



**NEW YORK CITY  
BOARD OF CORRECTION**

**April 20, 2018 Public Meeting Minutes**

**MEMBERS PRESENT**

Derrick D. Cephas, Esq., Acting Chair  
Stanley Richards, Acting Vice-Chair  
Robert L. Cohen, M.D.  
Hon. Bryanne Hamill  
Jennifer Jones Austin, Esq.  
James Perrino  
Michael J. Regan

Martha W. King, Executive Director

**MEMBERS ABSENT**

Steven M. Safyer, M.D.

**DEPARTMENT OF CORRECTION (DOC)**

Cynthia Brann, Commissioner  
Hazel Jennings, Chief of Department  
Jeff Thamkittikasem, Chief of Staff  
Peter Thorne, Deputy Commissioner of Public Information  
Winette Saunders, Deputy Commissioner of Youthful Offender and  
Young Adult Programming  
Anna Marzullo, Senior Policy Advisor  
Timothy Farrell, Senior Deputy Commissioner  
Steven Kaiser, Policy Analyst  
Danielle Leidner, Executive Director of Intergovernmental Affairs  
Heidi Grossman, Deputy Commissioner for Legal Matters/General Counsel  
Sarena Townsend, Acting Deputy Commissioner of the Investigation Division  
Brenda Cooke, Deputy Chief of Staff  
C. Brown, Correction Officer  
Wayne Prince, Captain  
David Sukhu, Correction Officer  
Jean Rene, Deputy Warden  
Dionne McKenzie, Assistant Deputy Warden  
Elizabeth Seibold, Press Officer

**NYC HEALTH + HOSPITALS (H+H)-CORRECTIONAL HEALTH SERVICES (CHS)**

Ross MacDonald, M.D., Chief Medical Officer, Assistant Vice President, CHS

Patsy Yang, DrPH, Senior Vice President, CHS

Patrick Alberts, Esq., Senior Director of Policy and Planning, CHS

Zachary Rosner M.D., CHS

**OTHERS IN ATTENDANCE**

Jennifer Parish, Urban Justice Center-Mental Health Project (UJC)

Alex Abell, (UJC)

Rosa Jaffe, (UJC)

Samantha Cook, (UJC)

Sophia Henegar, (UJC)

Efosa Akenzua, (UJC)

Victoria Phillips, Jails Action Coalition (JAC)

Elizabeth Mayers, (JAC)

Kelly Grace Price, (JAC)

Kevin McKoy, (JAC)

Megan Crowe, (JAC)

Dori Lewis, Legal Aid Society Prisoners' Rights Project (LAS)

Jillian Gonzalez, (LAS)

Veronica Vela, (LAS)

Katie Beth White, (LAS)

Maya Brown, Children's Rights

Matthew Gibson, Children's Rights

Kelsey De Avila, Brooklyn Defender Services (BDS)

Simone Spirig, (BDS)

Miguel Medrano, (BDS)

Ashley Iodice, New York City Law Department (Law)

Keith Zobel, New York State Commission of Correction (SCOC)

Allen Riley, SCOC

Kim Capers, Queens Library

Veronica Lewin, NYC Department of Health and Mental Hygiene

Dylan Hayre, Just Leadership USA

Tom O., Just Leadership USA

Sarita Daftary, Just Leadership USA

Herbert Murray, Just Leadership USA

Valerie Kaufmann, Just Leadership USA

Brandon Holmes, Just Leadership USA

Vidal Guzman, Just Leadership USA

Julia Geiger, New York Legal Assistance Group

Susannah Waldman, Independent Commission on Criminal Justice/Incarceration Reform

Julian Castronovo, Sylvia Rivera Law Project

Mick Kinkade, Sylvia Rivera Law Project

John Tucker, City University New York – Brooklyn College

Juliette Jabkhiro, Columbia Radio News

Levina Talukdar, Osborne Association

Allison Hollihan, Osborne Association

Victoria Law, Independent

Ann Harris, Independent

### **Approval of January and March 2018 Minutes**

Acting Chair Cephas called the meeting to order and asked for a motion to approve the January 9, 2018 and March 13, 2018 meeting minutes. Upon Member Cohen moving the item and Member Jones Austin seconding it, the minutes were unanimously approved (Acting Chair Cephas, Acting Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, Perrino, and Regan).

### **Addressing Misconceptions About the Board's Roles and Responsibilities**

Before proceeding to the main agenda items, Acting Chair Cephas addressed certain misconceptions with respect to the roles and responsibilities of the Board of Correction (BOC). He said he would first address the Board as an institution — why does it exist and what role does it serve — and then address BOC as currently constituted and how it views its mission. Following is a summary of the Acting Chair's remarks.

#### **► The Board's Legal Mandate**

First and foremost, BOC is an independent oversight agency whose legal mandate is to regulate, monitor, and inspect the City's jails in support of safer, fairer, smaller, and more humane jails. Toward that end, the Board (1) monitors conditions of confinement and compliance with its Minimum Standards; (2) documents systemic issues of a problematic nature; and (3) informs policy decisions and policy improvement with respect to the City's jails. The Board is not empowered to manage the operations and services within the jails — that is the legal mandate of DOC and CHS.

#### **► The Board's Creation and Historical Development**

incarceration is a part of the government's work, but when the government uses its power to deprive people of liberty and isolate them from their communities, it must include ongoing transparency and accountability measures. That is why BOC was created in the first instance.

In the early 1950's, Mayor Wagner, then DOC Commissioner Anna Kross, and a taskforce of other City leaders, including future Mayor Abe Beame, created BOC to monitor the New York City jail system on behalf of the public, to provide planning assistance to the Department, and to solicit and consider diverse viewpoints regarding the issues facing the jails. Since its earliest public reports, the Board has had full access to DOC records and facilities and has focused on data-driven oversight and data-informed policy decisions. In its early years, the Board pushed for critical, longstanding reforms such as ending the use of bread and water diets as punishment, requiring mattresses and running water in segregation cells, developing a methadone treatment program, creating the suicide prevention aide initiative, instituting prenatal services at the women's jail, and adding telephones to each housing area.

In 1975, New York City voters revised the City Charter to create an independent Board with a staff and budget, subpoena power, and the mandate to write local regulations to be known as Minimum Standards. The Board's accomplishments in the years after the 1975 Charter revision included the creation of a formal grievance system for people in custody and the development of the first jail mental health standards in the U.S. Over the years, BOC membership has consisted of leaders from various sectors of New York City life, including physicians, lawyers, government and corrections officials, judges and DAs, clergy, journalists, academics and juvenile justice practitioners, among others.

### ► **The Board's Regulatory Authority**

DOC and CHS take seriously their responsibilities for safe, fair, and humane care and custody that minimizes the adverse impacts of incarceration on people in custody specifically, and on our communities generally. Civilian oversight, like that of the Board's, is a tool to facilitate the transparency and accountability needed to support and evaluate these core responsibilities. More cities and states as part of their justice reforms are creating bodies like the one New York City has had for over 60 years. Unlike many of our peer agencies, the Board has regulatory authority: the power to write, amend and grant variances from the Minimum Standards.

In 1978, the Board adopted a set of 16 Minimum Standards to provide what it considered to be the basic elements necessary to ensure the safe and humane incarceration of people in custody. These Standards, which comprise Chapter 1 of BOC's rules, reflect the general principle of least restrictive confinement and have been refined by multiple court orders mandating policies regarding non-discriminatory treatment, classification, lock-out time, religion, access to courts, visitation, telephone calls, correspondence, packages, publications and media access. The Board's Minimum Standards also reflect state and federal constitutional rights, standards from other jurisdictions including the New York State Commission of Correction, and best practices in correctional facilities around the country and the world. Compliance with the Board's Minimum Standards is required — it is not optional.

The Minimum Standards have governed critical areas of life inside the City's jails for almost 40 years. Within these parameters, the Department has wide latitude to implement policy in ways it believes to be safe, fair and efficient. For example, the Board's Minimum Standard on recreation requires DOC to provide one-hour of outdoor recreation daily. It does not, however, prescribe anything further as to how the Department should carry out this requirement. Moreover, this and other Chapter 1 Standards expressly permit DOC to impose restrictions on individual access to mandated services for safety and security reasons.

If the Department cannot comply with a Minimum Standard, it can apply for a variance. In 2016 and 2017, the Board approved 32 of DOC's 34 variance requests. This collaborative approach also holds true with respect to DOC's violence prevention and safety efforts. The health and safety of people in custody and the people who work in the jails is a primary concern of both the Board and the Department — both agencies make their decisions with this concern at the forefront. Moreover, any suggestion, as was made at the March 2018 public meeting, that the Board as an institution engages in "confirmation bias" is misguided and wrong. The City Charter mandates that the Board perform independent oversight of the City's jails and all Board members takes this responsibility very seriously and are committed to utilizing their best, unbiased, and considered judgment in carrying out this legal mandate. The constituencies that BOC serves — the Mayor, the City Council, all those who work in the jails, all those who are incarcerated in them, and the public — deserve nothing less. The Board's independent oversight should not be mistaken for "confirmation bias." The rules BOC enacts, the variances it approves and the conditions upon which it grants them, and the reports it produces, are the product of data-driven analysis, qualitative observations, and significant input from DOC, other City agencies, advocates, and experts.

## ► Regulatory Reforms

In 2015, the Board, with support from the Mayor and other elected officials, the Department, CHS, and many advocacy groups, amended the Minimum Standards to create limits on the use of punitive segregation. The 2015 punitive segregation amendments established safeguards on who could be placed in segregation, for how long, and for what reasons. Before the amendments, close to 20% of adolescents in custody were in 23-hour lock-in and the number of people in isolation had grown 225% in the previous 10 years. New York City had one of the highest rates of punitive segregation in the nation and was overusing punitive segregation as a behavior management tool in the jails.

When the Board, in collaboration with the Department, created limits on punitive segregation, it based its decisions on numerous evidence-based studies showing that misused and overused segregation is not an effective behavioral management tool and does not deter violence. A vast majority of correctional experts agree that isolation of an individual for extended periods of time results in a distinct set of emotional, cognitive, social, and physical pathologies. Segregation is particularly damaging to young people, people with serious mental illness, and the physically disabled. The City's punitive segregation units were also places with higher rates of assaults on staff, suicide, self-harm, and splashings. Today, New York City leads the country in reducing its reliance on punitive segregation. The Department, in collaboration with the Board, eliminated punitive segregation for adolescents and young adults, and New York City is the only jurisdiction in the country that has eliminated punitive segregation for young people ages 18-21.

As the approach to law enforcement evolves around the country, correctional systems are joining New York City and reforming their use of punitive segregation. This includes jails and prisons in Cook County, Texas, Washington State, Colorado, the Federal Bureau of Prisons, and many more. Today, the segregation population in the City's jails is one-fifth of what it was during the year before the 2015 reforms and 10% of what it was in 2012 at the peak of punitive segregation.

As the Department planned to limit the use of punitive segregation in 2014-2015, it developed alternative responses to violence and misconduct. At that time, DOC petitioned the Board to enact a rule permitting the use of Enhanced Supervision Housing (ESH) as an alternative to the long-term use of punitive segregation. The Board ultimately wrote ESH into the Minimum Standards. The Department created other alternative housing for adolescents and young adults, such as Young Adult ESH, Secure, TRU and Second Chance, and the Board approved and renewed multiple variances — 19 in just the past two years — enabling DOC to create more housing options for promoting safety and holding accountable those who commit violence and other misconduct in the City's jails.

Currently, there are 47 different restrictive housing units in the city jail system, spread across 16 types of restrictive housing with approximately 450 people housed in these units. The people in these units are subject to restrictions on out-of-cell time, commissary, recreation, packages, mail, law library, showers, television programming, co-mingling, visits and personal property.

## ► Conclusion

The City Administration and the City Council have invested in the Board as never before, adding much needed resources to expand and enrich its oversight efforts. This new

investment in BOC is in recognition of the critical role that the Board plays in providing objective and trusted reporting, accountability, and regulation. The Board looks forward to continued collaboration with all correctional and criminal justice stakeholders.

## **Sexual Abuse and Sexual Harassment Prevention: An Update**

### **► Introduction**

Executive Director (ED) Martha King said BOC staff last reported to the Board and public in September 2017 on implementation of and compliance with BOC's Minimum Standards on preventing sexual abuse and sexual harassment. BOC staff will continue its public reporting every six months, and each report will focus on provisions that the Board, DOC and CHS reviewed together at their most recent quarterly meeting.

### **► Screening for Risk of Sexual Victimization and Abusiveness**

ED King provided an update on Minimum Standards §§ 5-17 and 5-18 regarding DOC's screening for risk of sexual victimization and abusiveness. At the September 2017 Board meeting, BOC staff reported that the Department was not meeting these Standards because of its reliance on paper-based systems to obtain and track this information. In October 2017, the Board unanimously passed a resolution for corrective action and by February 1, 2018, DOC had implemented an electronic screening process to assess and re-assess people for risk of victimization and abusiveness. ED King praised DOC for this significant progress and said the Board would monitor the screening for its impact.

### **► Housing Placements of Transgender People**

ED King reported that as of November 1, 2017, the Department began tracking housing placements and the reasons therefor for all new admissions of transgender people and have since tracked their housing movements. Commencing February 1, 2018, DOC consistently reports to the Board about the placement and movement of all transgender people in custody and provides BOC with all Transgender Housing Unit (THU) applications. The Board is working with DOC to further improve both agencies' use of this data. ED King noted that since the Department began reporting this information and the Board's release of its THU Report there appears to be an uptick in DOC's approval of applications to the THU. In addition, DOC's recent announcement that within the next six months, it will commence housing people in accordance with their gender identity will further its compliance with BOC's Standards. ED King stated that before the end of the 6-month period, the Board and the Department need to reach agreement on how to improve the individualized analyses to assess each person's risk of sexual victimization and abusiveness, as required by the Standards.

### **► Reporting Requirements**

ED King next turned to a discussion of the Department's compliance with the data reporting requirements set forth in the Minimum Standards. She reported the following:

- Section 5-40 requires the Department every six months to submit incident-level data to BOC and publicly issue a self-assessment. However, the data that DOC submits to the Board omits critical data points required by § 5-40, such as the time of the incident, demographics such as the victim's race, disability status, and LGBTI identity, whether the alleged perpetrator and victim were separated during the investigation, and whether the perpetrator was the subject of previous allegations of sexual abuse or

harassment. The Board is awaiting DOC's response concerning these data deficiencies.

- The Department is out of compliance with the requirement for timely submission to the Board of closing memoranda summarizing the findings of investigations of alleged sexual abuse/harassment.<sup>1</sup> DOC is aware that it must quickly institute a system to provide them to the Board in real time. To date, BOC has received 66 closing memos: seven (7) from 2015, 55 from 2016, and four (4) from 2017. Board staff intends to audit the closing memoranda before its next public meeting report.
- The Department is also behind in its completion of sexual abuse incident reviews and their submission to the Board.<sup>2</sup> These reviews are critically important for their purpose is to identify what, if any, corrective action should be taken at the facility level to prevent future incidents of sexual abuse. DOC's PREA Compliance Managers (PCMs) lead these reviews, but the number of PCMs remain below DOC's desired headcount. Additionally, after DOC's contract with the Moss Group ended, PCMs were redeployed to conduct weekly PREA trainings, which involve a significant time commitment. This resulted in less time for the PCMs to conduct sexual abuse incident reviews. DOC anticipates getting up to date on the nine (9) overdue reviews next month.
- The Department has successfully started its quarterly reporting (required under §§ 5-19 and 5-29) of each placement of a person in involuntary protective custody ("PC") due to risk of sexual victimization. According to the two reports submitted to date, involuntary PC was used once for this reason and for less than 48 hours. As of mid-January 2018, there were close to 400 people on the voluntary PC list, and about 10 on the involuntary list. According to DOC, none of the people on the involuntary PC list are on it because of risk of sexual victimization. If that does occur, BOC will be notified. The Board is awaiting DOC data on the number of people placed in voluntary PC due to risk of sexual victimization.
- Because of the high number of people filing complaints about their safety and housing classification, and recent incidents of violence in protective custody, BOC intends to pursue a larger investigation of the practices associated with transfer in and out of protective custody.

### ► Investigations

ED King stated that while the Minimum Standards require DOC to publish two self-assessment reports in 2017, it published one on March 14, 2018, i.e., the § 5-40 Report.<sup>3</sup> She then turned to a discussion of the Report, which indicates significant issues with the Department's investigations of sexual abuse/harassment allegations. She prefaced her discussion by noting that without prompt, thorough, and objective investigations — without meaningful investigations — efforts at prevention and accountability will fall short. The Report reveals the following:

- The total number of sexual abuse and sexual harassment complaints increased by 40% from 2016 to 2017 (from 823 to 1,151 complaints).

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<sup>1</sup> This requirement is set forth in Minimum Standard § 5-30(r) ("Criminal and Agency Investigations").

<sup>2</sup> Minimum Standard § 5-39 requires the Department to conduct sexual abuse incident reviews and submit them to the Board on a quarterly basis.

<sup>3</sup> NYC DOC Annual Sexual Abuse and Sexual Harassment Assessment Report (2016-2017) is available here: [http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/2018.03.15%20-%20Annual%20Sexual%20Abuse%20and%20Sexual%20Harassment%20Assessment%20Report%20\(PREA\).pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/2018.03.15%20-%20Annual%20Sexual%20Abuse%20and%20Sexual%20Harassment%20Assessment%20Report%20(PREA).pdf)

- The rate of allegations of sexual victimization in the jails increased in all categories.
- In New York City, the rate of reported allegations of sexual victimization was 19.20 per 1,000 inmates in 2017. By comparison, in New York State prisons, the rate was 10.5 per 1,000 inmates in 2015.
- Rates of victimization in New York City have been higher than national comparisons since at least 2011 when the Bureau of Justice Statistics released its nationwide data.
- Investigations are not being completed within 90 days as required. Almost all 2016 and 2017 investigations of sexual abuse and harassment are still open and pending. Of the 1,974 complaints from the past two years, 94% or 1,851 are still pending.
- Rates of substantiation in New York City remain below the national average, as they were before the Board's Standards took effect.

ED King invited the Department to speak to the barriers to timely completion of investigations, the reasons for the backlog, and DOC's plan for corrective action.

### ► **DOC's Presentation**

Sarena Townsend, the Department's Acting Deputy Commissioner ("DC") of the Investigation and Trials Division ("Division"), stated that she assumed her current position in February 2018. She joined DOC in September 2016 as Deputy General Counsel of the Trials Division and with Investigations and Trials now combined, she oversees both. Prior to her DOC employment, she served for 10 years as Deputy Bureau Chief at the Kings County District Attorney's Office where she prosecuted thousands of cases, including over 50 sexually based felonies involving rape, predatory sexual assault, and sexual abuse.

DC Townsend addressed her Division's compliance with BOC's Minimum Standards, its plans to achieve compliance, and its commencement of action to do so. She delivered the following remarks:

Pursuant to the Minimum Standards, the Division has an obligation to promptly, thoroughly, and objectively conduct investigations into alleged sexual abuse and sexual harassment. Within 72 hours of referral of an allegation and upon clearance from the City's Department of Investigation (DOI), the Division's specially trained PREA-certified investigators commence an investigation. This includes interviewing and assessing the credibility of the alleged victim and witnesses, reviewing video surveillance, assessing the alleged scene of the occurrence, preserving and analyzing physical evidence, and documenting all investigative steps throughout the process. In cases of inmate-on-inmate allegations of sexual abuse/harassment, DOC prepares a separation order to separate them. In cases of staff-on-inmate allegations, at the very least, DOC separates them and, in the case of particularly egregious conduct, modifies the staff member's duties or suspends the staff person.

In 2016 and 2017, the Department's total PREA caseload was 1,696 cases. This includes all sexually based allegations ranging from an incident of just one inappropriate comment to an incident of physical sexual assault. While each of these cases was investigated within 72 hours of referral, the reasons why cases remain open are twofold: (1) the closing memorandum ("memo") has not been drafted or completed; or (2) the case requires a final review by a supervisor to determine whether the investigation requires any additional steps or follow-up before closure. Most of the open cases fall into the first category.



On April 16, 2018, the Division began using a streamlined closing memo with a less cumbersome format, which allows investigators to close out cases more quickly without sacrificing the integrity or thoroughness of the investigation. This streamlined version will be used only for allegations that the Division determines to be unfounded or unsubstantiated.

In 2015, 14 people in custody were responsible for 69 PREA allegations, which represented 22% of the 2015 caseload. In 2016, 17 incarcerated persons were responsible for 181 allegations, representing 22% of the 2016 caseload. In 2017, 16 people in custody were responsible for 269 allegations, representing 23% of the 2017 caseload. So far in 2018, 18 incarcerated individuals have been responsible for 123 allegations, representing 34% of the 2018 caseload. For these years in total, 25% of the caseload — approximately 542 cases — were allegations made by the same 53 people in custody. The majority of these 542 cases are unsubstantiated and DOC plans to close out these unsubstantiated cases first. That said, some of the allegations made by the 53 individuals have been substantiated. It bears emphasis that the Department takes every allegation seriously and thoroughly investigates it before rendering a decision regardless of how many times an individual has made an allegation.

Lastly, the Department is conducting interviews to hire more investigators and supervisors for the Division. Since November 2016, the number of PREA investigators has increased from 14 to 19. The open caseload is not the result of a lack of investigation or seriously delayed investigations; rather, it reflects the lack of time investigators can devote to closing out cases because they are often investigating allegations in the jails. While DOC awaits the hiring of additional investigators, it has created a temporary solution by bringing in one of the Trials supervisors to assist in the administrative task of closing out cases — this person completed her PREA certification training this week and she will be assuming this role on April 23, 2018. DC Townsend concluded her remarks by acknowledging the need to improve DOC's process for finalizing and closing out investigations and expressing her belief that DOC's targeted strategy will allow it to better manage the administrative aspect of its investigations.

#### ► **Board Discussion**

Member Cohen asked that DC Townsend discuss the 75% of cases that do not involve allegations made by the same individuals. He said the Department's corrective process for sexual violence is through investigation and sanction, and he voiced grave concern about DOC's significant delays in completing investigations. In response, DC Townsend agreed that to pursue discipline in appropriate cases, DOC must move them forward to closure. She reiterated the Department's targeted strategies to expedite investigations and said DOC is substantiating allegations and taking disciplinary action where appropriate. The Department's General Counsel, Heidi Grossman, clarified that DOC is awaiting the executive budget at the end of the month to evaluate staffing capabilities. She noted the challenges DOC faces in retaining investigators, and said the Department continues to recruit and hire the most qualified applicants.

Member Jones Austin inquired whether the Division's current staffing structure is sufficient to conduct thorough investigations. DC Townsend responded affirmatively and said, ideally, an additional 15 investigators would be required to process cases more quickly. In response to Member Jones Austin's inquiry about the Division's current caseload, DC Townsend said approximately 2,200 cases are divided among 19 investigators, with each investigator

handling approximately 115 cases. While these 2,200 cases await final closure, they all were investigated within the first 72 hours of referral.

Member Regan asked why the Department's PREA caseload had increased by 40% from 2016 to 2017. DC Townsend responded that people in custody are being provided with more information than in the past about sexual abuse and sexual harassment and how to file a complaint. In response to further inquiry from Member Regan, DC Townsend said DOC does not wait for a case's administrative closure before separating the victim and perpetrator.

In response to Acting Vice-Chair Richards' inquiry, DC Townsend said most of the 2,200 cases were unsubstantiated and would provide the Board with the exact number later. She further stated that the substantiated cases are processed in the Trials Unit for imposition of appropriate discipline. The Acting Vice-Chair also asked how visitors are informed on reporting sexual abuse and harassment and how DOC tracks allegations submitted by visitors. Deputy Commissioner responded that there is signage in several different locations and DOC tracks the source of complaints. She said she could provide information specific to visitor allegations at a later time.

ED King noted that the Department's 5-40 Report cited three (3) substantiations in 2016 and only one in 2017. Member Cohen asked if there were any other cases substantiated in 2017 that may not have been documented in the 5-40 Report. In response, DC Townsend said the Report was accurate as of the date it was completed (i.e., March 14, 2018) and that she does not have any updated figures.

Member Hamill asked if the few cases that have been substantiated were prioritized for trial and what DOC's timeline is for substantiating a case and taking it to trial. DC Townsend responded that the process varies based on the unique circumstances of each case. Once a case is closed as "substantiated," it is referred to the Trials Unit where a Trials attorney drafts and serves charges, conducts discovery, and obtains a pre-conference trial date before the Office of Administrative Trials and Hearings (OATH). DOC is allotted one day per week — Wednesdays — during which DOC appears before OATH on up to 12 cases. The administrative law judge sets a trial date. Thereafter, DOC proceeds to trial if the case is not resolved through negotiation.

Member Hamill said in her experience, sexual abuse cases must be prosecuted in a timely manner and that the quick turnover of the jail population can compromise witnesses and evidence. Deputy Commissioner Townsend agreed. She said that in cases where the respondent refuses to resign as part of a negotiated plea, her Division pushes these cases to trial and seeks termination.

Acting Chair Cephas concluded that the Board intends to work with the Department to finalize a corrective action plan by June 2018. Member Jones Austin requested that the plan include an assessment of staffing, staffing patterns, and caseloads.

## **Transgender Housing Unit (THU)**

### **► Introduction**

Acting Chair Cephas stated that earlier this week, the Department made two major announcements that reflect the Board's Standards and recommendations for ensuring the

safety of transgender people in custody. First, DOC announced that it would house incarcerated individuals consistent with their gender identity. The Board already requires an individualized housing determination that accounts for a transgender person's own views with respect to his or her safety and this announcement aligns with this requirement and goes even further in the right direction. Once fully implemented, the Department's policy will be compliant with the Board's Minimum Standards. He added that DOC's announcement was a much-welcomed change and would contribute significantly to the safety and dignity of people in custody.

Acting Chair Cephas also discussed the Department's second announcement that it intends to keep the THU open. People in custody and their advocates have petitioned for this for some time and various Board members and staff have cited the importance of the THU as a housing option for transgender people. In view of these recent developments, DOC has advised that it is not prepared to discuss implementation details at this meeting. The Acting Chair expressed the Board's belief that the THU holds great potential as a violence prevention tool. However, there is significant work the Department must do to improve management and operations of the Unit.

Acting Chair Cephas said the Board's THU Report<sup>4</sup> includes findings and recommendations meant to inform plans for the Unit's future operations. At the March 2018 meeting, BOC presented these findings and recommendations and requested a response from the Department. The Board sent DOC the final Report one month prior to publication to provide DOC ample time to respond. The Board has not yet received a response, despite the Department's statement at last month's public meeting that it had concerns with the Report.

Acting Chair Cephas stated that given the recent announcement that the THU will remain open, the Board understands the Department is now working with government partners on plans to improve the Unit. The Board has requested that DOC respond in writing to the Report's recommendations and looks forward to receiving it as DOC's planning continues. In response to the Acting Chair's inquiry, the Department's Chief of Staff, Jeff Thamkittikasem, said that three months was sufficient time for DOC to provide its response to the Board.

### ► Board Discussion

Member Cohen emphasized that this is a time sensitive issue with direct implications on safety. He expressed disappointment with the Department's lack of response to the THU Report. He recounted his conversation with a transgender woman who for months had requested to be housed at the THU or RMSC, but DOC denied her requests. She also filed a grievance regarding DOC's decision not to transfer her, but did not receive a response. Based on her experiences in jail, she feels she is at great risk in a men's facility. Member Cohen said the Department should keep her safe by housing her in the THU or RMSC. He also spoke about another transgender woman currently housed at the West Facility who alleges she experienced severe sexual abuse while in custody. Member Cohen believes this woman should also be housed at RMSC. He asked the Department why these two women were not being housed there. General Counsel Grossman responded that she does not have any specific knowledge about these two individuals, but DOC would consider Member Cohen's

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<sup>4</sup> BOC Transgender Housing Assessment (February 2018) is available here:  
<http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/THU%20FINAL%20Feb%202018.pdf>

concerns. The General Counsel also stated that the Department intends to address the housing of transgender people over the next six months, and is committed to improving the THU in phases.

## **Lockdowns**

### **► Introduction**

ED King stated that in January 2018, Board staff published a report on lockdowns in the City's jails<sup>5</sup> and this week BOC published two additional reports on this topic: (1) facility-by-facility analyses of the 2017 lockdowns,<sup>6</sup> and (2) an audit of the Department's forms meant to document the duration of and reasons for the lockdowns and the services impacted<sup>7</sup>.

ED King stated that Department policy permits staff to lock down housing areas and facilities to investigate violence, prevent violence, conduct searches, or restore order. During a lockdown, people in custody must be in their cells and all movement, services, and programming cease. Lockdowns hinder the Department's and CHS's ability to meet the Minimum Standards. As a security response that impacts many people in custody and services, lockdowns also contribute to perceptions of unfair and excessive punishment, frustrations, and tensions in the jails.

ED King reported that while the City saw a 32% decrease in the City's jail population since 2008, there was simultaneously an 88% increase in lockdowns. There were close to 2,400 lockdowns in 2017, a 32% increase from the prior year. BOC presented these findings to the Department in January 2018, and provided DOC with the opportunity to review the report in advance of a public discussion. ED King welcomed the Department's response and thoughts on these issues.

### **► DOC's Presentation**

Chief of Staff Thamkittikasem prefaced that DOC appreciates the Board's review of lockdowns. He attributed the dramatic increase in lockdowns to changes in the housing areas over the 10-year period reviewed by the Board. For example, lockdowns are overrepresented in some facilities, such as OBCC, that have a high concentration of problematic and violent individuals. He said that DOC is interested in working with the Board to record and report information on lockdowns in more detail.

Chief of Department Hazel Jennings stated that when lock downs occur, DOC aims to resume normal activities as quickly and safely as possible. In ESH, DOC allows programming staff to enter the housing area during a lockdown, so long as it is deemed safe. The Department is exploring technical solutions for eliminating discrepancies between lockdown information that

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<sup>5</sup> BOC Lockdowns Report (January 2018) is available here:

<http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/Lockdown-Report-Jan-8-2018.pdf>

<sup>6</sup> BOC Lockdowns Report: Additional Findings (January 2018) is available here:

<http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/April-20-2018/2018.01%20-%20Additional%20Lockdown%20Findings.pdf>

<sup>7</sup> BOC Audit of DOC Facility Report of Area Lock-Ins Forms (April 2018) is available here:

<http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/April-20-2018/2018.04%20-%20LOCKDOWN%20AUDIT%20FINAL.pdf>

is called into the Central Operations Desk and information in the MFMR for security. DOC is also monitoring facility lockdown reports to ensure a report is completed for every lockdown.

Chief of Staff Thamkittikasem added that DOC has worked closely with CHS to ensure that scheduled medical appointments are maintained during lockdowns. For example, in March 2018, there were 42,000 scheduled appointments and of these, only 82 were impacted by a lockdown. He reiterated that the Department is working on securing programming and other services during lockdowns, and plans to move away from full facility lockdowns to more targeted ones so that access to services in the entire facility is not impacted.

### ► **Board Discussion**

Member Cohen said that the Board's fundamental concerns are that the Minimum Standards are not violated during lockdowns and that full facility lockdowns not serve as a form of collective punishment. He appreciates that the Department's localization of lockdowns seeks to address these concerns.

## **Visiting**

### ► **Introduction**

ED King stated that the Minimum Standards emphasize the importance of visits for people in custody to maintain connections with family and support systems. These connections lead to improved outcomes during confinement and upon reentry. Visiting comprises a significant part of DOC operations, with over 253,000 visitors traveling to the jails each year. For the past two years, the Board has published a monthly report on visits, restrictions on visiting, and visit restriction appeals filed with BOC. ED King further reported on visiting as follows:

The Board recently reviewed the Department's new visit directive and analyzed over a year's worth of restriction data. In December 2017, BOC provided DOC with these analyses, which are posted on the Board's website. During the 15-month period reviewed, the Department issued an average of 40 new restrictions per month on people in custody and 37 new restrictions per month on visitors. DOC issued a monthly average of 319 one-day denials to visitors and had an additional 206 one-day cancellations for visitors each month.

Over the past year, an average of 275 people in custody were restricted to non-contact visits or about 3% of the jail population. The Department utilizes these restrictions as a tool to handle safety and security risks posed by contact visits.

The Board's December 2017 analysis shows that BOC issued responses to 250 visit restriction appeals in the 15-month period. The Board granted the appeal in 44% of these cases primarily because DOC had failed to adequately document the alleged incident or failed to follow its own protocol for restricting people, such as adhering to its penalty grid.

The Board's analysis also commends the Department's progress in implementing a review process for long-term restrictions on non-contact visits. In November 2016, when DOC first began submitting these six-month reviews to the Board, only 36% of eligible people had received a six-month review of their non-contact status. In June 2017, this percentage had increased to 88%. More work, however, is needed to ensure that these reviews are meaningful. For example, of the 150 reviews conducted during this time, 40 resulted in continued non-contact restrictions even though the individual had not had any infractions in

the previous six months. The restrictions are subject to a six-month review precisely because they should continue only when contact visits pose an ongoing security risk.

ED King invited the Department to comment on BOC's analyses and report on its current and upcoming initiatives on visiting.

#### ► **DOC's Presentation**

Anna Marzullo, the Department's Senior Policy Advisor, announced that starting April 25, 2018, DOC will be offering a free shuttle to Rikers Island for visitors. The shuttle will pick up from two locations — one in Harlem and one in Brooklyn — and go directly to the Rikers Island Perry Center. The shuttle will operate during visiting hours five (5) days a week, Wednesday through Sunday.

Ms. Marzullo thanked the Visits Work Group, including Acting Vice-Chair Richards, advocates, and DOC staff for collaborating on initiatives to improve the visiting process. She reported that the Department has renovated the Central Visits area, issued the first visitor handbook in several years, improved signage, and separated the bail area from the visit area to make the visiting process more efficient. DOC also hired visit greeters for the Central Visits area and expedited the visiting process on certain days and hours for families with small children. DOC undertook several initiatives at RMSC to help improve the quantity and quality of visits there. It changed the visits floor, hired additional staff, and is currently exploring programming that will bridge that process between visits for women with children and other family members.

Ms. Marzullo stated that the Department has revised its visits directive in line with some of the Board's recommendations. DOC continues to review other BOC recommendations such as including in the directive language from the Minimum Standards and clarifying what constitutes a basis for non-contact visits, simplifying the visiting process, and improving documentation for tracking the process.

#### ► **Board Discussion**

Acting Vice-Chair Richards emphasized the importance of the new shuttle service for visitors and Member Perrino commended the Department on its work regarding visits. Members Hamill and Regan noted that DOC should publicize the shuttle service, and Ms. Marzullo responded that DOC has information regarding the shuttle on its website. She said the shuttle would be rolled out in phases and DOC would eventually increase the number of shuttle buses to take off every 20 to 30 minutes. Ms. Marzullo noted that the shuttle is a DOC bus and will be operated by DOC.

#### **Young Adult ESH**

Acting Chair Cephas stated that since July 2016, the Board has granted the Department a variance to house young adults in ESH. The Board last granted this variance at its November 2017 public meeting and will again consider the variance at its May 2018 meeting. The Acting Chair turned the floor over to Member Hamill who requested to make a statement and ask DOC several questions about the proposed variance.

Member Hamill said that in November 2017 the Board granted a six-month variance for Young Adult ("YA") ESH upon certain conditions, including that restraints shall not be used except (1) to control persons who present an immediate risk of self-injury or injury to others; (2) if

restraints are necessary, DOC must use the least restrictive form of restraint; and (3) DOC must use restraints only so long as the need exists. Member Hamill asked the Department what it is doing to reduce its reliance on restraint desks seven (7) hours a day for 30 days, which, on its face, is not the least restrictive use or only for as long as necessary; rather, restraints are used for a pre-determined time.

DOC's Senior Deputy Commissioner ("DC"), Timothy Farrell, responded that since the January 2018 Board meeting, DOC refined the ESH review process with the goal of promoting pro-social behavior. The ESH program focuses on building self-awareness to improve behavior and to comingle people without violent incident. The review period was shortened from 45 to 30 days and the reviews are conducted in a neutral area outside of the housing unit. The multidisciplinary review team consists of programming staff, operational staff, and social services counselors. To date, DOC has conducted 327 reviews, most of which have included participation of the incarcerated person and his active engagement with the multidisciplinary team. During the reviews, there is dialogue between the person in custody and the team about how programming is proceeding and the person's behavior. The team also considers feedback from officers and supervisors in charge of the unit in deciding whether to advance the person, retain him in his current level, or regress him back to a more restrictive level.

DC Farrell stated that, of the 327 reviews, 193 people were recommended for advancement to a less restrictive level while 25 were recommended for transfer from ESH Level 3 to general population housing. In the YA-ESH non-blended units, DOC has conducted 13 reviews and recommended that five (5) young adults advance to ESH Level 2.

DC Farrell emphasized that young adults in ESH Level 1 were placed there for very violent behavior such as disfiguring another person in custody (i.e., slashing) or seriously assaulting staff. This is usually not the first time the young person has engaged in violence; rather, the person typically has a history of serious, persistent violence. For these reasons, DOC tries to engage this population in programming designed to thwart violent behavior. This is accomplished most effectively in a congregate setting. To keep the young adults, officers, programming staff, and volunteers safe in a group setting, DOC uses programming desks in Level 1.

Member Hamill said the Department's variance request for YA-ESH to be voted on at the May 2018 meeting does not have any specifics about the use of restraint desks. She stated that the Board had recommended that people in ESH have seven (7) hours per day of lock-out and had come to that conclusion after very comprehensive and protracted rulemaking. The Board exempted young adults from being placed not only in punitive segregation, but also in ESH — and that was with the consent of then Commissioner Ponte, the Mayor and City Hall — because it was widely known that these highly restrictive settings were harmful to the unique needs of young people. Member Hamill noted that the Board granted the YA-ESH variance on condition that DOC try to obtain the resources and staffing needed to eliminate the use of ESH for young adults. But then the Board learned the Department was placing young people in restraint desks. At the time, DOC referred to the desks as restraint desks, not programming desks, and required that young adults be placed in them any time they were out of cell. Member Hamill remarked that she has visited YA-ESH many times and there is no programming going on. Thus, she asked the following question: Is the Department now using restraint desks only when active programming is going on or is it that young adults

cannot leave their cells unless such programming is going on? In response to this and other questions, DC Farrell responded that ESH Level 1 out-of-cell time takes place in programming desks (except for showers and recreation) and that when young people are exercising their right to be out of cell for seven (7) hours/day, they are restrained in a desk even when no programming is going on.

Member Hamill then referenced the Department's recent letter requesting renewal of the YA-ESH variance. She congratulated DOC on reducing the review period from 45 to 30 days (as stated in the letter) and noted that the letter refers to a ten-day check-in to assess the young adult's behavioral progress. She asked DOC to describe the check-in and how it operates. In response, the dedicated Deputy Warden of ESH, Jean Rene, described the ESH orientation process for young adults during which staff describe the program, behavioral requirements, and expectations. He said ESH has 15 dedicated supervisors and their efforts are to bring violence down and communicate effectively with the young adults. Staff perform 10-day check-ins and the multidisciplinary team, including Deputy Warden Rene, are actively engaged in the 30-day review process.

Member Hamill asked the Department whether the 10-day check-in could replace the 30-day review to reduce the amount of time young people are in restraint desks. She said every expert she has spoken to throughout the country has told her — and DOC has not presented any expert who states the contrary — that the use of restraint desks for predetermined periods, and for 30 or even 15 days, is degrading. It also is counterproductive in that it is more likely that it will result in increased violence because of young people's anger at being restrained for so many hours each day.

DC Farrell reiterated that young adults are placed in ESH Level 1 based on their violent behavior. Engaging them in programming must take place in a safe and secure environment. Additionally, before returning them to a less restrictive environment, DOC must take the time to conduct a very detailed, objective assessment of their behavior to determine whether they continue to pose a safety and security risk. DC Farrell also noted improvements to YA-ESH that are coming into place such as increased tablet programming and engagement with outside providers. He also remarked that DOC staff have bought into the ESH program model.

Member Hamill asked whether the Department had reviewed the Board's YA-ESH Report and had considered any of its findings in trying to improve the program. She also referenced meetings with then-Commissioner Ponte and his staff during which DOC agreed to use YA-ESH only while the Secure Unit was being piloted. In response to Member Hamill's inquiry whether the Secure Unit could be expanded to house the young adults in ESH, DC Farrell reiterated that given the violent behavior of the young adults in ESH, the use of restraint desks was required to maintain safety and security. He added that DOC had improved how it reviews progression through ESH and believes the Department is making progress.

In further response to Member Hamill's questions, Deputy Commissioner Lynette Saunders stated that the Department had reviewed the Board's YA-ESH Report and implemented many of its recommendations, including reducing the review period from 45 to 30 days, inclusion of both adults and young adults in the review process, and increasing programming. She pointed out that nowhere else in the country are young people excluded from punitive segregation. Additionally, in formulating the ESH model, DOC reached out to experts across the country



on the use of programming desks. In that regard, she noted that while employed at DOC, Member Perrino had visited Washington State to review its use of programming desks.

Member Perrino commented that when he visited YA-ESH, he observed that it was operating well and the teachers told him that restraint desks were necessary to keep the young people from hurting each other. He stressed that elsewhere in the country these young adults would be locked in their cell 23 hours a day. He concluded by noting that the Department has a responsibility to keep people in its custody safe and the desks are a tool for accomplishing this while also providing young adults with a safe environment in which to learn and congregate outside their cell.

Member Cohen asked how many of the people who because of their 30-day review were recommended to progress, moved out of ESH Level 1. DC Farrell said that 69 of the 327 reviews were recommended to progress from Level 1 to Level 2 and all of them progressed within a day or two after the review took place. He further noted that the ESH program has, in total, 126 people; of that number, 45 are in Level 1 of whom 11 are young adults. Chief Jennings added that she personally signs off on all placements in ESH, and that a lot of time and consideration is spent ensuring that people are appropriately placed there.

Acting Vice-Chair Richards acknowledged that the Department has done a really good job in correcting deficiencies identified in the Board's YA-ESH Report and making sure that only those young adults who have recently committed an act of serious violence are placed in Level 1. He said we can all agree that restraint desks are not what we want, but we all must work towards something better and he sees that happening.

Member Hamill stated that while the Department clearly has made progress in terms of more programming, better programming, and shortening the review period, she personally believes that the use of restraint desks for seven (7) hours a day for 30 days is degrading, humiliating, cruel and unusual punishment, and unconstitutional. She said she would not support the YA-ESH variance provided DOC continues to restrain young adults in this way. Member Hamill added that she would consider supporting the variance if DOC reduces the review period to 10 days, which the Department now uses as a check-in to assess a person's behavioral progress. She noted that changing one's behavior is difficult under any circumstance, especially for young people in DOC's custody who lack privileges, education, and family support. Therefore, it is unrealistic to expect them to make the sort of dramatic change the Department requires before it is willing to release them from Level 1. The determinative factor is whether they are at imminent risk of hurting themselves or others and not whether they have made the long-term progress that DOC seeks. Member Hamill said she hopes to have a meeting with advocates, union officials, and DOC to come to some agreement on changing the way that restraint desks are used during the 30-day review period.

Acting Vice-Chair Richards expressed his belief that it is the Board's obligation to work with the Department in coming up with an alternative to restraint desks that keeps everyone safe and that the parties have made progress in this respect. In response, Member Hamill stated that since imposition of the restraint desk condition in November 2017, Board members, including herself and others on the Restrictive Housing Rulemaking Committee, have offered meetings with the Department and with the experts the Committee has consulted, and have made recommendations on this issue. She said DOC has not made any progress on reducing the use of restraint desks and, therefore, she cannot support renewal of the variance.

### **Public Comment**

The Board heard public comment from Samantha Cook (UJC), Sophia Henegar (UJC), Efosa Akenzua (UJC), Jillian Gonzalez (LAS), Dori Lewis (LAS), Katie Beth White (LAS), Simone Spirig (BDS), Laura Fettig (JAC), Jennifer Parish (UJC), Kelly Grace Price (JAC), Levina Talukdar (Osborne Association), Victoria Phillips (UJC), Allison Hollihan (Osborne Association), Herbert Murray (Just Leadership USA), Mick Kinkade (Sylvia Rivera Law Project), Vidal Guzman (Just Leadership USA).

The public comments are available at:

[https://www.youtube.com/watch?time\\_continue=1&v=fKM42qwSb3U](https://www.youtube.com/watch?time_continue=1&v=fKM42qwSb3U).

Following public comment, Acting Chair Cephas adjourned the meeting.