at SUNY in criminal justice and forensic psychology, I have long worked to achieve this goal.

My first years with the NYC DOC were at the now-closed Bronx House of Detention for Men (BHDM), so I know the difference between a well-functioning, community detention facility and the sprawling, out-of-control mess at Rikers. Located near the courthouse and multiple transit lines, BHDM made it easy for inmates to have visits from family, friends, and attorneys, and get to court hearings without having to wake up at three in the morning for rush-hour bus transit off the single bridge from Rikers. Nearby hospitals ensured easy access to medical and mental health appointments or emergency treatment, resulting in fewer illnesses or deaths. Prisoner advocates and civil rights groups could monitor treatment of prisoners without obstruction. The central location allowed correction officers and staff to get to work easily, and nearby banks, restaurants and stores made their day-to-day lives more convenient, reducing their stress and thus improving interactions with inmates. Grateful for the superior working conditions at BHDM, and to prevent transfer to Rikers, officers and staff followed the rules and had lower rates of absenteeism and turnover.

Life at BHDH was not a picnic. It was jail, and it was hard – but everyone knew they were lucky to be there as opposed to the remote, dirty, aging, overpopulated and underserved jails on Rikers.

I want to state this clearly: It is a small minority of correction officers, administrators, and staff who participate in violent incidents against inmates, or in covering up these attacks. Likewise, the inmates who are involved in fights and beatings are a small fraction of the inmate population. Most correctional staff members at every level and rank, and even the bulk of the inmates, are not involved in violence behind bars.

Nevertheless, due to the severe injuries, misuse of power, and potential for deadly force against inmates, officers, and staff, this issue must be addressed directly, promptly, and with serious attention.

The danger of ‘transcarceration’

It should be clear I support 100 percent the goal to close Rikers and build smaller, modern detention facilities near courthouses in each borough. But experience has shown there must be new systems in place and fully operational before overhauling the system, or there will be a similar crisis to what followed deinstitutionalization in the 1960s and ‘70s, that is “transcarceration.”

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Back then, with the best of intentions, state mental hospitals – called “snake pits” then, just as Rikers is called today – released their patients with the goal of providing mental-health services in the community, via supportive housing and local clinics. But needed services were not in put place first, and society suffered as the homeless mentally ill lived on the streets, often getting picked

up by cops and serving time on Rikers, since they couldn’t afford bail, didn’t have legal representation, and faced a short sentence.

Today, we don’t want to move these populations from Rikers to another form of supervision and control and end up with the same number under surveillance at even higher cost – and perhaps even more, as the reach of these alternative programs extend beyond those who would have been locked up at Rikers originally.

There are the three burning questions that the mayor and his team must answer right now, to create a comprehensive, detailed plan to address these complex issues:

Question 1: How do you plan to reduce/prevent violence from being imported by the same violent inmates and correction officers into the smaller jails in each borough after Rikers is closed?



When moving the same violent and combative inmates with substance abuse problems, mental stability issues, gang affiliations and past confrontations – and the same officers who have a track record of using excessive force and not following policies and directives regarding inmate care – into a new setting, how do you prevent them from importing the same negative behaviors they have resorted to in the past?

Two critical elements must be addressed: the “culture of deviance” by correction and police officials, where corruption and rule-breaking occurs at the highest level; and the “culture of violence” perpetrated on the front lines by correction officers, staff and supervisors, who feel that “everyone does it” since those at the top get away with disregarding regulations.

Dozens of DOC administrators, supervisors and officers have been charged with multiple infractions: taking official cars for personal trips, smuggling contraband into jails, using excessive force, filing false reports, even intimidating witnesses and victims. If those at the top break the rules with impunity, why should front-line staff and inmates follow them?

There must be investigations and serious consequences for rule-breaking. There is little confidence in the criminal justice system if administrators are immune from prosecution for offenses that result in incarceration for those inside the jails they are managing, and little reason for rank-and-file officers, dealing with difficult situations on a daily basis, to follow rules if their own superiors don't do so. This problem must be addressed from the top down to prevent continued misbehavior by officers in the new smaller jails.

Despite lawsuits and oversight by a federal monitor at Rikers, excessive force and cover-ups continue. Inmates are punched in the head, slammed into walls, dragged and kicked while handcuffed, and attacked with pepper spray – even though de-escalation techniques would better defuse conflict. Since 2014, 38 officers and staff have been arrested as a result of DOI investigations. With many incidents going unreported, this number of arrests and indictments shows the situation at Rikers is out of control. The atmosphere of violence has led to an increased number of inmate fights.

This will transfer to other facilities if not addressed, says the Prisoners' Rights Project at Legal Aid: “Progress requires a fundamental shift in the

culture of impunity for misconduct and mismanagement... [it] will remain long after Rikers Island is shuttered if it not faced squarely and robustly right now.”

Meanwhile, a lack of substance-abuse treatment or positive programming means there is nothing for an inmate to lose if they engage in violent acts, so there are no consequences for such behavior other than excessive stays in solitary, which are no longer permitted due to the federal consent decree. This behavior will continue and be imported into the small neighborhood jails unless it is addressed at the policy level. Disciplinary methods must be put in place other than solitary confinement. Evidence-based research has shown that inmates with engaging educational and work programming are afraid to lose these benefits, and the threat of removal from those desired classes and jobs is an effective deterrent to such infractions.

Finally, improved inmate programming and staff training is required. Since the number of detainees will be reduced by moving non-violent, first-time offenders, petty criminals, and those who cannot afford bail, to new community justice programs and alternatives to incarceration, the new jails will house only the most violent and dangerous offenders with long criminal histories and high likelihood to be a danger to the community. This volatile population will need intense, multi-faceted service programs run by experienced counselors and specially trained correction officers to keep inmates engaged and out of trouble. Updated hiring and education practices are needed to prevent the same violent and deviant officers – mixing now with only the most violent inmates, repeat offenders and hardened criminals – from leading to the same level of violence being imported into in the new locations.

Question 2: What is the city’s responsibility to citizens who would have been incarcerated for a short-term but are now released to the community as a result of decarceration?

What will the city do with the people diverted from incarceration via youth court, drug court, mental health court and other alternative channels? Will there be services or supervision provided for these vulnerable populations, now left in their low-income community and likely to re-offend or miss their court dates? What support can the city provide for these individuals via alternatives to incarceration?

Many issues must be examined here: For those no longer going through intake at Rikers, where they might have been referred to appropriate social services upon release, what support will the city provide to prevent them from re-offending or going farther down the path that brought them into custody

in the first place?

These are often young people, first-time offenders, those with substance abuse problems, mental health issues, involved in “quality of life” crimes often caused by financial instability like vagrancy, loitering, public drunkenness or petty larceny (such as jumping a turnstile). If the current presidential administration cuts anti-poverty efforts to the bone, and New York City stops locking up low level offenders who return to their now even more underserved communities, are we creating a debacle?

A range of support is needed for those released into the community so they don't fall back into criminal behavior, including Social Services: Case management & intensive case management; habilitation & rehabilitation (vocational/job training; employment programs; academic/interpersonal skills training; leadership, mentoring, and youth development); and health and wellness support (health, wellness and stress reduction; mental-health and pharmacological treatment, including substance abuse treatment). Mental healthcare is particularly important, since if the mentally ill are not treated in the community, they end up involved with law enforcement, and indeed currently make up the majority of those incarcerated in our jails and prisons, where they receive even less treatment than they did in the past at the “snake pit” mental hospitals. Fact-based studies show the best way to reduce crime is to address these issues with smart, multifaceted programming.

Question 3: What will you do right now (not three or 10 years from now) to reduce or eliminate acts of violence against correctional staff and inmates currently on Rikers Island? ***

The violence and corruption on Rikers – extreme neglect, gang fights, attacks on correction officers, contraband smuggling, sexual abuse, and more – must be stopped right now, during the transition process. The level of damage to people on Rikers, even for a short time, has been demonstrated time and time again, with both inmates and correctional staff vulnerable to mental illness and suicide caused by exposure to the toxic environment on Rikers.

Correction officers are victims of the atmosphere of violence even as some are the perpetrators of it. Officers face years of stress and emotional devastation from dealing with difficult, often mentally ill, drug abusers, violent criminals, clever thieves, and gang members. They may lose empathy for inmates as fellow human beings, and view them as “others” who deserve to be treated with disdain, disrespect or outright abuse. Chronic exposure to these experiences may lead to deterioration in their psychological and emotional stability, including PTSD-like responses such as flash-backs, emotional numbing, moodiness, losing

temper easily, anxiety, hyper-vigilance and hyper-arousal (being jumpy or easily startled). The challenge is to address police culture and create a supportive work environment to reduce the stigmatization that prevents officers from acknowledging problems or seeking help to deal with work stress and mental health concerns

* * * *

While closing Rikers as fast as possible is the goal, the city needs programs in place and fully operational before this occurs. Simultaneously, the city must address violence on Rikers right now, both to reduce the suffering of the inmates and officers there presently, and to prevent the violence from being imported into the new jails.

It should be noted once again, that despite the disturbing reports of violence and mismanagement cited throughout this article, good staff and even good inmates actually exist. It's a small percentage of correctional officers and administrators, and a small percentage of inmates, that account for the majority of violence on Rikers Island. Nonetheless, it is critical to improve circumstances to prevent the violence from recurring in the new locations.

Moving from an era of mass incarceration to an era of decarceration requires programming not just for those who would have been incarcerated, but to all in the community, so as to prevent criminal justice involvement. A public information program is also needed to change views about incarceration and rehabilitation in the community, reducing the lifelong stigma of contact with the criminal justice system.

Yes, I believe that Rikers must be closed, completely closed, with no inmates there whatsoever – but this cannot happen without having proven programs and alternate sites open and fully first. It appears that the issues plaguing Rikers are being used as political pawns by those at the highest levels of city government. Rikers should be closed, but that is impossible in three or even 10 years without a concrete plan in place to identify and prepare sites in the five boroughs where the new smaller jails will be located, hiring architects and urban planners and developing alternatives to incarceration and improved programming as described. As of this writing, I have seen no evidence that any of this is underway.

David A. Fullard, Ph.D., is a Visiting Assistant Professor at Empire State College, teaching Criminal Justice and the Social and Behavioral Sciences. He is also licensed by the State of New York Board of Regents as a Mental Health Counselor (LMHC). He retired in 2011 as a captain with the New York City Department of Correction (NYCDOC) after 30 years' service.



see point 7

NYC BOARD OF CORRECTION

10/25/17 AGENDA

Telephone Conference with Dr. David Fullard [with my raw notes]

II. Restrictive Housing for Young Adults

What is your view about the following features of restrictive housing for young adults?

- 1. Should desk restraints be used and if so, for how many hours per day and for what length of time? Currently, restraint desks are used in the most restrictive levels of ESH ("Entry Unit" and "Level 1;" collectively, "restrictive levels") whenever young adults are locked out, i.e., 7 hours daily, and for a compulsory 30-day stay.**

DF: It's pretty clear that I'm not a fan of the restraint desk being used with adolescents and young adults on Rikers Island. Research tells us that using these types of tactics and the coercive techniques escalates rather than reduces violence, although in some instances you may have a short-term down-turn in violence and then it will go up. In some cases, I suspect, the violence will increase exponentially once the person is no longer being restrained. It makes much more sense to provide meaningful programs such as educational programs, vocational programs, and prison industry as a means of providing inmates with something meaningful to occupy their time. When the inmates' time is occupied with something that is meaningful to them you have a demonstrated reduction in violence. Also, being engaged in valuable programs means that inmates don't want to lose access to these activities, which is what happens when they are involved in a violent event. This means that inmates avoid violence in order to be allowed to continue with these programs.

To specifically answer your question I don't believe the restraint desk should be used, except with extremely violent inmates who have failed to change their behavior after serious attempts to address that behavior by the Department of Correction (through engagement in alternative programs), and psychotherapeutic interventions by the mental health staff, have failed.

I really do believe that the Department of Corrections has an opportunity to think truly outside of the box when it comes to attempting to reduce violence among adolescent and young adult inmates. I believe that having a

June 2002

program where the inmates are performing some kind of labor for a salary (\$3.00 per hour), combined with mental health treatment, substance abuse treatment, conflict resolution, interpersonal skills training, and good solid correctional treatment -- will result in a statistically significant reduction in violence. In the language of the youth, "you have to have some skin in the game in order to care about the game." Having a job within the correctional institution that pays \$3.00 an hour is of value to the adolescent and young adult inmate. They will want to hold on to this particular job, and these jobs are linked to good behavior in order to keep the job; if bad behavior is reported they would lose their job. It is important to note that while to us \$3.00 an hour is nothing, to an inmate it's a great deal of status. They do not want to lose that status. As such they will conform to our wishes, follow the rules of the institutions, and avoid violent altercations.

Members of the Department of Correction will most likely not like this idea. They (the NYCDOC) will say that we are paying the inmates for good behavior. In fact, this is a form of "token economy" which has been used to change poor adolescent inmate behavior for decades. The idea will have to be sold to the NYCDOC. Part of the sales tactic will involve explaining to the DOC that if they are able to show a statistically significant reduction in violence, they will have fewer staff injuries, fewer inmate injuries, fewer lawsuits, and will be able to say proudly to the national correctional community: "We found an effective solution to reducing violence among our adolescent and young adult inmate population."

It is also important to note that you need to have very good supervision in order to make this work. Captains and Assistant Deputy Wardens have to buy into the program. If they buy into the program, they will do everything in their power to make it work. Further, I think the correctional staff working in this program should be hand-selected by an interdisciplinary/multidisciplinary team, not just correctional staff. They should want to work in this program. They should have a positive attitude and be program minded. I also believe they should be paid a little bit more. They should receive ongoing regularly scheduled training. And if the program works well, they should be applauded, recognized, and rewarded.

In situations where serious attempts to change extremely dangerous and violent behavior by the Department of Correction (through engaging inmates in valuable programs such as those described above) and psychotherapeutic

interventions by the mental health staff have failed, an interdisciplinary/multidisciplinary team needs to assemble and examine each case individually, to determine when and how long the restraint desk will be utilized. While the restraint desk is being used in these situations, Department of Corrections and the mental health staff need to come up with a plan for this specific case going forward when the inmate is released from the restraint desk – otherwise the inmate will return to the same violent behavior, which may be even worse after a period of such physical restraint.

2. Currently, DOC performs a housing assessment of young adults in the Entry Unit and says that it needs 30 days to complete this assessment. Should this assessment take 30 days to complete?

DF: I don't know the procedure that the Department of Correction is currently using to complete the assessment process. 30 days does seem like a bit much. The question that comes to mind is, "do they (DOC) have dedicated (regularly assigned/steady post officer) staff to perform this assessment? Or, are staff members doing multiple tasks in addition to the assessment process?" Another question that comes to mind is, "who is supervising the assessment process? Are these supervisors assigned (regularly assigned/steady post supervisors) just to supervise those doing the assessments? Or, are these supervisors being rotated into the area with little knowledge of the assessment process?"

The best case scenario would be to have officers who are specially selected, trained, and regularly assigned to the duties of assessing young adult inmates in the entry unit. The same holds true for those who supervise the offices in this area. The supervisor should be specially selected, trained, and regularly assigned to the duties of supervising the correctional officers who are assessing young adult inmates in the entry unit. Where officers have multiple duties, and/or supervisors are rotating into the area, this could make the process more cumbersome, inefficient, and worse, inaccurate.

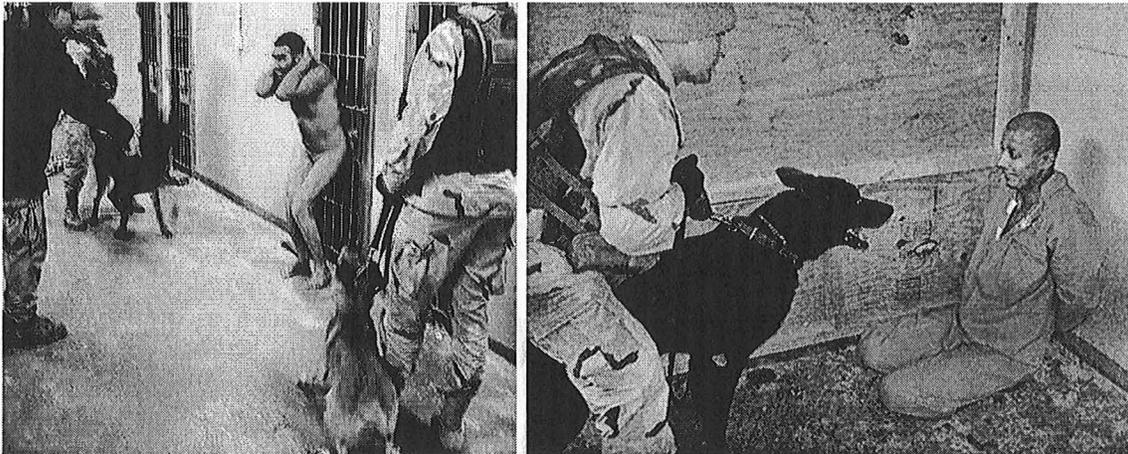
It also seems to make sense that this assessment would be performed by a team of interdisciplinary / multidisciplinary staff. If this is currently the case that might account for the 30 day assessment period since it takes time to engage multiple staff in the assessment process. However, if this is not the case 30 days does seem to be a rather long period of time to perform the assessment task for dedicated officers and supervisors assigned to the task.

3. Should dogs be present in the classroom space during school sessions?

DF: No.

The dogs utilized on Rikers Island search for drugs and escaped inmates. They have no other purpose.

Using the dogs in the classrooms spells coercion. We all remember the photographs from Abu Ghraib and the use of German Shepard dogs!



I don't think I need to say much more in reference to dogs being present in the classroom space during school sessions. I think it's beyond problematic!

4. What kinds of programming should be offered? Currently, the following programming is available in the restrictive levels: Dialectical Behavioral Therapy, Interactive Journaling, Youth Communication, Creative Expression Arts and Crafts, Overcome Life's Struggles (IDOL), skill building, reentry services program, and Cage Your Rage.

DF: Any psychotherapeutic therapeutic program that is Interactive will have a better chance of being effective than psychotherapeutic programs that are static. With that in mind, I would seriously consider interactive journaling, youth communications, creative expression arts and crafts, and interactive skills building that utilizes role play.

5. Should mental health clinicians be involved in placement/exit/level progression decisions? (Currently, involvement of mental health staff is limited to daily cell-door check-ins and deciding whether a person should be excluded from YA-ESH due to serious mental illness or serious physical disability).

DF: Correctional mental health staff should be involved in every single aspect of restrictive housing unit placement. But not just "involvement" -- they must have the line authority and power to effect change and make changes where necessary. As you know, the Department of Correction will resist this. If the inmate has a mental health issue, a clinician should be making many of the decisions concerning placement in restrictive housing. With this, comes a great deal of responsibility and accountability for the mental health clinician. Under competent clinical supervision, this can be effective and quite useful.

6. Should young adults/adults be commingled in ESH? Should all young adults be in one facility? (Currently, young adults ages 19-21 are commingled with adults in Level 1 and in less restrictive levels (where desks are not used)).

DF: No. Under no circumstances should young adults age 19 through 21 commingle with adults over the age of 21. The rationale behind this is as follows: young adults (when around older inmates) want to prove themselves - they want to prove their masculinity - they want and sometimes need to at least appear to be a tough guy - as such, they may act out in an effort to prove themselves. In other cases, the young adult between the age of 19 and 21 may end up being the victim of the older adult. This may take place as a simple assault or a sexual assault.

Because the population Rikers Island is quite low at this time, the Department of Correction has plenty of dorm and cell space to spread people out. Through classification, they can separate groups of inmates who should not be housed together. This certainly includes separating younger inmates from those over the age of 21. The Department of Corrections may resist this and state that spreading inmates out into various housing areas via classification may be a good thing but it is also costly. The Department of Correction will also note that they will need additional staff for those housing areas.

The department will have to decide whether it wants to spend money and have a safer environment or spend less money and have an unsafe environment.

7. Should placement criteria be only for violent acts that cause serious injury or also for weapons possession/threat of violence to staff?

In Re: Placement in restrictive housing for acts of violence that cause serious injury (to anyone).

DF: When an inmate causes serious injury to anyone several things should take place. First and foremost, the inmate would have to be housed and managed in an area where he or she will not be able to injure another person, including themselves. Currently, in the Department of Correction it would seem that placement in restrictive housing would be necessary and appropriate in this very specific situation.

In addition to placement in restrictive housing, the Department of Correction and the mental health staff would need to form an interdisciplinary / multi-disciplinary team of people to examine what happened, why it happened, and how to prevent it from happening in the future with this specific inmate. The Department of Correction should examine its classification system, and ask the question: "Was this inmate properly classified and properly housed?" The mental health staff should be examining the inmate to determine if he has a serious mental health condition that would increase his propensity to act out in a very violent manner or has a mental health condition that would make him more vulnerable to commit acts of extreme violence. Because the inmate will not spend the rest of his time in restrictive housing (or indeed, the rest of his life behind bars), both the mental health staff and the correctional staff need to create a plan for this particular inmate that would guide his release into an appropriate housing unit (after a term of confinement in restrictive housing) that has a support system built into the housing unit to prevent the violent behavior from reoccurring – and even more important, to reduce the likelihood that such behavior would occur after release back into the community.

On another note, a multidisciplinary / interdisciplinary team of staff should interview the inmate in an effort to determine why the violent behavior occurred in the first place. There are times when an inmate is attempting to protect himself from being assaulted by another inmate. During these times, an inmate may resort to acts of extreme violence in order to save his own life. This is one of the reasons why inmates carry weapons. They simply do not feel safe! This needs to be assessed and addressed. During my time with the Department of Correction this was always an issue that was never resolved. The department should move towards helping each inmate feel safer in its environment. This in and of itself will help to reduce violence because

inmates won't feel the need to carry a weapon (or as the inmates say, "be strapped"). It's important to note that oftentimes inmates will behave violently as a means of proving to the rest of the inmates that they will not be taken advantage of. This is simply a reality of being locked up in a correctional institution.

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One of the things this team of correctional and mental health staff should be looking for are the inmate's thoughts on his own safety in the correctional institution. Specifically they should be asking, "Do you have a specific enemy (or enemies) that you feel the need to protect yourself against?"

In Re: Placement in restrictive housing for threats of violence to staff.

DF: Responding to this question is a bit challenging when we're talking about verbal threats to civilian or correctional staff members. If an inmate identifies a particular staff member that he or she is planning to harm, staff must consider the inmate's words and take some kind of action in a proactive manner to avoid an assault on staff. Many times correctional staff are threatened by inmates, yet nothing actually happens. There are other times when an inmate makes a threat against a correctional staff member, and it's important to know the reasons behind this threat. The question becomes what you do when you have information directly from an inmate stating that he's going to hurt a staff member. This will have to be dealt with on a case-by-case basis. I think the first line of defense would be simply to transfer the inmate to another institution or another area where the inmate will not come in contact with threatened staff member. Using this method, good tracking of both the inmate and be threatened staff member are necessary. Supervisors must be made aware of the separation so there is no accidental contact or transfer. I guess what it boils down to is simply good correctional supervision of both the staff and the inmates.

Specifically, I do not think that an inmate should be placed in restrictive housing for a threat to a specific staff member. He or she should receive an infraction and some other form of punishment should be levied against that inmate. Further, I think the inmate should be assessed by an interdisciplinary / multidisciplinary team of people in an effort to figure out what went wrong and how best to deal with this issue. I guess what I'm saying is we need to function in a highly professional manner and address individual inmates as separate individuals who may have unique problems that need to be addressed.

8. Young adults have a right to a hearing to challenge their placement in YA-ESH. Who should serve as adjudicators? Currently, uniformed staff serve in this role.

DF: It's my very strong opinion that a member of the department's legal divisions should be the adjudicator for these hearings. Uniformed members of service should not serve in this capacity.

A lawyer or a highly competent legal assistant will be the best person able to look at the evidence and determine if the challenge to placement is warranted. Although correctional staff are trained for this particular duty it is very difficult. Correctional staff are not lawyers or legal assistants. If, in fact, you do come across correctional officers who have studied law or are legal assistants, they may be appropriate for that position if they can be completely objective and not be co-opted or influenced by their fellow officers.

Another reason that you want someone who is not a uniformed member of service to perform this particular duty is based on the fact that "blue tends to stick with blue." Believe me, as a person who is a member of the uniformed force it is hard for me to make this statement. But, as a person who wore blue the 30 years I am aware of situations where correctional staff have whispered to the adjudication officers their desire to have a negative outcome to a hearing. Painful to state, but it is simply a fact. As I noted elsewhere in these comments, the Department of Correction must increase its level of professionalism.

I hope this was useful.

David Fullard, Ph.D., LMHC, CRC

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Number 2 The Geography of Confinement

Beyond the Island: Changing the Culture of New York City Jails

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BEYOND THE ISLAND: CHANGING THE CULTURE OF NEW YORK CITY JAILS

Michael Jacobson,^{*} Elizabeth DeWolf,^{**} Margaret Egan^{***} & David Hafetz^{****}

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INTRODUCTION

The city and its department of correction now stand at a historic crossroads. New York City’s jail system, largely symbolized by the persistently violent and inhumane conditions in the massive jail complex on Rikers Island, is an ongoing source of public shame.¹ But after years of crime and incarceration reduction,² closing the jail facilities on Rikers Island and reimagining the New York City Department of Correction (“DOC”) now has become a realistic possibility.

Constant litigation and a number of accounts of violence and mistreatment of those held in the DOC’s custody prompted a loud and sustained cry for reform. Perhaps no story galvanized this public call more than the story of Kalief Browder, first published in *The New Yorker* in October of 2014.³ Browder was sixteen years old when he was arrested and charged with robbery, grand larceny, and assault.⁴ He was held on \$3000 bail and spent three years on Rikers Island waiting for his trial, unwilling to plead guilty to crimes he did

• • •

1. See Anna Mae Duane, *The Shame of Rikers: The Odious 19th-Century History of Rikers Island Provides Just One More Good Reason to Shut It Down*, SLATE (July 13, 2017), http://www.slate.com/articles/news_and_politics/history/2017/07/rikers_island_is_the_northern_equivalent_of_confederate_monuments_but_worse.html [<http://perma.cc/3PPP-E82R>].
2. Michelle Mark, *New York City Is Proof That Cities Don’t Need to Lock Up Tons of People to Drive Down Crime*, BUS. INSIDER (Nov. 5, 2016), <http://www.businessinsider.com/how-nyc-managed-to-lower-incarceration-and-crime-rates-at-the-same-time-2016-11> [<http://perma.cc/G9XX-7ML9>].
3. See Jennifer Gonnerman, *Before the Law*, NEW YORKER (Oct. 6, 2014), <http://www.newyorker.com/magazine/2014/10/06/before-the-law> [<http://perma.cc/7NCL-DJVN>].
4. *Id.*

Nunez v. City of New York³⁴ litigation, describing the complaint and the federal consent decree under which the DOC is currently operating. Section I.C outlines the current agenda for reform as embodied in the Commission’s recommendations and the recommendations outlined in the mayor’s roadmap to close Rikers Island.

A. Conditions at DOC: Historic and Continuing Challenges

One ever-present challenge of Rikers Island is its geographic isolation. Rikers Island functions as New York City’s penal colony, with ten facilities located on a remote 413-acre piece of land perched in the East River between the Bronx and Queens.³⁵ The majority of the population—over seventy-five percent—are being held there pretrial, meaning that they have not yet been convicted of a crime.³⁶ The island’s remote location contributes to delays in court processing time for felony and misdemeanor cases, inhibits access to attorneys and programming, and discourages visits by family.³⁷ It also results in an “out of sight, out of mind” approach to the city’s jail system that is unsafe and unproductive for those who are held and those who work there.³⁸

But remoteness and isolation are only part of the deep-rooted problems troubling Rikers Island. The facilities on Rikers, which first opened as a jail complex in the early 1930s, are in deep decay.³⁹ Facilities throughout the system have rotting floorboards, malfunctioning heating and cooling systems, sewage backups, leaking roofs, broken showers, and flooded bathrooms.⁴⁰ This decay has led to harmful conditions for those incarcerated,⁴¹ and has created an inhospitable environment.⁴² This inhospitable environment is further worsened due to the lack of basic services, such as heating in winter

1 11-cv-5845 (S.D.N.Y. 2011).

2 A MORE JUST NEW YORK CITY, *supra* note 10, at 103.

3 *Id.* at 33.

4 *Id.* at 73–75.

5 *Id.* at 14.

6 N.Y.C. DEP’T OF CORR., History of DOC, <http://www1.nyc.gov/site/doc/about/history-doc.page> [<http://perma.cc/VB2B-RL73>].

7 See A MORE JUST NEW YORK CITY, *supra* note 10, at 72.

8 For example, the broken materials provide opportunities for people to make weapons. See *id.* at 72.

9 See Raven Rakia, A Sinking Jail: The Environmental Disaster That Is Rikers Island, GRIST (Mar. 15, 2016), <http://grist.org/justice/a-sinking-jail-the-environmental-disaster-that-is-rikers-island/> [<http://perma.cc/MYW3-QYFC>].

and air conditioning in summer.⁴³ In addition to decaying and dangerous facilities and the lack of basic services, incarcerated persons are typically housed in multi-occupancy cells with no privacy, and the jails have little space for social services that are best practice in a modern correctional system.⁴⁴

Even worse, the people held on the island endure physical and mental abuse, a rampant culture of violence, and overly punitive conditions.⁴⁵ This has included alarming rates of force used against adolescents, rampant inmate-on-inmate assaults, and correction officers using blows to the head and force as punishment or retribution in response to verbal altercations with officers.⁴⁶ In addition, there is a link **between jail conditions and the violence that occurs within the facilities both by staff and by those held in the facilities.**⁴⁷ **For example, the deteriorating physical conditions throughout the system provide an opportunity to fashion weapons from light fixtures, radiators, and sprinkler heads; in fact, most of the weapons found inside the jails in 2014 were improvised from materials already inside the jails.**⁴⁸ **For both staff and those held, these punishing conditions, in addition to the rampant violence, have persisted for decades; those held on Rikers Island have described the island using terms such as “hellhole,” “torture island,” and “the land that time forgot.”**⁴⁹

These problems are not confined to Rikers, nor do they only impact those who are incarcerated. These problems also lead to an inhospitable environment for correction officers (“COs”) and other DOC staff. City data demonstrates that, like the facilities on Rikers Island, borough-based facilities also are marred by pervasive violence

43. See *id.*; Brad Hamilton, Cell Damage: Rikers in Ruins After Years of Neglect, N.Y. POST (Jan. 13, 2013), <http://nypost.com/2013/01/13/cell-damage-rikers-in-ruinsafter-years-of-neglect/> [<http://perma.cc/2654-66KG>].

1. See A MORE JUST NEW YORK CITY, *supra* note 10, at 13, 77.

2. See U.S. ATTORNEY FOR THE S. DIST. OF N.Y., U.S. DEP’T OF JUSTICE, CRIPA INVESTIGATION OF THE NEW YORK CITY DEPARTMENT OF CORRECTIONS JAILS ON RIKERS ISLAND 3 (2014) [hereinafter SDNY RIKERS REPORT], <https://www.justice.gov/sites/default/files/usao-sdny/legacy/2015/03/25/SDNY%20Rikers%20Report.pdf> [<https://perma.cc/4QPB-2VDK>].

3. *Id.* at 4.

4. See A MORE JUST NEW YORK CITY, *supra* note 10, at 72.

5. See *id.* at 72.

6. See *id.* at 27; see also Jonathan Lippman & Melissa Mark-Viverito, Opinion, Closing Rikers Island Is a Moral Imperative, N.Y. TIMES (Mar. 31, 2017), <https://www.nytimes.com/2017/03/31/opinion/closing-rikers-island-is-a-moralimperative.html> [<https://nyti.ms/2nFxqVW>].

and by decaying and outmoded conditions.⁵⁰ While the average daily population has steadily declined, rates of violence in the DOC have persisted. There are a number of explanations for violence in the facilities, between COs and those held and between inmates, including inability to appropriately manage the population due to inadequate training and management of staff and deteriorating facilities across the DOC.⁵¹ As on Rikers Island, the borough-based jails are generally inhospitable, with deteriorating buildings, broken heating and cooling systems, harsh lighting, and reverberating surfaces.⁵² And with the exception of the Manhattan Detention Center, all the DOC facilities are based on now obsolete design principles with a linear layout that makes curbing violence difficult.⁵³

Figure 1, below, shows the historical violence trends in the DOC over the last two decades. The trends are based on what the system calls “stabblings and slashings.” This is inmate-on-inmate violence with the use of a weapon (usually some type of razor or homemade knife).⁵⁴ If stabbing and slashing rates are high, it is also quite likely that all use of force, unjustified use of force, and attacks on COs will also be high.⁵⁵ The opposite is also true, if stabbing and slashing rates are low, use of force will be low.⁵⁶

1. Press Release, N.Y.C. Comptroller, Comptroller Stringer 2015 Analysis: Violence at City Jails Spikes Dramatically and Cost per Inmate Explodes Even as Inmate Population Declines (Oct. 16, 2015), <http://comptroller.nyc.gov/newsroom/comptroller-stringer-2015-analysis-violence-at-city-jails-spikes-dramatically-and-cost-per-inmate-explodes-even-as-inmate-population-declines/> [http://perma.cc/WG5TLLHK].
2. See A MORE JUST NEW YORK CITY, supra note 10, at 73.
3. Id.; see also, e.g., Daniel Beekman, Bronx’s Notorious Spofford Shut Down,

N.Y. DAILY NEWS (Mar. 31, 2011), <http://www.nydailynews.com/new-york/bronx/bronx-notorious-spofford-aka-bridges-juvenile-center-finally-shut-article-1.119333> [https://perma.cc/6WQD-47Z6].

1. Linear jails typically contain cells lined up along corridors, so that correction officers cannot easily monitor groups consistently. Richard Wener et al., Direct Supervision of Correctional Institutions, in PODULAR, DIRECT SUPERVISION JAILS INFORMATION PACKET 1–8 (Nat’l Inst. of Corr. ed., 1993).
2. N.Y.C. Bd. of Corr., VIOLENCE IN NEW YORK CITY JAILS: STABBING AND SLASHING INCIDENTS 2 (2015) [hereinafter VIOLENCE IN N.Y.C. JAILS 2009–2014], http://www1.nyc.gov/assets/boc/downloads/pdf/Violence%20in%20New%20York%20City%20Jails_Slashing%20and%20Stabbing%20Incidents.pdf [http://perma.cc/HLP7G6HC].
3. Id. at 2.
4. Id.

Figure 1. Historical Violence Trends at the DOC, as Measured by Stabbing and Slashing Incidents.⁵⁷

As shown, while the average daily population has steadily decreased since fiscal year 1995, violence rates, which peaked at over 59 stabbings and slashings per 1000 inmates in 1995, declined to a low of under 2 per 1000 inmates from 2003 to 2009.⁵⁸ After an initial

1. See MMR 2017, supra note 26, at 72–74; MAYOR’S OFFICE OF OPERATIONS, MAYOR’S MANAGEMENT REPORT 81 (2016) [hereinafter MMR 2016], http://www1.nyc.gov/assets/operations/downloads/pdf/mmr2016/2016_mmr.pdf [<http://perma.cc/57LL-MUPB>]; MAYOR’S OFFICE OF OPERATIONS, MAYOR’S MANAGEMENT REPORT 82–83 (2015) [hereinafter MMR 2015], http://www1.nyc.gov/assets/operations/downloads/pdf/mmr2015/2015_mmr.pdf [<https://perma.cc/SG3MSRCK>]; MAYOR’S OFFICE OF OPERATIONS, MAYOR’S MANAGEMENT REPORT 143–44 (2008) [hereinafter MMR 2008], http://www1.nyc.gov/assets/operations/downloads/pdf/mmr/0908_mmr.pdf [<https://perma.cc/M9XC-SR66>]; MAYOR’S OFFICE OF OPERATIONS, MAYOR’S MANAGEMENT REPORT: SUPPLEMENTARY INDICATOR TABLES 76 (2004), http://www1.nyc.gov/assets/operations/downloads/pdf/mmr/0904_indicators.pdf [<https://perma.cc/D82M-9WUB>]; MAYOR’S OFFICE OF OPERATIONS, MAYOR’S MANAGEMENT REPORT: SUPPLEMENTARY INDICATOR TABLES 71 (2002), http://www1.nyc.gov/assets/operations/downloads/pdf/mmr/0902_indicators.pdf [<https://perma.cc/N4HW-YF3X>]; VIOLENCE IN N.Y.C. JAILS 2009–2014, supra note 54, at 2; Mayor’s Office of Criminal Justice, Average Daily Jail Population in New York City, 1980–2017, CITY OF N.Y. (Jan. 1, 2018), http://www1.nyc.gov/assets/criminaljustice/downloads/pdfs/population_reduction_sheet.pdf [<https://perma.cc/8L47-C4A7>]; NYC Department of Correction at a Glance, N.Y.C. DEP’T OF CORR. (Apr. 27, 2017), http://www1.nyc.gov/assets/doc/downloads/pdf/DOC_At-Glance-427-17.pdf [<http://perma.cc/Y87N-QKAT>].
2. See MMR 2008, supra note 57, at 143–44; VIOLENCE IN N.Y.C. JAILS 2009–2014, supra note 54, at 2.

dramatic decrease in violence rates, and a leveling off, the DOC has seen a steady increase in violence since fiscal year 2009.⁵⁹ Since 2009 violence rates have steadily increased to over 17 per 1000 inmates in 2017, a thirteen fold increase from 2008.⁶⁰ While still not close to 1995 levels, the trend is deeply concerning.⁶¹ These conditions, coupled with the changing needs, particularly those related to behavioral health, of people cycling through the system, have developed a reputation for the DOC as a hopeless institution for staff and inmates alike.⁶²

1. A Legacy of Violence, Neglect, and Litigation

The troubling and inhumane conditions in New York City jails are not new. Before the bridge to Rikers Island was constructed in 1966, the majority of pre-trial detainees were housed in borough jails.⁶³ The Manhattan House of Detention (“the Tombs”), once was as notorious as Rikers Island due to its severe overcrowding and poor conditions for both inmates and officers.⁶⁴ **In the late 1960s, the Correction Officers Benevolent Association (“COBA”), New York City’s union for correction officers, urged the DOC to address the jail’s deteriorating conditions, severe understaffing, and a lack of new officer training.⁶⁵** The DOC made attempts to expedite case processing times to address overcrowding at the Tombs, but did little else to address rising tensions within the facility.⁶⁶ In 1970, tensions came to a head as an inmate uprising at the Tombs brought public attention to the overcrowding, officer brutality and racism, overly punitive conditions of confinement, and deteriorating environmental conditions.⁶⁷ Those held were “locked-in” to their cells twenty-four

1. See MMR 2017, supra note 26, at 84; MMR 2015, supra note 57, at 82; VIOLENCE IN N.Y.C. JAILS 2009–2014, supra note 54, at 2.
2. See MMR 2017, supra note 26, at 84; MMR 2008, supra note 57, at 143.
3. See MMR 2008, supra note 57, at 143–44.
4. See A MORE JUST NEW YORK CITY, supra note 10, at 71.
5. The Long-Term Plan for Borough Jails and Rikers Island, Hearing Before the

N.Y.C. Council Comm. on Fire & Criminal Justice 1 (Apr. 25, 2006) (statement of John Boston, Dir., Prisoners’ Rights Project, The Legal Aid Soc’y).

1. See John Surico, The Legacy of Violence at the Manhattan Jail Known as the ‘Tombs,’ VICE NEWS (July 19 2015), https://www.vice.com/en_us/article/tales-from-the-tombs-the-legacy-of-violence-at-the-manhattan-detention-complex-719 [http://perma.cc/QAM9-F6H6].
2. John J. Dilulio, Jr., The Impact of Judicial Intervention on Prisons and Jails, in COURTS, CORRECTIONS, AND THE CONSTITUTION: THE IMPACT OF JUDICIAL INTERVENTION ON PRISONS AND JAILS, 144 (John J. Dilulio, Jr., ed. 1990).
3. Id. at 143.
4. Id.

at the Tombs were transferred to the House of Detention for Men (“HDM”) on Rikers Island, where conditions—like overcrowding, deteriorating physical conditions, and disciplinary procedures—were just as poor as at the Tombs.⁷⁹

As the city budget crisis of the early 1970s worsened, action to address conditions of confinement was delayed, and in 1975, the most destructive inmate uprising yet erupted on Rikers Island.⁸⁰ Corrections Commissioner Benjamin J. Malcolm was able to negotiate an end to the protests, which arose out of complaints from inmates due to overcrowding and conditions in the facilities, and avoid bloodshed by agreeing to address the grievances of those incarcerated.⁸¹ **After the uprising, the DOC was forced to move people to other DOC facilities while repairs were made to large holes in cells and other debris was cleaned up.**⁸² **But COs on Rikers Island staged a walkout to protest the fact that the DOC had not issued a plan to address the unsafe working conditions in the facilities.**⁸³

Following that uprising, Legal Aid filed a new federal class action lawsuit, *Benjamin v. Malcom*,⁸⁴ alleging that conditions at the HDM were also unconstitutional.⁸⁵ The Koch administration negotiated a settlement agreement that would cover all of the city jails on and off Rikers Island.⁸⁶ In 1978, a consent decree was agreed to by all parties and in 1979, Judge Lasker approved and entered the consent judgment.⁸⁷ Two critical issues covered by the consent decree were overcrowding and developing policies for the treatment of those held at HDM.⁸⁸

In 1983, Legal Aid brought *Fisher v. Koehler*,⁸⁹ alleging that the DOC used excessive force on individuals incarcerated in the Correctional Institution for Men (“CIFM”), now the Eric M. Taylor

1. *Benjamin v. Malcolm*, 564 F. Supp. 668, 670 (S.D.N.Y. 1983).
2. See Tom Goldstein, 318 Prisoners Are Transferred from Riot-Damaged Rikers Jail, N.Y. TIMES (Nov. 29, 1975), <http://www.nytimes.com/1975/11/29/archives/318-prisoners-are-transferred-from-riotdamaged-rikers-jail.html> [<https://nyti.ms/2GglNOor>].
3. *Id.*
4. *Id.*
5. See Peter Kihss, Rikers Island Revolt Ends with Release of Hostages, N.Y. TIMES (Nov. 25, 1975), <http://www.nytimes.com/1975/11/25/archives/rikers-islandrevolt-ends-with-release-of-hostages-rikers-island.html> [<https://nyti.ms/2Fbyjxi>].
6. 495 F. Supp. 1357 (S.D.N.Y. 1980).
7. *Id.* at 1360.
8. See Baer & Bepko, *supra* note 74, at 23.
9. *Id.* at 23–24.
10. *Id.* at 24.
11. 692 F. Supp. 1519 (S.D.N.Y. 1988).

Center, on Rikers Island.⁹⁰ Judge Lasker also heard this case and ruled in favor of the plaintiffs, finding that use of force was excessive and **“that the pervasiveness of staff-on-inmate violence was the predictable result of defendant’s policies and practices”**⁹¹ In 1985, Legal Aid brought a similar case, *Jackson v. Montemagno*, against the DOC claiming abuse of the incarcerated population by staff at the Brooklyn House of Detention.⁹³ The case was settled in 1991, referencing the agreement reached in *Fisher*, requiring the DOC to develop and implement systems for controlling and investigating use of force incidents and disciplining COs for unnecessary or excessive force.⁹⁴

In 2003, the DOC and the Urban Justice Center also settled a class action suit, *Brad H. v. City of New York*,⁹⁵ which had been brought in state court claiming that the city failed to provide adequate discharge planning as part of their care for those with a diagnosed mental illness.⁹⁶ While this case covered the DOC as a whole, it again targeted a specific population, i.e., those with a diagnosed mental illness.⁹⁷ A settlement agreement was reached that required the DOC to develop a discharge plan based on an assessment for those individuals’ needs for continued treatment and support services, public benefits, and appropriate housing.⁹⁸ The DOC was also required to provide assistance and access to the services set forth in the plan.⁹⁹ A monitoring team was established that continues to monitor progress towards the agreement, and the thirty-seventh monitor’s report was filed in June of 2017.¹⁰⁰

1. *Id.* at 1519; see also *Facilities Overview*, CITY OF N.Y. DEP’T OF CORR., <http://home2.nyc.gov/html/doc/html/about/facilities-overview.shtml> [<https://perma.cc/R9RU-7XL4>].
2. *Id.* at 1564.
3. *Stipulation of Settlement* at 3, *Jackson v. Montemagno*, CV 85-2384

(E.D.N.Y. 1991).

1. *Id.* at 3.
2. *Id.*
3. *Stipulation of Settlement* at 2, *Brad H. v. City of New York*, No. 117882/99 (Jan. 8, 2003), 2003 WL 5582869.
4. *Id.*
5. *Id.*
6. *Id.* at 14.
7. *Id.*
8. See *Thirty-Seventh Regular Report of the Compliance Monitors* at 6, *Brad H.*, No. 117882/99 (June 6, 2017). For public access to the full docket, see *Brad H. v. City of New York*, URBAN JUSTICE CTR., <https://mhp.urbanjustice.org/mhp-bradH.v.cityofnewyork> [<https://perma.cc/8S5J-6LWS>].

a whole.¹⁰⁹ Then in 1990, Judge Lasker held that the city violated an order prohibiting the housing of incarcerated individuals in nonhousing areas, including gymnasiums and receiving areas, and found that the violence at CIFM was caused by overcrowding, inadequate staffing and supervision, excessive reliance on dormitory housing, lack of adequate classification, and inadequate systems for controlling, investigating, and disciplining staff misuse of force.¹¹⁰ In 1989, Judge Lasker approved a new use-of-force policy to address the violence at CIFM, under Fisher, and in 1990, during the population surge at the DOC, imposed a series of fines holding that the DOC had violated his order prohibiting the housing of individuals in nonhousing areas.¹¹¹ In the early 1990s, the DOC began addressing other condition-of-confinement issues including the provision of food services, access to the law library, environmental health (sanitary conditions, ventilation, lighting, and extreme temperatures), attorney visitation and confidentiality, placement of pre-trial detainees in restraints, fire safety, and modular housing units.¹¹²

In 1982, under the Malcolm case, Judge Lasker ordered the creation of the Office of Compliance Consultants (“OCC”), to oversee implementation of the consent decree requirements.¹¹³ The OCC was designed to be an agency of the city, not the court or the DOC, with leadership appointed by the city and staff from the DOC.¹¹⁴ This agency was designed to allow for greater cooperation among the city, Legal Aid, and the DOC.¹¹⁵ Because it was considered a relatively neutral party, the OCC was successful in inducing the DOC to adopt reform strategies, though these reforms only chipped away at the DOC’s entrenched culture.¹¹⁶

In addition to court oversight, the New York City Board of Correction (“the Board”) provides more general oversight of the DOC, separate from court oversight. **Originally established in 1957 by Mayor Robert F. Wagner, and expanded in 1977 under Mayor Beane, the Board is a citizen watchdog agency to set and enforce minimum standards for the DOC.**¹¹⁷ The minimum standards seek to

1 See supra Section I.A.1.

2 See Baer & Bepko, supra note 74, at 27.

3 Id. at 28–29.

4 Id. at 36.

5 Id. at 25.

6 Id. at 25–26.

7 Id. at 26.

8 Id.

9 About the BOC, N.Y.C. Bd. OF CORR., <http://www1.nyc.gov/site/boc/about/about.page> [<https://perma.cc/8W2Q-YBW4>].

ensure the care, custody, correction, treatment, supervision, and discipline of those held in the DOC.¹¹⁸ **The Board fulfills this mission through the evaluation of the DOC's performance and operation of a system for hearing grievances and issues from the DOC, both from those incarcerated in the DOC facilities and from the general public.**¹¹⁹ Made up of nine members appointed by the mayor and the city council, the Board has the right to access any DOC data or records and the right to inspect and visit any DOC facility at any time.¹²⁰ The Board continues to incorporate best practices into its minimum standards, including those related to the use of force and punitive segregation, as well as the provision of basic necessities to ensure proper conditions of confinement.¹²¹ *The Board sets minimum standards, but its success as an oversight agency has been limited primarily because it lacks strong mechanisms to actually incentivize compliance or to enforce its rights to obtain data and documentation from the DOC.*¹²²

These reform efforts function primarily through litigation and reflect a largely backward-looking responsive policy approach rather than a forward-looking comprehensive approach to reform at the DOC. There are many external factors that contribute to this reactive policy approach. A primary factor is the ever-changing nature of leadership in public bureaucracies, which makes stability hard to come by.¹²³ The DOC is an agency within city government, and its commissioner is appointed by and serves at the pleasure of the mayor.¹²⁴ This means that the highest rung of DOC leadership can change every four years, or less, depending on the performance of the commissioner or on the number of terms the appointing mayor

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serves. Many of the staff, however, stay much longer.¹²⁶ In the

1 Id.

2 N.Y.C. Bd. of Corr., A STUDY OF THE DEPARTMENT OF CORRECTION INMATE GRIEVANCE AND REQUEST PROGRAM I (2016), http://www1.nyc.gov/assets/boc/downloads/pdf/final_board_of_correctionreport_oct2016.pdf [<http://perma.cc/CYG3-8EVG>].

3 N.Y.C. CHARTER §§ 626, 626(c)(1) (2004).

4 N.Y.C. Bd. of Corr., *supra* note 119, at 1.

5 See generally *id.* at 12–14.

6 ROBERT J. LAVIGNA, ENGAGING GOVERNMENT EMPLOYEES: MOTIVATE AND INSPIRE YOUR PEOPLE TO ACHIEVE SUPERIOR PERFORMANCE 58–60 (2013).

7 See Baer & Bepko, *supra* note 74, at 23.

8 N.Y.C. CHARTER § 6 (2004).

9 N.Y.C. DEP'T OF CITYWIDE ADMIN. SERVS., WORKFORCE PROFILE REPORT 160 (2015), http://www.nyc.gov/html/dcas/downloads/pdf/misc/workforce_profile_report_fy_2015.pdf [<http://perma.cc/ELW8-QUQZ>].

then proceeded to hire them without any documented explanation of why the red flag was disregarded or overridden.²⁰⁶ Examples of these red flags included criminal histories, contact with inmates on Rikers, a history of domestic violence, and failed psychological screenings for other city jobs.²⁰⁷ The Monitor investigated these specific applications and found that the AIU's decisions to overlook the red flags were reasonable, but stressed the need to document the reasons for these decisions.²⁰⁸

Second, the Monitor has also found that due to the unprecedented volume of training efforts and resources required, the original one-year deadline set in the consent decree is unrealistic.²⁰⁹ Not only does the DOC need to cover operations while staff are being trained, but they also do not have adequate space for training.²¹⁰ The Monitor has consistently and strongly urged the City of New York to create a new training facility for the DOC; lack of quality training space has made it incredibly difficult for the DOC to carry out the training requirements of the consent decree.²¹¹ **To its credit, the city has also included \$100 million in the fiscal year 2018 budget for a new training academy.²¹² That said, the DOC has requested an extension to the deadline for training requirements.²¹³**

c. Young Inmate Management—Classification and Programming

In the fourth monitors report, it is noted that young inmates under the age of nineteen continue to contribute to a disproportionate share of both the DOC's use-of-force and inmate-on-inmate violence.²¹⁴ However, the DOC had made significant progress in increasing programming for young people, which reduces idle time and, in turn, reduces violence.²¹⁵

First, the DOC began working with an external consultant shortly after the conclusion of the most recent monitoring period in order to validate the existing classification tool.²¹⁶ The DOC also recently

1. See Second Monitors Report, *supra* note 181, at 160.
2. *Id.*
3. *Id.*
4. See Third Monitors Report, *supra* note 175, at 71.
5. *Id.*
6. *Id.* at 7.
7. See SMALLER, SAFER, FAIRER, *supra* note 20, at 36.
8. See Third Monitors Report, *supra* note 175, at 72.
9. See Fourth Monitors Report, *supra* note 170, at 14.
10. *Id.*
11. *Id.* at 214.

devised and began using an evidence-based classification model known as the **Housing Unit Balancer (“HUB”)**.²¹⁷ This tool was developed based on the analysis of approximately 60,000 DOC inmate records (including adolescent males), and uses a conditional (“if, then”) decision tree model to classify inmates according to violent conduct, mental health issues, age, severity of charge, gangaffiliation, and number of prior arrests.²¹⁸ Under the HUB model, inmates are assessed every 100 days, or after each violent incident, and classified as minimum, minimum-medium, medium-maximum, or maximum, and housed accordingly.²¹⁹ The HUB system has an override mechanism, so that both adult and adolescent inmates with special circumstances (such mental health issues or emotional immaturity) can be placed in the appropriate housing option.²²⁰ The DOC plans to ultimately use this classification system across all DOC facilities, for all populations.²²¹

However, the Monitor has expressed concern in areas related to young adult classification and programming. Moreover, the DOC’s new HUB classification system has been determined unfit for classifying adolescents, and the DOC must either create a new, evidence-based classification instrument from scratch or pilot a model currently used in another context for classifying adolescents.²²²

Second, the DOC has been working with the Monitor to develop plans to deliver direct supervision training to staff,²²³ but it is important to note that the **physical layout of all existing facilities on Rikers Island and the Brooklyn House of Detention are not in line with the design requirements of direct supervision, which will make adoption of this training model more challenging than in a more modern facility.**²²⁴

Finally, in addition to the previous abolition of the practice of punitive segregation for sixteen-and seventeen-year-olds in December 2014, the DOC abolished the use of punitive segregation for eighteen-year-old inmates on June 30, 2016.²²⁵ **In earlier reviews, the Monitor expressed concern about the sustainability of this**

1. See First Monitors Report, supra note 160, at 92.
2. Id. at 92–93.
3. Id. at 93.
4. Id. at 93–94.
5. Id. at 93.
6. See Fourth Monitors Report, supra note 170, at 214–15.
7. See id. at 86.
8. See A MORE JUST NEW YORK CITY, supra note 10, at 77.
9. See Third Monitors Report, supra note 175, at 218.

practice since other disciplinary sanctions had not been fleshed out.²²⁶ By the end of the third monitoring period, the DOC demonstrated promising efforts to increase alternative forms of discipline for young inmates.²²⁷ But the Monitor warned that alternative disciplinary programs, such as cognitive behavioral therapy, are a drastic shift from the DOC's status quo and will need significant time to become a successful replacement.²²⁸

C. Current Agenda for Reform

Throughout the years, the strongest sources pushing for DOC reform have been the courts and legal advocates, through litigation efforts. This kind of litigation strategy is popular across the United States: at one point, nearly one third of large U.S. prisons were under court orders to address unconstitutional conditions of confinement.²²⁹ One of the primary purposes of litigation is to deter unacceptable conduct or conditions, and specifically in the case of corrections, it can serve to create a space where inmates are treated with respect and as citizens.²³⁰

However, the DOC has historically not treated settlements as essential tools to help guide long-term structural reforms. The key examples of the DOC's litigation history from Rhem to Benjamin and Fisher to Nunez—though by no means an exhaustive account—reveal a pattern of illegal treatment of incarcerated people followed by successful lawsuits against the DOC that resulted in piecemeal responses rather than a holistic strategy for reform.²³¹ This stems partly from a consistent turnover of DOC leadership and outside experts as well as an absence of strong reform precedents in the DOC.²³² That said, the presence of the Nunez Monitor, the release of the Commission's report, and the mayor's commitment to closing Rikers Island all present critical opportunities to implement comprehensive reforms at the DOC.

As previously mentioned, the Commission recommended closing Rikers Island and redeveloping borough-based jails in order to create

1. See Second Monitors Report, *supra* note 181, at 142.
2. See Third Monitors Report, *supra* note 175, at 226.
3. *Id.* at 219.
4. Wayne N. Welsh, *The Dynamics of Jail Reform Litigation: A Comparative Analysis of Litigation in California Counties*, 26 *LAW & SOC'Y REV.* 591, 591 (1992).
5. See Margo Schlanger, *Inmate Litigation*, 116 *HARV. L. REV.* 1555, 1666 (2003).
6. See generally *Stipulation of Settlement*, *supra* note 95.
7. See Dilulio, *supra* note 65, at 154–55.

a smaller, safer, more humane and effective jail system for New York City.²³³

The DOC is a frequent target of public outrage, advocacy, and legal action.²³⁴ But history has shown that even scandal and outrage are not enough to change the culture of the DOC.²³⁵ Lasting change will require deliberate analysis, strategic planning, and execution over a long period of time. In order to take full advantage of this rare opportunity of galvanized political will for closing Rikers Island, reforming the broader criminal justice system, and building new state-of-the-art borough-based jails, the city and the DOC should prioritize organizational culture reform.

II. ORGANIZATIONAL CULTURE CHANGE

Part II turns to a critical piece of the comprehensive reform agenda—culture change. Reforming the DOC culture, and thus, operations, will be difficult and will not be immediate. But, to fully realize the mayor's goal of a smaller, safer, fairer jail system, it is necessary.

The subsequent sections outline the tenants of organizational culture change and culture change specific to correctional institutions, and then focus specifically on five critical areas for developing a culture change plan, including: accountability in management and performance; procedures and policies; recruiting and hiring; training and education; and wellbeing and support. These five areas do not exhaustively cover the challenges facing the DOC, rather, they are critical areas to take into account when devising a comprehensive strategic plan for organizational culture change for the DOC.

A. Changing the Culture at the DOC

The following sections will explore organizational culture and its relationship to the DOC's operations. This section first outlines a process for understanding and evaluating organizational culture. Next, this section turns to developing a plan for reform. Finally, this section outlines priority areas for operational reform in order to fundamentally change the organizational culture in the DOC.

1. See *A MORE JUST NEW YORK CITY*, supra note 10, at 15; see also discussion supra Introduction.
2. See *A MORE JUST NEW YORK CITY*, supra note 10, at 73–75.
3. See generally, e.g., *Stipulation of Settlement*, supra note 95.

The rehabilitative model for correctional environments requires staff to develop effective ties with incarcerated persons and enforce rules with discretion according to a nuanced understanding of inmates and their behavior.²⁷⁵ Staff still manage the incarcerated population through communication and some behavioral incentives, but this requires great technical skill and a strong commitment to these ideals.²⁷⁶

In contrast to many prisons in Central Europe and Scandinavia,²⁷⁷ which lean very strongly toward rehabilitative principles, most U.S. institutions over the past several decades have resisted the concept of rehabilitation in favor of a “tough-on-crime” approach.²⁷⁸ However, even as incarceration rates have risen, policy changes and litigation have forced improved conditions of confinement and protections from punitive action by COs.²⁷⁹ This trend has resulted in somewhat improved conditions of confinement in places where administrations have embraced reforms.²⁸⁰ Litigation tends to result in mandated reforms and restrictions on staff, limiting the coercive power of COs.²⁸¹

When COs are expected to perform both custody and treatment functions, this sets up a conflict of roles for staff.²⁸² Though line officers are expected to remain socially distant to maintain order, they

1. See generally ROBERT G. LEGER & JOHN R. STRATTON, *SOCIOLOGY OF CORRECTIONS: A BOOK OF READINGS* 1–7 (1977).
2. *Id.* at 446–48.
3. While the Scandinavian philosophy is instructive, it is important to note the differences between jails and prisons. In the United States, jails are local facilities that hold individuals pending trial and for sentences of a term of less than a year while prisons hold individuals sentenced to terms of more than a year. This presents distinct operational challenges as well as opportunities.
4. See RAM SUBRAMANIAN & ALISON SHAMES, *VERA INST. FOR JUSTICE, SENTENCING AND PRISON PRACTICES IN GERMANY AND THE NETHERLANDS: IMPLICATIONS FOR THE UNITED STATES* 1, 7 (2013), https://storage.googleapis.com/vera-web-assets/downloads/Publications/sentencing-and-prison-practices-in-germany-and-the-netherlands-implications-for-the-united-states/legacy_downloads/europeanamerican-prison-report-v3.pdf [<http://perma.cc/63V2-T839>]; Doran Larson, *Why Scandinavian Prisons Are Superior*, *THE ATLANTIC* (Sept. 24, 2013), <https://www.theatlantic.com/international/archive/2013/09/why-scandinavian-prisons-are-superior/279949/> [<http://perma.cc/PBD8-FHTV>]; see also *supra* Section I.A.2.
5. See generally Eric D. Poole & Robert M. Regoli, *Alienation in Prison: An Examination of the Work Relations of Prison Guards*, 19 *CRIMINOLOGY* 251, 252–53, 256, 264 (1981).
6. James B. Jacobs, *The Prisoners’ Rights Movement and Its Impacts, 1960–80*, 2 *CRIME & JUST.* 429, 462–63, 465 (1980).
7. See Poole & Regoli, *supra* note 279, at 252–53.
8. Oscar Grusky, *Role Conflict in Organization: A Study of Prison Camp Officials*, 3 *ADMIN. SCI. Q.* 452, 455 (1959).

are also increasingly urged to form close, supportive relationships with inmates and guide them to make their own decisions.²⁸³ Custody goals and rehabilitative goals are typically at odds by definition, and if organizational leadership does not develop a comprehensive strategy to integrate the two models, correctional staff will often encounter role strain and role conflict.²⁸⁴ Role strain refers to the tensions that an employee experiences when different duties within his or her role are difficult to achieve simultaneously.²⁸⁵ Role conflict is when one employee has multiple, distinct roles that are incompatible.²⁸⁶

When faced with too much role conflict, officers are more likely to revert to the custody model of coercive and punitive control because its clear guidelines and results can be more easily measured.²⁸⁷ The adoption of new cultural ideals, such as rehabilitation models, must be accompanied by a clear and direct tool of measurement for

²⁸⁸
success.

For long-term change to take hold, organizations and their staff must go through a process of reframing and redefining roles and missions so that old operations no longer seem acceptable.²⁸⁹ Elements of an organization's culture, such as shared attitudes, assumptions, beliefs, and behaviors guide individuals in managing how to work and survive together.²⁹⁰ Since a group's attitudes, assumptions, and beliefs develop out of the need for consistency and meaning, any efforts to adjust an organization's culture must address these needs as they progress.²⁹¹ Unless these elements and functions are recognized and addressed, the appropriate route to culture change will never be understood, let alone embraced.²⁹²

5. How Organizations Can Change

Organizational culture is dynamic and can be influenced by a number of changes to an organization. In some cases, promoting

1. See *id.* at 470.
2. See Mayer N. Zald, Power Balance and Staff Conflict in Correctional Institutions, 6 ADMIN. SCI. Q. 22, 23 (1962).
3. William M. Evan, Role Strain and the Norm of Reciprocity in Research Organizations, 68 AM. J. SOC. 346, 347–48 (1962).
4. Sam Matthews, Lecture on Social Roles, slide 11 (2016), <http://core.ecu.edu/soci/juskaa/SOCI2110/Lectures/structure/sld011.htm> [<http://perma.cc/SR2A-XQU9>].
5. See Jacobs & Retsky, *supra* note 256, at 6.
6. See SCHEIN, *supra* note 33, at 83–88.
7. See INNES, *supra* note 242, at 8–9.
8. See *id.*
9. *Id.* at 9; see also SCHEIN, *supra* note 33, at 300.
10. See INNES, *supra* note 242, at 9.

members of certain subcultures within an organization can spread that subculture more widely within the organization.²⁹³ Culture change can also be galvanized through scandal or public crisis – when major issues are brought to light, organizations may seek radical change in order to survive.²⁹⁴ Moreover, new technologies can be incorporated that neutralize certain problematic processes that were once left up to discretion—like body cameras and digitized systems that flag officers that show signs of abuse or distress.²⁹⁵

Organizations hoping to see lasting change will undoubtedly face resistance, confusion, and anxiety in the process.²⁹⁶ Culture change expert Edgar Schein describes five principles that an organization needs to accept—and be prepared to deal with—in order to effect true change: (1) staff must feel more survival anxiety, or fear of failing in their roles, than they feel anxiety about learning new things; (2) leaders pushing for organizational culture change must focus their efforts on reducing anxiety related to learning new things (rather than increasing survival anxiety); (3) goals of the change must be defined concretely in relation to the specific problems at hand (rather than merely referred to as “culture change”); (4) new cultural elements will only be embraced if they lead to positive results and satisfaction; and (5) cultural change will be at first psychologically painful, so efforts must be made to ensure psychological safety for staff.²⁹⁷

Creating and sustaining psychological safety for staff is one of the most crucial components of culture change efforts. Staff within an organization undergoing culture change often experience many types of fear: fear of losing power or position, of incompetence, of punishment, and of losing identity or group membership.²⁹⁸ These fears are powerful, and collectively can significantly undermine reform strategies.²⁹⁹ Thus, successful cultural change in an organization requires the existence of psychological safety.

Psychological safety can be achieved through: the development of a compelling positive vision; adequate formal and informal training; involving the learner in managing the process; flexibility for practice; support groups for processes; and new systems and structures that

1. See SCHEIN, supra note 33, at 283.
2. Id. at 291, 293.
3. See Consent Judgement, supra note 129, at 29.
4. See SCHEIN, supra note 33, at 300–05.
5. Id. at 311–13.
6. Id. at 304.
7. Id. at 304–05.

reinforce new ideals.³⁰⁰ These reforms must be rolled out strategically to create the safety that staff need in order to embrace change in their organization.³⁰¹ It is important to note that even if the correct problems are identified and the staff is willing, change attempts will fall flat if the organization rushes to implement changes without taking the necessary time and thought to put together a long-term, sustainable strategy.³⁰²

a. Culture Change in Correctional Systems

The NIC has been investigating and facilitating cultural assessments and change processes within correctional organizations since 2000.³⁰³ The NIC endorses the principles laid out by change management expert Dr. John P. Kotter.³⁰⁴ Kotter's principles have been incorporated into many successful organizational change efforts.³⁰⁵ In order for change to occur, Kotter recommends the following: (1) inspire a sense of urgency amongst critical stakeholders to create and maintain the momentum required to push change forward; (2) have a Change Team of respected senior managers who are committed to the goals of the change; (3) establish an emotionally charged vision that can be easily communicated, inspires staff, and addresses their primary fears regarding the change; (4) learn about each stakeholder's best interests in order to build buy-in; (5) provide clear tools for action so that staff are empowered to make the change;
(6) present short-term, achievable milestones and finish them before moving on; (7) never stop highlighting these achievements and pushing for further progress; and (8) provide positive reinforcement for successes to encourage sustainable change.³⁰⁶

The NIC has used these principles as inspiration to create its own change management model specifically for corrections called Achieving Performance Excellence Initiative (“APEX”).³⁰⁷ APEX is a roadmap and toolkit that can help correctional institutions understand where to begin and what steps are necessary to effect lasting culture change.³⁰⁸ The APEX model incorporates best

1. Id. at 306–07.
2. Id. at 307.
3. See CEBULA ET AL., supra note 238, at 45.
4. Id. at 9.
5. Id. at 18.
6. See id.
7. Id. at 19.
8. Id. at 21.
9. Id.

perhaps the most important element of any change management
³³²

process.

The final, perhaps most difficult, stage involves sustainability.³³³ Organizational change can only last if changes are embraced by staff and accompanied by positive reinforcement as well as ongoing guidance and training.³³⁴ Management must be held accountable for the success of implemented changes, and progress must be tracked on an ongoing basis.³³⁵

b. Case Study: Virginia Department of Corrections and a Healing Environment

Organizational culture change is not a common undertaking for correctional organizations. However, the Virginia Department of Corrections (“VADOC”) is currently in the midst of a massive culture change initiative aimed at creating a “healing environment” within the agency.³³⁶ The initiative began in 2010 when VADOC began investigating its effectiveness in reducing recidivism within Virginia’s criminal justice system.³³⁷ In an evaluation of its programs and services, the VADOC recognized that it could only have an impact on recidivism rates if it assessed and changed its organizational culture.³³⁸

VADOC Director Harold W. Clarke aimed to create a strategic plan for culture change by assessing staff attitudes and experiences, how the institution was perceived by external entities, and how care was received by the incarcerated population.³³⁹ All staff members received specific training on how to participate in the culture change effort as well as what his or her role would be in carrying out culture change goals.³⁴⁰ The strategic planning efforts resulted in the “healing environment”—a cultural model for the organization that aimed to create productive change for both staff and those

1. Id. at 37.

2. Id. at 38.

3. Id. at 38–39.

4. Id. at 39.

5. See Scott Richeson, Can Corrections Heal? Reducing Recidivism and Increasing Public Safety in Virginia, CORRECTIONS TODAY, Nov. 2014, at 26, 26–29.

6. See id. at 26.

7. Id. at 27.

8. See generally VA. DEP’T OF CORR., MANAGEMENT INFORMATION SUMMARY ANNUAL REPORT YEAR ENDING JUNE 30, 2014 (2014), <https://vadoc.virginia.gov/about/facts/managementInformationSummaries/2014-mis-summary.pdf> [<http://perma.cc/7GV5-9T37>].

9. See Richeson, supra note 336, at 2.

incarcerated.³⁴¹ Unlike “command and control,” this model prioritized mutual respect and de-escalation techniques to restore peace in the correctional setting.³⁴² Through the healing environment model, use of force was deemphasized and a continuum of responses for various infractions was introduced.³⁴³

A key element of VADOC’s healing environment was a practice known as “Dialogue,” which establishes a structured model for staff-wide discussions about the most pressing issues involved in the culture change process.³⁴⁴ It requires specific training to provide staff with the skills necessary to listen without judgment, effectively creating a safe space that encourages staff to share their thoughts and experiences, and also allows leadership to gauge how culture change is progressing.³⁴⁵ In Virginia, this training was carried out by “learning teams,” interdisciplinary groups of staff selected by leadership in each facility who were trained by Dialogue coaches.³⁴⁶ The critical component of Dialogue is that it does not stop once culture change efforts have been implemented—it is an ongoing part of the process and necessary to sustaining positive change.³⁴⁷

The Urban Institute, an economic and social policy think tank, is currently conducting an evaluation of this initiative at VADOC, and has released interim data showing that Dialogue has likely led to an increase in staff support for culture change initiatives at VADOC.³⁴⁸

B. Developing a Culture Change Plan at the New York City Department of Correction

As New York City prepares to shutter Rikers Island and move to new, borough-based facilities, the DOC has a unique opportunity to reimagine its role and make strides towards a more humane jail system.³⁴⁹ The goals of such a process would be to dramatically improve professionalism, mental and emotional balance, transparency, and accountability in order to significantly reduce

1. Id.
2. Id.
3. Id. at 3–4.
4. Id. at 3.
5. Id.
6. Id.
7. Id.
8. See Press Release, Va. Dep’t of Corr., Urban Institute Completes Third Employee Survey at Virginia Department of Corrections—VADOC’s Environment, Recent Culture Change Measured (Feb. 19, 2015), https://vadoc.virginia.gov/news/press-releases/15Feb19_UISurvey.shtm [http://perma.cc/AT9E-Z6U9].
9. See A MORE JUST NEW YORK CITY, supra note 10.

violence and improve outcomes. It will require fierce commitment from leadership and the recognition that culture change is extremely difficult, as well as acceptance of some risks.³⁵⁰

While the DOC may decide to work with an external consultant to assess their culture and develop a strategic plan, any culture change or strategic planning consultants should approach the process as a discovery process that focuses on asking the right questions and helping the organization arrive at conclusions on its own.³⁵¹

Should the DOC choose to undergo an assessment and develop a comprehensive plan for reform, this Article recommends several specific areas of focus for analysis: (1) accountability in management and performance; (2) formal processes and procedures; (3) recruiting and hiring; (4) training and professionalization of staff; and (5) staff wellbeing. The following section analyzes each of these areas in turn, highlighting ongoing, manifest issues at the DOC.

1. Accountability in Management and Performance

The legitimacy of reform efforts hinges on correctional leadership at all levels of management taking responsibility for the DOC's performance and progress during the process.³⁵² Organizational leaders must evaluate all levels of their staff according to new culture ideals and provide them with positive or negative reinforcement in accordance with their adoption of the new principles.³⁵³

a. Effective Management as the Primary Driver of Accountability

Dramatic changes in performance are more likely if culture change is led by a “transformational leader”—someone who has the skills to influence and inspire organizational commitment amongst staff.³⁵⁴

The NIC has developed standards for correctional leadership known as the Correctional Leadership Competencies for the 21st Century (“CLC”).³⁵⁵ The CLC holds accountability as one of the key values of successful correctional management.³⁵⁶ The CLC model

1. See CEBULA ET AL., *supra* note 238, at 38.

2. *Id.* at 19.

3. See SCHEIN, *supra* note 33, at 142.

4. *Id.* at 307.

5. See CEBULA ET AL., *supra* note 238, at 10.

6. See generally NANCY M. CAMPBELL, NAT'L INST. OF CORR., CORRECTIONAL LEADERSHIP COMPETENCIES FOR THE 21ST CENTURY: EXECUTIVES AND SENIOR-LEVEL LEADERS (2005), <https://s3.amazonaws.com/static.nicic.gov/Library/020474.pdf> [<https://perma.cc/D7K4-6RXA>].

7. *Id.* at xix.

identifies key competencies required for executive and senior leadership, which include: publicly acknowledging and rewarding behavior that encompasses organizational values; working strategically with investigators and auditors to enable accurate data collection and reinforce ethical values; explicitly modeling behaviors that the organization wants to promote; clearly aligning rewards and discipline with desired behaviors and values; setting clear boundaries around acceptable and unacceptable behavior; and addressing misconduct fairly, decisively, and in a timely manner.³⁵⁷

As discussed previously, the Nunez complaint cited a long history of the DOC's failures to select and promote managers with a commitment to ending violence or to ensure appropriate investigations and discipline of staff.³⁵⁸ **Other recent events highlight a serious lack of accountability within the DOC's middle-management, who should be setting the standard for staff behavior and transparency. For example, an August 2016 Daily News report contained internal documents and anonymous staff accounts claiming that administrators had been ordering officers to make use-of-force statistics "go away."**³⁵⁹ **At least one of the administrators involved was later promoted.**³⁶⁰

Most critiques of accountability, particularly in the form of litigation, within the DOC center on its chronic use-of-force issues.³⁶¹ The DOC's culture of violence is a frequent target of public outrage, advocacy, and legal action.³⁶² But the lack of accountability at the DOC is not limited to the area of violence—the DOC has underperformed in areas ranging from hiring to investigations to data tracking to training.³⁶³ By failing to take responsibility, management sends the message to staff that integrity, ethics, and performance are not top priorities for the DOC. Taking action against misconduct while rewarding staff who demonstrate the desired cultural principles can reinforce the culture that the DOC hopes to promote.³⁶⁴

1. Id. at 67.
2. See Amended Complaint, supra note 128, at 14.
3. See Stephen Rex Brown & Reuven Blau, Exclusive: Rikers Island Correction Bosses Routinely 'Purge' Unfavorable Violence Stats to Create Illusion of Reform, Review Shows, N.Y. DAILY NEWS (Sept. 28, 2016), <http://www.nydailynews.com/newyork/exclusive-rikers-island-bosses-cover-violence-stats-article-1.2768232?cid=bitly> [<http://perma.cc/8AXS-FD3S>].
4. Id.
5. See Fourth Monitors Report, supra note 170, at 4.
6. See supra Part I.
7. See supra Section I.B.
8. See Fourth Monitors Report, supra note 170, at 9.

having college-level education makes it more likely that COs have had exposure to a diverse range of backgrounds different from their own, expanding their capacity for empathy; this exposure to difference is invaluable to learning potential ways to deescalate violent incidents.⁴³¹ In order to recruit and hire the right staff for the mission and organizational culture the DOC would like to implement, it should create a comprehensive recruiting and hiring vision replete with a strategic plan that is directly in line with its overall culture change goals and efforts. According to the Nunez Monitor, the AIU is about to undergo a comprehensive review process of all current practices and will then draft an overall strategy for going forward.⁴³²

4. Training and Education as Tools for Culture Change

A supportive and healing training program can create the psychological safety needed for staff to accept change, and it can also position staff as agents of change by helping them develop the skills necessary to sustain a healing culture in the organization.⁴³³ For a hierarchical structure like the DOC, the process of opening up dialogue across silos likely will be difficult and uncomfortable at first. These initial steps should be treated as an opportunity to build skills and train staff for ongoing dialogues among all levels in the DOC. As seen in the Virginia Department of Corrections, staff likely will become accustomed to this new way of working and more willing and better positioned to contribute to innovation within the DOC.⁴³⁴

a. Training for a Healing Environment

Training plays a significant role in establishing legitimacy and procedural justice in a criminal justice setting: when correctional staff demonstrate competence and fairness in carrying out their jobs, the incarcerated population may be more likely to respect their authority.⁴³⁵ New York City's Police Department is currently transitioning from a strictly "law and order" approach to a more "community-based policing" model.⁴³⁶ Its 2015 Neighborhood

1. See Christine Tartaro, *Watered Down: Partial Implementation of the New Generation Jail Philosophy*, 86 *PRISON J.* 284, 297 (2006).
2. See Fourth Monitors Report, *supra* note 170, at 193.
3. See SCHEIN, *supra* note 33, at 305–06.
4. See Press Release, Va. Dep't of Corr., *supra* note 348.
5. See STEPHEN C. MCGUINN, *PRISON MANAGEMENT, PRISON WORKERS, AND PRISON THEORY: ALIENATION AND POWER* 56–57 (2015).
6. See WILLIAM J. BRATTON, N.Y.C. POLICE DEP'T, *THE NYPD PLAN OF ACTION AND THE NEIGHBORHOOD POLICING PLAN: A REALISTIC FRAMEWORK FOR*

Policing Plan emphasizes ongoing respectful engagement with citizens as the only way to properly maintain safety in the city.⁴³⁷ The DOC can learn from this initiative by making engagement, communication, and de-escalation—principles at the core of the direct supervision jail model—essential parts of its approach to maintaining safety.⁴³⁸

A transition to a direct supervision model would require the DOC to build its entire training program around techniques that have typically been considered supplementary training modules. A study on the full adoption of direct supervision principles in newly designed jails shows that facilities that focus on only the design elements of direct supervision, ignoring the training, management, and culture components, see status quo results in violence prevention.⁴³⁹ In fact, this happened at the Tombs, which is a direct supervision facility that has not been able to keep violence down, apparently due to mismanagement.⁴⁴⁰ In other cases, partial implementation is due to a misinterpretation of the direct supervision model, such as only placing COs in direct contact with inmates without providing a safe physical environment or ensuring the CO has the requisite communication skills to control the environment.⁴⁴¹ Again, in facilities that have fully implemented direct supervision principles, violence drops dramatically.⁴⁴² In those that adopted direct supervision in design only, violence was largely unaffected.⁴⁴³

Therefore, the DOC must implement direct supervision comprehensively. The difficulty of this task should not be understated. The DOC has had, in the past two decades, commissioners who were committed to change and were able to make some important and invaluable reforms in the agency.⁴⁴⁴ The kind of culture change discussed in this Article will require not just that kind of leadership, though it is essential, but a long term commitment from the mayor, the budget director, the Office of Labor Relations, the

CONNECTING POLICE AND COMMUNITIES 1–2 (2015), <http://home.nyc.gov/html/nypd/html/home/POA/pdf/Plan-of-Action.pdf> [<http://perma.cc/2UMY-ZRWA>].

1. See *id.* at 3.
2. See *A MORE JUST NEW YORK CITY*, *supra* note 10, at 88.
3. See Tartaro, *supra* note 431, at 291.
4. See Surico, *supra* note 63.
5. See Stephen I. Saunders, III, *Direct Supervision Jails: A Management Model for the 21st Century* 3 (Jan. 1995) (unpublished research paper, Florida Criminal Justice Executive Institute), <http://www.fdle.state.fl.us/FCJEL/Programs/SLP/Documents/Full-Text/Saunders.aspx> [<https://perma.cc/X7QK-5VE5>].
6. See Wener et al., *supra* note 53, at 11.
7. See Christine Tartaro, *Examining Implementation Issues with New Generation Jails*, 13 *CRIM. JUST. POL'Y REV.* 219, 225–26 (2002).
8. See *supra* Section I.B.

Mayor's Office of Operations, the Department for Citywide Administrative Services, as well as the city council, among others. This is no small undertaking and without this kind of substantial commitment from all levels of city leadership, it is unlikely to happen.

b. A Healing Environment Will Make Punitive Tools Obsolete

A common criticism from staff at the DOC is that the recent reduction in the use of punitive measures for dealing with inmates leaves staff with no tools to curb violence.⁴⁴⁵ Decades of reliance on solitary confinement as a primary anti-violence tactic with only cursory attempts at providing alternatives has left staff feeling powerless against violence.⁴⁴⁶ A common response to this dilemma is to say that officers simply need more training.⁴⁴⁷

The judicial response also has mirrored this approach. For example, the consent decree in Nunez calls for many additional training programs in efforts to reduce violence in the DOC, focusing on use of force, conflict resolution and crisis intervention, defensive tactics, cell extractions, as well as procedures, skills, and techniques for investigating use-of-force incidents.⁴⁴⁸ Recently, the DOC has made great strides in rolling out its "Continuum of Alternative Disciplinary Responses," and as of this writing is no longer using punitive segregation at all for sixteen- to eighteen-year-olds.⁴⁴⁹ This continuum includes several specialized housing options, depending on age and infraction, paired with programming aimed at behavioral change.⁴⁵⁰ COBA, which represents the COs currently being trained in these new strategies, strongly prefers the use of punitive segregation because officers feel vulnerable to violence without it.⁴⁵¹ Indeed, while the Monitor has found the drafting and testing of these new programs to be promising, it has warned that in order for correctional staff to feel secure without punitive segregation, these

1. See Press Release, Corr. Officers' Benevolent Ass'n, Inc., COBA President Elias Husamudeen Regarding the DOC's Elimination of Punitive Segregation for 18– 21 Year Old Inmates (Oct. 11, 2016) [hereinafter COBA Press Release], <https://www.cobanyc.org/news/immediate-release-coba-president-elias-husamudeen-regarding-doc%E2%80%99s-elimination-punitive> [<https://perma.cc/U37S-8YKU>].
2. *Id.*
3. *Id.*
4. See Consent Judgment, *supra* note 129, at 37–40.
5. See Fourth Monitors Report, *supra* note 170, at 233.
6. *Id.* at 240.
7. See COBA Press Release, *supra* note 445.

new policies must be extremely clear and rolled out carefully.⁴⁵² The monitoring team has also stressed that the DOC must expand the possible responses for mid-level misconduct that would not require the use of the specialized housing programs but should still be addressed.⁴⁵³

If implemented properly, the direct supervision model will render punitive tactics practically obsolete. As mentioned above, through direct supervision, staff manage inmates using communication, de-escalation, as well as relationship-building and leadership skills.⁴⁵⁴ Direct supervision principles should inform how all staff engage with the incarcerated population at all times, rather than as an afterthought.

c. Redefining Staff Roles Through Professionalization

As noted above, seeking a more professionalized staff by recruiting officers with higher education qualifications is one approach to changing the dynamics between COs and the incarcerated population.⁴⁵⁵ However, research has found that if underlying organizational culture issues are not addressed, hiring more educated and human-service oriented staff has little effect on changing culture.⁴⁵⁶ For this approach to be successful, staff must be fully integrated into strategic development and be fully capable of acting in accordance with reform goals.⁴⁵⁷

Job redesign is an approach that concedes more autonomy and control over operations to lower-level staff, thus providing opportunities for enrichment through increased responsibility and challenge in the workplace.⁴⁵⁸ Staff should be trained with the skills and knowledge necessary to have more autonomy over their decision-making, which can heighten their sense of personal responsibility and pride in their role.⁴⁵⁹

1. If punitive segregation is no longer an option, it must be replaced with a clear program of graduated responses to violent behavior.
2. See Fourth Monitors Report, *supra* note 170, at 244.
3. See *supra* note 182 and accompanying text.
4. See JOSI & SECHREST, *supra* note 429, at 46.
5. Nancy C. Jurik & Michael C. Musheno, The Internal Crisis of Corrections: Professionalization and the Work Environment, 3 JUST. Q. 457, 477 (1986).
6. See generally Richard F. Elmore, Organizational Models of Social Program Implementation, 26 PUB. POL'Y 188 (1978).
7. See John W. Slocum, Jr., Job Redesign: Improving the Quality of Working Life 5 (S. Methodist Univ, Working Paper No. 19, 1981).
8. ROGER CHEVALIER, A MANAGER'S GUIDE TO IMPROVING WORKPLACE PERFORMANCE 65–66 (2007).

Another approach is to develop an academic program for all staff that lasts between one and two years and that goes beyond traditional training modules to include fields such as criminal law, sociology, law enforcement history, and education.⁴⁶⁰ In German correctional institutions, often considered a global model, officers spend their two-year probationary period learning self-defense and communication, as well as criminal law and educational theory.⁴⁶¹ This professionalizes staff by providing them with skillsets found in professions requiring university degrees.⁴⁶²

5. Wellbeing and Support for Staff

Staff treatment and support are core elements of a positive organizational culture.⁴⁶³ This is particularly true in corrections considering the occupational stressors for correctional staff, which include fear of inmate violence, confrontation with inmate suicides, requirements to frequently work overtime, and demands of rotating shifts that can impede life outside of work.⁴⁶⁴ For correctional organizations to perform optimally and effectively, staff must be adequately supported and cared for.⁴⁶⁵ Adequate training of staff is also incredibly important to their wellbeing—when staff are inadequately trained, they can easily find themselves in situations that cause extreme stress and fear.⁴⁶⁶

As recommended by the Commission, facilities should provide normalized spaces for staff that are separate from the incarcerated population and offer a sense of connection to the outside world.⁴⁶⁷ The Commission recommended that these spaces would include natural materials, soft furniture, regular lamps and tables, and other every day furnishings.⁴⁶⁸ The value of natural light and temperature

1 Maurice Chammah, *The Stiff Competition to Work in German Prisons*, THE MARSHALL PROJECT (June 22, 2015), <https://www.themarshallproject.org/2015/06/22/the-stiff-competition-to-work-in-german-prisons#.dtvud6iq> [<http://perma.cc/7G24VDMZ>].

2 *Id.*

3 *Id.*

4 See JAIME BROWER, OFFICE OF JUSTICE PROGRAMS DIAGNOSTIC CTR., U.S. DEP'T OF JUSTICE, CORRECTIONAL OFFICER WELLNESS AND SAFETY LITERATURE REVIEW 1 (2013), https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/CorrectionalOfficerWellnessSafety_LitReview.pdf [<https://perma.cc/TS3DMPMK>]; see also CEBULA ET AL., *supra* note 238, at xiii.

5 See BROWER, *supra* note 463, at 11–13.

6 See CEBULA ET AL., *supra* note 238, at 48–51.

7 See BROWER, *supra* note 463, at 1.

8 See A MORE JUST NEW YORK CITY, *supra* note 10, at 82.

9 *Id.*

control was also stressed.⁴⁶⁹ However, as with other improvements related to physical facilities, the changes will mean little without a complete overhaul of how staff wellbeing and health are considered within the DOC.

Moreover, role conflict and unsupportive leadership can lead to many other conditions that afflict staff as they attempt to manage their relationships to their jobs and to their organization. For instance, burnout is a syndrome of emotional exhaustion, depersonalization, and a reduced sense of personal accomplishment that is a considerable risk for correctional staff.⁴⁷⁰ Studies have shown that of all correctional personnel, staff in custody roles report higher levels of burnout.⁴⁷¹

Beyond being unpleasant, burnout can lead to officers becoming careless on the job and can pose risks to the safety of the correctional institution.⁴⁷² This is an argument for providing ample support, challenge, and autonomy early in a CO's career, when they are at greater risk of burning out.

Though seniority on staff comes with benefits and perks, some of these may also be harmful. For example, overtime allows officers to dramatically increase their wages; however, excessive overtime takes an emotional and physical toll on COs.⁴⁷³ The DOC has become dependent on overtime as a way to staff posts, particularly when officers need to miss shifts for training, and frames it as a "perk" even though it can be harmful to officers in the long run.⁴⁷⁴

Developing and maintaining a supportive and healing culture is critical to staff wellbeing. Jails are trauma-inducing environments.⁴⁷⁵ The average CO will encounter twenty-eight first-hand events related

1 Id.

2 See Caitlin Finney et al., *Organizational Stressors Associated with Job Stress and Burnout in Correctional Officers: A Systematic Review*, 82 *BMC PUB. HEALTH* 1, 1 (2013).

3 See Marie L. Griffin et al., *Job Involvement, Job Stress, Job Satisfaction, and Organizational Commitment and the Burnout of Correctional Staff*, 32 *CRIM. JUST. BEHAV.* 239, 241 (2010).

4 See BROWER, *supra* note 463, at 11.

5 Michael Schwirtz & Michael Winerip, *Rikers Jail Costs Soared Despite Fewer Inmates, Comptroller Finds*, *N.Y. TIMES* (Oct. 17, 2014), <https://www.nytimes.com/2014/10/17/nyregion/rikers-jail-costs-soared-despite-fewer-inmates-comptroller-finds.html> [<https://nyti.ms/2FWNqvy>].

6 See *id.*; see also David A. Fullard, *Fixing Jail Violence Means Worrying About Officers' Health*, *CITY LIMITS* (Nov. 7, 2014), <https://citylimits.org/2014/11/07/fixing-jail-violence-means-worrying-about-officers-health/> [<http://perma.cc/VY4E-FLF3>].

7 Fullard, *supra* note 474.

to serious violence, injury, or death within his or her career.⁴⁷⁶ Unlike police officers, COs experience a sustained threat of violence, and have fewer opportunities to build rewarding relationships with the populations they work with, given that those populations are being held against their will.⁴⁷⁷ Staff who are exposed to events involving violence, injury, or death on a recurring basis are more likely to develop post-traumatic stress disorder (“PTSD”) and depressive disorders.⁴⁷⁸ These disorders can have dire consequences for staff— one study found that COs’ suicide rate is thirty-nine percent greater than other professions, and double the rate of police officers.⁴⁷⁹

The DOC should be proactive when it comes to ensuring the wellbeing of its staff. When COs are happy, healthy, adequately trained, and well-supported, they create a more positive and supportive environment for incarcerated people, and can improve behavior while reducing violence and the need for punitive measures. These benefits, which serve both individuals and the organization, however, can only be achieved with meaningful commitment from leadership.⁴⁸⁰

Currently, the DOC has a unit called the Correction Assistance Response for Employees (“CARE”). The CARE unit exists to assist officers who seek counseling around traumatic experiences, anxiety, PTSD, and job-related stressors, among other needs.⁴⁸¹ Officers needing additional services or treatment are referred elsewhere by the unit.⁴⁸² However, there is a strong stigma in correctional culture against seeking mental health treatment. David Fullard describes a “warrior ethos” in corrections, where COs are expected by their peers and supervisions to never show weakness, accept defeat, quit, or admit illness, making it much less likely that staff will seek help to cope with the extreme stress of the job.⁴⁸³ An additional challenge with internal CARE units is that they may be perceived as an

1. Id.
2. See BROWER, *supra* note 463, at 5.
3. MICHAEL D. DENHOF & CATERINA G. SPINARIS, DESERT WATERS CORR. OUTREACH, PREVALENCE OF TRAUMA-RELATED HEALTH CONDITIONS IN CORRECTIONAL OFFICERS: A PROFILE OF MICHIGAN CORRECTIONS ORGANIZATION MEMBERS 2 (2016), http://www.mco-seiu.org/files/2016/05/MCO-Paper_FINAL.pdf [<https://perma.cc/B49U-4KJK>].
4. See BROWER, *supra* note 463, at 12.
5. See Griffin et al., *supra* note 471, at 252.
6. See Correction Assistance Response for Employees, N.Y.C. DEP’T OF CORR., <http://www1.nyc.gov/site/jointheboldest/overview/correction-assistance-response-foremployees.page> [<http://perma.cc/3WCZ-SXL4>].
7. Id.
8. See Fullard, *supra* note 474.

extension of the organization, and therefore may not be as trusted by staff who are dealing with issues resulting from organizational stressors.⁴⁸⁴ One solution may be off-site facilities with strict confidentiality regulations that ensure the DOC is only informed of mental health issues in extreme cases.

A critical part of a larger culture change effort would be to help shift the stigma around mental health within its own organizational culture.⁴⁸⁵ Though seemingly insignificant, vocabulary around mental health has a large impact on staff perception and says a lot about its culture.⁴⁸⁶ The DOC can seek to normalize and neutralize conversations around mental health and incorporate healing practices such as the Dialogue process (discussed in earlier sections)⁴⁸⁷ into its operational status quo. Peer support programs, or “stress units,” can be especially helpful in fields prone to PTSD and where stressors are often shared.⁴⁸⁸ Stress units are group meetings led by peer mentors under mental health professional supervision where staff can discuss daily challenges or seek guidance for more serious incidents.⁴⁸⁹ These sessions can be more comfortable and successful than formal mental health services, which are often stigmatized.⁴⁹⁰ The DOC’s organizational culture should strive to be one that encourages dialogue, reflection, and sharing of both positive and negative experiences. This will create a healthier jail system for all.

CONCLUSION

The recent announcement of the eventual closure of Rikers Island marked a watershed moment in corrections in New York City and on a national scale.⁴⁹¹ There is an unprecedented amount of public and governmental support for eliminating Rikers—a penal colony plagued by a history of violence, abuse, and despair for the incarcerated population and DOC staff alike.⁴⁹² But simply building new jails off the island will not automatically result in a reformed DOC. Better outcomes for staff and incarcerated people in New York City requires a complete rethinking of the DOC’s organizational culture, including

1. See BROWER, *supra* note 463, at 15.
2. See *id.* at 9–12.
3. See Fullard, *supra* note 474.
4. See *supra* Section II.A; see also CEBULA ET AL., *supra* note 238, at 53–60.
5. See Fullard, *supra* note 474.
6. *Id.*
7. *Id.*
8. See A MORE JUST NEW YORK CITY, *supra* note 10.
9. *Id.*

clarifying how the DOC operates and behaves, its values, and what its ultimate goals are.⁴⁹³ Regardless of where the new facilities are located and how they are designed, the DOC must seize this historic opportunity to transform itself holistically.

Much of the operational reforms over the last fifty years at the DOC have been the result of litigation and consent decrees.⁴⁹⁴ While litigation can have an impact on operations, particularly in developing minimum standards to govern department operations, it cannot force the holistic reforms necessary to make lasting change at the DOC.⁴⁹⁵

After decades of litigation and corresponding consent decrees, the Nunez case and consent decree forced larger-scale reforms at the DOC.⁴⁹⁶ The Nunez monitoring team is working closely with the city and the DOC to develop and implement reforms across a host of core functions including hiring, training, and use of force.⁴⁹⁷ However, these reforms are being devised under the relatively narrow scope of the litigation rather than being contemplated as a sustainable reform strategy.⁴⁹⁸

Comprehensive reform—the kind of reform that can stop endemic violence and truly change treatment and conditions in DOC facilities—involves more than just remaking the DOC’s physical space. The DOC must, in many respects, start anew and rebuild itself by developing and carefully executing a strategic change management plan.⁴⁹⁹ Critical to this plan, and its ultimate success, will be the DOC’s deliberate analysis of its current organizational culture and the impact of that culture on daily operations.⁵⁰⁰

In order for operational reforms to take hold in the long-term, organizational culture change must also be addressed.⁵⁰¹ A proactive and supportive environment for staff and management will allow the operational reforms to be successful. This Article has described the litigation and reform history at the DOC, the theory underlying culture change in correctional facilities, as well as certain critical areas of operational reform.⁵⁰² The five areas of focus outlined in this

1. See MMR 2017, *supra* note 26, at 83.
2. See *supra* Part I.
3. See *supra* Section I.A.
4. See *supra* Section I.B.
5. See *supra* Section I.B.2.
6. See *supra* Section I.C.
7. See *supra* Section II.A.
8. See *supra* Section II.B.
9. See *supra* Section II.B.
10. See *supra* Section II.B.

report—accountability in management and performance, procedures and policies, recruiting and hiring, training and education, and wellbeing and support—do not exhaustively cover the challenges facing the DOC.⁵⁰³ Rather, they are key areas to take into account when devising a strategic plan for the DOC’s organizational culture change.

Unless the DOC reforms its organizational culture, the broader criminal justice reforms and the development of new jail facilities will bring the DOC only so far. The abuse and troubling conditions of confinement will continue, simply moving off the island into the new facilities along with the staff and those who are detained.

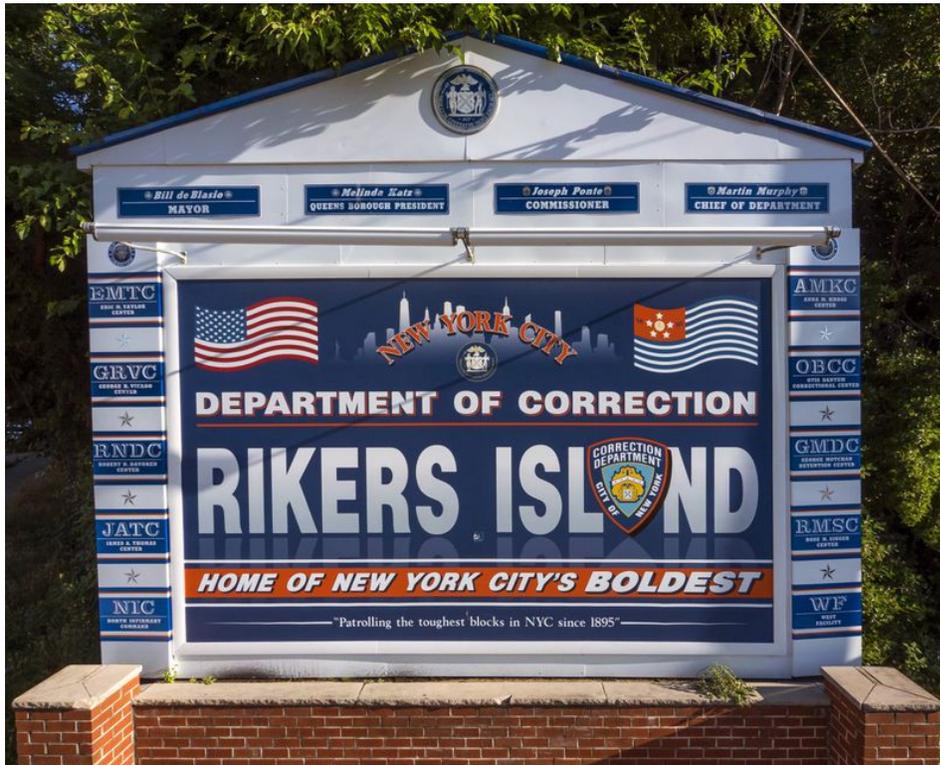
503. See *supra* Sections II.B.1–5.

EXCLUSIVE: Rikers Island correction bosses routinely 'purge' unfavorable violence stats to create illusion of reform, review shows

By [Stephen Rex Brown](#) and [Reuven Blau](#)

NEW YORK DAILY NEWS |

Aug 28, 2016 | 4:00 AM



Each of the last two fiscal years at Rikers has seen more than 100 stabbings and slashings, a threshold not passed since 1999 when the prison population of nearly 20,000 was about double its size today. (Anthony DelMundo/New York Daily News)

There's something hokey going on at the city's pokey.

As pressure mounts to reduce violence at the troubled jails, top correction bosses — seeking to create the impression they have turned matters around — repeatedly order underlings to downgrade incidents, a Daily News review of scores of internal documents shows.

Knife fights and ugly brawls between inmates, even attacks on officers, often end up airbrushed in the records as routine "log book entries," sources familiar with the process say.

The main culprit, critics say, is Security Chief Turhan Gumusdere, a man who has faced scandal in the past for distorting data in the jails by deleting hundreds of fights among inmates from the records when he was a deputy warden.



Critics say the architect of the alleged scheme is security chief Turhan Gumusdere, a man with a history of cooking the books.

They also have questions, they say, about Correction Commissioner Joseph Ponte, a touted reformer who nonetheless promoted Gumusdere into his job, even after the jail investigator recommended he be demoted.

While vowing to alter the culture of violence, Ponte has done nothing to address flaws in the record-keeping process, either exerting pressure or looking the other way, all to placate City Hall, several sources say.

One officer, requesting anonymity, called the practice a "purging" of unfavorable stats.

	CITY OF NEW YORK CORRECTION DEPARTMENT	
	Otis Bantum Correctional Center	
	Incident Photo	
Type of Incident: UOF <input type="checkbox"/> COD <input type="checkbox"/> Other <input checked="" type="checkbox"/>	Date & Time of Incident: 01/21/2016 20:50	
Incident Type: <u>Log Book Entry</u>	NYSID #: [REDACTED]	
First Name: CHRISTIAN	Book & Case #: [REDACTED]	
Last Name: SIMS	Inmate <input checked="" type="checkbox"/> Staff <input type="checkbox"/> Other <input type="checkbox"/>	
		
Photo Date: 01/21/2016 Photo Taken By: capt Stevens Investigating Supervisor: capt Hardy Photo Description: Other-Face	Photo Date: 01/21/2016 Photo Taken By: capt Stevens Investigating Supervisor: capt Hardy Photo Description: Other-Forehead	

Inmate Christian Sims says he injured his head on a bedpost, an account disputed by a medical review.

Gumusdere and the department strongly deny any wrongdoing. A department spokeswoman said Ponte declined to respond to the accusations.

The cases probed by The News seem to defy reason.

For example, a Rikers Island assault by four inmates leaving another inmate bloodied with severe gashes to his face is first depicted by front-line officers as a "violent incident."

 CITY OF NEW YORK CORRECTION DEPARTMENT Otis Bantum Correctional Center Incident Photo 	
Type of Incident: UOF <input type="checkbox"/> COD <input type="checkbox"/> Other <input checked="" type="checkbox"/>	Date & Time of Incident: 01/21/2016 20:50
Incident Type: <u>Log Book Entry</u>	NYSID #:
First Name: CHRISTIAN	Book & Case #:
Last Name: SIMS	Inmate <input checked="" type="checkbox"/> Staff <input type="checkbox"/> Other <input type="checkbox"/>
	
Photo Date: 01/21/2016 Photo Taken By: capt Stevens Investigating Supervisor: capt Hardy Photo Description: Front	Photo Date: 01/21/2016 Photo Taken By: capt Stevens Investigating Supervisor: capt Hardy Photo Description: Back
	
Photo Date: 01/21/2016 Photo Taken By: capt Stevens Investigating Supervisor: capt Hardy Photo Description: Left	Photo Date: 01/21/2016 Photo Taken By: capt Stevens Investigating Supervisor: capt Hardy Photo Description: Right

The incident was deemed a “logbook entry” a day before the fiscal year was completed, records show

But an order arrives to downgrade the episode, and it is swallowed up in the ledger as another workaday footnote.

"They lie about the use of force statistics," charged an officer who asked to remain anonymous. "This is a practice to keep the stats down."

Now the City Council, citing computations that don't add up, is demanding answers, starting with Elizabeth Crowley, who heads the committee overseeing the jails. She is calling on city Controller Scott Stringer to run an audit of the records.



Blood on the hand of a Department of Correction captain who intervened when two inmates began attacking each other. He documented the use of force but it was ultimately scrubbed because it didn't qualify. (Handout)

This is not the first time jail brass, particularly Gumusdere, have come under fire for juking figures. The Correction Department's internal Investigation Division found in 2011 that Gumusdere, while running a Rikers facility for troubled teens, "abdicated all responsibility" in documenting incidents. A department investigator recommended he be demoted.

Instead, Ponte did the opposite, promoting Gumusdere, in a move requiring special City Hall permission, a source said.

In reviewing 11 specific cases, The News found nine downgrades. But according to several jails bosses, this number represents just a fraction of the cases that are skewed. Incidents are often not logged at all, with Gumusdere telling supervisors to "make it go away," the sources say.



George Motchan Detention Center



Incident Photo

Type of Incident: UOF <input type="checkbox"/> COD <input checked="" type="checkbox"/> Other <input type="checkbox"/>	Date & Time of Incident: 06/12/2016 08:35
COD #: 1107/16	NYSID #: [REDACTED]
First Name: MICHEAL	Book & Case #: [REDACTED]
Last Name: BRYANT	Inmate <input checked="" type="checkbox"/> Staff <input type="checkbox"/> Other <input type="checkbox"/>

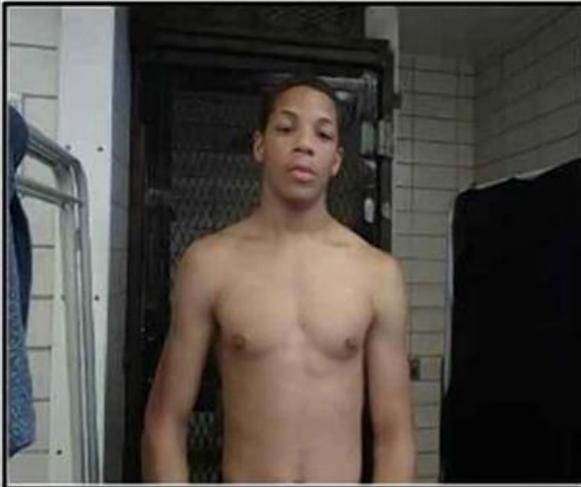


Photo Date: 06/14/2016
 Photo Taken By:
 Investigating Supervisor: Dept Glemaud
 Photo Description: Front

Photo Date: 06/14/2016
 Photo Taken By:
 Investigating Supervisor: Dept Glemaud
 Photo Description: Back



Photo Date: 06/14/2016
 Photo Taken By:
 Investigating Supervisor: Dept Glemaud
 Photo Description: Left

Photo Date: 06/14/2016
 Photo Taken By:
 Investigating Supervisor: Dept Glemaud
 Photo Description: Right

Inmate Michael Bryant couldn't believe his stabbing was initially recorded as a fight. It was upgraded two days later after he complained.

Experts agree that how the mayhem is chronicled is critical in a jail system rife with chaos. Each of the last two fiscal years has seen more than 100 stabbings and slashings, a threshold not passed since 1999 when the prison population of nearly 20,000 was about double its size today.

By all accounts, curbing the violence is a formidable challenge, complicated by the detainees themselves, often loath to cooperate, lest they be seen as snitches.

In one case, an inmate said three gashes on his face came from a fall against a bedpost. Another inmate said he injured his head falling on a "hot box."



"Everything is on video," Gumusdere said. "Everything is on the up and up. I don't know where all this is coming from. I can tell you one thing. Everything you have is wrong." (Todd Maisel/New York Daily News)

Doctors doubted their accounts, noting the injuries indicated a blade was used.

Correction officers labeled the incidents as "slashings" only to see them later downgraded. That catch-all category, a holdover from precomputer times, is not included in data on violence.

The Correction Department vehemently denies any wrongdoing.

Jail administrators routinely change reports issued by correction officers on violence within the jail. (Todd Maisel/New York Daily News)

"Any claim that our numbers are manipulated is absolutely false," said spokeswoman Dina Montes. "We have a rigorous process for capturing and reporting incidents."

The allegations, though, are not a surprise to former warden Raino Hills, who succeeded Gumusdere as head of the juveniles complex. He blew the whistle against Gumusdere in 2011, telling DOI there were scores of cases left open to make it appear violence was down.

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Sims, now in an upstate New York prison for a drug sale conviction, downplayed the episode, saying in a jailhouse interview that although he was jumped by four men, he hurt his head on a metal bedpost.

A bus carrying inmates leaves Rikers Island in Elmhurst, Queens, June 30. (Anthony DelMundo/New York Daily News)

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Gumusdere defended the recasting.

"That was an inmate who was running around his dorm. All the phone conversations say that he tripped," Gumusdere said, referring to secretly recorded phone exchanges.

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But Chief Hazel Jennings reviewed the case and took the unusual step of ordering staff to upgrade it, according to email obtained by The News.

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A photo shows one of the captain's hands covered in blood.

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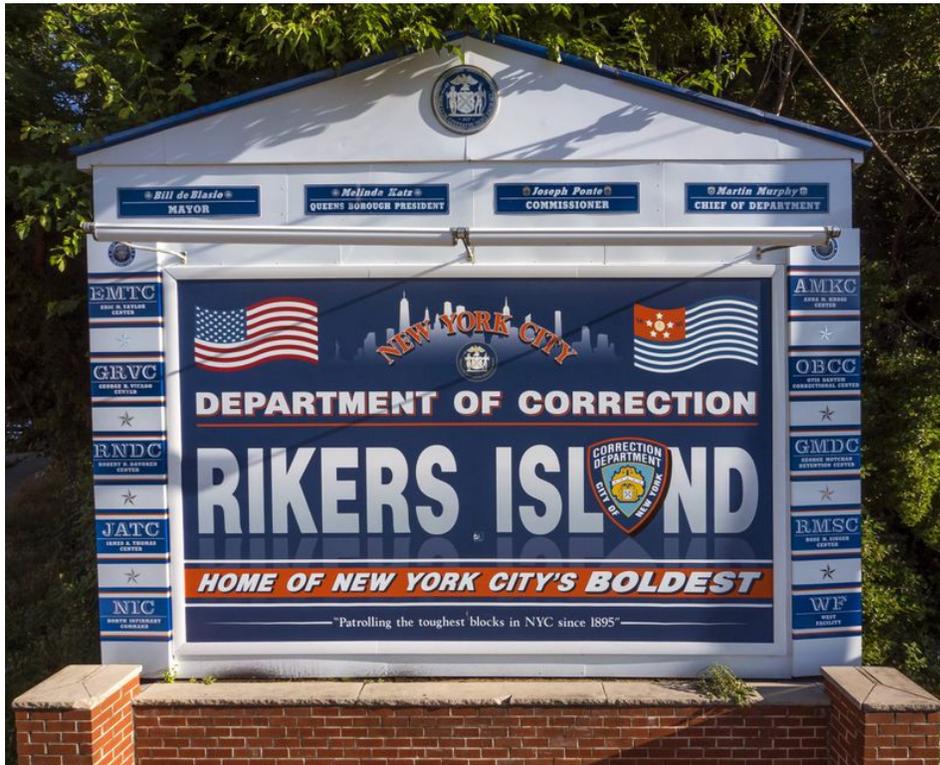
With Graham Rayman, Laura Dimon, Byron Smith, Tyler Foggat

EXCLUSIVE: Rikers Island correction bosses routinely 'purge' unfavorable violence stats to create illusion of reform, review shows

By [Stephen Rex Brown](#) and [Reuven Blau](#)

NEW YORK DAILY NEWS |

Aug 28, 2016 | 4:00 AM



Each of the last two fiscal years at Rikers has seen more than 100 stabbings and slashings, a threshold not passed since 1999 when the prison population of nearly 20,000 was about double its size today. (Anthony DelMundo/New York Daily News)

There's something hokey going on at the city's pokey.

As pressure mounts to reduce violence at the troubled jails, top correction bosses — seeking to create the impression they have turned matters around — repeatedly order underlings to downgrade incidents, a Daily News review of scores of internal documents shows.

Knife fights and ugly brawls between inmates, even attacks on officers, often end up airbrushed in the records as routine "log book entries," sources familiar with the process say.

The main culprit, critics say, is Security Chief Turhan Gumusdere, a man who has faced scandal in the past for distorting data in the jails by deleting hundreds of fights among inmates from the records when he was a deputy warden.



Critics say the architect of the alleged scheme is security chief Turhan Gumusdere, a man with a history of cooking the books.

They also have questions, they say, about Correction Commissioner Joseph Ponte, a touted reformer who nonetheless promoted Gumusdere into his job, even after the jail investigator recommended he be demoted.

While vowing to alter the culture of violence, Ponte has done nothing to address flaws in the record-keeping process, either exerting pressure or looking the other way, all to placate City Hall, several sources say.

One officer, requesting anonymity, called the practice a "purging" of unfavorable stats.

	CITY OF NEW YORK CORRECTION DEPARTMENT	
	Otis Bantum Correctional Center	
	Incident Photo	
Type of Incident: UOF <input type="checkbox"/> COD <input type="checkbox"/> Other <input checked="" type="checkbox"/>	Date & Time of Incident: 01/21/2016 20:50	
Incident Type: <u>Log Book Entry</u>	NYSID #: [REDACTED]	
First Name: CHRISTIAN	Book & Case #: [REDACTED]	
Last Name: SIMS	Inmate <input checked="" type="checkbox"/> Staff <input type="checkbox"/> Other <input type="checkbox"/>	
		
Photo Date: 01/21/2016 Photo Taken By: capt Stevens Investigating Supervisor: capt Hardy Photo Description: Other-Face	Photo Date: 01/21/2016 Photo Taken By: capt Stevens Investigating Supervisor: capt Hardy Photo Description: Other-Forehead	

Inmate Christian Sims says he injured his head on a bedpost, an account disputed by a medical review.

Gumusdere and the department strongly deny any wrongdoing. A department spokeswoman said Ponte declined to respond to the accusations.

The cases probed by The News seem to defy reason.

For example, a Rikers Island assault by four inmates leaving another inmate bloodied with severe gashes to his face is first depicted by front-line officers as a "violent incident."

 CITY OF NEW YORK CORRECTION DEPARTMENT Otis Bantum Correctional Center Incident Photo 	
Type of Incident: UOF <input type="checkbox"/> COD <input type="checkbox"/> Other <input checked="" type="checkbox"/>	Date & Time of Incident: 01/21/2016 20:50
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Photo Date: 01/21/2016 Photo Taken By: capt Stevens Investigating Supervisor: capt Hardy Photo Description: Front	Photo Date: 01/21/2016 Photo Taken By: capt Stevens Investigating Supervisor: capt Hardy Photo Description: Back
	
Photo Date: 01/21/2016 Photo Taken By: capt Stevens Investigating Supervisor: capt Hardy Photo Description: Left	Photo Date: 01/21/2016 Photo Taken By: capt Stevens Investigating Supervisor: capt Hardy Photo Description: Right

The incident was deemed a “logbook entry” a day before the fiscal year was completed, records show

But an order arrives to downgrade the episode, and it is swallowed up in the ledger as another workaday footnote.

"They lie about the use of force statistics," charged an officer who asked to remain anonymous. "This is a practice to keep the stats down."

Now the City Council, citing computations that don't add up, is demanding answers, starting with Elizabeth Crowley, who heads the committee overseeing the jails. She is calling on city Controller Scott Stringer to run an audit of the records.



Blood on the hand of a Department of Correction captain who intervened when two inmates began attacking each other. He documented the use of force but it was ultimately scrubbed because it didn't qualify. (Handout)

This is not the first time jail brass, particularly Gumusdere, have come under fire for juking figures. The Correction Department's internal Investigation Division found in 2011 that Gumusdere, while running a Rikers facility for troubled teens, "abdicated all responsibility" in documenting incidents. A department investigator recommended he be demoted.

Instead, Ponte did the opposite, promoting Gumusdere, in a move requiring special City Hall permission, a source said.

In reviewing 11 specific cases, The News found nine downgrades. But according to several jails bosses, this number represents just a fraction of the cases that are skewed. Incidents are often not logged at all, with Gumusdere telling supervisors to "make it go away," the sources say.



George Motchan Detention Center



Incident Photo

Type of Incident: UOF <input type="checkbox"/> COD <input checked="" type="checkbox"/> Other <input type="checkbox"/>	Date & Time of Incident: 06/12/2016 08:35
COD #: 1107/16	NYSID #: [REDACTED]
First Name: MICHEAL	Book & Case #: [REDACTED]
Last Name: BRYANT	Inmate <input checked="" type="checkbox"/> Staff <input type="checkbox"/> Other <input type="checkbox"/>

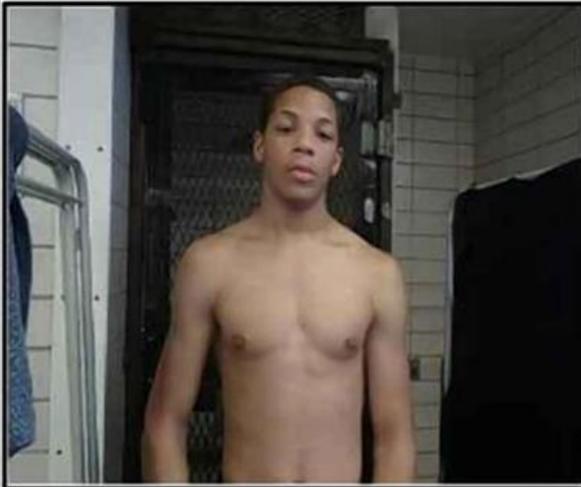


Photo Date: 06/14/2016
 Photo Taken By:
 Investigating Supervisor: Dept Glemaud
 Photo Description: Front



Photo Date: 06/14/2016
 Photo Taken By:
 Investigating Supervisor: Dept Glemaud
 Photo Description: Back



Photo Date: 06/14/2016
 Photo Taken By:
 Investigating Supervisor: Dept Glemaud
 Photo Description: Left



Photo Date: 06/14/2016
 Photo Taken By:
 Investigating Supervisor: Dept Glemaud
 Photo Description: Right

Inmate Michael Bryant couldn't believe his stabbing was initially recorded as a fight. It was upgraded two days later after he complained.

Experts agree that how the mayhem is chronicled is critical in a jail system rife with chaos. Each of the last two fiscal years has seen more than 100 stabbings and slashings, a threshold not passed since 1999 when the prison population of nearly 20,000 was about double its size today.

By all accounts, curbing the violence is a formidable challenge, complicated by the detainees themselves, often loath to cooperate, lest they be seen as snitches.

In one case, an inmate said three gashes on his face came from a fall against a bedpost. Another inmate said he injured his head falling on a "hot box."



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Doctors doubted their accounts, noting the injuries indicated a blade was used.

Correction officers labeled the incidents as "slashings" only to see them later downgraded. That catch-all category, a holdover from precomputer times, is not included in data on violence.

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NYC BOARD OF CORRECTION

10/25/17 AGENDA

Telephone Conference with Dr. David Fullard [with my raw notes]

II. Restrictive Housing for Young Adults

What is your view about the following features of restrictive housing for young adults?

- 1. Should desk restraints be used and if so, for how many hours per day and for what length of time? Currently, restraint desks are used in the most restrictive levels of ESH (“Entry Unit” and “Level 1;” collectively, “restrictive levels”) whenever young adults are locked out, i.e., 7 hours daily, and for a compulsory 30-day stay.**

DF: It’s pretty clear that I’m not a fan of the restraint desk being used with adolescents and young adults on Rikers Island. Research tells us that using these types of tactics and the coercive techniques escalates rather than reduces violence, although in some instances you may have a short-term down-turn in violence and then it will go up. In some cases, I suspect, the violence will increase exponentially once the person is no longer being restrained. It makes much more sense to provide meaningful programs such as educational programs, vocational programs, and prison industry as a means of providing inmates with something meaningful to occupy their time. When the inmates’ time is occupied with something that is meaningful to them you have a demonstrated reduction in violence. Also, being engaged in valuable programs means that inmates don’t want to lose access to these activities, which is what happens when they are involved in a violent event. This means that inmates avoid violence in order to be allowed to continue with these programs.

To specifically answer your question I don’t believe the restraint desk should be used, except with extremely violent inmates who have failed to change their behavior after serious attempts to address that behavior by the Department of Correction (through engagement in alternative programs), and psychotherapeutic interventions by the mental health staff, have failed.

I really do believe that the Department of Corrections has an opportunity to think truly outside of the box when it comes to attempting to reduce violence among adolescent and young adult inmates. I believe that having a

program where the inmates are performing some kind of labor for a salary (\$3.00 per hour), combined with mental health treatment, substance abuse treatment, conflict resolution, interpersonal skills training, and good solid correctional treatment -- will result in a statistically significant reduction in violence. In the language of the youth, "you have to have some skin in the game in order to care about the game." Having a job within the correctional institution that pays \$3.00 an hour is of value to the adolescent and young adult inmate. They will want to hold on to this particular job, and these jobs are linked to good behavior in order to keep the job; if bad behavior is reported they would lose their job. It is important to note that while to us \$3.00 an hour is nothing, to an inmate it's a great deal of status. They do not want to lose that status. As such they will conform to our wishes, follow the rules of the institutions, and avoid violent altercations.

Members of the Department of Correction will most likely not like this idea. They (the NYCDOC) will say that we are paying the inmates for good behavior. In fact, this is a form of "token economy" which has been used to change poor adolescent inmate behavior for decades. The idea will have been sold to the NYCDOC. Part of the sales tactic will involve explaining to the DOC that if they are able to show a statistically significant reduction in violence, they will have fewer staff injuries, fewer inmate injuries, fewer lawsuits, and will be able to say proudly to the national correctional community: "We found an effective solution to reducing violence among our adolescent and young adult inmate population."

It is also important to note that you need to have very good supervision in order to make this work. Captains and Assistant Deputy Wardens have to buy into the program. If they buy into the program, they will do everything in their power to make it work. Further, I think the correctional staff working in this program should be hand-selected by an interdisciplinary/multidisciplinary team, not just correctional staff. They should want to work in this program. They should have a positive attitude and be program minded. I also believe they should be paid a little bit more. They should receive ongoing regularly scheduled training. And if the program works well, they should be applauded, recognized, and rewarded.

In situations where serious attempts to change extremely dangerous and violent behavior by the Department of Correction (through engaging inmates in valuable programs such as those described above) and psychotherapeutic

interventions by the mental health staff have failed, an interdisciplinary/multidisciplinary team needs to assemble and examine each case individually, to determine when and how long the restraint desk will be utilized. While the restraint desk is being used in these situations, Department of Corrections and the mental health staff need to come up with a plan for this specific case going forward when the inmate is released from the restraint desk – otherwise the inmate will return to the same violent behavior, which may be even worse after a period of such physical restraint.

2. Currently, DOC performs a housing assessment of young adults in the Entry Unit and says that it needs 30 days to complete this assessment. Should this assessment take 30 days to complete?

DF: I don't know the procedure that the Department of Correction is currently using to complete the assessment process. 30 days does seem like a bit much. The question that comes to mind is, "do they (DOC) have dedicated (regularly assigned/steady post officer) staff to perform this assessment? Or, are staff members doing multiple tasks in addition to the assessment process?" Another question that comes to mind is, "who is supervising the assessment process? Are these supervisors assigned (regularly assigned/steady post supervisors) just to supervise those doing the assessments? Or, are these supervisors being rotated into the area with little knowledge of the assessment process?"

The best case scenario would be to have officers who are specially selected, trained, and regularly assigned to the duties of assessing young adult inmates in the entry unit. The same holds true for those who supervise the offices in this area. The supervisor should be specially selected, trained, and regularly assigned to the duties of supervising the correctional officers who are assessing young adult inmates in the entry unit. Where officers have multiple duties, and/or supervisors are rotating into the area, this could make the process more cumbersome, inefficient, and worse, inaccurate.

It also seems to make sense that this assessment would be performed by a team of interdisciplinary / multidisciplinary staff. If this is currently the case that might account for the 30 day assessment period since it takes time to engage multiple staff in the assessment process. However, if this is not the case 30 days does seem to be a rather long period of time to perform the assessment task for dedicated officers and supervisors assigned to the task.

3. Should dogs be present in the classroom space during school sessions?

DF: No.

The dogs utilized on Rikers Island search for drugs and escaped inmates. They have no other purpose.

Using the dogs in the classrooms spells coercion. We all remember the photographs from Abu Ghraib and the use of German Shepard dogs!



I don't think I need to say much more in reference to dogs being present in the classroom space during school sessions. I think it's beyond problematic!

4. What kinds of programming should be offered? Currently, the following programming is available in the restrictive levels: Dialectical Behavioral Therapy, Interactive Journaling, Youth Communication, Creative Expression Arts and Crafts, Overcome Life's Struggles (IDOL), skill building, reentry services program, and Cage Your Rage.

DF: Any psychotherapeutic therapeutic program that is Interactive will have a better chance of being effective than psychotherapeutic programs that are static. With that in mind, I would seriously consider interactive journaling, youth communications, creative expression arts and crafts, and interactive skills building that utilizes role play.

5. Should mental health clinicians be involved in placement/exit/level progression decisions? (Currently, involvement of mental health staff is limited to daily cell-door check-ins and deciding whether a person should be excluded from YA-ESH due to serious mental illness or serious physical disability).

DF: Correctional mental health staff should be involved in every single aspect of restrictive housing unit placement. But not just "involvement" -- they must have the line authority and power to effect change and make changes where necessary. As you know, the Department of Correction will resist this. If the inmate has a mental health issue, a clinician should be making many of the decisions concerning placement in restrictive housing. With this, comes a great deal of responsibility and accountability for the mental health clinician. Under competent clinical supervision, this can be effective and quite useful.

6. Should young adults/adults be commingled in ESH? Should all young adults be in one facility? (Currently, young adults ages 19-21 are commingled with adults in Level 1 and in less restrictive levels (where desks are not used)).

DF: No. Under no circumstances should young adults age 19 through 21 commingle with adults over the age of 21. The rationale behind this is as follows: young adults (when around older inmates) want to prove themselves - they want to prove their masculinity - they want and sometimes need to at least appear to be a tough guy - as such, they may act out in an effort to prove themselves. In other cases, the young adult between the age of 19 and 21 may end up being the victim of the older adult. This may take place as a simple assault or a sexual assault.

Because the population Rikers Island is quite low at this time, the Department of Correction has plenty of dorm and cell space to spread people out. Through classification, they can separate groups of inmates who should not be housed together. This certainly includes separating younger inmates from those over the age of 21. The Department of Corrections may resist this and state that spreading inmates out into various housing areas via classification may be a good thing but it is also costly. The Department of Correction will also note that they will need additional staff for those housing areas.

The department will have to decide whether it wants to spend money and have a safer environment or spend less money and have an unsafe environment.

7. Should placement criteria be only for violent acts that cause serious injury or also for weapons possession/threat of violence to staff?

In Re: Placement in restrictive housing for acts of violence that cause serious injury (to anyone).

DF: When an inmate causes serious injury to anyone several things should take place. First and foremost, the inmate would have to be housed and managed in an area where he or she will not be able to injure another person, including themselves. Currently, in the Department of Correction it would seem that placement in restrictive housing would be necessary and appropriate in this very specific situation.

In addition to placement in restrictive housing, the Department of Correction and the mental health staff would need to form an interdisciplinary / multidisciplinary team of people to examine what happened, why it happened, and how to prevent it from happening in the future with this specific inmate. The Department of Correction should examine its classification system, and ask the question: "Was this inmate properly classified and properly housed?" The mental health staff should be examining the inmate to determine if he has a serious mental health condition that would increase his propensity to act out in a very violent manner or has a mental health condition that would make him more vulnerable to commit acts of extreme violence. Because the inmate will not spend the rest of his time in restrictive housing (or indeed, the rest of his life behind bars), both the mental health staff and the correctional staff need to create a plan for this particular inmate that would guide his release into an appropriate housing unit (after a term of confinement in restrictive housing) that has a support system built into the housing unit to prevent the violent behavior from reoccurring – and even more important, to reduce the likelihood that such behavior would occur after release back into the community.

On another note, a multidisciplinary / interdisciplinary team of staff should interview the inmate in an effort to determine why the violent behavior occurred in the first place. There are times when an inmate is attempting to protect himself from being assaulted by another inmate. During these times, an inmate may resort to acts of extreme violence in order to save his own life. This is one of the reasons why inmates carry weapons. They simply do not feel safe! This needs to be assessed and addressed. During my time with the Department of Correction this was always an issue that was never resolved. The department should move towards helping each inmate feel safer in its environment. This in and of itself will help to reduce violence because

inmates won't feel the need to carry a weapon (or as the inmates say, "be strapped"). It's important to note that oftentimes inmates will behave violently as a means of proving to the rest of the inmates that they will not be taken advantage of. This is simply a reality of being locked up in a correctional institution.

In Re: ... Placement in restrictive housing for weapons possession.

DF: Restrictive housing should be utilized only for inmates who have acted out in a very violent manner and cause serious physical injury to another person. In the case of weapons possession, the inmate should be issued an infraction or have some other punishment levied against the inmate. He/she should not be placed in restrictive housing. Further an interdisciplinary/multidisciplinary team of correctional and mental health staff should interview the inmate in an effort to determine why he/she felt the need to carry a weapon. Once again, the Department of Correction needs to make certain that the inmates under their supervision feel at least somewhat safe in the correctional institution.

One of the things this team of correctional and mental health staff should be looking for are the inmate's thoughts on his own safety in the correctional institution. Specifically they should be asking, "Do you have a specific enemy (or enemies) that you feel the need to protect yourself against?"

In Re: Placement in restrictive housing for threats of violence to staff.

DF: Responding to this question is a bit challenging when we're talking about verbal threats to civilian or correctional staff members. If an inmate identifies a particular staff member that he or she is planning to harm, staff must consider the inmate's words and take some kind of action in a proactive manner to avoid an assault on staff. Many times correctional staff are threatened by inmates, yet nothing actually happens. There are other times when an inmate makes a threat against a correctional staff member, and it's important to know the reasons behind this threat. The question becomes what you do when you have information directly from an inmate stating that he's going to hurt a staff member. This will have to be dealt with on a case-by-case basis. I think the first line of defense would be simply to transfer the inmate to another institution or another area where the inmate will not come in contact with threatened staff member. Using this method, good tracking of both the inmate and be threatened staff member are necessary. Supervisors must be made aware of the separation so there is no accidental contact or transfer. I guess what it boils down to is simply good correctional supervision of both the staff and the inmates.

Specifically, I do not think that an inmate should be placed in restrictive housing for a threat to a specific staff member. He or she should receive an infraction and some other form of punishment should be levied against that inmate. Further, I think the inmate should be assessed by an interdisciplinary / multidisciplinary team of people in an effort to figure out what went wrong and how best to deal with this issue. I guess what I'm saying is we need to function in a highly professional manner and address individual inmates as separate individuals who may have unique problems that need to be addressed.

8. Young adults have a right to a hearing to challenge their placement in YA-ESH. Who should serve as adjudicators? Currently, uniformed staff serve in this role.

DF: It's my very strong opinion that a member of the department's legal divisions should be the adjudicator for these hearings. Uniformed members of service should not serve in this capacity.

A lawyer or a highly competent legal assistant will be the best person able to look at the evidence and determine if the challenge to placement is warranted. Although correctional staff are trained for this particular duty it is very difficult. Correctional staff are not lawyers or legal assistants. If, in fact, you do come across correctional officers who have studied law or are legal assistants, they may be appropriate for that position if they can be completely objective and not be co-opted or influenced by their fellow officers.

Another reason that you want someone who is not a uniformed member of service to perform this particular duty is based on the fact that "blue tends to stick with blue." Believe me, as a person who is a member of the uniformed force it is hard for me to make this statement. But, as a person who wore blue the 30 years I am aware of situations where correctional staff have whispered to the adjudication officers their desire to have a negative outcome to a hearing. Painful to state, but it is simply a fact. As I noted elsewhere in these comments, the Department of Correction must increase its level of professionalism.

I hope this was useful.

David Fullard, Ph.D., LMHC, CRC

What needs to be put in place before closing Rikers? Beyond building smaller, more modern jails close to the courthouses in each borough, there must be:

- 1) Reduction in prison population through alternatives to incarceration, sentencing reform and new bail policies;
- 2) New protocols for selecting and hiring staff, training methods, and more humane use of force and punitive segregation policies;
- ③ Implementation of effective programs and services – including mental health, wellness, drug treatment, and stress management training for both inmates and officers;
- 4) Education, job training, job placement, housing, and health care assistance for returning citizens after release and during release-planning process to reduce recidivism;
- ⑤ Improvement of conditions of confinement, risk assessment, reducing inmate-to-staff ratio, providing phone/internet services to inmates, and more.

Furthermore, Rikers itself needs to be repaired now. Correction officers' and inmates' lives are at stake.

The case for closure

As a correction officer and captain for 29 years on Rikers, I saw how dangerous it is for officers and how dreadful conditions are for inmates: I know we must close it as soon as possible. Now an assistant professor at SUNY in criminal justice and forensic psychology, I have long worked to achieve this goal.

My first years with the NYC DOC were at the now-closed Bronx House of Detention for Men (BHDM), so I know the difference between a well-functioning, community detention facility and the sprawling, out-of-control mess at Rikers. Located near the courthouse and multiple transit lines, BHDM made it easy for inmates to have visits from family, friends, and attorneys, and get to court hearings without having to wake up at three in the morning for rush-hour bus transit off the single bridge from Rikers. Nearby hospitals ensured easy access to medical and mental health appointments or emergency treatment, resulting in fewer illnesses or deaths. Prisoner advocates and civil rights groups could monitor treatment of prisoners without obstruction. The central location allowed correction officers and staff to get to work easily, and nearby banks, restaurants and stores made their day-to-day lives more convenient, reducing their stress and thus improving interactions with inmates. Grateful for the superior working conditions at BHDM, and to prevent transfer to Rikers, officers and staff followed the rules and had lower rates of absenteeism and turnover.

Life at BHDH was not a picnic. It was jail, and it was hard – but everyone knew they were lucky to be there as opposed to the remote, dirty, aging, overpopulated and underserved jails on Rikers.

I want to state this clearly: It is a small minority of correction officers, administrators, and staff who participate in violent incidents against inmates, or in covering up these attacks. Likewise, the inmates who are involved in fights and beatings are a small fraction of the inmate population. Most correctional staff members at every level and rank, and even the bulk of the inmates, are not involved in violence behind bars.

Nevertheless, due to the severe injuries, misuse of power, and potential for deadly force against inmates, officers, and staff, this issue must be addressed directly, promptly, and with serious attention.

The danger of ‘transcarceration’

It should be clear I support 100 percent the goal to close Rikers and build smaller, modern detention facilities near courthouses in each borough. But experience has shown there must be new systems in place and fully operational before overhauling the system, or there will be a similar crisis to what followed deinstitutionalization in the 1960s and ‘70s, that is “transcarceration.”

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Back then, with the best of intentions, state mental hospitals – called “snake pits” then, just as Rikers is called today – released their patients with the goal of providing mental-health services in the community, via supportive housing and local clinics. But needed services were not in put place first, and society suffered as the homeless mentally ill lived on the streets, often getting picked

up by cops and serving time on Rikers, since they couldn’t afford bail, didn’t have legal representation, and faced a short sentence.

Today, we don’t want to move these populations from Rikers to another form of supervision and control and end up with the same number under surveillance at even higher cost – and perhaps even more, as the reach of these alternative programs extend beyond those who would have been locked up at Rikers originally.

There are the three burning questions that the mayor and his team must answer right now, to create a comprehensive, detailed plan to address these complex issues:

Question 1: How do you plan to reduce/prevent violence from being imported by the same violent inmates and correction officers into the smaller jails in each borough after Rikers is closed?



When moving the same violent and combative inmates with substance abuse problems, mental stability issues, gang affiliations and past confrontations – and the same officers who have a track record of using excessive force and not following policies and directives regarding inmate care – into a new setting, how do you prevent them from importing the same negative behaviors they have resorted to in the past?

Two critical elements must be addressed: the “culture of deviance” by correction and police officials, where corruption and rule-breaking occurs at the highest level; and the “culture of violence” perpetrated on the front lines by correction officers, staff and supervisors, who feel that “everyone does it” since those at the top get away with disregarding regulations.

Dozens of DOC administrators, supervisors and officers have been charged with multiple infractions: taking official cars for personal trips, smuggling contraband into jails, using excessive force, filing false reports, even intimidating witnesses and victims. If those at the top break the rules with impunity, why should front-line staff and inmates follow them?

There must be investigations and serious consequences for rule-breaking. There is little confidence in the criminal justice system if administrators are immune from prosecution for offenses that result in incarceration for those inside the jails they are managing, and little reason for rank-and-file officers, dealing with difficult situations on a daily basis, to follow rules if their own superiors don't do so. This problem must be addressed from the top down to prevent continued misbehavior by officers in the new smaller jails.

Despite lawsuits and oversight by a federal monitor at Rikers, excessive force and cover-ups continue. Inmates are punched in the head, slammed into walls, dragged and kicked while handcuffed, and attacked with pepper spray – even though de-escalation techniques would better defuse conflict. Since 2014, 38 officers and staff have been arrested as a result of DOI investigations. With many incidents going unreported, this number of arrests and indictments shows the situation at Rikers is out of control. The atmosphere of violence has led to an increased number of inmate fights.

This will transfer to other facilities if not addressed, says the Prisoners' Rights Project at Legal Aid: “Progress requires a fundamental shift in the

culture of impunity for misconduct and mismanagement... [it] will remain long after Rikers Island is shuttered if it not faced squarely and robustly right now.”

Meanwhile, a lack of substance-abuse treatment or positive programming means there is nothing for an inmate to lose if they engage in violent acts, so there are no consequences for such behavior other than excessive stays in solitary, which are no longer permitted due to the federal consent decree. This behavior will continue and be imported into the small neighborhood jails unless it is addressed at the policy level. Disciplinary methods must be put in place other than solitary confinement. Evidence-based research has shown that inmates with engaging educational and work programming are afraid to lose these benefits, and the threat of removal from those desired classes and jobs is an effective deterrent to such infractions.

Finally, improved inmate programming and staff training is required. Since the number of detainees will be reduced by moving non-violent, first-time offenders, petty criminals, and those who cannot afford bail, to new community justice programs and alternatives to incarceration, the new jails will house only the most violent and dangerous offenders with long criminal histories and high likelihood to be a danger to the community. This volatile population will need intense, multi-faceted service programs run by experienced counselors and specially trained correction officers to keep inmates engaged and out of trouble. Updated hiring and education practices are needed to prevent the same violent and deviant officers – mixing now with only the most violent inmates, repeat offenders and hardened criminals – from leading to the same level of violence being imported into in the new locations.

Question 2: What is the city’s responsibility to citizens who would have been incarcerated for a short-term but are now released to the community as a result of decarceration?

What will the city do with the people diverted from incarceration via youth court, drug court, mental health court and other alternative channels? Will there be services or supervision provided for these vulnerable populations, now left in their low-income community and likely to re-offend or miss their court dates? What support can the city provide for these individuals via alternatives to incarceration?

Many issues must be examined here: For those no longer going through intake at Rikers, where they might have been referred to appropriate social services upon release, what support will the city provide to prevent them from re-offending or going farther down the path that brought them into custody

in the first place?

These are often young people, first-time offenders, those with substance abuse problems, mental health issues, involved in “quality of life” crimes often caused by financial instability like vagrancy, loitering, public drunkenness or petty larceny (such as jumping a turnstile). If the current presidential administration cuts anti-poverty efforts to the bone, and New York City stops locking up low level offenders who return to their now even more underserved communities, are we creating a debacle?

A range of support is needed for those released into the community so they don't fall back into criminal behavior, including Social Services: Case management & intensive case management; habilitation & rehabilitation (vocational/job training; employment programs; academic/interpersonal skills training; leadership, mentoring, and youth development); and health and wellness support (health, wellness and stress reduction; mental-health and pharmacological treatment, including substance abuse treatment). Mental healthcare is particularly important, since if the mentally ill are not treated in the community, they end up involved with law enforcement, and indeed currently make up the majority of those incarcerated in our jails and prisons, where they receive even less treatment than they did in the past at the “snake pit” mental hospitals. Fact-based studies show the best way to reduce crime is to address these issues with smart, multifaceted programming.

Question 3: What will you do right now (not three or 10 years from now) to reduce or eliminate acts of violence against correctional staff and inmates currently on Rikers Island? ***

The violence and corruption on Rikers – extreme neglect, gang fights, attacks on correction officers, contraband smuggling, sexual abuse, and more – must be stopped right now, during the transition process. The level of damage to people on Rikers, even for a short time, has been demonstrated time and time again, with both inmates and correctional staff vulnerable to mental illness and suicide caused by exposure to the toxic environment on Rikers.

Correction officers are victims of the atmosphere of violence even as some are the perpetrators of it. Officers face years of stress and emotional devastation from dealing with difficult, often mentally ill, drug abusers, violent criminals, clever thieves, and gang members. They may lose empathy for inmates as fellow human beings, and view them as “others” who deserve to be treated with disdain, disrespect or outright abuse. Chronic exposure to these experiences may lead to deterioration in their psychological and emotional stability, including PTSD-like responses such as flash-backs, emotional numbing, moodiness, losing

temper easily, anxiety, hyper-vigilance and hyper-arousal (being jumpy or easily startled). The challenge is to address police culture and create a supportive work environment to reduce the stigmatization that prevents officers from acknowledging problems or seeking help to deal with work stress and mental health concerns

* * * *

While closing Rikers as fast as possible is the goal, the city needs programs in place and fully operational before this occurs. Simultaneously, the city must address violence on Rikers right now, both to reduce the suffering of the inmates and officers there presently, and to prevent the violence from being imported into the new jails.

It should be noted once again, that despite the disturbing reports of violence and mismanagement cited throughout this article, good staff and even good inmates actually exist. It's a small percentage of correctional officers and administrators, and a small percentage of inmates, that account for the majority of violence on Rikers Island. Nonetheless, it is critical to improve circumstances to prevent the violence from recurring in the new locations.

Moving from an era of mass incarceration to an era of decarceration requires programming not just for those who would have been incarcerated, but to all in the community, so as to prevent criminal justice involvement. A public information program is also needed to change views about incarceration and rehabilitation in the community, reducing the lifelong stigma of contact with the criminal justice system.

Yes, I believe that Rikers must be closed, completely closed, with no inmates there whatsoever – but this cannot happen without having proven programs and alternate sites open and fully first. It appears that the issues plaguing Rikers are being used as political pawns by those at the highest levels of city government. Rikers should be closed, but that is impossible in three or even 10 years without a concrete plan in place to identify and prepare sites in the five boroughs where the new smaller jails will be located, hiring architects and urban planners and developing alternatives to incarceration and improved programming as described. As of this writing, I have seen no evidence that any of this is underway.

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see point 7

NYC BOARD OF CORRECTION

10/25/17 AGENDA

Telephone Conference with Dr. David Fullard [with my raw notes]

II. Restrictive Housing for Young Adults

What is your view about the following features of restrictive housing for young adults?

- 1. Should desk restraints be used and if so, for how many hours per day and for what length of time? Currently, restraint desks are used in the most restrictive levels of ESH ("Entry Unit" and "Level 1;" collectively, "restrictive levels") whenever young adults are locked out, i.e., 7 hours daily, and for a compulsory 30-day stay.**

DF: It's pretty clear that I'm not a fan of the restraint desk being used with adolescents and young adults on Rikers Island. Research tells us that using these types of tactics and the coercive techniques escalates rather than reduces violence, although in some instances you may have a short-term down-turn in violence and then it will go up. In some cases, I suspect, the violence will increase exponentially once the person is no longer being restrained. It makes much more sense to provide meaningful programs such as educational programs, vocational programs, and prison industry as a means of providing inmates with something meaningful to occupy their time. When the inmates' time is occupied with something that is meaningful to them you have a demonstrated reduction in violence. Also, being engaged in valuable programs means that inmates don't want to lose access to these activities, which is what happens when they are involved in a violent event. This means that inmates avoid violence in order to be allowed to continue with these programs.

To specifically answer your question I don't believe the restraint desk should be used, except with extremely violent inmates who have failed to change their behavior after serious attempts to address that behavior by the Department of Correction (through engagement in alternative programs), and psychotherapeutic interventions by the mental health staff, have failed.

I really do believe that the Department of Corrections has an opportunity to think truly outside of the box when it comes to attempting to reduce violence among adolescent and young adult inmates. I believe that having a

June 2002

program where the inmates are performing some kind of labor for a salary (\$3.00 per hour), combined with mental health treatment, substance abuse treatment, conflict resolution, interpersonal skills training, and good solid correctional treatment -- will result in a statistically significant reduction in violence. In the language of the youth, "you have to have some skin in the game in order to care about the game." Having a job within the correctional institution that pays \$3.00 an hour is of value to the adolescent and young adult inmate. They will want to hold on to this particular job, and these jobs are linked to good behavior in order to keep the job; if bad behavior is reported they would lose their job. It is important to note that while to us \$3.00 an hour is nothing, to an inmate it's a great deal of status. They do not want to lose that status. As such they will conform to our wishes, follow the rules of the institutions, and avoid violent altercations.

Members of the Department of Correction will most likely not like this idea. They (the NYCDOC) will say that we are paying the inmates for good behavior. In fact, this is a form of "token economy" which has been used to change poor adolescent inmate behavior for decades. The idea will have to be sold to the NYCDOC. Part of the sales tactic will involve explaining to the DOC that if they are able to show a statistically significant reduction in violence, they will have fewer staff injuries, fewer inmate injuries, fewer lawsuits, and will be able to say proudly to the national correctional community: "We found an effective solution to reducing violence among our adolescent and young adult inmate population."

It is also important to note that you need to have very good supervision in order to make this work. Captains and Assistant Deputy Wardens have to buy into the program. If they buy into the program, they will do everything in their power to make it work. Further, I think the correctional staff working in this program should be hand-selected by an interdisciplinary/multidisciplinary team, not just correctional staff. They should want to work in this program. They should have a positive attitude and be program minded. I also believe they should be paid a little bit more. They should receive ongoing regularly scheduled training. And if the program works well, they should be applauded, recognized, and rewarded.

In situations where serious attempts to change extremely dangerous and violent behavior by the Department of Correction (through engaging inmates in valuable programs such as those described above) and psychotherapeutic

interventions by the mental health staff have failed, an interdisciplinary/multidisciplinary team needs to assemble and examine each case individually, to determine when and how long the restraint desk will be utilized. While the restraint desk is being used in these situations, Department of Corrections and the mental health staff need to come up with a plan for this specific case going forward when the inmate is released from the restraint desk – otherwise the inmate will return to the same violent behavior, which may be even worse after a period of such physical restraint.

2. Currently, DOC performs a housing assessment of young adults in the Entry Unit and says that it needs 30 days to complete this assessment. Should this assessment take 30 days to complete?

DF: I don't know the procedure that the Department of Correction is currently using to complete the assessment process. 30 days does seem like a bit much. The question that comes to mind is, "do they (DOC) have dedicated (regularly assigned/steady post officer) staff to perform this assessment? Or, are staff members doing multiple tasks in addition to the assessment process?" Another question that comes to mind is, "who is supervising the assessment process? Are these supervisors assigned (regularly assigned/steady post supervisors) just to supervise those doing the assessments? Or, are these supervisors being rotated into the area with little knowledge of the assessment process?"

The best case scenario would be to have officers who are specially selected, trained, and regularly assigned to the duties of assessing young adult inmates in the entry unit. The same holds true for those who supervise the offices in this area. The supervisor should be specially selected, trained, and regularly assigned to the duties of supervising the correctional officers who are assessing young adult inmates in the entry unit. Where officers have multiple duties, and/or supervisors are rotating into the area, this could make the process more cumbersome, inefficient, and worse, inaccurate.

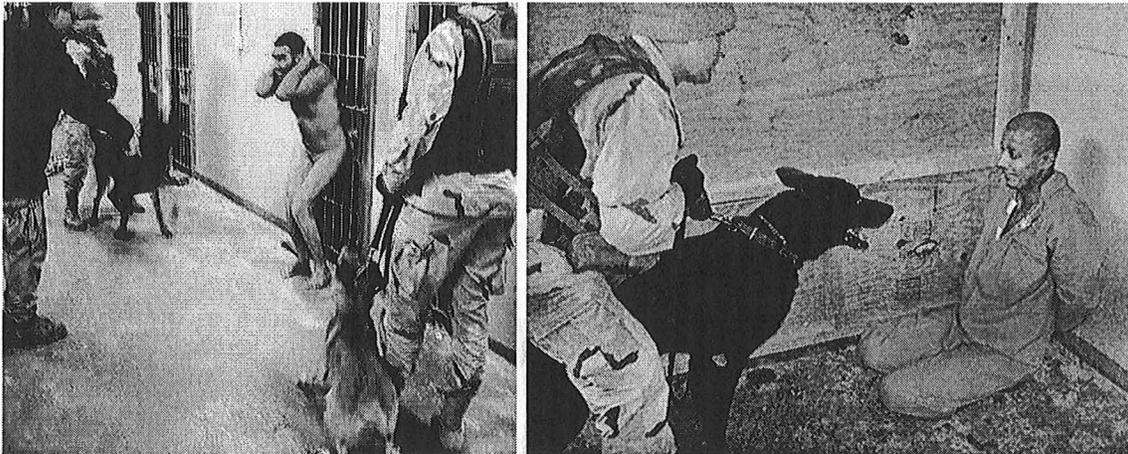
It also seems to make sense that this assessment would be performed by a team of interdisciplinary / multidisciplinary staff. If this is currently the case that might account for the 30 day assessment period since it takes time to engage multiple staff in the assessment process. However, if this is not the case 30 days does seem to be a rather long period of time to perform the assessment task for dedicated officers and supervisors assigned to the task.

3. Should dogs be present in the classroom space during school sessions?

DF: No.

The dogs utilized on Rikers Island search for drugs and escaped inmates. They have no other purpose.

Using the dogs in the classrooms spells coercion. We all remember the photographs from Abu Ghraib and the use of German Shepard dogs!



I don't think I need to say much more in reference to dogs being present in the classroom space during school sessions. I think it's beyond problematic!

4. What kinds of programming should be offered? Currently, the following programming is available in the restrictive levels: Dialectical Behavioral Therapy, Interactive Journaling, Youth Communication, Creative Expression Arts and Crafts, Overcome Life's Struggles (IDOL), skill building, reentry services program, and Cage Your Rage.

DF: Any psychotherapeutic therapeutic program that is Interactive will have a better chance of being effective than psychotherapeutic programs that are static. With that in mind, I would seriously consider interactive journaling, youth communications, creative expression arts and crafts, and interactive skills building that utilizes role play.

5. Should mental health clinicians be involved in placement/exit/level progression decisions? (Currently, involvement of mental health staff is limited to daily cell-door check-ins and deciding whether a person should be excluded from YA-ESH due to serious mental illness or serious physical disability).

DF: Correctional mental health staff should be involved in every single aspect of restrictive housing unit placement. But not just "involvement" -- they must have the line authority and power to effect change and make changes where necessary. As you know, the Department of Correction will resist this. If the inmate has a mental health issue, a clinician should be making many of the decisions concerning placement in restrictive housing. With this, comes a great deal of responsibility and accountability for the mental health clinician. Under competent clinical supervision, this can be effective and quite useful.

6. Should young adults/adults be commingled in ESH? Should all young adults be in one facility? (Currently, young adults ages 19-21 are commingled with adults in Level 1 and in less restrictive levels (where desks are not used)).

DF: No. Under no circumstances should young adults age 19 through 21 commingle with adults over the age of 21. The rationale behind this is as follows: young adults (when around older inmates) want to prove themselves - they want to prove their masculinity - they want and sometimes need to at least appear to be a tough guy - as such, they may act out in an effort to prove themselves. In other cases, the young adult between the age of 19 and 21 may end up being the victim of the older adult. This may take place as a simple assault or a sexual assault.

Because the population Rikers Island is quite low at this time, the Department of Correction has plenty of dorm and cell space to spread people out. Through classification, they can separate groups of inmates who should not be housed together. This certainly includes separating younger inmates from those over the age of 21. The Department of Corrections may resist this and state that spreading inmates out into various housing areas via classification may be a good thing but it is also costly. The Department of Correction will also note that they will need additional staff for those housing areas.

The department will have to decide whether it wants to spend money and have a safer environment or spend less money and have an unsafe environment.

7. Should placement criteria be only for violent acts that cause serious injury or also for weapons possession/threat of violence to staff?

In Re: Placement in restrictive housing for acts of violence that cause serious injury (to anyone).

DF: When an inmate causes serious injury to anyone several things should take place. First and foremost, the inmate would have to be housed and managed in an area where he or she will not be able to injure another person, including themselves. Currently, in the Department of Correction it would seem that placement in restrictive housing would be necessary and appropriate in this very specific situation.

In addition to placement in restrictive housing, the Department of Correction and the mental health staff would need to form an interdisciplinary / multi-disciplinary team of people to examine what happened, why it happened, and how to prevent it from happening in the future with this specific inmate. The Department of Correction should examine its classification system, and ask the question: "Was this inmate properly classified and properly housed?" The mental health staff should be examining the inmate to determine if he has a serious mental health condition that would increase his propensity to act out in a very violent manner or has a mental health condition that would make him more vulnerable to commit acts of extreme violence. Because the inmate will not spend the rest of his time in restrictive housing (or indeed, the rest of his life behind bars), both the mental health staff and the correctional staff need to create a plan for this particular inmate that would guide his release into an appropriate housing unit (after a term of confinement in restrictive housing) that has a support system built into the housing unit to prevent the violent behavior from reoccurring – and even more important, to reduce the likelihood that such behavior would occur after release back into the community.

On another note, a multidisciplinary / interdisciplinary team of staff should interview the inmate in an effort to determine why the violent behavior occurred in the first place. There are times when an inmate is attempting to protect himself from being assaulted by another inmate. During these times, an inmate may resort to acts of extreme violence in order to save his own life. This is one of the reasons why inmates carry weapons. They simply do not feel safe! This needs to be assessed and addressed. During my time with the Department of Correction this was always an issue that was never resolved. The department should move towards helping each inmate feel safer in its environment. This in and of itself will help to reduce violence because

inmates won't feel the need to carry a weapon (or as the inmates say, "be strapped"). It's important to note that oftentimes inmates will behave violently as a means of proving to the rest of the inmates that they will not be taken advantage of. This is simply a reality of being locked up in a correctional institution.

In Re: ... Placement in restrictive housing for weapons possession.

DF: Restrictive housing should be utilized only for inmates who have acted out in a very violent manner and cause serious physical injury to another person. In the case of weapons possession, the inmate should be issued an infraction or have some other punishment levied against the inmate. He/she should not be placed in restrictive housing. Further an interdisciplinary/multidisciplinary team of correctional and mental health staff should interview the inmate in an effort to determine why he/she felt the need to carry a weapon. Once again, the Department of Correction needs to make certain that the inmates under their supervision feel at least somewhat safe in the correctional institution.

One of the things this team of correctional and mental health staff should be looking for are the inmate's thoughts on his own safety in the correctional institution. Specifically they should be asking, "Do you have a specific enemy (or enemies) that you feel the need to protect yourself against?"

In Re: Placement in restrictive housing for threats of violence to staff.

DF: Responding to this question is a bit challenging when we're talking about verbal threats to civilian or correctional staff members. If an inmate identifies a particular staff member that he or she is planning to harm, staff must consider the inmate's words and take some kind of action in a proactive manner to avoid an assault on staff. Many times correctional staff are threatened by inmates, yet nothing actually happens. There are other times when an inmate makes a threat against a correctional staff member, and it's important to know the reasons behind this threat. The question becomes what you do when you have information directly from an inmate stating that he's going to hurt a staff member. This will have to be dealt with on a case-by-case basis. I think the first line of defense would be simply to transfer the inmate to another institution or another area where the inmate will not come in contact with threatened staff member. Using this method, good tracking of both the inmate and be threatened staff member are necessary. Supervisors must be made aware of the separation so there is no accidental contact or transfer. I guess what it boils down to is simply good correctional supervision of both the staff and the inmates.

Specifically, I do not think that an inmate should be placed in restrictive housing for a threat to a specific staff member. He or she should receive an infraction and some other form of punishment should be levied against that inmate. Further, I think the inmate should be assessed by an interdisciplinary / multidisciplinary team of people in an effort to figure out what went wrong and how best to deal with this issue. I guess what I'm saying is we need to function in a highly professional manner and address individual inmates as separate individuals who may have unique problems that need to be addressed.

8. Young adults have a right to a hearing to challenge their placement in YA-ESH. Who should serve as adjudicators? Currently, uniformed staff serve in this role.

DF: It's my very strong opinion that a member of the department's legal divisions should be the adjudicator for these hearings. Uniformed members of service should not serve in this capacity.

A lawyer or a highly competent legal assistant will be the best person able to look at the evidence and determine if the challenge to placement is warranted. Although correctional staff are trained for this particular duty it is very difficult. Correctional staff are not lawyers or legal assistants. If, in fact, you do come across correctional officers who have studied law or are legal assistants, they may be appropriate for that position if they can be completely objective and not be co-opted or influenced by their fellow officers.

Another reason that you want someone who is not a uniformed member of service to perform this particular duty is based on the fact that "blue tends to stick with blue." Believe me, as a person who is a member of the uniformed force it is hard for me to make this statement. But, as a person who wore blue the 30 years I am aware of situations where correctional staff have whispered to the adjudication officers their desire to have a negative outcome to a hearing. Painful to state, but it is simply a fact. As I noted elsewhere in these comments, the Department of Correction must increase its level of professionalism.

I hope this was useful.

David Fullard, Ph.D., LMHC, CRC

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Number 2 The Geography of Confinement

Beyond the Island: Changing the Culture of New York City Jails

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BEYOND THE ISLAND: CHANGING THE CULTURE OF NEW YORK CITY JAILS

Michael Jacobson,^{*} Elizabeth DeWolf,^{**} Margaret Egan^{***} & David Hafetz^{****}

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INTRODUCTION

The city and its department of correction now stand at a historic crossroads. New York City’s jail system, largely symbolized by the persistently violent and inhumane conditions in the massive jail complex on Rikers Island, is an ongoing source of public shame.¹ But after years of crime and incarceration reduction,² closing the jail facilities on Rikers Island and reimagining the New York City Department of Correction (“DOC”) now has become a realistic possibility.

Constant litigation and a number of accounts of violence and mistreatment of those held in the DOC’s custody prompted a loud and sustained cry for reform. Perhaps no story galvanized this public call more than the story of Kalief Browder, first published in *The New Yorker* in October of 2014.³ Browder was sixteen years old when he was arrested and charged with robbery, grand larceny, and assault.⁴ He was held on \$3000 bail and spent three years on Rikers Island waiting for his trial, unwilling to plead guilty to crimes he did

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1. See Anna Mae Duane, *The Shame of Rikers: The Odious 19th-Century History of Rikers Island Provides Just One More Good Reason to Shut It Down*, SLATE (July 13, 2017), http://www.slate.com/articles/news_and_politics/history/2017/07/rikers_island_is_the_northern_equivalent_of_confederate_monuments_but_worse.html [<http://perma.cc/3PPP-E82R>].
2. Michelle Mark, *New York City Is Proof That Cities Don’t Need to Lock Up Tons of People to Drive Down Crime*, BUS. INSIDER (Nov. 5, 2016), <http://www.businessinsider.com/how-nyc-managed-to-lower-incarceration-and-crime-rates-at-the-same-time-2016-11> [<http://perma.cc/G9XX-7ML9>].
3. See Jennifer Gonnerman, *Before the Law*, NEW YORKER (Oct. 6, 2014), <http://www.newyorker.com/magazine/2014/10/06/before-the-law> [<http://perma.cc/7NCL-DJVN>].
4. *Id.*

Nunez v. City of New York³⁴ litigation, describing the complaint and the federal consent decree under which the DOC is currently operating. Section I.C outlines the current agenda for reform as embodied in the Commission’s recommendations and the recommendations outlined in the mayor’s roadmap to close Rikers Island.

A. Conditions at DOC: Historic and Continuing Challenges

One ever-present challenge of Rikers Island is its geographic isolation. Rikers Island functions as New York City’s penal colony, with ten facilities located on a remote 413-acre piece of land perched in the East River between the Bronx and Queens.³⁵ The majority of the population—over seventy-five percent—are being held there pretrial, meaning that they have not yet been convicted of a crime.³⁶ The island’s remote location contributes to delays in court processing time for felony and misdemeanor cases, inhibits access to attorneys and programming, and discourages visits by family.³⁷ It also results in an “out of sight, out of mind” approach to the city’s jail system that is unsafe and unproductive for those who are held and those who work there.³⁸

But remoteness and isolation are only part of the deep-rooted problems troubling Rikers Island. The facilities on Rikers, which first opened as a jail complex in the early 1930s, are in deep decay.³⁹ Facilities throughout the system have rotting floorboards, malfunctioning heating and cooling systems, sewage backups, leaking roofs, broken showers, and flooded bathrooms.⁴⁰ This decay has led to harmful conditions for those incarcerated,⁴¹ and has created an inhospitable environment.⁴² This inhospitable environment is further worsened due to the lack of basic services, such as heating in winter

1 11-cv-5845 (S.D.N.Y. 2011).

2 A MORE JUST NEW YORK CITY, *supra* note 10, at 103.

3 *Id.* at 33.

4 *Id.* at 73–75.

5 *Id.* at 14.

6 N.Y.C. DEP’T OF CORR., History of DOC, <http://www1.nyc.gov/site/doc/about/history-doc.page> [<http://perma.cc/VB2B-RL73>].

7 See A MORE JUST NEW YORK CITY, *supra* note 10, at 72.

8 For example, the broken materials provide opportunities for people to make weapons. See *id.* at 72.

9 See Raven Rakia, A Sinking Jail: The Environmental Disaster That Is Rikers Island, GRIST (Mar. 15, 2016), <http://grist.org/justice/a-sinking-jail-the-environmental-disaster-that-is-rikers-island/> [<http://perma.cc/MYW3-QYFC>].

and air conditioning in summer.⁴³ In addition to decaying and dangerous facilities and the lack of basic services, incarcerated persons are typically housed in multi-occupancy cells with no privacy, and the jails have little space for social services that are best practice in a modern correctional system.⁴⁴

Even worse, the people held on the island endure physical and mental abuse, a rampant culture of violence, and overly punitive conditions.⁴⁵ This has included alarming rates of force used against adolescents, rampant inmate-on-inmate assaults, and correction officers using blows to the head and force as punishment or retribution in response to verbal altercations with officers.⁴⁶ In addition, there is a link **between jail conditions and the violence that occurs within the facilities both by staff and by those held in the facilities.**⁴⁷ **For example, the deteriorating physical conditions throughout the system provide an opportunity to fashion weapons from light fixtures, radiators, and sprinkler heads; in fact, most of the weapons found inside the jails in 2014 were improvised from materials already inside the jails.**⁴⁸ **For both staff and those held, these punishing conditions, in addition to the rampant violence, have persisted for decades; those held on Rikers Island have described the island using terms such as “hellhole,” “torture island,” and “the land that time forgot.”**⁴⁹

These problems are not confined to Rikers, nor do they only impact those who are incarcerated. These problems also lead to an inhospitable environment for correction officers (“COs”) and other DOC staff. City data demonstrates that, like the facilities on Rikers Island, borough-based facilities also are marred by pervasive violence

43. See id.; Brad Hamilton, Cell Damage: Rikers in Ruins After Years of Neglect, N.Y. POST (Jan. 13, 2013), <http://nypost.com/2013/01/13/cell-damage-rikers-in-ruinsafter-years-of-neglect/> [<http://perma.cc/2654-66KG>].

1. See A MORE JUST NEW YORK CITY, supra note 10, at 13, 77.

2. See U.S. ATTORNEY FOR THE S. DIST. OF N.Y., U.S. DEP’T OF JUSTICE, CRIPA INVESTIGATION OF THE NEW YORK CITY DEPARTMENT OF CORRECTIONS JAILS ON RIKERS ISLAND 3 (2014) [hereinafter SDNY RIKERS REPORT], <https://www.justice.gov/sites/default/files/usao-sdny/legacy/2015/03/25/SDNY%20Rikers%20Report.pdf> [<https://perma.cc/4QPB-2VDK>].

3. Id. at 4.

4. See A MORE JUST NEW YORK CITY, supra note 10, at 72.

5. See id. at 72.

6. See id. at 27; see also Jonathan Lippman & Melissa Mark-Viverito, Opinion, Closing Rikers Island Is a Moral Imperative, N.Y. TIMES (Mar. 31, 2017), <https://www.nytimes.com/2017/03/31/opinion/closing-rikers-island-is-a-moralimperative.html> [<https://nyti.ms/2nFxqVW>].

and by decaying and outmoded conditions.⁵⁰ While the average daily population has steadily declined, rates of violence in the DOC have persisted. There are a number of explanations for violence in the facilities, between COs and those held and between inmates, including inability to appropriately manage the population due to inadequate training and management of staff and deteriorating facilities across the DOC.⁵¹ As on Rikers Island, the borough-based jails are generally inhospitable, with deteriorating buildings, broken heating and cooling systems, harsh lighting, and reverberating surfaces.⁵² And with the exception of the Manhattan Detention Center, all the DOC facilities are based on now obsolete design principles with a linear layout that makes curbing violence difficult.⁵³

Figure 1, below, shows the historical violence trends in the DOC over the last two decades. The trends are based on what the system calls “stabblings and slashings.” This is inmate-on-inmate violence with the use of a weapon (usually some type of razor or homemade knife).⁵⁴ If stabbing and slashing rates are high, it is also quite likely that all use of force, unjustified use of force, and attacks on COs will also be high.⁵⁵ The opposite is also true, if stabbing and slashing rates are low, use of force will be low.⁵⁶

1. Press Release, N.Y.C. Comptroller, Comptroller Stringer 2015 Analysis: Violence at City Jails Spikes Dramatically and Cost per Inmate Explodes Even as Inmate Population Declines (Oct. 16, 2015), <http://comptroller.nyc.gov/newsroom/comptroller-stringer-2015-analysis-violence-at-city-jails-spikes-dramatically-and-cost-per-inmate-explodes-even-as-inmate-population-declines/> [http://perma.cc/WG5TLLHK].
2. See A MORE JUST NEW YORK CITY, supra note 10, at 73.
3. Id.; see also, e.g., Daniel Beekman, Bronx’s Notorious Spofford Shut Down,

N.Y. DAILY NEWS (Mar. 31, 2011), <http://www.nydailynews.com/new-york/bronx/bronx-notorious-spofford-aka-bridges-juvenile-center-finally-shut-article-1.119333> [https://perma.cc/6WQD-47Z6].

1. Linear jails typically contain cells lined up along corridors, so that correction officers cannot easily monitor groups consistently. Richard Wener et al., Direct Supervision of Correctional Institutions, in PODULAR, DIRECT SUPERVISION JAILS INFORMATION PACKET 1–8 (Nat’l Inst. of Corr. ed., 1993).
2. N.Y.C. Bd. of Corr., VIOLENCE IN NEW YORK CITY JAILS: STABBING AND SLASHING INCIDENTS 2 (2015) [hereinafter VIOLENCE IN N.Y.C. JAILS 2009–2014], http://www1.nyc.gov/assets/boc/downloads/pdf/Violence%20in%20New%20York%20City%20Jails_Slashing%20and%20Stabbing%20Incidents.pdf [http://perma.cc/HLP7G6HC].
3. Id. at 2.
4. Id.

Figure 1. Historical Violence Trends at the DOC, as Measured by Stabbing and Slashing Incidents.⁵⁷

As shown, while the average daily population has steadily decreased since fiscal year 1995, violence rates, which peaked at over 59 stabbings and slashings per 1000 inmates in 1995, declined to a low of under 2 per 1000 inmates from 2003 to 2009.⁵⁸ After an initial

1. See MMR 2017, supra note 26, at 72–74; MAYOR’S OFFICE OF OPERATIONS, MAYOR’S MANAGEMENT REPORT 81 (2016) [hereinafter MMR 2016], http://www1.nyc.gov/assets/operations/downloads/pdf/mmr2016/2016_mmr.pdf [<http://perma.cc/57LL-MUPB>]; MAYOR’S OFFICE OF OPERATIONS, MAYOR’S MANAGEMENT REPORT 82–83 (2015) [hereinafter MMR 2015], http://www1.nyc.gov/assets/operations/downloads/pdf/mmr2015/2015_mmr.pdf [<https://perma.cc/SG3MSRCK>]; MAYOR’S OFFICE OF OPERATIONS, MAYOR’S MANAGEMENT REPORT 143–44 (2008) [hereinafter MMR 2008], http://www1.nyc.gov/assets/operations/downloads/pdf/mmr/0908_mmr.pdf [<https://perma.cc/M9XC-SR66>]; MAYOR’S OFFICE OF OPERATIONS, MAYOR’S MANAGEMENT REPORT: SUPPLEMENTARY INDICATOR TABLES 76 (2004), http://www1.nyc.gov/assets/operations/downloads/pdf/mmr/0904_indicators.pdf [<https://perma.cc/D82M-9WUB>]; MAYOR’S OFFICE OF OPERATIONS, MAYOR’S MANAGEMENT REPORT: SUPPLEMENTARY INDICATOR TABLES 71 (2002), http://www1.nyc.gov/assets/operations/downloads/pdf/mmr/0902_indicators.pdf [<https://perma.cc/N4HW-YF3X>]; VIOLENCE IN N.Y.C. JAILS 2009–2014, supra note 54, at 2; Mayor’s Office of Criminal Justice, Average Daily Jail Population in New York City, 1980–2017, CITY OF N.Y. (Jan. 1, 2018), http://www1.nyc.gov/assets/criminaljustice/downloads/pdfs/population_reduction_sheet.pdf [<https://perma.cc/8L47-C4A7>]; NYC Department of Correction at a Glance, N.Y.C. DEP’T OF CORR. (Apr. 27, 2017), http://www1.nyc.gov/assets/doc/downloads/pdf/DOC_At-Glance-427-17.pdf [<http://perma.cc/Y87N-QKAT>].
2. See MMR 2008, supra note 57, at 143–44; VIOLENCE IN N.Y.C. JAILS 2009–2014, supra note 54, at 2.

dramatic decrease in violence rates, and a leveling off, the DOC has seen a steady increase in violence since fiscal year 2009.⁵⁹ Since 2009 violence rates have steadily increased to over 17 per 1000 inmates in 2017, a thirteen fold increase from 2008.⁶⁰ While still not close to 1995 levels, the trend is deeply concerning.⁶¹ These conditions, coupled with the changing needs, particularly those related to behavioral health, of people cycling through the system, have developed a reputation for the DOC as a hopeless institution for staff and inmates alike.⁶²

1. A Legacy of Violence, Neglect, and Litigation

The troubling and inhumane conditions in New York City jails are not new. Before the bridge to Rikers Island was constructed in 1966, the majority of pre-trial detainees were housed in borough jails.⁶³ The Manhattan House of Detention (“the Tombs”), once was as notorious as Rikers Island due to its severe overcrowding and poor conditions for both inmates and officers.⁶⁴ **In the late 1960s, the Correction Officers Benevolent Association (“COBA”), New York City’s union for correction officers, urged the DOC to address the jail’s deteriorating conditions, severe understaffing, and a lack of new officer training.⁶⁵** The DOC made attempts to expedite case processing times to address overcrowding at the Tombs, but did little else to address rising tensions within the facility.⁶⁶ In 1970, tensions came to a head as an inmate uprising at the Tombs brought public attention to the overcrowding, officer brutality and racism, overly punitive conditions of confinement, and deteriorating environmental conditions.⁶⁷ Those held were “locked-in” to their cells twenty-four

1. See MMR 2017, supra note 26, at 84; MMR 2015, supra note 57, at 82; VIOLENCE IN N.Y.C. JAILS 2009–2014, supra note 54, at 2.
2. See MMR 2017, supra note 26, at 84; MMR 2008, supra note 57, at 143.
3. See MMR 2008, supra note 57, at 143–44.
4. See A MORE JUST NEW YORK CITY, supra note 10, at 71.
5. The Long-Term Plan for Borough Jails and Rikers Island, Hearing Before the

N.Y.C. Council Comm. on Fire & Criminal Justice 1 (Apr. 25, 2006) (statement of John Boston, Dir., Prisoners’ Rights Project, The Legal Aid Soc’y).

1. See John Surico, The Legacy of Violence at the Manhattan Jail Known as the ‘Tombs,’ VICE NEWS (July 19 2015), https://www.vice.com/en_us/article/tales-from-the-tombs-the-legacy-of-violence-at-the-manhattan-detention-complex-719 [http://perma.cc/QAM9-F6H6].
2. John J. Dilulio, Jr., The Impact of Judicial Intervention on Prisons and Jails, in COURTS, CORRECTIONS, AND THE CONSTITUTION: THE IMPACT OF JUDICIAL INTERVENTION ON PRISONS AND JAILS, 144 (John J. Dilulio, Jr., ed. 1990).
3. Id. at 143.
4. Id.

at the Tombs were transferred to the House of Detention for Men (“HDM”) on Rikers Island, where conditions—like overcrowding, deteriorating physical conditions, and disciplinary procedures—were just as poor as at the Tombs.⁷⁹

As the city budget crisis of the early 1970s worsened, action to address conditions of confinement was delayed, and in 1975, the most destructive inmate uprising yet erupted on Rikers Island.⁸⁰ Corrections Commissioner Benjamin J. Malcolm was able to negotiate an end to the protests, which arose out of complaints from inmates due to overcrowding and conditions in the facilities, and avoid bloodshed by agreeing to address the grievances of those incarcerated.⁸¹ **After the uprising, the DOC was forced to move people to other DOC facilities while repairs were made to large holes in cells and other debris was cleaned up.**⁸² **But COs on Rikers Island staged a walkout to protest the fact that the DOC had not issued a plan to address the unsafe working conditions in the facilities.**⁸³

Following that uprising, Legal Aid filed a new federal class action lawsuit, *Benjamin v. Malcom*,⁸⁴ alleging that conditions at the HDM were also unconstitutional.⁸⁵ The Koch administration negotiated a settlement agreement that would cover all of the city jails on and off Rikers Island.⁸⁶ In 1978, a consent decree was agreed to by all parties and in 1979, Judge Lasker approved and entered the consent judgment.⁸⁷ Two critical issues covered by the consent decree were overcrowding and developing policies for the treatment of those held at HDM.⁸⁸

In 1983, Legal Aid brought *Fisher v. Koehler*,⁸⁹ alleging that the DOC used excessive force on individuals incarcerated in the Correctional Institution for Men (“CIFM”), now the Eric M. Taylor

1. *Benjamin v. Malcolm*, 564 F. Supp. 668, 670 (S.D.N.Y. 1983).
2. See Tom Goldstein, 318 Prisoners Are Transferred from Riot-Damaged Rikers Jail, N.Y. TIMES (Nov. 29, 1975), <http://www.nytimes.com/1975/11/29/archives/318-prisoners-are-transferred-from-riotdamaged-rikers-jail.html> [<https://nyti.ms/2GglNOor>].
3. *Id.*
4. *Id.*
5. See Peter Kihss, Rikers Island Revolt Ends with Release of Hostages, N.Y. TIMES (Nov. 25, 1975), <http://www.nytimes.com/1975/11/25/archives/rikers-islandrevolt-ends-with-release-of-hostages-rikers-island.html> [<https://nyti.ms/2Fbyjxi>].
6. 495 F. Supp. 1357 (S.D.N.Y. 1980).
7. *Id.* at 1360.
8. See Baer & Bepko, *supra* note 74, at 23.
9. *Id.* at 23–24.
10. *Id.* at 24.
11. 692 F. Supp. 1519 (S.D.N.Y. 1988).

Center, on Rikers Island.⁹⁰ Judge Lasker also heard this case and ruled in favor of the plaintiffs, finding that use of force was excessive and **“that the pervasiveness of staff-on-inmate violence was the predictable result of defendant’s policies and practices”**⁹¹ In 1985, Legal Aid brought a similar case, *Jackson v. Montemagno*, against the DOC claiming abuse of the incarcerated population by staff at the Brooklyn House of Detention.⁹³ The case was settled in 1991, referencing the agreement reached in *Fisher*, requiring the DOC to develop and implement systems for controlling and investigating use of force incidents and disciplining COs for unnecessary or excessive force.⁹⁴

In 2003, the DOC and the Urban Justice Center also settled a class action suit, *Brad H. v. City of New York*,⁹⁵ which had been brought in state court claiming that the city failed to provide adequate discharge planning as part of their care for those with a diagnosed mental illness.⁹⁶ While this case covered the DOC as a whole, it again targeted a specific population, i.e., those with a diagnosed mental illness.⁹⁷ A settlement agreement was reached that required the DOC to develop a discharge plan based on an assessment for those individuals’ needs for continued treatment and support services, public benefits, and appropriate housing.⁹⁸ The DOC was also required to provide assistance and access to the services set forth in the plan.⁹⁹ A monitoring team was established that continues to monitor progress towards the agreement, and the thirty-seventh monitor’s report was filed in June of 2017.¹⁰⁰

1. *Id.* at 1519; see also *Facilities Overview*, CITY OF N.Y. DEP’T OF CORR., <http://home2.nyc.gov/html/doc/html/about/facilities-overview.shtml> [<https://perma.cc/R9RU-7XL4>].
2. *Id.* at 1564.
3. *Stipulation of Settlement* at 3, *Jackson v. Montemagno*, CV 85-2384

(E.D.N.Y. 1991).

1. *Id.* at 3.
2. *Id.*
3. *Stipulation of Settlement* at 2, *Brad H. v. City of New York*, No. 117882/99 (Jan. 8, 2003), 2003 WL 5582869.
4. *Id.*
5. *Id.*
6. *Id.* at 14.
7. *Id.*
8. See *Thirty-Seventh Regular Report of the Compliance Monitors* at 6, *Brad H.*, No. 117882/99 (June 6, 2017). For public access to the full docket, see *Brad H. v. City of New York*, URBAN JUSTICE CTR., <https://mhp.urbanjustice.org/mhp-bradH.v.cityofnewyork> [<https://perma.cc/8S5J-6LWS>].

a whole.¹⁰⁹ Then in 1990, Judge Lasker held that the city violated an order prohibiting the housing of incarcerated individuals in nonhousing areas, including gymnasiums and receiving areas, and found that the violence at CIFM was caused by overcrowding, inadequate staffing and supervision, excessive reliance on dormitory housing, lack of adequate classification, and inadequate systems for controlling, investigating, and disciplining staff misuse of force.¹¹⁰ In 1989, Judge Lasker approved a new use-of-force policy to address the violence at CIFM, under Fisher, and in 1990, during the population surge at the DOC, imposed a series of fines holding that the DOC had violated his order prohibiting the housing of individuals in nonhousing areas.¹¹¹ In the early 1990s, the DOC began addressing other condition-of-confinement issues including the provision of food services, access to the law library, environmental health (sanitary conditions, ventilation, lighting, and extreme temperatures), attorney visitation and confidentiality, placement of pre-trial detainees in restraints, fire safety, and modular housing units.¹¹²

In 1982, under the Malcolm case, Judge Lasker ordered the creation of the Office of Compliance Consultants (“OCC”), to oversee implementation of the consent decree requirements.¹¹³ The OCC was designed to be an agency of the city, not the court or the DOC, with leadership appointed by the city and staff from the DOC.¹¹⁴ This agency was designed to allow for greater cooperation among the city, Legal Aid, and the DOC.¹¹⁵ Because it was considered a relatively neutral party, the OCC was successful in inducing the DOC to adopt reform strategies, though these reforms only chipped away at the DOC’s entrenched culture.¹¹⁶

In addition to court oversight, the New York City Board of Correction (“the Board”) provides more general oversight of the DOC, separate from court oversight. **Originally established in 1957 by Mayor Robert F. Wagner, and expanded in 1977 under Mayor Beane, the Board is a citizen watchdog agency to set and enforce minimum standards for the DOC.**¹¹⁷ The minimum standards seek to

1 See supra Section I.A.1.

2 See Baer & Bepko, supra note 74, at 27.

3 Id. at 28–29.

4 Id. at 36.

5 Id. at 25.

6 Id. at 25–26.

7 Id. at 26.

8 Id.

9 About the BOC, N.Y.C. Bd. OF CORR., <http://www1.nyc.gov/site/boc/about/about.page> [<https://perma.cc/8W2Q-YBW4>].

ensure the care, custody, correction, treatment, supervision, and discipline of those held in the DOC.¹¹⁸ **The Board fulfills this mission through the evaluation of the DOC's performance and operation of a system for hearing grievances and issues from the DOC, both from those incarcerated in the DOC facilities and from the general public.**¹¹⁹ Made up of nine members appointed by the mayor and the city council, the Board has the right to access any DOC data or records and the right to inspect and visit any DOC facility at any time.¹²⁰ The Board continues to incorporate best practices into its minimum standards, including those related to the use of force and punitive segregation, as well as the provision of basic necessities to ensure proper conditions of confinement.¹²¹ *The Board sets minimum standards, but its success as an oversight agency has been limited primarily because it lacks strong mechanisms to actually incentivize compliance or to enforce its rights to obtain data and documentation from the DOC.*¹²²

These reform efforts function primarily through litigation and reflect a largely backward-looking responsive policy approach rather than a forward-looking comprehensive approach to reform at the DOC. There are many external factors that contribute to this reactive policy approach. A primary factor is the ever-changing nature of leadership in public bureaucracies, which makes stability hard to come by.¹²³ The DOC is an agency within city government, and its commissioner is appointed by and serves at the pleasure of the mayor.¹²⁴ This means that the highest rung of DOC leadership can change every four years, or less, depending on the performance of the commissioner or on the number of terms the appointing mayor

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serves. Many of the staff, however, stay much longer.¹²⁶ In the

1 Id.

2 N.Y.C. Bd. of Corr., A STUDY OF THE DEPARTMENT OF CORRECTION INMATE GRIEVANCE AND REQUEST PROGRAM I (2016), http://www1.nyc.gov/assets/boc/downloads/pdf/final_board_of_correctionreport_oct2016.pdf [<http://perma.cc/CYG3-8EVG>].

3 N.Y.C. CHARTER §§ 626, 626(c)(1) (2004).

4 N.Y.C. Bd. of Corr., *supra* note 119, at 1.

5 See generally *id.* at 12–14.

6 ROBERT J. LAVIGNA, ENGAGING GOVERNMENT EMPLOYEES: MOTIVATE AND INSPIRE YOUR PEOPLE TO ACHIEVE SUPERIOR PERFORMANCE 58–60 (2013).

7 See Baer & Bepko, *supra* note 74, at 23.

8 N.Y.C. CHARTER § 6 (2004).

9 N.Y.C. DEP'T OF CITYWIDE ADMIN. SERVS., WORKFORCE PROFILE REPORT 160 (2015), http://www.nyc.gov/html/dcas/downloads/pdf/misc/workforce_profile_report_fy_2015.pdf [<http://perma.cc/ELW8-QUQZ>].

then proceeded to hire them without any documented explanation of why the red flag was disregarded or overridden.²⁰⁶ Examples of these red flags included criminal histories, contact with inmates on Rikers, a history of domestic violence, and failed psychological screenings for other city jobs.²⁰⁷ The Monitor investigated these specific applications and found that the AIU's decisions to overlook the red flags were reasonable, but stressed the need to document the reasons for these decisions.²⁰⁸

Second, the Monitor has also found that due to the unprecedented volume of training efforts and resources required, the original one-year deadline set in the consent decree is unrealistic.²⁰⁹ Not only does the DOC need to cover operations while staff are being trained, but they also do not have adequate space for training.²¹⁰ The Monitor has consistently and strongly urged the City of New York to create a new training facility for the DOC; lack of quality training space has made it incredibly difficult for the DOC to carry out the training requirements of the consent decree.²¹¹ **To its credit, the city has also included \$100 million in the fiscal year 2018 budget for a new training academy.²¹² That said, the DOC has requested an extension to the deadline for training requirements.²¹³**

c. Young Inmate Management—Classification and Programming

In the fourth monitors report, it is noted that young inmates under the age of nineteen continue to contribute to a disproportionate share of both the DOC's use-of-force and inmate-on-inmate violence.²¹⁴ However, the DOC had made significant progress in increasing programming for young people, which reduces idle time and, in turn, reduces violence.²¹⁵

First, the DOC began working with an external consultant shortly after the conclusion of the most recent monitoring period in order to validate the existing classification tool.²¹⁶ The DOC also recently

1. See Second Monitors Report, *supra* note 181, at 160.
2. *Id.*
3. *Id.*
4. See Third Monitors Report, *supra* note 175, at 71.
5. *Id.*
6. *Id.* at 7.
7. See SMALLER, SAFER, FAIRER, *supra* note 20, at 36.
8. See Third Monitors Report, *supra* note 175, at 72.
9. See Fourth Monitors Report, *supra* note 170, at 14.
10. *Id.*
11. *Id.* at 214.

devised and began using an evidence-based classification model known as the **Housing Unit Balancer (“HUB”)**.²¹⁷ This tool was developed based on the analysis of approximately 60,000 DOC inmate records (including adolescent males), and uses a conditional (“if, then”) decision tree model to classify inmates according to violent conduct, mental health issues, age, severity of charge, gangaffiliation, and number of prior arrests.²¹⁸ Under the HUB model, inmates are assessed every 100 days, or after each violent incident, and classified as minimum, minimum-medium, medium-maximum, or maximum, and housed accordingly.²¹⁹ The HUB system has an override mechanism, so that both adult and adolescent inmates with special circumstances (such mental health issues or emotional immaturity) can be placed in the appropriate housing option.²²⁰ The DOC plans to ultimately use this classification system across all DOC facilities, for all populations.²²¹

However, the Monitor has expressed concern in areas related to young adult classification and programming. Moreover, the DOC’s new HUB classification system has been determined unfit for classifying adolescents, and the DOC must either create a new, evidence-based classification instrument from scratch or pilot a model currently used in another context for classifying adolescents.²²²

Second, the DOC has been working with the Monitor to develop plans to deliver direct supervision training to staff,²²³ but it is important to note that the **physical layout of all existing facilities on Rikers Island and the Brooklyn House of Detention are not in line with the design requirements of direct supervision, which will make adoption of this training model more challenging than in a more modern facility.**²²⁴

Finally, in addition to the previous abolition of the practice of punitive segregation for sixteen-and seventeen-year-olds in December 2014, the DOC abolished the use of punitive segregation for eighteen-year-old inmates on June 30, 2016.²²⁵ **In earlier reviews, the Monitor expressed concern about the sustainability of this**

1. See First Monitors Report, supra note 160, at 92.
2. Id. at 92–93.
3. Id. at 93.
4. Id. at 93–94.
5. Id. at 93.
6. See Fourth Monitors Report, supra note 170, at 214–15.
7. See id. at 86.
8. See A MORE JUST NEW YORK CITY, supra note 10, at 77.
9. See Third Monitors Report, supra note 175, at 218.

practice since other disciplinary sanctions had not been fleshed out.²²⁶ By the end of the third monitoring period, the DOC demonstrated promising efforts to increase alternative forms of discipline for young inmates.²²⁷ But the Monitor warned that alternative disciplinary programs, such as cognitive behavioral therapy, are a drastic shift from the DOC's status quo and will need significant time to become a successful replacement.²²⁸

C. Current Agenda for Reform

Throughout the years, the strongest sources pushing for DOC reform have been the courts and legal advocates, through litigation efforts. This kind of litigation strategy is popular across the United States: at one point, nearly one third of large U.S. prisons were under court orders to address unconstitutional conditions of confinement.²²⁹ One of the primary purposes of litigation is to deter unacceptable conduct or conditions, and specifically in the case of corrections, it can serve to create a space where inmates are treated with respect and as citizens.²³⁰

However, the DOC has historically not treated settlements as essential tools to help guide long-term structural reforms. The key examples of the DOC's litigation history from Rhem to Benjamin and Fisher to Nunez—though by no means an exhaustive account—reveal a pattern of illegal treatment of incarcerated people followed by successful lawsuits against the DOC that resulted in piecemeal responses rather than a holistic strategy for reform.²³¹ This stems partly from a consistent turnover of DOC leadership and outside experts as well as an absence of strong reform precedents in the DOC.²³² That said, the presence of the Nunez Monitor, the release of the Commission's report, and the mayor's commitment to closing Rikers Island all present critical opportunities to implement comprehensive reforms at the DOC.

As previously mentioned, the Commission recommended closing Rikers Island and redeveloping borough-based jails in order to create

1. See Second Monitors Report, *supra* note 181, at 142.
2. See Third Monitors Report, *supra* note 175, at 226.
3. *Id.* at 219.
4. Wayne N. Welsh, *The Dynamics of Jail Reform Litigation: A Comparative Analysis of Litigation in California Counties*, 26 *LAW & SOC'Y REV.* 591, 591 (1992).
5. See Margo Schlanger, *Inmate Litigation*, 116 *HARV. L. REV.* 1555, 1666 (2003).
6. See generally *Stipulation of Settlement*, *supra* note 95.
7. See Dilulio, *supra* note 65, at 154–55.

a smaller, safer, more humane and effective jail system for New York City.²³³

The DOC is a frequent target of public outrage, advocacy, and legal action.²³⁴ But history has shown that even scandal and outrage are not enough to change the culture of the DOC.²³⁵ Lasting change will require deliberate analysis, strategic planning, and execution over a long period of time. In order to take full advantage of this rare opportunity of galvanized political will for closing Rikers Island, reforming the broader criminal justice system, and building new state-of-the-art borough-based jails, the city and the DOC should prioritize organizational culture reform.

II. ORGANIZATIONAL CULTURE CHANGE

Part II turns to a critical piece of the comprehensive reform agenda—culture change. Reforming the DOC culture, and thus, operations, will be difficult and will not be immediate. But, to fully realize the mayor's goal of a smaller, safer, fairer jail system, it is necessary.

The subsequent sections outline the tenants of organizational culture change and culture change specific to correctional institutions, and then focus specifically on five critical areas for developing a culture change plan, including: accountability in management and performance; procedures and policies; recruiting and hiring; training and education; and wellbeing and support. These five areas do not exhaustively cover the challenges facing the DOC, rather, they are critical areas to take into account when devising a comprehensive strategic plan for organizational culture change for the DOC.

A. Changing the Culture at the DOC

The following sections will explore organizational culture and its relationship to the DOC's operations. This section first outlines a process for understanding and evaluating organizational culture. Next, this section turns to developing a plan for reform. Finally, this section outlines priority areas for operational reform in order to fundamentally change the organizational culture in the DOC.

1. See *A MORE JUST NEW YORK CITY*, supra note 10, at 15; see also discussion supra Introduction.
2. See *A MORE JUST NEW YORK CITY*, supra note 10, at 73–75.
3. See generally, e.g., *Stipulation of Settlement*, supra note 95.

The rehabilitative model for correctional environments requires staff to develop effective ties with incarcerated persons and enforce rules with discretion according to a nuanced understanding of inmates and their behavior.²⁷⁵ Staff still manage the incarcerated population through communication and some behavioral incentives, but this requires great technical skill and a strong commitment to these ideals.²⁷⁶

In contrast to many prisons in Central Europe and Scandinavia,²⁷⁷ which lean very strongly toward rehabilitative principles, most U.S. institutions over the past several decades have resisted the concept of rehabilitation in favor of a “tough-on-crime” approach.²⁷⁸ However, even as incarceration rates have risen, policy changes and litigation have forced improved conditions of confinement and protections from punitive action by COs.²⁷⁹ This trend has resulted in somewhat improved conditions of confinement in places where administrations have embraced reforms.²⁸⁰ Litigation tends to result in mandated reforms and restrictions on staff, limiting the coercive power of COs.²⁸¹

When COs are expected to perform both custody and treatment functions, this sets up a conflict of roles for staff.²⁸² Though line officers are expected to remain socially distant to maintain order, they

1. See generally ROBERT G. LEGER & JOHN R. STRATTON, *SOCIOLOGY OF CORRECTIONS: A BOOK OF READINGS* 1–7 (1977).
2. *Id.* at 446–48.
3. While the Scandinavian philosophy is instructive, it is important to note the differences between jails and prisons. In the United States, jails are local facilities that hold individuals pending trial and for sentences of a term of less than a year while prisons hold individuals sentenced to terms of more than a year. This presents distinct operational challenges as well as opportunities.
4. See RAM SUBRAMANIAN & ALISON SHAMES, *VERA INST. FOR JUSTICE, SENTENCING AND PRISON PRACTICES IN GERMANY AND THE NETHERLANDS: IMPLICATIONS FOR THE UNITED STATES* 1, 7 (2013), https://storage.googleapis.com/vera-web-assets/downloads/Publications/sentencing-and-prison-practices-in-germany-and-the-netherlands-implications-for-the-united-states/legacy_downloads/europeanamerican-prison-report-v3.pdf [<http://perma.cc/63V2-T839>]; Doran Larson, *Why Scandinavian Prisons Are Superior*, *THE ATLANTIC* (Sept. 24, 2013), <https://www.theatlantic.com/international/archive/2013/09/why-scandinavian-prisons-are-superior/279949/> [<http://perma.cc/PBD8-FHTV>]; see also *supra* Section I.A.2.
5. See generally Eric D. Poole & Robert M. Regoli, *Alienation in Prison: An Examination of the Work Relations of Prison Guards*, 19 *CRIMINOLOGY* 251, 252–53, 256, 264 (1981).
6. James B. Jacobs, *The Prisoners’ Rights Movement and Its Impacts, 1960–80*, 2 *CRIME & JUST.* 429, 462–63, 465 (1980).
7. See Poole & Regoli, *supra* note 279, at 252–53.
8. Oscar Grusky, *Role Conflict in Organization: A Study of Prison Camp Officials*, 3 *ADMIN. SCI. Q.* 452, 455 (1959).

are also increasingly urged to form close, supportive relationships with inmates and guide them to make their own decisions.²⁸³ Custody goals and rehabilitative goals are typically at odds by definition, and if organizational leadership does not develop a comprehensive strategy to integrate the two models, correctional staff will often encounter role strain and role conflict.²⁸⁴ Role strain refers to the tensions that an employee experiences when different duties within his or her role are difficult to achieve simultaneously.²⁸⁵ Role conflict is when one employee has multiple, distinct roles that are incompatible.²⁸⁶

When faced with too much role conflict, officers are more likely to revert to the custody model of coercive and punitive control because its clear guidelines and results can be more easily measured.²⁸⁷ The adoption of new cultural ideals, such as rehabilitation models, must be accompanied by a clear and direct tool of measurement for

²⁸⁸
success.

For long-term change to take hold, organizations and their staff must go through a process of reframing and redefining roles and missions so that old operations no longer seem acceptable.²⁸⁹ Elements of an organization's culture, such as shared attitudes, assumptions, beliefs, and behaviors guide individuals in managing how to work and survive together.²⁹⁰ Since a group's attitudes, assumptions, and beliefs develop out of the need for consistency and meaning, any efforts to adjust an organization's culture must address these needs as they progress.²⁹¹ Unless these elements and functions are recognized and addressed, the appropriate route to culture change will never be understood, let alone embraced.²⁹²

5. How Organizations Can Change

Organizational culture is dynamic and can be influenced by a number of changes to an organization. In some cases, promoting

1. See *id.* at 470.
2. See Mayer N. Zald, Power Balance and Staff Conflict in Correctional Institutions, 6 ADMIN. SCI. Q. 22, 23 (1962).
3. William M. Evan, Role Strain and the Norm of Reciprocity in Research Organizations, 68 AM. J. SOC. 346, 347–48 (1962).
4. Sam Matthews, Lecture on Social Roles, slide 11 (2016), <http://core.ecu.edu/soci/juskaa/SOCI2110/Lectures/structure/sld011.htm> [<http://perma.cc/SR2A-XQU9>].
5. See Jacobs & Retsky, *supra* note 256, at 6.
6. See SCHEIN, *supra* note 33, at 83–88.
7. See INNES, *supra* note 242, at 8–9.
8. See *id.*
9. *Id.* at 9; see also SCHEIN, *supra* note 33, at 300.
10. See INNES, *supra* note 242, at 9.

members of certain subcultures within an organization can spread that subculture more widely within the organization.²⁹³ Culture change can also be galvanized through scandal or public crisis – when major issues are brought to light, organizations may seek radical change in order to survive.²⁹⁴ Moreover, new technologies can be incorporated that neutralize certain problematic processes that were once left up to discretion—like body cameras and digitized systems that flag officers that show signs of abuse or distress.²⁹⁵

Organizations hoping to see lasting change will undoubtedly face resistance, confusion, and anxiety in the process.²⁹⁶ Culture change expert Edgar Schein describes five principles that an organization needs to accept—and be prepared to deal with—in order to effect true change: (1) staff must feel more survival anxiety, or fear of failing in their roles, than they feel anxiety about learning new things; (2) leaders pushing for organizational culture change must focus their efforts on reducing anxiety related to learning new things (rather than increasing survival anxiety); (3) goals of the change must be defined concretely in relation to the specific problems at hand (rather than merely referred to as “culture change”); (4) new cultural elements will only be embraced if they lead to positive results and satisfaction; and (5) cultural change will be at first psychologically painful, so efforts must be made to ensure psychological safety for staff.²⁹⁷

Creating and sustaining psychological safety for staff is one of the most crucial components of culture change efforts. Staff within an organization undergoing culture change often experience many types of fear: fear of losing power or position, of incompetence, of punishment, and of losing identity or group membership.²⁹⁸ These fears are powerful, and collectively can significantly undermine reform strategies.²⁹⁹ Thus, successful cultural change in an organization requires the existence of psychological safety.

Psychological safety can be achieved through: the development of a compelling positive vision; adequate formal and informal training; involving the learner in managing the process; flexibility for practice; support groups for processes; and new systems and structures that

1. See SCHEIN, supra note 33, at 283.
2. Id. at 291, 293.
3. See Consent Judgement, supra note 129, at 29.
4. See SCHEIN, supra note 33, at 300–05.
5. Id. at 311–13.
6. Id. at 304.
7. Id. at 304–05.

reinforce new ideals.³⁰⁰ These reforms must be rolled out strategically to create the safety that staff need in order to embrace change in their organization.³⁰¹ It is important to note that even if the correct problems are identified and the staff is willing, change attempts will fall flat if the organization rushes to implement changes without taking the necessary time and thought to put together a long-term, sustainable strategy.³⁰²

a. Culture Change in Correctional Systems

The NIC has been investigating and facilitating cultural assessments and change processes within correctional organizations since 2000.³⁰³ The NIC endorses the principles laid out by change management expert Dr. John P. Kotter.³⁰⁴ Kotter's principles have been incorporated into many successful organizational change efforts.³⁰⁵ In order for change to occur, Kotter recommends the following: (1) inspire a sense of urgency amongst critical stakeholders to create and maintain the momentum required to push change forward; (2) have a Change Team of respected senior managers who are committed to the goals of the change; (3) establish an emotionally charged vision that can be easily communicated, inspires staff, and addresses their primary fears regarding the change; (4) learn about each stakeholder's best interests in order to build buy-in; (5) provide clear tools for action so that staff are empowered to make the change;
(6) present short-term, achievable milestones and finish them before moving on; (7) never stop highlighting these achievements and pushing for further progress; and (8) provide positive reinforcement for successes to encourage sustainable change.³⁰⁶

The NIC has used these principles as inspiration to create its own change management model specifically for corrections called Achieving Performance Excellence Initiative (“APEX”).³⁰⁷ APEX is a roadmap and toolkit that can help correctional institutions understand where to begin and what steps are necessary to effect lasting culture change.³⁰⁸ The APEX model incorporates best

1. Id. at 306–07.
2. Id. at 307.
3. See CEBULA ET AL., supra note 238, at 45.
4. Id. at 9.
5. Id. at 18.
6. See id.
7. Id. at 19.
8. Id. at 21.
9. Id.

perhaps the most important element of any change management
³³²

process.

The final, perhaps most difficult, stage involves sustainability.³³³ Organizational change can only last if changes are embraced by staff and accompanied by positive reinforcement as well as ongoing guidance and training.³³⁴ Management must be held accountable for the success of implemented changes, and progress must be tracked on an ongoing basis.³³⁵

b. Case Study: Virginia Department of Corrections and a Healing Environment

Organizational culture change is not a common undertaking for correctional organizations. However, the Virginia Department of Corrections (“VADOC”) is currently in the midst of a massive culture change initiative aimed at creating a “healing environment” within the agency.³³⁶ The initiative began in 2010 when VADOC began investigating its effectiveness in reducing recidivism within Virginia’s criminal justice system.³³⁷ In an evaluation of its programs and services, the VADOC recognized that it could only have an impact on recidivism rates if it assessed and changed its organizational culture.³³⁸

VADOC Director Harold W. Clarke aimed to create a strategic plan for culture change by assessing staff attitudes and experiences, how the institution was perceived by external entities, and how care was received by the incarcerated population.³³⁹ All staff members received specific training on how to participate in the culture change effort as well as what his or her role would be in carrying out culture change goals.³⁴⁰ The strategic planning efforts resulted in the “healing environment”—a cultural model for the organization that aimed to create productive change for both staff and those

1. Id. at 37.

2. Id. at 38.

3. Id. at 38–39.

4. Id. at 39.

5. See Scott Richeson, Can Corrections Heal? Reducing Recidivism and Increasing Public Safety in Virginia, CORRECTIONS TODAY, Nov. 2014, at 26, 26–29.

6. See id. at 26.

7. Id. at 27.

8. See generally VA. DEP’T OF CORR., MANAGEMENT INFORMATION SUMMARY ANNUAL REPORT YEAR ENDING JUNE 30, 2014 (2014), <https://vadoc.virginia.gov/about/facts/managementInformationSummaries/2014-mis-summary.pdf> [<http://perma.cc/7GV5-9T37>].

9. See Richeson, supra note 336, at 2.

incarcerated.³⁴¹ Unlike “command and control,” this model prioritized mutual respect and de-escalation techniques to restore peace in the correctional setting.³⁴² Through the healing environment model, use of force was deemphasized and a continuum of responses for various infractions was introduced.³⁴³

A key element of VADOC’s healing environment was a practice known as “Dialogue,” which establishes a structured model for staff-wide discussions about the most pressing issues involved in the culture change process.³⁴⁴ It requires specific training to provide staff with the skills necessary to listen without judgment, effectively creating a safe space that encourages staff to share their thoughts and experiences, and also allows leadership to gauge how culture change is progressing.³⁴⁵ In Virginia, this training was carried out by “learning teams,” interdisciplinary groups of staff selected by leadership in each facility who were trained by Dialogue coaches.³⁴⁶ The critical component of Dialogue is that it does not stop once culture change efforts have been implemented—it is an ongoing part of the process and necessary to sustaining positive change.³⁴⁷

The Urban Institute, an economic and social policy think tank, is currently conducting an evaluation of this initiative at VADOC, and has released interim data showing that Dialogue has likely led to an increase in staff support for culture change initiatives at VADOC.³⁴⁸

B. Developing a Culture Change Plan at the New York City Department of Correction

As New York City prepares to shutter Rikers Island and move to new, borough-based facilities, the DOC has a unique opportunity to reimagine its role and make strides towards a more humane jail system.³⁴⁹ The goals of such a process would be to dramatically improve professionalism, mental and emotional balance, transparency, and accountability in order to significantly reduce

1. Id.
2. Id.
3. Id. at 3–4.
4. Id. at 3.
5. Id.
6. Id.
7. Id.
8. See Press Release, Va. Dep’t of Corr., Urban Institute Completes Third Employee Survey at Virginia Department of Corrections—VADOC’s Environment, Recent Culture Change Measured (Feb. 19, 2015), https://vadoc.virginia.gov/news/press-releases/15Feb19_UISurvey.shtm [http://perma.cc/AT9E-Z6U9].
9. See A MORE JUST NEW YORK CITY, supra note 10.

violence and improve outcomes. It will require fierce commitment from leadership and the recognition that culture change is extremely difficult, as well as acceptance of some risks.³⁵⁰

While the DOC may decide to work with an external consultant to assess their culture and develop a strategic plan, any culture change or strategic planning consultants should approach the process as a discovery process that focuses on asking the right questions and helping the organization arrive at conclusions on its own.³⁵¹

Should the DOC choose to undergo an assessment and develop a comprehensive plan for reform, this Article recommends several specific areas of focus for analysis: (1) accountability in management and performance; (2) formal processes and procedures; (3) recruiting and hiring; (4) training and professionalization of staff; and (5) staff wellbeing. The following section analyzes each of these areas in turn, highlighting ongoing, manifest issues at the DOC.

1. Accountability in Management and Performance

The legitimacy of reform efforts hinges on correctional leadership at all levels of management taking responsibility for the DOC's performance and progress during the process.³⁵² Organizational leaders must evaluate all levels of their staff according to new culture ideals and provide them with positive or negative reinforcement in accordance with their adoption of the new principles.³⁵³

a. Effective Management as the Primary Driver of Accountability

Dramatic changes in performance are more likely if culture change is led by a “transformational leader”—someone who has the skills to influence and inspire organizational commitment amongst staff.³⁵⁴

The NIC has developed standards for correctional leadership known as the Correctional Leadership Competencies for the 21st Century (“CLC”).³⁵⁵ The CLC holds accountability as one of the key values of successful correctional management.³⁵⁶ The CLC model

1. See CEBULA ET AL., *supra* note 238, at 38.

2. *Id.* at 19.

3. See SCHEIN, *supra* note 33, at 142.

4. *Id.* at 307.

5. See CEBULA ET AL., *supra* note 238, at 10.

6. See generally NANCY M. CAMPBELL, NAT'L INST. OF CORR., CORRECTIONAL LEADERSHIP COMPETENCIES FOR THE 21ST CENTURY: EXECUTIVES AND SENIOR-LEVEL LEADERS (2005), <https://s3.amazonaws.com/static.nicic.gov/Library/020474.pdf> [<https://perma.cc/D7K4-6RXA>].

7. *Id.* at xix.

identifies key competencies required for executive and senior leadership, which include: publicly acknowledging and rewarding behavior that encompasses organizational values; working strategically with investigators and auditors to enable accurate data collection and reinforce ethical values; explicitly modeling behaviors that the organization wants to promote; clearly aligning rewards and discipline with desired behaviors and values; setting clear boundaries around acceptable and unacceptable behavior; and addressing misconduct fairly, decisively, and in a timely manner.³⁵⁷

As discussed previously, the Nunez complaint cited a long history of the DOC's failures to select and promote managers with a commitment to ending violence or to ensure appropriate investigations and discipline of staff.³⁵⁸ **Other recent events highlight a serious lack of accountability within the DOC's middle-management, who should be setting the standard for staff behavior and transparency. For example, an August 2016 Daily News report contained internal documents and anonymous staff accounts claiming that administrators had been ordering officers to make use-of-force statistics "go away."**³⁵⁹ **At least one of the administrators involved was later promoted.**³⁶⁰

Most critiques of accountability, particularly in the form of litigation, within the DOC center on its chronic use-of-force issues.³⁶¹ The DOC's culture of violence is a frequent target of public outrage, advocacy, and legal action.³⁶² But the lack of accountability at the DOC is not limited to the area of violence—the DOC has underperformed in areas ranging from hiring to investigations to data tracking to training.³⁶³ By failing to take responsibility, management sends the message to staff that integrity, ethics, and performance are not top priorities for the DOC. Taking action against misconduct while rewarding staff who demonstrate the desired cultural principles can reinforce the culture that the DOC hopes to promote.³⁶⁴

1. Id. at 67.
2. See Amended Complaint, supra note 128, at 14.
3. See Stephen Rex Brown & Reuven Blau, Exclusive: Rikers Island Correction Bosses Routinely 'Purge' Unfavorable Violence Stats to Create Illusion of Reform, Review Shows, N.Y. DAILY NEWS (Sept. 28, 2016), <http://www.nydailynews.com/newyork/exclusive-rikers-island-bosses-cover-violence-stats-article-1.2768232?cid=bitly> [<http://perma.cc/8AXS-FD3S>].
4. Id.
5. See Fourth Monitors Report, supra note 170, at 4.
6. See supra Part I.
7. See supra Section I.B.
8. See Fourth Monitors Report, supra note 170, at 9.

having college-level education makes it more likely that COs have had exposure to a diverse range of backgrounds different from their own, expanding their capacity for empathy; this exposure to difference is invaluable to learning potential ways to deescalate violent incidents.⁴³¹ In order to recruit and hire the right staff for the mission and organizational culture the DOC would like to implement, it should create a comprehensive recruiting and hiring vision replete with a strategic plan that is directly in line with its overall culture change goals and efforts. According to the Nunez Monitor, the AIU is about to undergo a comprehensive review process of all current practices and will then draft an overall strategy for going forward.⁴³²

4. Training and Education as Tools for Culture Change

A supportive and healing training program can create the psychological safety needed for staff to accept change, and it can also position staff as agents of change by helping them develop the skills necessary to sustain a healing culture in the organization.⁴³³ For a hierarchical structure like the DOC, the process of opening up dialogue across silos likely will be difficult and uncomfortable at first. These initial steps should be treated as an opportunity to build skills and train staff for ongoing dialogues among all levels in the DOC. As seen in the Virginia Department of Corrections, staff likely will become accustomed to this new way of working and more willing and better positioned to contribute to innovation within the DOC.⁴³⁴

a. Training for a Healing Environment

Training plays a significant role in establishing legitimacy and procedural justice in a criminal justice setting: when correctional staff demonstrate competence and fairness in carrying out their jobs, the incarcerated population may be more likely to respect their authority.⁴³⁵ New York City's Police Department is currently transitioning from a strictly "law and order" approach to a more "community-based policing" model.⁴³⁶ Its 2015 Neighborhood

1. See Christine Tartaro, *Watered Down: Partial Implementation of the New Generation Jail Philosophy*, 86 *PRISON J.* 284, 297 (2006).
2. See Fourth Monitors Report, *supra* note 170, at 193.
3. See SCHEIN, *supra* note 33, at 305–06.
4. See Press Release, Va. Dep't of Corr., *supra* note 348.
5. See STEPHEN C. MCGUINN, *PRISON MANAGEMENT, PRISON WORKERS, AND PRISON THEORY: ALIENATION AND POWER* 56–57 (2015).
6. See WILLIAM J. BRATTON, N.Y.C. POLICE DEP'T, *THE NYPD PLAN OF ACTION AND THE NEIGHBORHOOD POLICING PLAN: A REALISTIC FRAMEWORK FOR*

Policing Plan emphasizes ongoing respectful engagement with citizens as the only way to properly maintain safety in the city.⁴³⁷ The DOC can learn from this initiative by making engagement, communication, and de-escalation—principles at the core of the direct supervision jail model—essential parts of its approach to maintaining safety.⁴³⁸

A transition to a direct supervision model would require the DOC to build its entire training program around techniques that have typically been considered supplementary training modules. A study on the full adoption of direct supervision principles in newly designed jails shows that facilities that focus on only the design elements of direct supervision, ignoring the training, management, and culture components, see status quo results in violence prevention.⁴³⁹ In fact, this happened at the Tombs, which is a direct supervision facility that has not been able to keep violence down, apparently due to mismanagement.⁴⁴⁰ In other cases, partial implementation is due to a misinterpretation of the direct supervision model, such as only placing COs in direct contact with inmates without providing a safe physical environment or ensuring the CO has the requisite communication skills to control the environment.⁴⁴¹ Again, in facilities that have fully implemented direct supervision principles, violence drops dramatically.⁴⁴² In those that adopted direct supervision in design only, violence was largely unaffected.⁴⁴³

Therefore, the DOC must implement direct supervision comprehensively. The difficulty of this task should not be understated. The DOC has had, in the past two decades, commissioners who were committed to change and were able to make some important and invaluable reforms in the agency.⁴⁴⁴ The kind of culture change discussed in this Article will require not just that kind of leadership, though it is essential, but a long term commitment from the mayor, the budget director, the Office of Labor Relations, the

CONNECTING POLICE AND COMMUNITIES 1–2 (2015), <http://home.nyc.gov/html/nypd/html/home/POA/pdf/Plan-of-Action.pdf> [<http://perma.cc/2UMY-ZRWA>].

1. See *id.* at 3.
2. See *A MORE JUST NEW YORK CITY*, *supra* note 10, at 88.
3. See Tartaro, *supra* note 431, at 291.
4. See Surico, *supra* note 63.
5. See Stephen I. Saunders, III, *Direct Supervision Jails: A Management Model for the 21st Century* 3 (Jan. 1995) (unpublished research paper, Florida Criminal Justice Executive Institute), <http://www.fdle.state.fl.us/FCJEL/Programs/SLP/Documents/Full-Text/Saunders.aspx> [<https://perma.cc/X7QK-5VE5>].
6. See Wener et al., *supra* note 53, at 11.
7. See Christine Tartaro, *Examining Implementation Issues with New Generation Jails*, 13 *CRIM. JUST. POL'Y REV.* 219, 225–26 (2002).
8. See *supra* Section I.B.

Mayor's Office of Operations, the Department for Citywide Administrative Services, as well as the city council, among others. This is no small undertaking and without this kind of substantial commitment from all levels of city leadership, it is unlikely to happen.

b. A Healing Environment Will Make Punitive Tools Obsolete

A common criticism from staff at the DOC is that the recent reduction in the use of punitive measures for dealing with inmates leaves staff with no tools to curb violence.⁴⁴⁵ Decades of reliance on solitary confinement as a primary anti-violence tactic with only cursory attempts at providing alternatives has left staff feeling powerless against violence.⁴⁴⁶ A common response to this dilemma is to say that officers simply need more training.⁴⁴⁷

The judicial response also has mirrored this approach. For example, the consent decree in Nunez calls for many additional training programs in efforts to reduce violence in the DOC, focusing on use of force, conflict resolution and crisis intervention, defensive tactics, cell extractions, as well as procedures, skills, and techniques for investigating use-of-force incidents.⁴⁴⁸ Recently, the DOC has made great strides in rolling out its "Continuum of Alternative Disciplinary Responses," and as of this writing is no longer using punitive segregation at all for sixteen- to eighteen-year-olds.⁴⁴⁹ This continuum includes several specialized housing options, depending on age and infraction, paired with programming aimed at behavioral change.⁴⁵⁰ COBA, which represents the COs currently being trained in these new strategies, strongly prefers the use of punitive segregation because officers feel vulnerable to violence without it.⁴⁵¹ Indeed, while the Monitor has found the drafting and testing of these new programs to be promising, it has warned that in order for correctional staff to feel secure without punitive segregation, these

1. See Press Release, Corr. Officers' Benevolent Ass'n, Inc., COBA President Elias Husamudeen Regarding the DOC's Elimination of Punitive Segregation for 18– 21 Year Old Inmates (Oct. 11, 2016) [hereinafter COBA Press Release], <https://www.cobanyc.org/news/immediate-release-coba-president-elias-husamudeen-regarding-doc%E2%80%99s-elimination-punitive> [<https://perma.cc/U37S-8YKU>].
2. *Id.*
3. *Id.*
4. See Consent Judgment, *supra* note 129, at 37–40.
5. See Fourth Monitors Report, *supra* note 170, at 233.
6. *Id.* at 240.
7. See COBA Press Release, *supra* note 445.

new policies must be extremely clear and rolled out carefully.⁴⁵² The monitoring team has also stressed that the DOC must expand the possible responses for mid-level misconduct that would not require the use of the specialized housing programs but should still be addressed.⁴⁵³

If implemented properly, the direct supervision model will render punitive tactics practically obsolete. As mentioned above, through direct supervision, staff manage inmates using communication, de-escalation, as well as relationship-building and leadership skills.⁴⁵⁴ Direct supervision principles should inform how all staff engage with the incarcerated population at all times, rather than as an afterthought.

c. Redefining Staff Roles Through Professionalization

As noted above, seeking a more professionalized staff by recruiting officers with higher education qualifications is one approach to changing the dynamics between COs and the incarcerated population.⁴⁵⁵ However, research has found that if underlying organizational culture issues are not addressed, hiring more educated and human-service oriented staff has little effect on changing culture.⁴⁵⁶ For this approach to be successful, staff must be fully integrated into strategic development and be fully capable of acting in accordance with reform goals.⁴⁵⁷

Job redesign is an approach that concedes more autonomy and control over operations to lower-level staff, thus providing opportunities for enrichment through increased responsibility and challenge in the workplace.⁴⁵⁸ Staff should be trained with the skills and knowledge necessary to have more autonomy over their decision-making, which can heighten their sense of personal responsibility and pride in their role.⁴⁵⁹

1. If punitive segregation is no longer an option, it must be replaced with a clear program of graduated responses to violent behavior.
2. See Fourth Monitors Report, *supra* note 170, at 244.
3. See *supra* note 182 and accompanying text.
4. See JOSI & SECHREST, *supra* note 429, at 46.
5. Nancy C. Jurik & Michael C. Musheno, The Internal Crisis of Corrections: Professionalization and the Work Environment, 3 JUST. Q. 457, 477 (1986).
6. See generally Richard F. Elmore, Organizational Models of Social Program Implementation, 26 PUB. POL'Y 188 (1978).
7. See John W. Slocum, Jr., Job Redesign: Improving the Quality of Working Life 5 (S. Methodist Univ, Working Paper No. 19, 1981).
8. ROGER CHEVALIER, A MANAGER'S GUIDE TO IMPROVING WORKPLACE PERFORMANCE 65-66 (2007).

Another approach is to develop an academic program for all staff that lasts between one and two years and that goes beyond traditional training modules to include fields such as criminal law, sociology, law enforcement history, and education.⁴⁶⁰ In German correctional institutions, often considered a global model, officers spend their two-year probationary period learning self-defense and communication, as well as criminal law and educational theory.⁴⁶¹ This professionalizes staff by providing them with skillsets found in professions requiring university degrees.⁴⁶²

5. Wellbeing and Support for Staff

Staff treatment and support are core elements of a positive organizational culture.⁴⁶³ This is particularly true in corrections considering the occupational stressors for correctional staff, which include fear of inmate violence, confrontation with inmate suicides, requirements to frequently work overtime, and demands of rotating shifts that can impede life outside of work.⁴⁶⁴ For correctional organizations to perform optimally and effectively, staff must be adequately supported and cared for.⁴⁶⁵ Adequate training of staff is also incredibly important to their wellbeing—when staff are inadequately trained, they can easily find themselves in situations that cause extreme stress and fear.⁴⁶⁶

As recommended by the Commission, facilities should provide normalized spaces for staff that are separate from the incarcerated population and offer a sense of connection to the outside world.⁴⁶⁷ The Commission recommended that these spaces would include natural materials, soft furniture, regular lamps and tables, and other every day furnishings.⁴⁶⁸ The value of natural light and temperature

1 Maurice Chammah, *The Stiff Competition to Work in German Prisons*, THE MARSHALL PROJECT (June 22, 2015), <https://www.themarshallproject.org/2015/06/22/the-stiff-competition-to-work-in-german-prisons#.dtvud6iq> [<http://perma.cc/7G24VDMZ>].

2 *Id.*

3 *Id.*

4 See JAIME BROWER, OFFICE OF JUSTICE PROGRAMS DIAGNOSTIC CTR., U.S. DEP'T OF JUSTICE, CORRECTIONAL OFFICER WELLNESS AND SAFETY LITERATURE REVIEW 1 (2013), https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/CorrectionalOfficerWellnessSafety_LitReview.pdf [<https://perma.cc/TS3DMPMK>]; see also CEBULA ET AL., *supra* note 238, at xiii.

5 See BROWER, *supra* note 463, at 11–13.

6 See CEBULA ET AL., *supra* note 238, at 48–51.

7 See BROWER, *supra* note 463, at 1.

8 See A MORE JUST NEW YORK CITY, *supra* note 10, at 82.

9 *Id.*

control was also stressed.⁴⁶⁹ However, as with other improvements related to physical facilities, the changes will mean little without a complete overhaul of how staff wellbeing and health are considered within the DOC.

Moreover, role conflict and unsupportive leadership can lead to many other conditions that afflict staff as they attempt to manage their relationships to their jobs and to their organization. For instance, burnout is a syndrome of emotional exhaustion, depersonalization, and a reduced sense of personal accomplishment that is a considerable risk for correctional staff.⁴⁷⁰ Studies have shown that of all correctional personnel, staff in custody roles report higher levels of burnout.⁴⁷¹

Beyond being unpleasant, burnout can lead to officers becoming careless on the job and can pose risks to the safety of the correctional institution.⁴⁷² This is an argument for providing ample support, challenge, and autonomy early in a CO's career, when they are at greater risk of burning out.

Though seniority on staff comes with benefits and perks, some of these may also be harmful. For example, overtime allows officers to dramatically increase their wages; however, excessive overtime takes an emotional and physical toll on COs.⁴⁷³ The DOC has become dependent on overtime as a way to staff posts, particularly when officers need to miss shifts for training, and frames it as a "perk" even though it can be harmful to officers in the long run.⁴⁷⁴

Developing and maintaining a supportive and healing culture is critical to staff wellbeing. Jails are trauma-inducing environments.⁴⁷⁵ The average CO will encounter twenty-eight first-hand events related

1 Id.

2 See Caitlin Finney et al., *Organizational Stressors Associated with Job Stress and Burnout in Correctional Officers: A Systematic Review*, 82 *BMC PUB. HEALTH* 1, 1 (2013).

3 See Marie L. Griffin et al., *Job Involvement, Job Stress, Job Satisfaction, and Organizational Commitment and the Burnout of Correctional Staff*, 32 *CRIM. JUST. BEHAV.* 239, 241 (2010).

4 See BROWER, *supra* note 463, at 11.

5 Michael Schwirtz & Michael Winerip, *Rikers Jail Costs Soared Despite Fewer Inmates, Comptroller Finds*, *N.Y. TIMES* (Oct. 17, 2014), <https://www.nytimes.com/2014/10/17/nyregion/rikers-jail-costs-soared-despite-fewer-inmates-comptroller-finds.html> [<https://nyti.ms/2FWNqvy>].

6 See *id.*; see also David A. Fullard, *Fixing Jail Violence Means Worrying About Officers' Health*, *CITY LIMITS* (Nov. 7, 2014), <https://citylimits.org/2014/11/07/fixing-jail-violence-means-worrying-about-officers-health/> [<http://perma.cc/VY4E-FLF3>].

7 Fullard, *supra* note 474.

to serious violence, injury, or death within his or her career.⁴⁷⁶ Unlike police officers, COs experience a sustained threat of violence, and have fewer opportunities to build rewarding relationships with the populations they work with, given that those populations are being held against their will.⁴⁷⁷ Staff who are exposed to events involving violence, injury, or death on a recurring basis are more likely to develop post-traumatic stress disorder (“PTSD”) and depressive disorders.⁴⁷⁸ These disorders can have dire consequences for staff— one study found that COs’ suicide rate is thirty-nine percent greater than other professions, and double the rate of police officers.⁴⁷⁹

The DOC should be proactive when it comes to ensuring the wellbeing of its staff. When COs are happy, healthy, adequately trained, and well-supported, they create a more positive and supportive environment for incarcerated people, and can improve behavior while reducing violence and the need for punitive measures. These benefits, which serve both individuals and the organization, however, can only be achieved with meaningful commitment from leadership.⁴⁸⁰

Currently, the DOC has a unit called the Correction Assistance Response for Employees (“CARE”). The CARE unit exists to assist officers who seek counseling around traumatic experiences, anxiety, PTSD, and job-related stressors, among other needs.⁴⁸¹ Officers needing additional services or treatment are referred elsewhere by the unit.⁴⁸² However, there is a strong stigma in correctional culture against seeking mental health treatment. David Fullard describes a “warrior ethos” in corrections, where COs are expected by their peers and supervisions to never show weakness, accept defeat, quit, or admit illness, making it much less likely that staff will seek help to cope with the extreme stress of the job.⁴⁸³ An additional challenge with internal CARE units is that they may be perceived as an

1. Id.
2. See BROWER, *supra* note 463, at 5.
3. MICHAEL D. DENHOF & CATERINA G. SPINARIS, DESERT WATERS CORR. OUTREACH, PREVALENCE OF TRAUMA-RELATED HEALTH CONDITIONS IN CORRECTIONAL OFFICERS: A PROFILE OF MICHIGAN CORRECTIONS ORGANIZATION MEMBERS 2 (2016), http://www.mco-seiu.org/files/2016/05/MCO-Paper_FINAL.pdf [<https://perma.cc/B49U-4KJK>].
4. See BROWER, *supra* note 463, at 12.
5. See Griffin et al., *supra* note 471, at 252.
6. See Correction Assistance Response for Employees, N.Y.C. DEP’T OF CORR., <http://www1.nyc.gov/site/jointheboldest/overview/correction-assistance-response-foremployees.page> [<http://perma.cc/3WCZ-SXL4>].
7. Id.
8. See Fullard, *supra* note 474.

extension of the organization, and therefore may not be as trusted by staff who are dealing with issues resulting from organizational stressors.⁴⁸⁴ One solution may be off-site facilities with strict confidentiality regulations that ensure the DOC is only informed of mental health issues in extreme cases.

A critical part of a larger culture change effort would be to help shift the stigma around mental health within its own organizational culture.⁴⁸⁵ Though seemingly insignificant, vocabulary around mental health has a large impact on staff perception and says a lot about its culture.⁴⁸⁶ The DOC can seek to normalize and neutralize conversations around mental health and incorporate healing practices such as the Dialogue process (discussed in earlier sections)⁴⁸⁷ into its operational status quo. Peer support programs, or “stress units,” can be especially helpful in fields prone to PTSD and where stressors are often shared.⁴⁸⁸ Stress units are group meetings led by peer mentors under mental health professional supervision where staff can discuss daily challenges or seek guidance for more serious incidents.⁴⁸⁹ These sessions can be more comfortable and successful than formal mental health services, which are often stigmatized.⁴⁹⁰ The DOC’s organizational culture should strive to be one that encourages dialogue, reflection, and sharing of both positive and negative experiences. This will create a healthier jail system for all.

CONCLUSION

The recent announcement of the eventual closure of Rikers Island marked a watershed moment in corrections in New York City and on a national scale.⁴⁹¹ There is an unprecedented amount of public and governmental support for eliminating Rikers—a penal colony plagued by a history of violence, abuse, and despair for the incarcerated population and DOC staff alike.⁴⁹² But simply building new jails off the island will not automatically result in a reformed DOC. Better outcomes for staff and incarcerated people in New York City requires a complete rethinking of the DOC’s organizational culture, including

1. See BROWER, *supra* note 463, at 15.
2. See *id.* at 9–12.
3. See Fullard, *supra* note 474.
4. See *supra* Section II.A; see also CEBULA ET AL., *supra* note 238, at 53–60.
5. See Fullard, *supra* note 474.
6. *Id.*
7. *Id.*
8. See A MORE JUST NEW YORK CITY, *supra* note 10.
9. *Id.*

clarifying how the DOC operates and behaves, its values, and what its ultimate goals are.⁴⁹³ Regardless of where the new facilities are located and how they are designed, the DOC must seize this historic opportunity to transform itself holistically.

Much of the operational reforms over the last fifty years at the DOC have been the result of litigation and consent decrees.⁴⁹⁴ While litigation can have an impact on operations, particularly in developing minimum standards to govern department operations, it cannot force the holistic reforms necessary to make lasting change at the DOC.⁴⁹⁵

After decades of litigation and corresponding consent decrees, the Nunez case and consent decree forced larger-scale reforms at the DOC.⁴⁹⁶ The Nunez monitoring team is working closely with the city and the DOC to develop and implement reforms across a host of core functions including hiring, training, and use of force.⁴⁹⁷ However, these reforms are being devised under the relatively narrow scope of the litigation rather than being contemplated as a sustainable reform strategy.⁴⁹⁸

Comprehensive reform—the kind of reform that can stop endemic violence and truly change treatment and conditions in DOC facilities—involves more than just remaking the DOC’s physical space. The DOC must, in many respects, start anew and rebuild itself by developing and carefully executing a strategic change management plan.⁴⁹⁹ Critical to this plan, and its ultimate success, will be the DOC’s deliberate analysis of its current organizational culture and the impact of that culture on daily operations.⁵⁰⁰

In order for operational reforms to take hold in the long-term, organizational culture change must also be addressed.⁵⁰¹ A proactive and supportive environment for staff and management will allow the operational reforms to be successful. This Article has described the litigation and reform history at the DOC, the theory underlying culture change in correctional facilities, as well as certain critical areas of operational reform.⁵⁰² The five areas of focus outlined in this

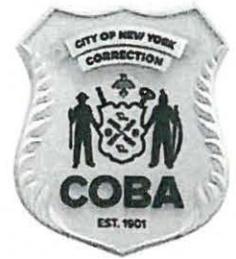
1. See MMR 2017, *supra* note 26, at 83.
2. See *supra* Part I.
3. See *supra* Section I.A.
4. See *supra* Section I.B.
5. See *supra* Section I.B.2.
6. See *supra* Section I.C.
7. See *supra* Section II.A.
8. See *supra* Section II.B.
9. See *supra* Section II.B.
10. See *supra* Section II.B.

report—accountability in management and performance, procedures and policies, recruiting and hiring, training and education, and wellbeing and support—do not exhaustively cover the challenges facing the DOC.⁵⁰³ Rather, they are key areas to take into account when devising a strategic plan for the DOC’s organizational culture change.

Unless the DOC reforms its organizational culture, the broader criminal justice reforms and the development of new jail facilities will bring the DOC only so far. The abuse and troubling conditions of confinement will continue, simply moving off the island into the new facilities along with the staff and those who are detained.

503. See *supra* Sections II.B.1–5.

CORRECTION OFFICERS' BENEVOLENT ASSOCIATION, INC.
"PATROLLING THE TOUGHEST PRECINCTS IN NEW YORK"



NORTH INFIRMARY COMMAND (NIC)
NEW MAXIMUM SECURITY FACILITY
A FULLY OPERATIONAL FACILITY

Prepared by
The New York City
CORRECTION OFFICERS' BENEVOLENT ASSOCIATION
[FOR DISCUSSION PURPOSES ONLY]

JULY 2017
[UPDATED SEPTEMBER 2017]



NORTH INFIRMARY COMMAND (NIC)

NEW MAXIMUM SECURITY FACILITY

**CONSISTS OF TWO INFIRMARY BUILDINGS,
ONE OF THEM IS THE ORIGINAL RIKERS ISLAND
HOSPITAL BUILT IN 1932.**

**> A NEW 400 BED MAXIMUM SECURITY
GENERAL POPULATION FACILITY**

**> THIS NEW FACILITY WILL
BE VITAL TO PROVIDING AN
ALTERNATIVE TO PUNITIVE SEGREGATION
AND WILL CONTINUE TO PUSH FORWARD THE
DEPARTMENT'S EFFORTS TO REFORM THE
NEW YORK CITY JAIL SYSTEM**

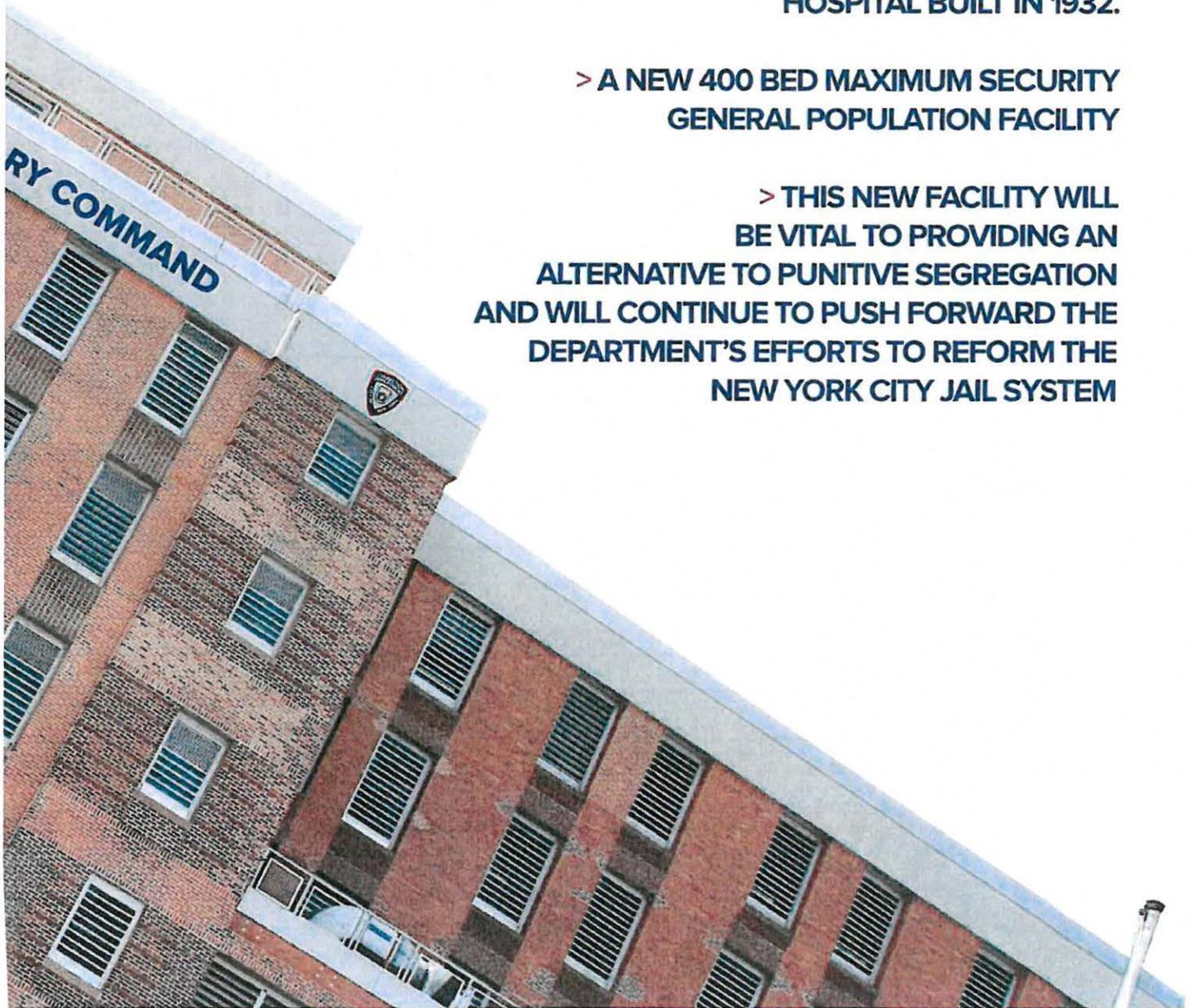
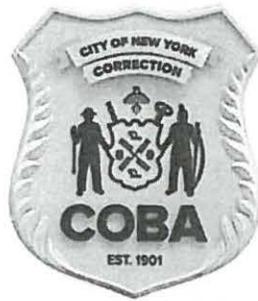


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The C.O.B.A. would like to thank you for recognizing that the Department of Correction is in need of reform and for inviting us to be a part of it. Contrary to popular opinion, The C.O.B.A and its members welcome any change in policy that will keep our members out of harm's way. The C.O.B.A. also recognizes that while punitive segregation can be an effective tool in keeping our facilities safe, the method was sometimes overused and failed to be combined with any corrective measures. At the time, Punitive Segregation was the only tool the Department managers gave our members to deal with the population of inmates who commit infractions. We know this population well because they are our neighbors, brothers, sisters, mothers, fathers, sons, and daughters. As such, any positive changes that are made can only help us. Our members have employed different techniques dealing with the inmate population long before this Department ever thought of interpersonal communications training, but were vilified by the Department managers who called it fraternizing and punished our officers for using that very technique.

After studying the current reform efforts, The C.O.B.A. has come to the conclusion that while the Department was so heavily focused on the rehabilitation of inmates and the discipline of correction officers, it fully neglected a certain segment of our inmate population. These are inmates who refuse to participate in any programing and have only continued to promote violence both directly and indirectly by committing infractions themselves or using their influence on others to do so. This has led to an increase in slashings, stabbings, gang assaults, and the promotion of prison contraband; all of which are the driving force behind most, if not all, of the violence on Rikers Island. Millions of dollars in manpower and lawsuits have been lost from the resulting rise in the use of force numbers, causing severe injury to correction officers, staff, and inmates alike.

The C.O.B.A. has devoted years to coming up with a meticulous plan with the hope for the opportunity to participate in helping this reform effort succeed. In this overview, we will provide a plan that will make the New York City Department of Correction once again the leading Corrections Department in the world.

OVERVIEW:

After examining the North Infirmary, The C.O.B.A. has identified a way of creating a facility that could safely house the very violent population on Rikers with very little modification and at minimal cost. The reopening of NIC could fill the gap between special housing areas like E.S.H. and the negatively viewed Punitive Segregation, by allowing inmates to receive therapeutic programming, while placing restrictions on their ability to commit violent acts. This would be accomplished by using policies that are already being implemented in the Department and which have been approved by the Board of Correction, and will also address the concerns of advocacy groups.



RANK STRUCTURE :

THE CHIEF OF SECURITY will handle all security aspects such as placement and movement to and from the facility and ensure that all Departmental policies in regards to transfer of inmates be followed. The facility should have a full administrative staff, wardens of security, administration, programs, and operations, as well as an on sight director for mental health supervision. This is vital to the success of this facility as each will play an instrumental role in the day to day running of the facility, by ensuring that the Department's standards are met.

THE WARDEN will respond directly to the office of the Chief of the Department and his or her designee.

THE DEPUTY WARDEN OF SECURITY will be responsible for ensuring that all inmates are provided with a list to register five prospective visitors and people he will call. In addition, he will also be given the responsibility of assuring that those persons whose names have been given are not known to the department as persons who have attempted to breach security by attempting to smuggle in contraband or who have gang affiliations. If they are found to have a gang affiliation, appropriate action should be taken to prevent said persons from introducing contraband to the facility. Furthermore, The Deputy Warden of Security will ensure that there are no inmates who have separation orders housed together and that individual who are known to The Department as gang members should not be housed by their gang affiliations. The Deputy Warden of Security will track all violations of The Department's rules and regulations. He /she will also be responsible for sending inmates to punitive segregation should they meet the standards by violating Departmental rules. The Deputy Warden will be responsible for the weekly report to the Warden in which he will give his assessment of inmate behavior.

THE DEPUTY WARDEN OF OPERATIONS will be responsible for coordinating transfers and court production. He or she will also be responsible for sending inmates to hospitals for mental health evaluation. The Deputy Warden of Operations will ensure all inmates are provided all their services not limited to recreation, medical services, phone and visit schedules as well as therapeutic services.

THE DEPUTY WARDEN OF ADMINISTRATION will ensure that the facility staffing levels are up to standards. Furthermore he/she will assure all staff have steady assignments, and that all staff will be given training in accordance to the Department's policies. A position of Special Assistant Deputy Warden will be put in place and he or she will serve as a liaison between the administration and the therapeutic staff, as well as address inmate and staff issues. He or she will also be responsible to submit a weekly tracking report on all inmates to the warden and his or her designee.

NORTH INFIRMARY COMMAND (NIC) NEW MAXIMUM SECURITY FACILITY ORGANIZATIONAL CHART

THE CHIEF OF SECURITY

THE CHIEF OF SECURITY will handle all security aspects such as placement and movement to and from the facility and ensure that all departmental policies in regards to the transfer of inmates be followed. The facility should have a full administrative staff, wardens of security, administration, programs, operations, as well as an on sight director for mental health supervision. This is vital to the success of this facility, as each will play an instrumental role in the day to day running of, the facility, by ensuring that the Department's standards are met.

WARDEN

THE WARDEN will report directly to the office of the Chief of the Department and his or her designee.

DEPUTY WARDEN OF SECURITY

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DEPUTY WARDEN OF ADMINISTRATION

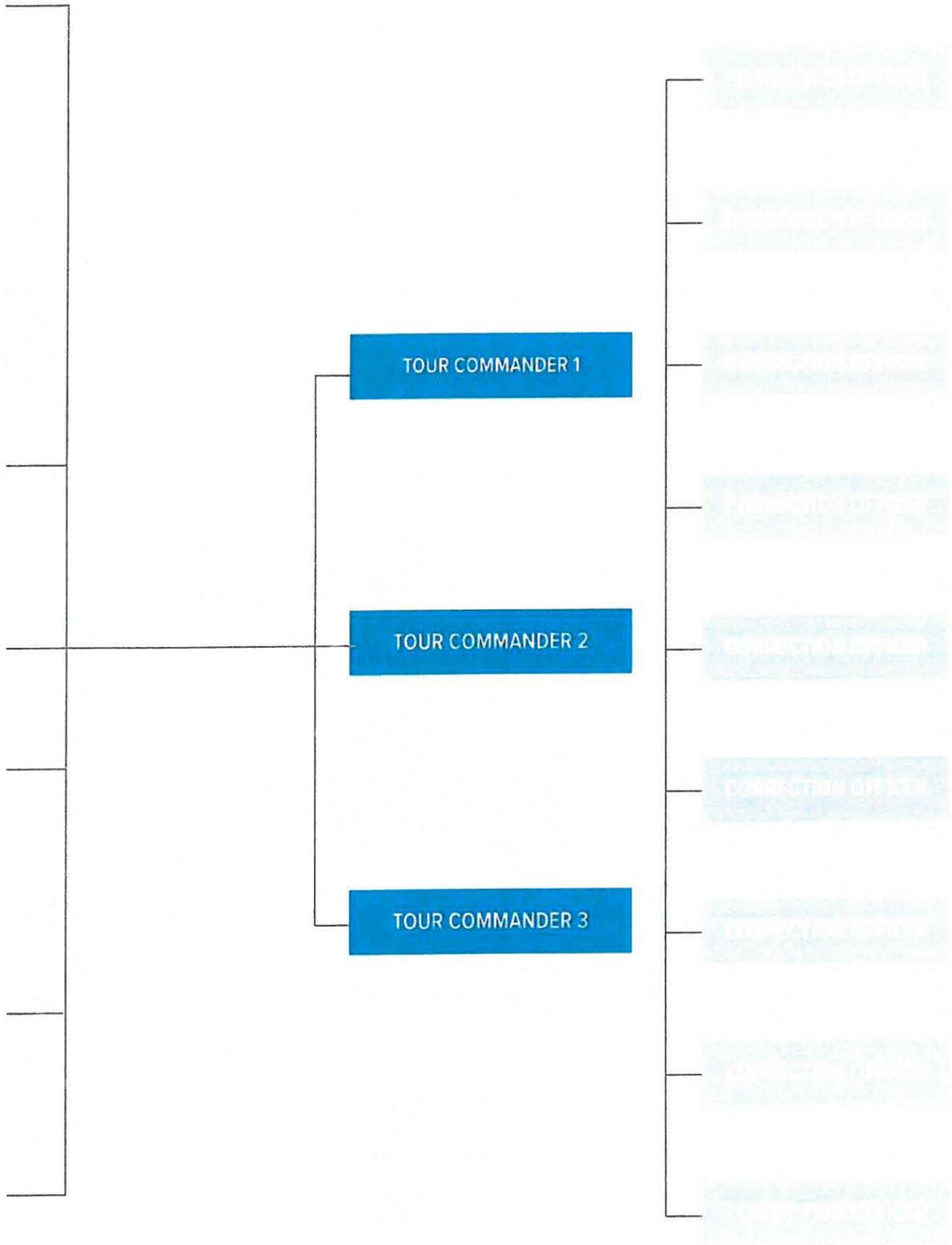
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ASSISTANT DEPUTY WARDEN OF OPERATIONS

THE ASSISTANT DEPUTY WARDEN will be put in place and he or she will serve as a liaison between the administration and the therapeutic staff, as well as address inmate and staff issues. The ADWO will also be responsible to submitting a weekly tracking report on all inmates to the Warden and his or her designee.

DIRECTOR OF ADULT & YOUTHFUL OFFENDER PROGRAMMING

THE DIRECTOR FOR PROGRAMS is responsible for overseeing and supporting the management of inmate programs and program planning initiatives. The Director will be responsible for developing and implementing programs that positively impact the inmate's behavior and successful reintegration back into general population and decrease the probabilities for recidivism; serve as liaison with uniform members of service in an endeavor to enhance opportunities for the introduction of innovative programs that benefits this inmate population.



STAFF INCENTIVES:

- Officers who are assigned to NIC will be given incentive pay at the same rate as their counterparts in accordance to the COBA contractual agreement who qualify for special pay.
- Officers will be granted the opportunity to transfer to a facility of their choice after a one year commitment, provided that there is a vacancy. If they are not qualified due to a lack of training or knowledge every effort should be made by the Department to ensure training is provided in a timely manner.
- In place of Gate 1 passes, a shuttle bus should be provided to assist officers to get to and from the facility, considering the placement of the facility and to incentivize the officers.
- COBA believes the sacrifice the Department is asking the officers to make in dealing with inmates who have a propensity to be violent towards staff and inmates, example (John Doe). The Department should show that same commitment to the uniformed members and exclude them from many aspects of the Nuñez consent decree, because as we know, the Nuñez settlement would damage their career path, limiting their opportunity to be promoted transferred or to be eligible for other opportunities within The Department of Correction.



STAFF TRAINING:

- In order for this facility to be successful, all staff must receive the best training that the Department has to offer. All officers must be trained by The Department's Emergency Service Unit in the use of chemical agents, extractions, take downs, de-escalations, response, application of mechanical restraints in addition to all other training the Department's Emergency Service Unit offers. This will potentially stop injury to staff and inmates, something the Department and the Federal Monitor put a great deal of emphasis on in his most recent report.
- All M.O.S. (all ranks) and civilians assigned to NIC must be trained by the Emergency Services Unit (ESU) techniques and strategies regardless of position.
- Working in this unit for 6 months would be included as part of the requirement for permanent status in the Emergency Service Unit (ESU)
- All uniformed members assigned must receive mental health training to work in the unit.
- All uniformed members assigned must be trained and capable of working any and all areas of the unit.

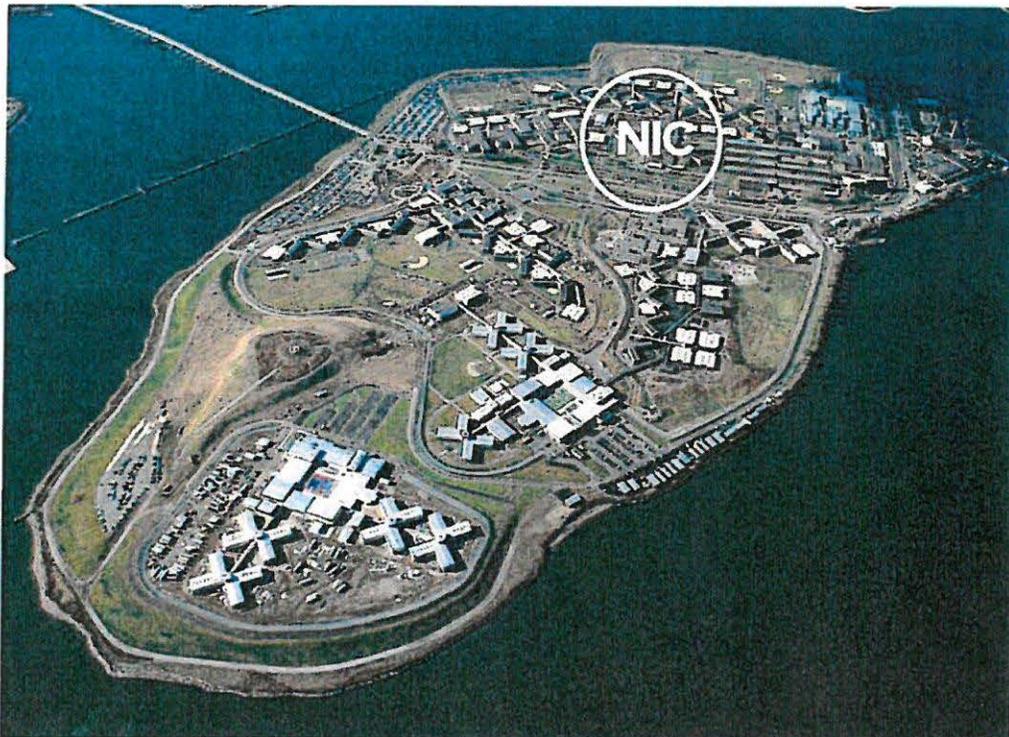
NORTH INFIRMARY:

All inmates who are transferred to this facility will be there for no less than 90 days, and will be required to complete a therapeutic program within that time.

Thirty (30) days of good behavior demonstrating a positive modification in an inmate can result in fewer restrictions. This will depend on an evaluation to be completed by the therapeutic program provider and the Deputy Warden of Security who will give their recommendation to the Warden of the facility. If there are two diametrically opposed opinions, a detailed report will be given to the Chief of Security.

If an inmate continues to participate in any violation of the rules or commits violent acts as described previously in the overview, he will be placed in punitive segregation. Upon his release from punitive segregation, he will be afforded another opportunity to re-enter the program.

If any inmate continues to display violent tendencies, he should be removed from the facility and sent to a mental health hospital for evaluation, at which time, it will be determined if he is mentally stable and if NIC and the Department of Correction are the right setting for this inmate. If he is deemed to be unstable, every effort should be made to place him in the proper setting.



HOUSING:

North Infirmery will be a general population, maximum security facility that has both quad housing units (which are cells) and modular units, which are dormitory style housing units. All inmates will be housed according to the propensity to commit violent acts. If an inmate has proven to be violent he will be housed in the quad area. Each cell has bars and just outside of the cell is an attached dayroom with a table and metal bench. All cells are surrounded by a mesh fence separating the cell from a small walk way that will provide safety for all staff. This gives the staff the ability to tour the area and the therapeutic providers the ability to be safe from assault, which is a major concern of theirs and ours. The modular housing area, including a communal dayroom and shower area, is an open area that will be used for inmates who may not have committed violence themselves, but have influenced others to do so. Inmates who have completed the punitive segregation for non-violent offenses but are not ready to be housed in a less restrictive environment, will also be placed in the modular housing area.

INMATES WHO MEET THE CRITERIA FOR NIC HAVE SHOWN THE FOLLOWING OR FALL INTO ONE OR MORE OF THE CATEGORIES LISTED:

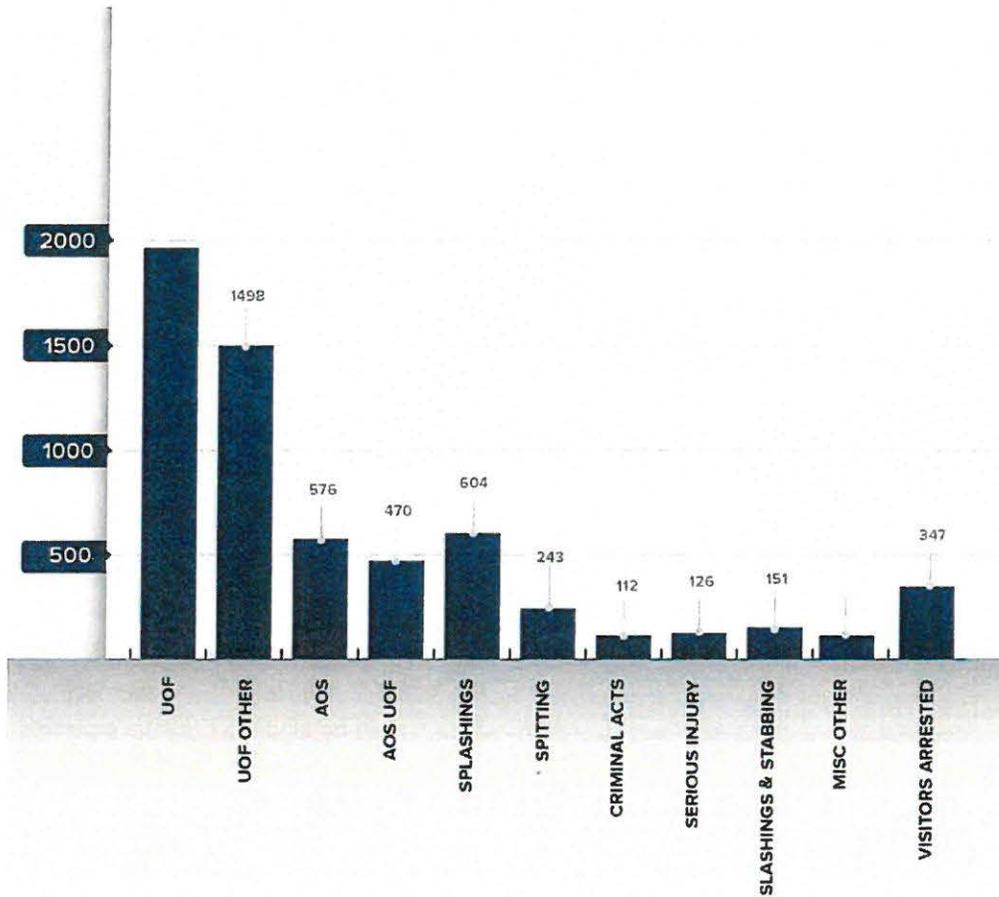
1. **A propensity for violence while in custody, including but not limited to:**
 - a. Slashings and stabbings.
 - b. Assaults on staff (uniformed or civilian).
 - c. Splashing staff with any liquid regardless of the content.
 - d. Spitting on staff.
2. **Known influential inmates. These inmates not only commit crimes and violations themselves, but influence others to do so as well.**
3. **Known gang members.**
4. **Inmates caught promoting or in possession of contraband, including but not limited to:**
 - a. Drugs or tobacco.
 - b. Weapons.
 - c. Cell phones.
 - d. Any other contraband in violation of Department policy, whether or not it is the visitor or the inmate caught in possession of the contraband.

MENTAL HEALTH THERAPEUTIC PROGRAMS:

C.O.B.A. understands that therapeutic treatment is a necessity to fully reform the Department, as well as for reforming the inmate. In fact, punitive segregation, when used long term, leads to a more violent inmate in some cases. This population of inmates referred to themselves as "Bing Monsters," inmates who adapted to the surroundings of punitive segregation to the point where being in punitive segregation had lost its punitive effects. Moreover, it was looked at as a home and did nothing to deter violence. While we believe that it is necessary that the Department add a punitive element to its reform efforts to discourage violence, we believe it is vital that a marriage between punitive and therapeutic treatment be formed in order to have real reform. We have come to this conclusion based on many years of dealing with this violent population of inmate and the Department's current agenda of implementing therapy, as part of its reform efforts, so we incorporated that as part of our plan for N.I.C.

1. We believe that upon their admission to the facility, the inmates should be given a detailed mental health evaluation and that evaluation should be used to create a program specifically for the individual inmate.
2. That a schedule be made available to all staff to support these efforts and be adhered to unless there is a security risk. In the event that this happens, every effort should be made to get that service to the inmate as soon as possible.
3. If an inmate commits a violent act, he should be infraacted and placed in a more restrictive housing area (punitive segregation if necessary). All efforts should be made to continue providing a therapeutic solution. If the inmate continues to display violent or assaultive behavior, that inmate should be sent to a hospital for a mental health evaluation to assess whether or not he is in the right setting. In the event it is deemed that this may not be the right setting for the inmate, every effort should be made to place him in the correct settings. If the inmates behavior can be modified through therapeutic remedies the information should be shared with the therapeutic provider in accordance to HIPPA laws and a program should be implemented upon his return to N.I.C.
4. All housing area officers and supervisors will be active participants in the inmate's mental health program. In addition, all staff will be given training to recognize when an inmate is having a mental health crisis.

2016 DEPARTMENTAL STATISTICS:





**SLASHING
AND
STABBINGS**



**ASSAULTS ON STAFF
(UNIFORMED OR
CIVILIAN)**

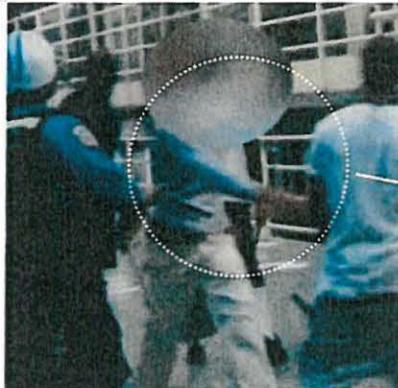
**A PROPENSITY FOR
VIOLENCE WHILE IN
CUSTODY**



**SPLASHING STAFF
WITH ANY LIQUID
REGARDLESS OF
THE CONTENT**



**SPITTING
ON
STAFF**



**INMATES WHO
INFLUENCE OTHERS
TO COMMIT CRIMES
AND VIOLATIONS**

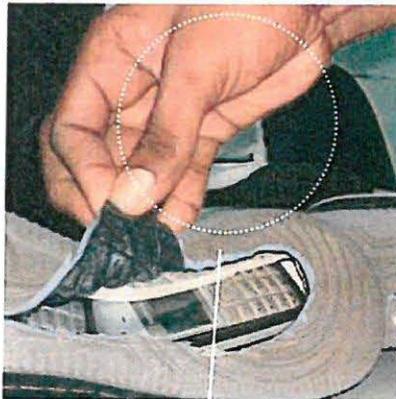
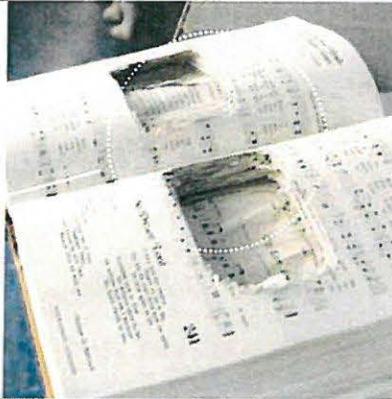


KNOWN GANG MEMBERS



DRUGS OR TOBACCO

INMATES CAUGHT PROMOTING OR IN POSSESSION OF CONTRABAND



WEAPONS



CELL PHONES



ANY CONTRABAND IN VIOLATION OF DEPARTMENT POLICY

RESTRICTIONS:

In the overview, we pointedly used the word “restrictions.” After looking at our data, N.Y.C. Department of Corrections data, policies, and rules, the policies of New York State, and of Federal Prisons, it is clear that what we are lacking in order to control the violence in our jail system and make Rikers Island safer is a lack of restrictions on those who violate department policy. This jail will have both rehabilitative and punitive elements. *All inmates’ minimum standards and services should be impacted, barbershop, telephone, law library, recreation, bag commissary with limits. These restrictions are vital for N.I.C. for the success of reform. One of the biggest factors leading to jail violence is organized crime. Gangs have been able to successfully smuggle drugs into our facilities, disrupting the safety and good order of these facilities. Inmate commissary accounts have repeatedly been one of the ways in which inmates receive payments for drugs because the department hasn’t set any limit on how much money an inmate can maintain in their accounts. The department has also failed to regulate who can place money in their accounts. Below is an example of how inmates utilize their commissary accounts.*

Ex: When an inmate purchases drugs from another inmate, he or she has an individual outside of jail, place the money in the drug dealer’s account or one or more of his associate’s accounts. If that money does not reach the agreed upon account that inmate will have a hit put on him or her. Furthermore, according to C.I.B. there was an unnamed inmate who sold drugs in the jails and made more than \$60,000. In fact, he used his illegal funds to bail himself out. This restriction is vital to the safety of anyone housed or working in the confines of the Department of Correction.

All inmates upon their arrival will be given a visit and call/commissary list. Each inmate will be allowed to place 5 names on both lists. A study of the department statistics shows this is the major reason for most of the violence in our facilities and is a major opening for the introduction of contraband. According to C.I.B., 347 visitors have been arrested trying to smuggle contraband into our facilities, which has led to drug trafficking, gang violence, slashings, stabbings, and has caused officers to use force. Inmates and visitors have been caught with everything from tobacco, synthetic cannabinoids such as K2, heroin, cocaine, scalpels and razors. As such, each inmate in N.I.C. will have to submit a list of five people that will be allowed to visit him. This list will be checked by security to see if anyone whose name was submitted has been arrested in the past for attempting to bring in contraband. If they have not been convicted, they will be allowed to visit with no contact. If they have been convicted, they will be banned from visiting any departmental facility, unless they have been cleared by security. After researching many states, we found that this is commonly practiced to stop the flow of drug trafficking and curb violence.

All phones will be monitored in compliance with departmental policies. If an inmate is found to have influenced anyone to either commit violent acts or smuggle contraband, he will be subjected to losing his phone privileges. If any inmate is caught improperly utilizing any number, he will be subjected to possible loss of phone privileges. In order to see that the inmate maintains contact with his family, he will be allowed to use a phone that will be provided to call from a pre-approved list that will be heavily monitored.

PLEXIGLASS APPROVED BY STATE COMMISSION ON CORRECTIONS:

Bronx Court clear plexiglass to prevent spitting and splashing on Correction Officers.



MAXIMUM SECURITY HOUSING AREA:



LESS RESTRICTED HOUSING AREA:



MODULAR:

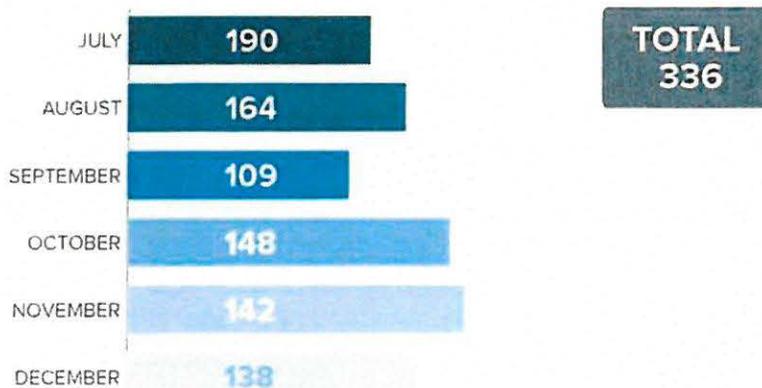


INMATES THAT COMMIT SPLASHINGS:

All inmates who are identified as splashers will be housed in the maximum security area. The quad area for this classification of inmates will not be allowed to shop in commissary for anything that they can use as a means of assault (cups, container, bottles, or any other object to throw any substance on staff). They will be housed in the last cells on the tier so they cannot disrupt services provided to all other inmates, nor have the ability to stop officers from carrying out his/her duties.



2016 SPLASHING INCIDENTS



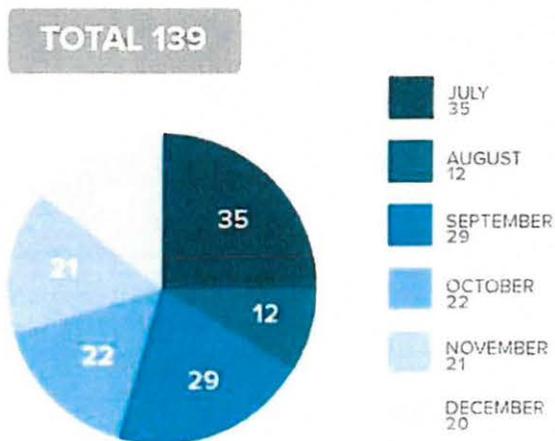
INMATES WHO SPIT:

Inmates who spit on staff, both uniformed and civilian will be placed in a spit mask in compliance with Department rules. This inmate will also have a Captain escort him to and from services.

All inmates in this facility are subject to punitive segregation in accordance to Department of Correction policies.



2016 SPITTING INCIDENTS



SEXUAL ASSAULT:

In recent years, the department has hired a large contingent of female officers bringing the total to approximately 40%. With that comes new and disturbing concerns regarding the rise of sexual assaults. C.O.B.A. believes in light of those concerns, the Department has to send a clear message to those inmates who would commit these offenses that sexual assault of officers will not be tolerated. Furthermore, C.O.B.A. believes that removing these individuals from the environment of those who they have assaulted is a societal norm and would discourage those who would copy that behavior, so placement in N.I.C. would provide both the punitive and therapeutic solutions to this growing problem.



www.bronxda.nyc.gov
www.facebook.com/BronxDistrictAttorney
www.nytcrr.com/BronxDAClark

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51-2017
For Immediate Release
June 22, 2017

RIKERS ISLAND INMATE CONVICTED OF ATTEMPTED FORCIBLE TOUCHING OF FEMALE CORRECTION OFFICER

Bronx District Attorney Darcel D. Clark today announced that a Rikers Island inmate has been convicted of Attempted Forcible Touching of a female correction officer.

District Attorney Clark said, "The sexual degradation of a correction officer doing her job is disgusting and unacceptable. We will seek justice for any crimes committed on Rikers Island, and I hope this conviction reinforces our message that we will hold offenders accountable."

District Attorney Clark said the defendant, Chavarr Gilliam, 26, was convicted on June 21, 2017 after a bench trial before Criminal Court Judge Bahaati Pitt of Attempted Forcible Touching and second-degree Harassment. He faces up to three months in jail when he is sentenced on July 12, 2017. The defendant is serving 18 years in prison for a robbery conviction and was being held at Rikers Island on a pending Manhattan case.

According to the investigation, on February 7, 2017, in the George R. Vierno Center, Gilliam passed a female correction officer and proceeded to touch her buttocks in front of several other inmates.

The case was prosecuted by Assistant District Attorney Jared Rosen, and Sheryl Konigsberg, Supervisor in the Rikers Island Prosecution Bureau, under the supervision of James Brennan, Deputy Chief of the Rikers Island Prosecution Bureau, Donald Hanratty, Deputy Chief of the Rikers Island Prosecution Bureau and Deanna G. Logan, Chief of the Rikers Island Prosecution Bureau, under the overall supervision of Stuart Levy, Deputy Chief of the Investigations Division, and Jean T. Walsh, Chief of the Investigations Division.

District Attorney Clark thanked Department of Correction Investigator Phil Lee, DOC liaison Scott Frank and former Assistant District Attorney Travis Long.

SEXUAL ASSAULTS ON OFFICERS

40% OF NYC CORRECTIONS OFFICERS ARE FEMALE

Gutierrez, Rodrigo 11720374Z 4411609993 5/24/17 15:30

Mcneil, Tark	13126362P	3491507418	4/15/17	10:30	
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Gilliam, Chavarr 02535962N 3001600524 5/24/17 6:26

Crobert, Kevin	01776099Y	2411507005	11/18/16	18:29	
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Motta, Michael 06585233M 4411505573 8/10/2016 10:47 3104/16

Francis, Derrick	02992329P	1411605555	8/17/2016	8:30	
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Walston, Daniel 00167285K 8951601354 8/23/2016 14:00 3317/16

Mangum, Terell	13506884N	3491608993	11/10/16 Thurs.	11:22	4392/16
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VCBC

Log Book Entry

(ADULT/GP), INMATE GUTIERREZ (NSRG, CL. 4) REACHED THROUGH THE A STATION WINDOW AND TOUCHED OFFICER GRATE (DOA: 12/16/04) IN THE GROIN AREA

(ADULT/GP), INMATE GUTIERREZ (NSRG, CL. 4) REACHED THROUGH THE A STATION WINDOW AND TOUCHED OFFICER GRATE (DOA: 12/16/04) IN THE GROIN AREA

0838/17

AMKC

Criminal Act

(M.O./ADULT), INMATE MCNEIL (BLOOD, CL 14, ENH REST) INAPPROPRIATELY TOUCHED HHC-REGISTERED NURSE CLARK (PACE PROGRAM).

(M.O./ADULT), INMATE MCNEIL (BLOOD, CL 14, ENH REST) INAPPROPRIATELY TOUCHED HHC-REGISTERED NURSE CLARK (PACE PROGRAM).

GRVC

Log Book Entry

(ADULT/GP), INMATE GILLIAM (BLOOD, VOP, CL. 22) WALKED PASS OFFICER DEMPS (DOA 08/06/15) DESK AND FORCIBLY TOUCHED HER INAPPROPRIATELY

(ADULT/GP), INMATE GILLIAM (BLOOD, VOP, CL. 22) WALKED PASS OFFICER DEMPS (DOA 08/06/15) DESK AND FORCIBLY TOUCHED HER INAPPROPRIATELY

GRVC

AOS

FORCIBLY TOUCHED AN OFFICER INAPPROPRIATELY. (ADULT/GP), SRG CRIP, CL-19

1

OBCC

UOF (P) - AOS (Actual)

INMATE MOTTA WALKED BY OFFICER STAPOR'S DESK AND TOUCHED HER IN THE BUTTOCK AREA

(ENH. REST., BLOOD, RED ID, ICR, CL.16, CELL 47)

BKDC

Log Book Entry

INMATE FRANCIS (ADULT, SRG- BLOOD, CL.15, VOP, ICR, CELL #5, 7C, GP) INAPPROPRIATELY TOUCHED OFFICER

"INMATE FRANCIS (ADULT, SRG- BLOOD, CL.15, VOP, ICR, CELL #5, 7C, GP) INAPPROPRIATELY TOUCHED OFFICER"

BHPW

UOF (P) - AOS (Actual)

CAPTAIN AND OFFICER WERE CONDUCTING A TOUR OF AREA. INMATE WALSTON WITHOUT CAUSE OR PROVOCATION ASSAULTED CAPTAIN BY SMACKING HER IN THE BACK OF THE HEAD AND FORCIBLY TOUCHED HER INAPPROPRIATELY

(MO, ADULT, SRG BLOOD, CL 23, MO)

RNDC

UOF (C) - AOS (Actual)

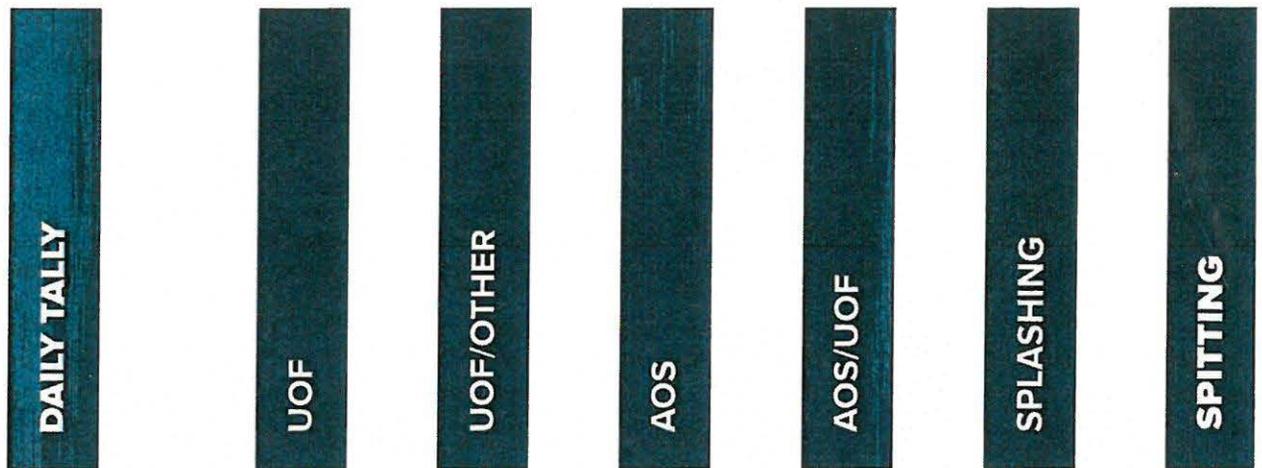
FORCIBLY TOUCHED AN OFFICER INAPPROPRIATELY IN HER UPPER TORSO.

(ADOL/GP), NSRG, CL-16

3 (9/11, 9/30)

FEDERAL MONITOR'S REPORT OF CORRECTION DEI

NOVEMBER 20, 2015 - DECEMBER 20, 2016 1,335 INCIDENTS REPORTED



	DAILY TALLY	UOF	UOF/OTHER	AOS	AOS/UOF	SPLASHING	SPITTING
July-Dec. 2016	JULY	133	187	78	24	46	33
	AUGUST	183	165	71	25	55	12
	SEPTEMBER	198	109	34	55	44	28
	OCTOBER	168	148	61	42	65	22
	NOVEMBER	212	142	76	19	68	21
	DECEMBER	172	138	43	35	59	20
	TOTAL	1066	889	363	200	337	136

	DAILY TALLY	UOF	UOF/OTHER	AOS	AOS/UOF	SPLASHING	SPITTING
Jan.-June 2017	JANUARY	222	125	26	67	61	33
	FEBRUARY	159	135	66	28	55	19
	MARCH	165	95	55	38	65	22
	APRIL	176	142	25	57	40	17
	MAY	176	112	41	80	46	16
	JUNE	210	136	24	76	52	27
	JULY	-	-	-	-	-	-
TOTAL	1108	745	237	346	319	134	

TOTAL INCIDENTS FOR 2016-2017

TOTAL	2174	1634	600	546	656	270
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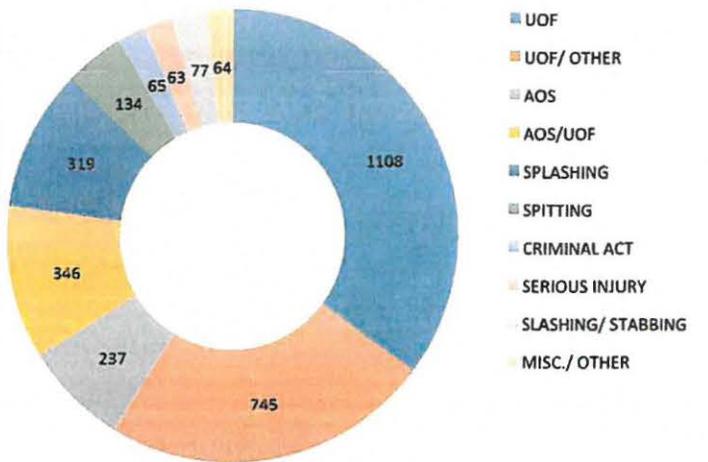
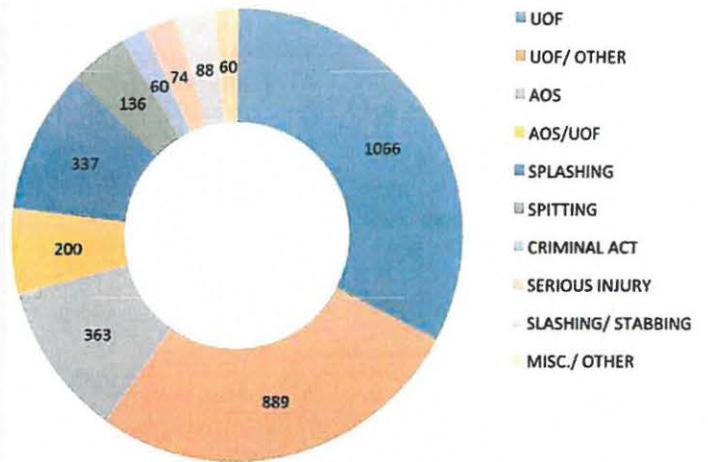
Monthly Violence Tracker Tally

July 2016-June 2017

CRIMINAL AC	SERIOUS INJURY	SLASHING/ STABBING	MISC./ OTHER
-------------	----------------	--------------------	--------------

7	7	11	11
15	20	15	12
4	5	20	2
13	13	17	13
7	16	13	12
14	13	12	10
60	74	88	60

15	12	11	7
8	7	17	7
11	16	17	10
4	13	12	18
14	4	6	14
13	11	14	8
-	-	-	-
65	63	77	64



125	137	165	124	Total Number of Violent Incidents
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INMATE FIGHTS:

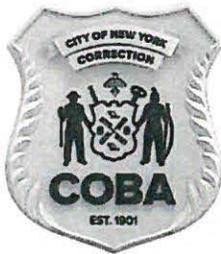


2016 UOF/OTHER (INMATE FIGHTS)



CONCLUSION:

We have mentioned some of the clear gaps in this reform agenda, which have led to a rise in jail violence. The C.O.B.A. is not just reporting what's wrong, we have offered real solutions that we know if implemented correctly, will do a lot to significantly reduce inmate violence and the need for officers to use force. By adding therapeutic programming we think we have offered something for those who say Punitive Segregation harms the developing minds in a less restrictive setting. The C.O.B.A acknowledges that everyone has to play a big role in ushering in reform. We hope that this is an opportunity for the union that represents officers to demonstrate our willingness to buy in to meaningful reform, if it is truly reform that all of us can live with.



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CORRECTION OFFICERS' BENEVOLENT ASSOCIATION, INC.
"PATROLLING THE TOUGHEST PRECINCTS IN NEW YORK"

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JOSEPH BRACCO
1st Vice President

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2nd Vice President

KAREN TYSON
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KENYATTA JOHNSON
Corresponding Secretary

DANIEL PALMIERI
Recording Secretary

BENNY BOSCIO
Sergeant-At-Arms

ALBERT CRAIG
First City-Wide Trustee

ANGEL CASTRO
Manhattan Borough Trustee

FREDERIC FUSCO
Queens Borough Trustee

PAULETTE BERNARD
Brooklyn Borough Trustee

**BISHOP WILLIAM
RAYMOND WHITAKER II**
Chaplain

WILLIAM KWASNICKI
Retiree Consultant

KOEHLER & ISAACS, LLP
COBA Attorney

April 6, 2018

Cynthia Brann, Commissioner
New York City Department of Correction
75-20 Astoria Blvd
East Elmhurst, New York 11370

**Re: Approaches to Restoring Safety in the New York City
Department of Correction**

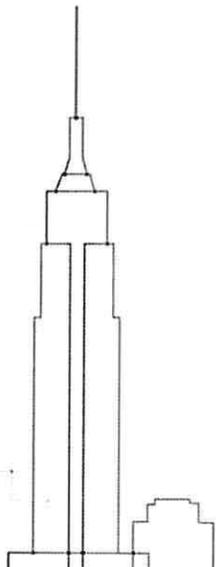
Dear Commissioner Brann:

I write in response to your letter of February 18, 2018 – in turn a response to my February 9, 2018 letter. First thank you for acknowledging COBA as a joint stakeholder with the Department, as well as deeming COBA's suggestions worth consideration and that they are serious suggestions.

I am sure that as Commissioner you recognize the daunting task of running a Department with so many "channel partners" – from the Department of Health Mental Hygiene, Health and Hospitals Corporation to various Prosecutors' Offices, the Department of Education and the Unified Court System.

This task is made more complicated by the various entities concerned with the business of "care, custody and control" which have been "assumed" by the *Nunez* Monitor and his staff, the Mayor of the City of New York, the New York City Department of Investigation, the New York City Board of Correction ("BOC") and the New York State Commission of Correction ("SCOC").

I would like to take the opportunity to address several interlocking issues.





PUNITIVE SEGREGATION

The Department of Correction is legally bound by the United States Supreme Court to take reasonable measures to protect inmates from violence. These individuals must be controlled by separation, restricted movement and limited access to inmates and staff. The Supreme Court has ruled that if officials know of a substantial risk of harm to a prisoner, but knowingly disregard the risk by failing to take reasonable measures to abate it, and the prisoner suffers serious harm, the officials may be found liable. Indeed, federal courts in New York have squarely addressed this as concerns the DOC and Rikers (¹). This has led to historic increases in settlements and judgments paid out.⁽²⁾

This topic is especially poignant since October 11, 2016.⁽³⁾ That is the date that Mayor DeBlasio announced an end to punitive segregation for young adults aged 19-21. While his press release (⁴) touted it as a reform -- "*New York City becomes first in nation to reform practice for young adults*"-- it ought to have been titled "*New York City regressively abolishes crucial tool relied upon to keep City workers safe.*" One man's idea of a reform is undermined by the data proving how wrong the term "reform" is in this case. As one New York politician put it, "Everyone is *entitled* to their own *opinions*, but they are *not entitled* to their own *facts*."

¹ [Shuford v. City of New York](http://www.legal-aid.org/en/lawreform/lawreform/prisonersrightsproject/activecases/violenceandpersonalsafety/shufordvcityofnewyork.aspx), 09 Civ. 0945 (PKC)(SDNY)(failure to protect adolescent inmate from other inmates), last accessed on March 7, 2018 at <http://www.legal-aid.org/en/lawreform/lawreform/prisonersrightsproject/activecases/violenceandpersonalsafety/shufordvcityofnewyork.aspx> and [Fisher v. Koehler](http://www.legal-aid.org/en/lawreform/lawreform/prisonersrightsproject/activecases/violenceandpersonalsafety/fishervkoehler.aspx), 83 Civ. 2128 (MEL)(SDNY)(spurred suit where Court identified, *inter alia*, lack of proper classification of prisoners and adequate security staffing caused inmate on inmate violence) at <http://www.legal-aid.org/en/lawreform/lawreform/prisonersrightsproject/activecases/violenceandpersonalsafety/fishervkoehler.aspx>

² The FYs 2013–2014 Claims Report projected an increase in the number of DOC claims filed and the cost for settlement and judgment payouts. Following the surge in DOC settlement and judgment costs to \$27.1 million in FY 2015, from \$11.1 million in FY 2014, FY 2016 and FY 2017 saw a continuation of this upward trend with \$32.9 million and \$37.3 million respectively in settlement and judgment costs—a 236 percent increase between FY 2014 to FY 2017. See February 20, 2018 Claims Report: FY 2017, annexed as "K."

³ See, Ex. "A" Opinion by Joseph Ponte (Fmr. Commissioner NYCDOC) *Leading the Way on Ending Punitive Segregation*, Gotham Gazette, October 11, 2016 last accessed March 4, 2018 <http://www.gothamgazette.com/opinion/6566-leading-the-way-on-ending-punitive-segregation>

⁴ See Mayor's Press Release of October 11, 2016, annexed as "B."



To date neither the Mayor, nor any of those “assuming” supervisory roles over the DOC, have had a spark of a suggestion to replace this tool. And, coming as no surprise to all levels of staff at the DOC, this most violent population has only increased acting out in violent assaults on staff and detainees alike. Indeed, as most recently pointed out by the New York City Comptroller, nothing has changed since punitive segregation was abolished and replaced by the Mayor’s expensive programs and private contractors McKinsey & Co.⁽⁵⁾ (Receiving nearly 30 million dollars!) Violence has seen a steady increase for the past decade (441 per 1000 average 2008 daily population to 1,332 per 1000 average population in 2017).⁽⁶⁾

The great irony is that the historic removal of a necessary tool – punitive segregation for the tiny (>100) minority of very violent young adults and adults - caused the increased use of punitive segregation in the first place. The perverse fact is that the BOC under the Bloomberg administration tried to tie the use of punitive segregation to an increase in violence. Now, after Bloomberg is long gone, it is clear that the drop in punitive segregation has been met with an increase in serious violence against staff. This is because – notwithstanding the valid argument that the mental health of a NORMAL young person may be impacted by long-term segregation – the mentality of these young mostly gang-affiliated members is already well set. It is a mistake to ignore the possibility that these offenders defy the studies cited by critics.

What I can only see as fear by the management of the DOC of the BOC (and its audience of inmate advocates) has resulted in a dilemma that has *increased* violence. The irony is not missed on Correction Officers that the attempt to reform and “humanize” the jails

⁵ The record of this company (now having received several contracts from DeBlasio) is replete with failure and scandal. One wonders whether the contracts were vetted at all. Given the “HUB” housing resolution they implemented one wonders why this company still has a seat at DeBlasio’s feeding trough. Viz. - <https://nypost.com/2017/02/27/rikers-anti-violence-consultants-bill-balloons-despite-spike-in-assaults/> ; <https://www.equities.com/news/a-look-at-mckinsey-company-s-biggest-mistakes> ; <http://business.time.com/2013/09/10/mass-layoffs-overpaid-ceos-blame-mckinsey/> ; <http://www.independent.co.uk/news/business/analysis-and-features/mckinsey-how-does-it-always-get-away-with-it-9113484.html> ; <https://www.ft.com/content/71c6f115-0c5c-33ed-bc00-812263f39d2f> ; https://www.washingtonpost.com/business/economy/two-banks-drop-mckinsey-in-fallout-from-south-africa-scandal/2017/10/30/8c49815e-bd85-11e7-959c-fe2b598d8c00_story.html?utm_term=.c90ef0eb9ce2

⁶ See, Ex. “C,” Comptroller’s FY 2019 Preliminary Budget Presentation, last accessed March 4, 2018 <https://comptroller.nyc.gov/reports/comptrollers-fy-2019-preliminary-budget-presentation/>



has lead to increased infractions where inmates dehumanize themselves and others—especially where inmate violence is concerned. Where once punitive segregation was an option there now is simply a void. Arguments about the ineffectiveness of punitive segregation have now been tested and found wanting for some – for any – solution.

LOOKING BACK TO PRE-OCTOBER 2016

It would be too easy to dust off old letters produced by COBA over the years to try to convince the DOC to take back its power from the Board of Correction. The BOC, and others without the power or expertise to run a large system let alone a jail system, have run rough-shod over an imperfect system but one which worked better ten years ago than today. Instead of parading opinions from COBA I've taken the liberty of quoting from some experts in the field – your predecessors and one your almost replacement.

The following is taken from a letter from Former Commissioner Martin Horn.⁽⁷⁾ No comment is needed, but a careful read of this supports the position that COBA holds:

When the Board first adopted its rules, it included Sec 1-02 (e) (v) that states," Prisoners placed in the most restrictive security status shall only be denied those rights, privileges and opportunities that are directly related to their status and which cannot be provided to them at a different time or place than provided to other prisoners." It is clear that the Board acknowledged that there might well be **a classification of prisoners whose management would require limitation of the rights, privileges and opportunities afforded general population prisoners.**

....

In many jails throughout the U.S. and even within New York State, prisoners are not routinely out and about for more than an hour a day. New York City is an anomaly by providing that prisoners are allowed to "lock out" of their cell for up to 16 hours a day. The Minimum Standards **of the State Commission on Corrections that govern the operation of the City's jails** and those of all other jails in the State nowhere require that length of "lock out" time. Only New York City affords that "privilege" to its prisoners.

The proposal for ESH is most definitely not solitary confinement and should not be seen as such. **Those, like the Jail Action Coalition who conflate what the Department is proposing for ESH with solitary confinement do a disservice to the campaign against solitary confinement. They diminish the importance of our national conversation about solitary confinement by alleging that ESH is,**

⁷ A copy of Martin Horn's letter to former BOC Chairman Gordon Campbell is annexed here to as Ex. "D."



and they misguidedly imperil the very prisoners they purport to care about by trying to deprive the Department of this sensible tool.

Indeed, the very person picked by Mayor DeBlasio to make the changes envisioned by the Mayor acknowledged COBA's position—that is until his mind was changed by the Mayor's decision by fiat to ban a necessary tool from the tool box. The necessity of this tool was so great that repeated variances were sought since 2015's punitive segregation rule-making to keep jails safe, this one from the June 2016 BOC meeting:

Pursuant to §1-15(f) of the New York City Board of Correction's ("Board") Minimum Standards, the New York City Department of Correction ("Department") requests the renewal of the six (6) month limited variance to §1-17(d)(2) and the second sentence of §1-17(d)(1) of the Board's Minimum Standards (Punitive Segregation) to allow the Department, in highly exceptional circumstances presenting safety and security concerns, to waive the requirement that inmates be immediately released from punitive segregation for seven (7) days after they have been held in punitive segregation for thirty (30) consecutive days, which was granted by the Board at the December 16, 2015 public meeting. This variance renewal is requested for the maximum permissible period of six (6) months.

...

The Department continues to make a good faith effort to comply with the minimum standards, but additional time is needed to develop alternative options to ensure the safety and security of the facilities. In the interim, it is imperative that the Department be equipped with the various tools necessary to immediately and safely respond to violent acts. We therefore ask that the Board take up for immediate consideration the requested limited variance renewal for six (6) months.⁸

Again, at the July 2016 (⁹) meeting the Commissioner came to the BOC hat in hand to request that the Board allow him to do his job of maintaining safe jails:

Pursuant to §1-15(b) of the New York City Board of Correction's ("Board") minimum standards, the Department writes to request two

⁸ See "E," June 3, 2016 letter from Commissioner Ponte to Chairman Brezenoff, Limited Variance Regarding Implementation of Young Adult Plan, last accessed March 6, 2018 <http://www1.nyc.gov/assets/boc/downloads/pdf/DOC%20Variance%20Renewal-%20Waiver%20of%207day%20Release%20from%20PSEG-%20Limited%20%206%20month%20Variance%20Request%20Letter%206.3.16.pdf>

⁹ See "F," June 30, 2016 letter from Commissioner Ponte to Chairman Brezenoff, Limited Variance Regarding Implementation of Young Adult Plan, last accessed March 6, 2018



six (6) month limited variances from BOC minimum standards. First, from §1-02(c)(1) which as of July 12, 2016¹⁰ requires inmates ages 18 through 21 be housed separately and apart from inmates over the age of 21. Second, from §1-17(b)(1)(ii), which requires, as of June 30, 2016¹¹, the exclusion of inmates ages 18 through 21 from punitive segregation. While the scope of the BOC minimum standards §1-02(c)(1) and §1-17(b)(1)(ii) are applicable to young adults ages 18 to 21 inclusive, the Department is seeking these variances only for young adults ages 19 to 21 years old. As noted above, the Department has already ended punitive segregation for the 18-year old population.

...

As we moved towards both ending the use of punitive segregation and eliminating comingling of all young adults (18 to 21 years old), maintaining the safety and security of staff and inmates has been paramount. Over this month, June 2016, the Department monitored Second Chance and TRU, and moved young adults out of punitive segregation placement to these units or to other housing options. **Initially**, GMDC saw continued success and safe outcomes with these efforts.

However, as noted by the Board's tours and communications with the Department regarding GMDC, concurrent with the Department's own observation of the situation, a marked shift occurred shortly after the first week in June when the Department started to increase the number past 700 of young adults housed together in GMDC. In particular, this included an exceptionally high increase in the number of high-risk young adults (young adult inmates with particularly violent histories or **strong gang involvement**) that were transferred into GMDC surging from 40 to 76 from the last week of May to the second week of June. The Department had been trying to slowly transition such high-risk young adults into the facility, averaging 6-10/week. Prior to GMDC's young adult population reaching 700 and increasing the number of high-risk young adults, **GMDC averaged 5 to 6 alarms per day. After, the average number of alarms doubled to 12 per day. One day during this period, alarms increased to 26**, more than one per

¹⁰ Footnote 1 in original: Based on variances granted by the Board on September 8, 2015, December 16, 2015, and January 12, 2016 extending the October 15, 2015 deadline for the housing of inmates ages 18 to 21 separately and apart from inmates over the age of 21.

¹¹ Footnote 2 in original: Based on variances granted by the Board on November 10, 2015, January 12, 2016, and May 26, 2016 extending the January 1, 2016 deadline for the exclusion of inmates 18 to 21 years of age from punitive segregation to June 30, 2016.



hour. When daily alarms remain low, they can be addressed without significantly affecting day-to-day operations, however as the number of incidents and alarms increased exponentially it had a facility-wide impact.

Since the beginning of June 2016, **there was a pronounced spike in the number of incidents, particularly concerning, the rise in serious and violent incidents. This rise in incidents -- ranging from inmates refusing orders to slashings -- has been attributed to the increased number of "high risk of violence" young adults moved to GMDC in early June.**

...

The Department has consulted with the Nunez Monitor throughout the implementation of the Young Adult plan and has advised the Monitor of the facts and circumstances set forth above. **The Monitor and his team of experts** - who have experience eliminating the use of punitive segregation in other jurisdictions - have continuously advised the Department on the need to be thoughtful and deliberate in our approach to punitive segregation reforms and **have cautioned that moving too quickly towards the ultimate goal of ending punitive segregation can undermine the success the Department has already achieved** through reforms to the management of this population. The Monitor has advised the Department the variance request is consistent with sound correctional practice and that he believes it represents the most reasonable and prudent approach in light of the current facts and circumstances.

The balance of that letter seeking (again seeking) a variance to try new approaches without the tool of punitive segregation should be taught in every correction class at John Jay and other Colleges teaching Criminal Justice. **It shows a professional dealing with bureaucrats.** It goes on for 5 single spaced pages and expresses barely concealed frustration at a lifelong correction professional trying to manage a jail with one hand tied behind his back. Indeed, the Commissioner even invoked the authority of the Monitor in pleading with the amateurs sitting on the Board of Correction for the time and tools needed to try to achieve reform goals that take time to reach. **And yet, the Mayor cut this all short with a politically motivated and misguided announcement that took the corrections community – including no doubt yourself and Mr. Ponte – by complete surprise.**

When Ponte was obliged to resign his position the first name floated for his possible replacement was an innovator with no jail experience. What he did have was a willingness to follow the Mayor's insistence on being the first in the nation to rid a jail system of a necessary tool (not unlike Ponte prior to his seeing the scale of the problem outlined above). However, in a thoughtful paper co-written and published by the U.S. Department of Justice, **Dan Pacholke described his many suggestions for segregation reform that undercut the Mayor's rush to be first at all costs.** In that paper, he tacitly critiqued the Mayor's knee-



erik abolishing of punitive segregation as merely “emptying beds.” Published in 2016, “More Than Emptying Beds: A Systems Approach to Segregation Reform¹²,” acknowledges need for segregation as a tool even while seeking its abolition:

Segregation has been and will continue to be a tool that is necessary to manage legitimate safety concerns. Reforms in the use of this practice will only be successful if the safety of inmates and staff is maintained or improved in the process. To impact the health and well-being of people under correctional control, reducing the use of segregation on its own by only “emptying beds” is of limited value. To make an impactful change, a systems approach to this complex issue is essential.

MANAGING THE JAILS

I want to acknowledge and thank you for something that you wrote and that I hope will come to fruition:

. . . [A]t the jail management level (,) as Commissioner I have dedicated substantial time, energy and resources to staff leadership development, and **I share your belief that Wardens should be empowered to run their jails, and be held accountable for their own problematic inmates.**

This statement is the heart of some of the problems, and the fixes, that we have in our particular system. Too often in the past – just like with the present BOC—those unaware of the vagaries of “care custody and control” of particular populations and running jails try and fail to stuff a square peg into a round hole. You yourself were able to see Ponte make attempts to implement change while unable to also maintain safer jails. I fervently hope that we can work together to change that reality he faced.

Wardens and other managers should be tasked with effectively and judiciously utilizing the existing inmate disciplinary sanctions and analyzing their effectiveness. Let’s assume that if inmate disciplinary sanctions have their desired effect, either in whole or in part. In such a world we can envision a Department with less restrictive housing, greater compliance, fewer injuries to staff and inmates, and a real change in morale and culture. **However, we are not living in that world at this time.** And sometimes with two steps forward we are forced back one in order to reassess the means we are trying to use to meet our goals.

¹² See “G,” Dan Pacholke and Sandy Felkey Mullins, J.D., *More than Emptying Beds: A Systems Approach to Segregation Reform*, NCJ-24958, BJA, 2016 last accessed March 6, 2018 <https://nicic.gov/more-emptying-beds-systems-approach-segregation-reform>



If change is to be honest at the managerial level, and evidence-based analysis and effective action is to be implemented going forward, incidents of assaults of uniformed staff members must be listed as they are when they occur to non-uniformed staff. The Department does not define these as criminal acts UNLESS it occurs to the non-uniformed staff. This must include incidents of “splashing.” These “E” Felonies⁽¹³⁾ (against uniformed staff only) also are absent from weekly DOC reporting to “Compstat.” Also, left out of DOC weekly reporting are logbook entries, because they are considered non-reportable incidents. Again, one needs to seek the difficult answers for the seeming discriminatory treatment of our law enforcement membership when compared with those serving elsewhere.

Also, a disturbing number of incidents are downgraded from “B” and “C” Use of Force incidents to “P.” These may or may not be justified, but this is one area where the union would like to discuss the process of classification of incidents where staff assaults are concerned. However, in COBA’s experience the numbers don’t often add up – and therefore the actual circumstances in the jails are not properly presented to those who need to rethink the policies that have been implemented which have eroded your mission as Commissioner.

THE BOARD OF CORRECTION

Given the monthly browbeating of the DOC by the BOC’s volunteer members it is no wonder that your response misplaces authority that the BOC has wrongfully assumed not only during your tenure, but also essentially going back over a decade. You stress the purported supervision by those serving on the BOC:

We are reviewing the proposals set forth in your letter and will explore how best to raise and address these issues, as many are focused on changes that must be made through changes to the Board of Correction minimum Standards.

However, the Board does not have the power you ascribe to that body. The members of that body as a whole, and their entire staff (surprisingly few of which have any corrections experience), certainly do not have the skillset needed to oversee one of the largest jail system (not a “prison”) in the world. However, the Board misses this distinction between a jail and a prison and insists that somehow reforms can be made to detainees in the six week average stay in our custody. This is – of course- absurd but adding insult to injury the Board would “vet” practical correction methods against their aspirations of a more humane jail system.

¹³ N.Y. Penal Law § 240.32 (McKinney).



Member Cohen said he was glad that DOC had agreed to implement a due process procedure regarding the use of restraints in Secure; however, he was disturbed to find out that the Department had been using three-point restraints in the Unit without any discussion with the Board or medical staff. A while ago, DOC did not place anyone in desk restraints, but now, an increasing number of people were being placed in two-point restraints, and the Board just found out that young adults were being placed in three-point restraints in the Secure Unit. Member Cohen said he found this practice very disturbing, particularly since it occurred without any directive describing the use of such restraints and, he believed, without any discussion with medical staff. He also noted that the Department's restraint policy permits the use of restraint chairs, which is a very dangerous device.

Taking another case in point – this one a legal case – the Legal Aid Society and the Board of Correction wanted legal “assistants” to be given access to the jails. The Commissioner denied access based wholly on a safety analysis of those individuals. The Court held “We conclude that at least in this area the decisions of the Board of Correction can have *no more than advisory force*.” Legal Aid Soc. v. Ward, 457 N.Y.S.2d 250 (1982), *aff'd*, 61 N.Y.2d 744 (1984). Rather than being found to be acting arbitrarily and capriciously, the powers granted to the Commissioner were analyzed on the basis of basic rationality. Moreover, the powers of the Board to circumscribe the Commissioner's primary goal of safety in the jails were affirmed by New York State's highest Court.

In short that Appellate Court found and Court of Appeals affirmed:

- 1-- The Board of Correction did not have power to render appellate decision binding on Commissioner of Correction as to granting of access pass to employee of Legal Aid Society - -- Under the City Charter, the Board is directed to “establish minimum standards” for care, custody, etc., of persons held or confined under jurisdiction of Department of Correction but power to establish minimum standards is quasi-legislative power;
- 2- Commissioner of Correction is charged with security of institutions under his jurisdiction and cannot be said to be acting arbitrarily and capriciously in refusing general access pass to man who had been convicted of attempt to murder police officer; and,
- 3- The Court is justified, in exercise of its discretion, in declining to issue order of mandamus to compel the Correction Commissioner, who is the official charged with security of institutions under his control, to restore general access pass to particular person, where good faith reasonable grounds existed to believe that restoration of such pass compromises or endangers security of those institutions.

[2017/May%209%20%202017%20Board%20Meeting%20Minutes%20-%20APPROVED.pdf](#)



Although not limited to Dr. Cohen, nearly monthly he or another of our Board members expresses surprise and consternation at not *first being asked* for permission to keep jails safe. This is infuriating to watch when those of us in this business since the 1980s know that the responsibility and rights lay with the Commissioner of the Department of Correction. Period. Can the BOC litigate or enjoin Department action or inaction? No. Can the BOC put a halt to necessary safety policies and directives that are accepted practice in jails around the world. No.

THE BOARD OF CORRECTION IS NOT A THRESHOLD “COURT” TO JUDGE SAFETY MATTERS DETERMINED BY THE DEPARTMENT OF CORRECTION. The BOC is an *advisory body only*. And, at that, to the City Council and to the Mayor, who in turn are supposed to take actions and make laws. The Board of Correction is meant to make recommendations and set “minimum standards” for conditions of confinement and correctional health and mental health care in all City correctional facilities. However, the advisory nature of the Board when compared to the traditional supervision of the SCOC – which ironically is the subject of an Article 78 proceeding filed by DeBlasio on March 5, 2018. Notwithstanding, the powers of the Board of Correction are limited:

The board, or by written designation of the board, any member of it, the executive director, or other employee, shall have the following powers and duties:

The preparation for submission to the mayor, the council, and the commissioner of proposals for capital planning and improvements; studies and reports concerned with the development of the department's correctional program planning; and studies and reports in regard to methods of promoting closer cooperation of custodial, probation, and parole agencies of government and the courts; and

The evaluation of departmental performance.

New York City, N.Y., Charter § 626, New York City, N.Y., Charter § 626 (c)(3)(4)

Although this may be excessive, by means of comparison with the above it is worth quoting (with emphasis) the language of the City’s Charter granting YOU the authority that has been ceded by your predecessors.

The commissioner shall have:

1. Charge and management of all institutions of the city, including all hospital wards therein for the care and custody of felons, misdemeanants, all prisoners under arrest awaiting arraignment who require hospital care, including those requiring psychiatric observation or treatment and violators of ordinances or local laws and for the detention of witnesses who are unable to furnish security for their appearance in criminal proceedings, except such places for the



detention of prisoners or persons charged with crime as are by law placed under the charge of some other agency.

2. **Sole power and authority** concerning the care, custody and control of all court pens for the detention of prisoners while in the criminal courts of the city of New York, the family court of the state of New York within the city of New York, the supreme court in the counties of New York, Bronx, Kings, Queens and Richmond and of all vehicles employed in the transportation of prisoners who have been sentenced, are awaiting trial or are held for any other cause.

3. Charge and management of persons or any other institution of the city placed under his jurisdiction by law.

4. **All authority**, except as otherwise provided by law, concerning the care and custody of felons, misdemeanants and violators of local laws held in the institutions under his charge.

5. **All authority in relation to the custody and transportation of persons held for any cause in criminal proceedings and all** prisoners under arrest awaiting arraignment who require hospital care, **including those requiring psychiatric observation or treatment**, in any county within the city.

6. General supervision and responsibility for the planning and implementation of re-training, counseling and rehabilitative programs for felons, misdemeanants and violators of local laws who have been sentenced and are held in institutions under his charge.

N.Y.C. Charter, Chapter 25 Section 623.

The Commissioner and the Chief of the Department MISTAKENLY believe that they have to answer to this Mayoral Agency, and that often actually boils down to the recommendations by inmates' rights advocates (with combined budgets and staffs far exceeding that of the Board of Correction). Why would one of the largest City Agencies need to "kowtow" to a tiny oversight group unlike any other uniformed service in The City of New York (or other large agencies like the departments of Education, Mental Health and Hygiene or Housing)? The answer is - - THE DOC DOES NOT. Just imagine the FDNY or NYPD sitting monthly for the type of scolding unqualified appointees give the DOC.

The Appropriate agency for monitoring the actual running of jails is the SCOC. As was recently shown, (and now is in litigation) that body and the Governor have the power to shutter jails, deny plans to build housing units and make architectural/ engineering changes, (and as they have done several times), and find the City DOC in violation of long published and enforced STATE minimum standards. Indeed, the State Commission on Correction has issued violation letters to the New York City Department of Correction for the failure to



properly punish violative inmates and maintain a backlog of hundreds who owe “bing” time. This was during this very administration under Ponte. And yet, the backlog of inmates who – after due process hearings- owe time in segregation continues at staggering rates.

MENTAL HEALTH ISSUES

At a Board of Correction meeting at of September 13, 2016 the DOC was sharply criticized for failing in managing the mental health needs of inmates. The DOC/HHC / DOHMH partnership¹⁵ seems to be standing still or moving at a snail’s pace at getting those in need to their mental health appointments. Crucially - nowhere in the discourse are persistent violent offenders discussed. Here I reference those unfortunate few who have scant chance at being rehabilitated in one of the model units touted by Correctional Health and are not one of those lucky few handpicked due to predictions that they may benefit. Nonetheless, the most violent >100 individuals like “John Doe” are certainly in need of a mental health solution for their persistent acts of destruction of property and assaults on other persons.

With the largest mental health institution on the East Coast, why is it that the “Doe” inmates are not being diagnosed and appropriately housed in a mental health facility where illness may be treated? The mental health staff at the DOC has been unable to grapple with these most violent inmates – unrealistically expecting miracles of minimally trained Correction Officers rather than mental health professionals according to *BOC minimum standards*. Why have we not investigated medical solutions to these violent mentally unsound individuals? The violence caused, as well as destruction to city property exhibited, are NOT the actions of individuals NOT suffering from mental health problems – though untreated/ undiagnosed. Can we not find mental health solutions such as they do with violent inmates in other jurisdictions? After all, it is your CHARGE to deal with these individuals: “Charge and management of all institutions of the city, including all hospital wards therein for the care and custody of felons, misdemeanants, all prisoners under arrest awaiting arraignment **who require hospital care, including those requiring psychiatric observation or treatment.**” See, N.Y.C. Charter, Chapter 25 Section 623.

In closing I welcome an opportunity to meet and discuss alternatives that may exist to the current regime whereby we are losing ground to those who believe they have both the expertise and authority to run the City’s Jails. Whether through your own power as Commissioner to issue safety rules, BOC rule-making or continuing to abuse the process and lending the Board validity by further seeking variances¹⁶, something must be done. And, it should be done **BOLDLY TOGETHER.**

¹⁵ <https://www.youtube.com/watch?v=mJ8NQ0lkECM&feature=youtu.be> beginning at 44:00.

¹⁶ At the September 8, 2015 meeting of the Board Co-Chair Derrick D. Cephas expressed an interest and consensus of the Board in streamlining the rulemaking process for matters already within the alleged purview of the Board of Correction. However – as you know first hand- in order to evaluate and experiment with new ways of treating age-old problems in Corrections, it is necessary to pass rules, make variances possible, or allow new modalities without either rules or variances. However, the Board members since that

Commissioner Cynthia Brann
April 6, 2018



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Sincerely,

A handwritten signature in blue ink, appearing to read "Elias Husamudeen".

Elias Husamudeen,
President

Enclosures

C:

meeting have often spoken of rulemaking as preferable. Indeed, annexed as Exhibit "J" is the CAPA regulatory Agenda for the Board of Correction for fiscal year 2017.



CORRECTION OFFICERS' BENEVOLENT ASSOCIATION, INC.
"PATROLLING THE TOUGHEST PRECINCTS IN NEW YORK"

ELIAS HUSAMUDEEN
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ALBERT CRAIG
First City-Wide Trustee

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Bronx Borough Trustee

FREDERIC FUSCO
Queens Borough Trustee

PAULETTE BERNARD
Brooklyn Borough Trustee

BISHOP WILLIAM
RAYMOND WHITAKER II
Captain

WILLIAM KWASNICKI
Retiree Consultant

KOEHLER & ISAACS, LLP
COBA Attorney

February 9, 2018

Cynthia Brann
Commissioner
New York City Department of Correction
75-20 Astoria Blvd.
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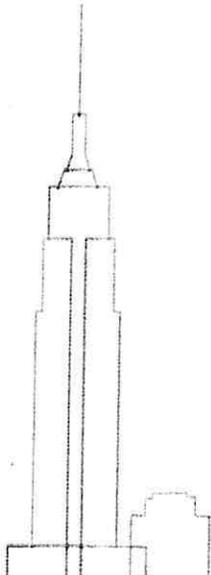
Dear Commissioner Brann,

As President of the Correction Officers Benevolent Association, I have watched with, great disappointment, the continued struggles of the Department of Correction. I have listened to the constant rhetoric of government officials, outside consultants, federal monitors, corporations with their own agendas and the news media denigrate the officers of the New York City Department of Correction. While there has been much talk, there has been little accomplished. The time to end this cycle of insanity is now. The safety and security of every officer, every civilian and every inmate is at stake. The time has come to engage in serious conversations, to put egos and ideology aside, and act in the best interests of the citizens you have sworn to serve.

I have attached to this letter an outline of what we believe to be a path to a safe and secure environment within every facility operated by the New York City Department of Correction. I hope you will take the time to carefully read our proposals. I also will be asking you, in the near future, to attend a summit of stakeholders so we can meet and discuss ways to improve the safety, security and the overall mission of the Department of Correction.

Sincerely,

Elias Husamudeen
President



INTRODUCTION

It's been said that the definition of insanity is doing the same thing over and over again and expecting a different result.

It's also been said that we reproduce what we don't resolve.

The Department of Correction is guilty of both these principles. First, the Department of Correction is still attempting to resolve the issue of jail violence through the creation of so called specialized inmate housing units/programs. However, regardless of whether we call them restrictive housing units, enhanced supervision housing, enhanced housing, transitional-restorative units, secure unit, enhanced supervision-restart, these housing units have done nothing to decrease jail security during the last four years. Further, in many cases, these units and how they are run have led to an increase in jail violence. The Department of Correction thinks that the mere creation of housing units/programs with fancy names somehow means they are creating something different or new. They are not. They have changed nothing during the last four years and continuing these units/programs and expecting a change is the definition of insanity.

Second, despite the fact that these units and other "reform policies" have been in place for four or more years, very little progress has been made to ensure jail safety. (Mayor's Management Report 2013-2017). Correction Officers, staff and inmates continue to be assaulted at alarmingly increasing rates on a daily basis without accountability or sanctions placed upon the inmates committing these assaults (Federal Monitor's Reports I-IV). The Department of Correction has been unable to lower the violence across every major category. (Mayor's Management Report 2013-2017). Astoundingly, despite a clear record of these policies, the Department of Correction continues to stand by them and have not developed any new or effective initiatives. Thus, the Department of Correction has failed to learn from recent history and continues to repeat its mistakes --- at the expense of Correction Officers, staff, inmates, and the public.

Correction Officers have been doing this job for decades. We've been dealing with the same population for decades. We are dealing with an age-old problem (jail violence) that is not new to anyone, except to those who have never faced it. Thus, Correction Officers deserve leadership that understands how to deal with an age-old problem in different ways. The Department deserves leadership that can not only think outside of the box, but can also think inside of the box as well. It deserves leaders and managers who are not pre-programmed with an ideology that has accomplished zero results. It deserves leaders that will actually work to accomplish what should be the Department of Correction's number one priority: safer jails.

We believe the foremost reason the Department of Correction has been unable to reduce the violence in the jails is because it has failed to implement deterrents to criminal behavior in the absence of punitive segregation, and continues to implement faulty policies that only serve to embolden those that would do us harm. Simply put, inmates should be held accountable when they violate the law or rules established to maintain safe jails.

So far, there's been a lot of talk about solving the problem and that's great; everyone's been great at talking about it. But, virtually no one has been able to actually fix the problem. More resolve must be shown for the Officers behind the gate. For four years, the Department of Correction has churned out policies that look good on paper and present good optics to those on the outside but it's been a living hell to those subject to these policies --- both Correction Officers, civilians and inmates alike.

Here are some of the other things the Department of Correction has failed to effectively address in the last four years:

- Making each individual jail accountable for its own problematic inmates.
- Empowering Wardens to be responsible for running their own facilities
- Creating more front-line supervisors, specifically Captains and ADWs

The one light of hope in these dark times is that the Department is now re-arresting inmates who commit criminal acts and the Bronx DA is now prosecuting inmates who commit acts of violence while in jail. **However, we cannot rely on the DA's office to address the root causes of the problem.** That responsibility falls on the Department of Correction and the solution begins with *disciplinary sanctions and restrictive measures for inmates when rules are broken or not adhered to.*

Case in point: *On January 21, 2018, inmate Kaymel Taylor, 20, was accused of slashing another inmate. He slashed former inmate Joseph Troiano, 28, who needed 22 stitches to close a 6-inch slash across his face. Inmate Taylor, 20, because of his age, cannot be placed in punitive segregation. Although he will be re-arrested, he can only be placed in programs such as ESH, TRU, Secured Unit and Second Chance which are void of any real disciplinary sanctions to address the reason for being placed in such a program. He will still be allowed Visits, Commissary, Barbershop, Law Library, Recreation, Property, Telephones, Television, Religious Rights, Attorney Access, Mail, Magazines, Newspapers and Packages. The Board of Correction's Rules and the Department of Correction's own misguided policies are responsible for allowing him the opportunity to cut another inmate. Because OF HIS AGE, he can't be segregated from other inmates. It defies logic that there are more restrictions placed on Correction Officers rather than on violent inmates who commit crimes while incarcerated.*

OVERVIEW

The Department should no longer look outside of itself to fix its problems. It shouldn't have to outsource the management, operations, and control of our agency to private companies exacting large price tags who don't know anything about jailing. The Commissioner and uniformed managers needs to take responsibility and ownership of the Department and not be bullied into doing something that fully jeopardizes the safety and security of the jails. It also needs to use what they have available to address the behavior of the inmates in our custody before we create more programs and policies that in the last four years have been proven unsuccessful in ensuring our number one priority: safer jails.

The Commissioner of the New York City Department of Correction is authorized by Sections 389, 623 and 1043 of the City Charter and Section 9-114 of the Administrative Code to adopt rules relating to the management of the Department of Correction facilities and the conduct of inmates in such facilities. However, a review of Directive 6500R-D entitled "Inmate Disciplinary Due Process" as well as a review of the "Inmate Rule Book "reveals that the department has failed to enforce its own written policies, thus leaving line staff without any means, support or recourse when dealing with inmates who commit infractions and violate Department rules.

Recently released Directive 4495 "Solo Housing", which sets forth the reasons an inmate may be placed into solo housing, nowhere mentions as a basis for placement into solo housing violent acts by adolescents and young adults who against Correction staff. The only criteria in regard to violence, addresses violence against other inmates, or fear of reprisals from violence from other inmates. See Section IV (A) (1) a-e.

Former Department of Correction's policies expressly made clear that inmates would be accountable for violating the rules of conduct or law. Use of Force policy #5005 dated 8/30/90 stated; *"The Department expects all inmates to obey the law and Department/Facility rules of conduct. Those inmates who do not comply with the rules face disciplinary sanctions including punitive segregation and/or the loss of good time. Those inmates who violate the law also face arrest and criminal prosecution"*. For some reason this common-sense statement reflecting New York State Law was removed from the new Directive.

Although this policy has been superseded, in no way should anyone think the same expectations of accountability do not apply. However, the Department's current policies leave much to be desired in terms of inmate accountability.

When an inmate violates the jail rules, the process available to the department is detailed in Directive 6500R-D (Inmate Disciplinary Due Process), Section III "Procedures". Under this policy, if inmate infractions are proven, the recourse is the following:

- 1) Reprimand
- 2) Loss of privileges
- 3) Loss of good time if sentenced
- 4) Punitive Segregation for up to thirty (30) days per each applicable individual charge
- 5) Restitution for intentionally damaging or destroying city property, a twenty-five (\$25) dollar disciplinary surcharge will be imposed on all inmates found guilty of a Grade I or Grade II offense, as found in Directive 6500R-D (page 20) and in Inmate Rule Book (10/12/2007) under penalties 1-05.

There are no other *disciplinary* sanctions placed upon inmates' privileges who commit infractions and crimes while incarcerated. Inmates have the privileges of Law Library, Recreation, Property, Visits, Telephones, Television, Religious Rights, Attorney Access, Mail, Magazines, Newspapers, Packages and Commissary. Thus, regardless of the violence or crimes an inmate commits while in jail, none of their privileges are revoked and if they are, it is done in only very narrow circumstances or with unreasonable stipulations *from the Board of Correction and at times the Department of Correction itself* that renders it an ineffective means of punishment. The clear lack of collaboration between the Board of Correction and the Department has resulted in a dilemma that has *increased* violence.

Indeed, the New York State Commission on Correction has previously issued violation letters to the New York City Department of Correction for the failure to properly punish violent inmates. This was during this very administration. And yet, the backlog of inmates who – after due process hearings- continues to owe time in segregation at staggering rates.

PROPOSALS

COBA PROPOSAL #1: Inmate Disciplinary Sanctions on Inmate Privileges

In an all-out effort to reduce violence while holding inmates *accountable* for committing crimes and infractions during incarceration, COBA recommends placing disciplinary sanctions upon inmate privileges. We recommend that the Department of Correction Task Managers with effectively and judiciously utilizing the existing inmate discipline measures and analyzing their effectiveness. They should begin tracking COBA's proposed sanctions in like manner to those indicators tracked on the Monthly Facility Management Reports so that their effectiveness can be comparatively evaluated. The use of COBA's proposed inmate disciplinary sanctions will serve as a powerful deterrent – the sheer perception to the inmates is that it is just not worth it to engage in such activity. *If inmate disciplinary sanctions have their desired effect, either in whole or in part, we can envision a Department with less restrictive housing, greater compliance, fewer injuries to staff and inmates, and a real change in morale and culture.* Implementing these disciplinary sanctions may even have an impact on recidivism.

By way of a few examples:

Visits

We must consider that certain aspects of the Board of Correction Minimum Standards and Directive 2007R-C, "Inmate Visit Procedures", effectively work against the Department and its efforts to deter violence and directly puts staff, visitors and members of the public at risk. The Department cannot limit or deny a visit to an inmate or visitor unless the criminal act is committed (or reasonably expected to be committed) in conjunction with a visit.

We can only limit or deny a visit if a litany of parameters is met and then there is the appeal process where the Board too often acts as an inmate/visitor advocate than an objective entity.

The Board must relax the constraints put on the Department and permit it to temporarily suspend visits even in cases where the inmates offending act of is not directly or indirectly in conjunction with the visit. This type of inmate disciplinary sanction will serve as a powerful deterrent. This will help to send the message that it is just not worth it to engage in acts the violate inmate rules. It may even have an impact on recidivism. *That would be a great joint Board of Correction-Department of Correction initiative that would have a direct impact on safety.* The impact we can have here is beyond measure.

Telephones

Let's consider telephone use by the detainee population. The Board mandates that detainees be permitted one call per day at a minimum of six minutes per call. Beyond arguably the right to speak by telephone to counsel, phone use is a privilege. This privilege should be curtailed when inmates commit acts of violence. Such action would serve to deter violent criminal activity.

The Department should be able to deny or limit access to telephones for rule violations.

Haircuts

Currently, the Board of Correction mandates that inmates must be afforded haircuts. It does not, however, stipulate where and when these haircuts take place. The Department of Correction should be able to remove the privilege aspect of taking a trip to the barbershop.

We recommend that when found guilty of rule violations, inmates be charged for haircuts except when going to court.

Commissary

Commissary access is a privilege. Immediate sanctions to deny commissary access to any inmate who commits any act of violence should be implemented or commissary being limited to personal hygiene products. Such denial should be extended for violent acts committed during a denial period.

We recommend that the Department implement disciplinary sanctions to deny commissary access for inmates that violate Department rules and regulations.

Recreation

Currently, the Board of Correction mandates, "recreation may only be denied only upon conviction of an infraction for misconduct on the way to, from, or during recreation." This rule is outdated. As a deterrent to violence, the Department needs to have the ability to deny or limit recreation for any violation of inmate rules.

We recommend the Department of Correction have the ability to deny or limit recreation as a disciplinary sanction for violation of inmate rules and regulations.

Law Library

The COBA does not seek to limit or deny any inmate the right to legally defend him or herself. We believe the Board's current rule that inmates be permitted access for at least two hours each day the law library is open to be sufficient. Currently the Department of Correction may only deny access to the Law Library for disrupting the orderly function of the Library or using it for a purpose other than for what it is intended. Even if an inmate is prohibited from physically accessing the Law Library, the Board permits the Department of Correction to develop alternate access to legal materials for effective legal research. The Department of Correction needs more latitude to effectively deter the violent inmate.

We recommend the Department of Correction be able to deny or limit access to the Law Library for rule violations even if such violations do not occur in the Library itself.

Disciplinary Sanctions for Splashing and Spitting Incidents

While no crimes against a Correction Officer should be tolerated, particularly egregious and sadly frequent are splashing and spitting incidents. To be clear these are incidents where inmates assault Correction Officers with hot water, saliva, urine, semen, and feces. The Board and the Department must take these incidents seriously and impose serious deterrence measures like the above proposed inmate disciplinary sanctions. The Department of Correction needs to be able to sanction an inmate's use of telephone, recreation, visits, law library, and haircuts when an inmate subjects our staff to potential pathogens. *Inmates who splash or spit on staff should be denied everything except basic minimum standards for a finite period of time.* Only this way will the Department of Correction be able to truly stop the increasing incidents of spitting and splashing.

COBA PROPOSAL #2: Restoration of Punitive Segregation in Limited Circumstances

The City of New York widely publicized its goal of “reforming” the Department of Correction. One of these “reform” measures was to eliminate the use of punitive segregation --- a tool widely misrepresented as solitary confinement ---- for 16-21-year olds. The use of punitive segregation for the adult inmate population over age 21 was also severely limited. *We do not seek to debate the pros and cons of punitive segregation.* However, the elimination and limitation of punitive segregation has directly led to an increase in violence (as reported in the Mayor’s Management Report 2013-2017). The problem is clear: in an unbelievable display of poor management and oversight both the Department of Correction and Board of Correction eliminated punitive segregation – an effective violence deterrence tool --- without a plan to fill the void that was left. The Department of Correction failed to implement any alternate measures that could effectively deter violence and violation of the rules. *Programs such as Secured Unit, ESH, the Transitional Restorative Unit (TRU) or Second Chance* are void of disciplinary sanctions and fail to address the underlying reason for why an inmate is being placed in such programs or units. *Thus, the Department of Correction’s mission to reduce the use of punitive segregation has actually empowered inmates to further commit crimes while incarcerated because they know that there is no further penalty, accountability or deterrent to his/her unlawful behavior beyond being detained in jail or criminally prosecuted.*

COBA recommends that the Department of Correction consider reinstating some form of punitive segregation for 19 to 21-year-old inmates in very limited circumstance – against those who commit serious offenses. We recommend this measure be used only when absolutely necessary and for the shortest duration and in the least restrictive manner possible. We also ask that its use be coupled with what we refer to above as “inmate disciplinary sanctions”. For example, if inmate disciplinary sanctions don’t work then and only then should punitive segregation be used on inmates 19-21 years of age. *Further, if punitive segregation doesn’t work inmates (regardless of age), should be removed from our custody and turned over to the DOH/MH or a separate facility should be created to house them.* This facility should be operated by the DOH/MH and other health care professionals with Correction Officers providing security and escort only (Los Angeles has a model of such a facility).

COBA PROPOSAL #3: Inmate Idleness Reduction

As an incentive and deterrent, COBA recommends that the Board of Correction consider standards for idleness reduction for inmates. Too often Department of Correction programs come and go with little measurable effect. In fact, the Department of Correction implements many of its programs in a bubble. Further, we understand that the Department of Correction has earned a less than optimal track record for submitting Monthly Management Reports in a timely and accurate manner and has been reluctant to enact measures to truly measure program effectiveness. We urge the Board of Correction to hold the Department of Correction accountable for that.

If programs are to be continued, we need programs that will stand longer than any one administration and provide stability for staff and inmates. The Department of Correction should mandate programs that foster teamwork and good sportsmanship.

COBA PROPOSAL #4: Other Disciplinary Sanctions

There are many other disciplinary sanctions such as 1.) Being locked in their cells for 4, 6, 8 hours or an entire tour 2.) Receiving a non-contact visit for a specified number of times and other disciplinary sanctions to be explored by all parties involved.

COBA PROPOSAL #5: A Summit of all Stakeholders

While we believe that our overview accurately reflects how to improve the security and safety for Correction Officers, staff and inmates alike, it is time for all the stakeholders to be in the same room, at the same time to discuss these issues of great importance. Through real conversation and dialogue, we are confident we can obtain great results and stop the insanity. In the near future we will be inviting each of you to attend a meeting of all stakeholders to address these issues.

In closing, we urge you to say “NO” to the current slate of failing programs and policies, and say “YES” to true progress as embodied in COBA’s proposals. These proposals are the real deterrents. These proposals are real measures that will effectively curb jail violence and increase safety. These proposals will, if given a chance to succeed, have a tremendous positive impact on the New York City Department of Correction. Please give these proposals serious consideration.

References:

Operations Order #04/14 (effective 4/25/14)

Directive 4104R-C (effective 3/24/17)

Directive 6500R-D (effective 10/5/16)

Directive 2007R-C (effective 7/14/17)

Directive 4016R

SCOC Minimum Standards

Board of Correction, Minimum Standards- Section 10

Board of Correction, Title 40 Chapter 1 Correctional Facilities

Federal Monitor's Reports I-IV

COBA's NIC Proposal July 2017

Mayor's Management Reports (2013-2017)

Directive 4495 – Solo Housing



February 18, 2018

President Elias Husamudeen
Correction Officers' Benevolent Association, Inc.
77-10 21st Avenue
East Elmhurst, NY 11370

Dear President Husamudeen,

I am writing in response to your February 9, 2018 letter, wherein you expressed many thoughtful and detailed ideas as to how we can work together as joint stakeholders in improving the safety and security of DOC facilities. Thank you for sending these ideas, we are giving them serious consideration.

As Commissioner, I and my executive leadership team are working every day to accomplish the Department of Correction's number one priority: safer jails. I am pleased to also have you as my partner in this effort. I share your belief that inmates should be held accountable when they violate the law or rules established to maintain safe jails, and welcome the opportunity to work together to both utilize current tools available and to identify new tools aimed at reducing violence in our jails. We are reviewing the proposals set forth in your letter and will explore how best to raise and address these issues, as many are focused on changes that must be made through changes to Board of Correction Minimum Standards. With respect to issues you raise about staff accountability at the jail management level, as Commissioner I have dedicated substantial time, energy and resources to staff leadership development, and I share your belief that Wardens should be empowered to run their jails, and be held accountable for their own problematic inmates.

Recently, we also made several announcements about commitments and actions we are taking to improve officer security and safety, including an announcement last week by the de Blasio Administration of the commitment of nearly \$4.5 million to fund a rapid increase of safety and security measures designed to immediately address violence against our officers. In response to recent unprovoked attacks against our officers, the Department has planned a series of enhancements that will be fully implemented by the end of June 2018, which include:

- Adding dedicated Emergency Services Unit (ESU) patrol groups to provide extra support during the busy and violence-prone shifts at the four most high-risk facilities – AMKC, GRVC, GMDC, and OBCC.
- Expanding the number of Tasers for emergency personnel and select uniform staff, bringing the total number of staff with Tasers from 25 to 145.
- Boosting cooperation and coordination with NYPD on intelligence-sharing and gang intelligence training, and assigning NYPD gang intelligence staff to DOC facilities.

These measures are designed to immediately boost safety for our staff, especially those working with our most violent inmates, and to disrupt the gang activity responsible for many of the vicious assaults on our officers, who are entrusted with keeping our city safe. We will continue to look seriously into more options with regards to inmate discipline and violence reduction, including the ideas you have presented in your letter.

Sincerely,

A handwritten signature in cursive script that reads "Cynthia Brann". The signature is fluid and elegant, with the first name "Cynthia" being larger and more prominent than the last name "Brann".

Cynthia Brann

91 A.D.2d 532
Supreme Court, Appellate Division, First
Department, New York.

The LEGAL AID SOCIETY,
Petitioner-Respondent,
v.
Benjamin WARD, etc., Respondent-Appellant.
Application of Naomi BURNS et al.,
Petitioners-Respondents-Appellants,
For a Judgment etc.,
v.
Benjamin WARD, etc., et al.,
Respondents-Appellants-Respondents.

Dec. 14, 1982.

Synopsis

A judgment of the Supreme Court, New York County, Maresca, J., granted petition of a legal aid society to restore access to city correctional facilities to the society's employee. On appeal, the Supreme Court, Appellate Division, held that: (1) determination by Commissioner of Correction to deny to legal aid society employee access to city correctional facilities was not arbitrary and capricious in view of fact that society sought general pass for access to man who had been convicted in Missouri of attempt to murder police officer, who was sentenced to 20 years' imprisonment on that conviction, was on parole from that conviction and at time of his arrest in Missouri incident was in car in which there was found stolen service revolver of murdered New York police officer, and (2) even if revocation of access pass by Commissioner was violation of minimum standards, it did not follow that petitioners were entitled to order under Article 78, in proceeding in nature of mandamus, mandamus being extraordinary remedy.

Judgment reversed on law and facts and in exercise of discretion, and petition dismissed.

Asch, J., dissented and filed memorandum.

West Headnotes (4)

- [1] **Prisons**
🔑 Right to Intervention or Review; Jurisdiction

Power of Board of Correction to "establish minimum standards" for care, custody, etc., of persons held or confined in city correctional facilities under jurisdiction of Department of Correction did not imply power of Board of Correction to set itself up as appellate tribunal to rule on specific cases. New York City Charter, § 626, subs. e, f.

1 Cases that cite this headnote

- [2] **Prisons**
🔑 Visitors

Legal aid society's complaint that access to city correctional facilities should be restored to society's employee was not on behalf of person held or confined under jurisdiction of Department of Correction or by employee of the Department, and unidentified clients of society were not parties to grievance procedure provided by statute to the Board of Correction, and matter was too important to be determined on basis of some kind of estoppel against the Commissioner of Correction, and thus in such area the decisions of Board of Correction could have no more than advisory force. New York City Charter, § 626, subs. e, f.

- [3] **Prisons**
🔑 Visitors

Determination by Commissioner of Correction to deny to legal aid society employee access to city correctional facilities was not arbitrary and capricious in view of fact that society sought general pass for access to man who had been convicted in Missouri of attempt to murder police officer, who was sentenced to 20 years' imprisonment on that conviction, was on parole from that conviction and at time of his arrest in Missouri incident was in car in which there was found stolen service revolver of murdered New

York police officer.

[4] **Mandamus**

🔑 Establishment, Maintenance, and Management of Public Institutions

Even if revocation of access pass by Commissioner of Correction was violation of minimum standards, it did not follow that petitioners were entitled to order under Article 78, in proceeding in nature of mandamus, mandamus being extraordinary remedy, and Commissioner would not be required thereby to restore general access pass to particular person where Commissioner in good faith and on reasonable grounds believed that same would compromise or endanger security of institutions. New York City Charter, § 626, subds. e, f; McKinney's CPLR 7801 et seq.

2 Cases that cite this headnote

Attorneys and Law Firms

****251** N.P. Forrest, New York City, for petitioner-respondent.

E.F.X. Hart, New York City, for respondent-appellant.

A. Eisenberg, New York City, for petitioners-respondents-appellants.

E.F.X. Hart, New York City, for respondents-appellants-respondents.

***534** Before KUPFERMAN, J.P., and SULLIVAN, SILVERMAN and ASCH, JJ.

Opinion

MEMORANDUM DECISION.

14072 — ***532** Judgment, Supreme Court, New York County, entered January 26, 1982 granting the petition of respondent, The Legal Aid Society, to restore access to

City Correctional facilities to its employee, Thomas McCreary, is reversed, on the law and the facts and in the exercise of discretion, without costs, and the petition dismissed.

14073 — Judgment, Supreme Court, New York County, entered March 5, 1982 granting the petition of respondent, Thomas McCreary, to restore access to petitioner to City Correctional facilities, is reversed, on the law and the facts and in the exercise of discretion, without costs, and the petition dismissed.

****252** The facts are sufficiently set forth in Justice Asch's memorandum. We agree that the Board of Correction did not have power to render an appellate decision binding on the Commissioner as to the granting of an access pass to Mr. McCreary.

^[1] Under New York City Charter § 626(e), the board is directed to "establish minimum standards" for the care, custody, etc. of persons held or confined under the jurisdiction of the Department of Correction. The power to establish minimum standards is a quasi-legislative power and does not imply the power of the Board of Correction to set itself up as an appellate tribunal to rule on specific cases.

New York City Charter § 626(f) directs the board to "establish procedures for the hearing of grievances." But even this on its face appears to be a quasi-legislative power rather than a judicial power, *i.e.*, the power to establish a procedure rather than itself conduct that procedure. We note that the very next sentence, which gives the board power to conduct hearings, provides only that the board may "make recommendations and submit reports of its findings to the appropriate authorities," an advisory rather than a quasi-judicial function.

^[2] Further, the power to establish procedures for hearing of grievances is expressly stated to be grievances ***533** "(1) by or on behalf of any person held or confined under the jurisdiction of the department or (2) by any employee of the department." **This grievance is not on behalf of either a person held or confined under the jurisdiction of the department, or by an employee of the department.** We reject the Legal Aid Society's contention that their unidentified clients are somehow parties to this grievance procedure.

On the face of the statute, the statutory powers of the Board of Correction do not appear to cover the question of which employees of the Legal Aid Society shall be recognized and given general access passes by the Commissioner of Correction. Despite the somewhat

inconsistent conduct of the Commissioner in telling petitioners of the grievance procedure, we think the matter is too important to be determined on the basis of some kind of estoppel against the Commissioner.

We conclude that at least in this area the decisions of the Board of Correction can have no more than advisory force.

^[3] The issue thus becomes whether the Commissioner's determination was arbitrary and capricious. We think it was not.

As an original proposition the Commissioner of Correction charged with the security of the institutions under his jurisdiction cannot be said to be acting arbitrarily and capriciously in refusing a general access pass to a man who had been convicted in Missouri of an attempt to murder a police officer, who was sentenced to 20 years imprisonment on that conviction, who is now on parole on that conviction, and who at the time of his arrest in the Missouri incident was in a car in which there was found the stolen service revolver of a murdered New York police officer.

The question then is whether the provisions of the minimum standards render the Commissioner's action arbitrary and capricious.

Read literally, the minimum standards do seem to forbid the revocation of a general access pass to a person in petitioner McCreary's position. Thus section 9.5(b) of the minimum standards provides that a pass shall not be denied based upon any of the items listed in section 10.8(a); one of the items so listed is the prospective visitor's criminal record. Section 9.5(c) provides that the revocation of a pass must be made pursuant to the procedural requirements of section 10.8(b)(i), among others, which provides:

This determination must be based on specific acts committed by the visitor during a prior visit to an institution that demonstrate his or her threat to the safety and security of an institution, or on specific information received and verified that the visitor plans to engage in acts during the next visit that will be a threat to the safety or security of the institution.

****253** It may well be that the drafters of the standards did not contemplate a situation such as is here presented, and that, therefore, the standards should not be read literally.

For example, do the standards sensibly mean that if a man has been convicted of engineering a large scale escape from a prison, the Commissioner cannot consider that fact in determining whether to issue a blanket access pass to him? We think the more sensible interpretation of the standard is that the fact that the applicant for the access pass has some kind of a criminal record cannot *ipso facto* disqualify him in all cases. It may well be that many of the persons incarcerated under the jurisdiction of the Commissioner of Correction have as close relatives or friends people who have at one time or another run afoul of the criminal law, but in respects which do not appear to the Commissioner to endanger the security of the institution; in such event, the applicant's criminal record should not bar a visitor's pass. But in the present case, we cannot say that the Commissioner was arbitrary and capricious in his view that the granting of a blanket access pass to a person of Mr. McCreary's record may compromise the security of the institution, or that the minimum standards forbid the Commissioner from considering that conviction and the underlying facts.

^[4] Even if the Commissioner's revocation of the pass may be said to be a violation of the minimum standards, it does not follow that petitioners are entitled to an order under Article 78. This proceeding is in the nature of mandamus. Mandamus is an extraordinary remedy. "A mandamus order may issue only for the enforcement of a clear legal right; and even after such right has been established, the court must determine whether, in the exercise of a sound discretion, it should grant or withhold the order." *Matter of Durr v. Paragon Trading Corp.*, 270 N.Y. 464, 469, 1 N.E.2d 967. "Moreover, even where a petitioner's legal right to the relief sought is clearly established, issuance of a writ of mandamus is a matter reserved for the sound discretion of the court." *Matter of Sheerin v. New York Fire Department*, 46 N.Y.2d 488, 496, 414 N.Y.S.2d 506, 387 N.E.2d 217. **We think we are justified, in the exercise of our discretion, in declining to issue an order of mandamus to compel the Commissioner of Correction, charged with the security of the institutions under his control, to restore a general access pass to a particular person, where the Commissioner in good faith and on reasonable grounds believes that the**

restoration of such a pass compromises or endangers the security of those institutions.

For the reasons stated by Justice Asch, we agree that attorneys' fees were properly denied to both petitioners, Burns and McCreary.

All concur except ASCH, J., who dissents in a memorandum as follows:

The appellant Commissioner determined that both Thomas McCreary and Naomi Burns, employees of the Legal Aid Society, posed security risks and should be excluded from City correctional facilities. The respondent, The Legal Aid Society, asserted that the Commissioner's determinations were in violation of "Minimum Standards" promulgated by the Board of Corrections and filed an administrative appeal with the Board. On December 17, 1980, the Board rendered an opinion in which it concluded that the Minimum Standards were "promulgated in rules and regulations [and are] binding on the Department of Correction." The Board determined that the Department had acted in contravention of the Minimum Standards when it revoked the access passes of Burns and McCreary (a) on the basis of their political associations and McCreary's criminal record, and (b) without making a showing that the two legal assistants had committed "specific acts" demonstrating that they posed a "threat to the safety and security" of a City correctional facility.

On June 25, 1981, Burns and McCreary commenced an Article 78 proceeding, seeking judgment directing the Commissioner to implement the decision of the Board and reinstate their access to City correctional facilities. The petition also alleged that the **254 violation of the constitutional due process standards represented a violation of 42 U.S.C. § 1983 which, in turn, entitled the petitioners to counsel fees under 42 U.S.C. § 1988.

On June 25, 1981, The Legal Aid Society also commenced an Article 78 proceeding against the Commissioner seeking implementation of the Board decision and restoration of access to Burns and McCreary.

Special Term, in an opinion in The Legal Aid Society proceedings, issued on December 22, 1981, granted the application. This opinion was adopted by reference in the Burns and McCreary proceeding on January 11, 1982. Judgment was entered in The Legal Aid Society proceeding on January 20, 1982 and in the Burns and

McCreary proceeding on March 5, 1982. No reference was made by Special Term to the request for counsel fees.

In response to the decisions of Special Term, the Commissioner withdrew his objections to Burns and reinstated her institutional pass. The Commissioner appeals from that part of the judgments which directed restoration of access to McCreary. McCreary and Burns cross appeal from so much of the judgment in their proceedings as failed to grant them counsel fees. The appeals in these matters were consolidated by this Court's *535 order of April 9, 1982.

Section 626(e) of the City Charter empowers the Board of Corrections to "establish minimum standards for the care, custody, correction, treatment, supervision, and discipline of all persons held ... and ... promulgate such minimum standards in rules and regulations ...". Pursuant to Section 626(e), on February 14, 1978, the Board adopted the Minimum Standards for New York City Correctional Facilities. As validly enacted regulations, the Minimum Standards have the force and effect of law. (See, e.g., *Bethlehem Steel Co. v. Joseph*, 284 App.Div. 5, 130 N.Y.S.2d 178.)

After the initial denial of the access passes by the Commissioner, Legal Aid and the two legal assistants invoked the Appellate procedures provided for in Section 10.8(e) of the Minimum Standards. After full consideration, the Board found that the Commissioner failed to meet the substantive requirements set forth in Sections 9.5(c) and 10.8(a) of the Minimum Standards. At the time of the Board's decision, Section 9.5(c) read, in pertinent part:

"[an access pass] may be revoked if specific acts committed by the legal assistant during a visit to an institution demonstrate his or her threat to the safety and security of that institution."

Section 10.8(a) read, in pertinent part:

"Visiting rights shall not be denied, revoked, limited or interfered with based upon a prisoner's or prospective visitor's: ... (vi) political beliefs; ... (viii) criminal record..."

The Minimum Standards adopted by the Board include the provision for appeals from determinations with

respect to access, from the Department to the Board (Minimum Standards § 10.8[e]). Although not necessary for our determination in the instant case, it is my judgment that the Board of Corrections did not, and does not, have authority to render appellate decisions which bind the Commissioner in specific cases involving access by legal aides. There is no grant of any appellate jurisdiction, or of the power to create it, contained in the Board's enabling legislation, New York City Charter, Sec. 626, or elsewhere. In addition, there is no language in the section which can be interpreted to confer appellate jurisdiction upon the Board. Nor can any such power be implied as a necessary concomitant of, or as essential to, the exercise of the powers conferred by Section 626.

I do not pass upon the wisdom of the provisions of the Minimum Standards promulgated by the Board. Consideration initiated as a result of these proceedings may well impel the Board to reconsider both its Minimum Standards and its assertion of appellate jurisdiction.

Until such action is taken, however, the Commissioner and Department were bound by the criteria proscribed in Section 10.8(a) and could not meet the "specific act" standard of Section 9.5(c). Regulations promulgated **255 by an administrative agency have the force and effect of law (2 N.Y. Jurisprudence 2nd, *Administrative Law*, § 101, pp. 148 et seq). Hence, the Commissioner's determination in violating the Board's regulations was arbitrary and capricious.

The construction that the majority of this Court seeks to impose upon the sections cited above to justify the Commissioner's actions are simply not warranted by the criteria set forth in the Minimum Standards. The words are clear on their face. Although not binding on this court, what better indication do we have that the language of Sections 9.5(c) and 10.8(a) of the Minimum Standards mean exactly what they say, than the fact that the Board

which promulgated the Regulations decided that the Commissioner's action violated the language of their own regulations? The remedy for the hypothetical case which the majority projects lies in an amendment of the language of the Regulations. The authority to do this, however, is not vested in the justices of this Court but in the Board of Corrections.

Attorney's fees were properly denied petitioners Burns and McCreary pursuant to 42 U.S.C. § 1988. In order to recover attorney's fees pursuant to § 1988, the plaintiff must state a claim pursuant to 42 U.S.C. § 1983, seeking to vindicate constitutional or civil rights. Petitioners *536 do not challenge the procedural due process afforded them herein. Rather they allege that the Commissioner's decision to exclude them was arbitrary in light of the Minimum Standards, and that state law requires that the Commissioner abide by the Board of Corrections' findings and determination. These are purely questions of state law and, as such, do not state a claim pursuant to § 1983. (See, *Phillips v. Bureau of Prisons*, 591 F.2d 966 [D.C.Cir., 1979]).

Accordingly, the judgment of the Supreme Court, New York County, entered January 26, 1982 granting the petition of respondent, The Legal Aid Society to restore access to City Correctional facilities to its employee, Thomas McCreary, should be affirmed, and the judgment of the Supreme Court, New York County, entered March 5, 1981, granting the petition of respondent, Thomas McCreary, to be restored access to City Correctional facilities should also be affirmed.

All Citations

91 A.D.2d 532, 457 N.Y.S.2d 250

INTRODUCTION

It's been said that the definition of insanity is doing the same thing over and over again and expecting a different result.

It's also been said that we reproduce what we don't resolve.

The Department of Correction is guilty of both these principles. First, the Department of Correction is still attempting to resolve the issue of jail violence through the creation of so called specialized inmate housing units/programs. However, regardless of whether we call them restrictive housing units, enhanced supervision housing, enhanced housing, transitional-restorative units, secure unit, enhanced supervision-restart, these housing units have done nothing to decrease jail security during the last four years. Further, in many cases, these units and how they are run have led to an increase in jail violence. The Department of Correction thinks that the mere creation of housing units/programs with fancy names somehow means they are creating something different or new. **They are not.** They have changed nothing during the last four years and continuing these units/programs and expecting a change is the definition of insanity.

Second, despite the fact that these units and other "reform policies" have been in place for four or more years, very little progress has been made to ensure jail safety. (Mayor's Management Report 2013-2017). Correction Officers, staff and inmates continue to be assaulted at alarmingly increasing rates on a daily basis without accountability or sanctions placed upon the inmates committing these assaults (Federal Monitor's Reports I-IV). The Department of Correction has been unable to lower the violence across every major category. (Mayor's Management Report 2013-2017). Astoundingly, despite a clear record of these policies, the Department of Correction continues to stand by them and have not developed any new or effective initiatives. Thus, the Department of Correction has failed to learn from recent history and continues to repeat its mistakes --- at the expense of Correction Officers, staff, inmates, and the public.

Correction Officers have been doing this job for decades. We've been dealing with the same population for decades. We are dealing with an age-old problem (jail violence) that is not new to anyone, except to those who have never faced it. Thus, Correction Officers deserve leadership that understands how to deal with an age-old problem in different ways. The Department deserves leadership that can not only think outside of the box, but can also think inside of the box as well. It deserves leaders and managers who are not pre-programmed with an ideology that has accomplished zero results. It deserves leaders that will actually work to accomplish what should be the Department of Correction's number one priority: safer jails.

Letter sent to Commissioner Brian Stabenow on 8/20/18

We believe the foremost reason the Department of Correction has been unable to reduce the violence in the jails is because it has failed to implement deterrents to criminal behavior in the absence of punitive segregation, and continues to implement faulty policies that only serve to embolden those that would do us harm. Simply put, inmates should be held accountable when they violate the law or rules established to maintain safe jails.

So far, there's been a lot of talk about solving the problem and that's great; everyone's been great at talking about it. But, virtually **no one** has been able to actually fix the problem. More resolve must be shown for the Officers behind the gate. For four years, the Department of Correction has churned out policies that look good on paper and present good optics to those on the outside but it's been a living hell to those subject to these policies --- both Correction Officers, civilians and inmates alike.

Here are some of the other things the Department of Correction has failed to effectively address in the last four years:

- Making each individual jail accountable for its own problematic inmates.
- Empowering Wardens to be responsible for running their own facilities
- Creating more front-line supervisors, specifically Captains and ADWs

The one light of hope in these dark times is that the Department is now re-arresting inmates who commit criminal acts and the Bronx DA is now prosecuting inmates who commit acts of violence while in jail. **However, we cannot rely on the DA's office to address the root causes of the problem.** That responsibility falls on the Department of Correction and the solution begins with *disciplinary sanctions and restrictive measures for inmates when rules are broken or not adhered to.*

Case in point: *On January 21, 2018, inmate Kaymel Taylor, 20, was accused of slashing another inmate. He slashed former inmate Joseph Troiano, 28, who needed 22 stitches to close a 6-inch slash across his face. Inmate Taylor, 20, because of his age, cannot be placed in punitive segregation. Although he will be re-arrested, he can only be placed in programs such as ESH, TRU, Secured Unit and Second Chance which are void of any real disciplinary sanctions to address the reason for being placed in such a program. He will still be allowed Visits, Commissary, Barbershop, Law Library, Recreation, Property, Telephones, Television, Religious Rights, Attorney Access, Mail, Magazines, Newspapers and Packages. **The Board of Correction's Rules and the Department of Correction's own misguided policies are responsible for allowing him the opportunity to cut another inmate. Because OF HIS AGE, he can't be segregated from other inmates. It defies logic that there are more restrictions placed on Correction Officers rather than on violent inmates who commit crimes while incarcerated.***

OVERVIEW

The Department should no longer look outside of itself to fix its problems. It shouldn't have to outsource the management, operations, and control of our agency to private companies exacting large price tags who don't know anything about jailing. The Commissioner and uniformed managers needs to take responsibility and ownership of the Department and not be bullied into doing something that fully jeopardizes the safety and security of the jails. It also needs to use what they have available to address the behavior of the inmates in our custody before we create more programs and policies that in the last four years have been proven unsuccessful in ensuring our number one priority: safer jails.

The Commissioner of the New York City Department of Correction is authorized by Sections 389, 623 and 1043 of the City Charter and Section 9-114 of the Administrative Code to adopt rules relating to the management of the Department of Correction facilities and the conduct of inmates in such facilities. However, a review of Directive 6500R-D entitled "Inmate Disciplinary Due Process" as well as a review of the "Inmate Rule Book" reveals that the department has failed to enforce its own written policies, thus leaving line staff without any means, support or recourse when dealing with inmates who commit infractions and violate Department rules.

Recently released Directive 4495 "Solo Housing", which sets forth the reasons an inmate may be placed into solo housing, nowhere mentions as a basis for placement into solo housing violent acts by adolescents and young adults who against Correction staff. The only criteria in regard to violence, addresses violence against other inmates, or fear of reprisals from violence from other inmates. See Section IV (A) (1) a-e.

Former Department of Correction's policies expressly made clear that inmates would be accountable for violating the rules of conduct or law. Use of Force policy #5005 dated 8/30/90 stated; *"The Department expects all inmates to obey the law and Department/Facility rules of conduct. Those inmates who do not comply with the rules face disciplinary sanctions including punitive segregation and/or the loss of good time. Those inmates who violate the law also face arrest and criminal prosecution"*. For some reason this common-sense statement reflecting New York State Law was removed from the new Directive.

Although this policy has been superseded, in no way should anyone think the same expectations of accountability do not apply. However, the Department's current policies leave much to be desired in terms of inmate accountability.

When an inmate violates the jail rules, the process available to the department is detailed in Directive 6500R-D (Inmate Disciplinary Due Process), Section III "Procedures". Under this policy, if inmate infractions are proven, the recourse is the following:

- 1) Reprimand
- 2) Loss of privileges
- 3) Loss of good time if sentenced
- 4) Punitive Segregation for up to thirty (30) days per each applicable individual charge
- 5) Restitution for intentionally damaging or destroying city property, a twenty-five (\$25) dollar disciplinary surcharge will be imposed on all inmates found guilty of a Grade I or Grade II offense, as found in Directive 6500R-D (page 20) and in Inmate Rule Book (10/12/2007) under penalties 1-05.

There are no other *disciplinary* sanctions placed upon inmates' privileges who commit infractions and crimes while incarcerated. Inmates have the privileges of Law Library, Recreation, Property, Visits, Telephones, Television, Religious Rights, Attorney Access, Mail, Magazines, Newspapers, Packages and Commissary. Thus, regardless of the violence or crimes an inmate commits while in jail, none of their privileges are revoked and if they are, it is done in only very narrow circumstances or with unreasonable stipulations *from the Board of Correction and at times the Department of Correction itself* that renders it an ineffective means of punishment. The clear lack of collaboration between the Board of Correction and the Department has resulted in a dilemma that has *increased* violence.

Indeed, the New York State Commission on Correction has previously issued violation letters to the New York City Department of Correction for the failure to properly punish violent inmates. This was during this very administration. And yet, the backlog of inmates who – after due process hearings- continues to owe time in segregation at staggering rates.

PROPOSALS

COBA PROPOSAL #1: Inmate Disciplinary Sanctions on Inmate Privileges

In an all-out effort to reduce violence while holding inmates *accountable* for committing crimes and infractions during incarceration, COBA recommends placing disciplinary sanctions upon inmate privileges. We recommend that the Department of Correction Task Managers with effectively and judiciously utilizing the existing inmate discipline measures and analyzing their effectiveness. They should begin tracking COBA's proposed sanctions in like manner to those indicators tracked on the Monthly Facility Management Reports so that their effectiveness can be comparatively evaluated. The use of COBA's proposed inmate disciplinary sanctions will serve as a powerful deterrent – the sheer perception to the inmates is that it is just not worth it to engage in such activity. *If inmate disciplinary sanctions have their desired effect, either in whole or in part, we can envision a Department with less restrictive housing, greater compliance, fewer injuries to staff and inmates, and a real change in morale and culture.* Implementing these disciplinary sanctions may even have an impact on recidivism.

By way of a few examples:

Visits

We must consider that certain aspects of the Board of Correction Minimum Standards and Directive 2007R-C, "Inmate Visit Procedures", effectively work against the Department and its efforts to deter violence and directly puts staff, visitors and members of the public at risk. The Department cannot limit or deny a visit to an inmate or visitor unless the criminal act is committed (or reasonably expected to be committed) in conjunction with a visit.

We can only limit or deny a visit if a litany of parameters is met and then there is the appeal process where the Board too often acts as an inmate/visitor advocate than an objective entity.

The Board must relax the constraints put on the Department and permit it to temporarily suspend visits even in cases where the inmates offending act of is not directly or indirectly in conjunction with the visit. This type of inmate disciplinary sanction will serve as a powerful deterrent. This will help to send the message that it is just not worth it to engage in acts the violate inmate rules. It may even have an impact on recidivism. *That would be a great joint Board of Correction-Department of Correction initiative that would have a direct impact on safety.* The impact we can have here is beyond measure.

Telephones

Let's consider telephone use by the detainee population. The Board mandates that detainees be permitted one call per day at a minimum of six minutes per call. Beyond arguably the right to speak by telephone to counsel, phone use is a privilege. This privilege should be curtailed when inmates commit acts of violence. Such action would serve to deter violent criminal activity.

The Department should be able to deny or limit access to telephones for rule violations.

Haircuts

Currently, the Board of Correction mandates that inmates must be afforded haircuts. It does not, however, stipulate where and when these haircuts take place. The Department of Correction should be able to remove the privilege aspect of taking a trip to the barbershop.

We recommend that when found guilty of rule violations, inmates be charged for haircuts except when going to court.

Commissary

Commissary access is a privilege. Immediate sanctions to deny commissary access to any inmate who commits any act of violence should be implemented or commissary being limited to personal hygiene products. Such denial should be extended for violent acts committed during a denial period.

We recommend that the Department implement disciplinary sanctions to deny commissary access for inmates that violate Department rules and regulations.

Recreation

Currently, the Board of Correction mandates, "recreation may only be denied only upon conviction of an infraction for misconduct on the way to, from, or during recreation." This rule is outdated. As a deterrent to violence, the Department needs to have the ability to deny or limit recreation for any violation of inmate rules.

We recommend the Department of Correction have the ability to deny or limit recreation as a disciplinary sanction for violation of inmate rules and regulations.

Law Library

The COBA does not seek to limit or deny any inmate the right to legally defend him or herself. We believe the Board's current rule that inmates be permitted access for at least two hours each day the law library is open to be sufficient. Currently the Department of Correction may only deny access to the Law Library for disrupting the orderly function of the Library or using it for a purpose other than for what it is intended. Even if an inmate is prohibited from physically accessing the Law Library, the Board permits the Department of Correction to develop alternate access to legal materials for effective legal research. The Department of Correction needs more latitude to effectively deter the violent inmate.

We recommend the Department of Correction be able to deny or limit access to the Law Library for rule violations even if such violations do not occur in the Library itself.

Disciplinary Sanctions for Splashing and Spitting Incidents

While no crimes against a Correction Officer should be tolerated, particularly egregious and sadly frequent are splashing and spitting incidents. To be clear these are incidents where inmates assault Correction Officers with hot water, saliva, urine, semen, and feces. The Board and the Department must take these incidents seriously and impose serious deterrence measures like the above proposed inmate disciplinary sanctions. The Department of Correction needs to be able to sanction an inmate's use of telephone, recreation, visits, law library, and haircuts when an inmate subjects our staff to potential pathogens. *Inmates who splash or spit on staff should be denied everything except basic minimum standards for a finite period of time.* Only this way will the Department of Correction be able to truly stop the increasing incidents of spitting and splashing.

COBA PROPOSAL #2: Restoration of Punitive Segregation in Limited Circumstances

The City of New York widely publicized its goal of “reforming” the Department of Correction. One of these “reform” measures was to eliminate the use of punitive segregation --- a tool widely misrepresented as solitary confinement ---- for 16-21-year olds. The use of punitive segregation for the adult inmate population over age 21 was also severely limited. ***We do not seek to debate the pros and cons of punitive segregation.*** However, the elimination and limitation of punitive segregation has directly led to an increase in violence (as reported in the Mayor’s Management Report 2013-2017). The problem is clear: **in an unbelievable display of poor management and oversight** both the Department of Correction and Board of Correction eliminated punitive segregation – an effective violence deterrence tool --- **without a plan to fill the void that was left.** The Department of Correction failed to implement any alternate measures that could effectively deter violence and violation of the rules. ***Programs such as Secured Unit, ESH, the Transitional Restorative Unit (TRU) or Second Chance*** are void of disciplinary sanctions and fail to address the underlying reason for why an inmate is being placed in such programs or units. ***Thus, the Department of Correction’s mission to reduce the use of punitive segregation has actually empowered inmates to further commit crimes while incarcerated because they know that there is no further penalty, accountability or deterrent to his/her unlawful behavior beyond being detained in jail or criminally prosecuted.***

COBA recommends that the Department of Correction consider reinstating some form of punitive segregation for 19 to 21-year-old inmates in very limited circumstance – against those who commit serious offenses. We recommend this measure be used only when absolutely necessary and for the shortest duration and in the least restrictive manner possible. We also ask that its use be coupled with what we refer to above as “inmate disciplinary sanctions”. For example, if inmate disciplinary sanctions don’t work then and only then should punitive segregation be used on inmates 19-21 years of age. ***Further, if punitive segregation doesn’t work inmates (regardless of age), should be removed from our custody and turned over to the DOH/MH or a separate facility should be created to house them.*** This facility should be operated by the DOH/MH and other health care professionals with Correction Officers providing security and escort only (Los Angeles has a model of such a facility).

COBA PROPOSAL #3: Inmate Idleness Reduction

As an incentive and deterrent, COBA recommends that the Board of Correction consider standards for idleness reduction for inmates. Too often Department of Correction programs come and go with little measurable effect. In fact, the Department of Correction implements many of its programs in a bubble. Further, we understand that the Department of Correction has earned a less than optimal track record for submitting Monthly Management Reports in a timely and accurate manner and has been reluctant to enact measures to truly measure program effectiveness. We urge the Board of Correction to hold the Department of Correction accountable for that.

If programs are to be continued, we need programs that will stand longer than any one administration and provide stability for staff and inmates. The Department of Correction should mandate programs that foster teamwork and good sportsmanship.

COBA PROPOSAL #4: Other Disciplinary Sanctions

There are many other disciplinary sanctions such as 1.) Being locked in their cells for 4, 6, 8 hours or an entire tour 2.) Receiving a non-contact visit for a specified number of times and other disciplinary sanctions to be explored by all parties involved.

COBA PROPOSAL #5: A Summit of all Stakeholders

While we believe that our overview accurately reflects how to improve the security and safety for Correction Officers, staff and inmates alike, it is time for all the stakeholders to be in the same room, at the same time to discuss these issues of great importance. Through real conversation and dialogue, we are confident we can obtain great results and stop the insanity. In the near future we will be inviting each of you to attend a meeting of all stakeholders to address these issues.

In closing, we urge you to say "NO" to the current slate of failing programs and policies, and say "YES" to true progress as embodied in COBA's proposals. These proposals are the real deterrents. These proposals are real measures that will effectively curb jail violence and increase safety. These proposals will, if given a chance to succeed, have a tremendous positive impact on the New York City Department of Correction. Please give these proposals serious consideration.

References:

Operations Order #04/14 (effective 4/25/14)

Directive 4104R-C (effective 3/24/17)

Directive 6500R-D (effective 10/5/16)

Directive 2007R-C (effective 7/14/17)

Directive 4016R

SCOC Minimum Standards

Board of Correction, Minimum Standards- Section 10

Board of Correction, Title 40 Chapter 1 Correctional Facilities

Federal Monitor's Reports I-IV

COBA's NIC Proposal July 2017

Mayor's Management Reports (2013-2017)

Directive 4495 – Soló Housing



CORRECTION OFFICERS' BENEVOLENT ASSOCIATION, INC.
"PATROLLING THE TOUGHEST PRECINCTS IN NEW YORK"

Sept 15, 2017

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President

JOSEPH BRACCO
1st Vice President

ELIZABETH CASTRO
2nd Vice President

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Brooklyn Borough Trustee

BISHOP WILLIAM
RAYMOND WHITAKER II
Chaplain

VINCENT COPPOLA
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KOEHLE & ISAACS, LLP
COBA Attorney

Cynthia Brann, Acting Commissioner
NYC Department of Correction
75-20 Astoria Boulevard
East Elmhurst, NY 11370

Dear Commissioner Brann,

The COBA reviewed the department's rollout proposal for the re-opening of the North Infirmiry Command (NIC). COBA's proposal pamphlet submitted to the department for discussion in July 2017 recommended that the North Infirmiry Command (NIC) is made to be a "Transitional Facility" for problematic inmates for re-entry into general population housing. NIC should not be a place of leisure and comfort for inmates housed there. *The NIC should be the last step before the inmate is discontinued from this program and delivered to a more restrictive program.*

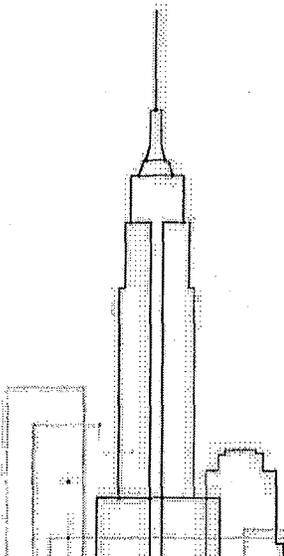
We are taking this time to point out some crucial factors that need to be addressed concerning the NIC Program. *The NIC PROPOSAL was to focus on problematic inmates with behavioral challenges.* Having restrictive procedures to impose on inmates will promote positive transformation. The luxury of commissary, visitation, barbershop, telephone, law library, bag commissary and recreation must be curbed and followed through continuously until improvements in behavior have legitimately been made.

The COBA believes part of the problem of the agency is its own inmate classification system. It has far too many restrictive housing units in place to perform the exact same function, which in our opinion leads to overkill. The previous Commissioner would take an entire housing area to house two inmates (i.e., secure unit in GRVC, the TRU Unit in RNDC) and claim to have nowhere to house problematic inmates such as housed in West facility (which was supposed to be a temporary solution)-- that is now going into its second year. *We can provide examples like this throughout the department.* Most of what was done in the last four years had more to do with OPTICS and appeasing the advocacy groups and oversight committees rather than safety or reducing the violence and addressing

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bad behavior by a small population of inmates. *We believe based on the department's Data and Violence Indicators (see attached Mayor's Management Report 2013-2017 or NYC DOC Violence and Contraband Trend CY15-16) this practice is shown not to be effective and should be clear that it is and has been counterproductive.*

In our proposal and discussions we made it clear that the reopening of NIC should not be done without having a clear and concise mission statement which was not spelled out during the NIC rollout. If you look at the proposal submitted for discussion by the COBA we viewed the opening of NIC as an alternative to other programs that have failed to answer the call in reducing violence in the last four years such as inmate on inmate, assault on staff and slashing and stabbings of other inmates and members of service.

Our concept and ideal for NIC is to provide inmates with a "final opportunity" between general population and punitive segregation. We believe the reopening of NIC could fill the gap between programs such as ESH, SECURED unit, TRU, and SCHU which would be less restrictive and could serve more as a step down unit before returning to general population.

Our proposal submitted for discussion had inmates not staying in this facility for more than ninety (90) days. The criteria set in our proposal defining the classification of inmates is in complete contradiction to pulling inmates from West facility and housing them in NIC as permanent housing. Our concept and our idea for NIC is to provide inmates with final opportunity to adhere to rules set forward to them in the inmate rule book and provide them with an opportunity to return to general population before going to a more restrictive program such as punitive segregation or ESH.

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We believe that every jail should be responsible for the problematic inmates in their facility.

But, there should be the facility for the inmates who take being non-compliant with DOC rules and regulations to a level which requires a more concentrated approach. *We believe NIC can be that middle passage facility.* If done right that might allow the inmate to see the error of their ways. It was not a part of our plan or proposal that NIC become a replacement for ESH, TRU, PS2, SECOND CHANCE, but that it becomes a transitional facility that leads to re-entry to general population. *This was our concept from the 2nd floor to the 3rd floor to the 5th floor and finally to the 6th floor and finally out of the facility and re-entry to general population in other facilities.*

If the agency has determined that the inmates housed in the WF are never going to be able to be housed in general population than why house them in a facility like NIC which is not equipped with adequate infrastructure, staffing, emergency response time and equipment to handle this population? The department will have to face the reality that a separate program or maybe even facility will have to be established to handle those inmates with more serious behavioral problems such as John Doe. In no way should NIC be equated as an end of the line facility for those who are employed there or inmates who are housed there. *However if it is intended as an "end of the line" then it should be made loud and clear to ALL and follow a totally separate set of rules.*

The COBA doesn't believe we need more programs in light of the ones we have. We need to use what we have available to us to address the behavior of the inmates in our custody before we create more programs that in the last four (4) years have proven unsuccessful in creating what is our number one priority – SAFER JAILS!

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We would like to have a joint meeting with a REPRESENTATIVE from ALL interested parties concerning the reopening of NIC. *The first meeting should be with your office and the department's uniformed managers and the uniformed unions.* Afterwards there should be a meeting which includes representatives from the following:

NYC DEPARTMENT OF CORRECTION
THE OFFICE OF THE MAYOR
THE CITY COUNCIL
ALL FIVE (5) DISTRICT ATTORNEYS OFFICE
THE OFFICE OF LABOR RELATIONS
THE CITY LAW DEPARTMENT
BOARD OF CORRECTIONS
THE HEALTH AND HOSPITAL CORPORATION
DEPARTMENT OF HEALTH/MENTAL HEALTH
STATE COMMISSION ON CORRECTION
ALL UNIONS (UNIFORMED AND CIVILIANS)
LEGAL AID SOCIETY
COURT APPOINTED MONITOR (NUNEZ)

Regards,

Elias Husamudeen

COBA NYC OFFICE

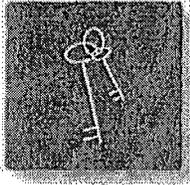
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DEPARTMENT OF CORRECTION

Dr. Dora B. Schirio, Commissioner

What We Do

The Department of Correction (DOC) provides for the care, custody and control of adults, persons 16 years of age and older, accused of crimes or convicted and sentenced to one year or less of incarceration. The Department operates 14 facilities, including 10 jails on Rikers Island, four borough houses of detention, one each in Brooklyn, the Bronx, Queens and Manhattan, court pens in each of the five boroughs, and two hospital prison wards, processes over 81,000 admissions and releases annually, and manages an average daily inmate population of approximately 11,800 individuals.

Our Services and Goals

Service 1: Provide a safe and secure environment for inmates, staff and host communities.

- Goal 1a: Ensure the security and safety of inmates in DOC custody.
- Goal 1b: Ensure that use of force is authorized and appropriate.
- Goal 1c: Provide inmates with timely access to health services.
- Goal 1d: Maximize bed capacity and address cell maintenance and repairs in a timely manner.
- Goal 1e: Ensure timely transport of inmates to courts throughout the City.

Service 2: Prepare inmates for return to their neighborhoods as civil and contributing members.

- Goal 2a: Prepare as many inmates as possible for successful release through participation in skills-building programs including educational opportunities, jobs training, behavioral interventions and mental health services.
- Goal 2b: Reduce idleness by increasing inmate participation in mandated and other programs, services and activities.

Service 3: Provide correction-related services and information to the public.

- Goal 3a: Provide timely notifications to crime victims.

How We Performed in Fiscal 2013

Service 1: Provide a safe and secure environment for inmates, staff and host communities.

Goal 1a: Ensure the security and safety of inmates in DOC custody.

The number of persons incarcerated on any given day fell from an average of 12,287 inmates during Fiscal 2012 to 11,827 in Fiscal 2013, nearly a four percent reduction. Since Fiscal 2009, admissions declined 18 percent and the average daily population is down by 11.5 percent. During the same period, the proportion of inmates with mental illness, prior arrests and admissions, or other hard-to-manage characteristics has increased. On any given day in Fiscal 2013, 40 percent of the city's inmate population was detained on one or more violent felony charges, 77 percent had been detained one or more times and had, on average, 8.8 prior admissions to DOC. Thirty-six percent of the population had a mental health diagnosis.

The Department seeks to provide a safe and secure environment for both the inmate population and staff. It employs data-driven custody management practices, including state-of-art assessment instruments to ascertain each inmate's risks and needs to inform custody assignments and referrals to preventive programming, among other strategies. During Fiscal 2013, these methods helped to reduce the number of inmate-on-inmate incidents by 105, or 3 percent. The rate of incidents per 1,000 stayed nearly constant with an increase of 0.30 due to a slight decrease in the average daily population. The low rate

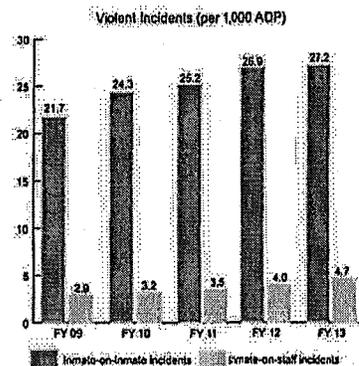
of serious injuries to inmates as a result of inmate-on-inmate incidents also remained nearly constant, increasing slightly by 0.09 from 1.33 per 1,000 ADP to 1.42.

The safety of staff is critical and the Department makes every effort to ensure that the workforce has the training and tools necessary to perform their duties in a safe and secure manner. The vast majority of inmate assaults on staff (96 percent) resulted in no injury or minor injury, which is classified as any contact that required nothing more than over-the-counter treatment to staff. The rate of serious injuries to staff as a result of inmate assaults decreased nearly 26 percent, from 0.27 per 1,000 ADP to 0.20 per 1,000 ADP, although the total number of inmate assaults on staff, physical contact that includes the throwing of objects rose by 77 incidents, or 12 percent.

The Department disciplines inmates who assault staff or otherwise violate the law while in custody and pursues their arrests and prosecution by the district attorney. Arrests of inmates for jail-based criminal misconduct increased 23 percent to 798 arrests in Fiscal 2013, up from 650 in Fiscal 2012. The most common reasons for jail-based arrests of inmates involved possession of contraband (most frequently, weapons), assaults on staff and obstruction of government administration.

Searches are a crucial tool in maintaining jail safety. The Department conducted 22,367 more searches in Fiscal 2013, a 10 percent increase from 225,501 in Fiscal 2012 to 247,868 in Fiscal 2013. The increase in searches of the physical plant reduced the number of jail-based weapons, and the use of full body imaging of at-risk inmates reduced the number of manufactured weapons (e.g., blades, razors) found. There were 2,162 weapons recovered in Fiscal 2013 versus 2,324 in Fiscal 2012, a 7 percent reduction.

There were three non-natural deaths in custody during the reporting period. There was one escape; the inmate was apprehended without incident and returned to custody.



Performance Indicators	Actual					Target		Desired Direction	5yr. Trend
	FY09	FY10	FY11	FY12	FY13	FY13	FY14		
Admissions	99,939	95,385	87,515	84,754	81,758	*	*	Neutral	Down
Average daily population	13,362	13,049	12,790	12,287	11,827	*	*	Neutral	Down
Fight/assault infractions	6,696	7,475	7,431	7,552	7,622	*	*	Down	Up
Jail-based arrests of inmates	567	526	642	650	798	*	*	Down	Up
Searches	214,605	203,403	215,038	225,501	247,868	*	*	Neutral	Up
Weapons recovered	1,295	1,213	1,901	2,324	2,162	*	*	Neutral	Up
* Violent inmate-on-inmate incidents (monthly rate per 1,000 ADP)	21.7	24.3	25.2	26.9	27.2	*	0	Down	Up
* Serious injury to inmate(s) as a result of violent inmate-on-inmate incidents (monthly rate per 1,000 ADP)	NA	NA	1.2	1.3	1.4	*	0	Down	NA
* Inmate assault on staff (monthly rate per 1,000 ADP)	2.9	3.2	3.5	4.0	4.7	*	0	Down	Up
* Serious injury to staff as a result of inmate assault on staff (monthly rate per 1,000 ADP)	NA	NA	0.27	0.27	0.20	*	0	Down	NA
* Escapes	1	1	0	0	1	*	0	Down	Down
* Non-natural deaths of inmates in custody	NA	NA	NA	2	3	*	0	Down	NA

* Critical Indicator NA... means Not Available in this report 0/0 shows desired direction

Goal 1b: Ensure that use of force is authorized and appropriate.

It is departmental policy to use force only when necessary to maintain the safety and security of the jails. Where force is warranted, the Department seeks to use the least restrictive means possible to achieve compliance. In Fiscal 2013, 96 percent of the total 2,997 Uses of Force resulted in no injury or a minor injury- 43 percent no injury and 52 percent minor injury - to either the officer or inmate. The remaining four percent of the Uses of Force last year required treatment to either the officer or the inmate beyond over-the-counter first aid. Notably, the rate of uses of force resulting in serious injury fell 8 percent in Fiscal 2013 from 1.0 incident per 1,000 ADP to 0.92 incidents per 1,000 ADP. The rate of uses of force resulting in no injury increased 27 percent, from 7.2 per 1,000 ADP in Fiscal 2012 to 9.1 per 1,000 ADP in Fiscal 2013. The use of chemical agents to achieve compliance, which is among the least restrictive methods available, increased by 30 percent during Fiscal 2013.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY09	FY10	FY11	FY12	FY13	FY13	FY14		
* Department use of force incidents with serious injury (rate per 1,000 ADP)	NA	NA	NA	1.00	0.92	*	0	Down	NA
Department use of force incidents with minor injury (rate per 1,000 ADP)	NA	NA	NA	8.15	10.95	*	*	Down	NA
Department use of force incidents with no injury (rate per 1,000 ADP)	NA	NA	NA	7.20	9.11	*	*	Down	NA
Incidents and allegations of use of force	2,196	2,222	2,272	2,837	3,413	*	*	Down	Up

* Critical Indicator *NA* - means Not Available in this report 0/0 shows desired direction

Goal 1c: Provide inmates with timely access to health services.

The proportion of inmates with mental health diagnoses continues to rise. In Fiscal 2013, 36 percent of DOC's average daily population had a mental health diagnosis, up from 33 percent in Fiscal 2012 and appreciably higher than the percentage a few years ago. Concern about the increasing prevalence and severity of mental illness in the city's inmate population led to the formation of the Mayor's Steering Committee on Citywide Justice and Mental Health in 2012. One of the Committee's recommendations was to establish resource hubs in each of the five boroughs to divert eligible defendants from jail to treatment in the community. Funding has been secured and a hub will open and operate in each of the five counties of the City by the end of Calendar 2013.

In a joint collaboration, DOC and the Department of Health and Mental Hygiene developed two new programs for mentally ill inmates; the Clinical Alternative to Punitive Segregation (CAPS), for seriously mentally ill inmates who incur infractions and Restricted Housing Units (RHU) for those with non-serious mental health diagnoses who incur infractions. DOC and DOHMH piloted two Restrictive Housing Units, one for adults in Fiscal 2013 and one for adolescents in Fiscal 2012. The RHU is both the place where the penalty of punitive segregation is imposed and a three-phase behavioral program is provided by clinical staff. Integral to RHU is the opportunity to earn progressively more out-of-cell time beginning the first week in the program and an early (or conditional) discharge. RHU is being expanded to serve all infractioned non-seriously mentally ill inmates.

CAPS is a therapeutic program provided in a secure setting and not a punitive placement. The length of time that a seriously mentally ill inmate remains in the unit is based upon their need for individualized treatment provided by mental health professionals. DOC has secured funding from the US Department of Justice's National Institute of Corrections to evaluate the efficacy of its reforms.

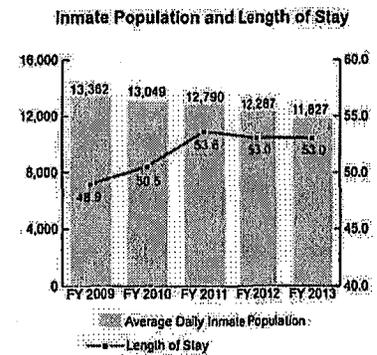
Clinic waiting times increased from 28 to 35 minutes, a 25 percent increase. The increase in waiting times is in part due to a change in policy regarding how inmates are produced to clinics to address safety concerns associated with unescorted movement. Inmates are now escorted in groups to the clinics, rather than allowed to walk to the clinic individually and unescorted. Waiting times overall increased because there are more people in the waiting room at one time, rather than spread out over the course of a day. DOC continues to monitor this trend with the goal of balancing appropriate waiting times with facility security.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY09	FY10	FY11	FY12	FY13	FY13	FY14		
Inmates with a mental health diagnosis (%ADP)	27.0%	29.0%	32.0%	34.0%	37.0%	*	*	Neutral	Up
Inmate health clinic visits	92,558	86,130	79,385	83,914	75,664	*	*	Neutral	Down
* - Average clinic waiting time (minutes)	23	30	29	28	35	*	*	Neutral	Up

* Critical Indicator *NA* - means Not Available in this report 0/0 shows desired direction

Goal 1d: Maximize bed capacity and address cell maintenance and repairs in a timely manner.

Slightly more than 3 percent of jail cells were unavailable during Fiscal 2013, up from 1.8 percent in Fiscal 2012, due to an increase in preventive and emergency work orders during Fiscal 2013. As DOC's facilities continue to age, DOC reorganized its support services and facility maintenance operations, to centralize the monitoring of outstanding work orders and the deployment of tradespersons to effect repairs more rapidly department-wide.



Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY09	FY10	FY11	FY12	FY13	FY13	FY14		
Jail-cells unavailable (short-term repair) (%)	0.8%	0.9%	1.2%	1.8%	3.1%	1.0%	1.0%	Down	Up
* Population as percent of capacity (%)	93%	93%	94%	92%	89%	96%	96%	Neutral	Neutral

* Critical Indicator: "NA" means Not Available in this report. 0-0 shows desired direction

Goal 1e: Ensure timely transport of inmates to courts throughout the City.

In addition to providing safe and secure detention for inmates, the Department is also responsible for transporting inmates to court in a safe and timely fashion. The Department delivered 94.9 percent of on-trial inmates to court on time in Fiscal 2013, down slightly from 96.9 percent in Fiscal 2012 and slightly below its target. The primary reason for the decrease was a 7 percent year-over-year decline in on-time production to Staten Island Courts. The Transportation Division has implemented a citywide improvement plan for Fiscal 2014 that is expected to improve on-time court production significantly.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY09	FY10	FY11	FY12	FY13	FY13	FY14		
* On-trial inmates delivered to court on time (%)	99.6%	99.7%	97.5%	96.9%	94.9%	95.0%	95.0%	Up	Neutral

* Critical Indicator: "NA" means Not Available in this report. 0-0 shows desired direction

Service 2: Prepare inmates for return to their neighborhoods as civil and contributing members.

Goal 2a: Prepare as many inmates as possible for successful release through participation in skills-building programs including educational opportunities, jobs training, behavioral interventions and mental health services.

The Department continues its work to reduce recidivism. During Fiscal 2013, DOC introduced the Individualized Correction Achievement Network (I-CAN). I-CAN is a jail-based community reentry program for both pre-trial and sentenced inmates with the highest risk for readmission to the city jails. The Department awarded performance-based contracts to community-based providers to ready the population for their release from jail to the community by connecting them to employment, education and substance abuse and mental health services consistent with their assessed need for intervention and risk of readmission while incarcerated. Since its implementation in February 2013, I-CAN has enrolled 818 individuals. The program is currently offered in 7 jails with full system-wide rollout during Fiscal 2014. I-CAN is expected to reduce recidivism by 10 percent.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY09	FY10	FY11	FY12	FY13	FY13	FY14		
I-CAN Referrals	NA	NA	NA	NA	1,420	*	*	Neutral	NA
*I-CAN Enrollments	NA	NA	NA	NA	634	*	*	Neutral	NA
I-CAN Workshops	NA	NA	NA	NA	333	*	*	Neutral	NA

* Critical Indicator *NA* - means Not Available in this report 0 0 shows desired direction

Goal 2b: Reduce idleness by increasing inmate participation in mandated and other programs, services and activities.

The Department added several initiatives geared toward reducing idleness while also providing skill-building programming, especially for the adolescent population. The Department and its partners implemented the Adolescent Behavioral Learning Experience (ABLE) program department-wide, which provides Moral Reconation Therapy (MRT) programming to all adolescent inmates in order to develop better jail-based behaviors and reduce recidivism. The ABLE initiative is funded by a first-of-its-kind Social Impact Bond as a part of the Mayor's Young Men's Initiative (YMI). In Fiscal 2013, approximately 1,500 adolescents were served by ABLE. Efforts to enhance educational outcomes for the adolescents have also been put in place jointly with the Department of Education. The East River Academy, the DOE school on Rikers Island, awarded 74 Regents diplomas last year, the most in the school's history.

Other approaches to adolescent management include reassigning youth who had been in large dormitories to smaller cell housing units; adding correction officers and captains to enhance housing area supervision and designated a deputy warden, ombudsperson, and integrity control officer to augment oversight. In support of education programs for the adolescent population, DOC established an earlier evening curfew to ensure that adolescents are well-rested for school and issued uniforms to be worn by all youth. An incentive system encourages youth to participate in education activities and, includes the designation of school as a work assignment, qualifying adolescents to work and earn wages. These reforms, along with the ABLE initiative, contributed to a 15 percent reduction in inmate-on-inmate fights in Fiscal 2013. Additional idleness reduction efforts include participation in skill-building activities, including workforce development programming, literacy and adult education opportunities, horticulture and farm training and other vocational training opportunities. On any given day in Fiscal 2013, approximately 1,275 inmates (10.8 percent) participated in skill-building activities, up slightly from Fiscal 2012.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY09	FY10	FY11	FY12	FY13	FY13	FY14		
Average daily number of inmates in vocational skills training programs	188	193	161	148	204	*	*	Up	Neutral
Average daily attendance in school programs	833	814	782	713	693	*	*	Neutral	Down
*Inmates participating in skills-building activities/discharge planning (%)	NA	NA	10.0%	10.0%	10.9%	*	10.0%	Up	NA

* Critical Indicator *NA* - means Not Available in this report 0 0 shows desired direction

Service 3: Provide correction-related services and information to the public.

Goal 3a: Provide timely notifications to crime victims.

Victim Identification and Notification Everyday (VINE) registrations declined by more than 7 percent from Fiscal 2012 to Fiscal 2013, in part due to reductions in both inmate admissions and the average daily population. VINE confirmed notifications increased by 3 percent to 17,396 from Fiscal 2012 to Fiscal 2013.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY09	FY10	FY11	FY12	FY13	FY13	FY14		
Victim Identification Notification Everyday (VINE) system registrations	8,020	32,308	20,558	16,111	14,929	*	*	Up	Neutral
VINE confirmed notifications	7,007	24,553	32,604	16,925	17,396	*	*	Up	Up

* Critical Indicator *NA* - means Not Available in this report 0 0 shows desired direction

Agency-wide Management

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY09	FY10	FY11	FY12	FY13	FY13	FY14		
Accidents involving city vehicles	NA	NA	NA	69	60	*	*	Down	NA
Workplace injuries reported	NA	NA	NA	NA	2,545	*	*	Down	NA
Accidents involving inmates	NA	NA	NA	38	43	*	*	Down	NA

* Critical Indicator *NA* - means Not Available in this report 0-0 shows desired direction

Agency Customer Service

DOC continued to respond to e-mail correspondence in a timely fashion, while the proportion of written correspondence responded to in 14 days declined by eight percentage points.

Performance Indicators	Actual					Target		5yr Trend
	FY09	FY10	FY11	FY12	FY13	FY13	FY14	
Customer Experience								
E-mails responded to in 14 days (%)	NA	98	94	100	99.9	100	100	NA
Letters responded to in 14 days (%)	NA	85	76	91	82.6	95	95	NA

Agency Resources

Resource Indicators	Actual					Plan ¹		5yr Trend
	FY09	FY10	FY11	FY12	FY13	FY13	FY14	
Expenditures (\$000,000) ²	\$1,010.2	\$1,012.0	\$1,045.1	\$1,078.8	\$1,091.9	\$1,069.7	\$1,065.1	Neutral
Revenues (\$000,000)	\$21.3	\$23.1	\$22.8	\$24.4	\$22.1	\$22.9	\$23.7	Neutral
Personnel (uniformed)	9,068	8,772	8,456	8,540	8,991	8,962	8,869	Neutral
Personnel (civilian)	1,485	1,444	1,423	1,459	1,394	1,633	1,611	Neutral
Overtime paid (\$000,000)	\$98.8	\$97.4	\$113.8	\$144.7	\$102.6	\$77.3	\$74.6	Up
Capital commitments (\$000,000)	\$40.3	\$67.5	\$69.0	\$95.4	\$101.4	\$461.1	\$691.8	Up

¹Authorized Budget Level

²Expenditures include all funds.

NA - Not Available in this report

Noteworthy Changes, Additions or Deletions

- The Individualized Correction Achievement Network (I-CAN) is a jail-based community reentry program tailored towards inmates with the highest risk for readmission to the city jails. This initiative is the successor to DOC's Riker's Island Discharge Enhancement (RIDE) program, and serves both detained and sentenced populations. The Department replaced its RIDE community re-entry indicators with new I-CAN indicators to correspond with this program change, including the new critical indicator 'I-CAN enrollments'.
- The Department added the following indicators: 'Accidents involving City vehicles,' 'Workplace injuries reported' and 'Accidents involving inmates.'

For additional agency performance statistics, please visit:

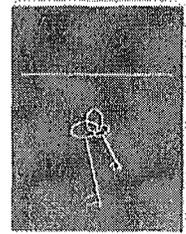
- Select annual indicators:
http://www.nyc.gov/html/doc/html/stats/doc_stats.shtml

For more information on the agency, please visit: www.nyc.gov/doc.



DEPARTMENT OF CORRECTION

Joseph Ponte, Commissioner



WHAT WE DO

The Department of Correction (DOC) provides for the care, custody and control of adults, persons 16 years of age and older, accused of crimes or convicted and sentenced to one year or less of incarceration. The Department operates 14 facilities, including 10 jails on Rikers Island, four borough houses of detention, one each in Brooklyn, the Bronx, Queens and Manhattan, court pens in each of the five boroughs, and two hospital prison wards, processes over 77,000 admissions and releases annually, and manages an average daily inmate population of approximately 11,400 individuals.

FOCUS ON EQUITY

A disproportionate number of people placed in Department of Correction (DOC) custody come from some of New York City's lowest income neighborhoods, including the South Bronx, central Brooklyn, northern Manhattan and eastern Queens. Efforts to improve jail conditions and inmate outcomes therefore inherently advance the city's concerns about equity. DOC currently operates two major re-entry initiatives designed to reduce recidivism—the Adolescent Behavioral Learning Experience (ABLE) for younger inmates and the Individualized Correction Achievement Network (I-CAN) for adults at the highest risk of coming back into custody—and collaborates with the Department of Health and Mental Hygiene to provide discharge planning for inmates with a mental health diagnosis. The Department also facilitates nearly 1,600 weekly visits to help inmates maintain contact with family and loved ones who can support them following their return to the community. DOC is part of Mayor Bill de Blasio's Task Force on Behavioral Health and the Criminal Justice System, which, as part of its efforts, is developing strategies to improve mental health care services for mentally ill people involved in the justice system, including those in custody. With an additional \$32 million in safety funding authorized for Fiscal 2015, the Department has begun implementing significant new measures, including specialized housing for mentally ill inmates, which are expected to reduce violence and improve long-term inmate outcomes.

OUR SERVICES AND GOALS

SERVICE 1 Provide a safe and secure environment for inmates, staff and host communities.

- Goal 1a: Ensure the security and safety of inmates in DOC custody.
- Goal 1b: Ensure that use of force is authorized and appropriate.
- Goal 1c: Provide inmates with timely access to health services.
- Goal 1d: Maximize bed capacity and address cell maintenance and repairs in a timely manner.
- Goal 1e: Ensure timely transport of inmates to courts throughout the City.

SERVICE 2 Prepare inmates for return to their neighborhoods as civil and contributing members.

- Goal 2a: Prepare as many inmates as possible for successful release through participation in skills-building programs including educational opportunities, jobs training, behavioral interventions and mental health services.
- Goal 2b: Reduce idleness by increasing inmate participation in mandated and other programs, services and activities.

SERVICE 3 Provide correction-related services and information to the public.

- Goal 3a: Provide timely notifications to crime victims.

HOW WE PERFORMED IN FISCAL 2014

SERVICE 1 Provide a safe and secure environment for inmates, staff and host communities.

Goal 1a Ensure the security and safety of inmates in DOC custody.

During Fiscal 2014 the Department admitted 77,141 inmates, a 5.6 percent decrease from the 81,758 admitted during Fiscal 2013. The average daily population (ADP) was 11,408, down from 11,827 in Fiscal 2013. The average length of stay for inmates admitted during the fiscal year was 54 days, up from 53 days during the year-ago period. In Fiscal 2014 38 percent of the ADP had diagnosed mental illness, 39 percent were in-custody on a violent felony top charge and 20 percent were validated members of security risk groups. This compares with 36 percent, 39 percent and 17 percent, respectively, in Fiscal 2013. Ninety-three percent of the ADP was male and seven percent female. The median age for an inmate in custody in Fiscal 2014 was 34.2 years compared with 33.8 years in Fiscal 2013.

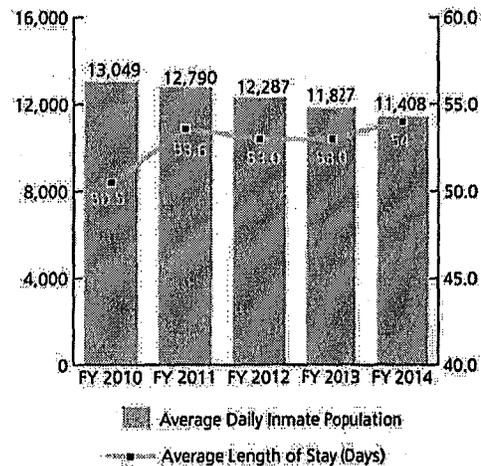
A rise of 16 percent in the number of inmate-on-inmate fights and a 29 percent increase in slashing/stabbing incidents contributed to the rise in the overall number of violent inmate-on-inmate incidents. The rate of serious injuries to inmates as a result of a violent inmate-on-inmate incident increased from 1.4 per 1,000 ADP to 1.8, a 29 percent increase. Overall incidents involving adolescent inmates decreased 15 percent in Fiscal 2014.

The Department disciplines inmates who assault staff and pursues their arrest and prosecution by the district attorney. Arrests of inmates for jail-based criminal misconduct increased 25 percent during the reporting period with 995 arrests in Fiscal 2014, up from 798 in Fiscal 2013. The most common reasons for jail-based arrests of inmates involved possession of contraband, assaults on staff and obstruction of government administration.

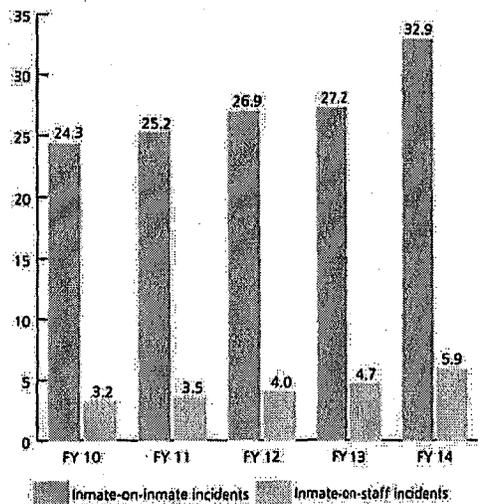
More searches of jail cells recovered more weapons during Fiscal 2014. The Department conducted 251,343 searches during Fiscal 2014, a one percent increase from Fiscal 2013. During the reporting period, the Department recovered 2,348 weapons, an increase of nine percent from Fiscal 2013.

Serious injuries to uniformed staff as a result of inmate assaults increased from 648 to 752. Assaults on staff encompass all physical contacts of any kind with a uniformed employee. Additionally, assaults on civilian staff increased from 17 to 54. Inmates with a mental illness diagnosis are involved in disproportionately more violent incidents between inmates and with staff, and many of these incidents occur in medical facilities in the jails. To reduce these incidents, DOC has been actively working with the Department of Health and Mental Hygiene (DOHMH), its correctional health provider and the unions representing healthcare staff to make physical plant changes in all facilities to improve safety. Security awareness seminars are conducted with health staff in all facilities. The Department will continue to work with all involved to ensure the safety of all staff and inmates in our facilities.

Inmate Population and Length of Stay



Violent Incidents (per 1,000 ADP)



Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY10	FY11	FY12	FY13	FY14	FY14	FY15		
Admissions	95,385	87,515	84,754	81,758	77,141	*	*	Neutral	Down
Average daily population	13,049	12,790	12,287	11,827	11,408	*	*	Neutral	Down
Fight/assault infractions	7,475	7,431	7,552	7,622	8,827	*	*	Down	Up
Jail-based arrests of inmates	526	642	650	798	995	*	*	Down	Up
Searches	203,403	215,038	225,501	247,868	251,343	*	*	Neutral	Up
Weapons recovered	1,213	1,901	2,324	2,162	2,348	*	*	Neutral	Up
*Violent inmate-on-inmate incidents (monthly rate per 1,000 ADP)	24.3	25.2	26.9	27.2	32.9	0	0	Down	Up
*Serious injury to inmate(s) as a result of violent inmate-on-inmate incidents (monthly rate per 1,000 ADP)	NA	1.2	1.3	1.4	1.8	0	0	Down	NA
*Inmate assault on staff (monthly rate per 1,000 ADP)	3.2	3.5	4.0	4.7	5.9	0	0	Down	Up
*Serious injury to staff as a result of inmate assault on staff (monthly rate per 1,000 ADP)	NA	0.27	0.27	0.20	0.39	0	0	Down	NA
*Escapes	1	0	0	1	0	0	0	Down	Down
*Non-natural deaths of inmates in custody	NA	NA	2	3	2	0	0	Down	NA

* Critical Indicator: "NA" - means Not Available in this report 0 0 shows desired direction

Goal 1b Ensure that use of force is authorized and appropriate.

Incidents and allegations of use of force increased by nearly 24 percent during Fiscal 2014. More incidents of Department use of force resulted in injuries to those involved. The rate of serious injuries resulting from Department use of force increased from 0.92 in Fiscal 2013 to 1.18 in Fiscal 2014 due to a 25 percent increase in the number of these incidents in Fiscal 2014 from 129 incidents to 161 incidents. The number of uses of force resulting in no injury increased 40 percent, from 1,294 in Fiscal 2013 to 1,806 in Fiscal 2014. The number of uses of force on adolescent inmates declined significantly during the final quarter of the fiscal year, from 134 to 78. Where force is warranted, the Department uses the least restrictive means possible to achieve compliance; notably, the use of handheld chemical agents (OC spray) increased by 25 percent in Fiscal 2014.

Performance Indicators	Actual				Target		Desired Direction	5yr Trend	
	FY10	FY11	FY12	FY13	FY14	FY15			
*Department use of force incidents with serious injury (rate per 1,000 ADP)	NA	NA	1.00	0.92	1.18	0	0	Down	NA
Department use of force incidents with minor injury (rate per 1,000 ADP)	NA	NA	8.15	10.95	13.23	*	*	Down	NA
Department use of force incidents with no injury (rate per 1,000 ADP)	NA	NA	7.20	9.11	13.19	*	*	Down	NA
Incidents and allegations of use of force	2,222	2,272	2,837	3,413	4,221	*	*	Down	Up

* Critical Indicator: "NA" - means Not Available in this report 0 0 shows desired direction

Goal 1c Provide inmates with timely access to health services.

Inmates with a mental health diagnosis constitute a large and growing proportion of the population in custody. As of June 2014, 38 percent of DOC's average daily population had a mental health diagnosis, up from 37 percent in Fiscal 2013 and the highest rate since the Department began tracking this information in Fiscal 2004. To address the needs of this growing proportion of the jail population, DOC and DOHMH developed two new programs for mentally ill inmates: the Clinical Alternative to Punitive Segregation (CAPS) is for seriously mentally ill inmates who incur infractions and new Restricted Housing Units (RHU) are for those with non-serious mental health diagnoses who incur infractions.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY10	FY11	FY12	FY13	FY14	FY14	FY15		
Inmates with a mental health diagnosis (% ADP)	29.0%	32.0%	34.0%	37.0%	38.0%	*	*	Neutral	Up
Inmate health clinic visits	86,130	79,385	83,914	75,664	77,825	*	*	Neutral	Neutral
* Average clinic waiting time (minutes)	30	29	28	35	41	*	*	Neutral	Up

* Critical Indicator "NA" - means Not Available in this report 0 0 shows desired direction

Goal 10 Maximize bed capacity and address cell maintenance and repairs in a timely manner.

Population as a percent of capacity continued to decline during Fiscal 2014, to 86 percent, while fewer jail cells were unavailable due to repairs.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY10	FY11	FY12	FY13	FY14	FY14	FY15		
Jail cells unavailable (short-term repair) (%)	0.9%	1.2%	1.8%	3.1%	2.8%	1.0%	1.0%	Down	Up
* Population as percent of capacity (%)	93%	94%	92%	89%	86%	96%	96%	Neutral	Neutral

* Critical Indicator "NA" - means Not Available in this report 0 0 shows desired direction

Goal 11 Ensure timely transport of inmates to courts throughout the City.

Fewer on-trial inmates were delivered to court on-time for the fifth consecutive year in Fiscal 2014. On-time delivery of these inmates to court missed the target of 95 percent for the second consecutive year. DOC has enacted a management plan to ensure on-time court arrivals going forward. Inmates are staged earlier, buses depart on schedule and additional buses are deployed when necessary to transport inmates outside of the existing schedule. DOC notifies judges any time it is anticipated that an inmate will be late for a scheduled court appearance to allow for other business to proceed before the inmate arrives.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY10	FY11	FY12	FY13	FY14	FY14	FY15		
* On-trial inmates delivered to court on time (%)	99.7%	97.5%	96.9%	94.9%	94.2%	95.0%	95.0%	Up	Neutral

* Critical Indicator "NA" - means Not Available in this report 0 0 shows desired direction

SERVICE 2 Prepare inmates for return to their neighborhoods as civil and contributing members.

Goal 2a Prepare as many inmates as possible for successful release through participation in skills-building programs including educational opportunities, jobs training, behavioral interventions and mental health services.

The Department continues its work to reduce recidivism. In February 2013, DOC introduced the Individualized Correction Achievement Network (I-CAN). I-CAN is a jail-based community reentry program for both pre-trial and sentenced inmates with the highest risk for readmission to the city jails. As of June 2014, there were 2,408 I-CAN enrollments in 1,580 workshops, which provide skill-building, cognitive behavioral therapy, job readiness training and family reunification support. The Department anticipates that this program will serve at least 2,270 inmates per year.

Adolescent inmates are all receiving cognitive behavioral therapy via the ABLE program. Funded by the first-in-the-nation Social Impact Bond, this program provides adolescent inmates (aged 16 and 17) with skills and tools to better manage their emotions and behavior. The program, which went to scale in January 2013, served 1,245 new inmates during Fiscal 2014. In addition, the Department has undertaken a comprehensive adolescent management strategy designed to better

manage the young people in its custody with improved custody management practices, smaller inmate-to-staff ratios and increased programming options.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY10	FY11	FY12	FY13	FY14	FY14	FY15		
I-CAN Referrals	NA	NA	NA	1,420	4,117	*	*	Neutral	NA
*I-CAN Enrollments	NA	NA	NA	634	2,408	*	*	Neutral	NA
I-CAN Workshops	NA	NA	NA	333	1,580	*	*	Neutral	NA

* Critical Indicator "NA" means Not Available in this report 0 0 shows desired direction

Goal 2b Reduce idleness by increasing inmate participation in mandated and other programs, services and activities.

More inmates participated in vocational skills training during Fiscal 2014 as the Department focuses on increasing inmate access to job training and workforce development services. Inmates are provided with training programs and certificate-bearing courses to help prepare them to enter the workforce upon release.

Average daily school attendance declined by 24 percent, primarily as a result of a 32 percent decrease in adolescent admissions that began in January 2013 and a change in New York State law in April 2014 that lowered the age of adulthood in a jail from the inmate's 19th birthday to his or her 18th birthday. The Department was required to separate 18 year olds from both adolescents and adults in order to comply with local standards and the result was a short-term decrease in school attendance as 18 year old inmates exercised their right to refuse school services. DOC and its partners at the Department of Education (DOE) expect school attendance among the young adult (aged 18 to 21) population to improve in Fiscal 2015.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY10	FY11	FY12	FY13	FY14	FY14	FY15		
Average daily number of inmates in vocational skills training programs	193	161	148	204	216	*	*	Up	Up
Average daily attendance in school programs	814	782	713	693	526	*	*	Neutral	Down
* Inmates participating in skills-building activities/discharge planning (%)	NA	10.0%	10.0%	10.9%	10.3%	10.0%	10.0%	Up	NA

* Critical Indicator "NA" means Not Available in this report 0 0 shows desired direction

SERVICE 3 Provide correction-related services and information to the public.

Goal 3a Provide timely notifications to crime victims.

New Yorkers obtain information regarding incarcerated inmates through the Victim Identification and Notification Everyday (VINE) service. VINE registrations increased slightly from Fiscal 2013 to Fiscal 2014. VINE confirmed notifications increased by 6 percent to 18,445 from Fiscal 2012 to Fiscal 2013.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY10	FY11	FY12	FY13	FY14	FY14	FY15		
Victim Identification Notification Everyday (VINE) system registrations	32,308	20,558	16,111	14,929	15,291	*	*	Up	Down
VINE confirmed notifications	24,553	32,604	16,925	17,396	18,445	*	*	Up	Down

* Critical Indicator "NA" means Not Available in this report 0 0 shows desired direction

AGENCY-WIDE MANAGEMENT

Performance Indicators

	Actual					Target		Desired Direction	5yr Trend
	FY10	FY11	FY12	FY13	FY14	FY14	FY15		
Collisions involving city vehicles	NA	NA	69	60	104	*	*	Down	NA
Workplace injuries reported	NA	NA	NA	2,545	3,599	*	*	Down	NA
Accidents involving inmates	NA	NA	38	43	38	*	*	Down	NA

AGENCY CUSTOMER SERVICE

Performance Indicators

	Actual					Target		Desired Direction	5yr Trend
	FY10	FY11	FY12	FY13	FY14	FY14	FY15		
Customer Experience									
Letters responded to in 14 days (%)	85.0%	76.2%	91.4%	82.7%	99.6%	*	*	Up	Up
E-mails responded to in 14 days (%)	98.0%	93.5%	100.0%	99.9%	100.0%	*	*	Up	Neutral

AGENCY RESOURCES

Resource Indicators

	Actual					Plan ¹		5-year Trend
	FY10	FY11	FY12	FY13	FY14	FY14	FY15	
Expenditures (\$000,000) ²	\$1,012.0	\$1,045.1	\$1,078.8	\$1,090.9	\$1,105.7	\$1,070.5	\$1,095.5	Neutral
Revenues (\$000,000)	\$23.1	\$22.8	\$24.4	\$22.5	\$21.7	\$21.8	\$21.7	Neutral
Personnel (uniformed)	8,772	8,456	8,540	8,991	8,922	8,882	9,109	Neutral
Personnel (civilian)	1,444	1,423	1,459	1,394	1,397	1,635	1,656	Neutral
Overtime paid (\$000,000)	\$97.4	\$113.8	\$144.7	\$154.6	\$110.3	\$74.6	\$93.4	Up
Capital commitments (\$000,000)	\$67.5	\$69.0	\$95.4	\$104.2	\$124.7	\$948.3	\$678.3	Up

¹Authorized Budget Level

²"NA" - Not Available in this report

²Expenditures include all funds.

NOTEWORTHY CHANGES, ADDITIONS OR DELETIONS

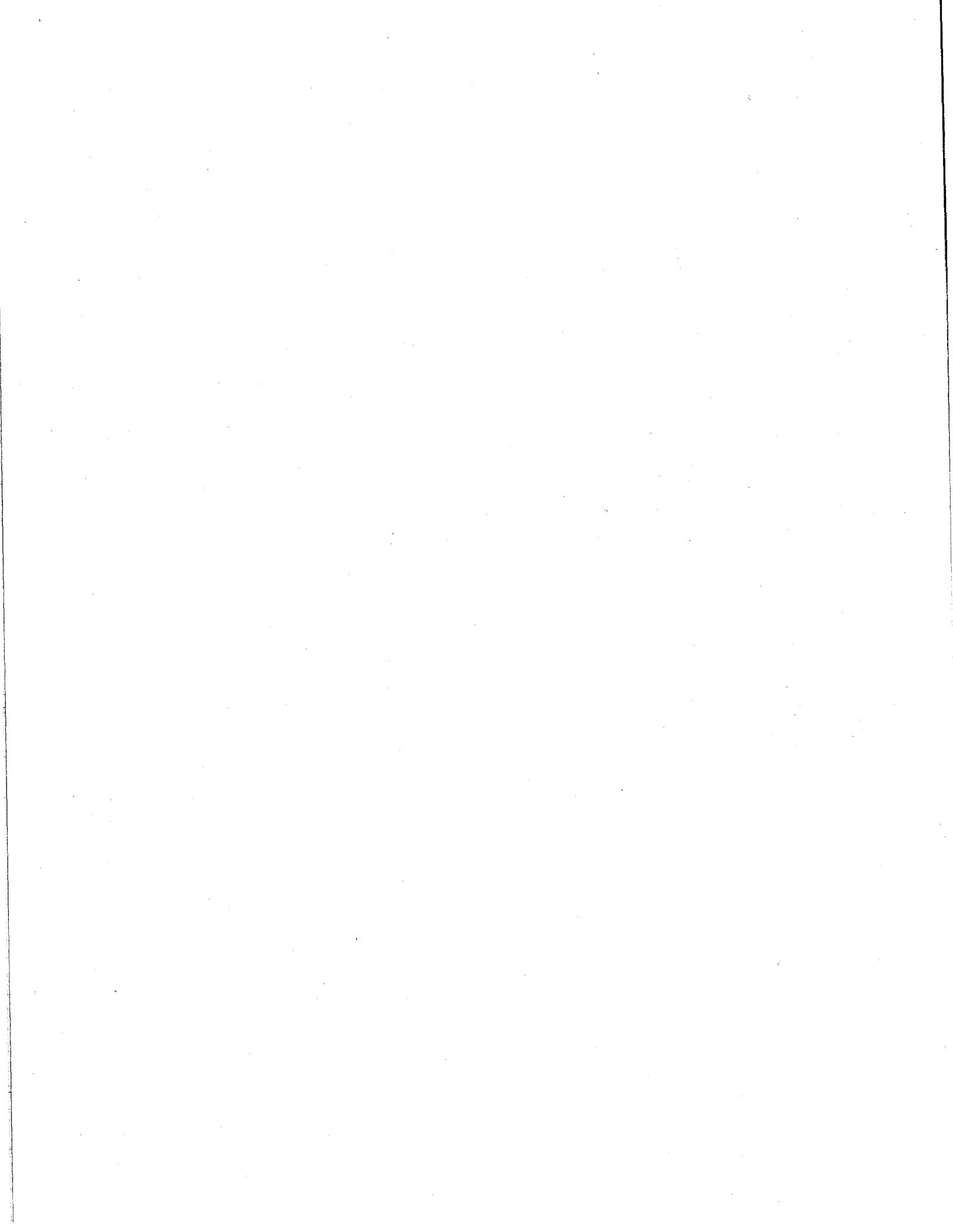
None.

ADDITIONAL RESOURCES

- Select annual indicators:

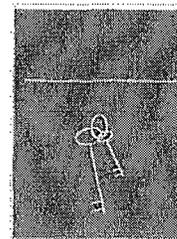
http://www.nyc.gov/html/doc/html/stats/doc_stats.shtml

For more information on the agency, please visit: www.nyc.gov/doc.



DEPARTMENT OF CORRECTION

Joseph Ponte, Commissioner



WHAT WE DO

The Department of Correction (DOC) provides for the care, custody and control of inmates, persons 16 years of age and older, accused of crimes or convicted and sentenced to one year or less of incarceration. The Department operates 14 correctional facilities, including 10 jails on Rikers Island, four borough houses of detention (Brooklyn, the Bronx, Queens and Manhattan), court pens in each of the five boroughs, and two hospital prison wards; processes nearly 68,000 admissions and releases annually, and manages an average daily inmate population of approximately 10,200 individuals.

FOCUS ON EQUITY

The Department of Correction is committed to enhancing safety, improving jail conditions, and promoting better outcomes for inmates, which advances equity for all New Yorkers. DOC has embarked upon a 14-point Anti-Violence Reform Agenda to implement significant new measures that will reduce violence within its facilities, increase safety for all staff and inmates, and ultimately change the culture to better address the needs of inmates at all levels and improve long-term inmate outcomes. DOC has implemented numerous initiatives to support adolescent and young adult populations, transgendered inmates and inmates with mental health issues, as well as the general population in custody, including: revising the Department's punitive segregation policies; increasing staff-to-inmate ratios; and improving and expanding educational programming, substance abuse treatment and discharge planning. DOC has made significant commitments to improving physical and mental healthcare for inmates. Beginning in August 2015, the Health and Hospitals Corporation (HHC) assumed operation of health and mental health services in the jails. HHC will collaborate with DOC to provide discharge planning for inmates with a mental health diagnosis and improve continuity of care. And, as a partner in Mayor Bill de Blasio's Task Force on Behavioral Health and the Criminal Justice System, DOC collaborates with other agency stakeholders and behavioral health experts to develop strategies to improve mental health care services for people involved in the justice system, including those in custody. DOC will continue to build on all these efforts and pursue its broader reform agenda to create safer jails for both inmates and staff.

OUR SERVICES AND GOALS

SERVICE 1 Provide a safe and secure environment for inmates, staff and host communities.

- Goal 1a Ensure the security and safety of inmates in DOC custody.
- Goal 1b Ensure that use of force is authorized and appropriate.
- Goal 1c Provide inmates with timely access to health services.
- Goal 1d Maximize bed capacity and address cell maintenance and repairs in a timely manner.
- Goal 1e Ensure timely transport of inmates to courts throughout the City.

SERVICE 2 Prepare inmates for return to their neighborhoods as civil and contributing members.

- Goal 2a Prepare as many inmates as possible for successful release through participation in skills-building programs including educational opportunities, jobs training, behavioral interventions and mental health services.
- Goal 2b Reduce idleness by increasing inmate participation in mandated and other programs, services and activities.

SERVICE 3 Provide correction-related services and information to the public.

- Goal 3a Provide timely notifications to crime victims.

HOW WE PERFORMED IN FISCAL 2015

SERVICE 1 Provide a safe and secure environment for inmates, staff and host communities.

Goal 1a Ensure the security and safety of inmates in DOC custody.

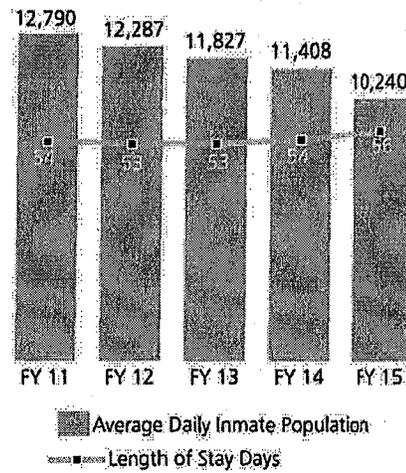
In Fiscal 2015, DOC admitted 67,672 inmates, a 12.3 percent decrease since Fiscal 2014. This lower admission rate contributed to a decrease in Average Daily Population (ADP) from 11,408 in Fiscal 2014 to 10,240 in Fiscal 2015, representing a 10.2 percent decrease in ADP. However, in this same time period, the average length of stay for inmates increased from 54.2 to 55.7 days.

The Department works to promote safety in the jails, in part by identifying inmates in security risk groups (SRGs), and assigns housing areas and services to these inmates accordingly to prevent violent incidents. In Fiscal 2015, the percentage of SRG inmates increased from 8.2 percent to 11.8 percent compared to the prior year. At the same time, there was an increase in inmates with a mental health diagnosis from 38 percent to 41 percent.

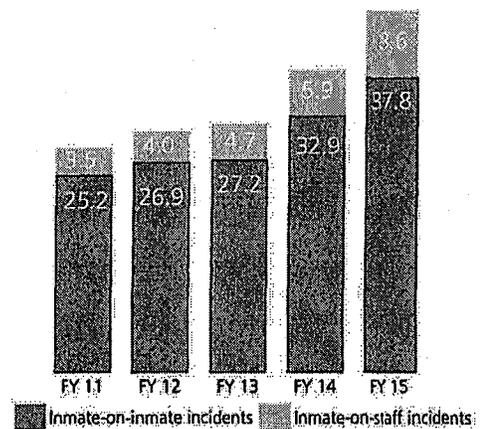
Despite the decrease in ADP, there was an increase in fight/assault infractions from 8,827 the previous year to 9,424 in Fiscal 2015, an increase of 6.8 percent. Stabbing and slashing incidents also rose from 88 to 108 in this same time period, while inmate assaults on staff increased by 31 percent. In addition, the rate of violent incidents among inmates and between inmates and staff increased by 15 percent and 46 percent respectively between Fiscal 2014 and Fiscal 2015. At the same time, the rate of serious injuries to inmates from violent incidents between inmates increased by nearly 38 percent, while the rate of serious injuries to staff from incidents between inmates and staff declined by 10 percent.

The DOC is implementing ongoing reforms and trainings to reduce the number of violent incidents within its facilities. In particular, improving clinical mental health services has shown promise in addressing this issue, as inmates with a mental health diagnosis tend to be involved in disproportionately more violent incidents. Improved mental health services contributed to the reduction of inmate self-harm, with no suicides taking place in the year. DOC has developed a new classification tool and housing process to ensure proper housing, staffing, and care to inmates throughout the system. DOC's pilot effort using the new classification tool is intended to demonstrate the effectiveness of this strategy. Additionally, the Department is improving access to work, education, and recreational programming to reduce idleness, which ultimately reduces incidents. A particular focus of this effort has been on the adolescent and young adult population, as well as efforts to consolidate such reforms in model facilities.

Inmate Population and Length of Stay



Violent Incidents (monthly rate per 1,000 ADP)



Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY11	FY12	FY13	FY14	FY15	FY15	FY16		
Admissions	87,515	84,754	81,758	77,141	67,672	*	*	Neutral	Down
Average daily population	12,790	12,287	11,827	11,408	10,240	*	*	Down	Down
Average daily population - adolescent inmates	NA	NA	681	489	216	*	*	Down	NA
Inmates in security risk group (% ADP)	NA	NA	9.9%	8.2%	11.8%	*	*	Down	NA
Fight/assault infractions	7,431	7,552	7,622	8,827	9,424	*	*	Down	Up
Jail-based arrests of inmates	642	650	798	995	795	*	*	Down	Up
Searches	215,038	225,501	247,868	251,343	255,776	*	*	Neutral	Up
Weapons recovered	1,901	2,324	2,162	2,348	2,240	*	*	Neutral	Up
*Violent inmate-on-inmate incidents (monthly rate per 1,000 ADP)	25.2	26.9	27.2	32.9	37.8	0	0	Down	Up
*Serious injury to Inmate(s) as a result of violent inmate-on-inmate incidents (monthly rate per 1,000 ADP)	1.2	1.3	1.4	1.8	2.5	0	0	Down	Up
*Inmate assault on staff (monthly rate per 1,000 ADP)	3.5	4.0	4.7	5.9	8.6	0	0	Down	Up
*Serious injury to staff as a result of inmate assault on staff (monthly rate per 1,000 ADP)	0.27	0.27	0.20	0.39	0.35	0	0	Down	Up
*Escapes	0	0	1	0	0	0	0	Down	Neutral
*Non-natural deaths of inmates in custody	NA	2	3	2	0	0	0	Down	NA

* Critical Indicator "NA" - means Not Available in this report 0 0 shows desired direction

Goal 1b Ensure that use of force is authorized and appropriate.

The Department's focus on minimizing use of force that involves physical altercations includes ongoing trainings for correctional officers to ensure that use of force is only applied when necessary and the most appropriate means are used to resolve situations while reducing risk of injury to staff and inmates alike. In Fiscal 2015, use of force incidents with serious injury declined by 3.4 percent, and use of force incidents with no injury increased by 45 percent. These results are partly due to increased de-escalation training and better response protocols that focus on immediate engagement that avoids prolonged physical altercation. Additionally, there was a nearly 40 percent decrease in use of force within the adolescent facility, directly attributable to increased training, staffing ratios and programming related to this population. The total number of incidents of confirmed uses of force increased by nearly 17 percent to 4,409. Incidents that include allegations of use of force increased by about 14 percent since Fiscal 2014.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY11	FY12	FY13	FY14	FY15	FY15	FY16		
Incidents of use of force - total	NA	NA	2,977	3,779	4,409	*	*	Down	NA
Incidents of use of force - adolescent inmates	NA	NA	715	624	378	*	*	Neutral	NA
*Department use of force incidents with serious injury (rate per 1,000 ADP)	NA	1.00	0.92	1.18	1.14	0	0	Down	NA
Department use of force incidents with minor injury (rate per 1,000 ADP)	NA	8.15	10.95	13.23	15.59	*	*	Down	NA
Department use of force incidents with no injury (rate per 1,000 ADP)	NA	7.20	9.11	13.19	19.14	*	*	Down	NA
Incidents and allegations of use of force	2,272	2,837	3,413	4,221	4,822	*	*	Down	Up

* Critical Indicator "NA" - means Not Available in this report 0 0 shows desired direction

Goal 1c Provide inmates with timely access to health services.

In Fiscal 2015, 41 percent of inmates had a mental health diagnosis—a number that has grown over the past five years. As such, DOC continues to implement responsive clinical services. In addition to the existing Clinical Alternative to Punitive Segregation (CAPS) program and Restricted Housing Units (RHU), the Department has implemented the Program to Accelerate Clinical Effectiveness (PACE) unit. These units provide inmates with preventive, therapeutic care intended to proactively reduce incidents related to violent behavior by inmates receiving mental health services. Since Fiscal 2014, the number of inmate health clinic visits increased from 77,825 to 81,873, and average clinic waiting time decreased from 41 to 34 minutes. As part of the transition of correctional health services to HHC, DOC will continue collaboration between correctional and healthcare staff to ensure that inmate needs are effectively communicated and necessary services are made accessible.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY11	FY12	FY13	FY14	FY15	FY15	FY16		
Inmates with a mental health diagnosis (% ADP)	32.0%	34.0%	37.0%	38.0%	41.0%	*	*	Neutral	Up
Inmates with a serious mental health diagnosis (% ADP)	NA	NA	9.5%	10.2%	11.1%	*	*	Neutral	NA
Inmate health clinic visits	79,385	83,914	75,664	77,825	81,873	*	*	Neutral	Neutral
* - Average clinic waiting time (minutes)	29	28	35	41	34	*	*	Neutral	Up

* Critical Indicator - "NA" - means Not Available in this report. 0 0 shows desired direction

Goal 1d Maximize bed capacity and address cell maintenance and repairs in a timely manner.

Population as a percentage of capacity continued to decline in Fiscal 2015 to 80 percent, while fewer jail cells were unavailable due to repairs.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY11	FY12	FY13	FY14	FY15	FY15	FY16		
Jail-cells unavailable (short-term repair) (%)	1.2%	1.8%	3.1%	2.8%	2.3%	1.0%	1.0%	Down	Up
* Population as percent of capacity (%)	94%	92%	89%	86%	80%	96%	96%	Neutral	Down

* Critical Indicator - "NA" - means Not Available in this report. 0 0 shows desired direction

Goal 1e Ensure timely transport of inmates to courts throughout the City.

DOC has enacted a management plan to improve the on-time delivery of inmates to court. The percent of on-trial inmates delivered to court on-time in Fiscal 2015 was lower than in previous years and fell under the target of 95 percent. An increased number of individuals falling within more specialized subpopulations (Enhanced Restraints, Separations, Mental Health designations) require more extensive search procedures prior to transit in an effort to curtail violence. Delays tend to result as measures to combat violence are balanced against expediting transportation of inmates to court. DOC notifies judges any time it is anticipated that an inmate will be late for a scheduled court appearance to allow for other business to proceed before the inmate arrives. As part of the new management plan, inmates are staged earlier, buses depart on schedule, and additional buses are deployed when necessary to transport inmates outside of the existing schedule.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY11	FY12	FY13	FY14	FY15	FY15	FY16		
* On-trial inmates delivered to court on-time (%)	97.5%	96.9%	94.9%	94.2%	90.9%	95.0%	95.0%	Up	Neutral

* Critical Indicator - "NA" - means Not Available in this report. 0 0 shows desired direction

SERVICE 2 Prepare inmates for return to their neighborhoods as civil and contributing members.

Goal 2a Prepare as many inmates as possible for successful release through participation in skills-building programs including educational opportunities, jobs training, behavioral interventions and mental health services.

Educational attainment, skills development, and behavioral modification are critical to recidivism reduction. As such, DOC has increased the accessibility of its programming and services to inmates. Specifically, DOC has committed to expanding the hours of available programming options to 5 hours for all inmates as part of its 14-point reform agenda. It has already expanded hours for its adolescent population and select populations in its model housing units and will broaden this effort to other inmates over the next year.

The Individual Correction Achievement Network, or I-CAN, was introduced in February 2013 as a jail-based community re-entry program for inmates with the highest risk for readmission to city jails. The number of workshops provided has grown dramatically from 1,580 in Fiscal 2014 to 2,065 in Fiscal 2015, providing inmates with a wider variety of educational and workforce training opportunities, in addition to cognitive behavioral therapy.

Working I.T. Out, a new green technology re-entry program was implemented in 2015, in partnership with STRIVE International, the New York City Department of Education, and Hostos Community College. This innovative program provides a combination of intensive pre-release programming as well as one month of programming in the community. This program has effectively connected 11 graduates of the program to internship opportunities with employment partners including D&A Electric, Project Renewal, and EnviroLution.

In addition, all adolescent inmates continued to receive cognitive behavioral therapy through the Adolescent Behavioral Learning Experience (ABLE) program. Here, inmates 16 and 17 are provided with tools and resources to better manage their emotions and behaviors. While the ABLE program ended on August 31, 2015, the Department has built new partnerships with the City University of New York to provide adolescents with expanded skill-based and certification training programs.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY11	FY12	FY13	FY14	FY15	FY15	FY16		
I-CAN Referrals	NA	NA	1,420	4,117	3,588	*	*	Neutral	NA
*I-CAN Enrollments	NA	NA	634	2,408	2,321	*	*	Neutral	NA
I-CAN Workshops	NA	NA	333	1,580	2,065	*	*	Neutral	NA

* Critical Indicator "NA" - means Not Available in this report 0 ↑ shows desired direction

Goal 2b Reduce idleness by increasing inmate participation in mandated and other programs, services and activities.

From Fiscal 2014 to Fiscal 2015, the percentage of inmates participating in skills-building activities and discharge planning increased from 10.3 percent to 10.5 percent. Increasing the number of workshops available as well as the diversity in learning opportunities has contributed to growing participation. With access to more workforce development and certification acquisition opportunities, the average daily number of inmates in vocational skills training programs increased by 19 percent since Fiscal 2014.

During fiscal 2015, adolescent admissions to jail declined by 56 percent compared to Fiscal 2014. This contributed to the 37 percent reduction in average daily attendance in school programs during the same period.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY11	FY12	FY13	FY14	FY15	FY15	FY16		
Average daily number of inmates in vocational skills training programs	161	148	204	216	256	*	*	Up	Up
Average daily attendance in school programs	782	713	693	526	330	*	*	Neutral	Down
* Inmates participating in skills-building activities/discharge planning (%)	10.0%	10.0%	10.9%	10.3%	10.5%	10.0%	10.0%	Up	Neutral

* Critical Indicator *NA* - means Not Available in this report 0 shows desired direction

SERVICE 3 Provide correction-related services and information to the public.

Goal 3a Provide timely notifications to crime victims.

The Victim Identification and Notification Everyday (VINE) service provides New Yorkers with access to crime and release information regarding incarcerated inmates. While there was a minor decline in VINE registrations from Fiscal 2014 to Fiscal 2015, VINE confirmed notifications increased by about 5 percent.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY11	FY12	FY13	FY14	FY15	FY15	FY16		
Victim Identification Notification Everyday (VINE) system registrations	20,558	16,111	14,929	15,291	15,159	*	*	Up	Down
VINE confirmed notifications	32,604	16,925	17,396	18,445	19,330	*	*	Up	Down

* Critical Indicator *NA* - means Not Available in this report 0 shows desired direction

AGENCY-WIDE MANAGEMENT

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY11	FY12	FY13	FY14	FY15	FY15	FY16		
Collisions involving City vehicles	NA	69	60	104	103	*	*	Down	NA
Workplace injuries reported	NA	NA	2,545	3,599	2,417	*	*	Down	NA
Accidents involving inmates	NA	38	43	38	44	*	*	Down	NA

AGENCY CUSTOMER SERVICE

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY11	FY12	FY13	FY14	FY15	FY15	FY16		
Customer Experience									
Letters responded to in 14 days (%)	76.2%	91.4%	82.7%	99.6%	99.4%	*	*	Up	Up
E-mails responded to in 14 days (%)	93.5%	100.0%	99.9%	100.0%	100.0%	*	*	Up	Neutral

AGENCY RESOURCES

Resource Indicators	Actual						Plan ¹	FY16	5yr Trend
	FY11	FY12	FY13	FY14	FY15	FY15			
Expenditures (\$000,000) ²	\$1,045.1	\$1,078.8	\$1,090.9	\$1,103.1	\$1,171.0	\$1,142.3	\$1,222.5	Up	
Revenues (\$000,000)	\$22.8	\$24.4	\$22.5	\$21.8	\$20.0	\$21.6	\$21.7	Down	
Personnel (uniformed)	8,456	8,540	8,991	8,922	8,756	9,537	9,653	Neutral	
Personnel (civilian)	1,423	1,459	1,394	1,397	1,491	1,776	1,933	Neutral	
Overtime paid (\$000,000)	\$113.8	\$144.7	\$154.6	\$139.1	\$172.4	\$124.3	\$86.7	Up	
Capital commitments (\$000,000)	\$69.0	\$95.4	\$104.2	\$124.8	\$153.6	\$401.5	\$469.3	Up	
¹ Authorized Budget Level		² "NA" - Not Available in this report				³ Expenditures include all funds.			

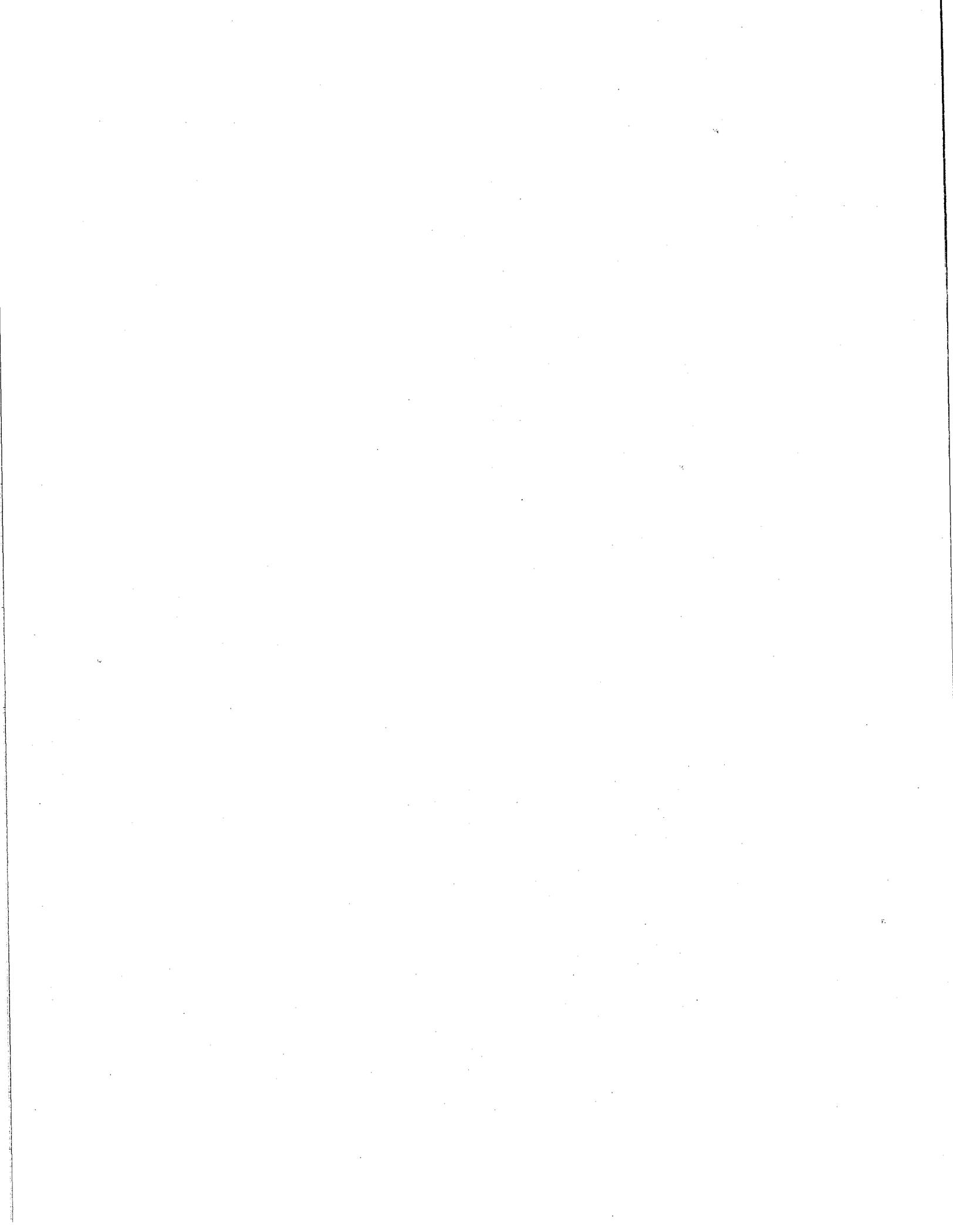
NOTEWORTHY CHANGES, ADDITIONS OR DELETIONS

None.

ADDITIONAL RESOURCES

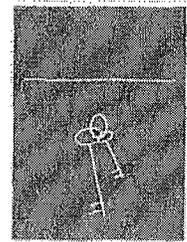
- Select annual indicators:
http://www.nyc.gov/html/doc/html/stats/doc_stats.shtml

For more information on the agency, please visit: www.nyc.gov/doc.



DEPARTMENT OF CORRECTION

Joseph Ponte, Commissioner



WHAT WE DO

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FOCUS ON EQUITY

DOC is committed to enhancing safety, improving jail conditions and promoting better outcomes for inmates, which advances equity for all New Yorkers. DOC has embarked upon a 14-point Anti-Violence Reform Agenda to reduce jail violence, increase safety for staff and inmates and ultimately change the culture to better address the needs of staff and inmates and improve long-term inmate outcomes. In Fiscal 2016, the Department saw a reduction in serious violence and connected significantly more inmates with comprehensive re-entry services. Its approach focuses on gender- and age-responsive services, mental health needs and vocational and educational programming. The Department ended punitive segregation for all inmates 18 and under and significantly reduced its utilization for 19-21 year old inmates. Young adults, the majority of whom are now housed at the George Motchan Detention Center (GMDC), now benefit from program-specific housing. The Accelerated Program Unit (APU), piloted in Fiscal 2015, has been expanded to serve approximately two-thirds of the inmates at the George R. Verno Center (GRVC), with an additional 12 units now open at the Anna M. Kross Center (AMKC). The APU model applies an advanced risk level classification system, improved staff training and staff-to-inmate ratios, enhanced physical infrastructure and expanded programming for inmates to create more stable housing units. Additionally, with the success of the collaborative clinical and correctional approach in the Program for Accelerated Clinical Effectiveness (PACE) units at AMKC, this model has also been expanded to GRVC to better address the population's growing mental health needs.

OUR SERVICES AND GOALS

SERVICE 1 Provide a safe and secure environment for inmates, staff and host communities.

- Goal 1a Ensure the security and safety of inmates in DOC custody.
- Goal 1b Ensure that use of force is authorized and appropriate.
- Goal 1c Provide inmates with timely access to health services.
- Goal 1d Maximize bed capacity and address cell maintenance and repairs in a timely manner.
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SERVICE 2 Prepare inmates for return to their neighborhoods as civil and contributing members.

- Goal 2a Prepare as many inmates as possible for successful release through participation in skills-building programs including educational opportunities, jobs training, behavioral interventions and mental health services.
- Goal 2b Reduce idleness by increasing inmate participation in mandated and other programs, services and activities.

SERVICE 3 Provide correction-related services and information to the public.

- Goal 3a Provide timely notifications to crime victims.

HOW WE PERFORMED IN FISCAL 2016

SERVICE 1 Provide a safe and secure environment for inmates, staff and host communities.

Goal 1a Ensure the security and safety of inmates in DOC custody.

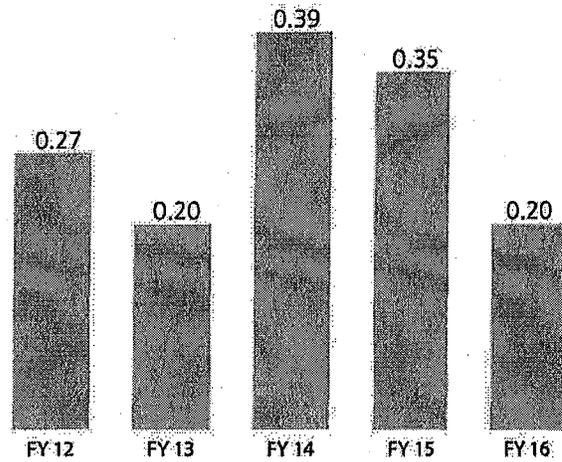
While the in-custody average daily population (ADP) dropped to 9,790 in Fiscal 2016, a 4.4 percent decrease from the previous fiscal year, the percentage of the population in a Security Risk Group (SRG) or diagnosed with a mental illness both increased since Fiscal 2015. The SRG population now comprises 13.3 percent of the population, up from 11.8 percent last year, and the population with a mental health diagnosis is now 42 percent, up from 41 percent the previous fiscal year. Both groups are involved in disproportionately more violent incidents – SRG-associated inmates were involved in more than half of jail incidents in Fiscal 2016 while those diagnosed with a mental illness were involved in more than three-quarters of jail incidents. DOC is working to address the challenges with the SRG population through the appropriate identification, classification and housing of inmates according to specific risks and needs.

Indicators of violence among inmates worsened in Fiscal 2016. There was a 19.3 percent increase in inmate fights and a 21.3 percent increase in stabbings and slashings compared to the previous fiscal year. During Fiscal 2016, the Department began ambitious testing of new alternatives including the housing of all young adults in one facility (GMDC). Young adults contribute to a disproportionate number of incidents and the concentration of this population has increased incidents in GMDC.

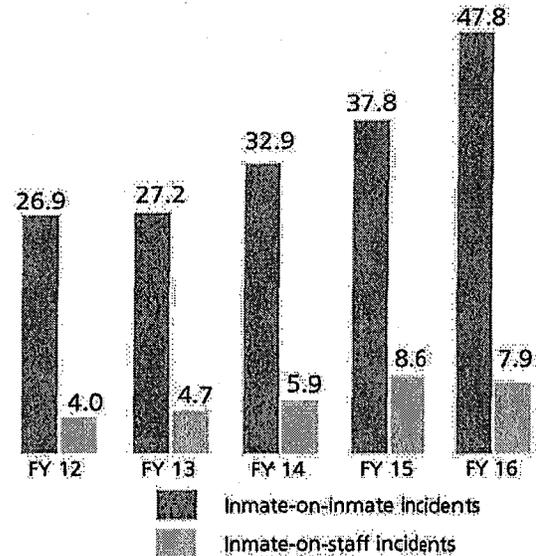
In order to ensure safety for all inmates and staff, the Department has placed a priority on arresting and prosecuting inmates who assault staff members. Arrests of inmates for jail-based criminal misconduct increased by 93.5 percent in Fiscal 2016. While the number of searches conducted declined by seven percent, weapons recovered as a result of these searches increased by 51.6 percent. The Department has been working to address the smuggling of contraband by both inmates and visitors through the addition of new surveillance cameras, improved technology and heightened front gate procedures including more searches and new search tactics. However, the detection can be best accomplished through the utilization of body scanner technology, which currently remains prohibited for non-medical use by New York State law.

The rate of violent inmate-on-inmate incidents increased by 26.5 percent in Fiscal 2016, from 37.8 to 47.8 per 1,000 ADP. Since the implementation of its Reform Agenda, DOC continues to roll out staff trainings in subjects such as crisis management, de-escalation, cognitive behavioral therapy and appropriate use of force to enhance safety for both staff and inmates to curb violence and serious injuries. Inmate assaults on staff, including both uniformed and civilian staff per 1,000 ADP, declined by 8.1 percent from 8.6 in Fiscal 2015 to 7.9 in Fiscal 2016 and serious injuries to staff as a result of inmate assaults decreased by 42.9 percent during the reporting period. Additionally, the rate of serious injury to inmates as a result of inmate-on-inmate violent incidents remained stable from the previous fiscal year.

Serious Injury to Staff as a Result of Inmate Assault on Staff (monthly rate per 1,000 ADP)



Violent Incidents (monthly rate per 1,000 ADP)



Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY12	FY13	FY14	FY15	FY16	FY16	FY17		
Admissions	84,754	81,758	77,141	67,672	63,758	*	*	Neutral	Down
Average daily population	12,287	11,827	11,408	10,240	9,790	*	*	Down	Down
Average daily population - adolescent inmates	NA	681	489	216	187	*	*	Down	NA
Inmates in Security Risk Group (% ADP)	NA	9.9%	8.2%	11.8%	13.3%	*	*	Down	NA
Fight/assault infractions	7,552	7,622	8,827	9,424	11,240	*	*	Down	Up
Jail-based arrests of inmates	650	798	995	795	1,538	*	*	Down	Up
Searches	225,501	247,868	251,343	255,776	237,757	*	*	Neutral	Neutral
Weapons recovered	2,324	2,162	2,348	2,240	3,396	*	*	Neutral	Up
*Violent inmate-on-inmate incidents (monthly rate per 1,000 ADP)	26.9	27.2	32.9	37.8	47.8	0	0	Down	Up
*Serious injury to inmate(s) as a result of violent inmate-on-inmate incidents (monthly rate per 1,000 ADP)	1.3	1.4	1.8	2.5	2.5	0	0	Down	Up
*Inmate assault on staff (monthly rate per 1,000 ADP)	4.0	4.7	5.9	8.6	7.9	0	0	Down	Up
*Serious injury to staff as a result of inmate assault on staff (monthly rate per 1,000 ADP)	0.27	0.20	0.39	0.35	0.20	0	0	Down	Neutral
*Escapes	0	1	0	0	0	0	0	Down	Down
*Non-natural deaths of inmates in custody	2	3	2	0	0	0	0	Down	Down

* Critical Indicator "NA" - means Not Available in this report. 0 shows desired direction

Goal 1b Ensure that use of force is authorized and appropriate.

In Fiscal 2016, the rate of use of force incidents with serious injury declined by more than 42 percent, from 1.14 to 0.66 per 1,000 ADP. The rate of incidents of use of force with minor injury declined by 1.2 percent and the rate of incidents with no injury increased by 27.6 percent. At the same time, the total number of incidents of use of force increased by 7.9 percent, from 4,409 to 4,756 overall. This increase was driven in large part by a 57.1 percent increase in incidents with the adolescent population. Enhanced trainings have been effective at improving response protocols that focus on immediate engagement and avoid prolonged physical altercation, aiming to minimize use of force that involves physical altercations, ensure that use of force is only applied when necessary and ensure that the most appropriate means are used to resolve situations while reducing risk of injury to staff and inmates alike. Where force is warranted, the Department uses the least restrictive means possible to achieve compliance.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY12	FY13	FY14	FY15	FY16	FY16	FY17		
Incidents of use of force - total	NA	2,977	3,779	4,409	4,756	*	*	Down	NA
Incidents of use of force - adolescent inmates	NA	715	624	378	594	*	*	Down	NA
*Department use of force incidents with serious injury (rate per 1,000 ADP)	1.00	0.92	1.18	1.14	0.66	0	0	Down	Down
Department use of force incidents with minor injury (rate per 1,000 ADP)	8.15	10.95	13.23	15.59	15.40	*	*	Down	Up
Department use of force incidents with no injury (rate per 1,000 ADP)	7.20	9.11	13.19	19.14	24.42	*	*	Down	Up
Incidents and allegations of use of force	2,837	3,413	4,221	4,822	5,269	*	*	Down	Up

* Critical Indicator "NA" - means Not Available in this report. 0 shows desired direction

Goal 1c Provide inmates with timely access to health services.

While the percentage of inmates diagnosed with a serious mental illness remained stable at 11 percent, the Department has continued to experience a steady increase in the percentage of inmates with a mental health diagnosis. Currently, 42 percent of the in-custody population falls in this category. Despite these rising numbers, inmate clinic visits decreased for the first time in three years, dropping by 4.1 percent since Fiscal 2015. This drop in clinic visits coincided with reduced clinic waiting times, which averaged 34 minutes in Fiscal 2015 and decreased by 17.6 percent to 28 minutes in Fiscal 2016. Aside from providing access to services in the clinic, the Department has focused on preventive and ongoing care through clinical units such as PACE and Clinical Alternative to Punitive Segregation (CAPS), detox units and mental health programming such as art therapy and counseling. These programs have benefited from the strong collaborative efforts of NYC Health + Hospitals, the Department of Health and Mental Hygiene (DOHMH), and DOC, as well as the healthcare, social service and correctional staff that manage and implement these programs.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY12	FY13	FY14	FY15	FY16	FY16	FY17		
Inmates with a mental health diagnosis (% ADP)	34.0%	37.0%	38.0%	41.0%	42.0%	*	*	Neutral	Up
Inmates with a serious mental health diagnosis (% ADP)	NA	9.5%	10.2%	11.1%	11.0%	*	*	Neutral	NA
Inmate health clinic visits	83,914	75,664	77,825	81,873	78,499	*	*	Neutral	Neutral
* - Average clinic waiting time (minutes)	28	35	41	34	28	↓	↓	Down	Neutral

* Critical Indicator "NA" - means Not Available in this report; ↓ ↑ shows desired direction

Goal 1d Maximize bed capacity and address cell maintenance and repairs in a timely manner.

Both population as a percentage of capacity and the number of jail cells unavailable due to repair remained steady at 80 percent and 2.3 percent, respectively. As a part of the City's five year capital plan, the Department is working to improve facilities' adherence to fire and life safety codes while also repairing and enhancing priority housing areas.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY12	FY13	FY14	FY15	FY16	FY16	FY17		
Jail-cells unavailable (short-term repair) (%)	1.8%	3.1%	2.8%	2.3%	2.3%	1.0%	1.0%	Down	Neutral
* Population as percent of capacity (%)	92%	89%	86%	80%	80%	96%	96%	Neutral	Down

* Critical Indicator "NA" - means Not Available in this report; ↓ ↑ shows desired direction

Goal 1e Ensure timely transport of inmates to courts throughout the City.

Timely transport of inmates to court continued to worsen for most of Fiscal 2016. The percentage of inmates delivered to court on time was only 84 percent for the period, compared to 90.9 percent in Fiscal 2015. As in the past, challenges have partially been due to an increase in inmates falling within specialized subpopulations including mental health designations, enhanced restraints and separations, which results in the need for more extensive search procedures prior to transit in an effort to curtail violence. Additionally, an ongoing challenge is problematic inmates who intentionally create delays in order to avoid trials. While the percentage of inmates delivered to court on time ranged between 77 percent and 89 percent between July 2015 and May 2016, new efforts in June brought timely court production above target at 95.5 percent. Together, the Criminal Justice Bureau (CJB) and the Transportation Division implemented a three-pronged approach to improve court production. The new approach combines improved monitoring of on-trial inmates and communication with facility managers, surveillance of on-trial inmates and more buses and timely departures to ensure timely court arrivals.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY12	FY13	FY14	FY15	FY16	FY16	FY17		
* On-trial inmates delivered to court on-time (%)	96.9%	94.9%	94.2%	90.9%	84.0%	95.0%	95.0%	Up	Down

* Critical Indicator "NA" - means Not Available in this report; ↓ ↑ shows desired direction

SERVICE 2 Prepare inmates for return to their neighborhoods as civil and contributing members.

Goal 2a Prepare as many inmates as possible for successful release through participation in skills-building programs including educational opportunities, jobs training, behavioral interventions and mental health services.

As a part of its reform agenda, the Department is expanding programs and services to improve educational and vocational opportunities for inmates as well as enhance mental health services to better facilitate successful re-entry into the community. As such, the Department, in collaboration with the Fortune Society and Osborne Association, significantly expanded the Individual Correction Achievement Network (I-CAN) program in Fiscal 2016. I-CAN is a jail-based community re-entry program designed to reduce recidivism through targeted discharge planning that supports inmates in obtaining GEDs, finding employment and treating substance abuse issues. While the program originally served only those inmates at the highest risk of recidivism, it has since expanded to serve those at medium risk as well. With these new criteria for participation and additional funding from the Mayor's Taskforce on Behavioral Health and Criminal Justice, I-CAN is now playing a major role in the overall programmatic expansion at AMKC, GRVC, and other facilities. Since Fiscal 2015, referrals increased by 72.6 percent, enrollments increased by 84.3 percent and workshops increased by 215 percent.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY12	FY13	FY14	FY15	FY16	FY16	FY17		
I-CAN Referrals	NA	1,420	4,117	3,588	6,194	*	*	Neutral	NA
*I-CAN Enrollments	NA	634	2,408	2,321	4,278	*	*	Neutral	NA
I-CAN Workshops	NA	333	1,580	2,065	6,505	*	*	Neutral	NA

* Critical Indicator. "NA" - means Not Available in this report. 0.0 shows desired direction.

Goal 2b Reduce idleness by increasing inmate participation in mandated and other programs, services and activities.

In Fiscal 2016, in support of the Department's new young adult initiatives which seek to significantly reduce both punitive segregation and house all young adults in one facility, a focus was placed on targeting this population for vocational skills training opportunities in an effort to reduce idleness and incidents in these housing units. Typically, vocational training programs such as food handler certification courses accommodate up to 50 students per class. However, in the young adult units, classes only accommodate 12 students. Due to these significantly smaller class sizes, which would require 4 times as many classes for young adults to offset the lower participation rates, the Department experienced an 11.7 percent decrease in the average daily number of inmates in vocational skills training programs. Also due to these smaller class sizes, inmates participating in skills building activities declined to 8.7 percent, not meeting the Department's 10 percent target. As young adult housing begins to stabilize and more courses can again be offered to the general population, which can accommodate higher numbers of participants, the DOC expects these numbers to increase.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY12	FY13	FY14	FY15	FY16	FY16	FY17		
Average daily number of inmates in vocational skills training programs	148	204	216	256	226	*	*	Up	Up
Average daily attendance in school programs	713	693	526	330	256	*	*	Neutral	Down
* Inmates participating in skills-building activities/discharge planning (%)	10.0%	10.9%	10.3%	10.5%	8.7%	10.0%	10.0%	Up	Down

* Critical Indicator. "NA" - means Not Available in this report. 0.0 shows desired direction.

SERVICE 3 Provide correction-related services and information to the public.

Goal 3a Provide timely notifications to crime victims.

The Victim Identification and Notification Everyday (VINE) service provides New Yorkers with access to crime and release information regarding incarcerated inmates. There was a 1.9 percent increase in VINE registrations from Fiscal 2015 to Fiscal 2016 and a 13.8 percent increase in VINE confirmed notifications during the same time period.

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY12	FY13	FY14	FY15	FY16	FY16	FY17		
Victim Identification Notification Everyday (VINE) system registrations	16,111	14,929	15,291	15,159	15,440	*	*	Up	Neutral
VINE confirmed notifications	16,925	17,396	18,445	19,330	21,993	*	*	Up	Up

* Critical Indicator "NA" - means Not Available in this report 0.0 shows desired direction

AGENCY-WIDE MANAGEMENT

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY12	FY13	FY14	FY15	FY16	FY16	FY17		
Collisions involving City vehicles	69	60	104	103	107	*	*	Down	Up
Workplace injuries reported	NA	2,545	3,599	2,417	2,222	*	*	Down	NA
Accidents involving inmates	38	43	38	44	43	*	*	Down	Up

AGENCY CUSTOMER SERVICE

Performance Indicators	Actual					Target		Desired Direction	5yr Trend
	FY12	FY13	FY14	FY15	FY16	FY16	FY17		
Customer Experience									
Letters responded to in 14 days (%)	91.4%	82.7%	99.6%	99.4%	99.3%	*	*	Up	Up
E-mails responded to in 14 days (%)	100.0%	99.9%	100.0%	100.0%	100.0%	*	*	Up	Neutral

AGENCY RESOURCES

Resource Indicators	Actual ¹					Plan ²		5yr Trend
	FY12	FY13	FY14	FY15	FY16	FY16	FY17	
Expenditures (\$000,000) ³	\$1,078.8	\$1,090.9	\$1,103.1	\$1,162.1	\$1,325.6	\$1,315.4	\$1,392.3	Up
Revenues (\$000,000)	\$24.4	\$22.5	\$21.8	\$20.8	\$22.9	\$21.7	\$20.5	Neutral
Personnel (uniformed)	8,540	8,991	8,922	8,756	9,832	10,195	10,336	Up
Personnel (civilian)	1,459	1,394	1,397	1,491	1,676	2,191	2,232	Up
Overtime paid (\$000,000)	\$144.7	\$154.6	\$139.1	\$196.3	\$187.9	\$184.8	\$137.6	Up
Capital commitments (\$000,000)	\$95.4	\$104.2	\$124.8	\$153.6	\$80.9	\$568.6	\$316.5	Neutral

¹ Actual financial amounts for the most current fiscal year are not yet final. Final fiscal year actuals, from the Comptroller's Comprehensive Annual Financial Report, will be reported in the next PMMR. Refer to the "Indicator Definitions" at nyc.gov/nmr for details. ² Authorized Budget Level ³ Expenditures include all funds
 NA - Not Available in this report.

NOTEWORTHY CHANGES, ADDITIONS OR DELETIONS

None.

ADDITIONAL RESOURCES

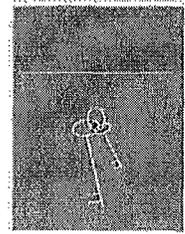
- Select annual indicators:
<http://www1.nyc.gov/site/doc/about/doc-statistics.page>

For more information on the agency, please visit: www.nyc.gov/doc.



DEPARTMENT OF CORRECTION

Joseph Ponte, Commissioner



WHAT WE DO

The Department of Correction (DOC) provides for the care, custody and control of inmates, persons 16 years of age and older, accused of crimes or convicted and sentenced to one year or less of incarceration. The Department operates 14 correctional facilities, including 10 jails on Rikers Island and four borough houses of detention (Brooklyn, the Bronx, Queens and Manhattan), as well as court pens in each of the five boroughs and two hospital prison wards; processes nearly 64,000 admissions and releases annually and manages an average daily inmate population of approximately 9,800 individuals.

FOCUS ON EQUITY

DOC is committed to enhancing safety, improving jail conditions and promoting better reentry outcomes for inmates, which advances equity for all New Yorkers. For the past two years, the DOC has been undertaking a shift in culture, guided by a transformative 14-point Anti-Violence Reform Agenda, which seeks to reduce jail violence, increase safety for and better address the needs of staff and inmates and improve long-term inmate outcomes. In support of this agenda, the DOC tailors housing, staffing and programming to the age-, gender- and health-specific needs of the unique populations in custody. The Department is restructuring housing to ensure improved safety, offer alternatives to punitive segregation and ensure age-appropriate services. Employing enhanced and amplified recruitment efforts, DOC has also been securing improved staffing levels for each housing area to ensure better staff to inmate ratios and appropriate staffing for intensive programming efforts. The past three graduating classes of the DOC Academy have been the largest in history, with over 700 graduates in the most recent class. The Department is also implementing targeted training efforts including Mental Health First Aid to provide officers with the skills needed to better identify and address the needs of unique populations. By moving away from one-size-fits-all responses and offering targeted training and services to DOC staff and inmates, the Department is successfully reducing serious violence in its restart areas and better meeting the needs of those in DOC custody.

OUR SERVICES AND GOALS

SERVICE 1 Provide a safe and secure environment for inmates, staff and host communities.

- Goal 1a Ensure the security and safety of inmates in DOC custody.
- Goal 1b Ensure that use of force is authorized and appropriate.
- Goal 1c Provide inmates with timely access to health services.
- Goal 1d Maximize bed capacity and address cell maintenance and repairs in a timely manner.
- Goal 1e Ensure timely transport of inmates to courts throughout the City.

SERVICE 2 Prepare inmates for return to their neighborhoods as civil and contributing members.

- Goal 2a Prepare as many inmates as possible for successful release through participation in skills-building programs including educational opportunities, jobs training, behavioral interventions and mental health services.
- Goal 2b Reduce idleness by increasing inmate participation in mandated and other programs, services and activities.

SERVICE 3 Provide correction-related services and information to the public.

- Goal 3a Provide timely notifications to crime victims.

HOW WE PERFORMED

- In order to enhance safety for both staff and inmates, DOC has continued to roll out reforms and trainings to improve responses to maladaptive behavior through crisis management and de-escalation. Through training in Mental Health First Aid, Cognitive Behavioral Therapy, Dialectical Behavior Therapy and other interventions, Correctional Officers working with special populations are now better equipped to respond to incidents. Through targeted training, the Department has achieved improved staff-inmate interactions in terms of crisis management, de-escalation, conflict resolution and general communication. These have combined to stabilize inmate assaults on staff, as the number and rate of assaults on staff remained unchanged at 341 and 8.8 per 1,000 ADP, respectively, during the first four months of Fiscal 2017.
- While inmate assaults on staff have stabilized, jail-based arrests of inmates increased by three percent from last year. The Department is committed to disciplining inmates who assault staff members and pursuing their arrest and prosecution by the District Attorney. The most common reasons for jail-based arrests of inmates involved possession of contraband and assaults on staff. While searches continued to drop (by eight percent), the effectiveness of searches continues to improve, with 43 percent more weapons recovered than in the same timeframe last year. The Department has been working to address the smuggling of contraband by both inmates and visitors through the addition of new surveillance cameras, improved technology and heightened front gate procedures including more searches and new search tactics. In particular, the use of contraband detectors for inmate searches as well as the use of more canine searches for both visitor and inmate searches have contributed to a higher contraband recovery rate. However, the detection of small blades and other hard-to-find weapons can best be accomplished through the utilization of body scanner technology, which currently remains prohibited for non-medical use by New York State law.
- While staff-inmate incidents have improved, the Department faces challenges in regards to inmate-on-inmate incidents. Stabbings and slashings increased by 21 percent while inmate fights increased by 27 percent compared to the same time period last year. The percentage of the population in a Security Risk Group (SRG) has increased to 14.4 percent, compared to 12.4 percent last year. Historically, SRG-associated inmates are involved in disproportionately more violent incidents and were involved in nearly 70 percent of jail incidents during the reporting period in Fiscal 2017. There has also been an increase in the use of difficult-to-detect titanium and ceramic blades, contributing to more stabbings and slashings. Challenges related to inmate-inmate interaction have also emerged from the Department's ambitious new reforms, which include eliminating punitive segregation for adolescents and drastically reducing its usage for the remainder of the population. On October 11, 2016, it was eliminated for young adults as well. The elimination of punitive segregation for these populations has contributed to initial spikes in violence. However, as the DOC continues to develop its therapeutic alternative housing options, the Department expects to see positive outcomes. In an attempt to offer age-appropriate services and programs to the young adult population, DOC undertook an initiative to house the majority of young adults in the George Motchan Detention Center (GMDC). Historically, young adults have also been involved in disproportionately more violent incidents, and as such, this housing structure resulted in higher rates of violence. The Department is adjusting this model to implement young adult housing only for those who are in lower-risk classifications, interested in programming and education and/or are in alternative housing units for infractions. For the remainder, the Department has continued to explore the use of blended housing (a mix of adults and young adults), which has shown more success in reducing violence. While the number and rate per 1,000 ADP of violent inmate-on-inmate incidents increased during this time period, the number of serious injuries to inmates as a result of assaults and fights decreased by nine percent due to the implementation of the Incident Command System (ICS), which has led to improved response.
- Since the implementation of the Department's anti-violence reform agenda, there has also been a focus on staff training in behavioral interventions, de-escalation and better response protocols that focus on immediate engagement and avoiding prolonged physical altercation. These trainings aim to minimize use of force that involves physical altercations, ensure that use of force is only applied when necessary and assure that the most appropriate means are used to resolve situations, while reducing risk of injury to staff and inmates alike. Where force is warranted, the Department uses the least restrictive means possible to achieve compliance; notably, handheld chemical agents. These measures have resulted in significant reductions in uses of force resulting in serious and minor injury. Compared to the same time period last year, uses of force with serious injury and uses of force with minor injury per 1,000 ADP declined by 17 percent and 18 percent, respectively. Uses of force with no injury per 1,000 ADP increased by three percent while total uses of force declined by six percent. DOC has also finalized new use of force policies and trainings in line with

US Department of Justice recommendations. The new policy will be effective in September 2017. During the first four months of Fiscal 2017, DOC began training staff in the new policy and defensive tactics.

- While the number of inmate health clinic visits decreased by only 2.6 percent from the same time period last year, the average clinic waiting time decreased by 24 percent, from 33 minutes to 25 minutes. In September, the facilities' clinics implemented daily shift meetings between DOC and NYC Health + Hospitals (H + H) that enable the communication of priority as well as the staffing support required, with the goal of identifying the individuals that need to be seen and ensuring they are seen as quickly as possible. Through these efforts, as well as shifting to a no-escort policy for certain areas and classifications to go to the clinics, waiting times have improved by 24 percent. In addition to services provided in the clinic, DOC and H + H continue to focus on developing and expanding collaborative programs that promote preventive and ongoing care such as the Program to Accelerate Clinical Effectiveness (PACE), Clinical Alternatives to Punitive Segregation (CAPS), and substance misuse treatment through A Road Not Taken (ARNT).
- Through intensive efforts to improve the timely transport of inmates to court, DOC achieved a 10.7 percentage point improvement in on-time court delivery, up to 98.3 percent. While there have been court production challenges over the past few years, the Department placed a major focus on production beginning in late Fiscal 2016, dedicating a Bureau Chief to the initiative. Through improved monitoring of on-trial inmates and communication with facility managers, surveillance of on-trial inmates and more buses, the Department exceeded its target of 95 percent on-time court arrivals. During times when it is anticipated that an inmate will be late for a scheduled court appearance, DOC notifies judges to allow for other business to proceed before the inmate arrives.
- A key component of the Department's reform agenda is developing vocational, educational and mental health programming to improve reentry outcomes. In line with this goal, the Department, in collaboration with the Fortune Society and Osborne Association, expanded the I-CAN program in October 2015. The program now plays a major role in the Anna M. Kross Center (AMKC), George R. Vierno Center (GRVC), and GMDC, where staff members have been added to provide services in newly created I-CAN housing areas. This expansion has resulted in a 107 percent increase in enrollments and a 113 percent increase in workshops compared to the same timeframe last year. Higher incident levels in the Robert N. Davoren Complex (RNDC) and GMDC contributed to a 9.8 percent decrease in the average daily attendance in school programs. As the Department continues to develop its alternatives to punitive segregation for the adolescent and young adult populations, incident levels are expected to stabilize, enabling higher daily school attendance.
- Compared to July through October of Fiscal 2016, there was a 153 percent increase in the average daily number of inmates in vocational skills training programs. This can be attributed to the I-CAN expansion as well as two new departmental initiatives - Industry Recognized Training (IRT) and Trading Futures. IRT offers adolescents and young adults certification courses such as OSHA, food handler and CPR, while Trading Futures offers inmates introductory courses in various trades such as carpentry, cosmetology, culinary arts, and basic electric work. In addition to expanding programming, the Department is working to ensure that programs are tailored to the age- and health- specific needs of the populations in custody. Through the housing of young adults in GMDC, the Department has developed program-specific housing that addresses the unique developmental, educational and vocational needs of young adults. These housing units offer up to 40 hours per week in programming, such as high school diploma or equivalency education, higher education, animal training and horticultural education. Individuals in Mental Observation (MO) housing are also offered clinical and trauma-informed programming including art therapy, pet therapy and acting and writing classes.

SERVICE 1 Provide a safe and secure environment for inmates, staff and host communities.

Goal 1a Ensure the security and safety of inmates in DOC custody.

Performance Indicators	Actual			Target		4-Month Actual	
	FY14	FY15	FY16	FY17	FY18	FY16	FY17
Admissions	77,141	67,672	63,758	*	*	22,081	19,944
Average daily population	11,408	10,240	9,790	*	*	9,694	9,744
Average daily population - adolescent inmates	489	216	187	*	*	181	197
Inmates in Security Risk Group (% ADP)	8.2%	11.8%	13.3%	*	*	12.4%	14.4%
Fight/assault infractions	8,827	9,424	11,240	*	*	3,562	4,518
Jail-based arrests of inmates	995	795	1,538	*	*	468	480
Searches	251,343	255,776	237,757	*	*	85,060	78,010
Weapons recovered	2,348	2,240	3,396	*	*	1,055	1,507
* Violent inmate-on-inmate incidents (monthly rate per 1,000 ADP)	32.9	37.8	47.8	0	0	48.2	58.3
* Serious injury to inmate(s) as a result of violent inmate-on-inmate incidents (monthly rate per 1,000 ADP)	1.8	2.5	2.5	0	0	2.8	2.9
* Inmate assault on staff (monthly rate per 1,000 ADP)	5.9	8.6	7.9	0	0	8.8	8.8
* Serious injury to staff as a result of inmate assault on staff (monthly rate per 1,000 ADP)	0.39	0.35	0.20	0	0	0.31	0.38
* Escapes	0	0	0	0	0	0	0
* Non-natural deaths of inmates in custody	2	0	0	0	0	0	0

* Critical Indicator "NA" - means Not Available in this report 0 0 shows desired direction

Goal 1b Ensure that use of force is authorized and appropriate.

Performance Indicators	Actual			Target		4-Month Actual	
	FY14	FY15	FY16	FY17	FY18	FY16	FY17
Incidents of use of force - total	3,779	4,409	4,756	*	*	1,718	1,621
Incidents of use of force - adolescent inmates	624	378	594	*	*	189	282
* Department use of force incidents with serious injury (rate per 1,000 ADP)	1.18	1.14	0.66	0	0	0.77	0.64
Department use of force incidents with minor injury (rate per 1,000 ADP)	13.23	15.59	15.40	*	*	18.29	14.91
Department use of force incidents with no injury (rate per 1,000 ADP)	13.19	19.14	24.42	*	*	25.25	26.04
Incidents and allegations of use of force	4,221	4,822	5,269	*	*	1,871	1,752

* Critical Indicator "NA" - means Not Available in this report 0 0 shows desired direction

Goal 1c Provide inmates with timely access to health services.

Performance Indicators	Actual			Target		4-Month Actual	
	FY14	FY15	FY16	FY17	FY18	FY16	FY17
Inmates with a mental health diagnosis (% ADP)	38.0%	41.0%	42.0%	*	*	42.0%	42.0%
Inmates with a serious mental health diagnosis (% ADP)	10.2%	11.1%	11.0%	*	*	10.9%	11.0%
Inmate health clinic visits	77,825	81,873	78,499	*	*	28,084	27,345
* - Average clinic waiting time (minutes)	41	34	28	0	0	33	25

* Critical Indicator "NA" - means Not Available in this report 0 0 shows desired direction

Goal 1d Maximize bed capacity and address cell maintenance and repairs in a timely manner.

Performance Indicators	Actual			Target		4-Month Actual	
	FY14	FY15	FY16	FY17	FY18	FY16	FY17
Jail-cells unavailable (short-term repair) (%)	2.8%	2.3%	2.3%	1.0%	1.0%	2.7%	2.1%
*Population as percent of capacity (%)	86%	80%	80%	96%	96%	77%	82%

* Critical Indicator "NA" - means Not Available in this report 0-0 shows desired direction

Goal 1e Ensure timely transport of inmates to courts throughout the City.

Performance Indicators	Actual			Target		4-Month Actual	
	FY14	FY15	FY16	FY17	FY18	FY16	FY17
*On-trial inmates delivered to court on-time (%)	94.2%	90.9%	84.0%	95.0%	95.0%	87.6%	98.3%

* Critical Indicator "NA" - means Not Available in this report 0-0 shows desired direction

SERVICE 2 Prepare inmates for return to their neighborhoods as civil and contributing members.

Goal 2a Prepare as many inmates as possible for successful release through participation in skills-building programs including educational opportunities, jobs training, behavioral interventions and mental health services.

Performance Indicators	Actual			Target		4-Month Actual	
	FY14	FY15	FY16	FY17	FY18	FY16	FY17
I-CAN Referrals	4,117	3,588	6,194	*	*	1,363	NA
*I-CAN Enrollments	2,408	2,321	4,278	*	*	1,019	2,106
I-CAN Workshops	1,580	2,065	6,505	*	*	1,522	3,238

* Critical Indicator "NA" - means Not Available in this report 0-0 shows desired direction

Goal 2b Reduce idleness by increasing inmate participation in mandated and other programs, services and activities.

Performance Indicators	Actual			Target		4-Month Actual	
	FY14	FY15	FY16	FY17	FY18	FY16	FY17
Average daily number of inmates in vocational skills training programs	216	256	226	*	*	239	605
Average daily attendance in school programs	526	330	256	*	*	255	230
*Inmates participating in skills-building activities/discharge planning (%)	10.3%	10.5%	8.7%	10.0%	10.0%	NA	NA

* Critical Indicator "NA" - means Not Available in this report 0-0 shows desired direction

SERVICE 3 Provide correction-related services and information to the public.

Goal 3a Provide timely notifications to crime victims.

Performance Indicators	Actual			Target		4-Month Actual	
	FY14	FY15	FY16	FY17	FY18	FY16	FY17
Victim Identification Notification Everyday (VINE) system registrations	15,291	15,159	15,440	*	*	4,899	5,475
VINE confirmed notifications	18,445	19,330	21,993	*	*	6,710	7,964

* Critical Indicator "NA" - means Not Available in this report 0.0 shows desired direction.

AGENCY-WIDE MANAGEMENT

Performance Indicators	Actual			Target		4-Month Actual	
	FY14	FY15	FY16	FY17	FY18	FY16	FY17
Collisions involving City vehicles	104	103	107	*	*	27	31
Workplace Injuries reported	3,599	2,417	2,222	*	*	722	1,045
Accidents involving inmates	38	44	43	*	*	16	19

AGENCY CUSTOMER SERVICE

Performance Indicators	Actual			Target		4-Month Actual	
	FY14	FY15	FY16	FY17	FY18	FY16	FY17
Customer Experience							
Letters responded to in 14 days (%)	99.6%	99.4%	99.3%	*	*	98.1%	100.0%
E-mails responded to in 14 days (%)	100.0%	100.0%	100.0%	*	*	100.0%	100.0%

AGENCY RESOURCES

Resource Indicators	Actual			Sept. 2016 MMR Plan	Updated Plan	Plan	4-Month Actual	
	FY14	FY15	FY16	FY17	FY17 ¹	FY18 ¹	FY16	FY17
Expenditures (\$000,000) ²	\$1,103.1	\$1,162.1	\$1,307.6	\$1,392.3	\$1,402.5	\$1,440.8	\$430.6	\$469.3
Revenues (\$000,000)	\$21.8	\$20.8	\$22.9	\$20.5	\$20.5	\$20.5	\$7.4	\$7.0
Personnel (uniformed)	8,922	8,756	9,832	10,336	10,336	10,420	9,057	9,477
Personnel (civilian)	1,397	1,491	1,676	2,232	2,238	2,238	1,499	1,680
Overtime paid (\$000,000)	\$139.1	\$196.3	\$275.2	\$137.6	\$139.4	\$171.4	\$83.1	\$90.8
Capital commitments (\$000,000)	\$124.8	\$153.6	\$81.5	\$316.5	\$579.8	\$989.8	\$7.6	\$13.3

¹January 2017 Financial Plan

²Expenditures include all funds

"NA" - Not Available in this report

NOTEWORTHY CHANGES, ADDITIONS OR DELETIONS

- As of September 1, 2016, the Department completed expansion of the I-CAN program and no longer directly refers inmates to discharge planning services. Service providers now determine eligibility for inmates in the bulk of the jail population and all inmates in Accelerated Program Unit (APU) housing are referred for I-CAN reentry services. Four-month Fiscal 2017 referral figures are not yet available. Reporting for I-CAN program referrals will be revised in the full-year Fiscal 2017 Mayor's Management Report.

ADDITIONAL RESOURCES

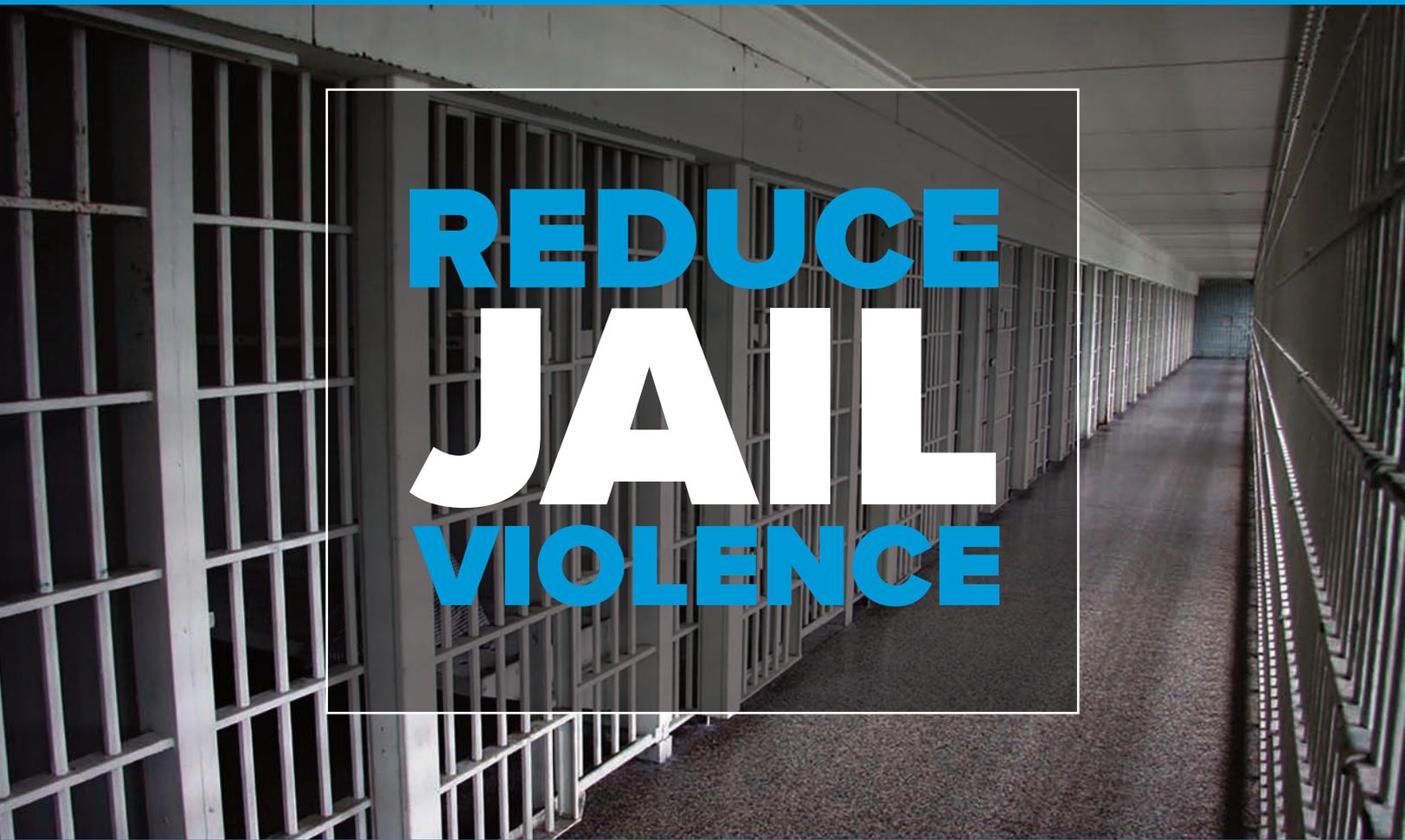
- Select annual indicators:
<http://www1.nyc.gov/site/doc/about/doc-statistics.page>

For more information on the agency, please visit: www.nyc.gov/doc.



CORRECTION OFFICERS' BENEVOLENT ASSOCIATION, INC.

"PATROLLING THE TOUGHEST PRECINCTS IN NEW YORK"



**REDUCE
JAIL
VIOLENCE**

**PROPOSALS TO REDUCE JAIL VIOLENCE IN
THE NEW YORK CITY DEPARTMENT OF CORRECTION**

A BRIEFING BOOKLET PREPARED BY:
THE CORRECTION OFFICERS' BENEVOLENT ASSOCIATION, INC.

ELIAS HUSAMUDEEN
President

2018

VIOLENCE ON THE STREETS OF NEW YORK CITY IS DEALT WITH BY ARRESTING AND SEGREGATING THE PERPETRATORS FROM THE PUBLIC AND SENDING THEM TO JAIL.

BUT WHAT HAPPENS WHEN THESE PERPETRATORS CONTINUE TO COMMIT VIOLENCE IN JAIL?

PUNITIVE SEGREGATION IS A JAIL WITHIN IN A JAIL. IT ENABLES CORRECTION OFFICERS TO SEGREGATE VIOLENT OFFENDERS JUST AS THE POLICE SEGREGATE VIOLENT OFFENDERS ON THE STREETS OF NEW YORK CITY, WHEN THEY MAKE ARRESTS.

DAILY NEWS

21-YEAR-OLD MAN FATALLY STABBED OUTSIDE OF VIOLENCE-RIDDEN BROOKLYN SHELTER



February 26, 2018

A man was stabbed to death Sunday outside a violence-ridden Brooklyn homeless shelter, cops and witnesses said.

Miguel Acosta, 21, was standing in front of the Atlantic Armory Shelter at Bedford and Atlantic Aves. in Crown Heights when the killer, armed with a knife and a grudge, approached him about 1 p.m., police said. The two men exchanged a few words before the assailant plunged a knife into the other man's chest and ran off.

Acosta, clutching his chest and gushing blood, limped half a block before stumbling facedown onto the rain-slicked pavement, a witness said.

Medics tried in vain to revive him before rushing him to Interfaith Medical Center, where he died.

A witness who lives in the shelter said it appeared the two men knew each other.

"I think he might have already had the knife in his hand. It was one of those double-bladed pocket knives," he said. "(The victim) was clutching his chest and saying, 'My bad! My bad!' His last words — he said 'my bad' four times. Those were his last words. It gave me goosebumps. "The

ambulance came with the paramedics and did everything they could to revive him," the witness added. "That dude is gone. That corner right there just turned into a murder scene."

The witness said he recognized the victim as a fellow shelter resident but said the killer was "not from around here."

A Department of Homeless Services official insisted the victim did not live at the shelter. Police listed his address as another homeless shelter — on Blake Ave. in Brooklyn. Durwin Adams, who has stayed at the 350-bed shelter since July, said it is plagued with violence.

"Just last week a man pulled a knife on me that was about 8 inches long," he said. "I was like, how the hell did you even get that through the metal detectors?" The suspect was described as a 5-foot-6 Hispanic man in his 20s, wearing a black wool cap, black jacket and blue jeans.

Earlier this month, Homeless Services officials said they had doubled the number of officers onsite and moved their training facility to the armory. There are a minimum of 11 security staffers on duty there at all times. Last week, the Daily News reported on an array of quality-of-life concerns surrounding the shelter in the rapidly gentrifying neighborhood.

INTRODUCTION

IT'S BEEN SAID THAT “THE DEFINITION OF INSANITY IS DOING THE SAME THING OVER AND OVER AGAIN AND EXPECTING A DIFFERENT RESULT”

The Department of Correction is still attempting to resolve the issue of jail violence through the creation of so-called specialized housing units/programs. However, regardless of whether we call them restrictive housing units, enhanced supervision housing, enhanced housing, transitional-restorative units, secure units, or enhanced supervision re-start, they will not address the core issue at hand-jail violence.

The Department of Correction thinks that the mere creation of housing units/programs with elaborate names somehow means they are creating something new. They are not. They have not changed anything during the last four years and continuing these failed programs, while expecting a different result, is the definition of insanity.

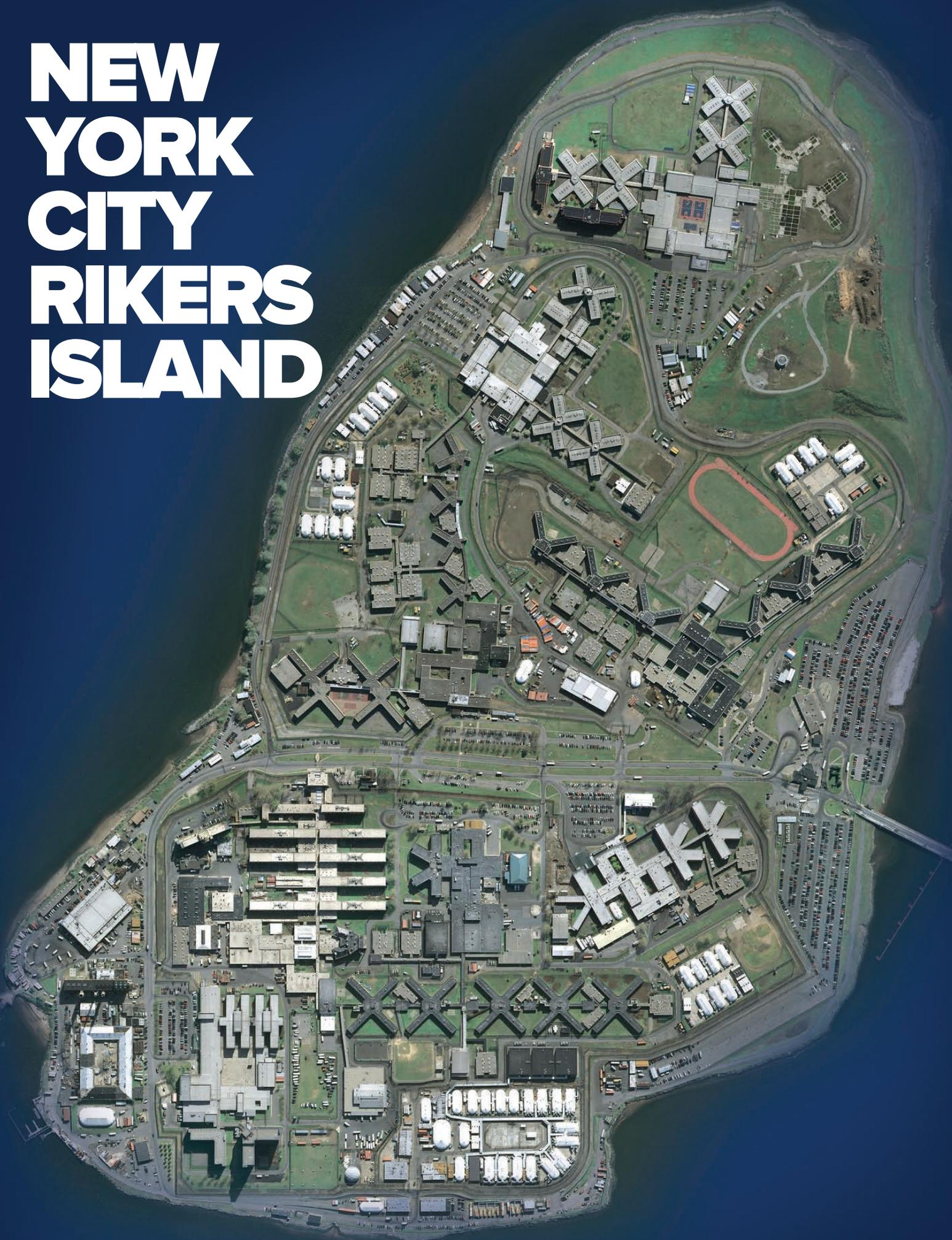
Second, despite the fact that these units and other “reform policies” have been in place for four or more years, very little progress has been made to ensure jail safety (Mayor’s Management Report 2013-2017). Correction Officers, staff, and inmates continue to be assaulted at alarmingly high rates on a daily basis without accountability or sanctions placed upon violent offenders (Federal Monitor’s Reports I-IV).

The Department of Correction has been unable to lower the jail violence across every major category (Mayor’s Management Report 2013-2017). Despite the failure of these policies, the Department of Correction continues to stand by them and has not developed any new or effective initiatives to effectively reduce jail violence.

Thus, the Department of Correction has failed to learn from recent history and it continues to repeat its mistakes at the expense of Correction Officers, staff, inmates, and the public.

The Mayor’s continued failure to listen to these sound recommendations from law enforcement experts and the boots on the ground is directly connected to the continued increase in violence in our jails.

NEW YORK CITY RIKERS ISLAND



RIKERS ISLAND & NEW YORK CITY JAILS

9 RIKERS ISLAND FACILITIES

1. RNDC: The Robert N. Davoren Center
2. EMTC: The Eric M. Taylor Center
3. GMDC: The George Motchan Detention Center
4. AMKC: The Anna M. Kross Center
5. NIC: The North Infirmary Command
6. OBCC: The Otis Bantum Correctional Center
7. WF: West Facility
8. RMSC: The Rose M. Singer Center
9. GRVC: The George R. Vierno Center

IN ADDITION TO THE 9 JAILS RIKERS HAS:

- POWER PLANT
- GARAGE
- GAS STATION
- CAR WASH
- FIRE RESPONSE UNIT
- MEDICAL UNITS
- BAKERY
- CENTRAL LAUNDRY
- TAILOR SHOP
- PRINT SHOP
- A K9 UNIT
- STORE HOUSE
- APPROXIMATELY
1500 PARKING SPACES

BOROUGH FACILITIES

BROOKLYN DETENTION COMPLEX (BKDC)

MANHATTAN DETENTION COMPLEX (MDC)

BRONX COURTS (BXCTS)

VERNON C. BAIN CENTER (THE BARGE) (VCBC)

QUEENS COURTS QDC)

HOSPITAL UNITS

ELMHURST HOSPITAL PRISON WARD (EHPW) QUEENS

BELLEVUE HOSPITAL PRISON WARD (BHPD) MANHATTAN

A GLIMPSE OF RIKERS ISLAND & NEW YORK CITY JAILS

	FY17
2017 ADMISSIONS	58,226
NUMBER OF REPEAT OFFENDERS.....	41,545
AVERAGE DAILY POPULATION	9,000
INMATES IN SECURITY RISK GROUP (% ADP).....	14.7%
JAIL-BASED RE-ARRESTS OF INMATES	1,126
POPULATION IS ON TRIAL	85%
AVERAGE LENGTH OF STAY	60.7 DAYS
PERCENT RELEASED TO THE COMMUNITY	76%
RIKERS ISLAND	420 ACRES
INMATES TRANSPORTED TO AND FROM COURT DAILY.....	1,000
INMATE VISITORS PER DAY	1,600

POPULATION DEMOGRAPHICS FY17

AGE	NEW ADMISSIONS	AVG. DAILY POP	% OF ADP
16-17	332	143	1.5%
18-21	1,381	947	10.2%
22-25	1,967	1,373	14.8%
26-29	2,181	1,321	14.2%
30-39	4,033	2,440	26.3%
40-49	2,597	1,560	16.8%
50-59	1,981	1,240	13.4%
60-69	348	226	2.4%
70+	39	21	0.2%
unknown	86	5	0.1%

BOROUGH OF ARRAIGNMENT

	NEW ADMISSIONS	AVG. DAILY POP	% OF ADP
Brooklyn	3,107	1,720	18.5%
Bronx	2,304	1,458	15.7%
Manhattan	4,538	3,010	32.4%
Staten Island	728	319	3.4%
Queens	2,606	1,571	16.9%
Other	1,662	1,198	12.9%

NEW YORK CITY DEPARTMENT OF CORRECTION

USE OF FORCE

FY FEBRUARY 2017 - FEBRUARY 2018

2017 YEAR IN REVIEW	FYTD 2017
INMATE VIOLENCE - SLASHINGS/STABBINGS	133
TOTAL USE OF FORCE "A"	156
TOTAL USE OF FORCE "B"	1,239
TOTAL USE OF FORCE "C"	2,221
TOTAL USE OF CHEMICAL AGENTS	2,280
ASSAULTS ON STAFF INCIDENTS	642
USE OF FORCE "A"	28
USE OF FORCE "B"	295
USE OF FORCE "C"	319
USE OF FORCE "A" –STAFF INJURIES	24
USE OF FORCE "A" –INMATE INJURIES	27
SERIOUS INJURY TO INMATE BY INMATE	152
TOTAL # OF INMATE FIGHTS	4,702
INFRACTIONS FOR INMATE ON INMATE ALTERCATIONS	9,694
ASSAULT ON STAFF W/O UOF	438
SPLASHING	744
SPITTING/SPAT	268
UOF STAFF - STOP INMATE FIGHT	1,727
CRIMINAL ACTS - ON CIVILIAN STAFF	121

3 ACTUAL USE OF FORCE INCIDENTS

***UOF (A)** REQUIRES MEDICAL ATTENTION BEYOND OVER THE COUNTER ANALGESICS
(LACERATION, PUNCTURE, FRACTURE, SUTURE, INTERNAL INJURIES)

INCIDENT DATE	JAIL
03-13-2018	GRVC

AT 1911 HOURS, IN HOUSING AREA 19B (ADULT/MO), INMATE MCMILLAN (BLOOD, ENH, REST CL23) WALKED UP TO OFFICER AND STRUCK HIM SEVERAL TIMES IN THE FACIAL AREA. AS A RESULT, A USE OF FORCE OCCURRED WITH THE BELOW LISTED STAFF, THIS INCIDENT IS CLASSIFIED AS AN "A" USE OF FORCE. VIDEO SURVEILLANCE: YES/ CHEMICAL AGENT (OC) UTILIZES: YES. INJURIES TO CORRECTION OFFICERS (CO A) LACERATION TO THE FACE (CO B) SPRAIN WRIST, INJURY TO INMATE CONTUSION TO THE NOSE

***UOF (B)** ADMINISTRATION OF MINOR FIRST AID
(SUPERFICIAL BRUISE, SCRAPE, SCRATCH, MINOR SWELLING)

INCIDENT DATE	JAIL
03-02-2018	MNCTS

AT 1625 HOURS IN MANHATTAN COURT NEW ADMISSION PEN #2, INMATE HUGGINS (SRG BLOOD, CL, 7, AMKC, NEW ADMISSION) WAS BEING ESCORTED BY OFFICER TO PEN #2, WHEN THE INMATE THREW PUNCHES TOWARDS THE OFFICER, NOT MAKING CONTACT, AS A RESULT, A USE OF FORCE OCCURRED WITH THE BELOW LISTED STAFF, THIS INCIDENT IS CLASSIFIED AS A "B" USE OF FORCE, VIDEO SURVEILLANCE: NO/ CHEMICAL AGENT (OC) UTILIZED: NO INJURY TO CORRECTION OFFICER OR INMATE.

***UOF (C)** NO INJURY

INCIDENT DATE	JAIL
03-12-2018	OBCC

AT 1515 HOURS, IN HOUSING AREA 5 SOUTH (ADULT/ GP), INMATES HENRY (NSRG, CL.19) AND COOPER (SRG-BLOOD, ICR, CL. 28) WERE INVOLVED IN A FIGHT, OFFICER ORDERED THE INMATES TO STOP AND WARNED CHEMICAL AGENT (OC) WOULD BE UTILIZED. THE INMATES DID NOT COMPLY. AS RESULT, A USE OF FORCE OCCURRED WITH THE BELOW LISTED STAFF. THIS INCIDENT IS CLASSIFIED AS A "C" USE OF FORCE, VIDEO SURVEILLANCE: YES/ CHEMICAL AGENT (OC) UTILIZED: YES. NO INJURY TO CORRECTION OFFICER OR INMATES.

ANALYSIS OF VIOLENCE ON RIKERS ISLAND FOR FISCAL PERIOD FEBRUARY 2017 - FEBRUARY 2018

In 2017, Correction Officers had in its custody approximately 65,000 inmates who were housed on Rikers Island and other New York City jail facilities. Out of the 65,000 approximately 41,000 were recidivist (arrested 2-9 times that same year).

THERE WERE APPROXIMATELY 3,616 USE OF FORCES (WHICH REPRESENTS LESS THAN 6 PERCENT FOR THE PERIOD IN QUESTION) WITH THE FOLLOWING BREAKDOWN: **156 CLASS (A) USE OF FORCES, 1,239 CLASS (B) USE OF FORCES, 2,221 CLASS (C) USE OF FORCES.**

Correction Officers used Chemical Agents a total of 2,280 times which resulted in no injury to inmate or Correction Officers. Between February 2017 and February 2018, there was a total of 642 Correction Officers assaulted by inmates. 28 of those assaults were Class "A" Uses of Forces resulting in Correction Officers being sent to the hospital for lacerations, punctures requiring sutures, fractures, internal injuries, broken orbitals, fractured jaws, broken/fractured noses, sprain of the hands, wrists, shoulders, ankles, back injuries, or missing teeth. Some were the result of an out right attack on Correction Officers by an inmate or inmates, while most are assaults resulting from Correction officers intervening in inmate fights or altercations. A total of 1,727 Use of Force involved Correction Officers breaking up or stopping inmate fights.

There were a total 438 incidents of inmate assault against Correction Officers where no force was used by Correction Officers. Correction Officers were splashed a total of 744 times with urine, feces and other unknown liquids by inmates. Correction Officers were spit/spat on a total of 268 times by inmates. Inmates usually spit in the face of Officers. These numbers do not include civilians. There was a total of 121 criminal acts (which includes assaults, splashing and spitting) against Civilians staff.

During this same period, there were 4,702 Inmate fights in total. Over 152 Inmate on Inmate Serious Injuries and 133 incidents of Inmate Slashing and Stabbings, mostly committed by adolescents, mentally ill and high custody inmates.

In FY2017, Adolescent inmates (16-21 year olds) who despite comprising only 1,713 of the total inmate population, are a group with higher than average lengths of stay in custody, more serious criminal charges (charged with one or more felonies), the top charges being (Robbery 1 and 2 and Murder 2) and a higher level of involvement in jail incidents. Since January 2018 to date there has been more than 150 Use of Force involving 16-17 year olds (mostly involved Correction Officers breaking up inmate fights).

In FY2017 Inmates identified as members of security risk groups (SRG), which include gangs, represent approximately 14.7% of the population and are involved in about a quarter of all jail incidents. High-custody inmates, identified as having a high propensity for institutional violence, but are involved in close to half of all jail incidents.

Correction Officers have been successful in running one the best operation in our profession. New jails and shutting down Rikers won't do anything to reduce the violence in the jails, if Correction Officers are not allowed to enforce the law behind bars.

INMATE BURNS AND BEATS CORRECTION OFFICER



On March 17, 2018, J'von Johnson, an inmate housed in an Enhanced Supervision Housing unit at the Otis Bantum Correctional Center, who is charged with murder and three assaults, lashed out and attacked a Correction Officer as he was completing his tour.

The inmate threw scalding hot water on the officer and then proceeded to punch him repeatedly. The officer was transferred to the Emergency Room at New York Cornell Hospital and was treated for 1st and 3rd degree burns and a broken nose. **This same inmate was responsible for assaulting another Correction Officer just last year in the same exact housing unit.**



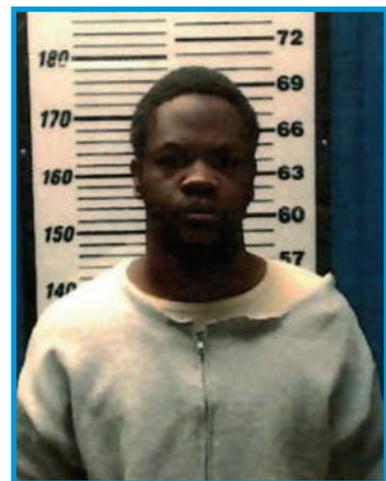
J'VON JOHNSON (Age 21)
INMATE

DETAILS:

STREET CHARGE:
MURDER (A FELONY)

CHARGE:
ASSAULT-2ND DEGREE (D FELONY)

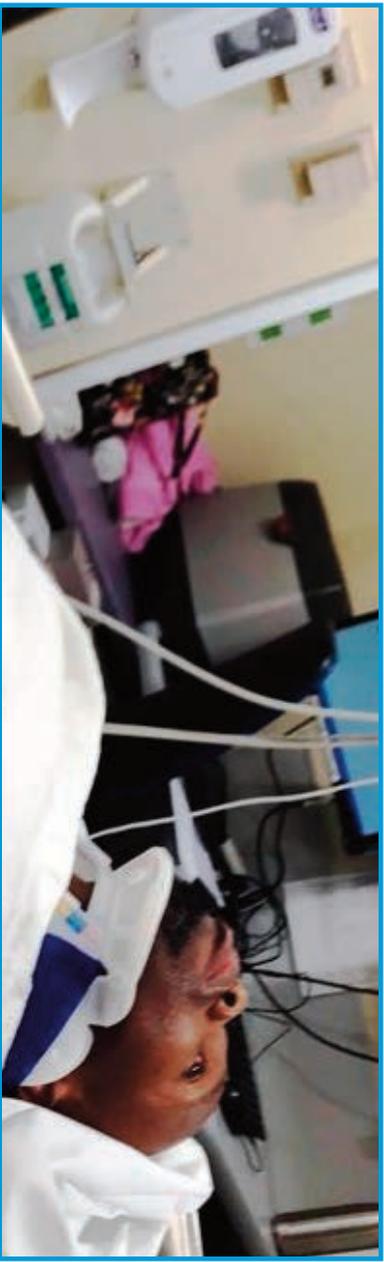
CHARGE:
ASSAULT-2ND DEGREE (D FELONY)



THIS INMATE CANNOT BE PLACED IN PUNITIVE SEGREGATION AND HIS PRIVILEGES CANNOT BE ELIMINATED BECAUSE HE'S 21. BUT WHEN HE WAS ARRESTED BY THE NYPD FOR HIS STREET CRIMES, HE WAS REMOVED AND SEGREGATED FROM THE GENERAL PUBLIC. WHEN SENT TO SURROUNDING COUNTIES IS PLACED IN SEGREGATION MORE RESTRICTED THAN NEW YORK CITY.

USE OF FORCE “A”

MULTIPLE INMATES ASSAULT CORRECTION OFFICER FRACTURING HIS NECK

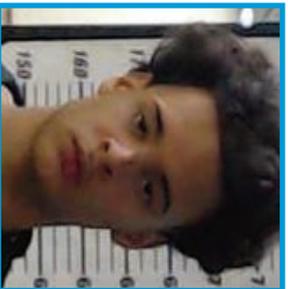


On February 10, 2018, the inmate and Bloods gang member, Steven Espinal, walked up to the uniformed officer in a vestibule of the George Motchan Detention Center and punched him, knocking him to the floor. Within moments, four other inmates rushed the officer, kicking and pummeling him for about eight seconds until two correction officers came to his aid, including one who used pepper spray, according to a video of the attack.

The injured officer, Jean Souffrant, 39, fractured his neck and was treated for bleeding on the right side of his brain.



THE FOUR INMATES WHO ATTACKED OFFICER SOUFFRANT



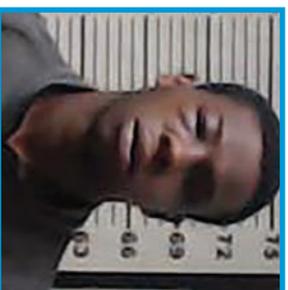
INMATE ESPINAL
Age 18

DETAILS:
STREET CHARGE:
Attempted MURDER
B Felony



INMATE BURNS
Age 18

DETAILS:
STREET CHARGE:
Attempted MURDER
B Felony



INMATE FRANCIS
Age 18

DETAILS:
STREET CHARGE:
Attempted ROBBERY
3rd E Felony



INMATE WATSON
Age 18

DETAILS:
STREET CHARGE:
Crim Poss weapon-2nd Degree
C Felony

THIS INMATE CANNOT BE PLACED IN PUNITIVE SEGREGATION AND HIS PRIVILEGES CANNOT BE ELIMINATED BECAUSE HE'S 21. BUT WHEN HE WAS ARRESTED BY THE NYPD FOR HIS STREET CRIMES, HE WAS REMOVED AND SEGREGATED FROM THE GENERAL PUBLIC. WHEN SENT TO SURROUNDING COUNTIES IS PLACED IN SEGREGATION MORE RESTRICTED THAN NEW YORK CITY.

INMATE ASSAULTED A FEMALE CORRECTION OFFICER, BREAKING HER NOSE



While attempting to break up a fight between multiple inmates at the George R. Vierno Center, on March 8, 2018, a Correction Officer was punched in the face by inmate Xavier Blount. She was sent to the Emergency Room and treated for a fractured nose.



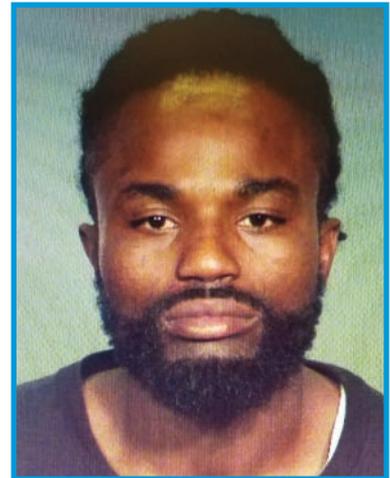
BLOUNT, XAVIER (Age 21)
INMATE

DETAILS:

STREET CHARGE:
CRIM POSS CONTRL SUBST-3RD B Felony

STREET CHARGE:
Court Order

STREET CHARGE:
ASSAULT -2ND D Felony



THIS INMATE CANNOT BE PLACED IN PUNITIVE SEGREGATION AND HIS PRIVILEGES CANNOT BE ELIMINATED BECAUSE HE'S 21. BUT WHEN HE WAS ARRESTED BY THE NYPD FOR HIS STREET CRIMES, HE WAS REMOVED AND SEGREGATED FROM THE GENERAL PUBLIC. WHEN SENT TO SURROUNDING COUNTIES IS PLACED IN SEGREGATION MORE RESTRICTED THAN NEW YORK CITY.

INMATE ASSAULTED A CORRECTION OFFICER, SLASHING HIM ACROSS HIS FACE



After refusing to return a hot pot of water to a Correction Officer, inmate Benjamin McMillan assaulted the Correction Officer in a housing area at the George R. Vierno Center on March 13, 2018, The Correction Officer was slashed across his face and sent to the Emergency Room.



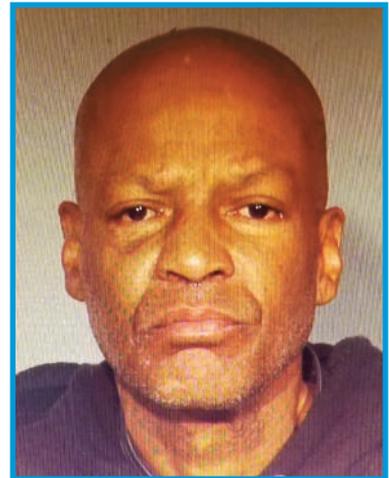
MCMILLAN, BENJAMIN (Age 61)
INMATE

DETAILS:

STREET CHARGE:
ASSAULT -2ND D Felony

STREET CHARGE:
OBSTRUCT GOVERNMENTAL ADMINIS
A Misdemeanor

STREET CHARGE:
Attempted ASSAULT-1ST C Felony



THIS INMATE CANNOT BE PLACED IN PUNITIVE SEGREGATION AND HIS PRIVILEGES CANNOT BE ELIMINATED BECAUSE OF HIS CLASSIFICATION AS A "MENTALLY ILL" INMATE. BUT WHEN HE WAS ARRESTED BY THE NYPD FOR HIS STREET CRIMES, HE WAS REMOVED AND SEGREGATED FROM THE GENERAL PUBLIC.

HOW DOES NYC DOC HANDLE VIOLENT 16-21 YEAR OLD INMATES?

Since the elimination of punitive segregation in NYC jails for the Adolescent population, the Department's solution for handling this population is to transfer them to the surrounding counties such as Suffolk, Nassau and Albany.

Currently, the NYCDOC has approximately 40 inmates who are transferred to surrounding counties at a cost of approximately \$150 per day.

These surrounding counties all have punitive segregation, but most are called administrative segregation.

When DOC inmates are transferred to the outside counties they are placed in administrative segregation because these counties don't want to expose their population to this population of inmates.

THE BENEFITS OF NYCDOC TRANSFERRING INMATES TO OTHER JURISDICTIONS:

1. We can have them placed in punitive segregation but not by us.
2. It separates this violent population from NYC Correction Officers, Civilians and inmates.
3. This population becomes someone else's problem.

THE DOWNSIDE TO TRANSFERRING THIS POPULATION OF INMATES:

1. It costs the city approximately \$150 per day that they're with the outside counties.
In addition to the \$247,000 it costs to incarcerate them annually.
2. It gives the appearance that NYCDOC and NYC cannot handle this population of violent inmates.
3. It creates a hardship for the family members to travel to visit them.
4. The additional costs involved with NYCDOC personnel who's responsible for ALL transportation of picking up and delivering these inmates for all hearings and court appearances in NYC and returning to them to the outside counties.
5. It forces their lawyers or legal representation to travel outside the city.



Mr. de Blasio said during his weekly appearance on NY1 that whatever validity there was to their claim about punitive segregation being a deterrent, “SOLITARY CONFINEMENT, UNFORTUNATELY, EATS AWAY AT THE HUMAN SOUL. SO I UNDERSTAND HOW FRUSTRATING IT MUST BE FOR OFFICERS WHO FEEL THAT SENSE OF DANGER, AND WE FEEL FOR THEM, WE WANT THEM TO BE SAFE AND THAT’S WHY WE’RE INVESTING AND WE’RE GOING TO MAKE SURE THEY’RE SAFE, BUT SOLITARY CONFINEMENT IS NOT THE ANSWER.”

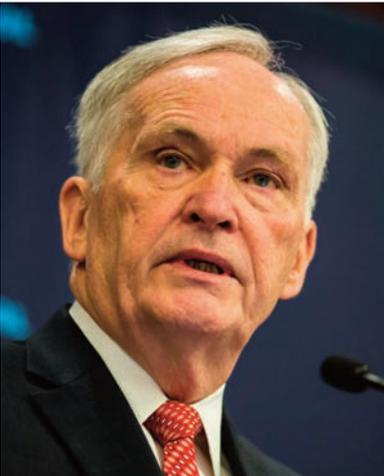
- BILL DE BLASIO, NEW YORK CITY MAYOR



Former DOC commissioner Martin F. Horn believes that the policy shifts and the recent spike in inmate violence are connected. “IT’S CERTAINLY PART OF THE STORY,” he says, adding that de Blasio and his team “MAY HAVE TRIED TO ACCOMPLISH TOO MUCH, TOO FAST.”

“In many jails throughout the U.S. and even within New York State, prisoners are not routinely out and about for more than an hour a day. New York City is an anomaly by providing that prisoners are allowed to "lock out" of their cell for up to 16 hours a day. The Minimum Standards of the State Commission on Corrections that govern the operation of the City's jails and those of all other jails in the State nowhere require that length of "lock out" time. Only New York City affords that "privilege" to its prisoners.

- MARTIN HORN, FORMER DOC COMMISSIONER



New York City Department of Correction “The first step to reducing UOF incidents is to reduce inmate-on-inmate violence. We still have significant improvements to make, particularly in preventing stabbings and slashings.” “The Department has consulted with the Nunez Monitor throughout the implementation of the Young Adult plan and has advised the Monitor of the facts and circumstances set forth above. The Monitor and his team of experts - who have experience eliminating the use of punitive segregation in other jurisdictions - have continuously advised the Department on the need to be thoughtful and deliberate in our approach to punitive segregation reforms and have cautioned that moving too quickly towards the ultimate goal of ending punitive segregation can undermine the success the Department has already achieved through reforms to the management of this population. The Monitor has advised the Department the variance request is consistent with sound correctional practice and that he believes it represents the most reasonable and prudent approach in light of the current facts and circumstances.”

- JOSEPH PONTE , FORMER DOC COMMISSIONER



“For all of the successes, we still have a long way to go. There are still too many officers being assaulted. There are still too many uses of force and fights. There are far too many stabbings and slashings.”

“For every 10,000 Correction Officers across the country, there are 254 workplace assaults and violent injuries. That is 36 times higher than the rate for all American workers. How many of you in this room today would continue to go to your place of employment everyday if those numbers were associated with your profession?”

- CYNTHIA BRANN, CURRENT DOC COMMISSIONER



“An effective way to reduce uses of force is to reduce the number of inmates fights. We also realize that, as a Department, we need to be flexible enough to revisit policy decisions tha have been made in the past, determine **WHAT IS WORKING** well and **WHAT IS NOT**, and amend those policies as needed. This includes issues such as punitive segregation, managing the mentally ill and adolescents, and basic custody management practices.”

- MARK CRANSTON, FORMER ACTING DOC COMMISSIONER



"Segregation has been and will continue to be a tool that is necessary to manage legitimate safety concerns. Reforms in the use of this practice will only be successful if the safety of inmates and staff is maintained or improved in the process.”

- DAN PACHOLKE, FORMER CANDIDATE FOR DOC COMMISSIONER



“I understand that that minimum standards for incarcerated persons are necessary for the operation of a humane jail system, but I think it is time to determine if the opportunity exists to establish--within the framework of those minimum standards--graduated sanctions that are proven to increase public safety and reduce violence.”

“Correction Officers must be empowered to prevent, reduce and stem violence on Rikers by employing swift, certain and immediate response to incidents that do not rise to the level of a criminal offense but still has the effect of disrupting order.”

“HOWEVER, I CANNOT PROSECUTE OUR WAY OUT OF THE VIOLENCE AND DYSFUNCTION of Rikers Island jails. Prosecution should be the last resort.”

- DARCEL CLARK, BRONX COUNTY DISTRICT ATTORNEY



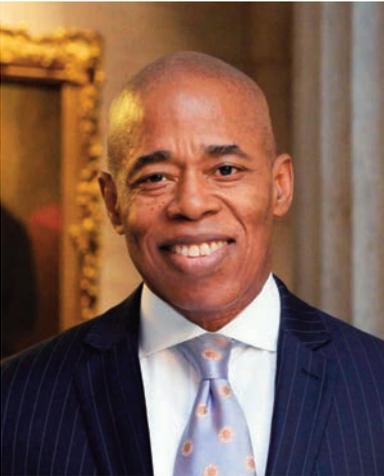
“Protecting Inmates is our legal responsibility but protecting Correction Officers is our moral and ethical responsibility.”

- JOSEPH BORELLI, CITY COUNCILMAN



“Let’s not forget today, let’s not forget tomorrow, let’s not forget next year. Ten years from now sounds nice, but it may never happen and if it doesn't happen, what do we do about the safety in Rikers Island?”

PAUL VALLONE, CITY COUNCILMAN



SIMPLY PUT, PUNITIVE SEGREGATION IS A JAIL WITHIN A JAIL. It is a public safety imperative that punitive segregation be permitted as a disciplinary tool for repeatedly violent inmates who put correction officers and other inmates in harm’s way, regardless of their age. Rather than completely removing it from the disciplinary toolkit, this punishment should be judiciously applied with oversight that takes mental health imperatives and violent behavior into account. We cannot and will not accept an either-or proposition between justice and safety. In the nation’s second-largest jail system, we must have both!

ERIC ADAMS, BROOKLYN BOROUGH PRESIDENT



“If I’m going to choose between the good guys and the bad guys, I’m going with the good guys. Inmates should be treated humanely, but when they attack correction officers, there has to be very serious repercussions.”

JOHN FLANAGAN, NEW YORK STATE SENATOR & SENATE MAJORITY LEADER

The city and agency went far beyond the court consent degree “Which includes the elimination of Punitive Segregation”

STEVE MARTIN, INDEPENDENT MONITOR

THERE ARE FOUR PRIMARY WAYS TO REDUCE/CONTROL JAIL VIOLENCE

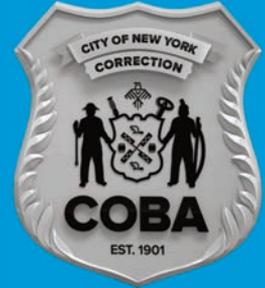
FIRST _____
Disciplinary Sanctions- penalties for inmates when the rules are violated, regardless of their age.

SECOND _____
The ability to use punitive segregation for inmates who are guilty of committing violence regardless of their age.

THIRD _____
Re-arrest inmates who have committed criminal acts while incarcerated in the city's jails.

FOURTH _____
Stronger charges issued by the District Attorneys, like gang assault and gang- related violence, and if and when convicted, consecutive sentencing.

Two of the four of the above policies are actually happening. It is obvious that the jails in the surrounding counties already implement recommendations #1 and #2 in order to keep the violence down and the jails safe.



CORRECTION OFFICERS' BENEVOLENT ASSOCIATION, INC.

“PATROLLING THE TOUGHEST PRECINCTS IN NEW YORK”

PROPOSALS

COBA PROPOSAL #1

DISCIPLINARY SANCTIONS
ON INMATE PRIVILEGES

COBA PROPOSAL #2

RESTORATION OF PUNITIVE SEGREGATION
IN LIMITED CIRCUMSTANCES

COBA PROPOSAL #3

INMATE IDLENESS REDUCTION

COBA PROPOSAL #4

OTHER DISCIPLINARY SANCTIONS

COBA PROPOSAL #5

A SUMMIT OF ALL STAKEHOLDERS

COBA PROPOSAL #1

DISCIPLINARY SANCTIONS ON INMATE PRIVILEGES

In an all-out effort to reduce violence while holding inmates accountable for committing crimes and infractions during incarceration, COBA recommends placing disciplinary sanctions upon inmate privileges. We recommend that the Department of Correction task managers effectively and judiciously utilizes the existing inmate discipline measures and analyzing their effectiveness. They should begin tracking COBA's proposed sanctions the same manner to those indicators tracked on the Monthly Facility Management Reports so that their effectiveness can be comparatively evaluated. The use of COBA's proposed inmate disciplinary sanctions will serve as a powerful deterrent - the sheer perception to the inmates that it is just not worth it to engage in such activity. If inmate disciplinary sanctions have their desired effect, we can envision a Department with less restrictive housing, greater compliance, fewer injuries to staff and inmates, and a real change in morale and culture. Implementing these disciplinary sanctions may even have an impact on recidivism.

LIST OF INMATE PRIVILEGES

- To Watch television ✓
- Utilize the telephone ✓
- Shop in the commissary ✓
- Receive a contact visit from family, friends and otherwise ✓
- Attend Recreation 1 hour each day ✓
- Attend Law Library ✓
- Access to Religious Affiliation and services ✓
- Access to haircuts (Barbershop or Beauty pallor) ✓
- Right to send and receive mail, publications, magazines and packages ✓
- Opportunity for gainful Employment ✓
- Ability to have money placed into their account ✓
- Mechanic Program ✓
- Cooking Program ✓
- Sports Programs ✓
- Officer Assistant ✓
- Maintenance ✓
- Religion ✓
- Empowerment Groups ✓
- Job Preparation ✓
- Gym ✓

A FEW EXAMPLES:

VISITS

We must consider that certain aspects of the Board of Correction Minimum Standards and Directive 2007R-C, “Inmate Visit Procedures,” effectively work against the Department and its efforts to deter violence and directly puts staff, visitors and members of the public at risk. The Department cannot limit or deny a visit to an inmate or visitor unless the criminal act is committed (or expected to be committed) in conjunction with a visit.

We can only limit or deny a visit if a litany of parameters is met and then there is the appeal process where the Board too often acts as an inmate/visitor advocate rather than an objective entity.

The Board must relax the constraints put on the Department and permit it to temporarily suspend visits even in cases where the inmates offending act is not directly or indirectly in conjunction with the visit. This type of inmate disciplinary sanction will serve as a powerful deterrent. This will help to send the message that it is just not worth it to engage in acts that violate inmate rules. It may even have an impact on recidivism. *That would be a great joint Board of Correction-Department of Correction initiative that would have a direct impact on safety. The impact we can have here is beyond measure.*

TELEPHONES

Let’s consider telephone use by the detainee population. The Board mandates that detainees be permitted one call per day at a minimum of six minutes per call. Beyond the right to speak by telephone to counsel, phone use is a privilege. This privilege should be curtailed when inmates commit acts of violence. Such actions would serve to deter violent criminal activity.

THE DEPARTMENT SHOULD BE ABLE TO DENY OR LIMIT ACCESS TO TELEPHONES FOR RULE VIOLATIONS.

HAIRCUTS

Currently, the Board of Correction mandates that inmates must be afforded haircuts. It does not, however, stipulate where and when these haircuts take place. The Department of Correction should be able to remove the privilege of taking a trip to the barbershop.

WE RECOMMEND THAT WHEN FOUND GUILTY OF RULE VIOLATIONS, INMATES BE CHARGED FOR HAIRCUTS EXCEPT WHEN GOING TO COURT.

COMMISSARY

Commissary access is a privilege. Immediate sanctions should be enforced to deny commissary access to any inmate who commits any act of violence, Commissary access should be limited to personal hygiene products. Such denial should be extended for violent acts committed during a denial period.

RECREATION

Currently, the Board of Correction mandates, “recreation may only be denied only with an open conviction of an infraction for misconduct on the way to, from, or during recreation.” This rule is outdated. As a deterrent to violence, the Department needs to have the ability to deny or limit recreation for any violation of inmate rules.

WE RECOMMEND THE DEPARTMENT OF CORRECTION HAVE THE ABILITY TO DENY OR LIMIT RECREATION AS A DISCIPLINARY SANCTION FOR VIOLATION OF INMATE RULES AND REGULATIONS.

LAW LIBRARY

The COBA does not seek to limit or deny any inmate the right to legally defend him or herself. We believe the Board’s current rule that inmates be permitted access for at least two hours each day the law library is open to be sufficient. Currently, the Department of Correction may only deny access to the Law Library for disrupting the orderly function of the Library or using it for a purpose other than for what it is intended. Even if an inmate is prohibited from physically accessing the Law Library, the Board permits the Department of Correction to develop alternate access to legal materials for effective legal research. The Department of Correction needs more latitude to effectively deter the violent inmate.

WE RECOMMEND THE DEPARTMENT OF CORRECTION BE ABLE TO DENY OR LIMIT ACCESS TO THE LAW LIBRARY FOR RULE VIOLATIONS EVEN IF SUCH VIOLATIONS DO NOT OCCUR IN THE LIBRARY ITSELF.

DISCIPLINARY SANCTIONS FOR SPLASHING AND SPITTING INCIDENTS

While no crimes against a Correction Officer should be tolerated, particularly egregious and sadly frequent crimes are splashing and spitting incidents. To be clear, these are incidents where inmates assault Correction Officers with hot water, saliva, urine, semen, and feces. The Board and the Department must take these incidents seriously and impose serious deterrence measures like the above proposed inmate disciplinary sanctions. The Department of Correction needs to be able to sanction an inmate’s use of telephone, recreation, visits, law library, and haircuts when an inmate subjects our staff to potential pathogens. *Inmates who splash or spit on staff should be denied everything except basic minimum standards for a finite period of time.* Only this way will the Department of Correction be able to truly stop the increasing incidents of spitting and splashing.

COBA PROPOSAL #2

RESTORATION OF PUNITIVE SEGREGATION IN LIMITED CIRCUMSTANCES

The City of New York widely publicized its goal of “reforming” the Department of Correction. One of these “reform” measures was to eliminate the use of punitive segregation — a tool widely misrepresented as solitary confinement — for 16-21-year olds. The use of punitive segregation on the adult inmate population over age 21 was also severely limited. ***We do not seek to debate the pros and cons of punitive segregation.*** However, the elimination and limitation of punitive segregation has directly led to an increase in violence (as reported in the Mayor’s Management Report 2013-2017). The problem is clear: **in an unbelievable display of poor management and oversight**, both the Department of Correction and Board of Correction eliminated punitive segregation — an effective violence deterrence tool — without a plan to fill the void that was left. The Department of Correction failed to implement any alternate measures that could effectively deter violence and violation of the rules. ***Programs such as Secured Unit, ESH, the Transitional Restorative Unit (TRU) or Second Chance*** are void of any real or effective disciplinary sanctions and fail to address the underlying reason for why an inmate is being placed in such programs or units. *Thus, the Department of Correction’s mission to reduce the use of punitive segregation has actually empowered inmates to further commit crimes while incarcerated, because they know that there is no further penalty, accountability, or deterrent to their unlawful behavior beyond being detained in jail or criminally prosecuted.*

COBA recommends that the Department of Correction consider reinstating some form of punitive segregation for 19 to 21-year-old inmates in very limited circumstances — against those who commit serious offenses. We recommend this measure be used only when absolutely necessary and for the shortest duration and in the least restrictive manner possible. We also ask that its use be coupled with what we refer to above as “inmate disciplinary sanctions.” For example, if inmate disciplinary sanctions don’t work, then and only then, should punitive segregation be used on inmates 19-21 years of age. ***Further, if punitive segregation doesn’t work, inmates (regardless of age), should be removed from our custody and turned over to the DOH/MH or a separate facility should be created to house them.*** This facility should be operated by the DOH/MH and other health care professionals with Correction Officers providing security and escort only.

COBA PROPOSAL #3

INMATE IDLENESS REDUCTION

As an incentive and deterrent, COBA recommends that the Board of Correction consider standards for idleness reduction for inmates. Too often Department of Correction programs come and go with little measurable effect. In fact, the Department of Correction implements many of its programs in a bubble. Further, we understand that the Department of Correction has earned a less than optimal track record for submitting Monthly Management Reports in a timely and accurate manner and has been reluctant to enact measures to truly measure program effectiveness. We urge the Board of Correction to hold the Department of Correction accountable for that.

If programs are to be continued, we need programs that will stand longer than any one administration and provide stability for staff and inmates. The Department of Correction should mandate programs that foster teamwork and good sportsmanship.

COBA PROPOSAL #4

OTHER DISCIPLINARY SANCTIONS

There are many other disciplinary sanctions such as 1. Being locked in their cells for 4, 6, 8 hours or an entire tour. 2. Receiving a non-contact visits for a specified number of times and other disciplinary sanctions to be explored by all parties involved.

COBA PROPOSAL #5

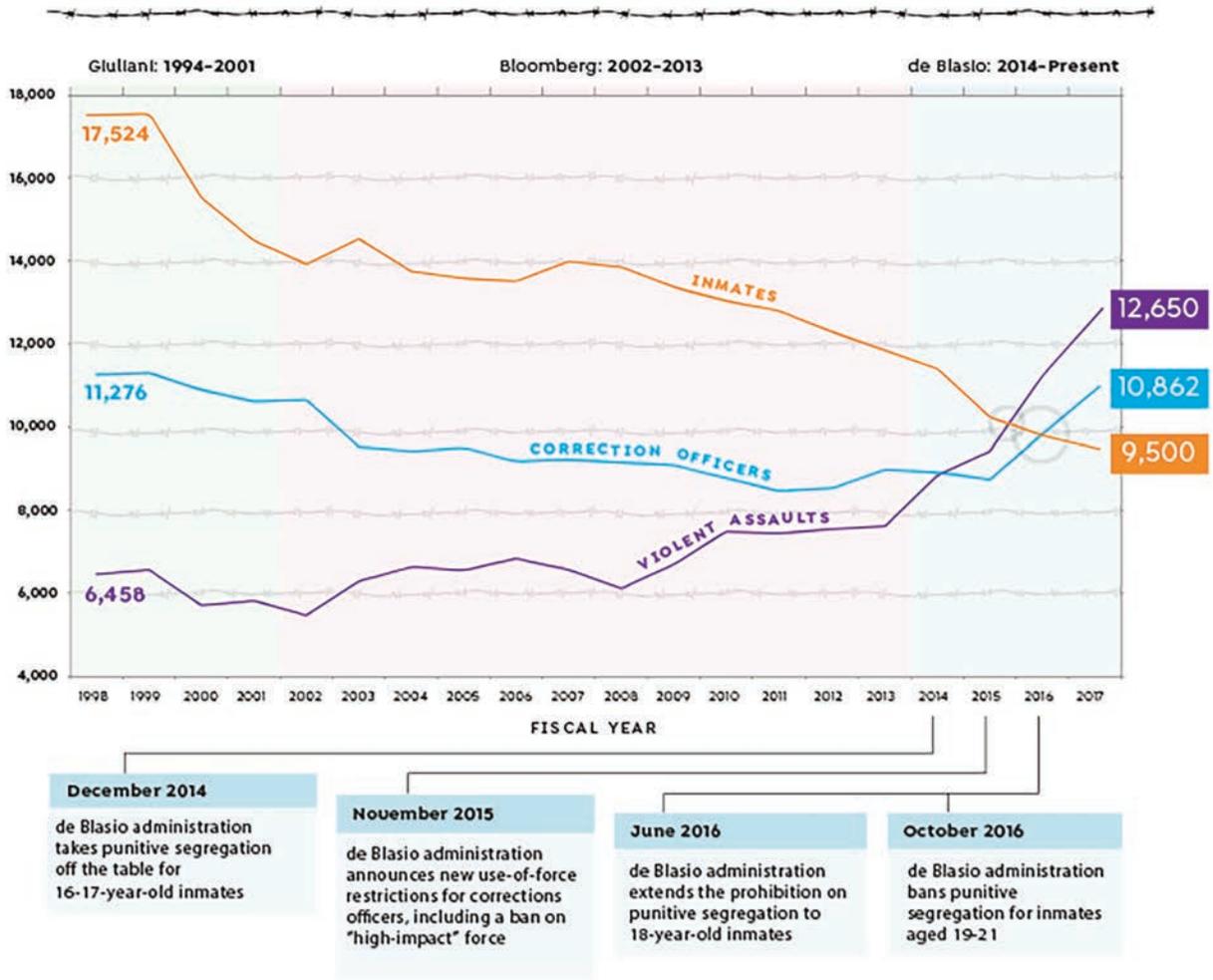
A SUMMIT OF ALL STAKEHOLDERS

While we believe that our overview accurately reflects how to improve the security and safety for Corrections Officers, staff and inmates alike, it is time for all stakeholders to be in the same room, at the same time to discuss these issues of great importance. Through real conversation and dialogue, we are confident we can obtain great results and stop the insanity.

In closing, we urge you to say “YES” to true progress as embodied in COBA’s proposals. These proposals are the real deterrents. These proposals are real measures that will effectively curb jail violence and increase safety. These proposals will, if given a chance to succeed, will have a tremendous positive impact on the New York City Department of Correction. Please give these proposals serious consideration.

“EQUITY” BEFORE SECURITY

ARE THE MAYOR’S CORRECTIONS POLICIES MAKING NYC JAILS LESS SAFE?



While the most recent Mayor’s Management Report admits that reducing punitive segregation appears to correspond to a rise in inmate violence, the report argues, circularly, that the successful diversion of nonviolent offenders from jails has concentrated the population of violent inmates, thus leading to more violence: “There is an increasing share of people in custody who face felony charges and have gang affiliations. These inmates are significant drivers of jail violence.

The core function of city government is to maintain security. In city jails, that task falls to New York’s Boldest, but the mayor’s progressive policies have altered the conditions in which they work—and data show that these policies have failed. Will de Blasio heed the counsel of those doing the job and reverse course? Not as long as he puts “equity” before security.

Rafael A. Mangual is the deputy director of legal policy at the Manhattan Institute for Policy Research, where he writes and researches in the areas of criminal justice reform and crime.

ADP BY TOP ARREST CHARGE BASED ON 1ST 6 MONTHS FY17 CROSS-SECTIONS

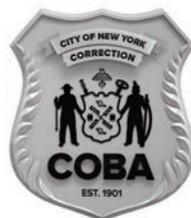
CHARGE CATEGORY	ADP
ROBBERY	1,273
MURDER/ATT MURDER/MANSLTER	1,080
WARR/HOLDS	902
OTHER FELONIES	916
ASSAULT	802
DRUG FEL SALE	790
DRUG FEL POSSESS	776
BURGLARY	741
WEAPONS	590
OTHER MISD	486
GRAND LARCENY	387
MISD LARCENY	242
MISD ASSAULT	234
OTHER SEXUAL OFFENSES	227
DRUG MISD	192
RAPE/ATT RAPE	153
VEHICULAR	144
MISD WEAPONS	74
OTHER	34
MISSING	27
VIOLATIONS	10
LOITER/PROSTITU	10

LESS THAN 1% OF THE 9,100 INMATE POPULATION IS RESPONSIBLE FOR THE MAJORITY OF THE JAIL VIOLENCE COMMITTED THROUGHOUT THE NYC DEPARTMENT OF CORRECTION

CORRECTION OFFICERS' BENEVOLENT ASSOCIATION, INC.
"PATROLLING THE TOUGHEST PRECINCTS IN NEW YORK"



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COBA HEADQUARTERS

77-10 21ST AVENUE EAST ELMHURST, N.Y. 11370 • T 718.545.COBA (2622) • F. 718.545.2668

www.cobanyc.org

87 A.D.2d 707
Supreme Court, Appellate Division, Third
Department, New York.

John J. McNULTY, Jr., as Sheriff of Albany
County, et al., Appellants,

v.

Stephen CHINLUND et al., Constituting the New
York State Commission of Correction,
Respondents.

March 18, 1982.

Synopsis

County sheriffs brought action against State Commission on Corrections seeking declaratory and injunctive relief with respect to certain rules and regulations promulgated by Commission covering six different subject areas concerning county jails. On motion of defendants for partial summary judgment, the Supreme Court, Albany County, Edward S. Conway, J., 108 Misc.2d 707, 438 N.Y.S.2d 734, granted motion, and plaintiffs appealed. The Supreme Court, Appellate Division, held that genuine issue of material fact existed as to validity of regulations governing contact visitation for all prisoners in facilities under plaintiffs' jurisdiction, precluding summary judgment.

Judgment reversed; motion denied.

West Headnotes (1)

[1] Judgment

🔑 Particular Cases

In action brought by county sheriffs for declaratory and injunctive relief with respect to regulations covering six different subject areas concerning county jails, genuine issues of material fact existed as to validity of regulations governing contact visitation for all prisoners in facilities under county sheriffs' jurisdiction, precluding summary judgment.

2 Cases that cite this headnote

Attorneys and Law Firms

****895** Peter R. Kehoe, Troy (Thomas Mitchell, Troy, of counsel), for appellants.

****896** Robert Abrams, Atty. Gen. (Lew A. Millenbach, Albany, of counsel), for respondents.

Monroe County Legal Assistance Corp., amicus curiae,
Ian C. DeWaal, Rochester, of counsel.

Before MAHONEY, P. J., and SWEENEY, KANE,
CASEY and LEVINE, JJ.

Opinion

MEMORANDUM DECISION.

***707** Appeal from a judgment of the Supreme Court, 108 Misc.2d 707, 438 N.Y.S.2d 734, at Special Term entered June 2, 1981 in Albany County, which granted defendants' motion for partial summary judgment.

In June, 1976, defendants promulgated, pursuant to subdivision 6 of section 45 of the Correction Law, certain rules and regulations covering six different subject areas concerning county jails, one of which involved contact visitation (9 NYCRR Part 7008). Plaintiffs, 51 county sheriffs in New York State, commenced this action on November 19, 1976 seeking declaratory and injunctive relief with respect to those regulations. A preliminary injunction against the enforcement of the regulations was in effect, having been granted by order of Special Term as to some of the regulations and extended by this court as to the other ***708** regulations (*McNulty v. Chinlund*, 62 A.D.2d 682, 406 N.Y.S.2d 588). After defendants served an answer on April 6, 1979, they made the instant motion for partial summary judgment on the issue of defendants' regulations governing contact visitation for *all* prisoners in facilities under plaintiffs' jurisdiction.

Special Term granted the motion on the ground that the Court of Appeals decision in *Cooper v. Morin*, 49 N.Y.2d 69, 424 N.Y.S.2d 168, 399 N.E.2d 1188, cert. den. 446 U.S. 984, 100 S.Ct. 2965, 64 L.Ed.2d 840 resolved any triable issue of fact which may exist. Special Term's judgment also dissolved the preliminary injunction. However, plaintiffs took the instant appeal and obtained an automatic stay (CPLR 5519, subd. [a], par. 1), which

this court refused to vacate.

The sole issue upon appeal is whether the decision in *Cooper v. Morin* (*supra*) resolved all issues of fact which this court found to exist in the present case with respect to contact visitation regulations (see *McNulty v. Chinlund, supra*). We find, contrary to defendants' position, that *Cooper* is not controlling. Briefly, in *Cooper*, female detainees in the Monroe County jail challenged that jail's rule which limited them to noncontact visits. The Court of Appeals rejected this local rule, holding that *pretrial detainees* are entitled to contact visits of reasonable duration as a matter of State constitutional right. Further, the Court of Appeals dismissed Monroe County's argument that financial considerations justified the rule (*Cooper v. Morin, supra*, pp. 81-82, 424 N.Y.S.2d 168, 399 N.E.2d 1188). However, *Cooper* did not concern or address the validity of 9 NYCRR Part 7008, which is, *inter alia*, the subject of the present action. **Moreover, *Cooper* did not hold that maintenance of security is, as a matter of law, an insufficient basis for denial of contact visits. *Cooper* held that a policy of noncontact visitation with respect to pretrial detainees is unreasonable unless supported by a strong showing of necessity. In this regard, the Court of Appeals merely found that financial considerations alone could not amount to such a showing.** Thus, *Cooper* does not overrule this court's prior observation in the instant case that:

[t]he plaintiffs in their complaint have * * * alleged facts which, if proven, establish that the regulations adopted by the defendants create **grave**

security risks, financial hardships, health and fire hazards. Administrative agencies can only promulgate rules to further the implementation of the law as it exists, and they have no authority to create a rule out of harmony with the statute or statutes being implemented (*Matter of Jones v. Berman*, 37 N.Y.2d 42 [371 N.Y.S.2d 422, 332 N.E.2d 303]). Under the allegations of the complaint, it is possible that the plaintiffs may establish facts indicating that certain parts of the regulations conflict with their statutory duty of safekeeping **897 of prisoners confined to their custody.

(*McNulty v. Chinlund*, 62 A.D.2d 682, 688, 406 N.Y.S.2d 588, *supra*.) The judgment must, therefore, be reversed.

Judgment reversed, on the law, with costs, and motion for partial summary judgment denied.

All Citations

87 A.D.2d 707, 448 N.Y.S.2d 895

35 Misc.3d 1204(A)
Unreported Disposition

(The decision of the Court is referenced in a table in
the New York Supplement.)
Supreme Court, Albany County, New York.

ONTARIO COUNTY and Ontario County Sheriff
Philip C. Povero, Canandaigua, New York, 14424,
Plaintiffs,

v.

Phyllis HARRISON–ROSS, M.D., Individually and
as Commissioner; New York State Commission of
Correction; Medical Review Board of the New
York State Commission of Correction; State of
New York, Defendants.

No. 2898–11.
|
March 7, 2012.

Attorneys and Law Firms

Eric T. Schneiderman, Attorney General, (Adele Taylor
Scott, of counsel) Albany, Attorney for Defendants.

Michael C. Reinhard, Assistant Ontario County Attorney,
Ontario County Attorney’s Office, Canandaigua, Attorney
for Plaintiffs.

Opinion

RICHARD M. PLATKIN, J.

*1 This is an action brought by plaintiffs Ontario County
and Ontario County Sheriff Philip C. Povero (“the
Sheriff”) seeking a declaration that the Final Report of the
New York State Commission of Correction in the matter
of the death of Bruce Morgan, an inmate of the Ontario
County Jail (“the Final Report”) is invalid. Following
joinder of issue, defendants move: (a) to convert this
action into a special proceeding brought pursuant to
CPLR article 78 and, upon conversion, for dismissal
pursuant to CPLR 3211(a)(5) and (7); or (b) in the
alternative, for summary judgment pursuant to CPLR
3212.

BACKGROUND

The New York State Commission on Correction (“the

Commission”) is an Executive branch agency established
to “visit and inspect ... all institutions used for the
detention of sane adults charged with or convicted of
crime” (New York State Constitution, art XVII, § 5). The
organization, powers and duties of the Commission are
prescribed in article 3 of the Correction Law. Among
other things, the Commission is charged with “mak[ing]
recommendations to administrators of correctional
facilities for improving the administration of such
correctional facilities and the delivery of services therein”
and “promulgat[ing] rules and regulations establishing
minimum standards for the review of the construction or
improvement of correctional facilities and the care,
custody, correction, treatment, supervision, discipline, and
other correctional programs for all persons confined in
correctional facilities” (Correction Law § 45[2], [6]).
While the Commission is authorized to prescribe rules
and regulations governing correctional facilities, the
Commission’s authority to enforce such rules and
regulations is highly circumscribed:

In any case where any rule or
regulation promulgated by the
commission ... are being or are
about to be violated, the
commission shall notify the person
in charge or control of the facility
of such violation, recommend
remedial action, and direct such
person to comply with the rule,
regulation or law, as the case may
be. Upon the failure of such person
to comply with the rule, regulation
or law the commission may apply
to the supreme court for an order
directed to such person requiring
compliance with such rule,
regulation or law. Upon such
application the court may issue
such order as may be just and a
failure to comply with the order of
the court shall be a contempt of
court and punishable as such.
(Correction Law § 46[4]).

Correction Law § 43 establishes a Medical Review Board
within the Commission. Pursuant to Correction §
47(1)(a), the Medical Review Board is charged, *inter alia*
with investigating and reviewing the “the cause and
circumstances surrounding the death of any inmate of a

correctional facility.” “Upon review of the cause of death and circumstances surrounding the death of any inmate, the [medical review] board shall submit its report thereon to the commission and, where appropriate, make recommendations to prevent the recurrence of such deaths to the commission and the administrator of the appropriate correctional facility” (*id.* [1][d]). In addition, the Medical Review Board shall “[i]nvestigate and report to the commission on the condition of systems for the delivery of medical care to inmates of correctional facilities and where appropriate recommend such changes as it shall deem necessary and proper to improve the quality and availability of such medical care.” (*id.* [1][e]).

*2 On or about December 31, 2009, Ontario County (“the County”) reported to the Commission that inmate Bruce T. Morgan hung himself on December 25, 2009 and was declared dead after being transported to a local hospital. In September 2010, following an investigation, the Medical Review Board (“the Board”) issued a preliminary report of its findings to plaintiffs for review and comment. On or about October 2010, the Ontario County Attorney submitted written comments and objections to the preliminary report. Among other things, the County acknowledged the Board’s authority to investigate and review the cause of inmate Morgan’s death and to make recommendations to prevent similar deaths in the future. However, the County took issue with many of the Board’s preliminary conclusions and maintained that it would be substantially prejudiced in its defense of a civil action by Morgan’s estate if the Board’s report were published as written. At a meeting on December 2, 2010, the Board rejected the County’s objections and voted to close the report pending the Commission’s approval of the report.

The Commission voted to approve the report for public release at a meeting on December 21, 2010. On December 24, 2010, the Final Report was endorsed on behalf of the Commission by defendant Commissioner Dr. Harrison-Ross and forwarded to the County. The Final Report identified certain deficiencies in the County’s provision of health-care services to inmate Morgan. In addition, the Commission made recommendations intended to prevent future inmate deaths. By letter dated June 7, 2011, the County’s Department of Mental Health advised the Board that it addressed all of defendants’ recommendations.

In the complaint filed in this action, dated April 25, 2011, plaintiffs assert that the Final Report is “invalid and unenforceable”, challenge the factual findings and legal conclusions set forth in the Final Report, argue that the Final Report “contains numerous allegations of wrongdoing and legal conclusions that are questions for

determination only by courts of law”, and argue that defendants acted in excess of their jurisdiction. Defendants answered the complaint and now move for conversion and/or dismissal. At the request of plaintiffs, oral argument was held on the motion on March 2, 2012. This Decision & Order follows.

ANALYSIS

Defendants first maintain that this action should be converted into a CPLR article 78 proceeding and dismissed as barred by the four month statute-of-limitations prescribed in CPLR 217. Alternatively, defendants argue that even if the Court declines to convert this action to a special proceeding brought pursuant to CPLR article 78, the action nonetheless is time-barred under CPLR 217.

“In order to determine the Statute of Limitations applicable to a particular declaratory judgment action, the court must examine the substance of that action to identify the relationship out of which the claim arises and the relief sought” (*Solnick v. Whalen* 49 N.Y.2d 224, 229 [1980]). If the court determines that the underlying dispute can be or could have been resolved through a form of action or proceeding for which a specific limitation period is statutorily prescribed, that limitation period governs the declaratory judgment action; otherwise, the action is governed by the residual six-year statute of limitations (CPLR 213[1]). “Here, the question is whether the four-month Statute of Limitations period applicable to article 78 proceedings should be invoked” (*Save the Pine Bush, Inc. v. Albany* 70 N.Y.2d 193, 202 [1987] [internal citations omitted]).

*3 It is apparent that the allegations of plaintiffs’ complaint could have been raised and resolved in a CPLR article 78 proceeding. “Relief previously obtained by writs of certiorari to review, mandamus or prohibition shall be obtained in a proceeding under [CPLR article 78]” (CPLR 7801). Thus, in an article 78 proceeding, courts may consider: (1) “whether the body or officer failed to perform a duty enjoined upon it by law”; “whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction”; and “whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion” (CPLR 7803[1–3]).¹

Plaintiffs’ principal complaint is that defendants acted in excess of their legal jurisdiction by, among other things,

exercising disciplinary or accusatory powers, issuing mandated directives and policy changes, and usurping the role of the courts.

These allegations all raise questions in the nature of prohibition and fall squarely within the literal language of CPLR 7803(2). Allegations that defendants omitted relevant facts from the Final Report, took certain facts out of context, failed to adequately consider the objections made by plaintiffs in response to the preliminary report, used inappropriate language in the Final Report or otherwise committed errors of fact and law in preparing the Final Report raise questions subject to review under CPLR 7803(3), the so-called mandamus-certiorari borderline. And while plaintiffs' complaint briefly adverts to a claim of unconstitutionality, it is apparent that any such claim is not directed at the constitutionality of any law, rule or regulation, but rather at defendants' application of its enabling laws and regulations. As such, the challenge is "available as a question for review in such a proceeding under the third question authorized by CPLR 7803 whether the determination was made in violation of lawful procedure [or] was affected by an error of law" ("Solnick 49 N.Y.2d at 241).

As all of plaintiffs' allegations are cognizable under CPLR 7803, the Court will exercise its discretion to convert this action into a special proceeding brought under CPLR article 78 (CPLR 103[a]).

"A CPLR article 78 proceeding must be commenced within four months after the challenged determination has become final and binding' or, put another way, when it inflicts an actual, concrete injury' upon the petitioner" (*Matter of Town of Olive v. City of New York* 63 A.D.3d 1416, 1418, 881 N.Y.S.2d 228 [3d Dept 2009] [internal citation omitted]). Here, the Final Report was adopted by the Commission on December 21, 2010, and it was signed by Commissioner Harrison-Ross and transmitted to plaintiffs on Friday, December 24, 2010. While defendants argue that the Final Report became final and binding and inflicted the alleged injuries upon plaintiffs as of December 24, 2010, the record is devoid of proof establishing "when [plaintiffs] receive[d] oral or written notice [of the Final Report], or when [plaintiffs] kn[ew] or should have known, of the adverse determination" (*Matter of Singer v. New York State & Local Employees' Retirement Sys.*, 69 A.D.3d 1037, 1038, 891 N.Y.S.2d 742 [3d Dept 2010]). Under the circumstances, the record fails to conclusively establish that the instant proceeding, which was commenced on April 27, 2011, is time barred under CPLR 217.

*4 However, the Court concludes that the branch of defendants' motion seeking dismissal of the complaint on

the merits must be granted. **Whatever the admissibility and relevance of the Final Report in civil litigation against plaintiffs, a point upon which this Court expresses no view, it is apparent that the State Constitution and Correction Law article 3 give the Commission and Board broad authority to visit and inspect correctional institutions, make recommendations to improve the delivery of correctional services, establish minimum standards for correctional services, investigate and review the cause of inmate deaths, and make recommendations to prevent similar incidents in the future.**

The statutory power and duty of the Board and Commission to determine the cause of an inmate's death and to report thereupon necessarily carries with it the jurisdiction to render opinions as to whether lack of compliance with established laws, rules, regulations, minimum standards promulgated by the Commission, policies or procedures played a part in bringing about such death. **In addition, the power to issue recommendations directed at preventing similar incidents in the future carries with it the power to recommend establishing new laws, rules, regulations, standards, policies and procedures or strengthening existing measures.** The fact that defendants' opinions regarding the factors that caused an inmate's death and their recommendations for reform may have collateral consequences in a civil litigation does not and cannot deprive the Commission and Board of its statutory jurisdiction. Nor does it entitle plaintiffs to compel the Commission and Board to rewrite its Final Report so as to remove criticism of the County for failing to provide mental health diagnosis, evaluation and treatment services to the subject inmate "[d]espite nearly constant complaints of mental disorder symptoms while incarcerated" (Final Report Finding No. 1).

In this connection, the Court finds plaintiffs' reliance upon *Lombard v. Wasser* (104 Misc.2d 883, 429 N.Y.S.2d 161 [Sup Ct, Monroe Co, 1980]) to be unavailing. In *Lombard* the court found that issuance of directives and formulation of policy were outside the Medical Board's jurisdiction, concluding that the Board is subsidiary to the Commission and limited to the powers granted it under Correction Law § 47. However, this is not a case where

the Board usurped the powers of the Commission. Rather, in accordance with paragraph (1)(d) of the cited statute, the Board reviewed the cause of and circumstances surrounding the death of the subject inmate, submitted a report thereupon to the Commission and made recommendations to prevent the recurrence of such death. Plaintiffs have failed to demonstrate that the Board acted in excess of this statutory jurisdiction.

Likewise, plaintiffs' submissions fail to identify any procedural errors committed by defendants in carrying out their responsibilities. Nor is there proof that the factual findings set forth in the Final Report are arbitrary, capricious or lacking a rational basis. Further, plaintiffs' argument that defendants issued mandated directives and policy changes is unripe for judicial review in the absence of any application for judicial enforcement (Correction Law § 46[4]) and, in any event, is patently lacking in merit.² Finally, plaintiffs have articulated no coherent theory upon which the Court could conclude that defendants committed an error of law, including the alleged constitutional violations.

*5 Based on the foregoing, it is **ORDERED** that the branch of defendants' motion seeking conversion of this action to a CPLR article 78 proceeding is granted, and upon conversion, the complaint is dismissed in all respects.

This constitutes the Decision and Order of the Court. The original Decision and Order and materials submitted for *in camera* review are being transmitted to counsel for defendants. All other papers are being transmitted to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing

Footnotes

- 1 This case does not implicate CPLR 7803(4), which governs review of administrative determinations made following a hearing required by law.
- 2 It is further noted that the County takes the position that it adopted of the recommendations set forth in the Final Report, which arguably renders this issue academic.

under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that Rule respecting filing, entry and Notice of Entry.

Papers Considered:

Amended Notice of Motion, dated November 18, 2011;

Affirmation of Michael F. Donegan, Esq., dated October 25, 2011, with attached exhibits A–K;

Plaintiffs' Memorandum of Law, dated November 22, 2011;

Verified Answer, dated October 25, 2011;

Defendants' Memorandum of Law, dated October 26, 2011;

Affidavit of Michael G. Reinhardt, Esq., dated November 23, 2011, with attached exhibits A–I;

Defendants' Reply Memorandum of Law, dated December 6, 2011;

Affirmation of Michael F. Donegan, Esq., dated December 6, 2011.

All Citations

35 Misc.3d 1204(A), 950 N.Y.S.2d 724 (Table), 2012 WL 1058142, 2012 N.Y. Slip Op. 50551(U)



Commission of Correction

THOMAS A. BEILEIN
Chairman

THOMAS J. LOUGHREN
Commissioner

April 28, 2017

Mr. Joseph Ponte, Commissioner
New York City Department of Correction
75-20 Astoria Boulevard, Suite 305
East Elmhurst, New York 11370

**Re: Substitute Jail Order-NYC DOC
Facilities as SJO alternate housing**

Dear Commissioner Ponte:

The New York State Commission of Correction has determined that effective immediately, no New York City Department of Correction facility shall be considered suitable to serve as an alternate housing location for inmates from outside the five boroughs, pursuant to 9 NYCRR, Part 7030, Substitute Jail Orders.

This decision by the Commission was based primarily on the extent to which numerous findings of non-compliance with regard to 9 NYCRR, Minimum Standards Parts 7000-7070, first reported to the department during or before 2016, remain as open violations.

Given the critical security nature of the operations associated with these findings, coupled with the extended period during which no substantive, department-wide corrective actions appear to have been implemented, the Commission of Correction concluded that this restrictive step was both appropriate and necessary.

The following findings are a sample of the open violations referenced as being the basis for this decision:

Part 7003, Security and Supervision

7003.3 (a) findings related to the abandonment of housing area security post and failing to maintain active supervision.

7003.3 (e) findings that electronic recording devices are not in use

7003.8 (f) personally owned firearms are not subject to mandatory inspection

Part 7022, Reportable Incidents

7022 (a) NYC DOC failed to comply with mandatory reporting of incidents for two month period in 2017

Part 7063, Chemical Agents

7063.5 (c) chemical agents was being issued to correction officers whose training certification had expired

Department officials are advised that upon their implementation of the required remedial actions, SCOC will initiate a reevaluation plan of those related operations in order to determine their level of compliance. SCOC remains committed to working with NYC DOC officials in an effort to ensure that all department facilities operate in a manner that is safe, secure and compliant with all mandated state standards.

Sincerely,

A handwritten signature in cursive script that reads "Thomas A. Beilein". The signature is written in dark ink and is positioned to the right of the typed name.

Thomas A. Beilein
Chairman

Compilation of Codes, Rules and Regulations of the State of New York ^{Currentness}Title 9. Executive Department
Subtitle AA. State Commission of Correction Chapter I. Minimum Standards and Regulations for
Management of County Jails and Penitentiaries Subchapter A. Minimum Standards and Regulations Part
7006. Discipline (Refs & Annos)

9 NYCRR 7006.1

Section 7006.1. Policy

In order to promote the safety, security and welfare of all inmates and staff within local correctional facilities, the chief administrative officer of each facility shall establish and maintain a system of inmate discipline designed to set standards of appropriate behavior, encourage self control and punish misbehavior fairly, impartially and consistently.

Credits

Sec. added by renum. 5100.7, Title 7, filed June 26, 1976; amd. filed June 9, 1987; repealed, new filed Aug. 3, 1992 eff. Aug. 19, 1992.

Current with amendments included in the New York State Register, Volume XXLII, Issue 4 dated January 29, 2020. Court rules under Title 22 may be more current.

9 NYCRR 7006.1, 9 NY ADC 7006.1

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Subtitle AA. State Commission of Correction Chapter I. Minimum Standards and Regulations for
Management of County Jails and Penitentiaries Subchapter A. Minimum Standards and Regulations Part
7006. Discipline (Refs & Annos)

9 NYCRR 7006.2

Section 7006.2. Facility policies and procedures

The chief administrative officer of each local correctional facility shall develop and implement written policies and procedures consistent with this Part.

Credits

Sec. filed Aug. 3, 1992 eff. Aug. 19, 1992.

Current with amendments included in the New York State Register, Volume XXLII, Issue 4 dated January 29, 2020. Court rules under Title 22 may be more current.

9 NYCRR 7006.2, 9 NY ADC 7006.2

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Subtitle AA. State Commission of Correction Chapter I. Minimum Standards and Regulations for
Management of County Jails and Penitentiaries Subchapter A. Minimum Standards and Regulations Part
7006. Discipline (Refs & Annos)

9 NYCRR 7006.3

Section 7006.3. Rules of inmate conduct

(a) The chief administrative officer of each facility shall develop written rules of inmate conduct which contain a list of all rules and regulations governing inmate behavior.

(b) The rules of inmate conduct shall include:

(1) all chargeable offenses;

(2) the range of punishments that may be imposed for each violation, consistent with the seriousness of the conduct prohibited; and

(3) a detailed description and an explanation of the facility's disciplinary procedures.

(c) Each inmate shall be provided with a copy of the rules of inmate conduct upon admission to the facility, and a copy shall also be maintained in the facility law library.

(d) Non-English speaking and illiterate inmates shall be assisted to understand the rules of inmate conduct.

Credits

Sec. filed Aug. 3, 1992 eff. Aug. 19, 1992.

Current with amendments included in the New York State Register, Volume XXLII, Issue 4 dated January 29, 2020. Court rules under Title 22 may be more current.

Section 7006.3. Rules of inmate conduct, 9 NY ADC 7006.3

9 NYCRR 7006.3, 9 NY ADC 7006.3

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Subtitle AA. State Commission of Correction Chapter I. Minimum Standards and Regulations for
Management of County Jails and Penitentiaries Subchapter A. Minimum Standards and Regulations Part
7006. Discipline (Refs & Annos)

9 NYCRR 7006.7

Section 7006.7. Administrative segregation pending a disciplinary hearing

- (a) An inmate who threatens the safety, security, and good order of the facility may be immediately confined in a cell or room pending a disciplinary hearing and may be retained in administrative segregation until the completion of the disciplinary process.
- (b) Within 24 hours of such confinement, the inmate shall be provided with a written statement setting forth the reason(s) for such confinement. Upon receipt of the written statement, the inmate shall be provided with an opportunity to respond to such statement orally or in writing to the chief administrative officer.
- (c) The chief administrative officer shall review the administrative confinement within 24 hours of such confinement in order to determine if continued confinement is warranted, and thereafter at intervals not to exceed seven days. Any such review shall be made by the chief administrative officer in writing, shall state the specific facts and reasons underlying the determination, and shall be maintained as part of the centralized record required by section 7075.6 of this Part.

Credits

Sec. filed Aug. 3, 1992 eff. Aug. 19, 1992; amd. filed May 21, 2019 eff. June 5, 2019.

Current with amendments included in the New York State Register, Volume XXLII, Issue 4 dated January 29, 2020. Court rules under Title 22 may be more current.

9 NYCRR 7006.7, 9 NY ADC 7006.7

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 KeyCite Yellow Flag - Negative Treatment
Proposed Regulation

Compilation of Codes, Rules and Regulations of the State of New York ^{Currentness}Title 9. Executive Department
Subtitle AA. State Commission of Correction Chapter I. Minimum Standards and Regulations for
Management of County Jails and Penitentiaries Subchapter A. Minimum Standards and Regulations Part
7006. Discipline (Refs & Annos)

9 NYCRR 7006.9

Section 7006.9. Disciplinary sanctions

(a) If the charges against the inmate are affirmed as a result of the hearing, one or more of the following sanctions may be imposed based upon the inmate's past record and the severity of the offense:

(1) counsel or reprimand;

(2) loss of one or more specified privileges for a period consistent with the facility rules of inmate conduct for the particular offense(s);

(3) restitution for the loss or damage of property made from existing or future funds in the inmate's account;

(4) restitution, not to exceed \$100, for facility expenditures related to the medical treatment of facility staff, make from existing or future funds in the inmate's account;

(5) confinement to a cell, room, or in special housing for a period consistent with the facility rules of inmate conduct for the particular offense(s), subject to the provisions of section 7075.4 of this Title;

(6) loss of a specified period of good behavior allowance, subject to restoration pursuant to applicable laws and regulations; and/or

(7) loss of up to one hour of weekly visitation for a period consistent with the facility rules of inmate conduct for the particular offense.

Section 7006.9. Disciplinary sanctions, 9 NY ADC 7006.9

(b) The hearing officer may hold the commencement of a sanction in abeyance for a period up to 30 days in order to assess the behavioral adjustment of the inmate. At the conclusion of such period, the hearing officer shall determine whether the sanction shall commence in whole or in part or shall be suspended in whole or in part.

(c) If an inmate is found guilty of a charge of misbehavior, a disciplinary surcharge not to exceed \$25 may be imposed upon the inmate in addition to the sanctions authorized pursuant to subdivision (a) of this section. All moneys collected shall be deposited in the county general fund and not specifically allocated to the facility.

(d) The chief administrative officer may, at any time, suspend a sanction of confinement imposed pursuant to subdivision (a)(5) of this section, in order to assess the behavioral adjustment of the inmate. At any time during such suspension, confinement may be reinstated at the discretion of the chief administrative officer.

Credits

Sec. filed Aug. 3, 1992; amds. filed: July 28, 1998; May 18, 1999; Dec. 27, 2006 eff. Jan. 17, 2007; amd. filed May 21, 2019 eff. June 5, 2019.

Current with amendments included in the New York State Register, Volume XXLII, Issue 4 dated January 29, 2020. Court rules under Title 22 may be more current.

9 NYCRR 7006.9, 9 NY ADC 7006.9

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STATE OF NEW YORK • EXECUTIVE DEPARTMENT
STATE COMMISSION OF CORRECTION
Alfred E. Smith State Office Building
80 S. Swan Street, 12th Floor
Albany, New York 12210-8001
(518) 485-2346
FAX (518) 485-2467

CHAIRMAN
Thomas A. Beilein

COMMISSIONERS
Phyllis Harrison-Ross, M.D.
Thomas J. Loughren

July 28, 2014

Honorable Joseph Ponte, Commissioner
New York City Department of Correction
75-20 Astoria Blvd.
East Elmhurst, NY 11370

Notice of Violation: 9 NYCRR Part 7006 - Discipline

Dear Commissioner Ponte:

It has come to the attention of the Commission of Correction that the New York City Department of Correction has a large number of inmates who, despite being found guilty of violating one or more rules of conduct and receiving a disposition that includes a period of punitive cell confinement, remain in the general population of various Department facilities well beyond the adjudication of their disciplinary charges.

For the purpose of clarification, the inmates being referenced here are those who have been afforded due process through a properly conducted disciplinary hearing, subsequently found guilty of one or more rule violations and given a disciplinary sanction that includes being placed and kept in their individual housing units apart from the general population of the facility.

Violation

The Commission views this situation to constitute a violation of 9 NYCRR Part 7006 Discipline which states in pertinent part:

§7006.1 Policy. In order to promote the safety, security and welfare of all inmates and staff within local correctional facilities . . . a system of inmate discipline (shall be maintained) . . . to set standards of appropriate behavior, encourage self-control and punish misbehavior fairly, impartially and consistently.

Delaying imposition of sanctions indefinitely undermines both the legitimacy of the Department's disciplinary program and the ability of staff to meaningfully enforce the Department's rules of inmate conduct. It by no means punishes misbehavior fairly, impartially or consistently. Allowing violent and otherwise serious rule offenders whose offense(s) warrant confinement away from the general population to continue at large in

the general population threatens the general safety and security of the facility and the well-being of inmates and staff alike.

While 9 NYCRR, §7006.9(b), does permit a hearing officer to hold the commencement of a sanction in abeyance for a period up to 30 days in order to assess the behavioral adjustment of the inmate, indefinite suspension clearly was not the intention of the hearing officers in the cases referred to here. The Commission interprets its regulation to mean that timeliness is an essential element of due process, fairness, impartiality and consistency. There can be no reasonable penological objective or administrative rationale that justifies the current practice of delaying the start of cell lock-in sanctions for over 800 inmates.

Please be advised that Correction Law §§137 (5) (6) and §500-k authorizes the Commissioner of the New York City Department of the Correction to house inmates in the manner necessary for purposes of maintaining order and discipline, including cell confinement. Moreover 9 NYCRR § 7006.7, Discipline, provides for administrative segregation (confinement) pending a disciplinary hearing for any inmate “who threatens the safety, security and good order of the facility . . .”

Please note that §§137 (5) (6) pertains to the treatment of inmates in a state facility and is incorporated by reference in §500-k as being applicable to inmates confined in jails. This latter section further stipulates that the reporting requirement contained therein appertains to the State Commission of Correction.

Action Required

The New York City Department of Correction shall submit to the Commission of Correction a plan describing how inmates found guilty of violating Department rules of inmate conduct and subsequently given a sanction that includes punitive segregation cell confinement time shall immediately begin serving that portion of the sanction, except in cases where the hearing officer orders that the cell confinement portion of the sanction be held in abeyance in the manner prescribed in 9 NYCRR, §7006.9(b). Within the narrative of the plan, NYC DOC shall include the number of inmates currently in general population, or other forms of special housing, that also have a period of punitive cell confinement as part of a disciplinary sanction that is being delayed due to current departmental policy.

Department officials shall further ensure compliance with 9 NYCRR, section 7006.7 for all individuals charged with a rule violation and who are identified as being a threat to the safety and security of the facility during the period immediately following the alleged incident. Such individuals may be immediately confined pending a

disciplinary proceeding. Officials shall document with a written statement the reason(s) for such a determination.

Inmates cell-confined for a period in excess of 24-hours is entitled to:

- A shower and access to shaving facilities once every three days;
- one hour of daily exercise;
- a daily health check by medical staff, the findings of which the department must submit in a weekly report to the NYS Commission of Correction
- regular visitation pursuant to 9 NYCRR, section 7008.3 unless the imposed sanction includes the loss of up to one hour of visitation per week pursuant to 9 NYCRR, section 7006.9(a)(7). (*visitation shall mean contact visitation unless otherwise noted*)

The required plan for addressing the issue pertaining to the commencement of cell confinement time shall be submitted to the Commission on or before August 27, 2014.

The Commission of Correction shall continue to work with the New York City Department of Correction to further address this and other areas of compliance concern. Please feel free to contact my office if you have any further questions regarding this or any other matter.

Sincerely,



Thomas A. Beilein
Chairman

cc: Errol Toulon, NYCDOC
Ron Greenburg, NYCDOC
William Benjamin, SCOC

To whom it may concern,

When responding to this letter, I am requesting that you enclose this tracking slip. This will assist my staff to direct this matter to the proper person for action and will help track the flow of information between the Commission and your agency so that all correspondence can be handled in a timely manner. Thank you for your cooperation in this matter.

Mailed :7/28/2014

Required Return Date: 8/27/2014

Access Number: 5035

Agency: New York City Department of Correction

Ref: Notice of Violation: 9 NYCRR Part 7006 - Discipline

Notes: Kinney

Thomas A. Beilein
Chairman

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF BRONX, PART 26

CORRECTION OFFICERS

-against-

CITY OF NEW YORK

Index No. 0024054/2016
 Hon. RUBEN FRANCO,
 Justice Supreme Court

The following papers numbered 1 to _____ read on this motion, (Seq. No. 001) for DISMISSAL, noticed on January 28, 2019.

	PAPERS NUMBERED
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	
Answering Affidavit and Exhibits	
Replying Affidavit and Exhibits	

MOTION IS DECIDED IN ACCORDANCE WITH MEMORANDUM DECISION FILED HEREWITH.

Respectfully Referred,
 Dated:



Dated: July 8, 2019

Hon. _____

RUBEN FRANCO, J.S.C.

Ruben Franco

1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
 2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
 3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
 FIDUCIARY APPOINTMENT REFEREE APPOINTMENT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX - IAS PART 26

CORRECTION OFFICERS' BENEVOLENT
ASSOCIATION, INC., and NORMAN SEABROOK

Index No. 24054/2016E

Plaintiffs,

**MEMORANDUM
DECISION/ORDER**

-against-

CITY OF NEW YORK,

Defendant.

Rubén Franco, J.

In this declaratory judgment action, defendant moves to dismiss the Complaint, pursuant to CPLR 3211 (a) (2) for lack of subject matter jurisdiction, and CPLR 3211 (a) (7), for failure to state a cause of action. Plaintiffs seek a declaration that defendant violated Labor Law 27-a by failing to furnish correction officers with a place of employment free from recognized hazards that are likely to cause death or serious physical harm to them. Plaintiffs request that defendant provide all correction officers, who are not part of the Emergency Service Unit (ESU), but are assigned to guard particularly violent inmates, the type of training and equipment that ESU correction officers receive, including spit-masks, mittens and enhanced restraints, and that until the training is provided, that ESU Corrections Officers guard the violent inmates. Plaintiffs also seek for defendant to promulgate and implement an appropriate Workplace Violence Prevention Program (WVPP).

The Department of Corrections (DOC) trains correction officers in various disciplines for 16 weeks or 640 hours at the inception of their employment. Only 40 hours of the training is

devoted to instruction in crisis intervention, verbal de-escalation, and escorting inmates, many of whom have problems with mental health, drugs, and violence. The ESU is an elite corps of correction officers created by DOC, who receive additional training in advanced defensive tactics and are provided with protective body equipment not available to all correction officers including helmets, chest-protectors, arm and shin guards, and stun shields, which serve to minimize the risk of injury from violent inmates. They are trained in relevant tactics for handling assaultive, and the most violent inmates. Less than 200 (.02%) of the approximately 9,000 correction officers are part of ESU. It is alleged that the ESU correction officers are not always available, and their unavailability leaves non-ESU correction officers who are inadequately trained with the responsibility of handling dangerous inmates, who may cause very serious injuries to the officers, other inmates, and staff. These incidents could be prevented with the proper training of non-ESU correction officers.

Policies, procedures, staffing and other controls, discussed in the implementing regulations of the WVPP, have not been instituted in order to evaluate the types of inmates that pose the greatest risk due to their viciousness and aggressiveness. Examples of behavior by violent inmates include serious assaults, punching, kicking, slashing, stabbing, flinging of urine and feces, setting fires, and destroying property.

Defendant argues that the court lacks subject matter jurisdiction in that plaintiffs' request for relief is tantamount to asking the court to assume management of the DOC in contravention of the principle that the judiciary should not preempt municipalities in the management and operation of municipal agencies. Defendant also contends that plaintiffs' cause of action is not a cognizable claim because the New York State Public Employee Safety and Health Act (PESHA) does not

cover injuries sustained in the line of duty and WVPP does not provide for a private right of action. Defendants also posit that their discretionary decisions related to staffing and training of law enforcement professionals cannot be considered to constitute a recognized hazard under PESHHA.

This court is called upon to determine whether, from the facts alleged, DOC has complied with PESHHA and WVPP.

Whether a court has the power to entertain a case is a question of justiciability. In *Matter of New York State Inspection, Sec. & Law Enforcement Empls., Dist. Council 82, AFSCME, AFL-CIO v Cuomo* (64 NY2d at 238-239), the Court of Appeals noted that “Justiciability is the generic term of art which encompasses discrete, subsidiary concepts including, *inter alia*, political questions, ripeness and advisory opinions. At the heart of the justification for the doctrine of justiciability lies the jurisprudential canon that the power of the judicial branch may only be exercised in a manner consistent with the ‘judicial function’” (citing *Matter of State Ind. Comm.*, 224 NY2d 13, 16, Cardozo, J.).

On a motion pursuant to CPLR 3211 (a) (7), a Complaint must be liberally construed, the factual allegations therein must be accepted as true, the plaintiff must be given the benefit of all favorable inferences therefrom, and the court must decide only whether the facts alleged fall under any recognized legal theory (*Miglino v. Bally Total Fitness of Greater N.Y., Inc.*, 20 NY3d 342 [2013]; *Lee v. Dow Jones & Co., Inc.*, 121 AD3d 548 [1st Dept 2014]). Defendant’s basis for asserting that plaintiffs fail to state a cause of action is that PESHHA does not cover injuries or hazards from risks unique to law enforcement work including injuries sustained in the line of duty.

Labor Law § 27-a (PESHHA), provides for the safety and health standards of public employees. Paragraph (a) (3) states:

3. Duties. a. Every employer shall: (1) furnish to each of its employees, employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees and which will provide reasonable and adequate protection to the lives, safety or health of its employees; and (2) comply with the safety and health standards promulgated under this section. In applying this paragraph, fundamental distinctions between private and public employment shall be recognized.

b. Every employee shall comply with the safety and health standards and all rules, regulations and orders issued pursuant to this section which are applicable to his own actions and conduct.

c. The state shall promulgate a plan for the development and enforcement of occupational safety and health standards with respect to public employers and employees, in accordance with section eighteen (b) of the United States Occupational Safety and Health Act of 1970 (Public Law 91-596) which provides: '(b) Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 6 shall submit a State plan for the development of such standards and their enforcement.'

Labor Law § 27-b sets forth the duty of public employers to develop and implement programs to prevent workplace violence (WVPP). The purpose of the WVPP is "to ensure that the risk of workplace assaults and homicides is evaluated by affected public employers and their employees and that such employers design and implement workplace violence protection programs to prevent and minimize the hazard of workplace violence to public employees." Paragraph 3 of the WVPP states: "Every employer shall evaluate its workplace or workplaces to determine the presence of factors or situations in such workplace or workplaces that might place employees at risk of occupational assaults and homicides." Paragraph 5 (b) provides:

b. Every employer shall provide its employees with the following information and training on the risks of occupational assaults and homicides in their workplace or workplaces at the time of their initial assignment and annually thereafter:

(1) employees shall be informed of the requirements of this section, the risk factors in their workplace or workplaces, and the location and availability of the written workplace violence prevention program required by this section; and

(2) employee training shall include at least: (a) the measures employees can take to protect themselves from such risks, including specific procedures the employer has implemented to protect employees, such as appropriate work practices, emergency procedures, use of security alarms and other devices, and (b) the details of the written workplace violence prevention program developed by the employer.

In paragraph 6, Labor Law § 27-b provides a mechanism for risk evaluation and determination, including having an employee bring the matter to the attention of the supervisor. If the situation continues, the employee can notify the Industrial Commissioner, who may conduct an inspection.

PESHA and the WVPP complement each other (*see Matter of City of New York v Commissioner of Labor*, 100 AD3d 519 [1st Dept 2012]; *Matter of City of New York v Commissioner of Labor*, 44 Misc 3d 612 [Sup Ct, NY County 2014]). In *Balsamo v City of New York* (287 AD2d 22 [2nd Dept 2001]), the Court addressed a claim by a police officer to recover damages for personal injuries sustained as the result of a motor vehicle accident. The Court found that “a violation of Labor Law § 27-a may constitute a sufficient predicate for a claim pursuant to General Municipal Law § 205-e which is based on an allegation of a workplace safety violation” (*id.* at 28).

In contrast, in *Williams v City of New York* (2 NY3d 352 [2004]), the plaintiffs sought to recover damages for the death of two detectives shot and killed by a prisoner they were transporting after the prisoner removed a gun from a locker in the detective squad’s locker room. The Court determined that the plaintiffs failed to establish a violation of Labor Law § 27-a because the provision that the defendants were alleged to have violated was not a specific workplace safety standard, but a general duty clause requiring employers to provide a place of employment free from recognized hazards. The Court asserted that PESHA did not cover the special risks faced by

police officers because of the nature of police work. The Court distinguished *Balsamo v City of New York* (287 AD2d 22) stating the “PESHA is designed to prevent the type of occupational injury that occurred when the officer was given an improperly equipped vehicle.”

In addressing another police officer’s claim for damages for injuries that were allegedly sustained while participating in a police training exercise at her precinct house, in *Singleton v City of New York* (13 Misc 3d 1173 [Sup Ct, Kings County 2006]) the court, using *Balsamo v City of New York* (287 AD2d 22) as precedent, found that the violation of section 27-a was properly construed as analogous to the unpadded computer console in *Balsamo*, and did not merely implicate policies utilized to manage the inherent dangers of police work. The court concluded that “having adequately pleaded a cognizable violation of section 27-a by the City, plaintiff’s section 205-e claim is not subject to dismissal under CPLR 3211 (a) (7)” (*Singleton v City of New York*, 13 Misc 3d at 1177-1178). As in *Balsamo v City of New York* (287 AD2d 22) and *Singleton v City of New York* (13 Misc 3d 1173), whether defendant has an obligation to provide specific protective equipment and training is a claim that fits within a cognizable theory.

In essence, plaintiffs claim that volatile individuals reside in the jail system and correction officers are left, almost defenseless, to deal with them without the proper training and equipment, and that DOC is charged with the responsibility to create a plan to address this risk, and to mitigate injuries to correction officers. However, DOC has failed to address what is a small population of predatory inmates who cause the largest number and gravest types of injuries to correction officers, as well as others within the system. This systemic failure is due, in large part, to DOC’s decision not to properly train and equip correction officers so that they can maintain order and security in the jail system, and protect themselves and others from these dangerous inmates, some of whom

are mentally ill. At issue is also whether DOC has failed in the responsibilities imposed by the WVPP because, it is alleged, that there are no safety or treatment plans for mentally ill or other inmates who pose inherent risks.

PESHA provides plaintiffs with a right of action because DOC has an obligation to provide a workplace free from recognized hazards likely to cause death or serious physical harm by providing reasonable and adequate protection (Labor Law § 27-a [3]). The court is charged with determining whether DOC is fulfilling its obligation to minimize avoidable risks of violence and is otherwise, addressing workers' safety consistent with State Law.

Defendant has not shown that DOC has implemented the controls mandated by the WVPP, or conducted risk assessments for incidents of violence, or diffused areas of concern by taking mitigating steps, such as considering the propensities of a part of the jail population, as well as properly training and equipping correction officers to address some of these problems. This court's interpretation of the WVPP is that the statute was implemented to ensure that agencies like DOC meet their statutory obligations, allowing for limited judicial review. In so doing, the court is not usurping DOC's role, it is determining whether DOC is in compliance with PESHA and the WVPP.

Accordingly, defendant's motion to dismiss is denied.

This constitutes the Decision and Order of the court.

Dated: July 8, 2019



Rubén Franco, J.S.C.

HON. RUBÉN FRANCO

Barr, Targeting Anti-Semitic Crimes, Enters Bail Reform Fray

The attorney general levied federal hate-crime charges against a woman accused of anti-Semitic assaults, including one after she was released without bail.



Attorney General William P. Barr met with Jewish leaders in Brooklyn on Tuesday to pledge the support of federal prosecutors to combat anti-Semitic crimes. Credit...Mark Lennihan/Associated Press

By [Jesse McKinley](#) and [Michael Gold](#)

- Jan. 28, 2020

- • In the month since New York enacted a sweeping series of changes to its bail laws that have set thousands of defendants free pending their trials, many [law enforcement officials](#) have urged lawmakers to reconsider the law.

The roster of prominent critics includes [Dermot Shea](#), the New York City police commissioner, as well as Richard P. Donoghue, the top federal law enforcement official in Brooklyn.

Opponents have seized on defendants recently released under the new bail laws who were rearrested on suspicion of committing new crimes, including several anti-Semitic incidents.

The most prominent of those instances involved Tiffany Harris, a Brooklyn woman who allegedly slapped three Orthodox women in late December. Ms. Harris was released without bail, only to be arrested a day later for assaulting another person.

On Tuesday, Ms. Harris’s legal woes intensified as Attorney General William P. Barr appeared in Brooklyn to announce federal hate-crime charges against her, promising “zero tolerance for this kind of violence.”

“This will not be an isolated case,” Mr. Barr said during a visit to the Boro Park Jewish Community Council. “We will move aggressively if we see this kind of activity.”

Mr. Barr did not specifically mention bail reform, but his citation of Ms. Harris’s case will undoubtedly give new ammunition to its opponents, and could increase pressure on lawmakers in Albany to make modifications.

Numerous lawmakers in the State Senate and the Assembly — both ruled by Democrats — have indicated that changes need to be made, but leaders in both chambers have said it is too soon to make broad judgments on the law, which went into effect on Jan. 1.

Gov. Andrew M. Cuomo, a third-term Democrat, indicated last week that while he anticipated some changes to the new law, any revisions needed to be carefully considered since the previous cash bail system was “repugnant to justice.”

“You look at the consequences from the change and you address them — which we are all open to doing,” Mr. Cuomo said. “But let’s do it intelligently and not politically or in some knee-jerk fashion.”

The [new law was passed](#) by lawmakers last spring, as part of a raft of progressive legislation that aimed to modernize the state’s long-stagnant criminal justice statutes. Under the new law, judges are not allowed to set bail for a long list of misdemeanors and nonviolent felonies, including many instances of burglary, robbery, drug offenses, assault and arson.

Bail originally was used as a way to guarantee that defendants returned to court for trial, but activists say the system had been corrupted and abused by law enforcement to unfairly jail poor defendants while releasing wealthy offenders.

That paradigm found a vivid, and tragic, example in 2010 when a Bronx teenager, Kalief Browder, spent three years on Rikers Island because his family could not raise \$3,000 for bail. The charges against Mr. Browder, who had been accused of stealing a backpack, were dropped for lack of evidence in 2013; he later [committed suicide](#).

But as soon as the new bail law took effect, critics began highlighting a parade of instances where recently released defendants allegedly committed more crimes once freed.

In one example, a man who had been charged with stealing or attempting to steal from four New York City banks was released without bail; hours later, the police said, he robbed a Chase bank in Brooklyn.

“No sound, rational and fair criminal justice system requires the pretrial release of criminal defendants who demonstrate such determination to continuously commit serious crimes,” Mr.

Donoghue, the United States attorney for the Eastern District of New York, said after the suspect was rearrested earlier this month.

Ms. Harris, 30, still faces a number of state charges, including assault, attempted assault, harassment and menacing. Police officials said at the time that Ms. Harris admitted to slapping the three women because she believed they were Jewish.

According to the federal complaint, Ms. Harris attacked all three women within a 10-minute period at around 12:40 a.m. on Dec. 27 in Crown Heights, a neighborhood in Brooklyn with a large Jewish population, “because of their actual or perceived religion.”

Two of the victims were wearing clothing that made them identifiable as Jewish, an F.B.I. agent wrote in the complaint. In the second attack, Ms. Harris approached a woman who was walking with five other Jewish people, hit her on the back of the head and uttered a profane, anti-Semitic remark.

Ms. Harris’s lawyers reacted angrily to the federal charges levied against her, which carry a maximum prison sentence of 10 years. They said she was “being used as a scapegoat for the fear-mongering surrounding bail reform,” adding she was currently hospitalized and “not endangering anyone.”

“Many members of the Jewish community have spoken out against the use of incarceration in her case, including one of the victims,” said Lisa Schreibersdorf, the executive director of Brooklyn Defender Services. “I don’t know how this can be seen as necessary or even humane.”

The change to bail is seen as a signature accomplishment of the Democratic-led State Legislature, pushed by a passel of young progressives who have often challenged mainstream Democrats like Mr. Cuomo to move further to the left. They have urged their colleagues to resist rolling back any portion of the law.

Another measure adopted last year to fix what lawmakers considered flaws in the criminal justice system — the creation of a Commission on Prosecutorial Misconduct — suffered a setback on Tuesday when a state court judge ruled that the commission violated New York’s Constitution because it “diminishes” the judiciary’s role in disciplining attorneys.

It was unclear what impact the ruling would have on the future of the commission, which had not yet taken shape.

A spokesman for Mr. Cuomo, who expressed concerns about whether the panel would withstand a legal challenge even as he signed the bill to create it, said that the governor’s office was reviewing the decision. A spokesman for Carl Heastie, the Assembly speaker, did not immediately respond to a request for comment.

As for the bail changes, many who have criticized them have asked lawmakers to give judges some discretion in seeking bail in cases where defendants pose a perceived risk to the public.

“The N.Y.P.D. believes significant bail reform can be achieved, as long as judges are granted the discretion to remand suspects whom they determine to be genuinely dangerous, including chronic repeat offenders,” Commissioner Shea wrote in [an Op-Ed](#) for The New York Times.

The New York City mayor, Bill de Blasio, also has suggested that changes to the new law may be necessary, saying on Tuesday that he has spoken to Commissioner Shea.

“We’re going to address the challenges we face,” the mayor said.

Reporting was contributed by Luis Ferré-Sadurní, Emma G. Fitzsimmons, Edgar Sandoval, Ed Shanahan and Liam Stack.

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De Blasio intervened in prosecution of accused anti-Semitic attacker Tiffany Harris

By [Rebecca Rosenberg](#), [Julia Marsh](#) and [Bruce Golding](#)

January 5, 2020 | 10:15pm | [Updated](#)



Bill de Blasio Getty Images for Festival People

Mayor Bill de Blasio intervened in the prosecution of an accused anti-Semitic attacker — leading to her lock-up in a psych ward — because she was generating negative publicity for his administration, The Post has learned.

Brooklyn's supervising judge was forced to hold an unscheduled hearing late on the afternoon of New Year's Eve after City Hall contacted the state Office of Court Administration about Tiffany Harris, 30.

Harris' repeated release from custody after back-to-back arrests late last month — including for allegedly slapping three Orthodox Jewish women and shouting "F-U, Jews!" on Dec. 27 — had made her a symbol of [revolving-door justice](#) amid the state's new bail reform law and de Blasio's gift programs for newly released jail inmates.

The administration flipped out when it learned that Harris had allegedly pinched a social worker Dec. 30 after she was [let loose under supervised release](#) following her second arrest, said a source familiar with the matter.

"The Mayor's Office was deeply concerned after learning that she was not in compliance with her supervised release and her erratic behavior was continuing," the source said. "They reached out to the court, who then calendared it to further investigate."

A transcript of the court hearing shows her public defender complained to Judge Michael Yavinsky that news coverage had led the Mayor's Office of Criminal Justice to contact both her and Brooklyn Justice Initiatives, which was responsible for overseeing Harris.

"The mayor of the executive branch of the government got involved because of a press case," said Lisa Schreibersdorf, founder and executive director of Brooklyn Defender Services.

The state's [bail reform law](#) — which eliminates cash bail for all misdemeanors — was set to take effect New Year's Day, she noted.

De Blasio has criticized aspects of that law, but has also offered incentives — including gift cards and free Mets tickets — to encourage defendants to show up in court.

"We're on the cusp of reform taking place in a few hours from now, and that was not the press they wanted, so what they did was they tried to find a way to intervene in the court process in a different branch of government, getting everybody involved in trying to address this," Schreibersdorf said.

Schreibersdorf — who appeared in court without Harris — decried the notion that her client's next appearance should be moved up because of outside intervention.

But Yavinsky said he would still issue a bench warrant for Harris' arrest. She was nabbed by city sheriff's deputies at a Brownsville hotel around 10:15 p.m. New Year's Eve, then ordered held the next day for a 72-hour psychiatric evaluation at an undisclosed facility.

She has since been admitted for mental health observation "at the discretion of her doctor," said a source familiar with her care.

De Blasio spokeswoman Freddi Goldstein said Sunday, “It is our job to help ensure supervised release works as it should.

“In that vein, we spoke with the Office of Court Administration after Ms. Harris’ assessment was left incomplete to determine next steps and discuss how to handle situations like this in the future.”

Tiffany Harris indicted on felony hate-crime charges — but still won’t face bail

By [Andrew Denney](#), [Emily Saul](#) and [Rebecca Rosenberg](#)

January 14, 2020 | 2:36pm | [Updated](#)

[Enlarge Image](#)



Tiffany Harris Rashid Umar Abbasi

The Brooklyn woman accused of assaulting several Jewish victims — [only to be released twice](#) thanks to new bail laws — has now been hit with felony hate-crime charges, The Post has learned.

But the new raps are still not enough for a judge to impose bail on her under the controversial state “reforms.”

A grand jury in Brooklyn Supreme Court indicted Tiffany Harris on three counts of felony assault as a hate crime Jan. 7, court records show.

The 30-year-old was initially facing misdemeanor charges [for allegedly slapping three Orthodox Jewish women in Crown Heights](#) on Dec. 27 while shouting “F-U, Jews!”

[Harris walked free](#) under the state’s new soft-on-crime law, which bars judges from imposing bail in most misdemeanor cases and some felonies.

Within days, she’d been arrested — and released — again for allegedly assaulting [another Jewish woman in Prospect Heights](#).

[She was arrested a third time on New Year’s Eve](#) for allegedly blowing off an appointment with social workers and was finally held for a psychiatric evaluation.

Harris is now scheduled to be arraigned on the new indictment Jan. 22 before Brooklyn Supreme Court Justice Danny Chun.

But the upgraded assault charges aren’t bail-eligible under the new regime, either — so she will likely walk free once more.

Mark Bederow, a criminal-defense lawyer and former Manhattan prosecutor, told The Post that authorities’ hands are tied from keeping her locked up, despite her alleged repeat offenses.

“If she continues to just get arrested and the law does not recognize that she can be held unless she demonstrates persistently that she won’t come back to court, then prosecutors can’t do anything,” said Bederow, who is not involved in Harris’ case.

The lawyer said that the only thing that would land Harris behind bars is if she is convicted and sentenced to serve time.

“The law is designed not to incarcerate her before she is convicted,” he said.

Noting that the troublesome bail law officially took effect New Year’s Day, Bederow added, “Today is Jan. 14, and it’s already clear there are problems with [it].”

Harris’s lawyer did not respond to requests for comment Tuesday.

The Brooklyn District Attorney’s Office declined to comment.