



**NEW YORK CITY
BOARD OF CORRECTION**

July 14, 2020 PUBLIC MEETING¹ MINUTES

ATTENDEES

MEMBERS PRESENT

Jennifer Jones Austin, Esq., Chair
Stanley Richards, Vice-Chair
Robert L. Cohen, M.D., Member
Felipe Franco, Member
James Perrino, Member
Michael J. Regan, Member
Jacqueline Sherman, Esq., Member

Margaret Egan, Executive Director

MEMBERS ABSENT

Steven M. Safyer, M.D., Member

DEPARTMENT OF CORRECTION

Cynthia Brann, Commissioner
Hazel Jennings, Chief of Department
Brenda Cooke, Chief of Staff
Dana Wax, Deputy Chief of Staff
Timothy Farrell, Senior Deputy Commissioner
Heidi Grossman, Deputy Commissioner for Legal Matters/General Counsel
Patricia Feeney, Deputy Commissioner for Quality Assurance and Integrity
Faye Yelardy, Assistant Commissioner of PREA
Steven Kaiser, Executive Director of Policy and Intergovernmental Affairs
James Boyd, Assistant Commissioner of Internal Communications
Marshall Volk, Assistant Commissioner of the *Nunez* Complaint Unit
Peter Thorne, Deputy Commissioner of Public Information
Becky Scott, Bureau Chief
Kenneth Stukes, Bureau Chief
Jean Rene, Warden
Maura McNamara, Senior Policy Advisor
Richard Bush, Senior Correctional Institutional Administrator
Nancy Li, Policy Analyst
Stacey King, Executive Director of Educational Services

¹ Due to the coronavirus/COVID-19 pandemic, this meeting was conducted virtually.

Lawrence Dail, Deputy Commissioner
Valerie Greisokh, Assistant Commissioner
Julia Szendro, Policy Analyst
Jason Kersten, Press Officer

NYC HEALTH + HOSPITALS - CORRECTIONAL HEALTH SERVICES

Patsy Yang, DrPH, Senior Vice President
Ross MacDonald, MD, Chief Medical Officer, Sr. Assistant Vice President
Michele Martelle, MPH, Assistant Vice President for Planning, Evaluation, and Reentry Support Services
Aaron Anderson, MPA, MEd, Assistant Vice-President for Finance and Risk
Carlos Castellanos, Chief Operations Officer/Deputy Executive Director
Jeanette Merrill, MPH, Director of Communications and Intergovernmental Affairs

OTHERS IN ATTENDANCE

Antoinette Anderson, Correction Officers' Benevolent Association (COBA)
Joey Bracco, COBA
Herman Jiminian, COBA
Ashaki Antoine, COBA
Nora Daniel, Administration for Children's Services
Kieshore Dennie, NYC Council
Chelsea Davis, NY City Hall
Joseph Thomas, NY City Hall
Rachel Baker, NY City Hall
Amanda Masters, NY Law Department
Zachary Katznelson, Independent Commission on New York City Criminal Justice and Incarceration Reform
Jennifer Parish, Urban Justice Center (UJC)
Victoria Phillips, Jails Action Coalition
Sarita Daftary-Steel, Just Leadership USA
Vidal Guzman, Just Leadership USA
Brandon Holmes, Just Leadership USA
Tobin Kassa, Children's Rights
Daniele Gerard, Children's Rights
Kayla Simpson, Legal Aid Society Prisoners' Rights Project (LAS)
Veronica Vela, LAS
Claudia Forrester, Brooklyn Defender Services (BDS)
Simone Spirig, BDS
Irene Cedano, BDS
Kelsey De Avila, BDS
Martha Grieco, Bronx Defenders
Julia Solomons, Bronx Defenders
Tahanee Dunn, Bronx Defenders
Nicolas Sawyer, Bronx Defenders
Kelly Grace Price, Close Rosie's
Jordyn Rosenthal, Women's Community Justice Association
Brad Maurer, NY County Defender Services
Julia Kerbs, NY County Defender Services
Ceila Joyce, NY County Defender Services
Andrea Nieves, NY County Defender Services
Christopher Boyle, NY County Defender Services

Scott Paltrowitz, HALT Solitary Campaign
Johnny Perez, National Religious Campaign Against Torture
Jan Ransom, NY Times
Jean B, Independent
Tahanie Aboushi, Independent
Melissa Essigman, Independent
Tina Tinen, Independent
Alexis Karpf, Independent
Dr. Hank Winkler, Independent
Olivia Maccioni, Independent
Juan Ramos, Independent
Keisha Hanley, Independent
Greg Williams, Independent
Shika Vogler, Independent

Approval of June 9, 2020 Minutes

Chair Jones Austin asked for a motion to approve the draft minutes of the Board's June 9, 2020 meeting. Upon Member Sherman moving the item and Vice-Chair Richards seconding it, the minutes were unanimously approved by all members present, 6-0 (Chair Jones Austin, Vice-Chair Richards, and Members Cohen, Perrino, Regan, and Sherman).

Announcements

Chair Jones Austin thanked the Department of Correction ("DOC" or "Department"), Correctional Health Services ("CHS"), Board of Correction, advocates, detained persons and all who have worked cooperatively in connection to the continuing pandemic. She made the following additional announcements.

On June 23, 2020, the Board released a report presenting findings and recommendations in connection with its investigation concerning the death of Layleen Xtravaganza Cubilette-Polanco. Ms. Polanco died in the Restrictive Housing Unit, a form of punitive segregation, on Rikers Island on June 7, 2019. She was a 27-year-old Afro-Latinx transgender woman. The Board's report makes 25 recommendations to CHS, DOC and the two agencies together. The Board and Board staff look forward to working with the agencies to ensure that the recommendations are implemented.

On June 29, 2020, Mayor de Blasio and Chair Jones Austin announced a working group to develop a practical and meaningful plan to end punitive segregation. The working group, led by Board Vice-Chair Richards, includes DOC Commissioner Cynthia Brann ("Commissioner Brann"), Just Leadership President and CEO DeAnna Hoskins, and new COBA President Benny Boscio. The group has already convened and will meet through the summer to develop and issue recommendations based on the core principles of accountability, support, and safety for all staff and detainees. The working group's recommendations will be incorporated into the broader restrictive housing rule package to be voted on in October. Chair Jones Austin said the Board believes City plans to overhaul the jail system--inclusive of reducing incarceration, closing Riker's Island, and locating detention centers in four boroughs--must also incorporate ending solitary confinement and developing alternative means of accountability for violence. She said this must be done with a focus on safety for both staff and detained persons, mental health, effective and robust programming and education, and investment in training and the well-being of employees. Chair Jones Austin expressed that the Board was particularly moved by the testimony during the public comment period in the winter and have resolved to move this forward with the Mayor. Some

stakeholders have called on the Board to move sooner—immediately—to end solitary confinement. Chair Jones Austin said that the Board certainly understand the urgency, but also understands that the City must have effective responses to acts of violence and ensuring safety for everybody. She said that solitary confinement cannot end without plan for violence prevention and without a clear structure that ensures safety, accountability, and healing after violence in the jails. Because such an undertaking would take time, the working group has been granted the summer months to create and present recommendations in September. In connection with this work, the Board invited the public to send its ideas and concerns.

Additionally, the Mayor announced that DOC and CHS are implementing new medical restrictions to exclude people with certain underlying medical conditions from punitive segregation, Enhanced Supervision Housing (“ESH”), and the Secure Unit. This includes people on an antiepileptic medication for seizures and people with asthma who are prescribed a maintenance inhaler. The Board was informed that CHS was in the process of reviewing all people currently in those units to determine whether they should be excluded under the new restrictions and then providing guidance to DOC as to who should be removed.

Finally, sadly, on June 22, 2020, a 61-year-old man died while in DOC custody at RNDC. CHS has reported that his death was not COVID-related.

Public Comment on Variance Requests

Chair Jones Austin stated that the following variances would be considered by the Board today: 1) DOC Variance Request regarding Young Adult Co-Mingling; 2) DOC/ACS Raise-the-Age Variance Renewals; 3) DOC Variance to operate the Young Adult ESH (“YA-ESH”) Unit; 4) DOC Variance Request regarding Separation Status; and 5) CHS Variance Requests regarding Psychotropic Medication Schedule and Tuberculosis Testing.

The Board heard public comment on these variance requests from Danielle Gerard (Children’s Rights), Jennifer Parish (UJC), Kayla Simpson (LAS), Ashaki Antoine (COBA), Simone Spirig (BDS), Martha Grieco (Bronx Defenders), Jean B. (Independent), Victoria Phillips (JAC), and Assad (Independent). The public comments are available here: <https://youtu.be/4yluyidUls?t=2095>.

DOC Variance Request re Young Adult Co-Mingling

► Introduction

Chair Jones Austin said the Department is requesting a renewal of the variance to allow co-mingling of young adults with adults in certain cases. Due to the number of items on today’s agenda, the Board will consider a one-month extension this month in order to allow for substantive discussion at the September meeting.

► Board Vote on Variance

Chair Jones Austin called for a motion to vote on the one-month extension. After the item was moved by Member Sherman and seconded by Member Perrino, the Board unanimously approved the variance, 7-0 (Chair Jones Austin, Vice-Chair Richards, and Members Cohen, Franco, Perrino, Regan, Sherman).²

² The final record of variance is available at: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/july/2020.07-FINAL-Record-of-Variance-Action-YA-Co-mingling-.pdf>

DOC/ACS Raise-the-Age Variance Renewals

Chair Jones Austin said the Raise-the-Age variances for the young people in DOC custody will expire in August. There are currently two young people in DOC custody at the Horizon Juvenile Center in the Bronx (“Horizon”) and both will turn 18 before August 1, 2020. ACS advised there is an extremely unlikely chance that an adolescent could be admitted to Horizon between August 15 and September 30, as an adolescent could only be admitted to Horizon if they were remanded for an alleged crime committed prior to the implementation of Raise-the-Age or if a pre-Raise-the-Age adolescent on probation or parole was violated. DOC and ACS are requesting an extension of the variances from August 15 to September 30. The Board has requested DOC and ACS to appear at the September meeting and discuss DOC’s departure from Horizon and its transition to ACS’s full control.

► Board Vote

Chair Jones Austin called for a motion to vote on the variance extension. After the item was moved by Member Sherman and seconded by Member Perrino, the Board approved the variances, with six (6) votes in favor (Chair Jones Austin, Vice-Chair Richards, and Members Cohen, Franco, Regan, and Sherman) and one (1) abstention (Member Perrino).³

DOC YA-ESH Variance Request

► Introduction

Executive Director Margaret Egan (“ED Egan”) introduced the YA-ESH variance request as follows:

On July 7, 2020, the Department sent a variance renewal request to continue operating YA-ESH. The Board first granted this variance in July 2017 and has consistently renewed it. The Board’s proposed Rule on restrictive housing incorporates the variance and its conditions; as such, if passed, this variance would no longer be necessary.

ESH Level 1 includes a maximum of seven hours out of cell per day and people are shackled by one foot to a “restraint desk” during all time spent out-of-cell. ESH Level 2 includes a maximum of seven hours out-of-cell per day, but restraint desks are not used. ESH Level 3 includes at least ten and a maximum of fourteen hours out-of-cell per day with no restraint desks. As of July 1, 2020, there were 16 young adults in ESH: three in ESH Level 1, eleven in Level 2, and two in Level 3. There were no 18-year-olds in ESH and all ESH units were combined adult/young adult housing areas, as is permitted by Board variance on young adult co-mingling. Additionally, on July 1, there were 90 adults in ESH.

According to Board staff analysis, between December 1, 2019 and May 1, 2020, there were 30 YA placements into ESH. Of those placements, 17 (or 56%) were placed into a Level 1 restraint unit and 13 (or 43%) were placed into Level 2. All placements into a restraint desk unit met the

³ The final Raise-the-Age records of variance are available at:

https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/july/2020.07-FINAL-Variance-Action_Dry-Cells.pdf

https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/july/2020.07-FINAL-Variance-Action_Law-Library.pdf

https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/july/2020.07-FINAL-Variance-Action_Correspondence.pdf

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/july/2020.07-RTA-Nursery-Variance-update.pdf>

placement criteria outlined in the most recent Board variance. As of May 1, 2020, there were eleven young adults in ESH. The average time in ESH for these individuals was 32 days, and the median was 30 days. As of May 1, 2020, the average total time in DOC custody for those young adults still in ESH was 265 days, and the median was 130 days. During the period from December 1, 2019 to May 1, 2020, the Board has found that the rate of young adult progression through ESH levels has declined. There were 97 periodic reviews conducted for young adults in ESH, resulting in 55 recommendations for progression (57% of reviews, down from 72% during the previous period). Of the 55 young adults recommended for progression, 51 were subsequently moved. According to the Department's monthly reports from March and April 2020, during the COVID-19 crisis, all but three of the young adults who met the criteria for a review received a review. Similar to the last reporting period, the most common exit reason during this time period was progressing out of YA-ESH. Young adults who exited between December 1, 2019 and May 1, 2020 had spent less time in a restraint desk unit than those who exited in the previous seven months. Additionally, fewer young adults spent any time in a restraint desk unit than those who exited in the previous seven months.

Each month, as required by Board variance condition, the Department audits four randomly selected dates and shares the results of its audit to the Board. According to these audits, the average lockout time from January 1, 2019 to May 1, 2020 in ESH Level 1 was 3 hours, 27 minutes – a reduction from an average of 5 hours, 43 minutes of lockout time between May and December 2019. Young adults in ESH 2 are also mandated to be afforded 7 hours of lockout time per day. From January to May 2020, the average lockout time in ESH Level 2 was 6 hours, 22 minutes, an increase from an average of 2 hours, 5 minutes in the Board's prior analysis period (May- December 2019). On the dates audited by the Department between January and May 2020 when school was in session, an average of 83 (or 72%) of young adults in ESH were enrolled in school. Of those enrolled, an average of 9 (or 13%) participated in in-person educational services on the 9 dates audited from January – March 2020. On the dates audited by the Department between March 17, 2020 and May 28, 2020, in-person educational services were suspended due to social distancing, personnel, and operational considerations related to the coronavirus. The NYC Department of Education provided alternative educational materials to the young adults enrolled in school on two of the 10 dates audited. On the dates audited by the Department, 85 (or 33%) of young adults in ESH requested law library services and 100% of the young adults in ESH who requested law library services were provided them. On all of the dates audited by the Department between January and May 2020, law library coordinators were onsite, even during the COVID-19 outbreak. On each of the dates audited by the Department in March 2020, nearly half of the typewriters in ESH were inoperable and only one housing area had an operable typewriter.

On May 12, 2020, as required by the Board's February 2020 variance, the Department of Correction released a public plan for increasing recreation participation for young adults in ESH. To develop its plan, the Department conducted one-on-one and group interviews with YAs in ESH.

► DOC Presentation

Commissioner Brann said the Board's proposed Condition #5 significantly alters the frequency of reviews for young adults in ESH Level 1, from every 15 days to every 7 days. She said that DOC has spent a considerable amount of time discussing restraint desks in ESH Level 1 and over the past week, her staff have spoken to the Board about the use of restraint desks in this unit. Commissioner Brann expressed that the Board's discussion about restraint desks displays a lack of concern for the detainees and staff who are victims of violence. The Commissioner said the Board's new proposed condition to change the frequency of reviews undermines the

Department's meaningful, multi-disciplinary reviews. She added that operating ESH is hard work, and requires the full support of staff, which is critical to the model's success. She said the Board's proposal suggests some Board members are willing to be guided by feelings and not facts when it comes to matters of safety within the DOC facilities. She said the facts and evidence are as follows: young adults can only be placed in ESH Level 1 if they recently participated in an attempted or actual stabbing or slashing, or engaged in an activity that caused serious injury to an officer, another person in custody, or any other person. Commissioner Brann objected to proposed Condition #5 because the length and dynamic of periodic reviews is a tool that affords the greatest measure of safety when managing the most violent young adults.

► Board Discussion⁴

Dr. Cohen said the history of the YA-ESH variances has seen the Board trying to control an institution for young adults that the Board had no intention of creating in the first place. He said the shackling of people during out-of-cell time is degrading, inhumane, and torturous, and the Board never would have initially approved this variance if it knew the Department would be chaining people to chairs. He has not seen any information from DOC that putting people into shackles promotes pro-social behavior and said if DOC has data showing that shackling makes people better, he would like to see it. He urged the Board to continue its process of limiting the amount of time people are placed in ESH and support their re-integration into the general population area. Commissioner Brann said these young men in ESH Level 1 have been adjudicated for committing violent acts while in custody, suggested that Dr. Cohen's criticisms of YA-ESH were offensive to the many individuals who remain in custody for long periods of time without violent incidents. She

Chair Jones Austin agreed with many of the statements expressed by Dr. Cohen and said if the Board had known shackles would have been used in ESH, it would never have voted for it. She said that through this variance and restrictive housing rulemaking, the Board should do what it can to limit the time young adults are in shackles, move them through ESH, and eventually get rid of the practice of restraint desks altogether. She also said the shared goal of the Board is to treat people humanely, while ensuring safety and accountability.

Member Sherman echoed Dr. Cohen and Chair Jones Austin's remarks and said there was a decrease in the number of ESH periodic reviews that resulted in a recommendation for progression out of the unit. She asked for clarification about this decrease and what DOC is doing in response to this. Hazel Jennings, DOC's Chief of Department ("Chief Jennings") said she takes these reviews very seriously and critically analyzes each placement. DOC Warden Jean Rene ("Warden Rene") said there are certain criteria that prohibit people from leveling up, such as assaultive behavior while in ESH, program participation, incidents while in ESH, and information received from intelligence. As of today, there are seven young adults in ESH and one specifically in ESH Level 1.

Vice-Chair Richards said the working group to end solitary confinement is making sure the jails are safe for officers, detained people, and visitors. The Board originally agreed to the ESH model for young adults but did not agree to all of the elements that were included by DOC. He said we are now at a place where the working group will develop a system that will fundamentally change restrictive housing, which includes this young adult ESH model. He encouraged the Board and the public to give the working group room to come up with solutions to ending solitary confinement and the restrictions that everyone agrees do not create safety for officers and detainees.

⁴ See the Board's full discussion on the YA-ESH Variance here: <https://youtu.be/4yluyidUlss?t=5797>.

Member Perrino said the Department has drastically changed its punitive segregation practices since he was a DOC Warden, and Chief Jennings has done an amazing job. He believes DOC should have further moved its solitary practices from locking people into individual cells to creating larger spaces to separate people where they would have access to a recreation yard and a shower, and he hopes this can be done for the new borough-based jails. He said the restraint desks and shackling in ESH are horrible, but it is better than being locked in a cell and not being able to see or talk to anyone. He supports Vice-Chair Richards's remarks and would like to give the Department and the workgroup the chance to develop solutions to ending solitary confinement and restrictions like the restraint desks.

► Board Vote

ED Egan read out loud the 18 variance conditions and specified that conditions #3, #6, and #7 have been modified, condition #5 is new, and all others are existing conditions.

After the Chair called a roll call vote, the Board approved the existing and proposed conditions with six (6) votes in favor (Chair Jones Austin, Vice-Chair Richards, and Members Cohen, Franco, Regan, and Sherman) and one (1) vote in opposition (Member Perrino).

Chair Jones Austin called for a motion to vote on the three-month variance with conditions. After the item was moved and seconded, the Board approved the variance with six (6) votes in favor (Chair Jones Austin, Vice-Chair Richards, and Members Cohen, Franco, Regan, and Sherman) and one (1) vote in opposition (Member Perrino).⁵

DOC Variance Request re Separation Status

► Introduction

ED Egan introduced the Separation Status variance as follows.

In July 2019, the Department restarted using body scanners for the detection of contraband that may not be detected by a magnetometer or other search methods. When someone has a positive scan or refuses to be scanned, the Department believes the person possesses contraband and places them in a highly restrictive housing area called the Separation Status Unit, which includes the person's confinement to an isolation cell for nearly 24 hours. DOC removes a person from the unit after the person receives a negative scan indicating the absence of contraband.

Board staff reviewed the documentation associated with all 30 placements into the Separation Status unit between February and May 2020. Board staff also reviewed the Department's revised Directive on the "Use of Body Scanners and Separation Status Housing," which became effective on April 24, 2020. Board staff found general improvements in the Department's compliance with variance conditions, 13 of which were codified in the Department's updated Directive. Board staff acknowledged the Department's progress, but expressed concern about: (1) longer lengths of stay in the unit, (2) increasing but relatively low rates of contraband recovery, (3) the Department's generic 72 hour plans to encourage individuals' removal from Separation Status, and (4) the continued involvement of untrained staff in body scanner and Separation Status procedures. Between February and May 2020, there were 30 Separation Status placements of 29 unique individuals. Twenty-two (22) (or 73%) of placements followed a positive body scan and 8 (or 27%) followed a refusal to scan. The average length of stay in the unit was one day and 22 hours. Most

⁵ The final record of variance is available at:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/july/2020.07-Record-of-Variance-Action-YA-ESH-FINAL.pdf>

placements in Separation Status do not result in contraband recovery, though the rate of contraband recovery has increased. From February to May, 13 (or 43%) of placements in Separation Status resulted in contraband recovery—nine of these placements followed a positive scan and four followed a refusal to scan. Additionally, 13 of the 22 placements that followed a positive scan did not result in the recovery of contraband. In March, April, and May 2020, over 50% of Separation Status placements each month resulted in contraband recovery, a marked increase from previous months.

Of the 30 placements, five (or 17%) exceeded 72 hours in length, including one placement lasting 11 days, the maximum length of stay to-date. The Board's variance condition requires the Department to develop an individualized plan for moving the person out of Separation Status whenever a person is in the unit for more than 72 hours and update the plan every 72 hours thereafter. Board staff reviewed all 72-hour plans for each of the five placements exceeding 72 hours. None of the plans noted or explicitly discussed the person's stated reason(s) for refusing to scan or surrender contraband, or how staffs' strategies were designed to target individual issues associated with placement.

Though there has been consistent and marked improvement, the Board has found that inadequately trained staff continue to be involved in body scanner and Separation Status procedures. The Board recognizes that the COVID-19 pandemic has forced the Department to suspend training at the academy however, in no case should untrained staff be operating machines that emit radiation or placing people in highly restrictive housing areas. The Board found that appropriately trained staff completed 63% (n=19) of all scans initiating placement and 67% (n=20) of all scans resulting in removals. This is up from 33% (n=6) and 41% (n=7) respectively in the Board's prior audit of December 2019 and January 2020 placements.

► **DOC Presentation⁶**

DOC Bureau Chief, Kenneth Stukes ("Chief Stukes") said the individual who spent eleven days in Separation Status was a unique challenge. Prior to placing an individual in Separation Status, multiple DOC staff attempt to get the individual to surrender the contraband. This particular individual was further engaged by Chief Stukes, who personally recovered the contraband after "gaining this individual's compliance;" the individual was subsequently removed from Separation Status. Of the 100 placements from July 2019 to July 6, 2020, 208 contraband items were recovered as a result of body scanner operations.

► **Board Discussion⁷**

Vice-Chair Richards said the Board's audit shows a smaller percentage of the people who scanned positively resulted in the finding of contraband. Chief Stukes replied the majority of people scanned had contraband. He said there are three different avenues for how DOC recovers contraband and DOC has recovered a substantial amount of contraband as a result of a positive scan.

Member Regan said the scanners are a very important tool, but he is disappointed that many untrained staff continue to operate the scanners. He urged the Department to address and resolve this issue. Chief Stukes said training was slowed due to COVID-19 and it may have affected staff in the beginning levels of the scanning protocol, but he assured the Board that the staff now authorizing placements and removals from Separation Status have been trained.

⁶ See DOC's full presentation on the Separation Status Variance here: <https://youtu.be/4yluyidUlss?t=7632>

⁷ See the Board's full discussion regarding the Separation Status Variance here: <https://youtu.be/4yluyidUlss?t=8208>

Member Sherman said she was deeply concerned about the individual who was in Separation Status for eleven days and thanked DOC for discussing this situation. She inquired about the individualized reviews discussed by Chief Stukes and asked to hear DOC's lessons learned from these reviews – particularly after long stays – about the reasons why individuals are refusing scans or not surrendering contraband. She also asked how DOC uses these lessons to form its approach to Separation Status and to reduce the amount of time people spend in Separation Status. Lastly, she asked what steps DOC takes to ensure its documentation reflects the individualized reviews (which are provided to the Board on an on-going basis) and what challenges it faces in strengthening this documentation process. Chief Stukes said each individual is different and has a unique set of circumstances. DOC staff actively engage with these individuals to build trust and work towards the person being honest with staff about why they refuse to surrender contraband or refuse to take a body scan. The majority of the reasons why people refuse “to be compliant” involves fear, and it takes lengthy conversations to make people feel comfortable enough to “come into compliance.” He said the individualized action plans have boilerplate language and do not depict all engagement strategies used by multiple levels of staff who work with these individuals “to gain compliance.” DOC plans to improve its documentation so all steps and engagement are properly reflected in this documentation. Dr. Cohen also urged DOC to individualize those forms.

Dr. Cohen asked if anyone in Separation Status has ever gone to recreation and Chief Stukes said it has been afforded to individuals, but no one has chosen to attend recreation. Dr. Cohen asked if anyone has received access to tele-visiting while in Separation Status and Chief Stukes said no. Dr. Cohen said there are many false positive scans and asked if DOC is doing any analysis on what is causing this issue. Chief Stukes said he is aware of some reasons why people receive false positive scans. He said some people rid themselves of contraband, such as powdery substances, after they have a positive scan by mixing the substances with body secretions, and thus, DOC has no way of recovering this contraband.

► Board Vote

ED Egan read out loud the existing variance conditions and new conditions #2, #6, #11, #13, and #15. Member Sherman proposed authorizing the variance for three-months, instead of six-months.

After the Chair called a roll call vote, the Board unanimously approved the existing and proposed conditions, 7-0 (Chair Jones Austin, Vice-Chair Richards, and Members Cohen, Franco, Perrino, Regan, and Sherman).

Chair Jones Austin called for a motion to vote on the three-month variance with conditions. After the item was moved and seconded, the Board unanimously approved the variance, 7-0 (Chair Jones Austin, Vice-Chair Richards, and Members Cohen, Franco, Perrino, Regan, and Sherman).⁸

CHS Variance Requests re Psychotropic Medication Schedule and Tuberculosis Testing

► Introduction

⁸ The final record of variance is available at: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/july/2020.07-Record-of-Variance-Action-Separation-Status-FINAL.pdf>

ED Egan introduced the psychotropic medication and tuberculosis testing variance request as follows:

CHS has requested renewal of longstanding variances regarding sharing psychotropic medication and tuberculosis screening. In January 2017, the Board unanimously passed a resolution to pursue rulemaking to integrate these variances into the Minimum Standards, but it has not yet done so due to capacity constraints.

The psychotropic medication variance allows psychiatrists to see and evaluate stable adult patients on psychotropic medication (medications that affect mental function, behavior, and experience) in general population at least every 28 days, rather than every 14 days. CHS says that this is consistent with the current community standard. As of June 2020, 37% of the jail population had a psychotropic medication prescription (1,440 people had a psychotropic medication prescription out of 3,927 people in jail). This is the highest reported rate since the data was first reported in June 2013. The previous high was 34% in January 2020. The number of people with psychotropic prescriptions has decreased by 530 people since January (27% decrease). However, the decrease did not keep pace with the overall population decrease, which was 33%. Of the 1,440 people on psychotropic medication in June 2020, 51% were on a schedule of 15-28 days, a greater proportion than the last reporting period when 42% of people were on psychotropic medications were on a 15-28-day schedule.

The Board first granted the tuberculosis testing variance in July 2013. The variance allows CHS to use either interferon gamma release assays (“IGRA”) or TST for tuberculosis screening, and to exempt from repeat screening those prisoners who have a documented negative test in the six months prior to their admission. Both of these variances are six-month renewals and there are no conditions on either variance.

► Board Vote

Chair Jones Austin called for a motion to vote on the variances. After the item was moved and seconded, the Board unanimously approved the variances, 7-0 (Chair Jones Austin, Vice-Chair Richards, and Members Cohen, Franco, Perrino, Regan, and Sherman).⁹

Sick Call Hotline

► Introduction

ED Egan provided a brief introduction to the Sick Call Hotline agenda item as follows:

In March 2020, CHS presented to the Board that it was introducing a new ‘sick call triage’ service that would operate weekday mornings from 5AM-10AM, during which time patients can directly call CHS nurses about their concerns. CHS nurses will determine if the concern can be handled administratively, telephonically, or during an in-person appointment in a new visit type, sick visit.

The Board has received complaints about people in custody calling the hotline and no one picking up and no response to voicemail. There has also been confusion as to whether the hotline is for mental health services and when a person should expect to receive a call to the clinic, if requesting

⁹ The final records of variance are available at:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/july/2020.07-Record-of-Variance-Action-Psychotropic-medications-FINAL.pdf>

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/july/2020.07-Record-of-Variance-Action-TB-Testing-FINAL.pdf>

to see a clinician via the hotline. At the May and June public meetings, Board Members requested quality assurance practices for the hotline and utilization data. Today, CHS will provide an update to the Board.

► **CHS Presentation**¹⁰

CHS Senior Vice President, Patsy Yang, DrPH (“Dr. Yang”) said as a part of CHS’s Re-envisioning Initiative, it implemented a sick call triage, where people in housing units can call CHS nurses directly during certain hours and CHS can triage telephonically, administratively, or by bringing people down to be seen. This is a supplemental service and people in custody still have the opportunity to request sick call through DOC. Between April 8 - June 23, a total of 6,488 calls were placed during the scheduled hours of 5AM-10AM – 82% of these calls were answered live and 18% went to voicemail. Dr. Yang noted that CHS experienced staff shortages as many of its staff were also out sick due to COVID-19. Between April 8- June 23, a total of 4,424 calls were placed during unscheduled hours. As of Monday, CHS extended the hotline’s hours to 12PM and it expects this will reduce up to half of the calls placed outside of the scheduled hours. Dr. Yang said all voicemails are addressed within 24 hours on weekdays and within 48 hours on weekends.

Dr. Yang said 44% of the calls received through this hotline were resolved by phone, which significantly reduced the need for DOC to produce people to clinic for issues such as medication renewals, making dental appointments, requesting glasses or contact lenses etc. Of the 55% of calls that resulted in in-person visits, 92% of requests were completed within 24 hours and 7% were determined to not need to be brought down to clinic within 24 hours.

CHS and DOC Coronavirus 2019 (COVID-19) Update

► **Introduction**

Chair Jones Austin said the Board has asked the Department and CHS to provide an update on the response to the COVID crisis. She recognized and thanked DOC and CHS staff and leadership for their collaboration, creativity, and hard work through the pandemic. She recognized and thanked advocates, defenders, families and friends, people in custody, and providers for their advocacy and hard work in advocating for continued connection to community, access to care and services, and information on the pandemic. She also thanked the Board’s staff for their tireless work to monitor conditions in the jails, providing the public with information, raising issues for DOC and CHS, and providing a space for people in custody, families, friends, advocates, and defenders to raise their concerns as the pandemic has progressed.

The Board continues to publish weekly COVID-19 data reports on its website. As of July 3, there were only 31 people in custody under observation by CHS (those were confirmed or symptomatic patients in DOC facilities, excluding hospitalized patients). In total, there have been 309 people in custody who have had COVID-19, including people who have recovered and people currently hospitalized. There have been three deaths in custody due to COVID-19 (none since the June public meeting). At the Board’s June 2020 public meeting, CHS reported that identification of new COVID cases was limited to new admissions. Additionally, CHS reported that all new admissions are offered a COVID test, however, a significant number of new admissions refuse the test. Additionally, there have been have a total of 201 CHS staff members and 1,418 DOC staff

¹⁰ To view CHS’s full *Re-envisioning Initiative* presentation, see the video recording available here: <https://youtu.be/4yluyidUJss?t=10047>

See CHS’s *Re-envisioning Initiative* PowerPoint presentation here: <https://hhinternet.blob.core.windows.net/uploads/2020/07/nyc-health-hospitals-correctional-health-services-update-to-nyc-board-of-correction.pdf>

members diagnosed with COVID-19. Since June 19, DOC staff cases have only increased by two people.

On May 28, City Council passed Local Law 1954-2020, which requires the Department and CHS to issue weekly reports (including testing and hospitalization data) to the public during public health emergencies (including the current COVID crisis), to publish a timeline of significant events, and to provide weekly updates to incarcerated individuals. The law became effective on June 29 and the first report was due on Friday, July 10 (covering June 29 to July 5). Through the hard work of many criminal justice partners, the jail population decreased 31% from March 16 to April 29 – a decrease of 1,725 people from 5,557 people on March 16 to a low of 3,832 people on April 29. The July 3, 2020 population was 3,929 people and was relatively steady in June.

► Board Discussion

Dr. Cohen requested that CHS share with the Board its latest updated policy on COVID in terms of quarantining, testing, and intake. CHS's Chief Medical Officer, Ross MacDonald, MD, ("Dr. MacDonald") said CHS can provide the latest version of the protocol to the Board. Dr. Cohen asked if CHS has a plan for a potential second wave of COVID-19 infections and whether it would need to keep the Eric M. Taylor Center (EMTC) on Rikers Island open. Dr. MacDonald said CHS learned a great deal throughout its response to the virus and along with its partner DOC, it is moving towards a response that can be ramped up or ramped down at a moment's notice and has built workflows with DOC that are still in place and will be durable in the event that the City experiences another wave of COVID-19.

Nunez Consent Decree Update

► Introduction

ED Egan introduced the update on the *Nunez* Consent Decree as follows.

The *Nunez* Independent Monitor filed their Ninth Report on May 29, which covers the six-month period of July 1, 2019 through December 31, 2019. Additionally, the Court ordered the Monitor to file a status report on July 2. The parties are now required to submit to the Court a proposed Remedial Order by July 31, 2020.

The Ninth Report finds that the conditions that gave rise to the Consent Decree have not abated since the effective date over four years ago, and the desired outcomes are simply not yet evident. Whether examining use of force ("UOF") trends systemwide, by facility, or by age group, the number of incidents and UOF rates have increased, thus producing a concomitant high number of problematic incidents and backlogs in both investigations and staff discipline over many Monitoring periods. Further, the Department's UOF rates during the Ninth Monitoring Period reached their highest levels since the Consent Judgment went into effect.

According to the Monitoring Team, the lack of a marked decrease in the frequency of unnecessary and excessive force was due to, in part, "the overreliance on Probe Teams and alarms, the use of necessarily painful escort techniques, unnecessary and improper use of OC spray, and hyper confrontational staff behaviors. These problems are compounded by uniform leadership's inability to identify these aspects of staff misconduct, thus failing to address them with their subordinates" (3-4).¹¹ As a result, DOC remains in non-compliance with four of the most consequential provisions of the Consent Judgment: (1) implementation of the UOF policy; (2) timely and quality

¹¹ The Ninth Report of the *Nunez* Independent Monitor is available here:
<https://www1.nyc.gov/assets/doc/downloads/pdf/9thMonitorsReport052920AsFiled.pdf>

investigations; (3) meaningful and adequate discipline; and (4) reducing violence among young inmates (i.e., ages 16, 17, and 18).

► **DOC Presentation**¹²

DOC's Deputy Commissioner for Legal Matters/General Counsel, Heidi Grossman ("GC Grossman") emphasized to the Board how important it is for DOC to achieve compliance with the terms of the *Nunez* Consent Judgement. She said DOC takes seriously the Monitor's findings in its Ninth Compliance Report, and DOC is not satisfied with where it is and is committed to working towards where it needs to be. While DOC has achieved partial or substantial compliance with over 90% of the terms in the Consent Judgement, it knows the ultimate goal is to reduce force. She said DOC's compliance in these other areas has laid the foundation to have systems in place to address the outstanding compliance areas.

GC Grossman said in terms of investigations and accountability, one of the common themes in the Monitor's Reports is that DOC needs to align in its understanding of UOF up and down the chain of command, in order to bring about culture change. Since the last *Nunez* Update to the Board, DOC developed an Intake Squad of 46 investigators and 2 attorneys who work on new UOF cases. This new centralized structure has eliminated DOC's facility investigations. Between February 3 and May 31, there were a total of 2,100 UOF incidents. As of July 9, 1,773 of those incidents (84%) have been investigated and closed in DOC's case management system. With respect to the Investigations Division's backlog of investigations, the Investigations Division has been working tirelessly with the Trials Division to close out the older cases and there were 8,600 pending cases as of the last Monitoring Report. Since then, DOC has closed almost 60% of these cases and many of the backlogged investigations were completed but were simply pending administrative closure. She noted that DOC also identified cases that warranted discipline early on and it did not allow the statute of limitations to run for these outstanding cases.

DOC's Assistant Commissioner of the *Nunez* Compliance Unit, Marshall Volk ("AC Volk") said DOC worked closely with the Monitoring Team to improve its UOF Review process within its facilities. Through this process, facilities (independently of the Investigations Division) review all UOFs to analyze staff behavior and assess if they were consistent with UOF policies and procedures. This process was revamped to improve clarity on how uniformed staff should be assessing UOF incidents. As a result, DOC expects to see alignment on messaging regarding its UOF policy coming from uniformed leadership. DOC also holds weekly meeting with different facilities to discuss *Nunez* related issues and disconnect between the Investigation Division's assessments of an incident and the facility's assessment of an incident. DOC also focuses on high needs individuals (who are people in custody that drive a disproportionate number of problematic incidents) by developing action plans to manage them in a uniform and consistent approach and practice accountability of their own behavior. With respect to safety and supervision of 18-year-olds in custody (majority of whom are housed at RNDC), DOC has been working on a plan to reduce the levels of violence at this facility through steady staffing, new policies and procedures to better manage people, new program initiatives such as case management and access to tablets to reduce idle time, positive reinforcement through incentives, and a management model to provide more oversight of these units. DOC has also implemented several trainings to help drive culture change for uniformed staff. Between January 2019 – May 2020, the rate of UOF at RNDC dropped by 67%, the rate of fights dropped by 74%, the rate of assaults on staff dropped by 23%, and the rate of Level B and Prob Team responses dropped by 43%. The

¹² A video recording of DOC's full presentation on the *Nunez* Consent Decree Update is available here: <https://youtu.be/4yluyidUJss?t=11200>

Department plans to roll out its efforts and trainings provided at RNDC to all other facilities, to fully implement a Department-wide culture change.

► **Board Discussion**¹³

Acting Vice-Chair Richards asked what DOC is doing to hold supervisors accountable for oversight of officers. AC Volk said one of DOC's goals is to implement a structure of unit management. Over the past six months, DOC has rolled out a new Assistant Deputy Warden class to have more leaders and oversight in the facilities. Member Perrino asked if this new class is filling existing lines of employment or if DOC is creating new lines for these roles. Chief Jennings said DOC is filling existing lines and also adding additional lines to provide more supervision level staff. She said DOC is distributing these roles based on each facility and, for example, a large facility like AMKC would receive additional Assistant Deputy Wardens.

Member Franco asked if DOC has seen a decrease or an increase in its use of OC spray. AC Volk said DOC has seen a decrease in its UOF numbers and a decrease in the use of OC spray to respond to incidents.

Member Sherman requested further information about the weekly meeting with the facilities discussed by AC Volk. Chief Jennings said the weekly meetings are held at the Chief of Department's office and the following DOC staff attend these meetings: AC Volk, DC Townsend, DC Feeney, Bureau Chief Scott, and facility management who are required to attend. They review the incidents that have been occurring, trends, and reports. Member Sherman and Vice-Chair Richards asked if these meetings are documented in any way by DOC. Commissioner Brann replied that DOC does not take formal notes or minutes of these meetings. Vice-Chair Richards asked if body cameras are a part of this review process and Chief Stukes said UOF related body camera footage and Genetec footage are reviewed in these meetings. Vice-Chair Richards asked how information learned from these reviews gets disseminated to facility leaders outside of the week's group meetings. AC Volk said outside of these weekly meetings, there are often alignment meetings with the Chiefs who bring in uniformed leadership to review problematic incidents to ensure everyone is aligned on issues identified. Commissioner Brann noted that this information is further shared with line staff from leadership through the Department's Transfer of Learning initiative.

Public Comment

The Board heard public comment from Kayla Simpson (LAS), Julia Kerbs (NY County Defender Services), Brandon Holmes (Just Leadership USA), Jean B. (Independent), Brad Maurer (NY County Defender Services), Zachary Katznelson (Lippman Commission), Martha Grieco (Bronx Defenders), Shika Vogler (Independent), Irene Cedano (BDS), Claudia Forrester (BDS), Assad (Independent), Victoria Phillips (JAC), Kelly Grace Price (Close Rosie's), Jennifer Parish (UJC), and Johnny Perez (National Religious Campaign Against Torture). The public comments are available here: <https://youtu.be/4yluyidUJss?t=13399>.

Chair Jones Austin said the next scheduled Board meeting is September 9, 2020 at 9:00 AM. This meeting will be likely be held via WebEx and details will be available on BOC's website. Following public comment, the Chair adjourned the meeting.

¹³ To view the Board's full discussion on the *Nunez* Update, see the video recording here: <https://youtu.be/4yluyidUJss?t=12635>