



**NEW YORK CITY
BOARD OF CORRECTION**

July 9, 2019 PUBLIC MEETING MINUTES

MEMBERS PRESENT

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

Martha W. King, Executive Director

DEPARTMENT OF CORRECTION (DOC)

Cynthia Brann, Commissioner
Brenda Cooke, Chief of Staff
Heidi Grossman, Deputy Commissioner for Legal Matters/General Counsel
Peter Thorne, Deputy Commissioner of Public Information
Angel Villalona, First Deputy Commissioner
Michael Tausek, Deputy Commissioner for Adult Programming and Community Relationships
Timothy Farrell, Senior Deputy Commissioner
Dana Wax, Deputy Chief of Staff
Steven Kaiser, Director of Policy & Reform Initiatives
Jean Rene, Acting Warden
Joseph Caputo, Acting Warden
Freeman Williams, Acting Assistant Chief
Kenneth Stukes, Bureau Chief
Justin VonBujdoss, Chaplain
Julia Szendro, Policy Analyst
Elizabeth Seibold, Press Officer
Nancy Li, Policy Analyst

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

Patsy Yang, DrPH, Senior Vice President
Ross MacDonald, MD, Chief Medical Officer, Assistant Vice President
Benjamin Farber, Chief of Staff
Carlos Castellanos, Chief Operations Officer/Deputy Executive Director
George Axelrod, MD, Director of Health Information & Risk Management
Omar Arnouk, Associate Counsel, Office of Legal Affairs
Jennine Ventura, Director of Communications and Public Affairs

OTHERS IN ATTENDANCE

Jennifer Parish, Urban Justice Center (UJC)
Victoria Phillips, UJC/Jails Action Coalition (JAC)
Elizabeth Meyers, JAC
Gale Wiener, JAC
Pooja Shivaprasad, Legal Aid Society Prisoners' Rights Project (LAS)
Mary Lynne Werlwas, LAS
Stephanie Ali, LAS
Mira De Long, LAS
Jennifer Ferento, LAS
Taylor Evensen, LAS
Kelsey De Avila, Brooklyn Defender Services (BDS)
Julia Solomons, Bronx Defenders
Deborah Lolai, Bronx Defenders
Justin Holiman, Children's Rights
Emily Lustbader, Children's Rights
Elissa Glucksman Hyne, Children's Rights
Nora Howe, Children's Defense Fund
Marc Steier, Correction Officers' Benevolent Association (COBA)
Tyson Jones, COBA
Kenyatta Johnson, COBA
Mark Mack, COBA
Carlina Rivera, NYC Council
Peter Butler, NYC Council
Catherine Suffern, NYC Council
Alana Sivin, NYC Council
Abigail Besler, NYC Council
Jeremy Unger, NYC Council
Zara Nasir, NYC Council
Julia Kerbs, New York County Defenders
Caroline Shea, New York Criminal Justice Agency
Marlies Talay, New York Criminal Justice Agency
Rachel Baker, NYC Mayor's Office
Wendell Walters, Osborne Association
Robert James, Friends of Island Academy
Jessica Lopez, Youth Represent
Winston Nguyen, Independent
Frances Geteles, Asylum Network of Physicians for Human Rights (PHR) and NY Campaign for Alternatives to Isolated Confinement (CAIC)
Scott Paltrowitz, CAIC
Jack Davis, CAIC
Roger Headley, CAIC
Jack Beck, CAIC
Cynthia Tucker, HALT Solitary Campaign
Victor Herrera, Close Rikers Campaign
Vidal Guzman, Just Leadership USA
Elsie Sidney, Just Leadership USA
Victor Herrera, Just Leadership USA
Mario Barrios, Just Leadership USA
Sarita Daftary-Steel, Just Leadership USA
Marvin Mayfield, Just Leadership USA
Jack Vernon, More Just NYC
William Farrington, New York Post
Daniel Cassady, New York Post

Ben Fractenberg, THE CITY
Eileen Grench, THE CITY
Chelsia Marcius, New York Daily News

Approval of June 11, 2019 Minutes

The Interim Chair asked for a motion to approve the draft minutes of the Board's June 11, 2019 meeting. Upon Member Cohen moving the item and Member Jones Austin seconding it, the minutes were unanimously approved (Interim Chair Sherman, Vice-Chair Richards, and Members Cohen, Hamill, Hernandez, Jones Austin, and Perrino).

Announcements

► ED King's Remarks

The Board's Executive Director, Martha W. King ("ED King") announced that today would be her last public Board meeting. She said the Board has formed a Committee that includes Interim Chair Sherman, Vice-Chair Richards, and Members Cohen and Hamill, to oversee the search for a new Executive Director. The Committee expects to hire a search firm to lead the recruitment process soon. Michele Ovesey, the Board's General Counsel, will serve as Acting Executive Director and Emily Turner, the Board's Deputy Executive Director of Research, will be Acting Deputy Executive Director.

ED King thanked the Mayor's Office and City Council, in particular Speaker Johnson and Members Powers, Dromm, Rivera, Ayala, and Rosenthal, for their increased attention to the conditions in the City's jails as well as their increased support of the Board's role and work. She thanked Correctional Health Services ("CHS") and the Department of Correction ("DOC" or "Department"), in particular DOC's Commissioner, Cynthia Brann ("Commissioner Brann"), DOC's Chief of Staff Hazel Jennings and her team, as well as CHS's Senior Vice President Patsy Yang for their ongoing collaboration and commitment to the Board's oversight role. ED King also thanked the people who come to speak at these meetings each month, as they have provided invaluable guidance to the Board's work in recent years. She thanked the Board for its unwavering support and the Board's staff for its extraordinary accomplishments and dedication. She is extremely proud of and humbled by what the Board's staff have achieved. She looks forward to supporting the Board's critical mission and following its work from a new and different vantage point.

► City Hall Remarks

On behalf of the Mayor's Office, Senior Advisor Freya Rigterink recognized ED King's extraordinary service to the Board and the City, and gifted ED King with a written proclamation designating Tuesday July 9, 2019 in the City of New York as Martha King Day.

► Interim Chair Sherman's Remarks

Interim Chair Sherman said that when ED King joined the Board of Correction ("BOC") in June 2015, she took on a seriously tough challenge. At the time, the Board had a majority of new members, the agency had seen a number of recent leadership transitions, there were 16 staff members with a budget of 1.6 million dollars, and public expectations for jail reform were high. In the past four years, ED King doubled BOC's budget and staff and led a resurgence of the Board's work.

First, ED King led the Board through rulemaking on visits, package inspection, classification, recreation, and segregation. She then led the Board through a rulemaking process to adopt the first new chapter of the Minimum Standards in 25 years – rules designed to detect, prevent, and respond to sexual abuse and sexual harassment of people in custody. Recently, she led rulemaking on injury prevention and she initiated rulemaking on restrictive housing. Additionally, ED King greatly expanded the Board's efforts at transparency, research, and public reporting,

leading to evidence-driven policy that has raised the profile of the Board at the local, state, and national levels. In 2018, the Board released 25 reports on issues such as visits, lockdowns, healthcare access, injuries, grievances, violence, and investigations – more than double the number of reports issued by the Board in 2014 and 2015 combined. Finally, ED King led her staff and the Board through rapid change in the agency and in the jails; she did this with professionalism, dedication, conviction, grace, empathy, and care.

► **Board Members' Remarks**

Member Cohen said the Executive Director of the Board has a difficult job that requires negotiating and building rapport with City Hall, DOC, CHS, City Council, the State Commission on Correction (“SCOC”), and the Board itself. He is proud of everything ED King has accomplished in this role. Member Jones Austin noted that ED King has always acted with integrity and sincerity, and has remained concerned about all who walk through the City's jails, including detainees, staff, and visitors. Judge Hamill said ED King accomplished more than anyone thought imaginable, leaving an indelible mark on BOC and city corrections, and a wonderful foundation upon which the new Executive Director can build. Member Regan applauded ED King's expansion of the Board's budget to increase its manpower for addressing serious and substantive issues. He added that she led this organization with distinction and thoughtfulness.

Update on Restrictive Housing Rulemaking

Interim Chair Sherman reported that in recent days, BOC has received letters from the City Council's Progressive and Women's Caucuses, Council Speaker Johnson, Criminal Justice Committee Chair Powers, the New York Campaign for Alternatives to Isolated Confinement, the Jails Action Coalition, and the Bronx Defenders calling on the Board to make changes to the Minimum Standards governing punitive segregation and for additional accountability mechanisms for City jails. These calls followed the tragic June death of Layleen Polanco in the Restricted Housing Unit – a form of punitive segregation – as well as the State Legislature's decision to not vote on the HALT Solitary Confinement Act during the session that concluded last month. Interim Chair Sherman noted that much of the input the Board has received is broadly consistent with the Board's draft rules on restrictive housing, which are the product of extensive research and fact-finding.

Interim Chair Sherman said the Board has shared draft proposed rules with DOC and CHS and the Board's staff have been meeting with a working group from DOC to discuss the draft rules; BOC anticipates completing these discussions by the end of this month. Once these discussions have concluded, the Restrictive Housing Rulemaking Committee will finalize proposed rules to publish and present to the full Board for a vote. The Board anticipates voting to propose the rules at a fall public meeting. The vote will start the City's administrative rulemaking process (known as City Administrative Procedures Act (“CAPA”), which will include a comment period and a hearing on the proposed rules. The public will have a full opportunity to submit written comments on the proposed rules as well as testify about them at a public hearing. As the rulemaking process proceeds, the Board will keep the public informed as milestones are reached. BOC has also created a webpage dedicated to this rulemaking.

Through rule-making, the Board will prioritize continued reforms to reduce the use of isolation in NYC jails and ensure that appropriate accountability mechanisms exist to keep everyone safe who lives, works, and visits the City's jails. The Rulemaking Committee will meet later this month to review the comments it has received to date and determine next steps.

Update on the Board's Investigation into a Recent Death

Interim Chair Sherman reported that the Board is in the midst of its investigation into the June 7th death of Layleen Polanco at the Rose M. Singer Center, and is reviewing all relevant documents and video from the Department. BOC requested a judicial subpoena in court so it can access Ms. Polanco's complete medical records; BOC will appear in court later this month. The Board is also

awaiting the results of the medical examiner's autopsy and was informed that this could take 90 days from the date of the death. The Board strongly urged the City to expedite the autopsy process and to transparently release those results as soon as possible. Interim Chair Sherman said that once BOC has the medical records and autopsy report, it will update the public again as to its timeline for releasing its findings and recommendations stemming from the investigation.

Public Comment on Variances

The Interim Chair announced that the Board has five (5) variance votes scheduled for today. The Board will also be voting on the new proposed rules that address patient privacy and injury response and surveillance.

Public comment was heard from Abigail Besler (City Council), Frances Geteles (PHR and CAIC), Elissa Glucksman Hyne (Children's Rights), Carlina Rivera (NY City Council), Marc Steier (COBA), Jennifer Parish (UJC), Scott Paltrowitz (CAIC), Vidal Guzman (Just Leadership USA), Jack Davis on behalf of Roger Headley (CAIC), and Victor Herrera (Close Rikers Campaign). The public comments are available here: <https://youtu.be/DQH312pJrc8?t=2173>.¹

Rulemaking re Minimum Standard § 3-08 and New Minimum Standard § 3-16

► Introduction

ED King stated that the Board will vote on a final rule regarding patient confidentiality and injury prevention. She summarized the rule as follows:

These rules were developed in response to the Board staff's January 2019 report which found that in 2017, there was an 81% discrepancy between the number of serious injuries diagnosed by CHS and the number of serious injuries reported by DOC. The Board also found systemic problems in investigating, monitoring, and preventing injuries in the jails. The Board voted to start the CAPA process at its May 14, 2019 public meeting and held a public hearing on June 20, 2019. ED King thanked DOC, CHS, COBA, and Legal Aid for their comments and feedback during this process. The Board made modifications in response to these comments, and then posted a final rule on July 2, 2019, which the Board intends to vote on today.

The new rules seek to: (1) allow CHS to share with DOC specific diagnoses related to injuries sustained by people while in custody and thereby support investigations and prevention; and (2) address the deficiencies identified in the Serious Injury Report by requiring DOC and CHS to comply with surveillance and reporting requirements. Additionally, in recognition of the fact that individuals in DOC custody are people first and the circumstance of their incarceration is not their defining feature, the Board has made a commitment here to employ person-forward language in its Minimum Standards and general communications going forward. To this end, the Board proposes wherever possible, deleting all references to "Inmates" in favor of person-first terms such as "people in custody." Finally, under the new rule, CHS would be able to disclose certain individual communicable disease diagnoses when an exposure has occurred at a facility and it is necessary for CHS to engage in contact tracing to protect the health and safety of exposed or potentially exposed people. When such disclosures are made, CHS would be required to inform the Board within 24 hours. These rules establish the most robust and transparent system in the country to monitor and prevent injuries sustained by people in local jail custody.

► Board Discussion

Member Cohen voiced support of this rule and said injuries that occur in the jails are often caused by incarceration and a large number of cases are preventable. He said the Board has an obligation to identify all serious injuries and investigate their causes.

¹ Letters and written testimonies received by the Board are available here: <https://www1.nyc.gov/site/boc/meetings/july-9-2019.page>

► Board Vote

The Interim Chair called for a motion to vote on the final proposed rules. After Member Hernandez moved the item and Acting Vice-Chair Richards seconded it, the Board unanimously approved the rules by a vote of 8-0 (Interim Chair Sherman, Vice-Chair Richards, and Members Cohen, Hamill, Hernandez, Jones Austin, Perrino, and Safyer).²

The Interim Chair noted that the Board will publish the final rule in the City Record and the rule will go into effect 30 days after publication.

DOC Variance Requests

Commissioner Brann provided an overview of DOC's three variance requests as follows:

The first variance related to the housing of young adults, ages 19 to 21, permitting some to be housed with adults aged 22 and older. Commissioner Brann reported that since 2015, the Department has tailored a management approach to the young adult population that supports their safety, educational, and programmatic needs. She said that DOC remains committed to providing age-appropriate programs and services to all young adults in its care, regardless of whether some 19- to 21-year-olds are housed with older adults. At previous Board meetings, DOC pledged to house substantially all young adults in young adult-only housing; the Commissioner reported that as of the end of June 2019, DOC had nearly 70% of young adults housed in young adult-only housing units – representing a 3% increase since its progress report at the beginning of January 2019.

The second variance request by the Department related to the use of Enhanced Supervision Housing (“ESH”) for young adults ages 18 to 21. The Commissioner explained that ESH is an important tool that enables the Department to manage some of its most violent individuals in an appropriate manner to ensure safety without the use of punitive segregation. She said that as of July 1, 2019, there were a total of 15 young adults in ESH – less than 3% of the total young adult population; only one young adult was in ESH Level 1, which is the most restrictive level that uses restraint desks during out-of-cell time. By contrast, she noted that in February 2019 there were a total of 25 young adults in ESH with three (3) in ESH Level 1. Commissioner Brann attributed DOC's success with ESH to its staff's consistent hard work as well as constant communication and collaboration with the Board. She described the narrowed placement criteria for ESH, more frequent reviews, and the presence and participation of young adults in their own periodic reviews as groundbreaking reforms supporting a culture of fairness and transparency to ensure that restrictive housing is only used when necessary. She further reiterated the Department's commitment to preventing the types of violent incidents that typically lead to ESH placement, by implementing ionizing body scanners in the coming weeks to detect and remove weapons from persons in custody.

Commissioner Brann explained that the third variance was related to punitive segregation and the ability, in highly exceptional circumstances that present safety and security concerns, to waive the requirement that people be released for seven (7) days after they have been held in punitive segregation for 30 consecutive days. She said that while the seven-day waiver tool has only been used once in the past year, it remains an important security tool when all other housing options are rendered unsuitable for an individual who engages in persistent, violent behavior.

Commissioner Brann concluded by thanking ED King for her hard work, dedication, and commitment to the Board's mission and for her collaboration with DOC in creating a safe, humane, and fair justice system in the city of New York.

² The Board's final rule regarding patient confidentiality and injury prevention is available here: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/July/final-injury-reporting-rule-002.pdf>

1. Young Adult Housing and Comingling Variance Request

► Introduction

ED King provided background on the young adult housing and comingling variance, explaining that the Minimum Standards require the Department to house 18- 21-year-olds separately and apart and to provide age-appropriate programming. Young adult housing allows DOC, CHS, and the Department of Education (“DOE”) to target resources for access to education, age-appropriate programming, and staff who are trained to work with the young adult population. The Department has sought and the Board has repeatedly granted a variance on this requirement over the past few years. The Board’s last variance included conditions that reiterated the importance of young adult housing and a young adult plan, and included specifics about the limited circumstances when a young adult may be moved to a housing unit with adults. The conditions allow DOC to commingle a young adult with adults only on a case-by-case basis if the young person is housed in restrictive housing, has engaged in violent or assaultive behavior, or has engaged in other actions that threaten safety inside a facility. When a young person is moved to adult housing, the Board requires that the young person and the Board be notified as to why.

ED King noted that during the pendency of the current variance, DOC has faced challenges ensuring that young adults are only commingled for permissible reasons, are provided notice, and that the Board receives accurate and complete biweekly reports on this issue. After analyzing administrative data from March 12, 2019 through April 29, 2019, BOC confirmed the Department moved at least 46 young people to adult units without proper notification to the young person or the Board. In recognition of this omission, DOC has committed to providing notification to those young people who are still in DOC custody. Board staff have also been working closely with DOC to address these compliance problems and have recommended that DOC implement a centralized, routine quality assurance process. DOC has also taken steps to ensure that their staff have a consistent understanding of which units are young adult-only units to help improve compliance. DOC will also publicly report this going forward.

In September 2018, only 22% of young adults were in young adult-only housing. That percentage increased from 57% in February 2019 after the Board’s variance vote, to 68% as of June 3, 2019, peaking in May 2019 at 71%. ED King said these figures demonstrate a significant recommitment to the young adult strategy. RNDC serves as DOC’s designated young adult jail, where 54% of young adults are housed. Ninety-nine percent (99%) of young people at RNDC were in young adult-only units. At the same time, there are 46% of young adults held in jails other than RNDC. Of the 283 young people at the other jails, 67% are comingled with adults and 33% are held in young adult-only units.

ED King thanked Board Research Director Victor St. John for his leadership in helping the Board publish a major new resource focused on young adults in the New York City jails. Launched yesterday, the Board’s new young adult webpage tracks the implementation of the City’s young adult strategy, presenting young adult-specific data on demographics, housing, restrictive housing, correction officer training, programming, education, and access to health care. It represents the most comprehensive public data on young adults in custody in the nation, and the Board will update the webpage at least annually.

► Failure of Cell Door Locking Mechanisms at RNDC

Member Perrino and Member Cohen toured RNDC one month ago and said that DOC’s uniformed staff relayed their safety concerns that the cell doors in some units are not secure and pop open very easily. Member Perrino and Member Cohen also witnessed some people in custody demonstrating how to pop open the cells doors when they are locked into their cells. Member Perrino spoke to the Commissioner and the Deputy Commissioner in charge of operations, who said that DOC is in the process of replacing the cell doors. Member Perrino expressed urgency

in resolving this issue, and suggested DOC change the cells doors as soon as possible for the few areas where there are high classification individuals. Member Cohen noted that DOC said fixing the cell doors will take two years, and urged DOC to resolve the issue much sooner.

► **DOC Presentation**

Timothy Farrell, Senior Deputy Commissioner (“DC Farrell”), presented DOC’s six-month variance request from Minimum Standard § 1-16(c)(1)(ii), which requires 18- to 21-year-olds to be housed separate and apart from people over the age of 21. The Department is only seeking this variance for young adults aged 19 to 21.

► **Board Discussion**

Dr. Cohen observed that DOC has not yet recovered from moving the young adults from GMDC to RNDC over one year ago. During Dr. Cohen’s recent visit to RNDC, he saw paved yards without any equipment and DOC told him that it has plans to install the equipment. He said there was very little programming taking place when he visited, and that he was informed that computer-based programming is only available to three dormitories in the graduated sanctions program and that young adults cannot access the computers unless they are in these dormitories. Dr. Cohen asked 1) when DOC plans to conduct a needs assessment to match individuals to age-appropriate programming; and 2) when DOC will track individual participation in programming.

Michael Tausek, DOC’s Deputy Commissioner for Adult Programming and Community Relationships (“DC Tausek”), said that DOC is transitioning to an individual accountability model with a three-phase levels system. He reported that RNDC currently has 66 active tablet programs, and said the Department is in the process of implementing the tablet program facility-wide. He said that DOC has approximately 325 tablets for the entire young adult population, and will soon have tablets for every young adult at RNDC.

Judge Hamill said the reports given to the Board by its staff indicate a drop in young adult school attendance – down to 27% in June 2019. She said it also appears that young people are not getting to their scheduled mental health appointments. DC Tausek said historically, the average school participation rate has been 30%, and DOC hopes the levels system and enrichment opportunities compel young adults to attend school. Acting Warden Joseph Caputo (“Acting Warden Caputo”), said he does not have data on mental health appointment production, but said the clinic production rate greatly increased in June 2019. He attributed this to the reduction in alarms, which hinder access to services.

Judge Hamill asked what steps are being taken to ensure that young adults placed in adult housing are comingled for appropriate reasons and that the young adults receive notice of the reason for their placement. Acting Warden Caputo said all young adult new admissions are processed through RNDC, but a small percentage have a negative impact on others so they must be transferred to adult housing units; others young adults voluntarily choose to be housed with adults. DC Farrell said all requests to comingle young adults and supporting documentation are sent to a centralized e-mail address that is checked daily. His office works with the Office of Custody Management and the facility to determine if there are other young adult cohort housing units to place these individuals prior to comingling. DOC is also implementing audits to ensure that transfers do not take place without the appropriate paperwork.

Vice-Chair Richards said between March and April 2019, there was a gap in the Board’s audit which found that 46 young people were moved to adult housing without proper notification to the Board. He asked how the Board can ensure that the reporting required by this variance is maintained with accuracy and consistency. DC Farrell said the period audited by the Board reflected a learning curve, and said that DOC has since implemented a centralized approach to improve this process.

Member Perrion said that officers at RNDC told him that the ultimate decision on commingling is made by the facility. He and Dr. Cohen believe that the Office Custody Management should make the housing determination and track individuals to encourage them to behave so they can return to young adult housing. DC Farrell clarified that the Office of Custody Management makes the ultimate housing decision, after working with the Operations Security Intelligence Unit (OSIU) to review behavior issues and other security concerns, and consulting with the facility to understand what has been done to manage an individual within young adult cohort housing.

Judge Hamill expressed appreciation for DOC's progress toward re-establishing the young adult plan. She said DOC only requests this variance for 19- to 21-year-olds and asked why the prioritization of placing 18-year-olds in young adult-only housing is not applied to the remainder of the young adult population. DC Farrell said the *Nunez* Consent Judgement requires enhanced staffing levels, tracking, and monitoring of 18-year-olds, and so DOC houses the 18-year-olds in one location to better manage reporting and tracking required by *Nunez*. DC Farrell expressed that DOC needs the flexibility to manage the 19- to 21-year-olds through comingling. Judge Hamill clarified that DOC is bound by many reporting and accountability standards through the *Nunez* Consent Judgement for the 18-year-olds, however, the Board thinks all young adults should be treated fairly and have access to the young adult program.

DC Tausek reminded the Board that DOC has implemented many programs and educational services at RNDC, but there is a percentage of young adults who were unmotivated to attend school in the community and they continue to be unmotivated in DOC's custody. Vice-Chair Richards said that language matters, and if DOC sees young people as "unmotivated," its way of engaging them will reflect that belief. He said these young people have been failed over and over again by the systems and services that were supposed to be provided to them. He challenged all parties to think about the language used in speaking about young people and incarcerated people.

Interim Chair Sherman said DOC committed to providing officers with effective communication and motivational strategies training during the February 2019 variance request, and asked if all officers working with young adults have received this training. Angel Villalona, DOC's First Deputy Commissioner, said this training is a part of the initial training for officers working with young adults and all staff have been trained.

Judge Hamill acknowledged that the Board has renewed today's variances many times. She said she would vote in favor of this variance with the notion that it will be addressed through upcoming Restrictive Housing Rulemaking.

► **Board Vote**

After the Interim Chair called a roll call vote, the Board unanimously approved the existing condition by a vote of 9-0 (Interim Chair Sherman, Vice-Chair Richards, and Dr. Cohen, Hamill, Hernandez, Jones Austin, Perrino, Regan, and Safyer).

The Interim Chair called for a motion to vote on the variance with the existing condition. After Member Hernandez moved the item and Vice-Chair Richards seconded it, the Board unanimously approved the variance by a vote of 9-0 (Interim Chair Sherman, Vice-Chair Richards, and Members Cohen, Hamill, Hernandez, Jones Austin, Perrino, Regan, and Safyer).³

2. Young Adult-ESH Variance Request

► **Introduction**

³ The final record of variance is available here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/July/2019.07%20Record%20of%20Variance%20Action%20-%20YA%20Co-mingling%20FINAL.pdf>

ED King said since July 2016, the Board has renewed a variance that allows the Department to house young adults in ESH. The Board has worked closely with the Department to monitor and improve the ESH model through these variances. She thanked Board staff Victor St. John, Rahzeem Gray, Kenneth Wong, and Mackenzie Deary for their critical analyses of young adult and ESH data to inform data-driven discussion on this variance.

In the first four months of 2019, there were 64 young adult placements into ESH. Of the 64 placements, 69% were placed into ESH Level 2; 16% were placed into ESH Level 3; and 16% were placed into ESH Level 1 (a restraint desk unit). For all recent placements of a young person into a restraint desk unit, the young person had recently participated in an actual or attempted slashing or stabbing or engaged in activity that caused serious injury to someone else.

Placement reviews and progressions between ESH levels have improved since January. Between January 1 and May 1, there were 140 periodic reviews conducted by DOC for young people in ESH. In more than half of those cases, the young people progressed after a review recommended progression. The percentage of young adults who spent time in restraint desks has continued to decrease consistently since 2017, and recent months show a sharp decline.

The Board published DOC's required recent audits of ESH units on its website. These show significant declines in the number of reported late lockouts in the ESH units. They also show that on average, 68% of young people are refusing recreation offers on audited days. In terms of Law Library, the Coordinator has been available, on average, four (4) hours per day in the ESH units, and an average of 11 young people requested Law Library services on the audited dates. The audits also show that while young people are entitled to three (3) hours of school a day while they are enrolled, students in April averaged two (2) hours of school per day.

► **DOC Presentation**

DOC's Acting Assistant Chief, Freeman Williams ("Acting Assistant Chief Williams"), said that ESH is an important tool that enables DOC to manage some of the most violent individuals in an appropriate manner that provides young adults with educational and pro-social programming. The individuals are reviewed at regular intervals by a multidisciplinary team that includes uniformed staff, social service providers, and programming staff to determine if the individual is ready to progress to a less restrictive level or back to general population. Reviews are conducted in Level 1 every 15 days, and in Levels 2 and 3 reviews are conducted every 21 days. As of today, DOC has one (1) young adult in Level 1; ten (10) in Level 2; and four (4) in Level 3 – a significant decrease of young adults in ESH compared to January 2019. Most individuals in Level 1 were placed after a slashing or stabbing so DOC wishes to maintain this variance to protect its staff, DOE staff, and other young adults.

► **Board Discussion**

Dr. Cohen said the progress that has been made in ESH has been done collaboratively, but noted that the Department unilaterally instituted the use of restraint desks, which were not approved by the Board. He wondered why, if DOC has only one person in ESH Level 1 right now, that individual needs to be in a restraint desk. The Commissioner replied that it is a necessary tool to keep everyone safe, and that regardless of whether they have one person in Level 1 or ten people, DOC must maintain fidelity to the program. She analogized her career as a police officer and said that although she only needed to access her firearm twice in eight years, it was an important safety tool.

Vice-Chair Richards asked if it would be possible to replace the use of Punitive Segregation ("PSEG") with ESH – a model that has accountability infused with services. Commissioner Brann said this is a conversation for rulemaking and reminded the Board that DOC is a leader in the reduction and elimination of PSEG for certain populations. She noted that the criteria for

placement into ESH is a slashing/stabbing or serious injury, while the criteria for placement into PSEG can be a multitude of infractions, not just violence.

Dr. Cohen asked if people in Levels 2 and 3 are in restraint desks when they are in school. DOC's Bureau Chief, Kenneth Stukes ("Chief Stukes"), said there were instances when people in Levels 2 and 3 were incorrectly placed in restraint desks, but this issue has been addressed with staff. Dr. Cohen urged his fellow Board members to vote against the use of restraint desks because he believes they are unnecessary and humiliating and DOC does not need them.

► Board Vote

After the Interim Chair called a roll call vote, the Board unanimously approved the existing conditions by a vote of 9-0 (Interim Chair Sherman, Vice-Chair Richards, and Members Cohen, Hamill, Hernandez, Jones Austin, Perrino, Regan, and Safyer).

The Interim Chair called for a motion to vote on the variance with the existing conditions. After the item was moved and seconded it, the Board approved the variance with conditions with eight (8) votes in favor (Interim Chair Sherman, Vice-Chair Richards, and Members Hamill, Hernandez, Jones Austin, Perrino, Regan, and Safyer) and one (1) vote in opposition (Member Cohen).⁴

3. PSEG Seven-Day Waiver Variance Request

► Introduction

ED King explained that in September 2015, the Board first granted a variance from Minimum Standard § 1-17(d)(2) to allow the Department, in highly exceptional circumstances presenting safety concerns, to waive the requirement that people in custody be immediately released from PSEG for seven days after they have been held in PSEG for thirty consecutive days. The Board has renewed this variance multiple times, each time on the condition that the Chief of Department must approve each waiver and state why placement in a less restrictive setting is not a safe option. Since the Board's last approval of this variance, there have been zero requests for a seven-day waiver.

► DOC Presentation

Chief Stukes requested a six-month variance renewal, pending rulemaking, from Minimum Standard § 1-17(d)(2). He explained that approval of the seven-day waiver is approved by the Chief of the Department and it is a vigorous process where alternative means of management are explored. Since DOC has been granted this variance, 39 waivers have been submitted, 29 have been approved, and 10 have been disapproved. Of the 29 that were approved, 27 of the incidents occurred within seven (7) days of being released from PSEG and two (2) occurred during PSEG. There have been zero requests for overrides in 2019, and the last request was in October 2018.

► Board Discussion

Dr. Cohen said that City Council and people who spoke during the public comment period feel there is no need for this variance, and he believes that DOC has many alternative areas to house people, if necessary (e.g., WF, MDC 9 South). Chief Stukes disagreed and said DOC's data shows that the seven-day PSEG override is a necessary tool to manage individuals who commit serious acts of violence.

Vice-Chair Richards acknowledged that over the years, the number of people in PSEG and those who cycle in and out of PSEG has reduced. He also acknowledged the damage solitary

⁴ The final record of variance is available here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/July/2019.07%20Record%20of%20Variance%20Action%20-%20YA%20ESH%20FINAL.pdf>

confinement has on people and commended DOC for using this waiver sparingly. Member Regan also commended DOC for its thoughtful work in granting these waivers.

Judge Hamill inquired about DOC's compliance with the SCOC's new rule requiring four (4) hours of out-of-cell time in solitary confinement. Chief Stukes said in June 2019, DOC began affording individuals in PSEG four (4) hours of out-of-cell time, which includes: two (2) hours of recreation, one (1) hour of programming, and one (1) hour for showers. To ensure compliance, facility schedules were arranged to mitigate scheduling conflicts and an additional supervisor dedicated to programming was added to the unit. DOC also created pre-printed logbooks to document all of the mandated services that must be afforded to individuals. Chief Stukes and the executive team, the Bureau Chief of Facility Operations and her staff, the Division Chief, Assistant Chief Williams and his staff, are all required to make tours of the PSEG units. DOC also conducts random audits of logbooks and performs Genetec spot checks to ensure that staff are affording services. Judge Hamill asked what activities are available in the recreation pens. Chief Stukes said that people can do push-ups and basic exercise, but there are no weights or pull up bars in the pens. The two (2) hours of recreation are provided at one time and if someone requests to be returned to the facility (e.g., to use the restroom) there is no requirement that they must be taken back to the recreation area for their remaining recreation time. Water and ice are brought to the recreation area. Judge Hamill asked how many people exercise their right to take a one (1) hour shower and if the water has to be running in order for someone to stay in the shower. Chief Stukes said that some individuals take a one (1) hour shower while some prefer to return to their cells sooner. He said the water does not have to be running in order for someone to spend more time in the shower.

Dr. Cohen asked for data on the number of showers people are taking and how many people go to recreation. Chief Stukes has not analyzed this information but during his tours, he has seen about 20 people in the recreation area (there are 30 total recreation pens). He said DOC has a Web Application containing this information on an individual level. Judge Hamill expressed that these issues should be addressed in rulemaking.

► **Board Vote**

After the Interim Chair called a roll call vote, the Board unanimously approved the existing conditions by a vote of 9-0 (Interim Chair Sherman, Vice-Chair Richards, and Members Cohen, Hamill, Hernandez, Jones Austin, Perrino, Regan, and Safyer).

The Interim Chair called for a motion to vote on the variance with the existing conditions. After Member Safyer moved the item and Member Regan seconded it, the Board approved the variance with conditions with eight (8) votes in favor (Interim Chair Sherman, Vice-Chair Richards, and Members Hamill, Hernandez, Jones Austin, Perrino, Regan, and Safyer) and one (1) vote in opposition (Member Cohen).⁵

CHS Variance Requests

The Interim Chair said the Board would vote on two variance requests from CHS, which it has renewed every six months for several years. In 2017, the Board voted unanimously to prepare to integrate these variances into the Minimum Standards and it is committed to doing this as soon as Board capacity allows.

1. Psychotropic Medication Variance Request

► **CHS Presentation**

⁵ The final record of variance is available here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/July/2019.07%20Record%20of%20Variance%20Action%20-%20Seven%20Day%20Waivers%20FINAL.pdf>

Ross MacDonald, MD, Chief Medical Officer and Assistant Vice President for CHS (“Dr. MacDonald”) acknowledged ED King’s departure and thanked her for her leadership. He explained that this variance from the Mental Health Minimum Standards allows psychiatrists to prescribe psychotropic medications on a 28-day schedule for stable patients in general population areas, in step with community practices. For patients in mental observation units, the standard remains that these medications are renewed every 14 days. CHS has presented data demonstrating that for patients in general population, there is a mix of 14-day and 28-day renewals, which reflects the clinical acuity of those cases.

► **Board Discussion**

Dr. Cohen encouraged all Board members to support this variance request and asked CHS to provide information from its testimony at City Council regarding serious mental illness (“SMI”), the definition of which he understands CHS to have expanded. He also requested any training or curriculum that was provided to staff regarding this new definition, and additional information about how the percentage of SMI patients has increased based upon the new definition. Dr. MacDonald said CHS would provide the Board with this information.

► **Board Vote**

The Vice Chair called for a motion to vote on the variance. After Member Regan moved the item and Member Hernandez seconded it, the Board unanimously approved the variance by a vote of 7-0 (Vice-Chair Richards, and Members Cohen, Hamill, Hernandez, Perrino, Regan, and Safyer).⁶

2. Tuberculosis (“TB”) Testing

► **CHS Presentation**

Dr. MacDonald said this variance from the Medical Minimum Standards allows CHS to use an alternative mechanism of screening for latent tuberculosis on admission. CHS has been using, for many years, the interferon gamma release assays instead of the tuberculin skin test.

► **Board Vote**

The Vice Chair called for a motion to vote on the variance. After Dr. Cohen moved the item and Dr. Safyer seconded it, the Board unanimously approved the variance by a vote of 7-0 (Vice-Chair Richards, and Members Cohen, Hamill, Hernandez, Perrino, Regan, and Safyer).⁷

Public Comment

The Board heard public comment from Winston Nguyen (Independent) Cynthia Tucker (HALT Solitary Campaign), Victoria Phillips (UJC/JAC), and Mary Lynne Werlwas (LAS). The public comments are available here: <https://youtu.be/DQH312pJrc8?t=9998>.

Following public comment, Interim Chair Sherman adjourned the meeting.

⁶ The final record of variance is available here:

https://www1.nyc.gov/assets/boc/downloads/pdf/2019_01_14_record_of_variance_action_psychotropic_medications_final.pdf

⁷ The final record of variance is available at:

https://www1.nyc.gov/assets/boc/downloads/pdf/2019_01_14_record_of_variance_action_tb_testing_final.pdf