



NEW YORK CITY
BOARD OF CORRECTION

November 15, 2016 - Public Meeting Minutes

MEMBERS PRESENT

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

Gerard W. Bryant, Ph.D.: Absent
Michael Regan: Absent

Martha King, Executive Director

DEPARTMENT OF CORRECTION

Joseph Ponte, Commissioner
Martin Murphy, Chief of Department
Jeff Thamkittikasem, Chief of Department
Winette Saunders, Deputy Commissioner of Youthful Offender and Young Adult Programming
Cynthia Brann, Deputy Commissioner of Quality Assurance and Integrity
Keith Taylor, Assistant Commissioner of the Correction Intelligence Bureau
Peter Thorne, Deputy Commissioner of Public Information
James Walsh, Deputy Commissioner of Adult Programming
Annie DiCaterino, Strategic Planning
Kwame Patterson, Assistant Commissioner of Public Information
Heidi Grossman, Deputy Commissioner for Legal Matters/General Counsel
Brenda Cooke, Deputy General Counsel
Gregory Kuczinski, Deputy Commissioner for Investigation Division
Danielle Leidner, Director for Intergovernmental Affairs
Yolanda Canty, Bureau Chief
Anna Matzullo, Senior Policy Advisor
Janet Amaro, Strategic Planning
Jordan Marin, Deputy Risk Manager
Eve Kessler, Director of Public Affairs
Carleen McLaughlin, Director of Legislative Affairs and Special Projects

Benjamin Seebaugh, Staff Analyst
Faye Yelardy, Director of Special Projects
Charlton Lemon, Warden
Jacqueline Brantley, Deputy Warden in Command
Joseph Vasaturo, Deputy Warden
Kristine McCormick, Captain
Louis Molina, Captain
Jeanette Perez, Principal Administrative Associate II
Mackenzie Dancho, Intern
Belinda Stewart

NYC HEALTH + HOSPITALS-CORRECTIONAL HEALTH SERVICES

Homer Venters, M.D., Assistant Commissioner, Bureau of Correctional Health Services
Elizabeth Ward, Senior Director Correctional Health
George Axelrod, Chief Risk Officer
Patrick Alberts, Agency Attorney, Division of Prevention and Primary Care
Levi Fishman, Associate Director of Public Affairs
Nathaniel Dickey, Special Assistant

OTHERS IN ATTENDANCE

Alex Abell, Urban Justice Center
Reuven Blau, NY Daily News
Angie Carpro, Mayor's Office of Criminal Justice
Mark Cranston, Middlesex County Department of Correction/COBA
Brian Crow, NY City Council (NYCC)
Kelsey Deavila, Brooklyn Defender Services (BDS)
Elizabeth DeWolf, Policy Associate, CUNY
Xena Grandichelli, Jails Action Coalition (JAC)
Courtney Gross, NY1
Shannon Hakn, NYC Independent Budget Office
Kymane Hutchinson, JAC
David Jeans, Columbia School of Journalism
Sarah Kerr, Legal Aid Society, Prisoners' Rights Project (LAS)
Mik Kinkead, Sylvia Rivera Law Project
Victoria Law, Freelance
Jin Lee, NYCC
Jeff Mailman, NYCC
Sebastian Maguire, NYCC
Amanda Masters, NYC Public Advocate Hon. Letitia James
Elizabeth Mayers, JAC
Jennifer Parish, Urban Justice Center/JAC
Gloria Pazmino, Politico NY
Charlotte Pope, Children's Defense Fund –NY (CDF-NY)
Grace Price, JAC

Corinne Ramey, Wall Street Journal
Steve Riester, NYC Council, Finance Division
Kathleen Rubenstein, NYC Law Department
Dr. Kanishk Solanki, Office of Mental Health
Marc Steier, COBA
Danielle Tcholakian, DNA Info
Veronica Vela, LAS
Keith Zobel, NYS Commission of Correction

Parting Remarks from Chair Brezenoff

Chair Brezenoff opened the meeting with parting remarks, thanking Board of Correction members for their diligence, support, guidance, and dedication to the mission of the Board. He expressed gratitude to Director Martha King (ED King) for her extraordinary job in leading the Board's staff, and thanked the public for their continuing input. The Chair also thanked the Commissioner and the Department of Correction for their ongoing commitment to reform.

Public Comment on Final PREA Rules and Variance Requests

► Public Comment

The public comments on the proposed final PREA rules and Department variance requests are available [here](#). Comments were heard from Mark Cranston (Middlesex County Department of Correction), Sebastian McGuire (Legislative Director to NYC Council Member Dromm), Albert Craig (COBA), Jennifer Parish (Director of Criminal Justice Advocacy at the Urban Justice Center Mental Health Project and JAC member), Kathy Morris (advocate), Sarah Kerr (Legal Aid Society, Prisoners' Rights Project), Kelsey De Avila (Brooklyn Defender Services (BDS)), Xena Grandichelli (transgender rights advocate), Charlotte Pope (Children's Defense Fund-NY), Grace Price (JAC), and Veronica Vela (Legal Aid Society, Prisoners' Rights Project).

► Board Discussion and Vote on Final PREA Rules

Chair Brezenoff opened the floor for discussion on the proposed final PREA rules.

Member Hamill praised the arduous efforts of the Board's *ad hoc* PREA Committee, Chair Brezenoff, ED King, General Counsel Michele Ovesey and DOC in working together to bring the proposed final rules to fruition. In response to public comment, she explained that the Board does not have the legal authority to direct an agency, such as the Department of Investigation ("DOI"), to investigate sexual abuse allegations against DOC staff. Member Hamill also expressed her disappointment that certain proposed investigation provisions did not make their way into the final rules. She assured the public that the Board will closely monitor implementation of the rules, and will seek to amend them, as it deems necessary, in the future.

Member Cohen echoed the concern about DOC investigating sexual abuse complaints against its own staff. However, he reiterated Member Hamill's observation that the Board is without legal authority to require DOI to conduct such investigations. Member Cohen also expressed concern that funding available to ensure compliance with the proposed rules may be insufficient. He also voiced his disappointment that DOC will be closing the Transgender Housing Unit (THU). He

strongly urged the Department to keep the THU open in 2017 pending staggered completion of PREA audits of DOC facilities, in the hope that the federal PREA standard prohibiting units, such as the THU, will be amended in the future.

Member Jones Austin expressed her appreciation of the work done by the *ad hoc* PREA Committee and her view that the rules, as a whole, were good. She further remarked that, going forward, the Board should continue listening to the concerns of the transgender community about the closing of the THU and developing alternative approaches that meet the needs of transgender inmates.

The Chair called for a vote on the proposed final rules. The rules passed with six (6) members voting in favor and none in opposition (Chair Brezenoff recused himself; as he explained later in the meeting, he did so because some of the rules require action by NYC Health + Hospitals (“H+H”), the interim leadership of which he will assume upon his impending resignation from the Board; Vice-Chair Cephas and Members Cohen, Jones Austin, Hamill, Richards, and Safyer voted in favor).

Variance Requests

Chair Brezenoff asked the Department to present its requests for (i) renewal of a limited variance from Minimum Standards § 1-17(d)(2), which requires a seven (7) day release from punitive segregation after an inmate has been held in punitive segregation for thirty (30) consecutive days; (ii) a limited variance from Minimum Standard § 1-09(c)(1)(i), which requires that visiting be permitted on at least three days for at least three consecutive hours between 9 a.m. and 5 p.m. and on at least two evenings for at least three consecutive hours between 6 p.m. and 10 p.m.; and (iii) a limited variance from Minimum Standard § 1-05(b), which requires 14 hours of daily lock-in time except for inmates housed in punitive segregation and Enhanced Supervision Housing (“ESH”) and §1-08(f), which requires inmate access to a properly equipped and staffed law library.

Limited Variance from Minimum Standard § 1-17(d)(2) (“7-Day Waiver”)

Chief Murphy presented the Department’s request for a six-month renewal of a limited variance, to end June 17, 2017, allowing DOC to waive the requirement that inmates who have been held in punitive segregation for thirty (30) consecutive days, be released for at least seven (7) days before that inmate may be returned to punitive segregation (“waiver” or “override”). This variance was first granted by the Board in September 2015 and last renewed at the Board’s June 2016 meeting.

Chair Brezenoff opened the floor for discussion. Member Cohen stated that it is not appropriate for the Board to effectuate rule changes by repeatedly renewing variances instead of engaging in rule-making. He also voiced his disapproval of placing inmates in long-term punitive segregation. Chair Brezenoff requested that DOC provide clarity by describing how the variance has been used.

Chief Murphy stated that since the granting of the variance in September 2015, he has approved 18 of 25 waiver requests, most of which concerned inmate assaults of staff or other inmates, stabbings, and slashings. In response to Vice-Chair Cephas’ inquiry, the Chief stated that most of the approved overrides concerned inmates who had committed infractions during the 7-day period.

Member Hamill asked the Department about the findings and recommendations of the Vera Institute of Justice (“Vera”) concerning its study of restrictive housing in the NYC jail system.

DOC Chief of Staff Jeff Thamkittikasem responded that Vera had generally recommended that DOC provide more incentives for inmates to exit restrictive housing. However, he declined to provide more detail because the report, which will be public, is not ready to be released. In response to Member Hamill's inquiry, Mr. Thamkittikasem stated that DOC had not consulted with Vera about whether to seek renewal of this variance.

Vice-Chair Cephas asked for the number of inmates who had served thirty (30) days in punitive segregation ("PSEG"), remained out for seven (7) days, and then re-infracted and returned to PSEG. Mr. Thamkittikasem responded that the Board would receive a "full analysis" of inmates who re-infracted during their stay in PSEG or in the 7-day period thereafter. Chief Murphy confirmed that DOC had eliminated historical PSEG time, i.e., PSEG time to which the inmate had been sentenced but had not yet served. He further stated that the seven inmates for whom he did not approve an override were transferred to a general population unit.

Chair Brezenoff called for a vote on the request for renewal of the limited variance. Four members (the Chair, Vice-Chair, Jones Austin and Richards voted in favor) while two members (Cohen and Hamill) voted in opposition. Since the variance did not receive a vote of the majority of the whole number of the Board (i.e., five or more votes), it failed to pass. The variance is set to expire on December 17, 2016. The Chair stated that he would raise with the Board whether to call a special meeting in December to revisit the Department's renewal request.

Continuing Variance from Minimum Standards §§ 1-07 and 1-08

Heidi Grossman, DOC's Deputy Commissioner for Legal Matters/General Counsel ("DC Grossman") withdrew DOC's request for a continuing variance from certain provisions of Minimum Standards § 1-07 (practice of religion) and 1-08 (access to law library) with respect to inmates who cannot, for safety reasons, be broadly mingled with other inmates. She stated that the Department required time to consider the public comments on the variance.

Member Hamill encouraged the Department to implement Vera's recommendations with respect to all of its segregated housing units. In response to Judge Hamill's inquiry regarding restraint desks, DC Grossman stated that restraint desks are an option available to the Department; they are now being used in the Secure Unit; and inmates are afforded due process that specifically reviews whether inmates should be subject to this form of restraint.

Members Cohen and Richards thanked the Department for withdrawing its request for a continuing variance. Member Cohen said he failed to understand why DOC had not sought a variance from Minimum Standard § 1-05 ("Lock-in") given that inmates in West Facility are confined to their cells 23 hours a day. Further, DOC has not been able to articulate any difference between the criteria for placement in ESH and the criteria for placement in Individual Safety Status ("ISS") or the difference between the ESH housing program and that of West Facility. He concluded that ISS is not clearly defined and asked DOC to differentiate between the two populations placed in this status, i.e., inmates with a history of violence and inmates who require protective custody.

Emergency Variance Request re OBCC

Mr. Thamkittikasem withdrew DOC's request for an emergency variance from operating the Otis Bantum Correctional Center (OBCC) in compliance with certain Minimum Standards. He described acts of violence that had occurred at the ESH unit at OBCC, including two slashings that had occurred within one hour of each other and an assault on staff. As a result, DOC locked down the jail and/or individual units for approximately three weeks in order to conduct an investigation, review video surveillance, and search for weapons. Although weapons were not found, the video showed inmates engaging in certain actions indicative of reaching for or holding a weapon (e.g. an inmate with his hands in his pants or with a closed fist). To prevent further violence, the Commissioner and the Chief decided to place inmates in one of three levels of ESH according to the inmate's history of violence and the severity of the violence. There are now 38 inmates in ESH Level 1 — the most restrictive level; they are placed in restraint desks (their legs are shackled with cuffs and chained to the desk, but their hands are free) to receive programming or watch T.V during their lock out time. DC Grossman stated the *Nunez* Monitor's view that the use of restraint desks for the reasons outlined by DOC constitutes sound correctional practice; she also noted that this form of restraint has been used in other jurisdictions.

Chair Brezenoff stated that while the Board recognizes that safety concerns require, at times, immediate action, the Board was concerned by the prolonged period of time it took to address the violence and achieve normalcy at OBCC. It is DOC's burden to make sure that emergency measures do not become the norm, and he urged the Department to increase the speed and efficiency of its processes for addressing emergency situations.

Limited Variance from Minimum Standard § 1-09 (Visiting)

Chief Murphy presented DOC's request for a limited variance permitting it to hold visits on Thanksgiving during the day tour instead of the evening tour as required by Minimum Standard § 1-09(c)(1)(i). The Chief stated that this modification would enhance the opportunity for family and friends to visit inmates during the holiday, and also benefit staff who work the visit post on Thanksgiving.

The Chair called for a vote on the variance request. The variance was approved by all members present (Chair Brezenoff, Vice-Chair Cephas, and Members Jones Austin, Cohen, Hamill, and Richards).

Young Adult Plan

Before presenting on the Young Adult Plan, Deputy Commissioner Winette Saunders ("DC Saunders") thanked the Chair for his leadership and noted that his shoes would be very hard to fill.

DC Saunders described recent implementation of young adult initiatives, including a re-entry program for adolescents; the expansion of ICAN re-entry services to young adults who do not technically meet ICAN eligibility criteria; commencement of the re-start process at GMDC, which involves the retraining of staff and an orientation for inmates newly entering the facility (so far, six housing units have been re-started, and re-start of the remaining units will be completed by Spring 2017); the launch of a youth engagement center focused on physical exercise; co-training of DOC and H+H staff on adolescent brain development and challenging behavior; and construction of a PACE unit for young adults by the end of 2017. DC Saunders also described the

blended young adult/adult housing pilots at AMKC and OBCC (including OBCC's ESH unit) and in "Young Adult ESH."

In response to Member Richards' questions, DC Saunders discussed the challenges the Department faces in separating young adults, particularly those who are affiliated with gangs or exhibit threatening behavior. She stated that the ESH model for young adults has been successful in identifying youth who require mental health services, and that each ESH inmate is assessed to determine what types of programming would best meet that inmate's individual needs.

Member Hamill noted that approximately 54% of young adults are housed in GMDC and asked why there had been a pause in referrals. DC Saunders responded that once the re-starts at GMDC are completed, placement of young adults in the facility will increase; until then, high-classification youth and those who want to go to school are prioritized for placement in GMDC.

Member Hamill asked whether a time would come when DOC determines which of the various housing programs for young adults, such as TRU, SCHU and Secure, would continue. She noted that the Board's Minimum Standards call for young adults to be housed together in order to take full advantage of programming and services designed specifically for inmates of this age group. DC Grossman responded that the *Nunez* Monitor supports the commingling of young adults with inmates ages 22 and older and DOC's exploration of housing options that commingle these age groups.

Limited Variance re Secure Unit

Chair Brezenoff called for a vote on DOC's request for renewal of a limited variance from Minimum Standards § 1-05(b) (minimum lock-in time) and § 1-08(f) (access to law library). This variance would permit DOC to continue providing 10 hours of daily out-of-cell time and law library services via kiosks to inmates housed in the Secure Unit. Vice-Chair Cephias moved the item and Member Richards seconded the motion.

Noting that one inmate in the Secure Unit had been there for 89 days, Member Cohen asked how long inmates are confined there. DC Saunders responded that inmates spend a minimum of 30 days in the first phase of the program. The time spent in the remaining phases depends on the person's progress and behavior. DC Grossman stated that the *Nunez* Monitor supports continued operation of the Secure Unit and renewal of the variance. Member Hamill remarked that she had spoken with the Monitor who believes this housing model constitutes good correctional practice; therefore, she supports the variance.

ED King read out loud the conditions to the variance, which are available [here](#).

Chair Brezenoff called for a vote on the limited variance with conditions. The variance passed with five votes in favor (Chair Brezenoff, Vice-Chair Cephias, and Members Hamill, Jones Austin, and Richards) and one abstention (Member Cohen).

Public Comment

The Board heard public comment from Mik Kincaid (Sylvia Rivera Law Project).