



**NEW YORK CITY
BOARD OF CORRECTION**

October 22, 2019 PUBLIC MEETING MINUTES

MEMBERS PRESENT

Jacqueline Sherman, Interim Chair
Stanley Richards, Vice-Chair
Robert L. Cohen, M.D.
Florentino Hernandez
Jennifer Jones Austin, Esq.
James Perrino
Michael J. Regan
Steven M. Safyer, M.D.

Michele M. Ovesey, Acting Executive Director

DEPARTMENT OF CORRECTION (DOC)

Cynthia Brann, Commissioner
Brenda Cooke, Chief of Staff
Heidi Grossman, Deputy Commissioner for Legal Matters/General Counsel
Peter Thorne, Deputy Commissioner of Public Information
Dana Wax, Deputy Chief of Staff
Kenneth Stukes, Bureau Chief of Security
Kwame Patterson, Assistant Commissioner
Steven Kaiser, Executive Director of Policy and Intergovernmental Affairs
Nancy Li, Policy Analyst

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

Patsy Yang, DrPH, Senior Vice President
Ross MacDonald, MD, Chief Medical Officer, Assistant Vice President
Benjamin Farber, Chief of Staff
George Axelrod, MD, Director of Health Information & Risk Management
Carlos Castellanos, Chief Operations Officer/Deputy Executive Director
Jennine Ventura, Director of Communications and Public Affairs
Diana McGee, Sr. Director of Operations
Giselle Cordero, Deputy Dir. of Communications and Public Affairs

OTHERS IN ATTENDANCE

Susana Gonzala, NYS Commission of Correction (SCOC)
Alberto Garcia, SCOC
Misaël Syldor, Independent Commission on NYC Criminal Justice and Incarceration Reform
Jennifer Parish, Urban Justice Center (UJC)
Nikki Tourigny, UJC
Victoria Phillips, UJC/Jails Action Coalition (JAC)
Elizabeth Meyers, JAC

Kelly Grace Price, JAC
Kayla Simpson, Legal Aid Society Prisoners' Rights Project (LAS)
Mary Lynne Werlwas, LAS
Vinila Varghese, LAS
Anthony Posada, LAS
Donna Hylton, A Little Piece of Light
Kelsey De Avila, Brooklyn Defender Services (BDS)
Simone Spirig, BDS
Irene Cedano, BDS
Gina Farinaccio, BDS
Martha Grieco, Bronx Defenders
Carmen Pinera, Bronx Defenders
Jasmine Paez, Bronx Defenders
Tahanee Dunn, Bronx Defenders
Julia Davis, Children's Defense Fund
Daniele Gerard, Children's Rights
Nicole Triplett, New York Civil Liberties Union (NYCLU)
Elias Husamudeen, Correction Officers' Benevolent Association (COBA)
Tyson Jones, COBA
Mark Mack, COBA
Rama Issa-Ibrahim, Office of the NYC Public Advocate
Alex Liao, Office of the NYC Public Advocate
Antonio Reynoso, NYC Council
Bill Perkins, NYC Council
Stephen Levin, NYC Council
Peter Butler, NYC Council
John Blasco, NYC Council
Asher Freeman, NYC Council
Alana Sivin, NYC Council
Abigail Besler, NYC Council
Stacey Yearwood, NYC Council
Elizabeth Adams, NYC Council
Kieshorne Dennie, NYC Council
Kim Joyce, NYC Law Department
Christopher Boyle, New York County Defenders Services
Freya Rigterink, NYC Mayor's Office
America Canas, NYC Mayor's Office
Wendell Walters, Osborne Association
Winston Nguyen, Independent
Madinah Jabbaar, Independent
Darleen Jackson, Women's Community Justice Organization
Frances Geteles, Asylum Network of Physicians for Human Rights (PHR) and NY Campaign for Alternatives to Isolated Confinement (CAIC)
Scott Paltrowitz, CAIC
Ryan Brown, CAIC
Melinda Miller, CAIC
Claudia F., CAIC
James Meagher, Safe Horizon
Quadira Coles, Girls for Gender Equity
Charlotte Pope, Girls for Gender Equity
Vidal Guzman, Just Leadership USA
Ben Fractenberg, THE CITY
Eileen Grench, THE CITY
Rose Goldensohn, THE CITY

Approval of September 10, 2019 Minutes

The Interim Chair asked for a motion to approve the draft minutes of the Board's September 10, 2019 meeting. After the item was moved and seconded, the minutes were unanimously approved (Interim Chair Sherman, Vice-Chair Richards, and Members Cohen, Hernandez, Perrino, Regan, and Safyer).

Announcements and Updates

The Interim Chair announced the death of Correction Officer Hyppolite and, sent condolences to his family, friends, and colleagues at the Department of Correction ("DOC" or "Department") on behalf of the Board.

The Interim Chair discussed the Board's involvement in the City's work to significantly reduce the jail population and close Rikers Island. Since its inception, the Board has advocated for alternatives to incarceration and decreases in the jail census. The City's jail population is around 7,200 people today with a plan to reduce the population to 3,300. In 1991, the average population was 21,669 people. Interim Chair Sherman applauded the Board's colleagues inside and outside of local and state government who have contributed to this historic and long-overdue decarceration effort. Additionally, since the 1970's, in reports and public meetings, the Board has stated that the Rikers Island infrastructure and its isolated location creates major barriers to compliance with the Board's Minimum Standards, including access to health and mental health care, connections to the community via visiting, and access to courts and legal counsel. The physical structures of the current borough-based facilities also pose serious barriers to compliance. Interim Chair Sherman expressed the Board's opinion that ultimately, all jails and prisons need strong, independent oversight. She said that whether on Rikers Island or in the boroughs, in existing jails or new ones, the Board will continue its mission to document and report on conditions inside the jails and engage stakeholders in improving those conditions for people in custody and staff.

Update on Restrictive Housing Rulemaking

The Interim Chair said the Board hoped to vote to commence the formal City Administrative Procedure Act ("CAPA") process today, but – despite the significant efforts of many – it has not yet completed the certification process. The Board is committed to resolving any outstanding issues and scheduling a special public meeting to vote on the proposed rules on Thursday, October 31, 2019. She specified this vote will begin the official public comment period followed by a public hearing on the proposed rules.

Acting Executive Director, Michele M. Ovesey ("Acting ED Ovesey") thanked former and present members of the Rulemaking Committee – former Board Chair Derek Cephas, Interim Chair Jackie Sherman, Dr. Bobby Cohen, Judge Bryanne Hamill, and Jennifer Jones Austin – for their support and hard work to develop the proposed rules. She thanked the Department and Correctional Health Service ("CHS") for their hard work and taking the time to present operational concerns to the Committee. She noted the Board listened to and carefully considered their concerns as part of the rulemaking process. Acting ED Ovesey thanked all Board members who brought their collective expertise and life experience to the rulemaking process. She also thanked the Board's staff whose tireless work informed each and every one of the proposed rules. She presented a summary of the draft proposed rules as follows.¹

¹ The Board's presentation titled, *New Proposed Rules on Restrictive Housing* (October 22, 2019) is published here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/October/Rules%20Presentation%20for%20October%2022%20Public%20Meeting%2010.21.19%20FINAL.pdf>

► Background on the Proposed Rules

The Board is proposing a new chapter – Chapter 6 of its Minimum Standards – designed to ensure that people in DOC’s custody: 1) are placed in restrictive housing in accordance with due process and procedural justice principles; and 2) are confined in the least restrictive setting and for the least amount of time necessary to address the specific reasons for their placement and to ensure their own safety as well as the safety of staff and other people in custody.

In 2016, former Board Member Judge Bryanne Hamill made a motion at a Board meeting to commence restrictive housing rulemaking, and the Board unanimously voted to approve the resolution. Rulemaking did not begin in 2016 because the Board was in the middle of enacting the Sexual Abuse and Sexual Harassment Minimum Standards (“PREA Standards”), which were enacted at the end of 2016. The Board began working on restrictive housing at the beginning of 2017 and the ad-hoc Rulemaking Committee engaged in extensive fact-finding. This included discussions with 30 organizations and individuals – the local defense bar, criminal justice advocates, national criminal justice organizations and oversight entities, COBA, correctional experts and academics, and BOC’s city partners, DOC and CHS. This comprehensive effort also entailed a literature review; an examination of Department directives, policies, and reports as well as Board staff research, analyses, and reports; model restrictive housing standards at the national and international level; and model restrictive housing in jails and prisons nationwide. During 2018 and 2019, the Rulemaking Committee mapped out the scope of the rules. It then prepared a detailed outline of the rules and Chapter 6 drafts of the rules and shared them with DOC and CHS. Finally, the Board engaged in extensive negotiations with DOC and CHS on the scope of the rules.

The proposed rules present a comprehensive approach to restrictive housing. They apply to disciplinary housing, such as PSEG I (20-hour daily lock-in), the Restrictive Housing Unit (PSEG for certain people with mental health issues), and PSEG II (which is 7-hour daily lockout). The proposed rules also apply to Transitional/Administrative housing (e.g. Enhanced Supervision Housing, the Secure Unit, Transitional Restorative Unit, and Second Chance). Finally, the proposed rules apply to Structurally Restrictive Housing – housing which by its very physical structure, limits a person’s ability to engage with more than one or two other people in custody. The proposed rules apply not only to existing restrictive housing units, but also similar types of housing that may be developed in the future. The proposed rules standardize procedural due process protections regarding placement across all restrictive housing types. They also standardize placement criteria, exit criteria, individualized behavior and programming plans, periodic reviews, and data reporting to ensure compliance. The public release of the proposed rules will include a Statement of Basis and Purpose, which is a comprehensive and detailed discussion of the basis and purpose underlying each of the proposed rules in the new Chapter 6.

► Key Highlights of The Proposed Rules

The proposed rules:

- Reduce the 30-day PSEG sentence to 15 days.
- Keep in place the 60-day PSEG sentence for serious assaults on staff. They have been modified to permit people sentenced to more than 15 days to earn time off for good behavior.
- Expand exclusions from PSEG I to include people who are diagnosed with an intellectual disability and pregnant persons within eight weeks of pregnancy outcome or are caring for a child in the Department’s nursery program.
- Eliminate the automatic surcharge for guilty infractions. They also call for the placement of people in PSEG within 30 days of adjudication.
- Call for DOC to provide the Board with a disciplinary system plan for young adults that must be consistent with the *Nunez* Consent Judgment.

- Increase young adults' out-of-cell time ("lock-out") in transitional/administrative housing from at least seven to at least 10 hours a day.
- Call for elimination of non-individualized use of restraints, such as restraint desks, during lockout in all facility housing units by 2022. Until then, DOC will provide weekly periodic reviews of all people who are confined in the most restrictive form of transitional/administrative housing in restraint desks during out-of-cell time. Until then, there will also be a rebuttable presumption of advancement out of restraint desks unless the person has engaged in disruptive violent or aggressive behavior in the previous seven days or there is credible intelligence that the person may engage in violence in a less restrictive level or housing unit.

► **Commissioner Brann's Remarks**

DOC's Commissioner, Cynthia Brann ("Commissioner Brann") said that the Department has been a national leader in reducing the use of PSEG, and that there are approximately 80% fewer people in PSEG now than there were five years ago. DOC is pleased with some key points in the proposed rules, such as: eliminating the automatic \$25 fine imposed on guilty infractions; further limiting the PSEG sentence length for most offenses while maintaining a maximum of 60 days for cases of serious assaults on staff; increasing the frequency of reviews of people in the most restrictive level of ESH; potentially reducing the time a person spends in a program desk; changes to the use of program desks during lockout in all housing units; and additional levels of review and support for due process around restrictive housing placements.

Commissioner Brann said that these reforms are important and will ensure any person who commits a serious infraction receives an appropriate consequence with the least restriction possible, while maintaining overall safety. The safety of every person working and living in DOC's facilities remains DOC's ultimate concern and it looks forward to working with the Board to finalize these rules. Commissioner Brann thanked DOC's Legal and Intergovernmental Divisions for working tirelessly for the past seven months to analyze the proposed rules and their impact on the Department.

She expressed that the Department also continues to be fully supportive of the City's plan to close Rikers Island and build borough-based jails. Although the closure of Rikers Island was made possible through projected decreases in the incarcerated population, she emphasized that DOC staff layoffs are not a part of this plan. She said that City Council's vote to close Rikers Island was possible in part, due to the dedication commitment and courage of DOC staff who have embraced the spirit and hard work of culture change and reform.

Public Comment on Variance Request and Restrictive Housing Rulemaking

The Interim Chair said the Department requested a variance to allow it to place people into Separation Status after a positive body scan or if they refuse a body scan. She noted that body scanners are a new security tool the Department is using to detect contraband.

The Board heard public comment on the variance request and restrictive housing rulemaking from Council Member Antonio Reynoso (NYC Council), Mary Lynne Werlwas (LAS), Daniele Gerard (Children's Rights), Jennifer Parish (UJC), Rama Issa-Ibrahim (Office of the NYC Public Advocate), Victoria Phillips (UJC/JAC), Julia Davis (Children's Defense Fund), Frances Geteles (PHR and CAIC), Kelly Grace Price (JAC), Vidal Guzman (Just Leadership USA), Kayla Simpson (LAS), Donna Hylton (A Little Piece of Light), Kelsey De Avila (BDS), Elizabeth Meyers (JAC), Scott Paltrowitz (CAIC), Bill Perkins (NYC Council), Carmen Pinera (Bronx Defenders), Steven Levin (NYC Council), and Nicole Triplett (NYCLU). The public comments are available here: <https://youtu.be/kAf3jifj2l4?t=2951>.

Dr. Cohen expressed pride in the City Council's vote to move forward with the plan to close Rikers this past week and said this achievement was made possible by everyone at today's Board meeting. Next, he thanked Judge Hamill, who served on the Board for six years and was a part of nearly every rulemaking process during her tenure. He said she worked tirelessly and made a tremendous difference in the lives of people in custody. He asserted that Judge Hamill's removal from the Board was a clear indication of the active interference by City Hall and was meant to change the dynamics of the proposed restrictive housing rules and prohibit her from voting with the Board to initiate the CAPA process. Dr. Cohen explained that the Board submitted the proposed rules to the NYC Law Department for certification over a month ago, and said that even though he is a member of the Rulemaking Committee, he had not been briefed on any significant legal issues holding up the Law Department's certification of the rules. He expressed a belief that the only reason the Board was not voting to initiate the CAPA process today was because the City wants to delay the vote to remove additional items from the proposed rules. He asked the Interim Chair to publish to BOC's website the version of the proposed rules that the Board submitted to the NYC Law Department a month ago, so the public can review the issues the Committee thought were important to include that were later removed under political pressure.

Separation Status Variance Request

► Introduction

Acting ED Ovesey provided an update on Board staff's oversight of the Separation Status Unit and body scanners. A body scanner is a security tool that utilizes a low dose of ionizing radiation to conduct full body scans capable of detecting objects placed on, attached to, or secreted within a person's body. In October 2018, Governor Cuomo signed a law that allowed DOC to use body scanners in the City's jails. The scanners can only be used on people in custody, not staff or visitors. The Board joined DOC, City Council leaders, COBA, and community-based organizations to support passage of the law, citing body scanners as an additional, necessary tool to prevent violence in the jails. In supporting the legislation, the Board said the scanners would only be effective if used alongside the Department's other violence prevention initiatives, such as increased programming, PACE Unit expansion, additional staff training, further reforms to restrictive housing, and a continued city-wide commitment to reducing the jail population.

In July 2019, the Department began using body scanners on people in custody to identify contraband. If a person scans positive for contraband or refuses a scan, DOC places the person into Separation Status. Today, body scanners are in operation at four facilities. Everyone entering DOC custody must be scanned, and scans can also be used to detect contraband after certain events. If DOC identifies contraband on a body scan – in other words, a positive scan – or a person refuses a body scan, DOC places the person into Separation Status. The Department keeps people in Separation Status until they receive a negative scan or post bail and are released from custody.

Separation Status involves 24-hour lock-in, except for the offer of a daily shower. CHS conducts daily medical rounds on the Separation Status Unit, and DOC and CHS are endeavoring to mitigate the potential health risks of Separation Status placement by requiring uninterrupted supervision of each person housed in status by a ratio of one Correction Officer for every one person in custody.

Board staff has closely monitored the Separation Status Unit since it opened on July 18, 2019 and has so far made the following findings:

- There have been 34 placements into Separation Status. Each placement has been documented on the Board's website, including date of placement and date of release.
- Of the 19 placements between July 18 and August 28, 2019, six (or 32%) resulted from individuals refusing to be scanned, while 13 (or 68%) were positive scans.

- Stays in Separation Status have been between one (1) and three (3) days, with 13 (or 68%) for only one (1) day.
- Eleven (11) or 58% of the 19 placements were Young Adults (ages 18 to 21).
- Nine (9) or 47% had a Brad H. designation (meaning they were individuals known to the Mental Health Service), including one (1) who was placed twice.
- The unit does not have air-conditioning; however, DOC says it will use West Facility as an alternative facility for Separation Status, if a person is heat sensitive.
- Ten (10) or 56% of the 18 people placed into Separation Status were Black, and the other 8 (or 44%) were Hispanic.
- A person who was placed in Separation Status did not receive his medications for two (2) days while he was in the unit.
- Initial gaps in medical rounding have been resolved, and, as of August 2019, the Separation Status Unit logbook has documentation of daily CHS rounds.
- Earlier stays in Separation Status were missing logbook documentation of offers to rescan. However, since mid-August, the Department has been consistently documenting offers to rescan.
- Three (3) individuals have missed court dates due to placement in Separation Status.
- According to DOC, since it began using body scanners, 20 people have been placed in Separation Status because of a positive body scan. Of those 20 people, DOC recovered contraband from four (4) individuals, while the remaining 16 later cleared the scanner with no contraband recovered. An additional 22 people immediately surrendered contraband after a positive scan and thus were not placed in Separation Status.
- DOC Officers and Captains who use the body scanners receive training on its use and interpreting images. Rules of the City's Department of Health and Mental Hygiene require DOC to post specific signage at all machines in English, Spanish, and any other languages DOC deems appropriate or necessary. In three (3) of the facilities, Board staff found the signage was not clearly visible to people entering the scanner, and none of the areas had visible signs in Spanish.

The Board appreciates the hard work and creative thinking of DOC and CHS on the initial planning and rollout of body scanners and Separation Status. It also recognizes the continued focus on strengthening procedures over the past few months. This is a challenging and critical security issue and the Board anticipates that body scanners and Separation Status — appropriately and sparingly used alongside other violence prevention initiatives — will contribute to decreased violence in the jails.

► DOC Presentation²

Kenneth Stukes, DOC's Bureau Chief of Security ("Chief Stukes") requested a six-month variance from Minimum Standards § 1-03 (c-d,j), § 1-04(b)(2-3), § 1-05(a-c), § 1-06, § 1-07(c), § 1-08(b-d), § 1-08(f)(4), § 1-08(g)(2-4), § 1-09(c-d, f), § 1-11(c-d), § 1-12(d), § 1-13(a-c), § 1-14(a-b) for the purpose of maintaining the safety and security of Department's facilities when individuals in custody are known or reasonably believed to have dangerous contraband secreted on or within their body. He reported that to date, 34 individuals have been placed into Separation Status. Twenty-two (22) individuals surrendered contraband immediately following a body scan and nine (9) individuals surrendered contraband prior to a scan. The 31 individuals who surrendered contraband prior to placement in Separation Status represent nearly 48 percent of all individuals who have had an initial positive scan or who initially refused being scanned. Of the 48 contraband items recovered, 33 weapons were weapons, which could cause serious injury to staff, people in custody, and other individuals in the facilities. Chief Stukes noted that people are given many

² DOC's presentation on Body Scanners for the Board's meeting (October 22, 2019) is available here: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/October/Updated-bscan-powerpoint-10.22.pdf>

opportunities to surrender contraband before placement into Separation Status. He stated that body scanners have been an effective tool for safety, security, and contraband recovery.

► Board Discussion

Member Regan said he is very pleased the Department has access to the body scanners, but noted this tool is very new, and the Department and Board must be careful when it comes to Separation Status. Member Perrino said the scanners are a very important tool to keep people in custody safe. He asked DOC to explore existing procedures with due process protections that could be used for separation, instead of operating a unit through six-month variance renewals.

Acting Vice-Chair Richards strongly encouraged DOC to assess what more humane options it has available to use body scanners and separate individuals who refuse or test positive for contraband, reminding the Department that New York ought to be a leader on criminal justice reform.

Member Hernandez said this variance must take into consideration the broader conversation on solitary confinement, but stated that he has managed detention facilities in the past and would support a tool used to reduce violence and secure safety of people in custody and employees.

Dr. Cohen supports the use of the body scanners and their value in identifying contraband and protecting people in custody, staff, and civilians in the jails. However, he said he was disturbed by this variance request, which restricts people in custody's visits with loved ones, attorney visits, and recreation. He said the best option with this variance request is to take Member Perrino's suggestion and request that DOC follow an existing isolation/confinement policy when it separates people after a positive scan or scan refusal.

Member Jones Austin said she understand the importance of safety and values the scanners. However, this variance request appears to go beyond what is necessary to ensure safety, and the Department seems to be engaging in practices in the Separation Status unit that are intended to be punitive. She expressed concerned that Board Standards such as visitation and recreation would be restricted.

After taking note of Board member concerns and public comment, the Interim Chair concluded the Board would table the variance request and address it at the October 31, 2019 meeting. She said that the Board hoped to engage in conversations with the Department before then to factor in the issues and concerns raised today's meeting.

Public Comment

The Board heard public comment from Victoria Phillips (UJC/JAC) and Winston Nguyen (Independent). The public comments are available here: <https://youtu.be/kAf3jifj2l4?t=10049>.

Following public comment, Interim Chair Sherman adjourned the meeting.