

NEW YORK CITY  
BOARD OF CORRECTION

September 10, 2012

MEMBERS PRESENT

Gerald Harris, Chair  
Greg Berman  
Robert L. Cohen, M.D.  
Michael J. Regan  
Milton A. Williams, Jr., Esq.

Excused absences were noted for Vice Chair Alexander Rovt, PhD and for Members Catherine M. Abate, Esq., and Pamela S. Brier.

DEPARTMENT OF CORRECTION

Dora B. Schriro, Commissioner  
Michael Hourihane, Chief of Department  
Lewis S. Finkelman, Esq., First Deputy Commissioner  
Thomas Bergdall, Esq., Deputy Commissioner and General Counsel  
Sara Taylor, Chief of Staff  
Martin Murphy, Deputy Chief of Staff  
Erik Berliner, Associate Commissioner  
Maggie Peck, Director, Constituent Services  
Carleen McLaughlin, Legislative Affairs Associate  
Robin Campbell, Administrative Public Information Specialist

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Amanda Parsons, M.D., Deputy Commissioner  
Homer Venters, M.D., Assistant Commissioner, correctional Health Services  
Ross McDonald, M.D., Medical Director  
Daniel Selling, Psy.D., Executive Director of Mental Health/Substance Abuse Treatment  
Suzette Gordon, Counsel  
George Axelrod, Director, Risk Management

OTHERS IN ATTENDANCE

Joseph Antonelli, Office of Management & Budget  
Christian Belle, Legal Aid Society  
Robert Calandra, Government Affairs, City Council  
Sister Marion Defeis  
Mary Dougherty, Jails Action Coalition  
Roman Echevarria, Father of Jason Echevarria  
Christina Fiorentini, Independent Budget Office  
Susana Guerrero, State Commission of Correction

William Hongach, City Council  
Neil Leibowitz, M.D., Director, Mental Health, Corizon  
Jeff Mailman, Legislative Director, NYC Council  
Jennifer Parish, Esq., Urban Justice Center  
Michael Rooney, no affiliation given  
Regina Ryan, City Council  
Jeffery Powell, Esq., Assistant United States Attorney, SDNY  
Eisha Wright, Finance Division, City Council  
Milton Zelermyer, Esq., Legal Aid Society, Prisoners' Rights Project

Chair Gerald Harris called the meeting to order at 9:05 a.m. A motion to adopt minutes from the Board's July 9, 2012 meeting was approved without objection.

Chair Harris announced that the Board would consider the Department of Correction's (DOC's) variance request to implement temporary cell restriction (TCR) of adolescent inmates housed at the Robert N. Davoran Center (RNDC). He explained that the DOC proposal is intended to reduce and prevent violence and to decrease the use of formal discipline, adding that it would be akin to a "cool down" period for adolescents giving them an opportunity to regain their composure.

Commissioner Schriro described her request as follows:

The goal of TCR is to intercede at the earliest opportunity in order to prevent harm to inmates and staff and prevent the escalation of incidents. Rather than infracting an adolescent inmate under certain circumstances, the Department would like the option to send him to his cell to "cool out" for a brief period of time, not to exceed two hours. In order to do this, the Department requested variances from a number of Minimum Standards, including the lock-in Standard. The Department intends to involve line staff, supervisors, and administrators in this initiative. The correction officer gives the order to lock-in, and thereafter immediately notifies a Captain who consults a tour commander. Because this is a new initiative, extensive training will be provided to staff, and once implemented there will be ongoing supervision at the highest level of the organization. The kinds of misconduct that the Department will focus on are relatively minor, such as incidents that do not involve weapons, that do not result in injury, and -- more likely than not -- with no physical contact. The Department is prepared to be as flexible as possible to see which situations are appropriate for TCR.

Chair Harris remarked that although the comment period for this request was not extensive, the Board did receive substantive and thoughtful comments from the interested parties, including the Legal Aid Society, the Jail Action Committee, and a concerned citizen.

The Chair noted that increasing time in the cell does have an impact on some of the other Minimum Standards that affect inmates. He stated that before today there had been preliminary discussions between the Department and the Board and its staff, so that what is being proposed today is really a refined version of what had originally been proposed by the Department. He stated that a principle right or privilege is visitation, and that his understanding is that during the two hour period there would be a delay in visitation. Chair Harris added that the limit to which it could be delayed is two hours, and that the delay could be less, for instance, if the inmate is prepared to modify his behavior. He concluded by saying that, there is a process for visitation which takes a bit of time, so it seems that visitation will not be impacted in a significant way, if at all. Chair Harris discussed substantive aspects of the variance request, as follows:

With respect to school attendance, DOC has adopted the proposed changes that were suggested - those who wish to go to school will be allowed to attend. Some other areas of our Standards - such as religious services - have been addressed and will be delayed. Medication and treatment will be unaffected by TCR. The use of the commissary will be

changed, and although they cannot go to commissary, items may be bagged and brought to the inmate's cells. Library and recreation will be restricted and rescheduled. Generally the purpose is to lessen the impacts on programs and services, and at the same time avoid the impact of trial and punishment and to diffuse the situation if at all possible.

Board Member Greg Berman asked Commissioner Schiro how she planned to measure the effectiveness of this initiative. The Commissioner responded that indicators described in the proposed operations order would be tracked, but ultimately it would be a combination of qualitative and quantitative information that would be assessed. She explained that the Department would examine information from the inmates and staff about how beneficial TCR is, the outcomes of the actual number of infractions compared with baseline data on the number of infractions prior to the policy change. Chair Harris recommended that the variance request be granted for four months or some finite length of time, and that data would be shared with the Board to see if the variance is working.

Board Member Dr. Bobby Cohen stated that attorney visits should include paralegals, social workers, and other agents of the attorneys. The Commissioner confirmed that it would. Dr. Cohen expressed concern that if an incident happened toward the end of a visit period, the inmates' visits will be completely denied. He explained that because the Board has worked with DOC over many years to improve the visit process, the families should not be penalized and made to wait an extra two hours. He added that TCR is not the family's fault and that the visit process already takes up so much of their time. The Chair asked Dr. Cohen if he felt that a distinction should be made between certain "close" family members as opposed to friends. Dr. Cohen replied no, explaining that the important thing is to ensure that inmates have ties to their communities. The Chair responded that the prospect of a visit might be leverage to encourage an inmate to behave. Executive Director Cathy Potler pointed out that the Minimum Standards require the Department to make every effort to minimize the waiting period for visitors. She added that the TCR process may take longer than the two hour lock-in period when including the officer-supervisor deliberations. Dr. Cohen asked the Commissioner if she envisioned visits being completely denied in cases when the incident occurs near the end of the day's visit period. Commissioner Schiro responded that the visits could be delayed as much as two hours. She added that in earlier discussions she had suggested that the inmate could receive a visit before the two-hour lock-in period is completed if in the opinion of the officer the inmate had composed himself.

Dr. Cohen pointed out that inmates in punitive segregation retain their visitation rights. He recommended that visits should not be affected by the requested variance, and that TCR would not be materially affected if inmates were to get access to visits. The Chair stated that leaving the issue of whether to allow a visit to the DOC personnel is reasonable because the whole enterprise depends on the discretion of those officers being used appropriately. Dr. Cohen noted the reason the Board is discussing all of the variances sought is that it is important to maintain a reasonable balance between protection of the prisoners and the normal institutional workings of the Department. He emphasized that the Board is considering these variance requests because the Members believe that there is a legitimate possibility that it will work and result in fewer infractions. He reiterated that TCR would not fail if affected inmates were permitted to go to visits and that granting such a variance could injure families and result in

missed visits. Dr. Cohen added that a four month variance would give enough time to test the new policy. He appreciated the Commissioner's comments and anticipated working with the Board to monitor this endeavor. Ms. Potler reminded the Board that it has the authority to place conditions on the variance.

The Chair asked for a vote on the variances offering two voting options: grant all of the variances requested by the Department, except for the variance delaying visits, or grant all of the variances requested by DOC. Jennifer Parrish requested permission to comment on the proposed variances. She identified herself as an attorney with the Urban Justice Center Mental Health Project and a member of the Jails Action Coalition and explained that -- particularly on the issue of visitation -- it is important for the Board to hear from members of the public, including the family members who come to visit on Rikers. She noted that her coalition was able to submit comments, but due to the very short period of time offered to comment prior to the Board's vote, there were many organizations, which included family members, who were not able to meet the time constraint and submit written comments. She asked that the vote be delayed so that there could be an opportunity for more people to comment.

The Chair responded that this is a proposed "temporary measure" or a "test" that would not exceed four months, and may be subjected to further deliberation by the Board and input from the public before it is extended or made more permanent. He added that there may be an opportunity to comment in the future, and the Board may have a public hearing on whether to further extend the variance or adopt it on a permanent basis. Chair Harris emphasized that he would not turn the Board meeting into a public hearing.

Board Member Michael Regan moved that the Board take a vote. Board Members Regan, Berman, Dr. Cohen and Milton Williams voted to grant all variances except for the variance pertaining to visitation. Chair Harris voted to approve all variances requested by the Department. Ms. Potler noted that the variance request regarding visitation was denied, but all other requested variances were granted.

The Chair explained that Commissioner Schriro provided the Board at the September meeting with material concerning the use of punitive segregation, and Board Member Pamela Brier had asked for an opportunity to examine the material and potentially raise some questions about it. Although she could not attend today's meeting, Chair Harris asked whether any other Board members had questions for the Commissioner. Dr. Cohen noted that the Board appreciated receiving the material. He added that one item was of particular interest because he had not understood it before: although there has been nearly a 50% increase in the use of the punitive segregation beds at Rikers, the proposed increase of 90 Mental Health Assessment Unit for Infracted Inmates (MHAUII) beds had already been included in the total number of segregation beds. Dr. Cohen recommended that the Board address concerns about placing the mentally ill in isolation. The Chair stated that he shared Dr. Cohen's concerns and added that it is an area that requires further exploration and discussion by the Board.

Chair Harris asked the Commissioner to discuss the plan to provide institutional clothing to adolescents at RNDC. He added that it did not require a variance as long as laundry services,

storage and supplies were available. The Commissioner explained that a letter of information was sent to the Board explaining that the Department had sufficient laundry capacity to handle the additional institutional clothing, had purchased over 3,000 pieces of uniform, and had adequate storage space. She confirmed that DOC will be able to store the inmates' personal clothing and make their court clothes available and that notification to inmates and family members have been posted. Commissioner Schriro stated that the Department will begin distributing the uniforms on September 15, 2012. Chair Harris asked the Commissioner to explain the underlying rationale for switching to uniforms. Commissioner Schriro responded that it would "level the playing field" because everyone would have the same amount and type of clothing. She added that the uniforms will serve to increase safety because they will eliminate one more reason for a fight.

The Chair mentioned the recent death in the MHAUII unit which has been the subject of review by Board staff. The Commissioner requested that the death be discussed in executive session because it is currently under investigation. This was agreed upon by the Board. Chair Harris noted that this recent death highlighted the issue of the Prison Death Review Board (PDRB). He described the PDRB as follows:

The PDRB was convened by the Deputy Mayor's Office, staffed by Board staff and composed of representatives of a number of New York City agencies. Deaths, particularly suicides, were often the subject of the PDRB, and would end with a report of findings and recommendations. I have reviewed information from staff about the manner in which the PDRB functioned. The Board will consider restoring this process, as a potential means of taking a look at suicides and other problematic deaths. In any event, there has been an extensive review of this particular death in MHAUII, and it will be discussed in executive session today.

Dr. Cohen stated that the discussion will be an important opportunity to address the PDRB with the Department of Health and Mental Hygiene (DOHMH) and DOC. Dr. Cohen recalled his experience many years ago as a physician on Rikers Island when he was involved in the PDRB, which he found to be invaluable in identifying deficiencies and creating policy changes. Dr. Cohen stated that he strongly supports reinstating the PDRB and reviewing the recent death as its first case. Mr. Regan stated that he was in full agreement with Dr. Cohen's recommendation.

Assistant Commissioner Dr. Homer Venter introduced Correctional Health Services new Medical Director, Dr. Ross McDonald, who served previously as the Deputy Medical Director. Dr. Venters thanked the Board for the opportunity to comment on the adolescent TCR, and hoped that the four points mentioned in the Department's written comments would be included in any final operations order prepared by DOC.

Dr Venters requested the renewal of two variances describing each variance request as follows: The first variance pertains to patients receiving psychotropic drugs who are getting a

high level of mental health care, are very stable, and have been seen by a psychiatrist at least once a week. For these individuals, DOHMH will review their medication orders every 28 days instead of 14 days, as required by the Board's standard. The other variance is to renew the use of interferon gamma release assays (IGRA) for tuberculosis screening at Rose M. Singer Center (RMSC). The use of IGRA was recently expanded system-wide because it has been working so well. The Board voted unanimously to extend both variances.

Dr. Venters discussed the Request for Proposals (RFP) process noting that the Department is in the final stages of selecting vendors; however, unlike previous years, this is a longer process because DOHMH is negotiating with multiple vendors simultaneously, but the Department is within a month of identifying the major contractor vendors. By the next Board meeting Dr Venters stated that he will be able to provide contractor names. He added that this will be a three year contract.

Chair Harris discussed DOC's request to renew a variance, which allows the commingling of high classification sentenced adolescents with high classification pre-trial detainees. Ms. Potler explained that even though this variance has yet to implemented, the Department has requested a four month renewal. The Board voted unanimously to renew this variance.

A motion to renew DOC's existing variances was approved without opposition.

Chair Harris adjourned the public meeting at 10:12 a.m. to go into executive session.