



**NEW YORK CITY
BOARD OF CORRECTION**

February 12, 2019 PUBLIC MEETING MINUTES

MEMBERS PRESENT

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

Martha W. King, Executive Director

DEPARTMENT OF CORRECTION (DOC)

Cynthia Brann, Commissioner
Hazel Jennings, Chief of Department
Heidi Grossman, Deputy Commissioner for Legal Matters/General Counsel
Brenda Cooke, Chief of Staff
Angel Villalona, First Deputy Commissioner
Peter Thorne, Deputy Commissioner of Public Information
Michael Tausek, Deputy Commissioner of Adult Programming and Community Relationships
Timothy Farrell, Senior Deputy Commissioner
Steven Kaiser, Director of Policy & Reform Initiatives
Faye Yelardy, Assistant Commissioner for Sexual Abuse and Sexual Harassment Prevention
Sarena Townsend, Deputy Commissioner of the Investigation Division
Emily Testwuide, Assistant Commissioner
Dana Wax, Senior Policy Advisor
Lawton Bourne, Assistant Commissioner
Kwame Patterson, Assistant Commissioner
Marcia Maxwell, Executive Director of Intergovernmental Affairs
Jean Rene, Deputy Warden
Prechelle Shannon, Senior Correctional Institution Administrator
Nancy Li, Policy Analyst
Latima Johnson, Press Officer
Elizabeth Seibold, Press Officer

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

Patsy Yang, DrPH, Senior Vice President
Carlos Castellanos, Director of Operations
George Axelrod, Chief Risk Officer
Omar Arnouk, Associate Counsel
Zachary Rosner, Associate Executive Director

Jonathan Wangel, Esq., Senior Director of Risk Mitigation and Management
Michele Martelle, Senior Director of Health Information and Insurance
Kelsey Burke, City Research Scientist II
Alexandra Owens, Deputy Director, Communications and Public Affairs

OTHERS IN ATTENDANCE

Victoria Phillips, Jails Action Coalition (JAC)
Kelly Grace Price, JAC
Kayla Simpson, Legal Aid Society - Prisoners' Rights Project (LAS)
Daniele Gerald, Children's Rights
Taylor Jones, NYC Council
Ashley Iodice, Esq., NYC Law Department
Kimberly Joyce, Esq., NYC Law Department
Thomas Giovanni, Esq., NYC Law Department
Albert Craig, Correction Officers' Benevolent Association (COBA)
Kelsey De Avila, Brooklyn Defender Services (BDS)
Simone Spirig, BDS
Anna Arkin-Gallagher, BDS
Wendell Walters, The Osborne Association
Joan T., Administration for Children's Services
Allen Riley, NY State Commission of Correction
Nick Marinacci, NYC Department of Education
Misaël Syldor, Independent Commission on NYC Criminal Justice and Incarceration Reform

Approval of January 8, 2019 Minutes

Chair Cephas asked for a motion to approve the January 8, 2019 meeting minutes. Upon Dr. Cohen moving the item and Member Sherman seconding it, the minutes were unanimously approved (Chair Cephas, Vice-Chair Richards and Members Cohen, Hamill, Jones Austin, Perrino, Regan, Safyer, and Sherman).

Election of Vice-Chair

Chair Cephas stated that the Board would vote on the role of Vice-Chair today. The Vice-Chair's term will begin today and end on January 31, 2020.

Dr. Cohen nominated current Acting Vice-Chair, Stanley Richards, to the role of Vice-Chair. Dr. Cohen acknowledged Mr. Richards' accomplishments as Executive Vice President of the Fortune Society and as a member of several other boards in NYC. Dr. Cohen said Mr. Richards plays an essential part in reframing the City's jail system, and working with him on the Board "has been an honor."

► Board Vote

After Judge Hamill seconded Dr. Cohen's nomination, the Board unanimously elected Stanley Richards to the role of Vice-Chair (Chair Cephas, Vice-Chair Richards and Members Cohen, Hamill, Jones Austin, Perrino, Safyer, and Sherman)¹.

Public Comment on Variances

Chair Cephas said there are two variance votes scheduled for today. The Department of Correction ("DOC" or "Department") requested a variance to allow it to continue housing young adults ages 19-21 in comingled housing with adults. DOC also requested renewal of a variance permitting it to house young adults (18- 21-year-olds) in Enhanced Supervision Housing ("ESH").

¹ Member Regan was not present for this vote.

Public comment on the variance requests was heard from Albert Craig (COBA) and Daniele Gerald (Children's Rights). The public comments are available at: https://www.youtube.com/watch?v=zUU1_IiAibY.

Sharing Patient Health and Injury Information

Chair Cephas stated that at last month's meeting, Correctional Health Services ("CHS") requested renewal of a longstanding variance from Minimum Standard § 3-08(c)(3), which prohibits health care staff from sharing with DOC specific diagnoses of people in custody. The variance permits CHS to provide DOC specific diagnoses related only to injuries sustained by persons while in correctional custody. A one-month variance was granted at last month's meeting to give the Board and CHS time to discuss BOC's proposed variance conditions, which CHS opposed and continues to oppose. CHS has now decided, based upon an opinion of the Law Department, not to seek further renewal of the variance. Chair Cephas said this impasse between BOC and CHS has resulted in a situation where the authority of the Board's Minimum Standards is in question and patient confidentiality is at risk.

► Background on Minimum Standard § 3-08(c)(3) and Variance

Chair Cephas discussed the history of Minimum Standard § 3-08(c)(3) and the variance, as follows.

Section 3-08(c)(3), which was enacted in 1991, strikes a careful balance between protecting the right to privacy of an incarcerated person and protecting the health and safety of that person and others. This balance is ensured by a regulatory framework that specifies the circumstances under which a person's health information may or may not be disclosed to DOC or parties outside the jail system. It also explicitly prohibits the sharing of patient diagnoses for any reason. Section 3-08(c)(3) was modeled on American Correctional Association and American Medical Association standards, which emphasize the importance of patient privacy and confidentiality in ensuring quality health care. Prior to promulgation, proposed § 3-08(c)(3) underwent multiple rounds of edits and public debates, receiving comments from many parts of government as well as Legal Aid's Prisoners' Rights Project and the ACLU's National Prison Project.

In November 2013, CHS requested a variance from § 3-08(c)(3) that would allow it to provide the Department with specific diagnoses related only to injuries sustained by people while in custody. At the time, CHS stated that this information was necessary for DOC to conduct meaningful investigations of incidents resulting in injuries and to utilize its investigative findings to prevent future injuries. Informed by public debate, the Board agreed and has granted this variance every six (6) months for the past five (5) years. CHS sought another renewal of this variance at the January 2019 Board meeting.

In January 2019, Board staff released a report titled "Serious Injury Reports in NYC Jails,"² which uncovered significant deficiencies in the reporting of serious injuries by DOC and CHS. As the variance was coming up for renewal, the Board proposed conditions to the variance to ensure that the agencies' implementation of the variance met the variance's stated goals and allowed for the Board to monitor compliance around injury reporting. However, after receiving the proposed conditions, CHS decided not to seek a renewal of the variance based upon Law Department guidance that the variance was unnecessary. Subsequently, the Corporation Counsel rendered a written opinion based on an interpretation of Section 3-08(c)(3), which the Board did not agree with.

² The report is available at:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2019.01.07%20-%20BOC%20Serious%20Injury%20Report%20-%20Final.pdf>.

The Board expressed its concern about CHS's decision not to renew the variance, and said it was an apparent attempt to avoid BOC's proposed conditions and thus avoid BOC's oversight of injuries. The Board also questioned the process by which the Law Department arrived at its new interpretation of § 3-08(c)(3) without first obtaining any input from BOC. The Board was not aware of any legal basis for this usurpation of its rulemaking authority and the public's opportunity to engage in rulemaking via the City Administrative Procedure Act ("CAPA") process. Further, the Law Department's opinion reversed 28 years of shared understanding of the Minimum Standard's plain meaning and intent. By asserting that patient diagnoses could now be routinely shared without patient consent and without Board oversight, CHS put a central tenet of quality medical care in doubt.

After receiving the Law Department's opinion, the Board urged CHS to seek a renewal of the variance to allow all parties to engage in a deliberate and transparent review of § 3-08(c)(3), its meaning, and the Board's ability to enforce it. BOC urged that only through such a process would the integrity of the Minimum Standards and the City's CAPA process be preserved. The Board is disappointed that CHS had chosen not to request a variance renewal and, therefore, the variance will expire at the end of today. In BOC's view, any sharing of patient diagnoses would be in violation of § 3-08(c)(3) after today. Such a result was not the Board's intent, as BOC recognizes a legitimate need for injury information sharing. That said, the Board believes that such information sharing must be done legally and with proper protections and oversight in place. Chair Cephas concluded his remarks by noting that the Board has agreed to rulemaking under CAPA to codify the variance.

Chair Cephas invited CHS to provide any insight or guidance it may have on this issue.

► CHS and the Law Department

Patsy Yang, Senior Vice President for CHS, deferred to the Law Department on this matter. Thomas Giovanni, the Law Department's Chief of Staff, stated that the Law Department had advised CHS not to submit a variance request. He said discussing legal advice would not be appropriate in this forum, and the Law Department would engage all stakeholders at an appropriate time.

► Board Discussion

Dr. Cohen responded that the Board was not asking for legal advice and that this meeting was an appropriate forum to discuss BOC matters. He said violence is a major cause of health problems in the jails, and investigation of injuries must continue with full respect for patient confidentiality. Dr. Cohen asked for the Law Department's basis for nullifying § 3-08(c)(3) and the variance. Mr. Giovanni reiterated that he would not discuss the substance of any legal advice given to CHS or DOC.

Member Regan remarked that the Law Department's opinion appeared "counterproductive" to safety. He noted that CHS's repeated requests for the variance and the Board's repeated approval of these requests were undertaken thoughtfully and carefully.

Vice-Chair Richards asked what immediate operational impact the Law Department's opinion would have on CHS's ability to share injury information with DOC. Mr. Giovanni responded that what CHS and the Law Department propose going forward will not jeopardize the flow of injury information between CHS and DOC.

Executive Director ("ED") King noted that CHS has publicly and regularly written and spoken about patient privacy as a central tenet of medical ethics and the importance of upholding patient privacy in the jails. She asked whether CHS was ethically comfortable with sharing health information with DOC whenever the Department says such information is "necessary to protect

the health and safety of inmates and others.”³ Dr. Yang responded that she would not be ethically comfortable unless appropriate protocols were in place. ED King asked whether CHS’ new policy on patient privacy (described today) would require new notification to patients. Dr. Yang responded that CHS was declining to renew the variance based on the Law Department’s opinion and not on any change in policy. ED King inquired about what new policies and systems CHS and DOC had in place to protect patient privacy given its new interpretation of § 3-08(c)(3). Mr. Giovanni responded that CHS and DOC were working to develop appropriate protocols.

Member Sherman suggested that CHS request a short-term variance until the next meeting to allow for discussions between CHS, the Law Department, and the Board. Member Perrino agreed and said that CHS must put a proper procedure in place before discontinuing the variance. Member Jones Austin stated: “It is the responsibility of the Corporation Counsel to minimize the risk to the City of New York. I cannot understand why you would not put in place a variance while you are figuring this out, because by not allowing for the variance, you are increasing the risk to the City of New York with respect to liability.”

Board Resolution re Disclosure of Specific Injury Diagnoses⁴

Dr. Safyer urged the Board to vote on a resolution to show collective disagreement with the Law Department’s interpretation of Health Care Minimum Standard § 3-08(c)(3). Chair Cephas added that the resolution should reaffirm the Board’s commitment to enforcing the Minimum Standard as it currently exists and the Board’s authority to impose conditions when appropriate.

BOC’s General Counsel, Michele M. Ovesey, read out loud the proposed resolution.

► Board Vote

Chair Cephas called for a motion to vote on the proposed resolution. After the item was moved and seconded, the resolution was unanimously approved, 7-0 (Chair Cephas and Members Cohen, Hamill, Jones Austin, Perrino, Safyer, and Sherman).⁵

Young Adult Housing and Comingling Variance Request

► Introduction

ED King reported on the young adult housing and comingling variance, as follows.

The Board’s Minimum Standards require DOC to house 18-21-year-olds separately from the rest of the jail population. Young adult-only housing allows DOC and the Department of Education (“DOE”) to target resources and provide access to education, age-appropriate programming, and staff who are trained to work with a young adult population. However, the Department has sought and the Board has repeatedly granted a variance from this requirement for the past few years. While DOC has consistently housed 18-year-olds in young adult-only housing, the majority of 19-21-year-olds have been comingling with adults in adult housing. In September 2018, 78% of 19-21-year-olds were comingling with adults in housing areas throughout the jails.

³ The first sentence of § 3-08(c)(3) reads: “Health care personnel may report an inmate’s health information to the chief correctional officer without the written consent of the inmate only when such information is necessary, to provide appropriate health services for the inmate or to protect the health and safety of the inmate or others.”

⁴ The resolution was voted on at the end of the meeting. Member Regan and Vice-Chair Richards were not present for this vote.

⁵ The Board’s resolution is available at:

[https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/February/Resolution%20re%20Variance%20from%20Min.%20Std%203-08\(c\)\(3\)%20%202.12.19%20Board%20Meeting%20with%20Vote.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/February/Resolution%20re%20Variance%20from%20Min.%20Std%203-08(c)(3)%20%202.12.19%20Board%20Meeting%20with%20Vote.pdf)

In October 2018, the Board granted a three-month variance until January 2019 to assess the Department's progress toward housing all young adults in young adult-only housing. Due to Chair Cephas' absence at the January 2019 meeting, the Board granted a five-week variance to allow for his participation in the discussion today.

In recent months, Board Members have met with the Department to reiterate the importance of the Young Adult Plan, and have worked with DOC to articulate a specific proposal for how the Department can safely implement young adult-only housing, as required by the Minimum Standards. BOC commended the Department for beginning to solidify a young adult framework that commits to compliance with the Standards, is informed by the unique developmental needs of young adults, and seeks to minimize the adverse effects of incarceration on the health and mental health of this population.

The Department's commitment can be seen in its decision to move all young adult intake to RNDC, its construction of new outdoor recreation yards at RNDC, its dedication of a programming staff exclusively for young adult new admission housing, its decision to add more officers to young adult-only houses, and ultimately allowing more young adults to benefit from young adult-only housing. In recent months, DOC has significantly increased the number of 19-21-year-olds in young adult-only housing. As of January 2019, 58% of 19-21-year-olds were in young adult-only housing. The Department and Board staff confirmed this week that 67% of all 18-21-year-olds were currently in young adult-only housing.

While recognizing this progress, the Board maintains that more young adults can and must benefit from the Young Adult Plan, including more programming, educational access, and dedicated staff and planning. BOC noted that young adults have increased as a percentage of RNDC's total population — increasing from 10% in June 2018 to 38% in July 2018, immediately following the closure of GMDC. By December 2018, the percentage of young adults in RNDC increased to 63%. Given this increase, the Board is concerned about the facility's ability to manage the young adult population without force and lockdowns, while also preventing violence to young adults and staff. The Board is also concerned about young adults' low school attendance, particularly at RNDC. From September 2018 to January 2019, while the Department-wide young adult enrollment in school increased 69%, from 176 students to 298 students, the overall young adult attendance rate decreased from 40% to 25%. Over the same period, young adult school enrollment at RNDC increased 180%, while the attendance rate decreased from 44% to 23%. The Board has encouraged the Department to move towards school-based housing for the young adult population to facilitate attendance and timely production to school.

► **DOC Presentation**

Timothy Farrell, DOC's Senior Deputy Commissioner ("DC Farrell"), requested renewal of the six-month variance from Minimum Standard § 1-02(c)(1) to allow the Department to house 19-21-year-olds with people over the age of 21.

► **Board Discussion**

Judge Hamill recounted her visit to RNDC and GRVC yesterday. In RNDC, she saw only one (1) officer on the floor in a unit with 24 young adults. The housing officers at RNDC no longer escort young adults to school, and escorting is now provided by the six (6) officers assigned to the school floor. She was informed that officers are no longer present in the classroom and when a certain number of students are in the classroom, no additional young adults can attend due to "safety reasons." There were two (2) housing units that requested to attend school yesterday, but they were not allowed to go due to this cap on attendance. Judge Hamill was also told that a few weeks ago, a student opened the door to allow other students to run into the classroom, and when an officer tried to gain control, she was struck by a chair, breaking her nose and causing other facial injury. Judge Hamill spoke with the school psychologist and several counselors who felt that some students were afraid to attend school due to safety concerns. She also spoke to some DOE staff

who said they are concerned for their own safety. In GRVC's Secure Unit, Judge Hamill noted that the total population has increased to 20 young adults, with five (5) per quad. The increase in population appears to have resulted in more fights, and now, only one (1) quad can attend school for one (1) hour at a time each day. Judge Hamill was extremely impressed by DOE's teachers and counseling staff who are trying to engage the young adults and explain the benefits of attending school. She urged DOC to address educational and training needs as well as safety issues in young adult housing.

Angel Villalona, DOC's First Deputy Commissioner, disputed Judge Hamill's account that there was only one (1) officer on the housing floor in RNDC. He said staffing levels at RNDC are appropriate according to DOC rules.⁶ He clarified that the housing area officer had accompanied adolescents (16-17-year-olds) to school because they have a compulsory education requirement and, therefore, the housing area was empty during school. He explained that young adults (18-21-year-olds) do not have the same compulsory education requirement. Thus, when young adults choose not to attend school, the housing officer must remain in the housing area to supervise them. Chief of Department Hazel Jennings said the Department has added a dedicated Deputy Warden of Operations to the Young Adult Plan, and the Facility Operations Chief has discussed increasing school levels with DOE. She said RNDC was also advised to complete paperwork (Form 119) for additional posts to ensure adequate staffing.

Dr. Cohen said he also visited around six (6) housing areas at RNDC yesterday and none had two (2) officers present, notwithstanding DOC's written representation to the Board that at least two (2) officers are always present on young adult housing floors. Dr. Cohen noted that while only 5% of the jail population is at RNDC, 25% of all jail-wide uses of force in January 2019 occurred at that facility. Chief Jennings said the Department will add additional staff to housing areas where it deems necessary and currently, DOC must have three (3) officers in a unit (including two (2) on the floor) when the census reaches 25 people. Judge Hamill and Dr. Cohen agreed to send DOC a list of the housing areas they visited that they believe were inadequately staffed. Judge Hamill praised the correction officers working with the young adults, but said that several had confided in her that they did not feel they could be as effective in RNDC since there were not enough officers assigned to the facility.

Member Perrino stated that while the Department is "striving to go in the right direction," he is concerned that most housing areas have more than 15 young adults. When he visited RNDC recently, the officers told him additional officers were needed to supervise the young adult population. Member Perrino suggested that DOC add additional officers temporarily without Form 119 approval, as it has done in the past. He noted that when the violence decreases, DOC can remove additional officers from the unit.

Dr. Cohen asked whether the Department can track assessment and program participation at an individual level. Michael Tausek, Deputy Commissioner of Adult Programming ("DC Tausek"), responded that DOC is identifying the most effective assessment tool for this population and will implement it in the new admission housing unit. Dr. Cohen expressed concern that the Young Adult Plan states that young adults who choose not to participate in programming will not be in the Young Adult Program. He feared that young adults who opt not to participate will forgo their access to education.

Member Sherman asked the Department what indicators it would review on a systematic basis to determine the success of the young adult initiative, and at what intervals it would examine the data to drive further improvements. DC Tausek responded that there are various ways to measure success (e.g., violence reduction, grievance reduction, participation rates, decreased recidivism),

⁶ Later in the meeting, Commissioner Brann clarified that out of the 21 "open" housing areas at RNDC, only four (4) have a population that requires two (2) officers in the unit.

but this decision must be made by a collective group of DOC staff. Member Sherman requested that DOC advise the Board about its method for measuring success, and that BOC be given the opportunity to engage with the Department in selecting the indicators.

Judge Hamill stated that in December 2018, the highest number of missed appointments at RNDC were in mental health, and only 54% of the 23,000 scheduled mental health appointments were kept. Dr. Cohen said the problem appears to be a lack of escorts. DC Farrell said he is unaware of this data and would like to review it before discussing this issue.

Nick Marinacci, DOE's Senior Executive Director of Youth Justice Education and Treatment Programs, said that throughout the history of young adult education at GMDC, GRVC, and OBCC, officers have not been in the classroom. Historically, there have been low levels of incidents for the young adult school population. He said the average attendance rate for young adults has been around 34%. While the attendance rate decreased from September 2018 to January 2019, the number of young adults attending school increased from 12 to 18 in the past month. DOE has twice met with the Department to discuss improving attendance. Some of the school recruiting initiatives discussed include adding dedicated staff to the new admission housing unit and having the psychologist go to the unit three (3) days per week. Two career technical components have been added to RNDC — a carpentry class and a culinary arts class. Mr. Marinacci noted that after a recent reorganization within DOE, the Office of Adult Education now falls under District 79 (DOE's Alternative School District, which encompasses the East River Academy). This reorganization may give DOE the opportunity to offer certain educational opportunities to students through the age of 25.

Member Perrino commended Mr. Marinacci on improving the provision of education to young adults. He asked what school attendance was like at GMDC. Mr. Marinacci said at its peak, GMDC had 30-40 students on any given day. He noted that a lack of school attendance "is not always a safety issue; sometimes they just don't want to go." He explained that in the community, the young adult population has about a 75% school dropout rate, and the average attendance rate before dropping out is approximately 38%.

Judge Hamill asked DOE and DOC to develop a protocol for when additional security is needed to accommodate young adult requests for school. Mr. Marinacci noted that school attendance has always been higher in school-based housing (e.g., GMDC success houses, EMTC success houses).

► **Board Vote**⁷

ED King read out loud one new proposed condition and one existing condition to the variance. DC Farrell accepted both conditions to the variance. Dr. Cohen said he would vote against the new proposed condition because a young adult's behavior should not serve as a basis for the young person's exclusion from the Young Adult Program.

After Chair Cephas called a roll call vote, the Board approved the new condition with seven (7) votes in favor (Chair Cephas, Vice-Chair Richards, and Members Hamill, Jones Austin, Perrino, Safyer, and Sherman) and one (1) vote in opposition (Member Cohen).

After Chair Cephas called a roll call vote, the Board unanimously approved the existing condition 8-0 (Chair Cephas, Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, Perrino, Safyer, and Sherman).

Chair Cephas called for a motion to vote on the six-month variance with the conditions. After the item was moved and seconded, the Board approved the variance with conditions, with seven (7)

⁷ Member Regan left the meeting before the vote on the two variances.

votes in favor (Chair Cephas, Vice-Chair Richards, and Members Hamill, Jones Austin, Perrino, Safyer, and Sherman) and one (1) vote in opposition (Member Cohen).⁸

Young Adult Enhanced Supervision Housing (“YA-ESH”) Variance Request

► Commissioner Brann’s Remarks

DOC Commissioner Cynthia Brann made the following remarks.

The Board and the Department share the same overall goals — to run a jail system that is safe, humane, and results in positive outcomes. The significant focus on restraint desks in ESH has overshadowed DOC’s impressive reforms. The Department has fundamentally transformed the structure of punitive segregation in just a few years. When punitive segregation was eliminated for young adults, ESH was identified as a necessary option to safely house violent young people in a structured and secure setting that could provide enhanced programming and incentivized levels.

Young adults can only be placed in ESH Level 1 (with restraint desks) if they have recently participated in an attempted or actual stabbing or slashing, or engaged in activity that caused serious injury to an officer, another person in custody, or any other person in the facility. Between 2017-2018, approximately 3% of the young adult population was in ESH on any given day, with approximately 1% in ESH Level 1. As of yesterday, there were a total of 25 young adults in ESH with three (3) in Level 1; 16 in Level 2; and six (6) in Level 3. The Department must continue to use ESH and restraint desks in Level 1, as it has not identified an equally safe and effective alternative. The alternatives it has reviewed are more restrictive and less humane than the restraint desks. The Department expressed its commitment to continuing to review alternatives and working with the Board to make changes where appropriate.

► DOC Presentation

DC Farrell requested renewal of the six-month variance from Minimum Standard § 1-16(c)(1)(ii) to allow the Department to house young adults ages 18-21 in ESH.

► Board Discussion

Chair Cephas thanked Commissioner Brann for the thoughtful and careful consideration DOC has given to the Board’s concerns about ESH and the restraint desks. He said BOC would continue working with the Department toward eliminating their use. Judge Hamill thanked Commissioner Brann for DOC’s tremendous progress in ESH, specifically the implementation of periodic reviews, programming, and excellent teachers and clinicians. She noted that the use of restraint desks has dramatically decreased. Dr. Cohen expressed appreciation for the Commissioner’s remarks and said none of the accomplishments Judge Hamill referenced could have been achieved without DOC’s agreement and support.

Dr. Cohen said he is voting against this variance because he believes the restraint desks are unnecessary, and alternative methods should be developed to safely house the three young adults currently in ESH Level 1. He added that the Board should not vote to “endorse a policy of continuous restraints.” Chair Cephas said other members of the Board share the concern about the use of restraint desks; however, the Department has made progress and will continue to look for alternative safety tools. Member Perrino said he would continue to support the variance until DOC finds alternative measures for securing safety amongst this small, but extremely violent population. Member Sherman said the Board would like to hear about the alternatives to restraint desks that DOC has explored thus far.

⁸ The final record of variance is available here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/February/2019.02.12%20-%20Record%20of%20Variance%20Action%20-%20YA%20Co-mingling%20for%20DOC.pdf>

► Board Vote

After Chair Cephas called a roll call vote, the Board unanimously approved the existing conditions, 8-0 (Chair Cephas, Vice-Chair Richards, and Members Cohen, Hamill, Jones Austin, Perrino, Safyer, and Sherman).

Chair Cephas called for a motion to vote on the six-month variance with the conditions. After the item was moved and seconded, the Board approved the variance with conditions, with seven (7) votes in favor (Chair Cephas, Vice-Chair Richards, and Members Hamill, Jones Austin, Perrino, Safyer, and Sherman) and one (1) vote in opposition (Member Cohen).⁹

Board Resolution re PREA Investigations

► Background

ED King reported on the Board's resolution regarding the Minimum Standards on Sexual Abuse and Sexual Harassment ("PREA Standards"), as follows:

In September 2018, the Board released an audit of DOC's investigations into sexual abuse allegations, which analyzed a sample of 42 investigation reports occurring between January 2010 and December 2017. The audit documented significant gaps in PREA investigations and violations of multiple provisions of the PREA Standards. These violations included missing supervisor reviews, delayed investigations, failure to complete all interviews, and reports that did not document whether the victim had been interviewed in a confidential setting or why a crime scene had not been established. The Board unanimously passed a resolution requiring corrective action to improve the quality and timeliness of investigations. While the Department did not respond to the resolution by the required deadlines, Commissioner Brann wrote a letter on December 10, 2018 which outlined recent efforts to improve compliance. Chair Cephas wrote a letter in response on January 3, 2019, reiterating the need for a Corrective Action Plan that clearly articulated goals and the timelines for achieving them.

On January 31, 2019, the Department submitted its Corrective Action Plan.¹⁰ ED King said DOC's recently reported efforts show signs of important progress. The Department has met its goals of staffing up to 30 PREA investigators, adding supervisory staff, and increasing specialized training. However, there continue to be data and reporting challenges in meeting the reporting requirements of PREA Standard § 5-40. The § 5-40 reports submitted to the Board are missing required data elements, and BOC has been unable to reconcile this data with the information in DOC's public semiannual assessment reports. Board and DOC staff are fully committed to working together to improving the Department's reporting capacity, and the agencies are working closely together on § 5-40 data and reporting issues. This work will be critical to ensuring that DOC meets the requirements of recent City Council legislation requiring reporting on sexual assault and harassment in the jails.

The Board announced that it has scheduled a special hearing on April 23, 2019 at 9:00 AM, which will focus exclusively focused on the Department's compliance with the Board's PREA Standards.

► DOC Update on Its Corrective Action Plan

Sarena Townsend, DOC's Deputy Commissioner of the Investigation Division ("DC Townsend"), recapped that in June 2018, DOC committed to a Corrective Action Plan to address the PREA

⁹ The final record of variance is available here:

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/February/2019.02.12%20DRAFT%20Record%20of%20Variance%20Action%20-%20YA%20ESH.pdf>.

¹⁰ DOC's *PREA Investigations Corrective Action Plan* (February 2019) is available here:

https://www1.nyc.gov/assets/boc/downloads/pdf/prea_corrective_action_plan_february_2019.pdf.

investigation backlog. One goal was to add six (6) supervisory staff and two (2) upper management staff by September 2018. Another goal was to increase the number of investigators to 30 by January 2019. DOC has achieved those goals and the PREA investigation unit is now fully staffed. Additionally, the Department has two (2) data analysts assigned to PREA investigations and a dedicated director and supervisory attorney from the Trials and Litigation Division who assist PREA investigators during the investigation process and handle the prosecution of substantiated cases. Since April 2018, DOC's PREA investigators have closed over 1,000 cases and they are on track to eliminate the backlog by the end of February 2019.

In September 2018, the Board conducted an audit of DOC's PREA investigations, which made eight (8) recommendations. The Department implemented all of them before developing a Corrective Action Plan in January 2019. DC Townsend concluded her presentation by noting that DOC expects to implement a new computer system by the end of 2020 to replace the current one, which is inefficient and archaic.

► **Board Discussion**

Dr. Cohen requested that the Department provide the following information at the April 2019 hearing: (1) the number of PREA referrals the Department of Investigation (DOI) has made to district attorneys since 2015; (2) the number of PREA referrals DOC has made to district attorneys since 2015; (3) the number of PREA cases involving DOC staff that were tried or otherwise resolved at OATH since 2015; and (4) the number of PREA-related indictments that have occurred since 2015. Member Jones Austin requested that this data be provided in the aggregate and broken down by year.

Public Comment and Adjournment

The Board heard public comment from Anna Arkin-Gallagher (BDS), Albert Craig (COBA), Kayla Simpson (LAS-PRP), Victoria Phillips (JAC), and Kelly Grace Price (JAC).¹¹ The public comments are available at: https://www.youtube.com/watch?v=zUU1_IIAibY.

Following public comment, Chair Cephas adjourned the meeting.

¹¹ Written testimony from Kelly Grace Price is available here: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2019/February/BOC%20Meeting%20Testimony%20Feb%2012%202019.pdf>