



**NEW YORK CITY
BOARD OF CORRECTION**

February 11, 2020 PUBLIC MEETING MINUTES

ATTENDEES

MEMBERS PRESENT

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

Margaret Egan, Executive Director

MEMBERS ABSENT

Jennifer Jones Austin, Esq.

DEPARTMENT OF CORRECTION

Cynthia Brann, Commissioner
Hazel Jennings, Chief of Department
Brenda Cooke, Chief of Staff
Heidi Grossman, Deputy Commissioner for Legal Matters/General Counsel
Kenneth Stukes, Bureau Chief of Security
Peter Thorne, Deputy Commissioner of Public Information
Steven Kaiser, Executive Director of Policy and Intergovernmental Affairs
Julia Szendro, Policy Analyst
Francis Torres, Assistant Commissioner of Education and Youth Advocacy Services
Timothy Farrell, Senior Deputy Commissioner
Judy Beale, Deputy Commissioner
Ada Pressley, Acting Assistant Chief
William Barnes, Assistant Chief
Joseph Caputo, Deputy Warden In Command
Jean Rene, Acting Warden
Danielle DeSouza, Administrative Public Information Specialist
Nell McCarty, Assistant Director of Counseling Services Unit
Al Craig, Officer
Latima Johnson, Press Officer

NYC HEALTH + HOSPITALS - CORRECTIONAL HEALTH SERVICES

Patsy Yang, DrPH, Senior Vice President

Ross MacDonald, MD, Chief Medical Officer, Sr. Assistant Vice President

Paulina Reiss, MD, Bellevue Resident

OTHERS IN ATTENDANCE:

Keith Zobel, NY State Commission on Correction (SCOC)

Allen Riley, SCOC

Charles Parkins, Administration for Children's Services (ACS)

Joan Tannenbaum, ACS

Tim Roche, ACS

Rachael Jensen, ACS

Nora Daniel, ACS

Nikki Tourigny, Urban Justice Center

Victoria Phillips, UJC/Jails Action Coalition (JAC)

Mary Lynne Werlwas, Legal Aid Society Prisoners' Rights Project (LAS)

Kelsey De Avila, Brooklyn Defender Services (BDS)

Simone Spirig, BDS

Irene Cedano, BDS

Gina Farinaccio, BDS

Claudia Forrester, BDS

Julia Davis, Children's Defense Fund

Daniele Gerard, Children's Rights

Jasmine Paez, Bronx Defenders

Jack Storey, NY City Council

Kieshorne Dennie, NYC Council

Maisaël Syldor, Independent Commission on NYC Criminal Justice and Incarceration Reform

Brandon Holmes, Just Leadership USA

Harvey Murphy, Just Leadership USA

Marco Barrios, Just Leadership USA

Tamika Graham, Just Leadership USA

Kelly Grace Price, Close Rosie's

Wendell Walters, The Osborne Association

Darlene Jackson, Independent

AGENDA AND PUBLIC VOTES

1. Approval of January 14, 2020 Minutes (February 11, 2020 BOC Public Meeting Transcript ("Transcript"), at page 3)
 - After the item was moved and seconded, the minutes were approved with five (5) votes in favor (Interim Chair Sherman, Vice-Chair Richards, and Members Cohen, Franco, and Regan) and one (1) abstention (Member Hernandez).
2. Announcements and Updates (Transcript, p.3)
3. Public Comment on Variance Requests (Transcript, p. 7)
4. Background on Raise-the-Age Variance Requests (Transcript, p. 23)

5. Limited Variance Request to BOC Minimum Standard § 1-04(b)(2) (Raise-the-Age: Dry Cells) (Transcript, p. 53)
 - Existing Conditions:
 - After Interim Chair Sherman called a roll call vote, the Board approved the existing conditions with seven (7) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Hernandez, Perrino, Regan, and Safyer) and one (1) abstention (Member Franco).
 - Vote on Variance with Conditions:
 - After Interim Chair Sherman called a roll call vote, the Board approved the variance with conditions, with six (6) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Hernandez, Perrino, Regan, and Safyer), one (1) vote in opposition (Member Cohen), and one (1) abstention (Member Franco).
 - The final record of variance is available here:
<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/February/2020-02-FINAL-Variance-Action-Dry-Cells.pdf>
6. Limited Variance Request to BOC Minimum Standard § 1-08(f) (Raise-the-Age: Law Library) (Transcript, p. 56)
 - Existing Conditions:
 - After Interim Chair Sherman called a roll call vote, the Board approved the existing conditions with seven (7) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Hernandez, Perrino, Regan, and Safyer) and one (1) abstention (Member Franco).
 - Vote on Variance with Conditions:
 - After Interim Chair Sherman called a roll call vote, the Board approved the variance with conditions, with seven (7) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Hernandez, Perrino, Regan, and Safyer) and one (1) abstention (Member Franco).
 - The final record of variance is available here:
<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/February/2020-02-FINAL-Variance-Action-Law-Library.pdf>
7. Limited Variance Request to BOC Minimum Standard § 1-11(a) (Raise-the-Age: Correspondence) (Transcript, p. 59)
 - Vote on Variance:
 - After Interim Chair Sherman called a roll call vote, the Board approved the variance, with seven (7) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Hernandez, Perrino, Regan, and Safyer) and one (1) abstention (Member Franco).
 - The final record of variance is available here:
<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/February/2020-02-FINAL-Variance-Action-Correspondence.pdf>
8. Limited Variance Request to BOC Minimum Standard § 3-06(e)(5) (Raise-the-Age: Nursery) (Transcript, p. 61)
 - Existing Conditions:
 - After Interim Chair Sherman called a roll call vote, the Board approved the existing conditions with seven (7) votes in favor (Interim Chair Sherman,

Vice-Chair Richards and Members Cohen, Hernandez, Perrino, Regan, and Safyer) and one (1) abstention (Member Franco).

- Vote on Variance with Conditions:
 - After Interim Chair Sherman called a roll call vote, the Board approved the variance with conditions, with seven (7) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Hernandez, Perrino, Regan, and Safyer) and one (1) abstention (Member Franco).
 - The final record of variance is available here:
<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/February/2020-02-RTA-Nursery-Variance.pdf>

9. Background on Separation Status Variance Request (Transcript, p. 64)

10. Limited Variance Request to BOC Minimum Standards § 1-03(c-d, j) (Personal Hygiene); § 1-04(b)(2-3) (Single Occupancy, including storage and desk space); § 1-05(a-c) (Lock-In); § 1-06 (Recreation); § 1-07(c) (Religion); § 1-08(f)(4) (Law Library Access); § 1-08(g)(2-4) (Legal Documents and Supplies Access); § 1-09 (c-d, f) (Visiting); § 1-11(c-d) (Correspondence); § 1-12(d) (Incoming Packages); § 1-13(a-c) (Publications); and § 1-14(a-b) (Access to Media) (Separation Status) (Transcript, p. 112)

- Vote on Length of Variance:
 - After Interim Chair Sherman called a roll call vote, the Board did not approve the condition to change the length of the variance from six-months to three-months, with four (4) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members, Cohen, and Safyer) and four (4) votes in opposition (Members Franco, Hernandez, Perrino, and Regan).
- Unchanged Existing Conditions:¹
 - After Interim Chair Sherman called a roll call vote, the Board unanimously approved the existing conditions, 8-0 (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Franco, Hernandez, Perrino, Regan, and Safyer).
- Proposed Amendments to Existing Conditions # 3(b), 3(c), 3(e), 4, 6, 9, and 10:²
 - After Interim Chair Sherman called a roll call vote, the Board unanimously approved the proposed amendments to existing conditions, 8-0 (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Franco, Hernandez, Perrino, Regan, and Safyer).
- Proposed Condition # 12:
 - After Interim Chair Sherman called a roll call vote, the Board unanimously approved the proposed condition, 8-0 (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Franco, Hernandez, Perrino, Regan, and Safyer).
- Proposed Condition # 13:
 - After Interim Chair Sherman called a roll call vote, the Board approved the proposed condition with seven (7) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Franco, Perrino, Regan, and Safyer) and one vote (1) in opposition (Member Hernandez).

¹ To view the existing conditions approved at November 12, 2019 Public Board Meeting, please see: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/November/Post-Meeting/2019.11%20-%20Record%20of%20Variance%20Action%20-%20Separation%20Status%20final.pdf>.

² *Id.*

- Proposed Condition # 14:
 - After Interim Chair Sherman called a roll call vote, the Board approved the proposed condition with six (6) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Franco, Perrino, and Safyer) and two votes (2) in opposition (Members Hernandez and Regan).
- Proposed Condition # 15:
 - After Interim Chair Sherman called a roll call vote, the Board approved the proposed condition with six (6) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Franco, Perrino, and Safyer) and two votes (2) in opposition (Members Hernandez and Regan).
- Dr. Cohen's Proposed Condition # 1 (Affording Haircuts and the Ability to Shave):
 - After Interim Chair Sherman called a roll call vote, the Board voted against the proposed condition with seven (7) votes in opposition (Interim Chair Sherman, Vice-Chair Richards and Members Franco, Hernandez, Perrino, Regan, and Safyer) and one (1) vote in favor (Member Cohen).
- Dr. Cohen's Proposed Condition # 2 (Affording Access to Correspondence):
 - After Interim Chair Sherman called a roll call vote, the Board voted against the proposed condition with five (5) votes in opposition (Interim Chair Sherman, and Members Franco, Hernandez, Perrino, and Regan) and three (3) votes in favor (Vice-Chair Richards, and Members Cohen and Safyer).
- Dr. Cohen's Proposed Condition # 3 (Affording Access to Newspapers and Magazines):
 - After Interim Chair Sherman called a roll call vote, the Board unanimously approved the condition, 7-0 (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Franco, Hernandez, Perrino, and Safyer).
- Vote on Variance with Conditions:
 - After Interim Chair Sherman called a roll call vote, the Board unanimously approved the variance, 6-0 (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Franco, Hernandez, and Perrino).
 - The final record of variance is available here: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/February/2020-02-11-Record-of-Variance-Action-Separation-Status.pdf>

11. Background on Young Adult Co-Mingling Variance Request (Transcript, p. 149)

12. Limited Variance Request to BOC Minimum Standard § 1-02(c)(1) (Young Adult Co-Mingling) (Transcript, p. 174)

- Vote on Variance with Existing Conditions:
 - After Interim Chair Sherman called a roll call vote, the Board approved the variance with conditions, with five (5) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Franco, Hernandez, and Perrino) and one (1) vote in opposition (Member Cohen).
 - The final record of variance is available here: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/February/2020-02-DRAFT-Record-of-Variance-Action-YA-Co-mingling.pdf>

13. Background on Young Adult Enhanced Supervision Housing Variance Request (Transcript, p. 175)

14. Limited Variance Request to BOC Minimum Standard § 1-16(c)(1)(ii) (Young Adult Enhanced Supervision Housing) (Transcript, p.197)

- Existing Conditions:
 - After Interim Chair Sherman called a roll call vote, the Board approved the existing conditions, with five (5) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Franco, Hernandez, and Perrino) and one (1) vote in opposition (Member Cohen).
- Dr. Cohen's Proposed Condition #1 (Individualized Use of Restraint Desks):
 - After Interim Chair Sherman called a roll call vote, the Board voted against the proposed condition, with five (5) votes in opposition (Interim Chair Sherman, Vice-Chair Richards and Members Franco, Hernandez, and Perrino) and one (1) vote in favor (Member Cohen).
- Dr. Cohen's Proposed Condition # 2 (Increasing Young Adult Recreation Participation):
 - After Interim Chair Sherman called a roll call vote, the Board unanimously approved the proposed condition, 6-0 (Interim Chair Sherman, Vice-Chair Richards and Members Cohen, Franco, Hernandez, and Perrino).
- Vote on Variance with Existing and New Conditions:
 - After Interim Chair Sherman called a roll call vote, the Board approved the variance with conditions, with five (5) votes in favor (Interim Chair Sherman, Vice-Chair Richards and Members Franco, Hernandez, and Perrino) and one (1) vote in opposition (Member Cohen).
 - The final record of variance is available here:
<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/February/2020-02-Record-of-Variance-Action-YA-ESH.pdf>

15. Public Comment (Transcript, p. 209)

A video recording of the meeting is available at:

https://www.youtube.com/watch?v=NDah4tdhWQY&feature=emb_logo

NEW YORK CITY
BOARD OF CORRECTIONS

BOARD MEETING

Board Meeting
125 Worth Street
New York, NY 10013
February 11, 2020
[9:00 a.m. - 1:00 p.m.]

February 11, 2020

MEMBERS PRESENT:

Jacqueline Sherman, Interim Chair

Stanley Richards, Vice Chair

Robert L. Cohen, M.D., Member

Felipe Franco, Member

Tino Hernandez, Member

James Perrino, Member

Michael J. Regan, Member

Steven M. Safyer, M.D., Member

Margaret Egan, Executive Director

1 February 11, 2020

2 (The public board meeting commenced at 9:00
3 a.m.)

4 MS. JACQUELINE SHERMAN: Good morning.
5 Our scheduled business today, we'll start by
6 voting on the draft January 14, 2020 board
7 meeting minutes, which board members have
8 received. Does a board member wish to move for a
9 vote to approve the minutes?

10 DR. COHEN: Motion to approve.

11 MS. SHERMAN: Thank you. Are there any
12 edits or questions? I have a vote to approve the
13 January 2020 minutes. All right, the minutes have
14 been approved. Before we begin, I have a few
15 announcements. First, the board was saddened to
16 hear of the death of Correction Officer
17 Christopher Gayle on January 24th. We wish to
18 express our condolences to his family and friends
19 and his colleagues at the Department of
20 Correction.

21 The board's public comment period for
22 restrictive housing rulemaking ended on January
23 31, 2020. We received 54 written comments
24 throughout the comment period. In addition, over

1 February 11, 2020

2 the two public hearings held in December, we
3 received comment from 59 people. Videos and
4 transcripts from the hearings are available on
5 the board's website.

6 The next steps in the rulemaking process
7 are for the board to review all public comment
8 received and consider amendments to the proposed
9 rules. The board again thanks all the people and
10 organizations who have spent so much time and
11 energy in forming and responding to the proposed
12 rules. The policy and ultimately jail operations
13 will be stronger due to your advocacy and
14 engagement. We expect to provide a substantive
15 update on the rulemaking process at the March
16 meeting.

17 We're now going to turn to public
18 comment on variance requests before the board
19 today. And before I call members of the public to
20 comment, I will briefly list the variance
21 requests for today. First, there are Raise the
22 Age Horizon variance requests. The department
23 requests four variances related to the operations
24 of the Horizon Juvenile Center. These variance

1 February 11, 2020

2 regarding dry cells, law library, correspondence
3 and nursery availability were first approved by
4 the board in July of 2018 and they've been in
5 effect since then.

6 The board approved short extensions of
7 those variances at public meetings in November
8 and January. Today, we will consider the six
9 month variance request.

10 We will also consider the separation
11 status variance. The department requested a
12 variance that would allow it to place people into
13 separation status, a highly restrictive housing
14 unit, after a positive body scan or if an
15 individual refuses a body scan. Body scanners are
16 a new security tool that the department is using
17 to detect contraband. Through January, there have
18 been 64 placements in separation status,
19 averaging nine placements per month.

20 The board approved a three month
21 variance relating to the use of separation status
22 in November, and the department has requested a
23 six month variance renewal.

24 The young adult comingling variance, the

1 February 11, 2020

2 department requested a variance that would allow
3 it to continue to comingle 19 to 21 year olds
4 with adults. The board first granted this
5 variance in September of 2015 and has
6 consistently renewed it since. Most recently in
7 July of 2019. As of January 1, 2020, there were
8 474 18 to 21 year olds in DOC custody. This
9 represents a 16 percent decrease since August 1st
10 of 2019.

11 We will also consider the young adult
12 ESH variance. The department has requested a
13 variance that would allow it to continue to house
14 young adults in enhanced supervision housing, a
15 restrictive housing unit. The board first
16 approved this variance in October of 2016 and
17 last renewed it in July of 2019. As of January
18 30, 2020, there were 11 young adults in ESH. None
19 of these young adults were in ESH Level One, the
20 unit that has restraint desks.

21 We ask that speakers limit their
22 comments to the proposed variances and to three
23 minutes. We will have an additional public
24 comment period on all other matters to close out

1 February 11, 2020

2 today's meeting. The iPad on the stage will let
3 you know how much time you have left. I will
4 first call upon Mr. Craig. Good morning.

5 MR. AL CRAIG: Good morning. I'm here to
6 speak about this variance, enhanced supervision.
7 Since I've been returned to the facility, I've
8 noticed the inmate population has no regard for
9 the officers' safety or other inmates' safety.
10 I've encountered situation, one situation in
11 particular, was very disturbing. A female officer
12 was flashed repeatedly, til her underwear was
13 soaking wet and the doctor told her that she
14 might want to remove those so that she won't get
15 an infection, right.

16 Another case, an officer was spit, had
17 spit in his mouth. Another -- an inmate spit in
18 his mouth and it said it took him weeks to
19 swallow his own saliva.

20 Look, a lot of things that are happening
21 in the city is happening because of the neglect
22 in this room. You've allowed gangs to be housed
23 according to gang affiliation. You've allowed
24 officers to be assaulted, and now that's trickled

1 February 11, 2020

2 out to the general public. And because there's no
3 penalty, there's nothing that can happen. They
4 are even, inmates have the gall to request female
5 officers, so they can objectify them while they
6 masturbate.

7 This is what's happened, this is what
8 you all allowed to happen. Now you, some of you
9 might not know me, but I have been coming here
10 for about two or three years, talking about
11 inmate safety, officer and inmate safety. And
12 year after year, you've ignored me. Now the
13 general public is being assaulted. Cops are being
14 assaulted the way we're being assaulted. You
15 don't think there's a coincidence? Gangs started
16 in jail and now it's out in the streets. Sagging
17 started in jail, now it's out in the street.
18 Because of your neglect and their neglect. This
19 is what's happening. It is atrocious that that
20 young lady had to stand there and worry about an
21 injection. A doctor told her she could get an
22 infection.

23 And so, y'all, you sit up here on the
24 regular, and you ignore me because you're cogs in

1 February 11, 2020

2 a system to close Rikers Island. The whole goal
3 is to close Rikers Island, opposed to actually
4 controlling jail. Well, you pretty much have
5 achieved that. Now, maybe you can do something to
6 save some people's lives. You're not doing a
7 damned thing and they aren't either. You all work
8 for the mayor and you all have one objective. And
9 these officers are suffering, these inmates are
10 suffering because you thinking about the
11 perpetrator of these crimes. You know, to be
12 exposed to AIDS and, and be assaulted, this is
13 ridiculous.

14 And I know my time is running out, but
15 this is why you need these kind of restrictive
16 housing areas. Like this guy here, you know, I
17 think it's so rude that you're not listening and
18 that you're reading while I'm talking. When this
19 department let a gang walk through the jail,
20 called G. Mack, unescorted after being caught
21 bringing in contraband, and now the new,
22 everybody in the city knows that that's what they
23 were doing. I'm going to go, but you know what,
24 that's why we need these restrictions and

1 February 11, 2020

2 enhanced housing, because of your neglect and
3 your neglect.

4 MS. SHERMAN: Thank you. Thank you. I'll
5 now call on Daniele Gerard. Good morning.

6 MS. DANIELE GERARD: My name is Daniele
7 Gerard. I'm a staff attorney at Children's
8 Rights. We are concerned about the welfare of
9 young adults and youth at Rikers and Horizon. I'd
10 like to refer you to our six-page written
11 testimony, which covers many of the variances
12 today. I'd like to focus on separation status
13 housing with one word about co-mingling, which is
14 just that there is no evidence that the practice
15 of comingling reduces violence. I'd like you to
16 take that into account.

17 Regarding separation status housing
18 variance request, separation status housing is
19 punitive segregation pure and simple as we
20 testified in October and November. The
21 department's variance request does not include
22 any mention of the treatment of young adults. It
23 includes no due process provisions, it does not
24 specify specific timeframes regarding how long an

1 February 11, 2020

2 incarcerated person can be held in this housing.
3 It is essentially solitary confinement for young
4 adults in violation of the minimum standards. It
5 is a violation of the young adult plan.

6 Research shows that placing young adults
7 in restrictive housing can cause significant
8 neurological damage at this important
9 developmental stage. All of this pertains equally
10 to ESH. The board's January 2020 body scanners
11 and separation status report found that people
12 found in separation status were more likely to be
13 young adults and black than the average daily
14 population in DOC custody and that of the 41
15 unique individuals placed in separate status, 34
16 percent were young adults compared to nine
17 percent of the average daily population of people
18 in DOC custody from July to November 2019.

19 The report also notes that the processes
20 for placement and removal from separation status
21 are regularly delayed and out of compliance with
22 policy, leading to people in custody spending
23 extended time in highly restrictive restraints
24 and in transit to the unit. It is unclear, based

1 February 11, 2020

2 on this report how long each young adult was held
3 in separation status housing, a critical piece of
4 missing information. In addition, the report
5 notes that the implementation of separation
6 status was dangerously chaotic. DOC staff who
7 have not completed the required safety and body
8 scanner operation training are operating body
9 scanners, creating a risk of radiation exposure
10 to staff and people in custody and the potential
11 for misinterpretation in scans.

12 Misinterpretation undermines the
13 department's ability to use scanners effectively
14 as a tool to identify contraband and may lead to
15 unnecessarily placement in the department's most
16 restrictive housing area. We urge the board to
17 deny this variance request and to stop allowing
18 the department to create new forms of punitive
19 segregation for adults and other incarcerated
20 persons.

21 Separation status housing must be
22 abolished. The use of body scanners must be
23 continued. We respectfully request that the board
24 deny all of the department's variance requests

1 February 11, 2020

2 today. As always, we urge the board to require
3 the superintendent to comply with the minimum
4 standards as written, especially with regard to
5 the young adult plan. Thank you, board members.

6 MS. SHERMAN: Thank you. Mary Lynne
7 Werlwas. Good morning.

8 MS. MARY LYNNE WERLWAS: Good morning.
9 I'm Mary Lynn Werlwas of the Legal Aid Society
10 Prisoners Rights Project, and we are going to
11 address two sets of variances requests today,
12 both of which we think should be denied.

13 The first I'm going to address is the
14 set of variances about the young adult plan and
15 the comingling of young adults. This is a
16 variance that as noted in the preparatory remarks
17 has been in effect for four years now. That's not
18 a variance. That's a rule. That's a de facto
19 rule.

20 And during that time, for a period of
21 time, a small amount of information has been
22 provided to the board about the housing and
23 programming that's available to these young
24 adults when they are in adult areas. But that

1 February 11, 2020

2 information stream has significantly dwindled.
3 There's a paucity of information about the
4 location of these young people, about the
5 services that are provided to them and about the
6 reasons that they are being housed with adults.

7 The department consistently pushes off
8 requests for information, for this kind of
9 information, with statements such as that young
10 adults are not a monolithic cohort, or housing
11 placements are made on an individualized basis.
12 But no information is being provided about how
13 the housing decisions are made, about the reason
14 one-third of young adults are housed with adults.
15 And about the programming that is available to
16 them, most significantly, education.

17 As we know, the Department of Education
18 doesn't have the resources to provide the New
19 York City high school education in a scatter shot
20 fashion to youth housed throughout the jails. And
21 so many young adults are being deprived of the
22 educational opportunities that they had when the
23 young adult plan was enforced. I don't believe
24 that this is a board of individuals who wants to

1 February 11, 2020

2 sub silentio abandon Commissioner Ponte's young
3 adult plan. And that is what this continued
4 variance seeks to do.

5 I'll have just a minute to address
6 separate status. We provided written comments,
7 which I hope you have, and if not, I have copies
8 of them, reiterating our concerns with separation
9 status, which have been merely reinforced and in
10 fact, strengthened by the Board of Correction's
11 report on the body scanners. We are grateful for
12 the board for producing this very detailed
13 report, investigative report. It's the kind of
14 oversight information that gives us the facts
15 that can inform our decisions.

16 The decision that it informs today is
17 about the continu- -- the department's ability to
18 implement the scanner and separation status
19 program with any fidelity to due process and to
20 respect for the mental and physical health of the
21 individuals they're incarcerating. For the
22 reasons we set forth in our letter, which I
23 encourage you to read, we ask the board to deny
24 these separation status variances for the reasons

1 February 11, 2020

2 also that our colleague gave earlier. Thank you.

3 DR. ROBERT COHEN: Question. I read your
4 letter. Can you describe what due process would
5 look like in terms this separation of scanning?

6 MS. WERLWAS: I think there's a range of
7 the due process depending as -- well, due process
8 always is about the process, given the level of
9 deprivation that the government wishes to impose
10 upon an individual. As a baseline matter, many of
11 the deprivations that these variances seek, such
12 as essentially incommunicado detention, are, in
13 our view, simply unwarranted and that a
14 disproportionate response to any legitimate
15 security need that the department has
16 articulated. And thus, for some of these, there
17 truly is not, since they are wholly unnecessary,
18 there's no amount of process that is due.

19 For those that might be more limited,
20 such as a restrictive housing placement, at a
21 minimum, an opportunity to challenge the basis
22 for your placement, the factual basis, such as
23 what a correction officer's reading of this
24 radiographic scan of your body, as opposed to a

1 February 11, 2020

2 medical officer's, clinician's view, shows and an
3 opportunity for notice to your counsel, certainly
4 an opportunity to come to court, that it is most
5 telling that the department is still wanting to
6 reserve the right to keep people from defending
7 the criminal charges lodged against them by the
8 government, by governmental fiat of keeping them
9 locked in a cell. That's unacceptable. People
10 have to come to court.

11 DR. COHEN: Thank you very much.

12 MS. SHERMAN: Thank you. Ms. V. Good
13 morning.

14 MS. VICTORIA PHILLIPS: Good morning. My
15 name is Ms. V. and right now, I'm standing in the
16 capacity of being a Jails Action Coalition
17 member. In your report that you released, your
18 studies from July 15 through November 30, 2019,
19 stated that 11,212 body scans had occurred. I,
20 I'm speaking on the separation status variance.
21 Forty-five placements in separation status unit,
22 41 different individuals, 28 were positive scans,
23 17 were refusals to be scanned. In your report,
24 you stated DOC recovered five pieces of

1 February 11, 2020

2 contraband from the 45 placed in separation
3 status unit.

4 Your report also stated that DOC staff
5 with no formal radiation safety or body scanning
6 training had operating the body scanners, a
7 concern that I've addressed to this very board
8 and City Council last year.

9 Review of the logbooks, in your report
10 stated from November 18, 2019 through November
11 30, 2019, 30 percent of body scans were conducted
12 by staff who did not have the appropriate
13 training to operate without the proper training.
14 Last month, DOC leadership responded to this very
15 board and this month the City Council as if the
16 top shouldn't be held accountable and responded
17 as if officers working without training or using
18 someone else's credentials, which your report
19 also stated has occurred, would be held
20 responsible.

21 But as an army brat, I know for a fact
22 that DOC operates as a paramilitary operation
23 organization, right. That means that the board
24 must hold DOC accountable from the commissioner

1 February 11, 2020

2 on down to the assistant commissioners and
3 forward.

4 I remind you that your report itself
5 stated two individuals with serious mental
6 illness were placed in separation status, that
7 six individuals missed mental health
8 appointments, one missed a specialty appointment,
9 and one individual in your report missed four
10 doses of insulin, all unacceptable because people
11 were placed in the care, custody and control of
12 the Department of Correction.

13 That means that the people that are in
14 those units are your responsibility, because DOC
15 is not following protocols, they're not following
16 minimum standards, and they're not following what
17 your clear directions was to have someone placed
18 in that unit. And that means that their very
19 lives, of every individual in that unit is now
20 your exact responsibility.

21 And I just want to point out that I have
22 put my own medical business on the record, saying
23 as a brain surgery survivor, my own doctors told
24 me in the airport, do not go through the

1 February 11, 2020

2 machines, get patted down. I've discussed that.
3 Many board members have said why they agree with
4 DOC based on safety.

5 Well, when is it going to be the safety
6 of the New York people that are in the Department
7 of Correction waiting their fair day of trial,
8 not being forced to undergo unnecessary exposure
9 to radiation? When are you going to consider
10 that? Because DOC doesn't even consider their own
11 officers' safety by putting them in positions to
12 run these machines and then later on want to hold
13 them accountable when you find out that they
14 weren't properly trained. Please do your job this
15 year and save a life, save many lives. Because
16 over 11,000 were actually scanned, and how many
17 of them were scanned by people that were not
18 properly trained to do so?

19 MS. SHERMAN: Thank you. Brandon Holmes.
20 Good morning.

21 MR. BRANDON HOLMES: Good morning. Sorry,
22 I'm congested, so quickly, I am speaking on the
23 issue of variances in general and asking the
24 board, you know, we've submitted testimony over

1 February 11, 2020

2 the past several months and we continue to see
3 variance renewal requests.

4 And I want to ask, what is the measure
5 of accountability and oversight that this board
6 is actually willing to serve? What will that role
7 look like when we're renewing variances that have
8 been granted for months and months over the past
9 decades, right, regardless of the commissioner,
10 regardless of executive leadership, we continue
11 to renew these variances and not develop ways for
12 the board to actually provide some type of real
13 tangible accountability, and some type of
14 responsibility when these variances must be
15 renewed, but no reform has actually been adopted
16 or enacted within the department.

17 So, if we're going to continue to allow
18 these exceptions, let's call them what they are.
19 They're not a variances, they're exceptions to
20 rules that have been laid out. Stop granting
21 exceptions to rules that are set in stone, and
22 start providing real oversight and
23 accountability.

24 And lastly, I caught the tail end of I

1 February 11, 2020

2 believe a member of COBA saying that that the
3 disregard for officers in jails is leaking into
4 the streets and causing police officers to be
5 shot and killed. And there's just no possible way
6 that we can believe that this union is concerned
7 with public safety or community safety, when they
8 have opposed reform and opposed changing and
9 improving the conditions of life, not only for
10 their staff that are working inside the
11 facilities that are falling apart, as we speak,
12 but also for the people that are in their
13 custody, care and control.

14 There is no way that we can really
15 believe that they want to thread the needle to
16 what's happening in our broader communities when
17 right in their own workplace, they're allowing
18 their own staff, their own union members to live
19 in those deplorable conditions and work in those
20 every day and continue to create a toxic work
21 environment for not only union members, but
22 people in their custody. Thank you. (Applause)

23 MS. SHERMAN: Thank you. That concludes
24 the public comment on the variance proposals on

1 February 11, 2020

2 today's agenda. So we will move to consider the
3 specific variances. We'll start with the Raise
4 the Age variances. From September 26 to September
5 30, 2018, the department moved all adolescents
6 off of Rikers Island to the Horizon Juvenile
7 Center in the Bronx. The population at Horizon
8 has consistently decreased from a high of 96
9 young people on October 2, 2018 to 13 as of
10 February 6, 2020.

11 When it opened in September of 2018,
12 Horizon was jointly operated by the department
13 and ACS, with the Department of Correction
14 managing all security operations. As of January
15 2020, the facility is operated by ACS, with the
16 Department of Correction providing limited roles
17 including perimeter security, control room
18 management, and an adolescent response team,
19 formerly called a PROBE team to respond to use of
20 force incidents involving pre-Raise the Age young
21 people.

22 The department will continue to provide
23 these functions until the last pre-Raise the Age
24 younger person leaves Horizon, which the city

1 February 11, 2020

2 estimates will take place in August of 2020. We
3 understand that ACS has begun to move young
4 people from Crossroads to Horizon, and we look
5 forward to understanding the city's plans to
6 operate the facility now that there are both pre-
7 Raise the Age and post-Raise the Age young people
8 housed there.

9 So long as Department of Corrections
10 staff are interacting with young people, the
11 minimum standards will apply to the pre-Raise the
12 Age population and board oversight will continue.
13 Board staff will remain on site to monitor
14 compliance. At this time, we'd like to invite the
15 department and ACS to the podium to provide an
16 update on Raise the Age implementation and the
17 future of the Horizon Juvenile Center and to
18 present their variance requests, beginning with
19 the request on single occupancy dry cells. Thank
20 you and good morning.

21 MR. TIM ROCHE: Good morning. Good
22 morning, I have a brief statement and then we can
23 move into the variances and any questions you
24 might have. My name is Tim Roche. I'm the senior

1 February 11, 2020

2 policy advisor in the Division of Youth and
3 Family Justice at the Administration for
4 Children's Services. I appreciate the opportunity
5 to discuss Raise the Age this morning, alongside
6 my colleagues from ACS and the Department of
7 Correction.

8 As you know, for the past 16 months,
9 pursuant to Raise the Age legislation, 16- and
10 17-year old youth previously housed at Rikers
11 Island and 17-year olds arrested and detained
12 from October 1st of 2018 through September 30th
13 of 2019 have been housed at the city's
14 specialized juvenile detention facility, Horizon.
15 We refer to these youth as pre-RTA youth.

16 At Horizon, ACS and DOCx have been
17 collaborating to jointly operate a facility that
18 provides for the safety, security and wellbeing
19 of the youth in a developmentally appropriate
20 setting and manner. As of this morning, there are
21 13 pre-RTA youth at Horizon, only one of whom was
22 part of the original 93 youth transitioned from
23 Rikers Island last September. To date, ACS has
24 provided care to 425 unique pre-RTA youth at

1 February 11, 2020

2 Horizon.

3 As planned, ACS assumed primary
4 operational control of Horizon in December. ACS
5 worked with DOC and the unions to develop a
6 phased plans to introduce youth development
7 specialists to Horizon over a period of
8 approximately six months. As of today, there are
9 182 YDS at Horizon, managing all of the housing
10 units.

11 Currently, DOC has only 45 corrections
12 officers across all three tours at Horizon. DOC
13 staff functions are limited to managing the
14 perimeter, the command station and the adolescent
15 response team. Given the continuing decline in
16 the Horizon population and the increasing
17 population at Crossroads, ACS sought to certify
18 several halls at Horizon as specialized secure
19 detention halls.

20 ACS received approval and operating
21 certificates from SCOC and OCFS in early January.
22 We have begun to move a small number of
23 adolescent offender from Crossroads to Horizon in
24 small cohorts over a period of six weeks. As of

1 February 11, 2020

2 this morning, there are 11 male adolescent
3 offenders at Horizon. These youth are housed on a
4 different floor from the pre-RTA and have no
5 contact with DOC staff.

6 With regard to the variances, prior to
7 Raise the Age effective date, the board granted
8 several limited variances which were first
9 granted by the board in July, July 10th of 2018,
10 and have been extended until today. ACS and DOC
11 are seeking to have four variances renewed for
12 six months until August 11th of 2020. These
13 variances have enabled ACS and DOC to provide
14 developmentally appropriate care and supervision
15 and services to pre-RTA youth within the Horizon
16 Juvenile Center.

17 I want to take a few moments to address
18 the implementation of the various beginning with
19 the law library. The access to the law library,
20 on January 14th of 2020, DOC extended a limited
21 variance allowing DOC to house pre-RTA youth in a
22 facility that does not have a properly equipped
23 and staffed law library.

24 This variance included several

1 February 11, 2020

2 conditions, including access to LexisNexis on
3 tablets for at least two hours per day, seven
4 days per week during hours that do not conflict
5 with school programming, counseling, therapy or
6 other required daily activities, an on-site legal
7 coordinator at least five days per week for a
8 total of 20 hours and monthly audits of
9 compliance. As was documented in the monthly
10 audits, ACS and DOC have been providing youth at
11 Horizon with access to a legal coordinator and
12 tablets.

13 As per the requirements of the variance,
14 Horizon residents have been provided daily access
15 to legal research via LexisNexis enabled tablets
16 and assistances from an on-site legal
17 coordinator. Youth may complete a resident law
18 library request form to use the tablets for
19 research to request an individualized or request
20 an individualized session with the legal
21 coordinator or can access both of these services.

22 The legal coordinator provides four
23 hours of law library services Monday through
24 Friday during times that enable youth daily

1 February 11, 2020

2 access to schedule individualized appointments,
3 answer general legal questions and to obtain
4 documents printed on their behalf. The legal
5 coordinator is able to have direct contact with
6 the majority of residents in residence halls and
7 in classrooms after school hours.

8 During the weekend, program coordinators
9 facilitate the use of tablets for legal research.
10 To date, the SJD residents have been able to
11 access tablets for at least two hours per day
12 seven days a week. Law library services are
13 currently provided by the Friends of Island
14 Academy, which will continue until the contract
15 expires at the end of March of 2020.

16 Beginning in April 2020, an ACS staff
17 member will assume the role of legal coordinator.
18 ACS will ensure that there will be on-site,
19 excuse me, an on-site legal coordinator services
20 provided five days per week for a total of 20
21 hours as required, as well as tablet access for
22 at least two hours per day seven days a week. I'm
23 happy to go on, or if you would like to take this
24 now.

1 February 11, 2020

2 MS. SHERMAN: Why don't you present all
3 of the variances and then we'll move.

4 MR. ROCHE: I'll continue. The nursery,
5 on January 14th of 2020, BOC extended a limited
6 variance allowing DOC to house pre-RTA youth in a
7 facility that does not have necessary childcare
8 and a nursery program for youth who give birth
9 while in custody. This variance contains several
10 conditions, including that DOC notify the board
11 in writing within three business days for each
12 pregnant youth admitted to Horizon, that agencies
13 maintain appropriate placements outside the SJD
14 where youth could be placed with their children
15 and that ACS provide more information at the
16 September 2019 board meeting regarding the
17 individualized assessments and work ACS does to
18 help young mothers plan for their babies.

19 Children's Village Inwood House is
20 available to provide wraparound services for
21 pregnant and parenting mothers and fathers
22 specifically for ACS's juvenile justice
23 population. These portable parenting services are
24 designed to afford a wrap around model of support

1 February 11, 2020

2 to pregnant youth and all young mothers and
3 fathers detained at the facility, then follow the
4 youth back to the community or other settings
5 once released from Horizon.

6 These services include nurse family
7 partnership, parent coaching, a fatherhood
8 program, teen choice sexuality education and
9 consultation. These are currently no young women
10 detained at Horizon, ACS does not anticipate any
11 pre-RTA female youth being detained at Horizon.
12 If however, a young woman is brought to Horizon
13 on a violation or a warrant, and she is pregnant,
14 ACS would use the individualized assessment and
15 case planning protocol that we discussed in
16 detail at the September 2019 board meeting.

17 As to correspondence, on July 14th of
18 2020, DOC extended a limited variance allowing
19 for us to identify individuals with whom mail
20 correspondence is permissible and to limit
21 correspondence only to those individuals based on
22 the safety or security of the youth facility
23 and/or consistent with existing court orders. DOC
24 included a requirement that by February 12th of

1 February 11, 2020

2 2019, DOC install outgoing mailboxes in common
3 areas so that all halls have daily access to an
4 outgoing mailbox. DOC also required that staff
5 check these mailboxes each business day.

6 The mailbox requirement has been
7 implemented. There is a mailbox on the first
8 floor near the cafeteria and three mailboxes on
9 the second floor near the main staircase. The
10 mailboxes are clearly labeled and ACS case
11 managers check the mailboxes daily.

12 ACS has implemented this variance by
13 identifying a list of individuals with whom mail
14 correspondence is prohibited or restricted, based
15 on the safety and security of the youth, the
16 facility and/or existing court orders. This is
17 consistent with ACS's juvenile detention model.
18 Under this system, there is no restriction on the
19 amount of correspondence or language used,
20 correspondence is never read by facility staff
21 unless the youth requests reading assistance,
22 correspondence is opened in front of youth to
23 inspect for inappropriate content such as paper
24 clips or staples or pornography.

1 February 11, 2020

2 Dry cells, on January 14th of 2020, DOC
3 extended a limited variance allowing youth at
4 Horizon to be housed in single occupancy dry
5 cells. This variance requires monthly audits on
6 compliance with three conditions, the first being
7 staff will escort residents to the bathroom and
8 to provide drinking water within five minutes of
9 the request absent any extenuating circumstances.
10 Housing unit staff will document when a bathroom
11 escort or drinking water is requested and third,
12 notice of the terms of this variance and the
13 right to notify the board of violations shall be
14 provided to Horizon residents.

15 Now that ACS has assumed responsibility
16 for all halls, ACS has been escorting youth to
17 the bathrooms, keeping the required logs and
18 ensuring that youth are brought to the restroom
19 within five minutes of the request. The audits
20 that have been conducted show that ACS staff have
21 been ensuring youth are able to get water and go
22 to the bathroom within the five minutes of their
23 request. That concludes my list.

24 MS. SHERMAN: Thank you. And we will

1 February 11, 2020

2 move to take up each of those variances. Before
3 we do so, I'd like to ask a question of both ACS
4 and the department and I'd like to hear you speak
5 to how your partnership at Horizon has changed
6 over the last several weeks, as a small number of
7 AOs have moved to the facility, to hear you speak
8 to how that change in the population and the
9 introduction of a population that I gather is not
10 interacting with Department of Corrections staff
11 is going. Any challenges, any highlights to
12 relate regarding that significant change in the
13 operation of the facility?

14 MR. ROCHE: It is a significant change,
15 it was a well planned change. We had support from
16 our state oversights, from both OCFS and SCOC, we
17 had input from of course our partners in the DOC,
18 the unions were contributors to this, and we had
19 been planning this over the course of many, many
20 months.

21 The other thing I think that's important
22 to understand just in terms of context is that
23 the Department of Corrections sort of footprint
24 within the facility has shrunk. And you'll

1 February 11, 2020

2 remember they came into the facility with more
3 than 300 correction officers. Today, there are
4 about 40 DOC staff in the building, providing
5 just perimeter and control room security as well
6 as supporting the adolescent response team.

7 ACS is in full control of all of the
8 halls. Many of you have been, if not all of you,
9 have been to the Horizon facility and seen the
10 operations there, and you know that it's a two
11 level building, there's a two story building with
12 housing units on both levels. And so we were able
13 to create a sort of an envelope for the AOs on
14 the first floor. There are four housing units on
15 the first floor that have I believe a capacity of
16 38 beds combined, along with a special housing
17 unit, along with classrooms.

18 And so we're able to house all of the
19 AOs on the first floor of the building. They're
20 able to participate in their daily educational
21 activities and recreational activities are
22 rigidly scheduled to ensure that there is no
23 overlap with not only the pre-RTA youth but with
24 DOC staff. ACS created corridor posts with some

1 February 11, 2020

2 of the communication and escorting to ensure that
3 there was no overlap between the pre-RTA youth
4 and the AOs. We have been transitioning in very
5 small numbers, like no more than two AOs in a
6 single day, no more than five in a single week.
7 And as I said, we're up to 11.

8 The plan is to bring that number to
9 about 15, and then take a pause and meet with our
10 state oversight to talk about how the operation
11 of the facility in this manner is going.

12 The other thing to remember too is that
13 this manner of operating a facility with clear
14 separation among youth is not new to us in the
15 sense that at Crossroad, we have been operating
16 that facility since the inception of Raise the
17 Age, separating the AO population in the same
18 way. There is no overlap. And so as part of our
19 operating certificate, we developed a very, very
20 detailed collocation plan that addresses each of
21 the various aspects of a day, an operational
22 daily routines that speak to exactly how we are
23 able to safely manage the facility and ensure
24 that the separations that are required, both

1 February 11, 2020

2 between RTA youth and DOC staff regarding the AOs
3 is able to occur safely.

4 We have -- I think the pace, the slow
5 and careful pacing of the transition has helped
6 to ensure that there have been no major incidents
7 at all. I am unaware of any significant incidents
8 between any AOs and pre-RTA youth, or DOC staff
9 for that matter. We feel that this is going very
10 smoothly and I welcome the DOC to offer their
11 perspective.

12 MS. SHERMAN: Thank you. Wait, I think
13 the --

14 MS. ADA PRESSLEY: Good morning.

15 DR. STEVEN SAFYER: I'm sorry. I have a
16 question. Take a step back. On the issue of
17 training, for the people that are using it, how
18 frequently, and maybe Meg knows the answer, do we
19 learn how many people have not been trained or
20 whatever. How are we going to follow that? If we
21 move forward on that, I would like to propose
22 that we have some mechanism that gives us the
23 feedback that this doesn't happen again. I'm
24 asking us. That's the question. Do we get some

1 February 11, 2020

2 kind of bi-weekly report, monthly report,
3 something along those lines?

4 MS. SHERMAN: I think that's a very fair
5 question and a question to take up as we consider
6 the separation status variance.

7 DR. SAFYER: Okay. Well, I mean whatever
8 -- that's fine.

9 MS. SHERMAN: Thank you.

10 MS. PRESSLEY: Good morning, how you
11 doing? My name is Ada Pressley. I'm acting
12 Assistant Chief in DOC. I was formerly the warden
13 of Horizon and I just want to add what Tim said,
14 that to ensure Horizon is running efficiently, we
15 continue the daily huddles, and that includes
16 ACS, mental health, DOE, and we speak about all
17 the residents, so that we ensure that everyone is
18 working cohesively. So, to say that we, why we
19 there, and continue to be there as DOC small
20 footprint, we'll be there until the last Raise
21 the Age kid depart.

22 MS. SHERMAN: Thank you.

23 MR. JAMES PERRINO: I'd just like to
24 make a comment [unintelligible] [00:57:17].

1 February 11, 2020

2 MS. PRESSLEY: Yes.

3 MR. PERRINO: It was a promotion well
4 deserved.

5 MS. PRESSLEY: Thank you, sir.

6 MR. PERRINO: What you did from in the
7 beginning where it was hot press and on
8 television and violence and stuff, and brought it
9 down to you and your team and ACS, it was
10 something. And I think people should really like
11 record it so when we need to do this in the
12 future, like what you did, you did something that
13 really was remarkable. I know with 90 people just
14 going over, it must have been crazy in the
15 beginning, but utilizing the ACS procedures and
16 working together with corrections to make
17 something even better than what we had, because I
18 know, being a warden also in RNDC, it was a lot
19 of, [unintelligible] [00:57:17] there was a lot
20 of days that just alarms won't stop. So we've got
21 something better now. I think we should learn
22 what we did so we can actually go forward to be
23 able to repeat it. Job well done, I don't know if
24 many people, I'm sure people did tell you, but I

1 February 11, 2020

2 want to say it publicly.

3 MS. PRESSLEY: Thank you, sir.

4 MR. PERRINO: I'm very proud of you, of
5 what you accomplished.

6 MS. PRESSLEY: Thank you. Thank you. And
7 we're going to continue our collaboration with
8 ACS. That's my new ally, that's my family. Thank
9 you.

10 MR. PERRINO: I mean just you saying
11 that, and getting together, it was two totally
12 different concepts that instead of just killing
13 each other, you got together and you made it
14 work, which I think that's great.

15 MS. PRESSLEY: It was difficult, but we
16 pulled through it. Thank you.

17 MR. FILEPE FRANCO: I would like to
18 second that. Even though sometimes it felt like
19 killing each other. And I think it's commendable
20 that, I mean in hindsight, nothing should have
21 been done that quickly. I mean it's good that you
22 guys have the time to do it planfully now, but
23 the way that you were able to move your staff
24 away from use of room confinement, and the use of

1 February 11, 2020

2 pepper spray in a matter of weeks is what
3 actually a lot of people nationally are looking
4 up to DOC now.

5 MS. PRESSLEY: Yes, thank you. We call
6 that IPC.

7 DR. COHEN: I'd like to add my
8 compliments as well. We worked closely on many
9 issues. I agree that the transition could have
10 been smoother and I understand a little bit why
11 it wasn't. I'm glad that the SEOC and the other
12 super state agencies did not allow pepper spray
13 to be used at Horizon, and then you were able to
14 run the facility through that transition.

15 I have a couple of questions for Tim.
16 One is DOC staff wear nametags so the residents
17 know who they are. I raised this question twice
18 already with your staff and I wonder at the
19 present time, to the ACS staff wear nametags so
20 the residents know who they are.

21 MR. ROCHE: They don't wear nametags as
22 yet, Dr. Cohen, but we are looking into it. We
23 have reached out to the vendor who supplies our
24 uniforms. All of our staff, I mean first of all,

1 February 11, 2020

2 it's clear that we can't have a name tag in terms
3 of a pin or something that would sort of a raise
4 a security concern. And so the nametags would
5 have to be either ironed on or sewn on to the
6 shirts. We've reached out to a vendor to get some
7 cost estimates on what that would be, because all
8 of our staff are provided with five shirts, and
9 so we're trying to figure out what the costs are.
10 But this is something that we are currently
11 actively looking into.

12 DR. COHEN: I appreciate that. I think
13 it's important for the residents to know who's
14 talking to them. Next question is about the
15 structure right now. You said there are 11 or 13
16 --

17 MR. ROCHE: That's right, yeah.

18 DR. COHEN: There are 11, and two of
19 them are in SHU?

20 MS. PRESSLEY: No. There's 13
21 [unintelligible] [01:01:08] and 11 AOs, none of
22 them are in SHU right now.

23 DR. COHEN: So it's 13?

24 MR. ROCHE: Yeah. There are 11 AOs. I

1 February 11, 2020

2 wasn't sure what you were referring to.

3 DR. COHEN: There are 13 people who are
4 being, that we are concerned about particularly
5 right now?

6 MR. ROCHE: That's correct.

7 DR. COHEN: And two of them are in SHU?

8 MS. PRESSLEY: No.

9 DR. COHEN: Nobody is in SHU now?

10 MS. PRESSLEY: No [unintelligible]

11 [01:01:28] SHU at this time.

12 DR. COHEN: Every time I've been there,
13 there have always been two people in SHU. And
14 there's in four, how many different housing areas
15 are they in?

16 MS. PRESSLEY: Three.

17 DR. COHEN: Three. So there's, there's,
18 and how many ACS staff are there in the midnight,
19 in the evening hours, in each --

20 MR. ROCHE: Well, we have a total of 187
21 and on the night shift, uh, the overnight, I'm
22 really not sure what the exact number is, Chuck?

23 MR. CHARLES PARKINS: It'll vary from
24 day to day but we could have anywhere between

1 February 11, 2020

2 three to five.

3 DR. COHEN: In each hall, in each hall.

4 MR. ROCHE: Oh, in each hall. I thought
5 you were --

6 MR. PARKINS: Correct, in each hall.

7 DR. COHEN: So why can't the doors be
8 left open and people who need to go to the
9 bathroom, which would be a lot less frequently
10 than people on this stage.

11 MR. ROCHE: I mean I think that --

12 DR. COHEN: Why can't, for the rare time
13 when this is necessary, why can't they go to the
14 bathroom without asking permission?

15 MR. ROCHE: Yeah, I know this was raised
16 before. I mean first of all, I'd just like to say
17 that there has been no indication that there's a
18 problem with responding promptly to requests for
19 the bathrooms.

20 DR. COHEN: I'm familiar.

21 MR. ROCHE: This is something that we've
22 been auditing closely, we've been watching it,
23 we've been working with our staff to ensure that
24 they're tracking this and paying attention to it.

1 February 11, 2020

2 And it is how we have historically operated our
3 facility. So this is not new to us. And I don't
4 believe that there is any problem there. In spite
5 of the fact that these, the staffing ratios are
6 as Chuck described and that we are well staffed
7 around the clock in our housing units, there is
8 still concern that leaving doors open at night
9 when kids are asleep could present a safety risk
10 of youth on youth.

11 This is something that we talked with
12 the Nunez Monitors about as well. They reiterated
13 that they've seen no problems in ensuring access
14 to the bathrooms. This is not something that has
15 been raised with them. And frankly, they too,
16 thought that the security issues were such that
17 I'm not sure they would support it either.

18 DR. COHEN: They also wanted to have
19 pepper spray available, the Nunez Monitor.

20 MR. ROCHE: As to the leaving of doors
21 unlocked at night, I just don't think that from a
22 security standpoint it's the best position.

23 DR. COHEN: I understand that this is a
24 national standard that you have with the

1 February 11, 2020

2 requirement that it be answered within five
3 minutes, but it seems to be a contradiction to
4 your other statement about normality and the
5 creation of a normalized environment for these
6 young people, that they shouldn't have to say
7 please can I use the bathroom when they're 16,
8 17.

9 MR. ROCHE: Understood.

10 MS. SHERMAN: Thank you.

11 MR. STANLEY RICHARDS: Question,
12 congratulations on the promotion, well deserved.
13 Can you talk about how you made it work? What
14 were the elements that went into going from the
15 chaos of the transition to where we're at today,
16 where you can talk about how it's operating,
17 where audits verify the good work? And this is a
18 DOC and ACS question. It's like how did y'all,
19 what are the elements, because I think this is an
20 opportunity as you said, Jim, that we ought to
21 take lessons learned, right.

22 MS. PRESSLEY: So it took a lot of
23 training.

24 MR. RICHARDS: Training on -- with

1 February 11, 2020

2 staff?

3 MS. PRESSLEY: Training with staff,
4 because coming from Rikers Island and moving to
5 Horizon, it was something different. Supporting
6 staff, the management team, captains on up to the
7 ADWs, I had four ADWs on site. We had to adapt to
8 some of ASC procedures of reporting. We never
9 reported on MCCU and other outside agencies. We
10 learned that. They came in, sat with us and
11 taught us the reporting mechanisms, so just, I
12 believe the collaboration working together
13 assisted us, and then getting to know the
14 population, that was most important.

15 MR. RICHARDS: I think that was a big
16 thing. When I went and I went to the housing
17 areas, they all knew you.

18 MS. PRESSLEY: Yes.

19 MR. RICHARDS: And said how often you
20 came and you talked to them and that was a big
21 deal when I went, they was talking about the
22 relationship.

23 MS. PRESSLEY: I was the parent for 18
24 months.

1 February 11, 2020

2 MR. TINO HERNANDEZ: I actually agree,
3 although I hadn't visited, I heard, I got the
4 same feedback about your leadership at the
5 facility. Initially, and I remember all the
6 stories that came out in the news and the papers
7 and you overcame all of those. In the beginning
8 was a mix of ACS staff, it's hard for me to say
9 that, because I ran this place and it wasn't part
10 of ACS at the time. But it was ACS staff and
11 corrections staff working jointly, right?

12 MS. PRESSLEY: Yes.

13 MR. HERNANDEZ: That's the way?

14 MS. PRESSLEY: Yes. We didn't have the
15 ACS YDS but we had program counselors and stuff
16 like that. But once we got in the building and we
17 got everything -- I just believe that no one
18 thought that we would be able to successfully
19 transfer those youth over before October 1. So
20 small things weren't prepared, but once we got
21 them together and the kids settled down, they
22 were happy.

23 MR. HERNANDEZ: Yeah, no, I agree. I
24 think they was skepticism about whether or not

1 February 11, 2020

2 this would work, so again, I commend you in the
3 work. I'm going to ask you to sort of answer a
4 couple of questions because I got confused with
5 the alphabet city and the acronyms. How many
6 people in Crossroads have been moved over to
7 Horizon?

8 MR. ROCHE: So far 11 youth from
9 Crossroads have moved over. There are 11 there
10 today.

11 MR. HERNANDEZ: What's the capacity of
12 Horizon now?

13 MR. ROCHE: So the capacity, the overall
14 capacity hasn't changed. But --

15 MR. HERNANDEZ: But what is it?

16 MR. ROCHE: I'm sorry, it's always been
17 106.

18 MR. HERNANDEZ: Okay.

19 MR. ROCHE: And the halls that were
20 certified as --

21 MR. HERNANDEZ: Can, can, let me just
22 ask a couple of -- what's the actual capacity
23 now, how many people, what's the census now?

24 MR. ROCHE: Oh, total of 24.

1 February 11, 2020

2 MR. HERNANDEZ: So what is the
3 difference between the younger people and the
4 older, older people that are now there?

5 MR. ROCHE: You mean in terms of how
6 they are managed?

7 MR. HERNANDEZ: No. Just in terms of
8 numbers.

9 MR. ROCHE: I'm not sure I understand
10 the question. I mean the difference is a legal
11 status, that the pre-RTA kids are technically
12 adults.

13 MR. HERNANDEZ: RTA meaning --

14 MR. ROCHE: The RTA, prior to the
15 October 1st of 2018.

16 MR. HERNANDEZ: Okay. So how many of
17 them are there, and then how many younger people
18 are there, this is my question.

19 MR. ROCHE: They're all basically the
20 same age. They're all about 17.

21 MS. PRESSLEY: Thirteen gap year 17 and
22 11 AOs,

23 MR. HERNANDEZ: I'm sorry?

24 MS. PRESSLEY: Thirteen gap year 17s.

1 February 11, 2020

2 MR. HERNANDEZ: Okay.

3 MS. PRESSLEY: And 11 AOs.

4 MR. HERNANDEZ: Okay. Now you said you
5 have discreet halls for the younger, the younger
6 kids, right?

7 MR. ROCHE: Yes.

8 MR. HERNANDEZ: Right. How about
9 programming? Do they program together or
10 separately, how does that work.

11 MR. ROCHE: No.

12 MS. PRESSLEY: They program separately.

13 MR. HERNANDEZ: They do. So education,
14 for instance, the younger people have access to
15 that and the older kids have access to that as
16 well?

17 MS. PRESSLEY: All the residents have
18 access to education.

19 MR. HERNANDEZ: Okay. But it's separate?

20 MS. PRESSLEY: It's mandated, yes. So
21 they have, we have three different sections of
22 the school. We have a main, we have the first
23 floor and we have the second floor, west wing. So
24 we can utilize three different areas to separate

1 February 11, 2020

2 them.

3 MR. HERNANDEZ: Okay. Thank you. That's
4 very helpful. I'm just trying to understand. And
5 I think we should both go out.

6 MR. RICHARDS: Yeah, we should.

7 MR. HERNANDEZ: We'll go out, we'll go
8 and take a look at it.

9 MS. PRESSLEY: Okay.

10 MR. HERNANDEZ: Again, I commend you for
11 your hard work. You've done a great job. I don't
12 know if you can answer this question, but what's
13 the plan for Crossroads? Or is that --

14 MR. ROCHE: Our plan is to rebalance our
15 system. As I said a moment ago, there are only 26
16 young people at Horizon today. And I think our
17 population at Crossroad is about 70. We want to
18 rebalance that system in the way it should be. So
19 the expectation is that slowly we will continue
20 to move AOs into Horizon as that, as those
21 remaining 13 kids --

22 MR. HERNANDEZ: AO is what? What does
23 that mean?

24 MR. ROCHE: An adolescent offender. I'm

1 February 11, 2020

2 sorry, it was a status that was created as a part
3 of Raise the Age. It's a legal status that was
4 created for young people as part of Raise the
5 Age. Of the remaining 13 young people that are
6 pre-RTA who either came from Rikers or are a part
7 of that gap year 17 population, that number is
8 going to continue to decline.

9 MR. HERNANDEZ: Okay.

10 MR. ROCHE: And I think we're expecting
11 that number will diminish to zero around July.

12 MR. HERNANDEZ: So then, you're not
13 aware of any particular plan for Crossroads, it's
14 going to remain operational?

15 MR. ROCHE: Oh, yes.

16 MR. HERNANDEZ: Okay. Thank you.

17 MS. SHERMAN: Thank you. We're going to
18 move to vote on the four variances. We're going
19 to start with the variance regarding dry cells
20 and it has already been presented by ACS, so I
21 believe I can ask, will a board member move to
22 vote on the requested six month variance to allow
23 the department to house pre-Raise the Age youth
24 in single occupancy dry cells, that is cells that

1 February 11, 2020

2 do not have either a toilet or a sink.

3 MR. HERNANDEZ: So moved.

4 MS. SHERMAN: Thank you. I will open the
5 floor for discussion. If there are any further
6 comments. Okay. And I believe that there are
7 existing conditions to the variance. Am I
8 correct?

9 MS. MARGARET EGAN: Yes.

10 MS. SHERMAN: So, the next step is that
11 we need a motion and a second to renew the
12 existing conditions.

13 MR. HERNANDEZ: Move.

14 MR. RICHARDS: Second.

15 MS. SHERMAN: Okay. And I will call a
16 vote on that. Mr. Regan?

17 MR. MICHAEL REGAN: Yes.

18 MS. SHERMAN: Dr. Safyer?

19 DR. SAFYER: Yes.

20 MR. RICHARDS: Yes.

21 MR. HERNANDEZ: Yes.

22 MR. PERRINO: Yes.

23 MR. FRANCO: Abstain.

24 DR. COHEN: Yes.

1 February 11, 2020

2 MS. SHERMAN: I vote yes, by a unanimous
3 vote, we have renewed the existing conditions.
4 Would any board member like to propose any
5 further conditions? With that, we can move to a
6 motion and a second and a vote on the variance
7 with the approved conditions.

8 DR. SAFYER: Move we [unintelligible]
9 [01:13:14].

10 MR. RICHARDS: Second.

11 MS. SHERMAN: Okay. Mr. Regan?

12 MR. REGAN: Yes.

13 MS. SHERMAN: Dr. Safyer?

14 DR. SAFYER: Yes.

15 MS. SHERMAN: Mr. Richards?

16 MR. RICHARDS: Yes.

17 MS. SHERMAN: Mr. Hernandez?

18 MR. HERNANDEZ: Yes.

19 MR. PERRINO: Yes.

20 MR. FRANCO: Abstain.

21 DR. COHEN: No. I think any 16- or 17-
22 year shouldn't have to ask permission to go to
23 the bathroom.

24 MS. SHERMAN: I vote yes, so by a vote

1 February 11, 2020

2 of 6 in favor, one opposed and one abstention,
3 the variance with conditions is renewed. I will
4 move to the second variance request, which is
5 for, regarding law library services. The variance
6 request has been presented by ACS. Will a board
7 member move to vote on the requested six month
8 variance which allows the department to house
9 pre-Raise the Age youth in a facility that does
10 not have a properly equipped and staffed law
11 library.

12 MR. REGAN: Just before we go there, I'd
13 like to -- you spent a lot of time talking to us
14 about this law library when this first came up.
15 It seems to be working well. And we're going to
16 vote on something else that seems to be
17 complicated on the law library. So I want to
18 revisit your experience when we get to the next
19 item.

20 MS. SHERMAN: Okay. So, do we have a
21 motion to, I guess we have, have we moved to open
22 the floor for discussion? I don't think we have,
23 so why don't we have a motion to open the floor
24 for discussion.

1 February 11, 2020

2 MR. RICHARDS: Motion.

3 MS. SHERMAN: Okay. Is there a second?

4 DR. SAFYER: [unintelligible]

5 [01:14:55].

6 MS. SHERMAN: Thank you. Is there any
7 further discussion? Okay. How about a motion and
8 a second to vote to renew existing conditions?

9 DR. COHEN: Moved.

10 MS. SHERMAN: [unintelligible]

11 [01:15:15].

12 MS. SHERMAN: Thank you. We'll call a
13 vote on the existing conditions. Mr. Regan?

14 MR. REGAN: Yes.

15 MS. SHERMAN: Dr. Safyer?

16 DR. SAFYER: Yes.

17 MS. SHERMAN: Mr. Richards?

18 MR. RICHARDS: Yes.

19 MR. HERNANDEZ: Yes.

20 MR. PERRINO: Yes.

21 MR. FRANCO: Abstain.

22 DR. COHEN: Yes.

23 MS. SHERMAN: Yes, by a vote of seven in
24 favor, one abstention, the conditions have been

1 February 11, 2020

2 renewed. Are there any further conditions that
3 members would like to propose?

4 MS. SHERMAN: With that, we can move to
5 a motion and a second and a vote on a variance
6 with all of the approved conditions. Do I have a
7 motion?

8 MR. RICHARDS: Motion.

9 MS. SHERMAN: Thank you.

10 DR. SAYFER: Second.

11 MS. SHERMAN: Thank you. Vote, Mr.
12 Regan?

13 MR. REGAN: Yes.

14 MS. SHERMAN: Dr. Safyer?

15 DR. SAFYER: Yes.

16 MR. RICHARDS: Yes.

17 MR. HERNANDEZ: Yes.

18 MR. PERRINO: Yes.

19 MR. FRANCO: Abstain.

20 DR. COHEN: Yes.

21 MS. SHERMAN: Yes, by a vote of seven in
22 favor and one abstention, the variance with all
23 conditions is approved. We will move to vote on
24 the third variance regarding correspondence which

1 February 11, 2020

2 has been presented by ACS. Will a board member
3 move to vote on the request six month variance to
4 allow the department for pre-Raise the Age youth
5 to identify individuals with whom mail
6 correspondence is prohibited or restricted based
7 on safety and security of the youth, and/or
8 consistent with any existing court order? Can I
9 have a motion to open the floor for discussion?

10 MR. RICHARDS: Motion to open.

11 MS. SHERMAN: With a second?

12 MR. HERNANDEZ: [unintelligible]

13 [01:17:00].

14 MS. SHERMAN: Thank you. Is there any
15 discussion or questions regarding this?

16 MR. RICHARDS: Just one question. What
17 impact, how many people have been restricted in
18 terms of the mail?

19 MR. ROCHE: Oh, there are only three
20 young people who have any, who have any court
21 ordered restrictions on communications --

22 MR. RICHARDS: Communication.

23 MR. ROCHE: -- that we are monitoring at
24 the facility.

1 February 11, 2020

2 MR. RICHARDS: Is that pre-, the three
3 on the pre, or three --

4 MR. ROCHE: This is of the pre-RTAs.

5 MR. RICHARDS: Thank you.

6 MS. SHERMAN: Thank you, there are no
7 existing conditions to this variance, so we can
8 move to a vote on the variance. Do I have a
9 motion for a vote on the variance?

10 DR. SAFYER: [unintelligible] [01:17:52]
11 Thank you, and a second?

12 MR. RICHARDS: Second.

13 MS. SHERMAN: Thank you. Mr. Regan?

14 MR. REGAN: Yes.

15 MS. SHERMAN: Dr. Safyer?

16 DR. SAFYER: Yes.

17 MR. RICHARDS: Yes.

18 MR. HERNANDEZ: Yes.

19 MR. PERRINO: Yes.

20 MR. FRANCO: Abstain.

21 DR. COHEN: Yes.

22 MS. SHERMAN: Yes, by a vote of seven to
23 approve and one abstention, the variance is
24 approved. And finally, we'll move to a vote on

1 February 11, 2020

2 the variance regarding the nursery program. Will
3 a board member move to vote on the requested six
4 month variance to allow the department to house
5 the pre-Raise the Age youth in a facility that
6 does not have childcare and a nursery program for
7 youth who give birth while in custody?

8 DR. SAFYER: Vote the item.

9 MR. HERNANDEZ: Second.

10 MS. SHERMAN: Thank you. Is there any
11 discussion, any questions?

12 Yeah, I'd like to say something. I mean
13 I was against this in the beginning and I voted
14 no, but there are, you kept your word and you did
15 a great job [unintelligible] [01:18:53] we had a
16 woman [unintelligible] [01:18:56] and not being
17 able to visit their babies, my major concerns on
18 my first vote and you kept your word, ASC kept
19 their word and I think you did a great job. I
20 just want to put that out there, because
21 initially I wasn't for that at all.

22 MR. ROCHE: Thank you.

23 MR. PERRINO: But I seen that you and
24 everybody did what they were supposed to do and

1 February 11, 2020

2 we [unintelligible] [01:19:16], be with their
3 babies, so I vote yes for [unintelligible]
4 [01:19:20].

5 MS. SHERMAN: Thank you. There are
6 existing conditions to this variance, so I need a
7 motion and a second and a vote to renew the
8 existing conditions.

9 DR. SAFYER: [unintelligible]
10 [01:19:31].

11 MS. SHERMAN: Thank you.

12 MR. RICHARDS: Second.

13 MS. SHERMAN: Thank you. Mr. Regan?

14 MR. REGAN: Yes.

15 MS. SHERMAN: Dr. Safyer?

16 DR. SAFYER: Yes.

17 MR. RICHARDS: Yes.

18 MR. HERNANDEZ: Yes.

19 MR. PERRINO: Yes.

20 MR. FRANCO: Abstain.

21 DR. COHEN: Yes.

22 MS. SHERMAN: And I approve, so by a
23 vote of seven in favor and one abstention, the
24 existing conditions are renewed. Would any board

1 February 11, 2020

2 member like to propose any further conditions?

3 And with that --

4 MR. ROCHE: Excuse me. Can I just
5 confirm that these are all, all of these
6 variances are effective as of today?

7 MS. SHERMAN: Yes. With that, we can
8 move to a motion and a second and a vote on the
9 variance with all of the approved conditions.

10 MR. RICHARDS: Motion.

11 MS. SHERMAN: Thank you.

12 DR. SAFYER: [unintelligible]

13 [01:20:21].

14 MS. SHERMAN: Mr. Regan?

15 MR. REGAN: Yes.

16 MS. SHERMAN: Dr. Safyer?

17 DR. SAFYER: Yes.

18 MR. RICHARDS: Yes.

19 MR. HERNANDEZ: Yes.

20 MR. PERRINO: Yes.

21 MR. FRANCO: Abstain.

22 DR. COHEN: Yes.

23 MS. SHERMAN: Yes, by a vote of seven to
24 approve and one abstention, the variance with

1 February 11, 2020

2 conditions is approved. And now we're going to
3 move into the next variance on the agenda which
4 is the variance regarding separation status.

5 MS. EGAN: The department has submitted
6 a six month variance renewal request seeking
7 permission to continue to place people into
8 separation status of highly restrictive unit
9 after a positive body scan or a refusal to scan.
10 The board approved a three month variance at its
11 November public meeting with a commitment to
12 closely monitor implementation of separation
13 status and body scanners. In January, the board
14 published a report on early implementation of
15 this new tool. The report made 22 recommendations
16 to the department on CHS, on improvements to body
17 scanner and separation status practice and
18 policy. DOC and CHS have each responded to these
19 recommendations in documents that are now posted
20 on our website.

21 At our January meeting, the report -- as
22 we noted, at the January meeting, the report
23 found that DOC staff that had not completed the
24 required radiation safety and body scanner

1 February 11, 2020

2 operation training were operating radiation
3 equipment. When we notified the department of
4 these findings, they took immediate corrective
5 action, including issuing a security memo
6 reiterating the requirement that only trained
7 staff use the body scanner, prioritizing intake
8 staff for immediate training, revising the
9 training curriculum and referring results of
10 their internal investigation of the issue to the
11 investigation division.

12 They reported on these corrective
13 actions at January's public meeting. In advance
14 of today's meeting, board staff conducted a new
15 audit of all body scans conducted from January
16 18th to January 24, 2020. The audit found that
17 DOC staff who have not completed all required
18 training continue to operate scanners and approve
19 separation status and removals.

20 We found that 15 percent of the scans
21 were conducted by DOC staff who had not completed
22 all the required training, 51 percent of the body
23 scans were supervised by DOC staff who had not
24 completed the training in both radiation safety

1 February 11, 2020

2 and body scanner operations. Additionally, since
3 the department's corrective actions on January
4 7th, there have been seven placements into
5 separation status that were initiated by
6 untrained staff and ten removals from separation
7 status that were initiated by untrained staff.

8 These are serious problems. The use of
9 body scanners by untrained staff creates a risk
10 of radiation exposure to staff and people in
11 custody and the potential for misinterpretation
12 in scans. Again, false negatives undermine the
13 department's ability to use scanners effectively
14 as a tool to identify contraband, while false
15 positives lead to unnecessary placement in
16 separation status. Misuse of this tool threatens
17 its efficacy as a violent prevention measure and
18 the continued disregard for the rules and
19 regulations, raise doubts about the department's
20 ability to manage these potentially dangerous
21 machines.

22 The department committed to the board
23 and to the state legislature that they could
24 responsibly operate the body scanners on people

1 February 11, 2020

2 in custody and DOC must make immediate changes to
3 restore confidence that they can use body
4 scanners safely and effectively.

5 As Jackie noted earlier, through January
6 there have been 64 placements in separation
7 status. That's a mean of nine placements per
8 month. Our updated analysis of December and
9 January placements includes a number of
10 additional findings. There was an increased rate
11 of contraband recovery from placements in
12 separation status. Contraband was recovered from
13 32 percent of the 19 placements in December and
14 January, compared to 11 percent of the 45 percent
15 placements from July to November 2019. The mean
16 length of placement in December and January was
17 35 hours, around five hours longer than July to
18 November of 2019. There were two removals for
19 medical reasons, there were two placements that
20 lasted longer than 72 hours, one for five days
21 and 16 hours, the other for four days and 17
22 hours.

23 While the department did send the board
24 a plan for moving each person out of separation

1 February 11, 2020

2 status, each plan used the same boilerplate
3 language. Per DOC logbook, recreation was not
4 afforded to these two people with extended
5 placements. Per the DOC logbook, daily scans were
6 not offered in two instances. CHS conducted daily
7 medical rounds in the units. And we will now ask
8 the department and CHS to address the board's
9 findings and present its variance request.

10 MR. KENNETH STUKES: Yes, good morning.

11 MS. SHERMAN: Good morning.

12 MR. STUKES: First, I would like to
13 start by stating that the department took the
14 finding with regards to staff operating the body
15 scanners without being properly trained in
16 radiation safety and energy variation very
17 seriously. Upon the department being alerted of
18 the first issue of staff operating the body
19 scanners without first being properly receiving
20 both parts of the training, we took an immediate
21 action to address those issues. We launched an
22 immediate internal investigation to determine
23 staff involved and referred [unintelligible]
24 [01:26:09] this to our investigation division for

1 February 11, 2020

2 further investigation.

3 The investigation is ongoing as there's
4 a protocol as video has to be reviewed, and staff
5 have to be interviewed. We issued a security
6 memorandum, as you stated, to all the facility
7 leadership reiterating the policy that only
8 appropriately trained staff who may operate the
9 body scanners and staff who have been given a
10 credentials login. We further reiterated to staff
11 that they must not share their login credentials.
12 We provided additional image evaluation training
13 to all the staff who's assigned to OSIU, which is
14 our operations security intelligence unit,
15 including the assistant deputy wardens at
16 facilities that has the body scanners in
17 operation.

18 After that initial notification, we did
19 an internal audit on a random date, and we found
20 that we were 98.2 percent compliant with our
21 staff operating the body scanners after that
22 alert. However there were one instance that we
23 found a person who had operated the scanner
24 without receiving the proper training and that

1 February 11, 2020

2 was turned over to our investigation division.

3 While in our first investigation
4 process, the board conducted a second
5 investigation audit regarding the utilization of
6 our body scanners by persons who have not
7 received all of the training. And again, the
8 department took an immediate response to that
9 issue. The chief of the department issued a
10 department wide teletype on February 4th, which
11 was to be read at 28 consecutive roll calls, the
12 teletype reiterated the requirements that all
13 scanner operators use their own login credentials
14 and are properly trained.

15 A new piece to this teletype was the
16 additional training to the tour commanders who
17 were on tour supervising the staff doing the
18 operation of the body scanners. At this point,
19 the teletype directed that the tour commander on
20 duty must give authorization to the staff member
21 to operate the body scanner prior to any body
22 scanning taking place.

23 Secondly, the teletype states that the
24 identified failure to comply with the teletype

1 February 11, 2020

2 orders and any unauthorized use of the scanners
3 will result in staff discipline for all staff
4 including the on-duty tour commander. With
5 regards to the login credentials, anyone found to
6 have used the logins of another individual, the
7 login credentials were reset.

8 We posted multiple signs on the scanners
9 with information pertaining to training
10 requirements for the scanner operators, we
11 circulated body scanner talking points to the
12 facility management team, that they could use
13 during roll call briefings and at internal
14 supervisory meetings. Again, we committed to
15 conducting weekly audits of training compliance.

16 With regard to a question prior, so the
17 department maintains a list of all staff who have
18 received the appropriate training to operate
19 their body scanners, through our developmental
20 and training staff. We maintained a list of all
21 staff who are trained in the areas of the body
22 scanners, where the facilities have body scanners
23 in operation. We provided that listing to the
24 management team or facility as well as we

1 February 11, 2020

2 committed to providing updated training lists to
3 the board to commence with their audits. So, we
4 will continue to provide an updated list upon
5 request, and as stated, the department has
6 additionally posted a list of trained facility
7 staff in the areas of the scanner, and the list
8 will be updated as necessary.

9 DR. SAFYER: Question. And I appreciate
10 it.

11 MR. STUKES: You're welcome.

12 DR. SAFYER: How often do we check to
13 see that the person's been trained, or that
14 there's a breach.

15 MR. STUKES: So, there's an updated list
16 that's provided to the facility management team.
17 That list is the [unintelligible] [01:30:47] body
18 scanners are in operation, so the part of
19 recommitting to ensure that the person only
20 operate the body scanner after receiving the
21 proper training is the tour commander who have
22 access to this list must give authorization to
23 the person to operate the body scanner. So the
24 tour commander being a higher level of

1 February 11, 2020

2 management, we are confident that he or she, upon
3 giving authorization to a person to operate the
4 scanner will utilize the provided list to ensure
5 that that person is listed as receiving their
6 required training.

7 DR. SAFYER: But how frequently do we
8 look at whether or not there was even one breach.
9 In other words, I understand, I was certain that
10 you were going to say what you said and that
11 makes sense. Are we looking to see if we're, that
12 it's working?

13 MR. STUKES: I would that our efforts to
14 address --

15 MS. HAZEL JENNINGS: So good morning. So
16 I just want to make it clear in what Chief Stukes
17 is saying, so that the tour commander has the
18 final authority to allow anyone who has
19 previously been trained and is on the list to
20 utilize the body scanner live time and then
21 thereafter, we have put together a weekly audit
22 to ensure that everyone who utilizes --

23 DR. SAFYER: That's my question.

24 MS. JENNINGS: -- has been on the list

1 February 11, 2020

2 and trained, so that we can conduct our own
3 audits and investigation and that we have taken
4 it serious.

5 MR. REGAN: How many people have been
6 trained and how long does the training take?

7 MS. JENNINGS: So I'm going to let Chief
8 Stukes -- I don't have that list of persons who
9 are trained because we get it weekly, so there's
10 got to be hundreds of people. And it's ongoing.

11 MR. REGAN: And how long does the
12 training take?

13 MS. JENNINGS: So it's two parts. Do you
14 want to --

15 MR. STUKES: Yeah, it's two parts.

16 MS. JENNINGS: -- say how many days each
17 one is?

18 MR. STUKES: Right. So it's a two day
19 training. It's just a part of body, the image
20 evaluation, radiation safety and training part,
21 and then it's the image evaluation.

22 MR. REGAN: And then who are the
23 trainers? Are they medical professionals, are
24 they --

1 February 11, 2020

2 MR. STUKES: No, they're members of our
3 training academy.

4 MS. JENNINGS: So we initially had the
5 vendor come out to train trainers to train it,
6 and then they're continuing the training with the
7 assistance of the actual vendor.

8 MS. SHERMAN: Dr. Cohen?

9 MR. HERNANDEZ: I just want to ask a
10 simple question. When you say that someone has to
11 have a login, the scanner requires a login
12 number?

13 MR. STUKES: Well, each person, upon
14 being trained, is issued an account, which has a
15 password. So to log on to the body scanner, you
16 have to log in the password that associated with
17 an IT account.

18 MR. HERNANDEZ: So wouldn't that create
19 accountability that someone could not log in if
20 they weren't trained?

21 MR. STUKES: No, so, each time a person
22 has been given the credentials to utilize the
23 body scanner, that means that they are authorized
24 to use it. However, there have been staff members

1 February 11, 2020

2 found in the audits who have shared their login
3 credentials, who have been authorized --

4 MR. HERNANDEZ: Okay.

5 MR. STUKES: -- and given them to
6 persons who have not been trained, authorized to
7 use the scanner.

8 MR. HERNANDEZ: So you're going to deal
9 with that, create some accountability that
10 there'll be consequences if you share your number
11 with someone else.

12 MR. STUKES: Yeah, so not only that the
13 person who have utilized the body scanner and
14 conducted image review without properly being
15 trained, but the person who's login credentials
16 has been utilized is also subject to discipline.

17 MR. HERNANDEZ: Okay. How many people in
18 separation status today?

19 MR. STUKES: There's zero in separation
20 status today, sir.

21 MR. HERNANDEZ: What is the average
22 length of stay in separation status?

23 MR. STUKES: The average length is about
24 1.5, 1.27 days.

1 February 11, 2020

2 MR. HERNANDEZ: Okay. And if I'm
3 understanding you correctly, the tour commander
4 is the one that oversees the use of the scanners?

5 MR. STUKES: They initial policy did not
6 require that the tour commander be trained or the
7 tour commander have to give authorization for the
8 person to utilize the body scanner. So after the
9 second audit, the chief of the department which
10 issued a teletype, which give clear direction
11 that only that the on duty tour commander from
12 this juncture will authorize the use of the body
13 scanner during his or her tour.

14 MR. HERNANDEZ: Okay. Thank you.

15 MR. STUKES: You're welcome.

16 MS. SHERMAN: Dr. Cohen?

17 DR. COHEN: Yes, have there ever been
18 any sanctions yet against the staff, supervisory
19 staff?

20 MR. STUKES: I'm sorry?

21 DR. COHEN: Have any supervisory staff
22 been sanctioned because of allowing the --

23 MR. STUKES: So the investigation is
24 ongoing through our investigation division. There

1 February 11, 2020

2 is a protocol, so several staff members have been
3 MEO-16, which is our policy. With regards to the
4 investigative division, they have to do a cross
5 reference of positive and negative scans and
6 review of search room, which requires some time.

7 DR. COHEN: I noticed that there were
8 people staying up to five days now.

9 MR. STUKES: Yes, so, uh --

10 DR. COHEN: Which is what we thought
11 would happen, which is why we're, I mean I want
12 to say actually before that, I mean, although I
13 do think your process of declaring emergencies
14 after emergencies initially was the wrong way to
15 go, the process to date and your responsiveness
16 and working together with the board and helping,
17 providing us with data and we helping you analyze
18 the data has been a good one. Initially it
19 started off fairly poorly.

20 MR. STUKES: Thank you.

21 DR. COHEN: And I do think that the
22 board's concerns about the oppressiveness of this
23 extreme solitary were well founded and you have
24 taken a lot of steps to improve that. It's my

1 February 11, 2020

2 understanding from staff reviews that people are
3 not being offered scans on a daily basis,
4 although your policy says that they should be. Do
5 you have a -- we told you that. What's your
6 response?

7 MR. STUKES: I would say that there is a
8 whole lot of high level of supervising staff that
9 makes tours on those units. And with regards to
10 the persons who are being transferring to those
11 units, they are given a verbal orientation. And
12 right now, the orientation form is in English. In
13 addition, those persons are provided with a copy
14 of the orientation which tells them of all the
15 services that they are entitled to while they are
16 in separation status, in addition to, there are
17 telephone numbers to oversight that, and to
18 counsel and to community based services that they
19 have unlimited access, inclusive of their legal
20 counsel.

21 DR. COHEN: And that says you are
22 eligible for daily scan?

23 MR. STUKES: Yes.

24 DR. COHEN: And are you going to be

1 February 11, 2020

2 looking at the relative efficacy sensitivity
3 specificity of this process relative to the other
4 mechanisms that you have, boss chair,
5 magnetometers, [unintelligible] [01:39:10] wands,
6 et cetera?

7 MR. STUKES: Well, I would state that
8 prior to the department being able to utilize the
9 body scanners, we resorted on other sources of
10 security devices, the handheld trans frisker, the
11 magnetometer and the boss chair. However, upon
12 review of several incidents, post-incident, pre-
13 incidents, we saw that individuals commit acts of
14 violence are in possession of contraband, that we
15 had great confidence that they had on their
16 person, that they secreted in their bodies, that
17 we had no ability to detect that they remain in
18 procession of the contraband prior to, because of
19 the fact that there is so much that we could do
20 legally with the guards to searching of persons
21 in custody.

22 With regards to the body scanner, it is
23 a tool that gives us the ability to state with
24 confidence that a person is concealing contraband

1 February 11, 2020

2 on their person, or have secreted contraband
3 inside their body cavity.

4 DR. COHEN: It would decrease the use of
5 strip searches?

6 MR. STUKES: So that does not allow us
7 to deviate from our existing policy with regards
8 to strip searching of persons in custody.

9 However, I would state that the body scanner as
10 it pertains to contraband discovery within this
11 department has been an asset with regards to
12 contraband discovery and recovery. We have had
13 numerous of persons who before a body scan who
14 surrendered contraband without being placed in
15 separation status, in addition to numerous
16 persons who after receiving a positive body scan
17 surrendered contraband, again, resulting in no
18 placement in separation status.

19 DR. COHEN: Does the department have a
20 problem with notifying the board when someone is
21 placed in separation status without reason? You
22 have two reasons to put them in there, refuse to
23 scan or they have a positive scan. We're aware of
24 at least one episode and I'm sure there will be

1 February 11, 2020

2 other episodes where this will happen. I'm very
3 concerned about that, and I wonder if -- I
4 shouldn't be onerous, because it should never
5 happen.

6 MS. HEIDI GROSSMAN: Our understanding
7 is that we do provide documents to the board on a
8 regular basis, which includes the reason for
9 placement. So we are already, we already do that.
10 We comply.

11 DR. COHEN: Well, when you're aware that
12 someone is placed there without reason, what do
13 you do?

14 MS. GROSSMAN: We're not aware that that
15 has happened without reason. There's a reason.

16 DR. COHEN: It has happened.

17 MS. GROSSMAN: When someone is placed,
18 there -- our procedure requires that you document
19 the reason, and that --

20 DR. COHEN: But there are only two
21 reasons, right, that you can be there?

22 MS. GROSSMAN: Well, when there's a
23 positive body scan --

24 DR. COHEN: Or you've refused.

1 February 11, 2020

2 MS. GROSSMAN: Or there's been a
3 refusal, right.

4 DR. COHEN: But there has been one
5 person that have been sent there who did not, had
6 neither of those reasons.

7 MS. GROSSMAN: I would need to know more
8 about, and if you were to share that information
9 with us, we certainly will look into that and get
10 back to the board.

11 DR. COHEN: I believe we've shared that
12 with you.

13 MS. JENNINGS: So there are two reasons
14 a person can be placed in isolation. And the one
15 instance in which you are speaking to, there were
16 no one in isolation status, however, during the
17 emergency search, because of the intake that was
18 full, the emergency service unit put someone in
19 until there was room. But this person was not in
20 isolation status and this has been cleared up and
21 I have made it real clear that that housing area
22 is only designated as isolation and there are
23 only two reasons in which a person can go in. So
24 this should never happen.

1 February 11, 2020

2 DR. COHEN: Right. No, I agree chief and
3 I understand that that's what happens in the
4 Department of Corrections, rarely, but when there
5 are situations where you, where someone doesn't
6 know where to put someone there are other, just
7 exactly as you described, they'll be put in
8 places where they shouldn't be put, which is what
9 happened here. So you've said it can't happen
10 again, but my concern is that you let us know if
11 it's happening, because it's the nature of these
12 crisis situations --

13 MS. JENNINGS: So, I don't have a
14 problem with that, Dr. Cohen, at all.

15 MS. SHERMAN: Okay.

16 DR. COHEN: You, you don't think this
17 person was sent to --

18 MS. JENNINGS: I said I don't think it's
19 going to be an issue, and I don't have a problem
20 with making a notification.

21 MS. SHERMAN: Okay.

22 DR. COHEN: Okay.

23 MS. SHERMAN: Thank you.

24 DR. COHEN: That's great, thank you.

1 February 11, 2020

2 MR. RICHARDS: Chief, can you talk about
3 how many people turned in contraband before a
4 positive scan?

5 MS. SHERMAN: And can I just add to that
6 question, because I had a very similar question.
7 How, when those instances occur, how is that
8 documented?

9 MR. RICHARDS: Yes.

10 MS. SHERMAN: How and where is that
11 documented?

12 MR. STUKES: So we have in the body
13 scanner area a body scanner logbook. And there
14 are fields that kind of dictates the process. So
15 there are remark columns that states prior to a
16 body scan, before a body scan. So when a person
17 is subjected to be scanned by the body scanner,
18 the person, after having a conversation with the
19 correction officer, surrenders the contraband. So
20 we document that as a person surrendering
21 contraband before a body scan. So to date, the
22 data reports that there have been 18 persons who
23 have surrendered contraband items prior to a body
24 scan. So that is tracked by my office.

1 February 11, 2020

2 MS. SHERMAN: And that's 18 individual
3 people or 18 individual instances?

4 MR. STUKES: Eighteen individual
5 persons. And with regards to contraband recovered
6 after a positive body scan, that is where persons
7 who have complied with the body scanner process
8 and have received a positive image of some
9 foreign body and have surrendered contraband to
10 the correction officer, again resulting in no
11 placement in separation status. That number is
12 that 46.

13 MR. RICHARDS: Could you say that again?
14 I'm sorry, I didn't -- repeat that.

15 MR. STUKES: Persons who are subjected
16 to the body scanner, after having completed the
17 process and there is a positive image that the
18 person is either in possession of contraband or
19 concealing contraband in their body cavity, there
20 has been a total of 46 persons who have
21 surrendered contraband in that instance and who
22 have not been placed in separation status.

23 MR. RICHARDS: So that's not part of the
24 total 64? That's in addition to the 64?

1 February 11, 2020

2 MR. STUKES: No, that's inclusive of the
3 whole part, of persons who have in separation
4 status.

5 MR. HERNANDEZ: So there are 46 and 18
6 out of the 64?

7 MR. STUKES: Right, prior to and after,
8 so just to, just give some data with regards to
9 the different effects of what we have recovered
10 since being able to operate these machines is to
11 date, we have recovered 18 scalpels, nine hobby
12 blades, 19 razor blades.

13 MR. HERNANDEZ: I'm sorry, what was the
14 nine? I didn't hear that, I didn't quite catch
15 that.

16 MR. STUKES: Nine hobby blades. It's
17 similar to a razor.

18 MR. HERNANDEZ: It's like an arts tool,
19 right?

20 MR. STUKES: Yes, yes, similar, 25
21 sharpened metals, so we all have seen the
22 injuries that scalpels, sharpened metals and
23 blades can cause and the disfigurement it causes
24 people in custody. So, as an agency, we have the

1 February 11, 2020

2 responsibility to keep persons in custody safe,
3 our staff and members of the public that visit
4 our facility. So each time that we recover one of
5 these items, it is one less incident or act of
6 violence that we may have prevented a person in
7 custody receiving a mark that would last them a
8 lifetime.

9 MR. REGAN: This is spectacular, this is
10 what this board supported, this initiative, and
11 this is why this board supported the legislation
12 in Albany. We wrote to the speaker, we wrote to
13 the legislative leaders. That's a really, really
14 terrific statistic.

15 MR. PERRINO: Yeah, I'd like to add to
16 that too, just a correction to what you're said.
17 A lot of times I've noticed when you do have a
18 slashing in the jail, we don't get the razor,
19 because they pass it off quick. So just one razor
20 in, or one hobby in a jail system could cut
21 dozens of people, just one.

22 MR. STUKES: Agreed.

23 MR. PERRINO: And you guys are up to 64.
24 So I think you're making people safer. I think

1 February 11, 2020

2 there's, like Mike said, I mean this is something
3 we supported and it's very important that we get
4 these weapons out of the jails. I mean just one,
5 you never find it, right, so it's being used
6 several times, because the plan is with gang
7 members, they pass it on before we even get
8 there.

9 MR. STUKES: That's the different effect
10 of the body scanner.

11 MR. RICHARDS: So I think we probably
12 need to reconcile the data because when I look at
13 the report that we have, it says that six people
14 of the 19 who were placed between December and
15 January, contraband was recovered and five of the
16 45 people between July and November contraband
17 was recovered. You're saying that there was 45
18 people who you recovered contraband as a result
19 of --

20 MR. STUKES: As a result of positives,
21 46.

22 MR. RICHARDS: Forty-six?

23 MR. STUKES: As a result of positive
24 scans.

1 February 11, 2020

2 MR. RICHARDS: As a result of a positive
3 scan?

4 MR. STUKES: Yes, so --

5 MR. RICHARDS: Out of the 64 --

6 MR. STUKES: -- I would just like to add
7 that this data is updated as of today. I'm not
8 certain if that --

9 MR. RICHARDS: Ours is January.

10 MR. STUKES: Yeah, this is updated as of
11 today.

12 MS. JENNINGS: So we can provide you
13 with an updated copy.

14 MR. STUKES: A copy of the report.

15 MR. RICHARDS: Okay.

16 DR. COHEN: I have a question.

17 MR. STUKES: Yes, Dr. Cohen.

18 DR. COHEN: Your one day survey showed
19 98 percent training. Our survey covered a week
20 following your survey showing 11 or 12 percent
21 who were not, not being trained. So this is not a
22 solved issue yet. And I'm also concerned in terms
23 of the point you were just making Stanley, about
24 the differential rates of finding contraband. We

1 February 11, 2020

2 all find this device, and while I want it to be
3 safe for the staff --

4 MR. STUKES: Thank you.

5 DR. COHEN: I want it to be safe for the
6 people living there, and to, not to create a
7 terrible new solitary environment. But you are
8 having, as is the nature of any technology and
9 this one in particular, especially because of the
10 minimal training that's being provided, I'm not
11 saying it's the right amount or the wrong but
12 it's really minimal, that you're getting lots of
13 false positives and lots of false negatives. Now,
14 every test has false positives and false
15 negatives. As clinicians, as decision makers, we
16 all have to deal with that level of uncertainty.
17 But we also have to figure out why the rates are
18 so high.

19 And so the board has asked you, in our
20 report, we specifically asked you to engage in a
21 process where you'll have an external expert
22 review the false positives and false negative
23 scans so you'll know better whether there's a
24 training error, a training problem involved,

1 February 11, 2020

2 where there's a technology problem.

3 MS. JENNINGS: So, Dr. Cohen --

4 DR. COHEN: And you've rejected that, so
5 I [unintelligible] [01:52:07].

6 MS. JENNINGS: No, so, Dr. Cohen, Chief
7 Stukes spoke at the beginning, where he talked
8 about OSIU, which is the external from the
9 facility that have been trained, and it is his
10 responsibility and his teams to now look at those
11 scans the day after the scan. So if they're there
12 live time, they look at the scans. If it happens
13 on off hours or weekends, it's done and they have
14 access to look at these scans from a laptop, so
15 we have made measures to correct that gap.

16 DR. COHEN: Our request I believe was
17 for a non-DOC expert to engage in this review
18 process, not for an internal DOC review.

19 MS. SHERMAN: Thank you.

20 MS. JENNINGS: Okay. So that's something
21 we can discuss further --

22 DR. COHEN: Because the people who've
23 been --

24 MS. JENNINGS: -- if you would like.

1 February 11, 2020

2 MS. SHERMAN: Thank you.

3 MS. JENNINGS: I said that's something
4 we could discuss further if you would like.

5 DR. COHEN: Okay.

6 MR. RICHARDS: And you do that for every
7 scan that doesn't turn up contraband? Is there
8 like a protocol, so like --

9 MS. JENNINGS: So they're looking at
10 every scan.

11 MR. RICHARDS: Oh, every scan?

12 MS. JENNINGS: Every scan.

13 MS. SHERMAN: I just want to make one
14 clar- I'm going to try to make one clarification.
15 I think there is, it would be helpful to ensure
16 that our numbers are in sync, and so to look at
17 the data side by side. I do just want to clarify
18 that I believe the 46 number that was cited
19 regarding contraband recovered was a number that
20 reflected contraband that was recovered or
21 surrendered post-scan but pre-placement in
22 separation status.

23 MR. STUKES: Correct.

24 MS. SHERMAN: So the individual who

1 February 11, 2020

2 surrendered that contraband did not ever go to
3 separation status. The numbers I believe Mr.
4 Richards, that you were citing were based on
5 individuals who, from whom contraband was
6 recovered after having been placed in separation
7 status.

8 MR. RICHARDS: Got it.

9 MS. SHERMAN: Is that --

10 MR. STUKES: Right. So the number of
11 persons who have surrendered contraband after
12 being placed --

13 MR. RICHARDS: They don't even go.

14 MR. STUKES: -- in separation status is
15 13, right, with a total of 26 items recovered
16 from persons in separation status.

17 MS. SHERMAN: Thank you.

18 MR. RICHARDS: But the 46 is people that
19 didn't go?

20 MR. STUKES: Yes. That's the people who
21 did not go to separation status. So, that is, the
22 data is correct. And I would just like to add
23 that with regards to this unit, we as an agency,
24 we operate this unit in the most least

1 February 11, 2020

2 restrictive means possible. We have done, since
3 our last meetings, made major operational changes
4 to the unit. We've placed recreation equipment in
5 a designated location for the person after 48
6 hours to be afforded recreation. We have
7 installed tele-visits, so when we feel that a
8 person is just not safe and they don't go to
9 their court appearance, we request OCA to be
10 amenable to allow the person to have tele-visits
11 with their attorneys or for a court appearance or
12 for community service with family members through
13 Skype and things of that nature. We have begin to
14 allow persons in separation status to have loose
15 leaf paper, newspaper, they are afforded the
16 ability to request law library services and
17 things of that nature upon request.

18 With the assistance of the chief of the
19 department, we totally repainted the unit,
20 changed the lighting to a higher range of
21 lighting, painted inspirational quoting on the
22 wall to inspire people. However, separation is
23 not a place that we want people to stay in, with
24 regards to sometimes we as an agency extending

1 February 11, 2020

2 the four hours upon a refusal or a
3 [unintelligible] [01:56:06], it is the staff
4 utilizing methods of de-escalation and positive
5 engagement with the person in an effort to
6 recover the contraband so that the person does
7 not have to be placed in separation status,
8 especially after a response to taking immediate
9 action after, you know, a violent incident or we,
10 as body scanners shows us that a person is in
11 possession of a dangerous, contraband item.

12 MR. RICHARDS: Thank you, chief.

13 MR. PERRINO: You know, I initially saw
14 the area when we started going back and forth and
15 discussing policies, what should be done, what
16 shouldn't be done. And the phrase I've used was
17 dungeon. Okay. And people said oh, it's not a
18 dungeon, but you want to know something, it
19 looked really dark, it looked really, it did not
20 look like a place where we want to try to get
21 people out of. I've got to say within a two
22 months, I did go back and I did talk to the chief
23 and we spoke about different issues, and it's a
24 total different place. It's a place where, like

1 February 11, 2020

2 you said, it is brighter. I wish everybody -- I
3 wish you would have brought pictures to show what
4 we're talking about now.

5 MR. STUKES: Thank you.

6 MR. PERRINO: It's bright. There's
7 positive sayings on the wall, there is a perfect
8 area where there's a video conference booth
9 that's coordinated with the public libraries,
10 where individuals, if they do stay more than a
11 day and a half which they average, they can talk
12 to their family members, they can reach out, they
13 can go to court, they can speak to their judges
14 and stuff if the judge really needs to speak to
15 these people. So I think like going back and
16 forth with the board, like you know, the
17 department has really held up to the suggestions
18 that were given and to see it in real life, it
19 was kind of, I'd say it surprised the hell out of
20 me, because it went from something I would
21 imagine it would look like to something that was
22 really, you can have a problem with people
23 wanting to leave that place, because they're
24 safe, they're getting what they're supposed to

1 February 11, 2020

2 get, and quite honestly, it was the cleanest
3 place in the jail, I hate to say it. So, it was a
4 place where instead of it being where the normal
5 corrections would do like dark, and there's no
6 [unintelligible] [01:58:17] forget it, to like
7 all right we're really trying to work with you.

8 Going back, 27 years in the department,
9 in the very beginning, we used to put people in
10 cells with no water, so they couldn't get rid of
11 the weapon, and along with it, [unintelligible]
12 [01:58:29] just like all right, let's just put
13 them there, you know, let's get the weapon.
14 Because at the end of the day, what I think
15 everybody should be looking at if people aren't
16 safe, nothing else matters. If there are weapons
17 get into the jail, people are not safe. We're
18 talking about these individuals who've been
19 arrested, been detained and how they're figuring
20 out a way of getting a razor in because they
21 might not feel safe themselves. So they need
22 something where they need to protect themselves.

23 So if we could stop that, we're going to
24 stop the people who really feel like they've got

1 February 11, 2020

2 to carry a weapon to protect themselves because
3 no one is going to have a weapon. So if no one
4 has weapons, then they're not going to feel like
5 have to do it. Everybody carrying a weapon is not
6 a bad person. They just heard the stories and
7 they just want to try to protect themselves. You
8 know, so if people are unsafe, we get this kind
9 of culture. And if we can continue getting these
10 razors out, 64 people who would have brought
11 razors in, I think it would be a safer
12 environment and we can get to the place where we
13 want to be. I know it's going to take a lot of
14 time.

15 And just another thing I'd like to add.
16 Like a lot of people compare this to punitive
17 segregation. The only thing holding the detainee,
18 the person in this custody right now is the
19 positive scan.

20 MR. STUKES: And they have choice. They
21 have a choice to not be there.

22 MR. PERRINO: If they [unintelligible]
23 [01:59:40] it's their choice, they are totally
24 out. And I can see, the department don't want

1 February 11, 2020

2 people in this area. They don't. Let's get them
3 out. The 1.5 days great, the people that don't go
4 in is even better. But something that we need to
5 look at is we're getting these razors out of the
6 area and we're keeping people safe.

7 MR. STUKES: Yes.

8 MR. PREEINO: And like I said, 64
9 weapons that could have went in, times that by
10 how many numbers because we never get the weapons
11 when they utilize them. You know, so what number
12 would that look like. I've seen people's lives
13 change with a cut on their face, they've got to
14 go through the rest of their live just opened up.
15 And it's disheartening. I have children, you
16 know, by the grace of god, it could have been me.
17 You never know. You know, detention, these people
18 in our custody are not guilty, okay. So they
19 could go in a dangerous environment and it's up
20 to us, it's up to the department to keep them
21 safe.

22 MR. RICHARDS: I agree, we need to take
23 weapons out of the facilities, we need to make it
24 safe, but I think we've also got to keep our eye

1 February 11, 2020

2 on, there was, out of the 19 people, six weapons
3 were recovered. That means 13 people didn't have
4 anything, right. And should they be in
5 separation. And this is not a critique. Don't,
6 you don't even have to respond, chief.

7 MR. STUKES: I would like to.

8 MR. RICHARDS: Okay. But let me just
9 finish, right. It's not, it's not a critique of
10 right or wrong. I think we have to, I'm so glad
11 to hear that y'all are reviewing every scan,
12 because we have to get to a place where we are
13 getting better and better. And we clearly are.
14 What you did to the facility, the way you
15 brightened it up, we're getting better, right.
16 You're hearing our feedback, y'all are taking our
17 feedback, y'all are trying to work it. You
18 personally said you don't want to see people in
19 there. And by the way, people are moving out,
20 you're working your tail off to make sure people
21 aren't there.

22 Those are all really good things, but I
23 think we got to keep our eye on the prize. And
24 the prize is as little bit as we can, as

1 February 11, 2020

2 infrequently as we can, to separate and to have
3 people isolated, to make the jails safe, we need
4 to work on doing it. And y'all are doing it,
5 let's just keep getting better. So the question I
6 have is of those reviews you do, do you document
7 that, does the officer who did the scan, is he
8 involved, him or her involved in reviewing that
9 data?

10 MR. STUKES: So the correction officer
11 that conducts the body scan is a person who is
12 trained to operate the machine. So it is that
13 person who is confirming that the person's in
14 possession of some contraband or contraband
15 secreted in their body.

16 MR. RICHARDS: No, I'm talking about the
17 review that the chief said happens after every
18 scan.

19 MR. STUKES: So that starts with the
20 correction officer.

21 MR. RICHARDS: Oh, okay.

22 MR. STUKES: First, then, as previously
23 stated, the new teletype issued by the chief of
24 the department requires the tour commander to

1 February 11, 2020

2 authorize the use and the tour commander also has
3 been in the process as an agency of receiving
4 imagery variation training. So that is ongoing.
5 So every tour commander who's on a tour who's
6 giving authorization to the staff members to
7 operate the scanner machine is also trained in
8 imagery variation, which is a second level of
9 review.

10 And ultimately, the staff that works out
11 of my office, which is office of security
12 intelligence unit, who is involved from the
13 process upon the immediate notification of a
14 positive scan with the facility or refusal to
15 scan, whereas that executive officer reviews the
16 image of the staff in the office and give the
17 authorization for transfer either in or removal
18 from the unit. However, I would like to respond
19 to your statement regarding the persons in
20 separation status and that we did not recover
21 anything.

22 MR. RICHARDS: Continue to answer the
23 question. So --

24 MS. JENNINGS: So that person that

1 February 11, 2020

2 reviews is ADW. It's not an officer.

3 MR. RICHARDS: It's not the officer?

4 MS. JENNINGS: It's not --

5 MR. STUKES: It's the executive officer
6 of OSI, it's an assistant deputy warden.

7 MS. JENNINGS: Absolutely.

8 MR. RICHARDS: I'd like to talk about
9 how that might be different. Because I like the
10 way y'all are doing the use of force reviews. So
11 that the officer who is involved in it, the
12 commanding officer all sort of huddle up and look
13 at the incident and say what we have done
14 differently, how could it have -- what happened
15 here. Like is there something like that in place
16 for this review? It doesn't sound like it. It
17 sounds like there's an ADW that's reviewing it,
18 but it's separate from the officer who actually
19 did the test, it's a separate thing. The
20 commanding officer who authorized it, they're not
21 in that review.

22 MR. STUKES: Well, they each are
23 required to review. They're just not reviewing at
24 the same time.

1 February 11, 2020

2 MR. RICHARDS: Right. They're not
3 collectively reviewing to learn that that's not
4 [unintelligible] [02:04:32].

5 MR. STUKES: So what happens is due to
6 the fact of our business and how we operate,
7 there are occasions when the executive officer is
8 at home and review from home, or there are only
9 two people that will be collectively in the
10 process in real time that it's happening would be
11 the correction officer who's conducting the scan
12 and the assistant deputy warden in the facility
13 who's commanding the tour.

14 MS. SHERMAN: Thank --

15 MR. PERRINO: I've got a question real
16 quick. How many scans have you done that the
17 person went into separation and when you reviewed
18 it, it still showed that, that foreign object,
19 but it was determined that it's not a weapon.

20 MR. STUKES: Repeat that question,
21 Perrino.

22 MR. PERRINO: So it runs through the, a
23 person goes through a machine and you see an
24 object, right. So we put them in separation. But

1 February 11, 2020

2 then it's determined the object's still there. It
3 was disappeared, it wasn't taken out. And it was
4 determined, well that's not --

5 MR. STUKES: Okay.

6 MR. PERRINO: -- it might be from
7 possibly a surgery, it might be something that,
8 you know like it's still there, but it's not a
9 weapon. We determined it was not a weapon.

10 MR. STUKES: Thank you. So there has
11 been no person removed from separation status as
12 a result of as a correction officer placing them
13 in separation status as a result of a positive
14 image and we've done further review, either by a
15 different level and person confirms and complied
16 with going back through the body scanner and what
17 we saw that initially placed them is still there
18 and we perhaps consult with medical and the
19 persons to confirm as to whether it's some
20 medical procedure that they had that would show
21 this type of fragment, we haven't had anybody
22 removed for that reason.

23 MR. PERRINO: Okay. Thank you.

24 MS. SHERMAN: Thank you. Dr. Cohen I

1 February 11, 2020

2 believe has been waiting.

3 DR. COHEN: Yes, a few questions
4 regarding the medical aspects of this. I'll ask
5 them all together. So, there were, in January, we
6 found six missed mental health appointments, a
7 missed specialty clinic appointment, one
8 individual missed four doses of insulin. What has
9 been done by DOC and CHS to respond to that? Also
10 specifically for CHS, how do you instruct your
11 staff to counsel people in separation status on
12 the dangers of contraband ingestion, because
13 they're in there in some cases for that. And what
14 harms does CHS feel this new form of isolation
15 can cause to patients. Do you have any
16 recommendations for us on how to mitigate these
17 harms?

18 MR. STUKES: As an agency, we work
19 collectively and collaboratively daily with CHS
20 with regards to the immediate notification when a
21 person is placed in separation status via an e-
22 mail distribution list. So the CHS staff is known
23 when a person is placed and when a person is
24 removed from separation status. So we work with

1 February 11, 2020

2 them collectively on basically on best how to
3 operate this unit and inform them of any
4 operational changes.

5 DR. ROSS MACDONALD: How you doing, Dr.
6 MacDonald. So I appreciate the reporting and the
7 collaboration we've had around this issue. I
8 think early on we had some miscommunications
9 about the notification process, which explain the
10 insulin case in particular, which we learned
11 from. I would say at this moment in time, our
12 notification system is strong. So we are getting
13 real time notifications which are reviewed by our
14 facility site medical leadership. They also go to
15 pharmacy services. And we, as you pointed out,
16 are doing the daily rounds.

17 The placement in this status has been
18 short for the majority of patients placed in the
19 status, as we've discussed here, and that's
20 imperative. We would not generally seek to engage
21 in routine care during the time that somebody is
22 in this status. So that speaks to the importance
23 of it being a limited amount of time. The goal of
24 the rounding is really to look for an emergency

1 February 11, 2020

2 situation which primarily our remedy would be
3 hospital referral. And we've also mitigated some
4 of the risks through collaboration and discussion
5 of the security watch status.

6 DR. COHEN: And the rounds that were for
7 medical and mental health?

8 DR. MACDONALD: The rounds in this
9 setting are for medical only. The medical staff
10 are trained to collaborate with mental health
11 around any particular issue that would require a
12 mental health emergency run.

13 DR. COHEN: Have there been any issues
14 that required that collaboration?

15 DR. MACDONALD: Not to this point.

16 DR. COHEN: And what about instructing
17 people about the risks of maintaining ingestion.

18 DR. MACDONALD: Yeah, so we're not aware
19 of an evidence base to guide that discussion, so
20 that we would leave to individual clinician
21 discretion and also if a patient raised a
22 particular concern. I'm not aware of anything
23 systematic to counsel patients on that issue as
24 sort of a risk reduction or a public health

1 February 11, 2020

2 initiative. I'd be happy to review anything that
3 you have on that.

4 DR. COHEN: I don't have anything on
5 that. But I mean, but as I recall, being a
6 doctor, that that's how you operate. I mean there
7 are a lots of areas where there's no clear -- I
8 mean someone comes to the emergency room, they've
9 swallowed something, you do something, you talk
10 to them about it, and you know, they were brought
11 by the police, you're called as a doctor, I mean
12 you say something to them.

13 DR. MACDONALD: Absolutely. So, you
14 know, I think this would be a discussion with, on
15 an individual clinician level, rather than a
16 proactive, systematic counseling for all the
17 patients in the setting. This is a different
18 pathway than what happens when people swallow
19 things, for example, as a form of self-harm,
20 which goes down a clinical pathway. So we would
21 leave that to the individual clinician
22 discretion.

23 MS. SHERMAN: Thank you. Mr. Regan?

24 MR. REGAN: This is more of a comment

1 February 11, 2020

2 than a question to you.

3 MR. STUKES: Yes, thank you.

4 MR. REGAN: This is both to the private
5 sector [unintelligible] [02:11:11]. In Jakarta,
6 in Mumbai, I've got [unintelligible] [02:11:21]
7 all over the world. I have contracts with vendors
8 who are experts in reading the mail x-rays, other
9 x-rays. They're the best in the business. They're
10 postal people, there are bomb squad people,
11 they're really good. And if I [unintelligible]
12 [02:11:37] an image at any place in the world
13 that I'm concerned about, I send it to the team.
14 They're open 24 hours a day, and they're amazing
15 in their skill set. I am sure that there are
16 private sector people who have become specialists
17 in this type of technology and I think you guys
18 should enter into a contract with a company like
19 this who could advise you, who could advise you
20 about safety, who could advise you about
21 warnings, and they're going to be better than
22 anyone in the department. That's just because of
23 their training, maturity, wisdom, experience.
24 Just look. I'm sure that this exists, but it

1 February 11, 2020

2 does, there are a number of guys who do it for
3 traditional x-ray equipment. I'm sure there's
4 really smart men and women out there who do this
5 [unintelligible] [02:12:25].

6 MR. STUKES: Thank you.

7 MS. SHERMAN: Thank you. We're now going
8 to move to vote on the requested variance with
9 conditions. The vote is going to be a little bit
10 complicated because there are a number of
11 existing conditions and there are a number of
12 proposals to amend existing conditions and there
13 are a number of proposed new conditions, all of
14 which we will have to vote on separately. So, I
15 believe that the first step that we need to take
16 is to open the floor for discussion of the
17 variance as submitted to the Board of Correction.
18 Does a member move to open that discussion?

19 MR. RICHARDS: So moved.

20 MS. SHERMAN: Thank you. The next step
21 that we will take is there is a proposal to the,
22 to limit the variance to a three month rather
23 than a six month variance. Is there a motion and
24 a second on that initial proposed condition?

1 February 11, 2020

2 MR. RICHARDS: So moved.

3 MS. SHERMAN: Any discussion regarding
4 the three month length of the variance? Well,
5 with that, we can move to a vote on the length of
6 the proposed variance. Mr. Regan?

7 MR. REGAN: No.

8 MS. SHERMAN: Dr. Safyer?

9 DR. SAFYER: Yes.

10 MR. RICHARDS: Yes.

11 MR. HERNANDEZ: No.

12 MR. PERRINO: No.

13 MR. FRANCO: No.

14 DR. COHEN: Yes.

15 MS. SHERMAN: Yes. By a vote of one,
16 hold up, we have -- so the, the proposed
17 condition fails by a tie vote. And so we will
18 move on to the consideration of conditions that
19 are unchanged for the variance. So those are
20 conditions one and two, 3A, 3C, 3D, 3F, five, and
21 seven and eight, and 11. I am advised that we
22 don't have to review those. They are unchanged.
23 I, can I have a motion.

24 MR. HERNANDEZ: [unintelligible]

1 February 11, 2020

2 [02:15:16].

3 MS. SHERMAN: Second?

4 MR. PERRINO: [unintelligible]

5 [02:15:18].

6 MS. SHERMAN: And we will move to a vote
7 on those unchanged conditions.

8 MR. REGAN: Yes.

9 DR. SAFYER: Yes.

10 MR. RICHARDS: Yes.

11 MR. HERNANDEZ: Yes.

12 MR. PERRINO: Yes.

13 MR. FRANCO: Yes.

14 DR. COHEN: Yes.

15 MS. SHERMAN: Yes. By a unanimous vote,
16 the unchanged conditions will remain in the
17 variance. Now, we will move into proposed
18 amendments to existing conditions. And I am
19 advised that we can, we will review all of them,
20 and then we can vote on them as a package. So
21 just to set out at the outset, there are proposed
22 amendments to conditions 3B, C, E, four, six, ten
23 and nine.

24 MS. EGAN: Condition 3B, the department

1 February 11, 2020
2 shall notify CHS of each person placed into
3 and/or released from separation status upon the
4 conclusion of each tour. Each notification is to
5 include a notification to pharmacy and mental
6 health and individuals' specific information,
7 i.e., name and book and case number. For people
8 released from separation status, DOC shall
9 provide CHS with the person's new housing
10 location. Three C, CHS, the department shall
11 provide CHS -- sorry. CHS shall provide daily
12 medical and mental health rounds to people housed
13 in separation status and shall have the authority
14 to determine if any person should be removed for
15 clinical evaluation or treatment.

16 Three E removes the following language,
17 by the next business day notify the board in
18 writing of any instances of which an individual
19 is denied the opportunity to receive a daily scan
20 and provide reasons for such denial. And then,
21 further, it eliminates the language in the second
22 sentence that the department shall have in place
23 starting December 1, 2019. So just to clarify
24 that condition, 3E becomes provide opportunities

1 February 11, 2020

2 for regular visiting and attorney visiting by
3 secure video conferencing system.

4 Condition four, when a person remains in
5 separation status for 72 hours, the chief of the
6 department, the bureau chief of security and the
7 GRBC warden shall develop, shall meet to develop
8 an individualized plan for moving the person out
9 of separation status. The committee shall meet
10 and develop a plan every 72 hours until the
11 person is moved out of separation status. The
12 department shall provide each written plan to the
13 board within one business day of the committee's
14 meeting.

15 Condition six strikes the first clause,
16 when a person remains in separation status for 48
17 hours, and, but keeps the following, the
18 department shall begin to afford one hour per day
19 of indoor recreation for people in separation
20 status, recreation will be provided on the
21 housing unit in a closed space, but outside of
22 the person's assigned cell. Recreation space
23 shall include appropriate recreation equipment.

24 Condition nine, by the next business day

1 February 11, 2020
2 of a person's placement in and release from
3 separation status, the department shall provide
4 the board access to all supporting documentation
5 related to the person's placement and release.
6 The department shall provide the board with a
7 monthly public report on the implementation of
8 separation status. The requirements for the
9 notification and report are outlined in Appendix
10 A hereto. The department shall provide the board
11 with a monthly data file with placement level
12 information corresponding to the metrics
13 enumerated in the monthly separation status
14 reports. This file shall include all the relevant
15 identifying placement level information and be
16 shared in an electronic, manipulatable format and
17 updated cumulatively from each prior data
18 reporting period. By April 3, 2020, the
19 department shall provide the board with all
20 individual scan level information collected by
21 body scanners. Data shall be provided to the
22 board on at least a quarterly basis.

23 And, condition ten. The department shall
24 offer a daily opportunity to body scan to each

1 February 11, 2020

2 person in separation status and documents such
3 offers.

4 MS. SHERMAN: Does the department wish
5 to comment any of the proposed amendments to
6 existing conditions?

7 MR. STUKES: No.

8 MS. SHERMAN: Okay. Is there any
9 discussion among the members, any questions
10 regarding the proposed amendments? Okay. Then,
11 with that, I believe we can move to a vote on the
12 proposed amendments to existing conditions. Mr.
13 Regan? Mr. Regan?

14 MR. REGAN: Yes.

15 MS. SHERMAN: Dr. Safyer?

16 DR. SAFYER: Yes.

17 MR. RICHARDS: Yes.

18 MS. SHERMAN: Mr. Hernandez?

19 MR. HERNANDEZ: Yes.

20 MR. PERRINO: Yes.

21 MR. FRANCO: Yes.

22 DR. COHEN: Yes.

23 MS. SHERMAN: Yes. By a unanimous vote,
24 all proposed amendments to existing conditions

1 February 11, 2020

2 have been approved. We will now move to a number
3 of new conditions that have been proposed, and
4 with respect to each new condition, we will
5 consider the condition individually. So we should
6 start by reading the proposed conditions. So
7 we'll start with proposed condition number 12.

8 MS. EGAN: Proposed condition number 12,
9 all staff operating or supervising the scanner
10 shall have completed radiation safety and body
11 scanner operation trainings. All staff reviewing
12 and approving separation status placement and
13 removals, tour commanders and OSIU staff, shall
14 have completed training on image evaluation, i.e.
15 body scanner operator training, which includes
16 training on image evaluation or other image
17 evaluation training.

18 MS. SHERMAN: Okay. Is there a motion to
19 vote on the proposed new condition number 12?

20 MR. RICHARDS: Motion.

21 MS. SHERMAN: Does the department wish
22 to comment on the proposed condition?

23 MR. STUKES: No.

24 MS. SHERMAN: Okay. Are there any

1 February 11, 2020

2 questions or comments? Okay. Then we can move to
3 a vote on the proposed condition. Mr. Regan?

4 MR. REGAN: Yes. But we have way too
5 many conditions. They've already told us, I'm
6 going to look at it, they've already told they're
7 doing this. We could have conditions for the rest
8 of our lives. I'm voting yes, but there was a
9 time when we didn't have conditions, we trusted
10 the department. And they've indicating they're
11 fixing this. I just wanted to note that.

12 MS. SHERMAN: Thank you. Dr. Safyer?

13 DR. SAFYER: Yes.

14 MS. SHERMAN: Mr. Richards?

15 MR. RICHARDS: Yes.

16 MR. HERNANDEZ: I agree with my
17 colleague, but I'll vote yes.

18 MS. SHERMAN: Thank you.

19 MR. PERRINO: Yes.

20 MR. FRANCO: Yes.

21 DR. COHEN: Yes.

22 MS. SHERMAN: Yes. By a unanimous vote,
23 the condition is approved. We'll move to the next
24 condition, number 13.

1 February 11, 2020

2 MS. EGAN: Condition 13, upon placement,
3 all people in separation status shall be provided
4 with verbal and written information on how to
5 access services, all restrictions to services
6 while in the unit, the right to a daily scan, the
7 potential risks of ingesting or secreting
8 contraband and the right to individualized
9 counseling on those risks and an assessment by
10 clinical staff in a clinical setting. This
11 information shall be readily available in the
12 separation status unit in both English and
13 Spanish and any other language the department
14 deems necessary.

15 MS. SHERMAN: Does the department wish
16 to comment?

17 MR. STUKES: No.

18 MS. SHERMAN: Okay. Then are there any
19 questions or comments from the members?

20 MR. RICHARDS: Hold on.

21 MS. SHERMAN: Oh.

22 MS. JENNINGS: So, ma'am, my only
23 comment is, is that what we have previously
24 spoken about with the board about daily scans was

1 February 11, 2020

2 that we would offer it up to 48 hours, two days,
3 and anything thereafter, we would, because of
4 security concerns, that we have previously
5 discussed, but to say daily puts us at a risk.

6 MS. SHERMAN: Okay. So that's condition
7 number ten. Thank you, that --

8 DR. COHEN: We've had the condition
9 changed to daily scans to require it. I don't
10 know, if you're not practicing that, you're in
11 violation of our conditions.

12 MS. JENNINGS: No, no.

13 DR. COHEN: We did not agree --

14 MS. JENNINGS: So, that is not what I
15 said. I said we said daily up to 48 hours is what
16 we talked about. Sure.

17 MS. GROSSMAN: It's about the -- I think
18 in terms of the right to it, we are complying
19 with the conditions of the board and we afford it
20 daily. So I just want to make that clarification.
21 But this proposed condition is about providing
22 notice to the individual incarcerated person that
23 they have a right to it. So there's a distinction
24 between offering it and providing and then saying

1 February 11, 2020

2 you have a right to it. So that -- there are
3 security concerns about including that particular
4 condition in this variance and it doesn't change
5 the fact that we are making the offer to
6 incarcerated persons.

7 MS. SHERMAN: Thank you. Any further
8 discussion or questions from the members? Okay.
9 With --

10 DR. COHEN: I'm confused on what we're
11 talking. I mean that was the department's
12 commenting. Our rule says daily, says what it
13 says.

14 MS. SHERMAN: The proposed amended
15 condition, or the proposed new condition says
16 what it says. It hasn't been changed up until
17 this moment. So if there -- is there further
18 comment?

19 MR. STUKES: No.

20 MS. GROSSMAN: No.

21 MS. SHERMAN: Okay. If, if there's no
22 further comment, I believe we can move to a vote
23 on the addition of condition number 13. Mr.
24 Regan?

1 February 11, 2020

2 MR. REGAN: Yes.

3 MS. SHERMAN: Dr. Safyer?

4 DR. SAFYER: Yes.

5 MR. RICHARDS: Yes.

6 MS. SHERMAN: Mr. Hernandez?

7 MR. HERNANDEZ: Which condition?

8 MS. SHERMAN: Number 13.

9 MR. HERNANDEZ: No.

10 MR. PERRINO: Yes.

11 MR. FRANCO: Yes.

12 DR. COHEN: Yes.

13 MS. SHERMAN: Yes. By a seven in favor
14 and one opposed, the condition number 13 will be
15 added to the proposed variance. We will now move
16 to the next condition, proposed condition number
17 14.

18 MS. EGAN: Condition 14, by April 3,
19 2020 the department shall issue an updated
20 directive and train all relevant staff on updated
21 policies.

22 MS. SHERMAN: Does the department wish
23 to comment on the proposed condition?

24 MR. STUKES: Not at this time.

1 February 11, 2020

2 MS. SHERMAN: Thank you. Is there, are
3 there any questions or further comments from
4 members?

5 MR. RICHARDS: Just one comment. I want
6 to just piggyback on a colleague. If these are
7 conditions that either the department is already
8 doing, or practicing or in agreement, it would be
9 --

10 MR. STUKES: We are.

11 MR. RICHARDS: -- right, it would be
12 helpful if just put it in the request, so that
13 way we don't have to have the conditions. That's
14 all I have to say.

15 MR. STUKES: Thank you.

16 MS. SHERMAN: Thank you. Will a board
17 member move to vote on proposed condition number
18 14?

19 DR. SAFYER: [unintelligible]
20 [02:27:34].

21 MR. HERNANDEZ: I just have a comment. I
22 think this is extraordinarily redundant. I think
23 that his is redundant. We've already had this
24 conversation previously, and now we're sort of

1 February 11, 2020

2 again having the same conversation.

3 MS. SHERMAN: The process for new
4 conditions, the addition of new conditions to a
5 variance is that we do have to read each one
6 individually. I appreciate Mr. Richard's remark
7 as to one way that this could be addressed
8 differently. So with that, we'll move to a vote
9 on the proposed condition number 14.

10 MR. REGAN: No.

11 DR. SAFYER: Yes.

12 MR. RICHARDS: Yes.

13 MR. HERNANDEZ: No.

14 MR. PERRINO: Yes.

15 MR. FRANCO: Yes.

16 DR. COHEN: Yes.

17 MS. SHERMAN: Yes. With a vote of six in
18 favor and two opposed, the condition number 14
19 will be added. And we will now move to condition
20 number 15.

21 MS. EGAN: Condition 15, the department
22 shall provide access to media via phone calls,
23 media interviews by phone shall be scheduled via
24 requirements of minimum standard 1-14B and DOC's

1 February 11, 2020

2 media access policy.

3 MS. SHERMAN: Thank you. Does the
4 department wish to comment on the proposed
5 condition?

6 MR. STUKES: No.

7 MS. SHERMAN: Thank you. Does any board
8 member have a question or a comment regarding the
9 proposal?

10 MR. HERNANDEZ: Is this, again,
11 something you're already doing?

12 MR. STUKES: Yes.

13 MS. SHERMAN: Can I --

14 DR. COHEN: It's something they've said
15 no to previously.

16 MS. JENNINGS: No, we did not. We did
17 not. [unintelligible] [02:29:23]. Media access.

18 DR. COHEN: I though you, in the initial
19 set of minimum standards, that you wanted
20 variances from you, including that one?

21 MR. STUKES: No.

22 MR. RICHARDS: No is right.

23 MS. SHERMAN: All right. Will a board
24 member move to vote on the condition?

1 February 11, 2020

2 DR. SAFYER: [unintelligible]

3 [02:29:48].

4 MR. RICHARDS: Second.

5 MR. REGAN: No.

6 DR. SAFYER: Yes.

7 MR. RICHARDS: Yes.

8 MR. HERNANDEZ: No.

9 MR. PERRINO: Yes.

10 MR. FRANCO: Yes.

11 DR. COHEN: Yes.

12 MS. SHERMAN: Yes. By a vote of six in
13 favor and two against, the condition will be
14 added. And now I believe I will ask if board
15 members have any additional conditions that they
16 would like to propose? Dr. Cohen?

17 DR. COHEN: Yes, I have a few. Members
18 have a list here, I don't know if the department
19 with this or not. I assume they were. I mean the
20 first one, I mean I'm just going to read.

21 MR. HERNANDEZ: Is your mic on?

22 DR. COHEN: Yes. Okay. Thank you. The
23 first condition, which I'm just going to withdraw
24 right now, we voted for 72 hours. My condition

1 February 11, 2020

2 would ask for a plan within 48 hours, but I'm
3 just going to delete that for now. I think people
4 in -- my next condition is that the department
5 shall provide haircuts and the ability to shave
6 per existing minimum standards. I haven't heard a
7 reason why people should not have access to
8 haircuts and shaving. They can be there for five
9 days, as we know right now. And I would hope the
10 department would not object to that.

11 MS. JENNINGS: So with all due respect,
12 I will not providing a razor to someone who
13 already has or is suspected of having a weapon in
14 isolation.

15 DR. COHEN: Would you have someone else
16 shave them, like a barber cuts them?

17 MS. JENNINGS: Absolutely not.
18 Absolutely not, because this is about removing
19 the weapon and reducing the amount of time
20 someone could be hurt. I mean I think --

21 MS. SHERMAN: So we're going to -- if
22 there is further -- we're going to have, like the
23 other proposed additional conditions, we'll go
24 through each of these individually. So we need a

1 February 11, 2020

2 motion to consider the proposed additional
3 condition.

4 MR. HERNANDEZ: Are we commenting on
5 this particular?

6 MS. SHERMAN: Once it's on the floor,
7 we'll have comments and questions.

8 MR. HERNANDEZ: IS there a motion?

9 DR. COHEN: I move. Is there a second?

10 MS. SHERMAN: Is there a second?

11 MR. RICHARDS: Second.

12 MS. SHERMAN: Okay. The, I believe the
13 department has already commented. If there is
14 additional commentary from, or questions from the
15 board?

16 MR. HERNANDEZ: I, I would, I just think
17 that it's irresponsible to have someone get a
18 haircut or shave when there's a belief that they
19 could have a weapon on them. And I don't think
20 that, most people move through this process
21 relatively quickly. Not being able to get a
22 haircut for two days, three days, four days, or
23 shave, I don't think is that problematic, so I
24 would err on the, to really be cautious about

1 February 11, 2020

2 exposing someone to getting hurt.

3 MS. SHERMAN: Thank you. Are there any
4 further comments?

5 DR. COHEN: Yeah, I have one further
6 comment. I mean the department has a practice
7 which we'll be speaking about soon, of requiring
8 a certain segment of the population of either be
9 in their room by themselves or else when they're
10 not in their room to be in restraint desks. And
11 those people, and those people are able to shave
12 and get haircuts. I do not understand the
13 difference between this population. But I respect
14 your expertise on it. I don't see the difference
15 between you're allowing people who you believe
16 need to be in prolonged restraints to shave, why
17 people in this setting can't get a shave or a
18 haircut.

19 MS. CYNTHIA BRANN: So, Dr. Cohen, I
20 don't believe you respect our expertise in this
21 issue, because there is clear difference. People
22 in ESH who are getting a shave or a haircut have
23 been screened, and they're suspected of having a
24 weapon on them. When you are in segregated status

1 February 11, 2020

2 because you are believed to have a weapon, it is
3 different. And so it is our obligation to keep
4 everyone safe. And yes, the people who are in
5 segregated status because of a positive body scan
6 have rights. But so does everybody else who we
7 need to keep safe. And until we're sure that that
8 weapon is not within their control, we have
9 certain things that we have to take into
10 consideration and keep done.

11 MS. SHERMAN: Thank you, commissioner. I

12 --

13 DR. COHEN: I do appreciate that
14 commissioner, but I have been told by your staff
15 on multiple occasions that the reason people are
16 restrained in ESH is because you believe that
17 they have weapons and that's why --

18 MR. STUKES: So, Dr. Cohen, persons who
19 are enhanced supervision housing level one, they,
20 it's a criteria for being transferred into that
21 unit. So by the time the person reaches that
22 unit, that is post incident, as a result of
23 having participated in an act of violence, a
24 slashing, a stabbing or a serious injury to a

1 February 11, 2020

2 person. They have gone through our search
3 protocols prior to being transferred into the
4 unit.

5 The difference of a person in separation
6 status is we have great belief and is confident
7 that the person is in possession of contraband.
8 So it would pose substantial risk for us to bring
9 another person to interact with a person how we
10 believe to have possession of contraband to
11 either shave them or give them a haircut or
12 interact with them otherwise.

13 MS. SHERMAN: Thank you.

14 DR. COHEN: Thank you.

15 MS. SHERMAN: If there are no further
16 questions, we can move to a vote. Mr. Regan?

17 MR. REGAN: No.

18 DR. SAFYER: No.

19 MR. RICHARDS: No.

20 MR. HERNANDEZ: No.

21 MR. PERRINO: No.

22 MR. FRANCO: No.

23 DR. COHEN: Yes.

24 MS. SHERMAN: No. With, by a vote of

1 February 11, 2020

2 seven opposed, one in favor the condition will
3 not be added.

4 DR. COHEN: My next condition is that
5 people should -- the department should allow
6 person in custody, in separation status to send
7 and receive correspondent. The department may
8 limited the amount of correspondence and
9 materials that a person may have in the cell at
10 any one time. I say this because I think it's
11 important that people have the ability to
12 correspond when they're in jail, and that the
13 department has the capacity to safely screen
14 materials for, letters received and
15 correspondence material to go out, that that
16 should not be barred.

17 MS. SHERMAN: Does the department wish
18 to comment?

19 MS. JENNINGS: Absolutely. And we spoke
20 about this previously. So a person that is placed
21 in separation order status has the right not to
22 be placed. They just have to surrender the
23 weapon. And we agreed upon and providing with
24 loose leaf and legal material and newspapers. So

1 February 11, 2020
2 the more items come in, are the more likelihood
3 of contraband coming into area, and so the reason
4 why we spoke about legal mail or mail in general
5 is because of the possibility of having liquid K2
6 on these items. So any person that is
7 incarcerated and high off of a narcotics is a
8 dangerous person. And this is what we're trying
9 to prohibit. So anyone has the right to
10 relinquish the contraband. We're not trying to
11 keep not one person there.

12 MS. SHERMAN: Thanks.

13 MR. RICHARDS: But chief, you've had
14 people there that tested positive for the scan,
15 but didn't have anything. How do you deal with
16 that?

17 MR. STUKES: Well, let me answer that.
18 So there are persons who may test positive for a
19 scan.

20 MR. RICHARDS: Right.

21 MR. STUKES: And in fact is in
22 possession of items, so you have to be mindful of
23 the fact that there's a toilet with running
24 water, and there's a sink with running water. So

1 February 11, 2020

2 there are certain items that a person may have
3 that could be disintegrated through the means of
4 water and dissolved, if it's pills, drugs,
5 however, I would just like to close by saying one
6 thing we are certain of even when the person
7 leaves separation status, we are confident after
8 they submit to the scan and it shows negative,
9 that they are no longer in possession of a
10 contraband.

11 MS. SHERMAN: Thank you. Is there a
12 motion to bring this proposed condition to a
13 vote?

14 MR. RICHARDS: Motion to bring it.

15 MS. SHERMAN: Second?

16 MR. REGAN: Second. No.

17 DR. SAFYER: Yes.

18 MR. RICHARDS: Yes.

19 MR. HERNANDEZ: No.

20 MR. PERRINO: No.

21 MR. FRANCO: No.

22 DR. COHEN: Yes.

23 MS. SHERMAN: And I'll vote no, and that
24 is five opposed and three in favor and the

1 February 11, 2020

2 condition will not be added.

3 DR. COHEN: Just a quick information
4 here, is this my five covered by the exist- by
5 what you put in?

6 MS. EGAN: The existing condition is
7 just newspapers. This is the new condition.

8 DR. COHEN: Okay. So --

9 MS. SHERMAN: That adds books, magazines
10 or other.

11 DR. COHEN: Okay. Right, so I'm
12 proposing a final condition that persons in
13 separation status and they can be there for one
14 or two or three or four or five days, as we know,
15 the department shall provide for them access to
16 newspapers, books, magazines or other reading
17 material. The department may limit the number of
18 newspapers, books, magazines or other reading
19 materials that a person may have in cell at any
20 one time. Again, the department has the capacity
21 to screen these materials to make sure that they
22 don't contain any weapons or drugs, and this is a
23 minimum standard that should be continued for
24 people who are stuck in separation status, placed

1 February 11, 2020

2 in separation status. And, you know, the argument
3 that you're making that it's their fault that
4 they're in separation status and therefore they
5 don't get rights, I don't think is --

6 MS. JENNINGS: So I never said that
7 they're not entitled to [unintelligible]
8 [02:41:08]. That's not what I said. I'm not
9 saying -- I am saying is that we have an
10 obligation to keep people safe. So you want
11 magazines and paper? We acknowledge, we agree. We
12 will give that.

13 DR. COHEN: Okay.

14 MS. JENNINGS: But when does it stop?

15 DR. COHEN: You decide how much they're
16 going to have.

17 MS. JENNINGS: Well, you decide, Bobby,
18 because it's, we have shown that we have utilized
19 this tool appropriately. When does it stop?

20 DR. COHEN: Are you saying you don't
21 want to allow magazines?

22 MS. JENNINGS: I said I would.

23 DR. COHEN: You would, okay.

24 MS. JENNINGS: And we done it.

1 February 11, 2020

2 DR. COHEN: Okay. Good. Thank you.

3 MS. JENNINGS: Thank you.

4 MR. RICHARDS: So we don't need -- do we
5 need this then?

6 MR. FRANCO: No, they have good point.
7 So folks who are in separation status get access
8 to books, magazines and materials provided by you
9 guys.

10 MR. RICHARDS: Okay.

11 MS. JENNINGS: We agreed to that.

12 MR. HERNANDEZ: You agreed to books.

13 MS. JENNINGS: We agreed to newspapers
14 and we agreed to publications. We did not agree
15 to hard cover books.

16 MR. HERNANDEZ: I actually would have a
17 problem with hard covered books.

18 MR. FRANCO: Soft cover books?

19 MS. SHERMAN: So maybe we should read --
20 okay, so we can read the language of the proposed
21 condition. We can see if there's a agreement to
22 the language with the, of the proposed condition,
23 then perhaps we don't need to proceed with it. If
24 there's a difference of opinion, then we should

1 February 11, 2020

2 proceed. So, Dr. Cohen, would you like to read
3 the language of the proposed condition?

4 DR. COHEN: The department shall provide
5 access to newspapers, books, magazines or other
6 reading materials. The department may limit the
7 number of newspapers, books, magazines or other
8 reading materials that a person may have in cell
9 at any one time.

10 MR. REGAN: Excuse me. Can you give
11 these folks iPads?

12 MS. JENNINGS: No, sir, because --

13 UNIDENTIFIED AUDIENCE: Can she answer
14 on the mic on the record.

15 MR. REGAN: Please.

16 UNIDENTIFIED AUDIENCE: We just can't
17 have all this. It's got to be on the record.

18 MR. REGAN: Why can't they just use
19 iPads. I mean they use them [unintelligible]
20 [02:43:11].

21 MS. GROSSMAN: Our answer, the
22 department opposes.

23 MS. SHERMAN: The department opposes?

24 MS. GROSSMAN: We oppose.

1 February 11, 2020

2 MS. SHERMAN: Okay.

3 MR. REGAN: [unintelligible] [02:43:19]
4 use iPads, which are used effectively in Horizon.

5 MR. STUKES: I think it's something that
6 we could explore. I wouldn't give you a
7 confirmation now, but I think it's something that
8 we could explore.

9 MS. BRANN: Right now, our table program
10 is in suspension because we had a security
11 breach. And so I'm not opposed eventually to be
12 able to do that, but at this point in time, until
13 we are sure that tablets cannot be breached and
14 access made to the internet and other things,
15 that we will not be provided tablets in
16 segregation status.

17 MS. SHERMAN: Thank you.

18 MR. HERNANDEZ: Right, so are you in
19 favor of this condition or you're -- I'm a little
20 confused.

21 MS. SHERMAN: They have said that they
22 oppose the condition. I believe I heard that the
23 department opposes this additional condition. Is
24 that correct?

1 February 11, 2020

2 MS. GROSSMAN: We do oppose. We just
3 want to note that we do provide the newspapers
4 and the magazines. But we do oppose this
5 condition.

6 MS. SHERMAN: Okay. Is there a motion to
7 --

8 DR. COHEN: So moved.

9 MS. SHERMAN: -- vote on the proposed
10 condition.

11 DR. COHEN: So moved.

12 MS. SHERMAN: Is there a second?

13 MR. PERRINO: [unintelligible]

14 [02:44:36].

15 MS. SHERMAN: Okay. And we'll move to a
16 vote unless there's further commentary. Okay.

17 MR. FRANCO: I'm not clear what the
18 department opposition is. I mean they --

19 MS. SHERMAN: Their position is they
20 provide period- some periodicals I believe, but
21 they oppose the addition of the condition.

22 DR. SAFYER: I want to be clear on what
23 we're voting on.

24 MS. SHERMAN: Okay.

1 February 11, 2020

2 DR. SAFYER: It's not clear.

3 MS. SHERMAN: Okay. So we can re-read
4 the proposed condition again. So the proposed
5 condition reads the department shall provide
6 access to newspapers, books, magazines or other
7 reading materials. The department may limit the
8 number of newspapers, books, magazines or other
9 reading materials that a person may have in a
10 cell at any one time.

11 MR. REGAN: And the department is saying
12 they already do this and they're prepared to
13 continue to do this?

14 MS. GROSSMAN: We do this except for
15 books.

16 MR. HERNANDEZ: Why don't we
17 [unintelligible] [02:45:51] books now, yeah. I --

18 MR. RICHARDS: You okay with that Bobby?

19 MR. HERNANDEZ: That's actually where I
20 started. I really had, you know, I had a concern
21 about books. You can actually secrete or hide
22 things in the binding of a book, in the pages of
23 a book.

24 MS. SHERMAN: All right. So you would

1 February 11, 2020

2 like to move to --

3 MR. HERNANDEZ: Yes.

4 DR. SAFYER: Yes.

5 MR. HERNANDEZ: Remove books.

6 MS. SHERMAN: Remove books. So that is a
7 proposed amendment to the proposed additional
8 condition.

9 MR. RICHARDS: And if we remove the
10 books, it's what the department is doing.

11 MS. GROSSMAN: And it would have to be,
12 we oppose, but if you're going to be modifying
13 this condition, you'd also have to remove the
14 words other reading materials. We'd have to limit
15 it to newspapers and periodicals, because other
16 reading materials could be construed as books.

17 MS. SHERMAN: It also, just to be clear
18 on the language, the language is, it says or
19 other reading materials. It doesn't say and, it
20 says or.

21 MS. PHILLIPS: That's a big difference,
22 that one word.

23 MS. SHERMAN: Okay. so, there has been a
24 proposed amendment to the proposed new condition,

1 February 11, 2020

2 which would strike books. I, I guess we need a
3 motion on that, unless that's viewed as a
4 friendly amendment to the condition.

5 DR. COHEN: It might be in spirit, but I
6 don't take it as friendly.

7 MS. SHERMAN: Okay. So is there a motion
8 to so amend?

9 DR. SAFYER: Motion.

10 MR. HERNANDEZ: Second.

11 MS. SHERMAN: Okay. All right. We, we
12 can move to a vote to so amend the condition.

13 MS. GROSSMAN: Excuse me, I'm sorry. I
14 would, if, you haven't taken out the words other
15 reading materials, because what I'm saying is
16 that we are okay, what we are doing right now is
17 we're providing the newspaper and magazines. But
18 the or other reading materials, I don't know what
19 we're talking about and that's not -- it's
20 ambiguous, it's unclear. So, if you're going to
21 modify this, it would be limited to newspapers
22 and magazines. That would be our position.

23 MS. SHERMAN: So is, there was a motion
24 to remove the books. Is there a similar motion to

1 February 11, 2020

2 remove or other reading materials, which could
3 provide space for the department to explore the
4 possibility of providing other reading materials.
5 It really leaves it to the --

6 DR. SAFYER: Let's, let's modify it.
7 Let's modify it.

8 MS. SHERMAN: -- department's
9 discretion.

10 DR. SAFYER: Modify it to do what you
11 just said.

12 MS. SHERMAN: Oh, I think that's what it
13 currently does. I mean I think the addition of
14 other reading materials does provide the
15 opportunity.

16 MR. REGAN: Let's vote on
17 [unintelligible] [02:48:37], let's just --

18 MR. HERNANDEZ: I would actually strike
19 the ending of the, the condition.

20 MS. SHERMAN: Okay. So, what --

21 MR. HERNANDEZ: The, the or other
22 reading materials.

23 MS. SHERMAN: Okay. So you would like
24 amend your motion to strike both books and or

1 February 11, 2020

2 other materials?

3 MR. HERNANDEZ: I just think it's
4 ambiguous.

5 UF: They can't even have their own copy
6 of the minimum standards if you strike that.

7 MS. SHERMAN: Okay. I'm, there will be a
8 time for public comment. Now is now the time for
9 public comment.

10 UF: [unintelligible] [02:48:37].

11 MS. SHERMAN: Okay. So, so the motion
12 has a second, is there any further commentary or
13 questions. If no, we'll move to a vote. Mr.
14 Regan?

15 MR. REGAN: No.

16 DR. SAFYER: Yes.

17 MR. RICHARDS: Yes.

18 MR. HERNANDEZ: Yes.

19 MR. PERRINO: Yes.

20 MR. FRANCO: Yes.

21 DR. COHEN: Yes.

22 MS. SHERMAN: Okay. Yes. The, so the
23 proposed condition has now been modified amended
24 to read, and I'll read what the condition now

1 February 11, 2020

2 states. The condition now, and we will move to a
3 vote on this proposed condition. The condition
4 now states the department shall provide access to
5 newspapers and magazines. The department may
6 limit the number of newspapers and magazines that
7 a person may have in cell at any one time. Can we
8 move -- does a member move to vote on that.

9 MR. RICHARDS: So moved.

10 MR. HERNANDEZ: [unintelligible]

11 [02:50:18].

12 MS. SHERMAN: Thank you. Okay. Is there
13 any further discussion. Okay. If not, we'll move
14 to a vote. Dr. Safyer?

15 DR. SAFYER: Yes.

16 MS. SHERMAN: Mr. Richards?

17 MR. RICHARDS: Yes.

18 MR. HERNANDEZ: Yes.

19 MR. PERRINO: Yes.

20 DR. COHEN: Yes.

21 MS. SHERMAN: Yes, by a unanimous vote,
22 the condition has been added. Are there any
23 further conditions to be proposed by members?
24 Okay. If not, I believe that we can move to a

1 February 11, 2020

2 vote on the variance with all of the approved
3 conditions. Is there a motion for a vote on the
4 variance with all approved conditions?

5 MR. RICHARDS: Motion.

6 MS. SHERMAN: Second?

7 MR. PERRINO: Yes.

8 MS. SHERMAN: Thank you. Any further
9 questions or comments? If not, we'll move to a
10 vote.

11 MR. RICHARDS: Yes.

12 MR. HERNANDEZ: Yes.

13 MR. PERRINO: Yes.

14 MR. FRANCO: Yes.

15 DR. COHEN: Yes.

16 MS. SHERMAN: Yes. So by a unanimous
17 vote, the variance with conditions has been
18 approved.

19 DR. COHEN: It was voted six to zero, is
20 that right?

21 MS. SHERMAN: Yes. Okay. And now we will
22 move to the next variance request on our agenda,
23 which is the young adult comingling variance. The
24 department has requested a six month variance

1 February 11, 2020

2 renewal request for permission to continue to
3 comingle 19- to 21-year olds with adults. In
4 2015, the board amended its minimum standards to
5 create a unique category of people in custody.
6 Young adults ages 18 through 21 who are to be
7 housed separately and apart from the adults in
8 the department's custody. The revisions were
9 designed to reduce violence by first segregating
10 developmentally distinct age groups, second
11 providing age appropriate rehabilitative
12 opportunities and third, confirming the board's
13 minimum standards with the requirements of New
14 York State Law and the Prison Rape Elimination
15 Act.

16 Although the rule became effective in
17 July of 2016, the board has continuously passed
18 variances exempting the department from full
19 compliance. The board began granting variances to
20 the department in fall of 2015. The board's
21 proposed rule on restrictive housing incorporates
22 the variance and many of its conditions. The
23 rules enactment would eliminate the need for this
24 variance. Currently, the board allows for

1 February 11, 2020

2 comingling of young adults in three limited
3 circumstances. If a young adult is in a
4 restrictive housing area, has engaged in violent
5 behavior or has engaged in actions that threaten
6 the safety and security of the facility.

7 MS. EGAN: As of January 1, 2020, there
8 were 474 young adults in DOC custody. This is a
9 16 percent decrease since August 1 of 2019.
10 Fifty-four percent of all YAs in DOC custody were
11 housed in RNDC, 13 percent were housed in GRVC
12 and nine percent were housed in EMTC. As of the
13 beginning of the year, 70 percent of all young
14 adults were housed in young adult only housing.
15 This is a three percent increase since July 2019
16 and a 12 percent increase since January 2019.
17 Ninety-seven percent of 18-year olds were housed
18 in young adult housing areas and 64 percent of
19 19- to 21-year olds were housed in young adult
20 only housing areas. Seventy-five percent of the
21 330 young adults housed in YA only housing were
22 housed in RNDC across 26 YA only units. There are
23 additional YA only units in OBCC ESH, GRBC, EMTC,
24 AMKC and RMCS.

1 February 11, 2020

2 As of January 30th, young adults made up
3 nine percent of DOC's population but 15 percent
4 of the DOC population in restrictive housing.
5 There were 60 young adults in the ESH and secure
6 and 12 young adults in structurally restrictive
7 housing. Between August and December 2019, around
8 193 unique young adults were placed into adult
9 housing units.

10 Board staff reviewed whether document
11 notified the board of each placement and whether
12 each reason for placement fell within the
13 permissible criteria for comingling. The number
14 of comingling determinations and supporting
15 documentation sent to the board has improved
16 since our last audit of August 2019 and reporting
17 has improved each month since August.

18 However, overall DOC appropriately
19 reported roughly only 64 percent of YA placements
20 in adult housing areas between August and
21 December of 2019. When DOC documented the
22 comingling determination, they did notify the
23 young adult within three days of their placement
24 in a comingled housing unit per a board variance.

1 February 11, 2020

2 Fighting is the primary reason for
3 comingling placements reported to the board. In
4 19 cases reviewed, DOC comingled young adults as
5 a preventative measure, for example to reduce
6 tension in a housing area. In these cases, it
7 appears the department comingled young adults for
8 reasons outside of the board's variance's limited
9 criteria. Would the department like to present
10 the variance?

11 MR. TIMOTHY FARRELL: Sure. Good morning
12 everyone, good morning, Board Chairman Sherman.
13 Pursuant to 1-15 of the New York City Board of
14 Correction's minimum standards, the New York City
15 Department of Correction requests a six month
16 limited variance renewal from the board minimum
17 standards 1-02C1, which requires individuals in
18 custody ages 18 through 21 to be housed separate
19 and apart from individuals over the age of 21.
20 While the scope of the board's minimum standards
21 is applicable to young adults aged 18 to 21, the
22 department seeks for this variance request to
23 apply only for young adults ages 19 to 21 years
24 of age. The department requests the renewal to

1 February 11, 2020

2 take effect February 12, 2020, the date to which
3 the current variance is set to expire.

4 MS. SHERMAN: Thank you. Are there
5 questions for the department? Dr. Cohen?

6 DR. COHEN: A couple questions, why
7 would you have, you have at present Second Chance
8 Secure ESH one, two and three. You have five
9 different categories of disciplinary housing.

10 MR. FARRELL: And TRU.

11 DR. COHEN: What?

12 MR. FARRELL: And TRU.

13 DR. COHEN: TRU, so six, six different
14 categories of housing to respond to infractions,
15 disorder, things like the -- that threaten the
16 safety and security of the facility. Why not
17 expand the capacity of Secure to cope with the,
18 as young adults, the particular needs of a young
19 adult population when you're putting them in a
20 restrictive status? I don't understand how the
21 department says that it's endorsing a young adult
22 program, which is based upon a neurophysiological
23 agreement, understanding that caused the
24 development of the YA program when it was set up

1 February 11, 2020

2 and creating exceptions to that program for
3 people who have problems with violating rules.
4 This is not a privilege to be in a young adult
5 program, this is rather a commitment by the
6 department to provide programs, including
7 disciplinary programs for young adults. So I
8 don't understand the basic logic of the variance
9 request of allowing you to remove people who have
10 problems and create problems. Why are they not
11 kept in a young adult disciplinary status?

12 MR. FARRELL: With the exception of two
13 individuals, all young adults in our problematic
14 housing units are in young adult cohorted housing
15 units. The, our ESH is one component with three
16 different levels. We have young adult ESH to deal
17 with the young adult population. They represent
18 less than two percent of the entire population in
19 the agency and only two of those eight
20 individuals are currently in a comingled housing
21 unit due to separation issues. So we as an agency
22 are in fact incorporating and providing for young
23 adult cohorted units to deal with these
24 problematic individuals.

1 February 11, 2020

2 DR. COHEN: So you're not -- you're not
3 saying you want us to give you a variance that
4 allows you to take people who are problematic and
5 take them out of YA status? Isn't that what
6 you're doing?

7 MR. FARRELL: No, this variance is for
8 GP housing units.

9 DR. COHEN: Yes, no, I understand.

10 MR. FARRELL: Yes, so we are seeking the
11 variance to be able to house individuals in a
12 comingled environment based on specific and
13 certain needs that benefit the entire population.

14 MR. FRANCO: Commissioner Farrell, I
15 mean question, so besides the Second Chance, the
16 [unintelligible] [03:00:45] and the special
17 supervision housing, what is the intent that you
18 are looking for? You want to move young adults
19 that have particular needs with a particular
20 program somewhere or you want to -- what is it
21 that we're looking for?

22 MR. FARRELL: No, we are looking to
23 house as many young adults in young adult
24 cohorted housing --

1 February 11, 2020

2 MR. FRANCO: Sure.

3 MR. FARRELL: -- units throughout the
4 agency.

5 MR. FRANCO: But there's some young
6 adults that you want to move into regular
7 population with adults?

8 MR. FARRELL: There are certain
9 individuals who have proven and demonstrated and
10 presented need that they cannot be housed in that
11 environment. We have, as an agency, worked very,
12 very hard to improve the numbers. As of Friday's
13 numbers, we were at 73 percent of our population,
14 young adult, 18 to 21 were housed in young adult
15 cohorts. Six months ago, that number was 69
16 percent. So we are constantly striving to work
17 forward to doing it.

18 We've developed documentation process
19 and review process if an individual determines or
20 acts in a way that they cannot be housed in a
21 young adult cohorted unit. That is a objective
22 review. It's reviewed by a central office
23 committee and that individual will be housed
24 accordingly based on that decision. So we are

1 February 11, 2020

2 documenting it, we are reviewing it. It's not
3 arbitrary and we are improving our numbers even
4 with certain challenges.

5 MS. GROSSMAN: But at the end --

6 MR. FRANCO: I mean the numbers actually
7 are moving in the right direction. But again, the
8 question that I have a simple one. The plan of
9 moving that you can go from one of the units that
10 is already available into general population is
11 intended to accomplish what? What is it that that
12 young adult in general population would be
13 getting that would allow him to regulate his
14 emotions, behavior, differently than what you
15 have available within Second Change, Secure
16 through an ESH?

17 MR. WILLIAM BARNES: So, good afternoon.
18 I just want to be clear that I am committed to
19 housing as many of these young men within my
20 facility so they have the opportunity to benefit
21 from the enormous amounts of programs that we've
22 invested endlessly in. But at the end of the day,
23 some of these young men, they're not interested
24 in that benefit and they're interested in causing

1 February 11, 2020

2 disruption and problems which prevents all the
3 other young men that I have in my custody and I'm
4 responsible for and I want to provide with these
5 programs.

6 So in the rare instance that their
7 activity doesn't rise to the level of Secure or
8 ESH but is disruptive to the institute, we've
9 found that when housed in general population with
10 adults that there is a much lesser propensity for
11 them to engage in that activity. And it creates
12 the ability for me to program the kids who are
13 interested in it. So we have utilized this tool
14 sparingly and very carefully. But it is something
15 that I do need to be able to run my institution
16 and be able to provide for the rest of the
17 children that are interested, the rest of these
18 young adults that are interested in benefitting
19 from the programs.

20 MR. FRANCO: Again, the question does
21 not have anything to do with your ability to
22 separate for safety. I'm not clear about what is
23 it that young adults are getting when they go to
24 general population.

1 February 11, 2020

2 MS. FRANCIS TORRES: Welcome, how are
3 you. Francis Torres, assistant commissioner. I
4 think it's important to say that when it comes to
5 the young adults that are moved into general
6 population adult, there's nothing that changes.
7 They're still getting the type of programming
8 that we are committed to offer if we were to have
9 them in a young adult housing area. That is they
10 have access to counseling, they have access to
11 programming, they have access to recreation by
12 DOC staff, they have access to workforce
13 development.

14 It's just that mixing that young adult
15 with an adult population has provided us with
16 some understanding that they are, for lack of a
17 better term, neutralized. Their behavior or
18 tendencies seem to be lesser. Does that answer?

19 MR. FRANCO: I mean I think that we -- I
20 would love to get a better understanding on how
21 is it that movement has some intentionality to
22 actually do what you say that actually has
23 happened, and I would love to look at the
24 statistics. But if you actually have a theory of

1 February 11, 2020

2 change that young adults by being moved to
3 general population are getting exactly what they
4 would be getting, at the beautiful place, like
5 the stuff at RNDC, and there's actually an
6 intentionality of actually helping them improve
7 their behavior, then we're doing our job.
8 Otherwise, it feels like we're just excluding
9 them from services. But you're assuring me that
10 that's not the case.

11 MS. TORRES: No, that's not it.

12 MR. RICHARDS: So the 27 percent that's
13 not in young adult housing, there has been some
14 assessment about their behavior, their disruption
15 that justifies them being placed in comingled
16 housing? Is that what you're saying?

17 MS. TORRES: Yes.

18 MS. SHERMAN: Are there any further
19 questions or comments?

20 DR. COHEN: Yeah. If the almost 40
21 percent of the people who have been sent out of
22 the facility, sent out for reasons that threaten
23 the safety and security of the facility. So these
24 are things that are not infractions? They're just

1 February 11, 2020

2 reasons to go to GP?

3 MR. BARNES: So all these individuals
4 that jeopardize the safety of the facility, they
5 are infracted. But obviously, there is no
6 punitive segregation process. So the young men
7 can go to TRU. Once they graduate from TRU, they
8 go back into general population. If you look at
9 some of this data, I'm still committed to, listen
10 anybody who wants to go to school still has the
11 opportunity to go to school. That's a mandate and
12 school is offered in various facilities.

13 If you look at the data, there's been
14 several young men that have been comingled that
15 I've taken the chance on to come back and give
16 them another chance to reintegrate into our
17 facility and benefit from the programs that are
18 unique to RNDC and some of them have been
19 successful, some of them have been comingled
20 again. The goal is for them to do well and also
21 for the other young men that are in my custody to
22 do well.

23 DR. COHEN: And when you say that
24 there's tension in the place, nothing specific,

1 February 11, 2020

2 tension, you remove people for that also?

3 MR. BARNES: So more would fall under
4 the safety and security of the institution, like
5 in that --

6 DR. COHEN: Sometimes you say safety and
7 security and sometimes you say tension.

8 MR. BARNES: They're really kind of one
9 in the same. Tension can jeopardize the safety
10 and security of the institution. At the end of
11 the day, a lot of these young men are members of
12 different security risk groups that obviously
13 don't get along. The reality is in the streets,
14 they guys are actually some of them killing each
15 other, shooting at each other. And that doesn't
16 end when they come into jail. They can be next to
17 somebody that their friends or their rivals have
18 been associated with in the street and that
19 creates a great risk within the facility. And we
20 try to move them around the facility. Some of
21 these kids, honestly, it may not even be
22 something that they've done. That's why it's very
23 -- it's tough to be limited to those three
24 specific criteria. Like I gave you an example

1 February 11, 2020

2 before the meeting started, of a young man who
3 was begging me to not be housed with these other
4 young men, because they feel they have to act a
5 certain way.

6 I am not over utilizing this tool. Most
7 of things, like most of these kids I interview
8 myself. I really want them to stay, but I want
9 the rest of them to be safe as well and to
10 benefit from the stuff that we have to offer.

11 DR. COHEN: Well, I think you have a
12 problem, which is you don't have a place to put
13 them when people are having these problems. And
14 the fact that they're having these problems
15 doesn't make them adults. It makes them young
16 adults where you don't -- I mean there are lots
17 of problems you inherited with this facility. You
18 really had a completely disruptive young --

19 MR. BARNES: And we're doing well. I
20 would love for you to come.

21 DR. COHEN: I know you're doing it.

22 MR. BARNES: Some of the members have
23 come and speak to the kids. Some of them really
24 don't want to be with the kids. They want to be

1 February 11, 2020
2 with adults. They feel that they can learn to
3 jail a different way, they feel that they can
4 relax, unfortunately. Being around an environment
5 of all people that are the same age as you
6 sometimes would make you react a certain way or
7 act a certain way. You feel that you have to
8 perform or show out or put on. And some of them
9 want to be with adults. It's not necessarily a
10 negative. And especially the fact that we're
11 attesting that they still have access to plenty
12 of programs. This is not a negative. This is a
13 tool that I don't overuse, but I'm telling you I
14 need to run my facility.

15 DR. COHEN: [unintelligible] [03:09:06]
16 example of the programs you don't have --

17 MR. RICHARDS: They don't have the
18 programs, the do at the PEACE Center.

19 MR. BARNES: They don't have the PEACE
20 Center.

21 MR. RICHARDS: Yeah, yeah, yeah.

22 MR. BARNES: They still have a lot of
23 very good programs.

24 DR. COHEN: They don't have any access

1 February 11, 2020

2 to the tablet program as well.

3 MR. BARNES: I welcome them back if they
4 want to use that PEACE Center the right way and
5 I'm committed to it.

6 MR. RICHARDS: Yeah, I know. I toured
7 it.

8 MR. BARNES: And you've come, and you've
9 spoken to some of these young men --

10 MR. RICHARDS: You're doing a great job.

11 MR. BARNES: -- who have said to you
12 that they don't want to be in this facility. And
13 some of them love it. And you saw the honors unit
14 that they get to, you know, benefit from.

15 MR. RICHARDS: That should be the
16 standard about how we --

17 MR. BARNES: If I have a whole jail of
18 an honors unit, I'd be happy.

19 MR. RICHARDS: -- that should be the
20 standard.

21 MR. PERRINO: Just a little history
22 though. When GNDC was built, I don't know if it
23 was built, but when it was converted to young
24 adults, it was working great, and it was

1 February 11, 2020

2 effective and everybody was excited and had like
3 20 percent of the kids and we rolled it to 40
4 percent of the kids and we've rolled to 50
5 percent of the kids.

6 And all of a sudden, like that 50, 60
7 mark, we had like chaos and fighting and
8 stabbing, and they just off the hook and
9 everybody was like well, what's changed, because
10 the idea initially was to get 100 percent. It was
11 a great idea but it didn't get passed that point
12 where you're just mixing different individuals
13 with different personalities and gang bangers and
14 stuff together, because our goal was to get 100
15 percent in because that's what we were trying to
16 do at the time.

17 But then we realized from experiments
18 that whoa, when we got past that 50, 60 mark, it
19 was chaos. So I think this thing that the
20 department is doing is from experience. It's not
21 just they just made it up. It's from experience
22 and 60, 70 is a lot higher than we were when it
23 was, when GNDC was getting crazy, so.

24 MR. BARNES: Seventy-three.

1 February 11, 2020

2 MS. SHERMAN: Seventy-three.

3 MR. RICHARDS: But that 73 percent, if
4 y'all haven't toured, I would encourage you to go
5 out. There is something behind that. Like he has
6 a real program out there, like the driving
7 program, it's like, they're just not housed with
8 young people. There's a program and services that
9 they are engaged in, so --

10 MR. PERRINO: The same that I'm talking
11 about. GMDC when we did that was the PEACE
12 center. It was that.

13 MR. RICHARDS: There's something behind
14 it.

15 MR. PERRINO: [unintelligible]
16 [03:11:10] designed, just like they redid it at
17 RNDC, is what they had in 73. So it wasn't just
18 like we were just trying to throw everybody in
19 one facility.

20 MR. RICHARDS: Yeah.

21 MR. PERRINO: It was a well thought out
22 plan and the department spent a ton of money in
23 73 to get it to looking like that.

24 MR. FRANCO: Ms. Torres, I mean I think

1 February 11, 2020

2 the question that I still don't get an answer,
3 but maybe we don't get it today is your ability
4 to actually create a portable program that allows
5 young people that are moved from these six spaces
6 to actually have the same resources. And I think
7 the other question that we should all have is
8 that research is very clear that actually having
9 younger adults exposed to older people with
10 [unintelligible] [03:11:46] behavior is actually
11 not a very good idea unless you're very
12 intentional about it. I mean if you are very
13 intentional about it, I would love to hear about
14 how you are making sure that it's actually around
15 positive influence of adults and the programming
16 actually meets the same standards of your young
17 people actually going through the PEACE center.

18 MS. TORRES: So I will be very
19 transparent with you. We don't have a PEACE
20 Center in every facility. But we do have the
21 necessary staff and providers to ensure that
22 programming, as it is detailed and mapped out at
23 RNDC exists in other facilities.

24 MR. FRANCO: And young adults are

1 February 11, 2020

2 getting that no matter where they go?

3 MS. TORRES: Absolutely. The only
4 exception to educational services, and here we go
5 again for transparency, is at AMKC. We afford
6 educational services in all of the other
7 facilities on Rikers Island and as an agency, we
8 have taken the necessary steps to contact the
9 State Department of Education and we have opened
10 up test centers at both Manhattan Detention and
11 VCBC.

12 AMKC, we're still working with it,
13 because we don't find an appropriate space.
14 However, in young adult, 19- to 21-year old who
15 is interested in educational services, we
16 transfer to another facility where he can receive
17 educational services.

18 DR. COHEN: I'd like to make one other
19 comment there. Among the 18-year olds, where you
20 look at it differently, they're 98 percent. And
21 these are not all angels. But when you want to do
22 it, you have 98 percent of the 18-year olds in
23 young adult housing. The 19 to 21s, you're in the
24 70 range.

1 February 11, 2020

2 MR. FARRELL: They're a larger group of
3 population segment too.

4 DR. COHEN: It is a larger group, but
5 it's always been the case. I mean it's always
6 been the case.

7 MR. FARRELL: And to touch on AC Torres
8 with AMKC, we recognize the challenges we have in
9 providing as much robust programming for the
10 young adult. There's only 18 19- to 21-year olds
11 at AMKC, which is our largest facility. So we've
12 recognized that, and we've relocated a lot of
13 those comingled areas out of AMKC into other
14 facilities that have the ability to continue that
15 young adult program.

16 MR. RICHARDS: What's the challenge with
17 having the program that I saw at RNDC department
18 wide? Is there a space challenge?

19 MS. VICTORIA PHILLIPS: It's funding.

20 MR. RICHARDS: Like that to me seems
21 like the standard of what --

22 MS. BRANN: I think Ms. V. just answered
23 your question. It's capital funding and
24 improvement.

1 February 11, 2020

2 MR. RICHARDS: It's funding?

3 MS. BRANN: Yes, absolutely.

4 MR. RICHARDS: That's what it is?

5 MS. BRANN: So there is space, however,
6 because of the Close Rikers initiative and we'll
7 be leaving the island in 2027, there is no way we
8 would get capital funding to reproduce the PEACE
9 Center in every facility.

10 MR. RICHARDS: So this is something we
11 should build into the new system --

12 MS. BRANN: Mm-hmm.

13 MR. RICHARDS: -- the way we have with
14 every --

15 MS. BRANN: Which, yes, And SDC Farrell
16 is involved in those discussions with the
17 interior design and those plans are already in
18 progress.

19 MR. RICHARDS: Okay. Because, I mean it
20 was a great program when I seen it. And the way
21 that you did it when I was talking about the
22 review on the separation status, I was referring
23 to Dep Caputo in terms of how he does use of
24 forces, every use of force is reviewed with the

1 February 11, 2020

2 person involved and lessons learned about how it
3 could be done different.

4 MS. BRANN: Yes, that's correct.
5 Everybody does that.

6 MR. RICHARDS: That's the process.

7 MS. BRANN: Everybody does that, yes.

8 MR. RICHARDS: That we should be doing
9 in separation status.

10 MR. FRANCO: And again, I don't want to
11 --

12 MR. RICHARDS: So congratulations,
13 because that is a great [unintelligible]
14 [03:15:39].

15 MR. FRANCO: Stanley, and I don't want
16 us to think that space is always the only
17 deterrent to do good programming. I mean Ms.
18 Torres, you know how to do it better than anyone.
19 I mean this place is like [unintelligible]
20 [03:15:47], they actually have created very good
21 [unintelligible] [03:15:50] programs for young
22 adults. This place is like in Colorado where they
23 actually use C-Tech. I mean there's ways that
24 actually we could get programming to young people

1 February 11, 2020

2 no matter where you guys feel that that they have
3 to be at. And I want to learn more how you can
4 [unintelligible] [03:16:05].

5 MS. SHERMAN: Thank you. We are, I
6 believe ready to move to a vote on this proposed
7 variance with conditions. Is there a motion and a
8 second to open the floor for that vote?

9 MR. HERNANDEZ: [unintelligible]
10 [03:16:20].

11 MS. SHERMAN: Second? Second? Thank you.
12 There are existing conditions. As far as I know,
13 there are no changes to existing conditions to
14 the variance, so we can vote on the variance with
15 existing conditions. Are there any questions,
16 comments or proposed further conditions to the
17 variance? If not, we can move to is there a
18 motion to vote to renew the variance with
19 existing conditions?

20 MR. RICHARDS: Motion.

21 MR. PERRINO: [unintelligible]
22 [03:17:01]

23 MS. SHERMAN: Okay.

24 MR. RICHARDS: Aye, in favor.

1 February 11, 2020

2 MR. HERNANDEZ: Yes.

3 MR. PERRINO: Yes.

4 MR. FRANCO: Yes.

5 DR. COHEN: No.

6 MS. SHERMAN: Yes. By a vote of five in
7 favor and one opposed, the variance with all
8 conditions that had previously been approved is
9 approved. And --

10 MR. RICHARDS: My apologies. I, I said,
11 Dep Caputo, it's Warden Caputo.

12 MR. BARNES: It's still [unintelligible]
13 [03:17:27]. [laughter]

14 MR. RICHARDS: Congratulations.

15 MS. SHERMAN: And now we will move to
16 the young adult ESH request. Since July of 2016,
17 the board has granted a variance that allows the
18 department to house young adults in enhanced
19 supervision housing. The board has worked closely
20 with the department to monitor and improve the
21 ESH model through these variances. ESH is a
22 restrictive housing area. In ESH level one, the
23 most restrictive level, people are allowed out of
24 their cell for seven hours per day. This is half

1 February 11, 2020

2 as much as the general population. In level one,
3 all time out of cell is spent restrained to a
4 desk by one ankle. The board's proposed rule on
5 restrictive housing incorporates the variance and
6 many of its conditions. The rule's enactment
7 would eliminate the need for this variance.

8 MS. EGAN: The department is currently
9 operating eight ESH housing units, including two
10 young adult only ESH units. As of January 30,
11 2020, there were a total of 82 people in ESH, 71
12 adults and 11 young adults. Of the 11 young
13 adults, 82 percent were in Y only status, 54
14 percent were in level three, 45 percent in level
15 two, and no young adults were in ESH level one.
16 Board staff analyzed young adult ESH data from
17 May 2019 through November 2019. Key findings
18 include review progressions have improved since
19 the last six month reporting period. Similar to
20 the last period, the most common exit reason
21 during this time period was progressing out of
22 young adult ESH.

23 Young adults who exited between May 1
24 and December 1 of 2019 spent slightly less time

1 February 11, 2020

2 in ESH than those who exited between January 1
3 and May 1 of 2019. Young adults who exited
4 between May 1 and December 1 of 2019 had spent
5 more time in a restraint desk unit than those who
6 existed in the previous four months, January
7 through May, 2019.

8 Additionally, board staff reviewed the
9 department's monthly public audits of young adult
10 ESH from May through December of 2019. The
11 department audits four randomly selected days per
12 month. Those key findings include the average
13 lockup time in ESH level one was five hours 43
14 minutes, an increase of just over 30 minutes from
15 the previous reporting period. During the review
16 period, one young adult in ESH one, 11 young
17 adults in ESH two, and eight young adults in ESH
18 three refused to lock out of their cells for any
19 amount of time on an audit day.

20 In recent months, board staff have
21 received complaints from young adults in ESH who
22 express that they are concerned for their safety
23 in the ESH unit and therefore elect to remain
24 locked in for their own safety. On audit days, an

1 February 11, 2020

2 average of 64 percent of the young adults in ESH
3 refuse to participate in any recreation for any
4 amount of time. Would the department like to
5 present the request?

6 MR. STUKES: Yes, good afternoon. So
7 I'll be presenting on their request regarding
8 enhanced supervision housing for young adult.
9 Pursuant to section 1-15F of the New York City
10 Board of Correction [unintelligible] [03:21:04],
11 the New York City Department of Correction
12 requests a six month limited variance renewal
13 from the board member standards 1-16C-1A, which
14 requires that young adults ages 18 to 21 be
15 excluded from placement in enhanced supervision
16 housing. The department requests this renewal to
17 take effect on February 18, 2020, the date of
18 which our current variance is set to expire.

19 I'd just like to give some context as it
20 relates to our young adults in the enhanced
21 supervision housing. Of course, in 2016 the New
22 York City Department of Correction became the
23 first correction department in the nation to
24 eliminate the use of punitive segregation for

1 February 11, 2020

2 ages 18 through 21 years of age. The department
3 was able to achieve this reform partly through
4 the creation of an alternative behavior
5 intervention, enhanced supervision housing.

6 Young adult housing is an intervention
7 unit used only when necessary, as data shows, for
8 a very small subset of young adults who engages
9 in persistently violent behavior or perpetrates
10 of acts of egregious violence while in the
11 department's care. Through the operation of the
12 young adult ESH levels one through three, the
13 department is able to create a safe and
14 supportive environment where young people
15 frequently engage in programming and educational
16 services for the first time during their stay in
17 custody.

18 During the most recent school year, July
19 2019 through July 2020, there were two young
20 adults that earned their high school equivalency
21 diploma while housed in enhanced supervision
22 housing. Through the close collaboration of
23 program staff, counselors, officers, facility
24 leadership, the Department of Education and the

1 February 11, 2020

2 Board of Correction, ESH involves a structured
3 management approach that is informed by best
4 practices and is comprised of three levels with
5 gradually increased provisions of services. In
6 2019, there were approximately 19 young adults in
7 ESH on any given day, with three young adults in
8 ESH level one.

9 For comparison, in 2017, there were
10 approximately 33 young adults in ESH on any given
11 day, with 11 young adults in level one ESH
12 housing. Today, there's only eight young adults
13 in ESH, none of which are in level one. There are
14 zero young adults in level one enhanced
15 supervision housing. Throughout the department's
16 operation for young adults, the department has
17 ensured that ESH placement is utilized only as a
18 last resort, when a young adult's behavior cannot
19 be safely managed in programming intensive
20 general population housing, like TRU, or Second
21 Chance, which has been previously mentioned by
22 Acting Warden Caputo.

23 The chief of the department personally
24 reviews all young adults' review for placement

1 February 11, 2020

2 into enhanced supervisor housing. The only level
3 where the desks are utilized in order to evaluate
4 whether least restrictive housing is viable prior
5 to placement. So, just to be clear, the chief of
6 the department is the authorizing authority of
7 placing a person or young adult in level one
8 enhanced supervision housing after they have been
9 processed and reviewed. And again, it is used as
10 a last resort. And I will put emphasis on today's
11 date, there are zero young adults in ESH level
12 one housing.

13 Young adults in all levels are able to
14 participate in the multidisciplinary review,
15 which occurs 15 days of placement at level one,
16 or 21 days after level two. So the person is
17 given the opportunity when they are reviewed for
18 progression, they are allowed to be a part of
19 that process and that review. As long as the
20 young adult has not engaged in violence or
21 aggressive behavior, and there's credible
22 intelligence that he plans to engage in
23 additional violence in a less restrictive unit.

24 The department wants all adults in ESH

1 February 11, 2020

2 to progress as quickly as possible back to
3 general population housing, as we mentioned.
4 While in ESH, young adults are encouraged to
5 participate in programming, counseling and
6 educational services, specifically designed to
7 disrupt antisocial behavior and criminality
8 risks. And to give context on the purpose of the
9 unit, the purpose of the unit is to ensure
10 everyone's safety following egregious violent
11 incidents by a person or persistent violence and
12 harm while equipping young adults with the tools
13 they need to regulate their behavior. We want all
14 young adults in the department's care to be
15 successful in general population housing settings
16 and most importantly back into their communities.

17 MS. SHERMAN: Thank you. Are there
18 questions? All right, does a board member move to
19 vote on the requested six month variance to allow
20 the department to house young adults in enhanced
21 supervision housing?

22 DR. COHEN: Motion.

23 MS. SHERMAN: Are there questions?

24 MR. RICHARDS: Just what's the

1 February 11, 2020
2 difference, chief, how do they go from, you know,
3 people who aren't moving up in the progression,
4 people who sort of, we get our first report,
5 people, the way people got out and they ended up
6 getting released to where we're at now, where
7 people are making, they're going through stages,
8 people aren't in level one restraint desks.
9 What's happening?

10 MR. STUKES: I'm going to let Acting
11 Warden Rene answer that.

12 MR. JEAN RENE: For the record, I'm
13 Acting Warren Rene, Jean Rene. I'm the commanding
14 officer of OBCC. At one time, I did oversee ESH
15 and I still do as the commanding officer. One of
16 the things we do, we take a holistic approach in
17 dealing with the young adults in ESH. You have
18 your staff that's engaged with them on the
19 housing area floor. You have a dedicated
20 supervisor, I have a unit manager assigned to the
21 area. I have a deputy warden of ESH that tours
22 there to make sure that everything is coming all
23 together, and of course, I come there as well to
24 make sure that everything is being done.

1 February 11, 2020

2 Like I said, we're a collaborative
3 effort with the programming staff, the uniform
4 staff that's in the area. We definitely sit there
5 and encourage them to go through the levels of
6 ESH, to let them understand this is a temporary
7 situation. This is what you have to do. We
8 encourage them every step of the way and the next
9 thing you know, they go through the different
10 levels.

11 MR. FRANCO: Can you explain a little
12 bit of that. I mean how is it that you help a
13 young person as he, whatever conditions you're
14 talking about? I mean how is it that you're
15 helping them be less violent, less impulsive. How
16 do we do that? I mean it seems to be happening.
17 How is it that you're doing that?

18 MR. RENE: Just addressing the specific
19 needs of the inmate, and of course I'm just going
20 to allow Commissioner Torres to answer.

21 MS. TORRES: Thank you. There are very
22 key components that we have selected and are
23 infused in what we call supportive structure
24 housing areas. When it comes to the population

1 February 11, 2020

2 that is assigned to ESH, their impulse and the
3 lack of rationalization when it comes to their
4 behavior is something that needs to be targeted
5 and needs to be targeted with their input.

6 When it comes to the staff assigned to
7 any of these supportive housing areas, they're
8 hand selected, they're hand picked. They are well
9 trained. We have trained them in very specific
10 evidence based components that are beneficial to
11 the young adults. We also bring in very specific
12 providers that are able to work with them on a
13 one-on-one as well as groups.

14 And I think that what has made the
15 difference as well is that when we first rollout
16 the support team for any of these structured
17 houses, we first rolled out it and we did not
18 involve the young adults. Last year, we purposely
19 decided that we needed to have the young adult be
20 a part of that support team. He needed to be in
21 attendance, he needed to be a part of it, he
22 needed to hear what was communicated about his
23 progress, he needed to see what the reaction of
24 the staff was when he accomplished specific goals

1 February 11, 2020
2 that had been set by the support team. And we
3 think that that entire support team, which by the
4 way, is multidisciplinary. It includes uniform,
5 non-uniform, programs, DOE and providers as well
6 as mental health. You know, having the kid be
7 there and hear what the progress has been, as
8 well as the new goals is what has made a
9 difference.

10 MR. FRANCO: Is that happening at ESH
11 though?

12 MS. TORRES: That happens at ESH on a
13 weekly basis.

14 MS. SHERMAN: Dr. Cohen?

15 DR. COHEN: Yes, first, it's quite
16 impressive to have no people in ESH level one,
17 and the work that's been done, I think
18 collaboratively with the board over a period of
19 time to decrease the utilization of ESH one and
20 to require a process that moves people through,
21 that this is great. And I congratulate the
22 department on accomplishing that.

23 MR. RENE: Thank you.

24 DR. COHEN: And now, I'll ask you some

1 February 11, 2020

2 questions. You know I'm not a fan of restraint
3 desks. And probably you're not a fan of restraint
4 desks either, but you think they're necessary. I
5 hope that's the case. Why are, I have a few
6 questions, why are people spending more time in
7 restraint desks now, the length in them? It's
8 about, it's almost four weeks on average that
9 people who are placed in ESH one restraint desks
10 stay there. So, they have an average of five
11 hours a day out of cell only at this point. And
12 I'll ask you that question too, why they're not
13 getting the seven hours time out of -- that
14 they're supposed to, they're only getting five.
15 But why are they, they're spending a lot of time
16 and that's not decreasing. Any idea why that's
17 gone up?

18 MR. STUKES: With regards to a person
19 remaining in ESH housing longer, so each person
20 that's in ESH housing, they get their 15 day
21 review based on their participation and how they
22 behave after being placed. So 15 days, when you
23 look at it in reality is not a very long time,
24 especially when you're dealing with young adults.

1 February 11, 2020

2 So there are occasions when we have to like
3 engage the individual more positively to convince
4 them to be engaged and explain to them what we
5 want their outcome and goals to be, which would
6 confirm them being, remaining in ESH housing past
7 the 15 days after the first review.

8 DR. COHEN: I hear that. Most standards
9 on using restraints on people require evaluations
10 15 minutes or 30 minutes or two hours. You wait
11 14 times 24 before you evaluate the change. I
12 think that's inappropriate and you think it's
13 appropriate. We'll discuss that more. People
14 aren't getting out to recreation. In the last
15 month, 30 percent of the people get to recreation
16 from ESH. Why aren't they getting out of their --
17 you say they're refusing but why, what are you
18 doing to make them not refuse?

19 MR. RENE: Of course, with every
20 individual, it's a case by case situation. Again,
21 like I said before, my staff and myself, we
22 encourage each young adult to participate.
23 Sometimes when they first come through, they
24 understand why they're now in ESH, that's why we

1 February 11, 2020

2 go through the orientation process, show them the
3 reasons why they got here, show them what they
4 have to do to sit there and go through the
5 different levels. Of course with different other
6 situations might not want them to engage. That's
7 why it's important that us as the uniformed
8 staff, we work collaboratively with the program
9 staff to sit there and see what exactly is the
10 young adult needs are so that way we can get them
11 to engage in the program activities that's
12 offered to them.

13 DR. COHEN: Do you think there's
14 anything you could do to increase the number? I
15 mean I've always thought that the process that
16 you have of strip searching before they go to
17 recreation and using, and putting them in chains
18 when they leave their -- I mean recreation is
19 right outside ESH one, right, it's right there?

20 MR. RENE: Yes, it is.

21 DR. COHEN: There's the door, you're
22 right there, but they have to get strip searched
23 before and after and they have to get put on leg,
24 arm and belly chains to be removed from their

1 February 11, 2020

2 cell. Is there any way that you can make that
3 process -- I assume that has something to do with
4 how much fun it is to go to recreation.

5 MR. STUKES: So again, persons who are
6 in ESH level one are there based [unintelligible]
7 [03:35:58] to be placed there. That's following
8 an act of violence, slashing, a stabbing or a
9 serious injury to inmate. So what we do as an
10 agency to ensure that all persons are safe even
11 when they are being removed from the confinements
12 of their cell to be escorted to recreation, we
13 utilize those methods of restraints.

14 And contrary to belief, the fact that
15 when persons are being removed in that type of
16 setting with restraints, they are more apt to
17 participate because of not having that fear of
18 someone not being in restraints and having the
19 ability to assault and attack them.

20 DR. COHEN: So, is there anything you
21 can do to increase the percentage of people who
22 utilize recreation among these young adults.

23 MR. STUKES: We, as an agency,
24 collectively with all the programming staff and

1 February 11, 2020

2 the counselors and the officers, we will continue
3 to engage these young men positively and explain
4 to them like ESH housing is not a place that we
5 want them to remain. We want to disrupt the
6 negative behavior and reintegrate them back into
7 general population or back to their communities.
8 That is our goal. Our goal is not to keep them
9 there, our goal is not to utilize it as a
10 punitive setting or forum. However, we must
11 utilize best practices with our efforts and goal
12 of keeping people safe.

13 DR. COHEN: I understand that you want
14 to continue use of [unintelligible] [03:37:39].
15 I, it's my understanding that the reason someone
16 can go into ESH versus Secure are the same. You
17 can't -- whatever you do to get into ESH one you
18 can't do to get into Secure? You slashing or
19 stabbing, you'd never go to secure?

20 MS. JENNINGS: Let me answer.

21 MR. STUKES: Okay, chief.

22 MS. JENNINGS: I'm going to answer for
23 me, because I'm the only authority figure that
24 can people in ESH level one. And so I look at it

1 February 11, 2020

2 holistically to be able to say how can we manage
3 this person. We only have 11 total people, young
4 adults in ESH and zero in ESH one. So even with
5 the comingling, I'm the one who looks at all of
6 the evidence, including video to say where best
7 we could possibly treat and deal with a person so
8 that they're not in restraints. So that's under
9 the contrary. So I'm looking at that. We don't
10 have, only 11 in ESH and none of which are in ESH
11 level one.

12 DR. COHEN: I'm very glad about that. I
13 think that suggests that maybe there's not a need
14 for ESH one, rather than there is, because you
15 can --

16 MS. JENNINGS: So it is a tool, it's a
17 tool, as well as comingling, as well as Secure,
18 because we are the only ones in the nation who
19 has eliminated punitive segregation. So I think
20 that we have shown that we've been responsible
21 with our placements and with our evaluations.
22 We've proven that.

23 MR. FRANCO: Chief, sorry, but there's
24 plenty of places that actually serve folks up to

1 February 11, 2020

2 age 24 that don't use room confinement.

3 MS. JENNINGS: I'm sorry?

4 MR. FRANCO: There's actually many
5 places in the nation that actually serve young
6 people up to age 24 that are not using room
7 confinement.

8 MS. JENNINGS: So we have gone out and
9 most places, one, if they're out programming,
10 they're not out of their cells. So, we're talking
11 about the elimination of punitive segregation.
12 And I'm not arguing that someone else may have
13 something, but we're also comparing apples to
14 oranges when you talk about direct supervision.
15 But we have proven that it is a tool that's
16 necessary and that we need it to be available if
17 we have to at the last resort to utilize. I've
18 shown that.

19 MR. RICHARDS: So let's go back then,
20 right, because this is amazing, right. We have
21 close to 500 young adults --

22 MS. JENNINGS: Young adults.

23 MR. RICHARDS: -- in the system. And we
24 have 11 in ESH, right. Let's just put this all

1 February 11, 2020

2 together, right. We have 11 in ESH.

3 MS. JENNINGS: So eight, I'm sorry.

4 MR. RICHARDS: Eight? Eight in ESH, we
5 have zero in level one, we have bail reform
6 happening, right. So the folks who were normally
7 detained are out of the system. What are we doing
8 that's -- no, not what we, what are you doing
9 that is getting this results, because whatever it
10 is, we need to do more of it.

11 MS. JENNINGS: So, and we are. We are.

12 MR. RICHARDS: So we can get to where
13 Bobby's at about why do we even need it.

14 MS. JENNINGS: But what I've said all
15 along, and I was fortunate enough to be a deputy
16 warden in RNDC and an officer for 12 and a half
17 years working with this population, that these
18 restraint desks eventually will eliminate
19 themselves because of the work that we're doing
20 with this population. It will eventually
21 eliminate itself where we won't have a need. But
22 at this time, that's not where we are.

23 MR. RICHARDS: Right, no, I get that.
24 I'm just, I want to just congratulate y'all. I

1 February 11, 2020

2 think this is great work, and I want to just take
3 this moment to say how do we do more of it,
4 because y'all got this result. It didn't just
5 happen.

6 MS. BRANN: No, it didn't just happen.
7 This has been significant work over a period of
8 time with lots of discussions with the board
9 members and pushing us to do better and we have.

10 MR. RICHARDS: You have.

11 MS. BRANN: And so this is a part of
12 rulemaking. This is on rulemaking, correct?

13 MS. SHERMAN: It is.

14 MS. BRANN: So every time we come here
15 with this variance, we have the same discussions,
16 the same questions. It truly doesn't make much
17 sense to have the same discussion over and over
18 and over again, when in March and our next board
19 meeting, we'll be moving forward on new rules. I
20 agree, Stanley. We have done an exceptional job.
21 And there is no other place in the country, no
22 other place in the country, in an adult jail or
23 an adult prison where they have done what we have
24 taken on.

1 February 11, 2020

2 We created all the alternatives to
3 punitive segregation and people are coming to see
4 what we have done. And so, as the chief says, I
5 believe eventually, we will eliminate the need
6 for this. But right now, it's still a tool. And
7 we need this tool to safely transition into
8 something different, as we have been
9 transitioning over the past four years.

10 We don't want to put anybody in desks.
11 We don't want to put anybody in punitive
12 segregation. However, people still have free will
13 and they act out that's why we have this. We have
14 done targeted interventions with all of those
15 young adults who are in ESH level one. I can
16 attest to the fact that I have toured with the
17 warden, who knows every single kid. And when they
18 are out in their desk, he knows their plan and
19 they know their plan. And they talk about what
20 they need to do to get out of there. So he is
21 intimately involved with everything that goes on
22 in those units, as is Chief Stukes, as is the dep
23 who works there, as is the staff. They all know
24 their plans. So to have eight and then zero in

1 February 11, 2020

2 level one, rather than condemn for using the
3 tool, I applaud you for giving us kudos for
4 getting to this point, so thank you.

5 MR. RICHARDS: [unintelligible]
6 [03:43:53] thank y'all.

7 MS. SHERMAN: Thank you. And with that,
8 I will ask for, there are existing conditions and
9 there are not amendments to the existing
10 conditions, so we can have a motion and a second
11 and a vote to renew the existing conditions. Do I
12 have a motion?

13 MR. RICHARDS: Motion.

14 MS. SHERMAN: With a second.

15 MR. PERRINO: [unintelligible]
16 [03:44:19].

17 MS. SHERMAN: Okay. Let's move to a
18 vote. Mr. Richards?

19 MR. RICHARDS: Yes.

20 MS. SHERMAN: Mr. Hernandez?

21 MR. HERNANDEZ: Yes.

22 MR. PERRINO: Yes.

23 MR. FRANCO: Yes.

24 DR. COHEN: No.

1 February 11, 2020

2 MS. SHERMAN: Yes. By a vote of five in
3 favor and one opposed, we have voted to renew the
4 existing conditions. Does any board members which
5 to propose further conditions?

6 DR. COHEN: I have some conditions. I
7 understand, commissioner, that some of these
8 issues are in rulemaking, but they, they still,
9 we still have to make a decision about what we
10 are going to, what variances we're going to give
11 you. As you pointed out, we've been in rulemaking
12 for a long time. So, I have presented this
13 amendment every time we have discussed ESH. I
14 think the use of restraints is unnecessary. We
15 know that because of Secure. We know that you've
16 never had to use Secure, use restraints in
17 Secure, even though you could if you wanted to.
18 You have the physical capacity in Secure to
19 isolate people who you think should not be in
20 contact with others. And the use of leg
21 restraints, even though they become normalized by
22 continuous use over years of time, are
23 humiliating, degrading, and torturous and this
24 board should not have, should not allow it.

1 February 11, 2020

2 When we agreed to allow ESH, which is
3 the reason there's a variance here, because our
4 initial ESH rule said that young people could not
5 be in ESH. We gave a variance to the department
6 because you said you could not people out of
7 solitary confinement unless we used ESH. And at
8 that time, you weren't using restraint desks. And
9 then you started using restraint desks. So my
10 first condition is that DOC shall not use non-
11 individualized use of restraint desks or other
12 restraints during lockout. Non-individualized use
13 means placing any person or group of people in a
14 restraint desk or other restraint as a condition
15 of lockout or solely based on their transfer to
16 ESH. Our previous rules on this, which you've
17 ignored and the principals of the rulemaking,
18 which we're going to be engaged in, and these
19 general principals are that restraints should be
20 used as little possible for as short a period as
21 possible, and only to control the incident that's
22 going on. They shouldn't be used for 24 days. So
23 that's my first condition.

24 MS. SHERMAN: Does the department which

1 February 11, 2020

2 to comment?

3 MS. GROSSMAN: The department opposes
4 this condition. As was mentioned at the very
5 beginning of this meeting, the board is
6 undergoing rulemaking and many of these --
7 they're undergoing discussions and too, it's a
8 legitimate process that we believe is important
9 to participate in. We have more discussions to be
10 had with the board. And to bypass this rulemaking
11 process at this point in time, we just, we would
12 oppose that at this point in time.

13 So, we have very serious concerns about
14 not being able to use the restraint desks. If we
15 don't have these tools available, as has been
16 discussed by the chiefs, by the commissioner, we
17 have no other options at this point in time. And
18 the board's proposed rules contemplate that there
19 will be time for the department to transition.
20 And we need that time. And that's what the
21 proposed rulemaking process is all about. So
22 that's why we opposed at this point in time.

23 MS. SHERMAN: Thank you. Are there any
24 questions for the department or further comments

1 February 11, 2020

2 from the board?

3 MR. FRANCO: Heidi, let me see if I get
4 your point. Your point is actually that there
5 would be a process that would allow you a
6 transition to move out of these practices. But I
7 just heard from the commissioner she would
8 actually see a day when they don't exist, or is
9 that actually you believe that you need these
10 very humiliating practices to continue to happen,
11 even with time to transition?

12 MS. GROSSMAN: Well, I think as we look
13 at other jurisdictions, we're not finding any
14 other options at this point in time. So we are
15 continuing to and continuing to consider other
16 available options, and as you can see, we've been
17 applying our tools very judiciously. So that's
18 what I think the proposed rules contemplate is
19 that we have the time to continue looking, and
20 exploring other options. And we want to be able
21 to avail ourselves of that.

22 MR. RICHARDS: But at the same time
23 [unintelligible] [03:49:05].

24 MS. GROSSMAN: Well, we're, we, and I

1 February 11, 2020

2 think the commissioner has mentioned this before.
3 Sometimes you need a tool and you need to have
4 the ability to use the tool, and if you don't use
5 it, that's a good thing. But as you, yes, I
6 agree.

7 MS. SHERMAN: All right, with that, I
8 believe we're ready to move. Is there a motion to
9 vote on the proposed condition?

10 MR. PERRINO: So moved.

11 MS. SHERMAN: Is there a second?

12 MR. RICHARDS: Second.

13 MS. SHERMAN: Okay. Are there any
14 further discussion regarding the condition? If
15 not, we'll move directly to a vote. And again,
16 the condition, I should read the condition.
17 Again, the condition would state DOC shall not
18 use non-individualized use of restraint desks or
19 other restraints during lockout. Non-
20 individualized used means placing any person or
21 group of people in a restraint desk or other
22 restraint as a condition of lockout or solely
23 based on their transfer to ESH. The condition,
24 the proposed condition has been opposed by the

1 February 11, 2020

2 department and it has also been pointed out that
3 this is the subject of current rulemaking. With
4 that, I will call for a vote.

5 MR. RICHARDS: With rulemaking in
6 process and the department's demonstration that
7 they don't use it, I vote no.

8 MR. HERNANDEZ: No.

9 MR. PERRINO: No.

10 MR. FRANCO: I want to be on the record
11 that I don't think any human being should be
12 shackled to a desk for more than is necessary, a
13 minimum amount of time, based on an incident. But
14 based on rulemaking, I will vote no.

15 DR. COHEN: Yes.

16 MS. SHERMAN: And I will vote no, and by
17 a vote of five in favor and one opposed, no,
18 excuse me, by a vote of one in favor and five
19 opposed, the condition will not be added to the
20 variance. Are there further proposed conditions?

21 DR. COHEN: Yes. By May 12, 2020 DOC
22 shall develop a public plan to increase young
23 adults' recreation participation in ESH and
24 submit such plan to the board. DOC shall publicly

1 February 11, 2020

2 report monthly on the implementation of the plan,
3 of the number, rate and time of young adult
4 recreation participation. I appreciated the
5 comments that I heard from acting warden and
6 others about doing it. I hope it's possible to do
7 better. If not, something else has to be thought
8 about. I want to make clear that although some
9 people don't agree with this, I believe this
10 board understands recreation not as a privilege
11 but as a critical health issue, that you have to
12 get out of your cell and do large muscle exercise
13 and everyone needs to do that. I don't do it
14 enough. But these are young people and they
15 really need to do that. And the department has to
16 create a situation that supports that. And I
17 believe that you want to do that. We're asking
18 you to think a little bit harder about that over
19 the next couple of months and let us know.

20 MS. SHERMAN: Does the department wish
21 to comment?

22 MS. GROSSMAN: I think that we just go
23 back to again is there a need for this condition
24 at this point in time as you've heard from

1 February 11, 2020
2 everyone today. We've spent considerable amount
3 of time talking about all the work that the
4 department has done for programming and to try to
5 facilitate people to come out for recreation.
6 What one of our concerns is that to, especially
7 for the public reporting on a monthly basis, is
8 it a good use of our resources to take a person
9 who could be doing other work for the department
10 to publicly report. It is something that we're
11 concerned about and we believe that we don't need
12 this variance condition.

13 MS. SHERMAN: Thank you. Is there a
14 motion to vote on the proposed condition?

15 DR. COHEN: So moved.

16 MS. SHERMAN: Is there a second.

17 MR. PERRINO: Second.

18 MS. SHERMAN: Okay.

19 MR. RICHARDS: Could we hear the
20 condition again, Bobby?

21 DR. COHEN: Yeah. By May 12th, so that's
22 three months from now, DOC shall develop a public
23 plan to increase young adults' recreation
24 participation in ESH and submit such plan to the

1 February 11, 2020

2 board. DOC shall publicly report monthly on the
3 implementation of the plan and then number, rate
4 and time of young adult recreation participation.

5 MR. RICHARDS: Okay. Thank you.

6 MS. SHERMAN: Are there any further
7 questions or comments on the proposed condition?

8 MR. FRANCO: I have a question for the
9 department. Do you keep track of major muscle
10 activity at ESH?

11 MR. STUKES: Yes, that's a part of our
12 data collection.

13 MR. FRANCO: You do it through logs or
14 reports?

15 MR. STUKES: Yes, it is taken by staff
16 and put in our FIS report which tracks our data.
17 So any person that participated, the number of
18 persons that goes to those services, it is
19 documented.

20 MR. FRANCO: Okay.

21 MR. HERNANDEZ: Just out of curiosity,
22 what do you think of some of the reasons that
23 people in custody would sort of not avail
24 themselves of recreation?

1 February 11, 2020

2 MR. STUKES: There could be a number of
3 reasons. Some young persons prior to coming into
4 custody didn't exercise, and once they come into
5 DOC custody, they really don't change their way
6 of living. However, we as an agency, have engaged
7 these young men and tried to introduce them to a
8 different setting once they are in our custody
9 where we are ultimately in charge of them,
10 encourage them as several members have spoken
11 this afternoon, that we encourage them to
12 participate and socialize with other individuals
13 with whom they may not be familiar with.

14 However, I would state that these young
15 men, when they don't know a person, it's kind of
16 like in free society, they don't feel safe
17 engaging with persons that they don't know. So
18 but we as an agency, we try to integrate them,
19 where they begin to interact and socialize with
20 other persons to become a community so they can
21 feel safe being around these persons without
22 perhaps utilization of being in restraints.

23 MS. SHERMAN: Thank you. If there are no
24 further questions or comments, we can move to a

1 February 11, 2020

2 vote on the proposed condition.

3 MR. RICHARDS: In light of the
4 department doing these things, you're already
5 engaging young people, trying to get them to go
6 to recreation, you have a system for reporting, I
7 vote yes. This is just about putting what you're
8 doing on paper and having a plan and measuring
9 it, so I vote yes.

10 MS. SHERMAN: Mr. Hernandez?

11 MR. HERNANDEZ: Yes.

12 MR. PERRINO: Yes.

13 MR. FRANCO: Yes.

14 DR. COHEN: Yes.

15 MS. SHERMAN: Yes, by a unanimous vote
16 of six in favor, the condition will be added to
17 the variance, and now final step, I think we are
18 ready to vote on the variance with the pre-
19 existing conditions and with the new approved
20 condition. Is there a motion?

21 DR. COHEN: So moved.

22 MS. SHERMAN: Second?

23 MR. RICHARDS: Second.

24 MS. SHERMAN: Thank you. Mr. Richards?

1 February 11, 2020

2 MR. RICHARDS: Yes.

3 MR. HERNANDEZ: Yes.

4 MR. PERRINO: Yes.

5 MR. FRANCO: Yes.

6 DR. COHEN: Yes.

7 MS. SHERMAN: And yes, by a unanimous
8 vote, the variance with conditions has been
9 approved. Thank you. We will now move to our
10 general public comment period. Mr. Craig. Okay.
11 Ms. V.? Good afternoon.

12 MS. PHILLIPS: Good afternoon.

13 MS. SHERMAN: Good afternoon, please
14 proceed.

15 MS. PHILLIPS: I'm waiting for the board
16 to pay attention. Good afternoon. My name is Ms.
17 V. And I'm speaking in the context of myself as
18 an individual and the Jails Action Coalition. So
19 I sat on the advisory board for the past six
20 years with several DOC staff who have now left
21 and one that's a board member now. And I say that
22 because I've been advocating around the DOC
23 inhumane culture and practices for the past nine
24 years. And the Federal Monitor has, you know,

1 February 11, 2020

2 backed up a lot of the different things that I
3 brought to light before this board. I've worked
4 with Commissioner Ponte, even, I believe her name
5 was Shapiro back in the day and nothing with
6 Commissioner Brann yet. But everything that
7 Commissioner Brann highlights and brings forth
8 like GMDC, the program and all that stuff is
9 because I was one of the advocates that advocated
10 at city hall to expand the budget and things like
11 that to make the jails safer, to make additional
12 officers be in place so officers don't have to
13 work two and three tours and be forced to come
14 back in less than eight hours, all things that
15 result around safety, right.

16 So, I say that because I'm not just a
17 fly by night person and even when I wasn't
18 necessarily working at a certain organization,
19 I've always been a part of the board even when I
20 was on workers' comp, for example. And so I
21 believe that I offer a valid voice, especially
22 for the people at the advisory board table. I
23 believe that as someone who herself has had brain
24 surgery, has several invisible disabilities that

1 February 11, 2020

2 I remind DOC of the vulnerable population that
3 they are in charge of when they say care, custody
4 and control.

5 For example, at the last advisory board
6 meeting, DOC was talking to us and giving us a
7 presentation, I hope they show you, on vulnerable
8 population, and of the four populations that they
9 said was vulnerable, mental health was not
10 considered one. So I brought up the fact that
11 over 40 percent of the people in their custody
12 have some type of mental health contact and why
13 wasn't mental health considered a vulnerable
14 population. And I asked certain questions
15 throughout that time all based on the
16 conversation, like DOC said we're going to start
17 making steady officers in certain units. But I
18 know the day before at city hall, DOC's union had
19 stated that they can't be forced to do steady
20 without, you know, certain things working
21 throughout their union. So I asked about that at
22 the advisory board. And I ended up pissing off
23 people in DOC at the advisory board because of my
24 questions. And I was also told by someone is

1 February 11, 2020
2 aware that I had brain surgery, we've been on the
3 board together since the beginning, that she
4 didn't like the way I asked my questions. And I
5 have no tone. I'm consistent wherever I am
6 because of my brain surgery. My brain surgeon
7 says I have not filter. I have not tone, I just
8 ask what comes to my mind, and I'll put a
9 disclaimer, no disrespect or things like that if
10 I think it's going to be uncomfortable. But I am
11 who I am.

12 And so my point to you is, is that what
13 are we doing about training and leadership,
14 because she sat at the table and responded to me
15 in a very negative way, and I did not argue, I
16 did not argue with her at all. But she responded
17 to me in a very negative way with uniformed
18 officers, with wardens and deputy wardens there,
19 and they go back to their facilities and how are
20 they responding to people also with invisible
21 disabilities who might have questions about their
22 own medical care or access to mental health
23 professionals or medical professionals and even
24 today, CHS said oh, medical staff comes through

1 February 11, 2020
2 certain units but nothing mental health staff
3 actually coming through certain units. So people
4 like me behind the wall could very well have very
5 real questions and concerns. And if the
6 leadership at the advisory board table is showing
7 the officers and the wardens how to respond to
8 someone like me, there's a problem. And I want
9 y'all to follow up on their actual training,
10 because this mindfulness stuff that the
11 commissioner talked about has not trickled down
12 to her ACs yet.

13 MS. SHERMAN: Thank you. Ms. V., just a
14 note on one of the conditions that we voted to
15 amend on the separation status variance adds
16 mental health rounds to medical rounds.

17 MS. PHILLIPS: I appreciate that. I was
18 very [unintelligible] [04:02:14] and I just want
19 to put it on the record [unintelligible]
20 [04:02:17]. I [unintelligible] [04:02:20].

21 MS. SHERMAN: Thank you. Kelly Grace
22 Price.

23 MS. KELLY GRACE PRICE: Hi, good
24 afternoon. So, I'll of course turn in my written

1 February 11, 2020

2 testimony. I want to address quickly some things
3 that I heard in this room that are shocking to
4 me. I can't believe that Chief Jennings stood up
5 here and said that body scans are being sent to
6 department members personal laptops for review
7 when they're not on the island. We already know
8 from your own report that the delineations
9 people's anatomy, of their genitals, of their
10 bodies, are on those scans. So you're literally
11 allowing people's images to be sent out to be
12 viewed anywhere. There's not control, there's no
13 care, there's no custody.

14 I'm also shocked to hear that certain
15 board members don't even know that hard back
16 books aren't allowed in the jail. If you're a
17 board member, read the minimum standards. Know
18 them.

19 Let's talk about institutional
20 knowledge. ESH was voted on in January of 2015,
21 not in July of 2016. Not what, sorry Ms. Sherman,
22 but not what you said and not what the department
23 chief said. We've not had ESH for four years,
24 we've had it for five. Little things like this

1 February 11, 2020
2 are annoying to people like me. I'm not paid. I
3 don't have a job. I get no glory from coming to
4 these meetings and tediously writing up my data.
5 Let's talk about my data. Let's talk about the
6 data that I turned in, in November of 2019 saying
7 that comingling had not been adhered to properly.
8 Instead of issuing a violation you guys welcome a
9 variance when a robust advocate like myself
10 points out that your own data is incorrect and
11 the data that the department has been handing you
12 for years, which was a condition of ESH, well,
13 no, no one of you were even here for the ESH
14 vote, so -- I beg your pardon, Dr. Cohen, of
15 course you were.

16 But let's talk about the way that this
17 board responds to the department. I heard the
18 department chief get up and say we're not
19 allowing books in Secure status. She's not
20 allowed to say that to you. You set the rules,
21 Mr. Richards. You set the rules, Mr. Hernand-,
22 sorry, your name tags are switched by the way,
23 Mr. Hernandez, Mr. Franco, Ms. Sherman, you set
24 the rules.

1 February 11, 2020

2 Let's talk about the history of variance
3 requests and what's been going on. All of these
4 variance requests from the shackling to the
5 separation housing, to the comingling have come
6 about because the department has been setting its
7 own rules and then when light is shed on their
8 malfeasance and their practices that are not
9 approved by this board, you go about variance
10 making.

11 So here's what I propose. This is a new
12 board. Welcome, Ms. Egan. You're now in charge.
13 You're the sheriff. This is what I propose that
14 you tell the department about future variances
15 and future, independent rulemaking let's call it.
16 Their felicitous sort of behind the scenes
17 rulemaking where they've cooked up shackling,
18 they've cooked up separation status and it's not
19 until members of the board or the public identify
20 these problems that variance requests are even
21 entered into the record.

22 Give the department an amnesty period.
23 Tell them you have six months to tell us all the
24 stuff that you've cooked up, because we know that

1 February 11, 2020

2 there's more things that we don't know about
3 aside from shackling and separation status and
4 other horrors. Tell them you have six months to
5 tell us about all these other renegade practices
6 that you have employed in the shadow of darkness
7 on the island, because after six months, if we
8 find other stuff, we're not just going to accept
9 your variance request, oh, sorry, we needed
10 another tool, because what has happened here is
11 that every time they cook up this renegade
12 rulemaking and have their own practices and abide
13 by their own codes because they need a new tool
14 without coming for your approval is they're
15 incentivized to keep acting that way.

16 Please, the city charter was changed in
17 1975 and implemented in 1977 to give you
18 independence, please use it. [Applause]

19 MS. SHERMAN: Thank you. Dr. Cohen.

20 DR. COHEN: I just wanted to, for the
21 record, it's not related to you, Kelly. In the
22 last vote, I voted in favor of the condition that
23 I recommended, but I, and by mistake, I voted yes
24 for approving ESH. I don't support the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

February 11, 2020

establishment of ESH [unintelligible] [04:06:45]
so I'm officially changing my vote to no on that.

MS. SHERMAN: Thank you. And the tally
will be updated to reflect that change.

DR. COHEN: Thank you.

MS. SHERMAN: There is no further public
comment and so the meeting will be adjourned. The
board's next scheduled meeting is on March 10th
at 9:00 a.m., please note the meeting will not be
held in this auditorium. We will announce the
location for the meeting. It will be posted on
our website shortly. So please look out for that
and again the meeting will not be in this
auditorium on March 10th. Thank you.

(The public board meeting concluded at
1:00 p.m.)

CERTIFICATE OF ACCURACY

I, Devin Turpin, certify that the foregoing transcript of NYC Board of Corrections Meeting on February 11, 2020 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: March 2, 2020

GENEVAWORLDWIDE, INC

256 West 38th Street - 10th Floor

New York, NY 10018