



NEW YORK CITY

BOARD OF CORRECTION

September 13, 2016 - Public Meeting Minutes

MEMBERS PRESENT

Stanley Brezenoff, Chair
Derrick D. Cephas, Esq., Vice Chair
Robert L. Cohen, M.D.
Honorable Bryanne Hamill
Jennifer Jones Austin, Esq.
Michael Regan
Stanley Richards

Gerard W. Bryant, Ph.D.: Absent
Steven M. Safyer, M.D.: Absent

Martha W. King, Executive Director

DEPARTMENT OF CORRECTION

Joseph Ponte, Commissioner
Martin Murphy, Chief of Department
Jeff Thamkittikasem, Chief of Staff
Dr. Nichole Adams, Deputy Commissioner
Cynthia Brann, Deputy Commissioner
Winette Saunders-Halyard, Deputy Commissioner
Dina Simon, 1st Deputy Commissioner
Peter Thorne, Deputy Commissioner
Angela Tolosa, Assistant Commissioner
James Walsh, Deputy Commissioner of Adult Programming
Shirvahna Gobin, Assistant Commissioner for Strategic Planning
Annie DiCaterino, Strategic Planning
Kwame Patterson, Assistant Commissioner of Public Information
Brenda Cooke, Deputy General Counsel
Heidi Grossman, Esq., Deputy Commissioner of Legal Matters/General Counsel
Gregory Kucziski, Acting Deputy Commissioner
Douglas Zeigler, Executive Agency Counsel
Danielle Leidner, Director for Intergovernmental Affairs
Jeff Thamkittikasem, Chief of Staff

Hazel Jennings, Bureau Chief
Yolanda Canty, Assistant Chief
Sean Jones, Assistant Chief
Kenneth Stukes, Assistant Chief
Marisa Alberti, Policy Analyst
Anna Martzullo, Senior Policy Advisor
Meekaelle Copeland, Administrative Director of Social Services
Mahsa Forkin, Project Management Analyst
Carleen McLaughlin, Director of Legislative Affairs and Special Projects
Frances Taormina, Project Management Analyst
Francis Torres, Director of Education
Benjamin Seebaugh, Staff Analyst
Faye Yelardy, Director of Special Projects
Eve Kessler, Director of Public Affairs
Ada Pressley, Warden
Jacqueline Brantley, Deputy Warden in Command
Herns Mitton, Assistant Deputy Warden
Marsha Elbourne, Captain
Jorge Marin, Correction Officer
Mackenzie Dancho, Intern
Lauren Laquerre, Executive Assistant
Yudelke Aponte
Chris Kelly

NYC HEALTH + HOSPITALS-CORRECTIONAL HEALTH SERVICES

Homer Venters, M.D., Assistant Commissioner, Bureau of Correctional Health Services
Ross MacDonald, M.D., Medical Director
Elizabeth Ward, Senior Director Correctional Health
Patrick Alberts, Agency Attorney, Division of Prevention and Primary Care
Levi Fishman, Associate Director of Public Affairs
Patsy Yang, DrPH, Executive Director Commissioner and Chief Operating Officer
Carlos Castellanos, Director of Operations
Lucia Caltagirone, Agency Attorney Intern
Nathaniel Dickey, Special Assistant
Abdul Madison

OTHERS IN ATTENDANCE

Alex Abell, Urban Justice Center
William Benjamin, NYS Commission on Correction (NYSCOC)
Dahiana Castillo, Office of Management and Budget (OMB)
Albert Craig, Correction Officers' Benevolent Association (COBA)
Mark Cranston, Middlesex County Department of Correction
Brian Crow, NYC City Council
Chelsea Davis, Office of the Mayor
Kelsey De Avila, BDS
Elizabeth DeWolf, Policy Associate at CUNY
Ellen Eng, NYCC
Dennis Gonzales, Monitorship
Susan Goodwillie, Jails Action Coalition (JAC)

Colby Hamilton, Politico
Dr. Phyllis Harrison-Ross, NYSCOC
Xiomara Hayes, Public
Elias Husamudeen, COBA
Kymane Hutchinson, JAC
Karen Imas, Connelly, McLaughlin & Woloz
Sarah Kerr, Legal Aid Society (LAS)
Tanya Krupat, Osborne Association
Victoria Law, Independent
Jeff Mailman, NYCC
Tomas Mantilla, Public
Amanda Masters, NYC Public Advocate – Hon. Letitia James
Elizabeth Mayers, JAC
Cecily McMillan, Public
Louis Molina, Nunez
Nicolas Montano, Vera Institute of Justice
Victoria Phillips, JAC
Charlotte Pope, Children’s Defense Fund –NY (CDF-NY)
Grace Price, JAC
Steve Riester, NYC Council, Finance Division
Kathleen Rubenstein, Law Department
Jane Stanicki, JAC/Hour Children
Marc Steier, COBA
Sarah Stone, Public
Rachel Weiner, Urban Justice Center
Lorna Woodham, Osborne Association
Keith Zobel, NYSCOC

July Board Meetings

Chair Brezenoff asked for a motion to approve the minutes of the July Board meetings (July 12, 2016 and July 26, 2016). There were no amendments to the minutes. Chair Brezenoff asked for a vote on two separate motions approving the minutes. Vice-Chair Cephas moved the motions and Member Hamill seconded. They were approved unanimously (Chair Brezenoff, Vice-Chair Cephas, Members Jones Austin, Cohen, and Hamill).

Executive Director Update

► Strategy Update

Executive Director (“ED”) King briefed the public on the Board’s priorities moving forward, as guided by (1) the Mayor, (2) the City Council, (3) the Board’s recent efforts, and (4) the interests of the broader community. These priorities will be in furtherance of the Board’s mission to exercise its independent oversight and regulatory authority in support of safer, fairer, smaller, and more humane jails. ED King stated that, consistent with the Board’s rich history and Charter-derived powers, Fiscal Year (“FY”) 2016 was marked by new funding, new staff, and new Board members. BOC hired five staff members, resulting in a current staff of 18. The Board’s FY 2017 budget includes a headcount of 38 and totals nearly \$3 million.

ED King explained that, as part of an organizational restructuring, Board staff is now comprised of three divisions: An Office of the General Counsel to update and expand regulations; an Office of Monitoring to enhance daily monitoring in the jails; and an Office of Research and Analytics to support transparency and compliance through data and analysis. ED King summarized the Board’s regulatory agenda¹, its Key Performance Indicator (KPI) project², and its monitoring and research priorities.

ED King introduced BOC’s new Deputy Executive Director of Monitoring, Nicole Austin-Best, who will lead the Board’s monitoring staff. In concluding her report, ED King said that the Board was looking inward to improve its own practices, policies, and accountability in an effort to support DOC and NYC Health + Hospitals (“H+H”) operations in the jails, needed reforms, and safer, fairer, smaller, and more humane jails.

► Proposed PREA Rules

ED King reported that during the public comment period, 66 organizations, 66 individuals, and two Council Members submitted written comments, totaling 215 pages, on the Board’s proposed rules based upon standards promulgated pursuant to the federal Prison Rape Elimination Act (PREA). In addition, 31 people testified at the July public hearing, including representatives of the Office of the Public Advocate, Council Member Dromm, and the Department of Correction (“DOC” or “Department”). ED King stated that because of the magnitude of the response to the proposed rules and the complexity of the underlying issues, the Board requires more time to consider the comments before finalizing the rules.

Use of Tasers

Commissioner Ponte stated that six to eight months ago, the Department started analyzing the use of Tasers as a use of force option. He explained that Tasers allow officers to incapacitate inmates more quickly and safely than chemical spray or physical force; the device would be used only by Captains in

¹ Available at <http://www1.nyc.gov/assets/boc/downloads/pdf/2016.04.22%20-%20Regulatory%20Agenda%20FINAL.pdf>

² More information available at <http://www1.nyc.gov/site/boc/reports/BOC-Reports/key-performance-indicators.page>

DOC's Emergency Services Unit (ESU) and deployed only in limited circumstances. The Commissioner stated that the Department had shared its Taser Directive with the *Nunez* Monitor and revised the Directive based on the Monitor's recommendations.

Member Richards asked whether Tasers were being deployed because chemical spray is not working. In response, Commissioner Ponte said that unlike Tasers, chemical spray affects inmates and staff in the surrounding area whereas the Taser affects only its intended subject. Tasers also eliminate the need for physical restraint and the resulting risk of physical injury to inmates and staff. In response to further inquiry by Member Richards, Commissioner Ponte stated that Tasers would be issued to all 14 ESU Captains and that determination as to its use would be incident-specific.

Member Hamill asked how DOC captains would determine whether an inmate has a condition that would militate against using a Taser to subdue the inmate. Commissioner Ponte responded that if time permitted, security staff would check with medical/mental health staff; otherwise, a Taser would be deployed only if necessary to prevent an immediate physical threat to the officer or another person. In the event of deployment, the Taser's application would be limited only to what is necessary to subdue the subject.

Member Cohen said there have been 2,000 uses of pepper spray this year to date and noted that, in most of these instances, according to DOC's Taser Directive, Tasers could have been deployed. He asked Commissioner Ponte for assurance that Tasers would be used only by ESU Captains. The Commissioner responded that DOC wants to ensure that the device is issued only to staff who are well trained in responding to emergencies. Chair Brezenoff stated that the Board will look more closely at the Department's use of Tasers and that the Board's ad hoc Violence Committee (chaired by Member Cohen) would be a good vehicle for conducting this review.

Finally, in response to Member Cephas's inquiry about the Department's K-9 use, Commissioner Ponte stated that some dogs are trained to uncover drugs while others are trained to patrol in response to alarms. The Department's goal is to utilize dogs who are trained in both purposes.

Lockdown at Brooklyn Detention Center (BKDC)

Commissioner Ponte reported on recent multiple incidents of violence at BKDC, particularly slashings and stabbings. This violence resulted in a complete or partial lockdown of the facility over the course of three days in violation of the Board's Minimum Standard § 1-05 ("Lock-in"). The Commissioner said that the Department's typical approach toward quelling violence is to respond to each incident as it occurs. However, even after moving some of the higher classification inmates out of BKDC and replacing them with Protective Custody inmates who typically are less problematic, another violent incident occurred within one day of this change. At that point, the Department decided that a top-to-bottom review was required, which included interviewing every inmate in the facility. As a result of this review, DOC transferred 30 inmates out of BKDC either for their own safety or because they posed threats to other inmates and staff.

Bureau Chief Gumudere reported on other action taken as part of this review, which included confirming that Protective Custody inmates were properly classified as such, and repeatedly searching the facility, which resulted in the confiscation of 40 weapons. In response to Member Cephas' inquiry, the Bureau Chief said that the weapons recovered were predominately manufactured from materials found in the jail such as pieces of plexiglass, aluminum, and broken metal.

Member Hamill said she was deeply concerned about what turned into a three-day lockdown, which was not lifted until after the Board issued a Notice of Violation. She asked why it took so long to search the

facility; Bureau Chief Gumudere responded that because the violence was not localized, it was necessary to search every cell and interview every inmate.

In response to Member Cohen's inquiry about the inmate interviews, the Bureau Chief said that inmates were asked questions about their cases, living environment and safety concerns. The Bureau Chief said he would provide the Board with a list of the questions that inmates were asked during these interviews.

Member Cohen expressed concern about officers' strip searching BKDC's General Population inmates before going to recreation and questioned whether these searches had contributed to the recent spike in violence. Chief Murphy stated that he communicated to the Warden that such searches must be incident-based; as a result, strip-searching of all inmates prior to going to recreation ceased. Member Cohen asked whether such searches were useful. The Chief responded that no weapons were found, which indicated that inmates had anticipated being searched prior to recreation and as a result, were deterred from carrying weapons.

Member Jones Austin stated that the Department should review the lessons learned from this situation so that, in the future, it re-gains control of a facility in a manner that does not violate Minimum Standards.

Toward the end of the Board meeting, immediately prior to public comment, Heidi Grossman, Deputy Commissioner for Legal Affairs, explained that the Board's rules contemplate that there will be times when DOC cannot meet Minimum Standards and that in requesting an emergency variance, the Department was acting in compliance with the Standards. Chair Brezenoff noted that it is not clear how the Board should deal with such requests but that a request for an emergency variance is not the same as an emergency variance.

Monthly Health and Mental Health Access Update

► Establishment of a Fourth PACE Unit

Dr. Homer Venters reported on H+Hs recent opening of a fourth PACE unit at GRVC. This unit is dedicated to inmates who are returning to a city jail after evaluation in a New York State mental health facility pursuant to Article 730 of the NY Criminal Procedure Law. Since these patients often find the return to a jail environment overwhelming, placement in a PACE unit helps them adjust to the transition.

► Access to Services

Dr. Beth Ward reported that H+H has now taken charge of scheduling inmates for appointments at Bellevue. This has resulted in successful identification of patients who require an immediate appointment and are being scheduled in real time. Member Cohen said the numbers of patients actually seen has not really changed. Dr. Ward responded that while this overall number remains the same, inmates requiring immediate attention are being identified and scheduled accordingly. She noted other issues affecting access such as transportation and inmates' refusal to go to appointments.

Member Cohen noted that the Board has been asking about this issue for four months. Member Regan asked the Department to discuss transportation at the next Board meeting. DOC's Dr. Adams responded that the Department is happy to provide a full update in October. She noted that there are currently three buses dedicated to transporting inmates to appointments at Bellevue but so far, DOC is not seeing the improvements in access that it would like to see. Dr. Adams said that the Department is reviewing what is a realistic number of patients who can be seen over a given period of time.

Member Richards asked what DOC has learned about inmates' access to on-Island clinics. Dr. Adams said that the Department has learned that the DOC and H+H systems of collecting data are very different and that they need to collaborate in order to improve access to services. Member Cohen stated that he did

not believe it was an issue of data collection or an adequate number of clinic staff. He has visited clinics and observed that no patients were there. Dr. Cohen expressed his view that there is an insufficient number of escort officers to escort inmates to their clinic appointments. Dr. Ward agreed. Dr. Adams responded that medical and security staff are equally committed to making sure inmates are seen and that there is a process in place to prioritize patients who require immediate attention.

In response to ED King's inquiry, Dr. Ward stated that the prioritization system is being used in all jails. Member Cohen asked whether inmates are also being triaged for follow-up appointments and Dr. Ward responded that they were. Dr. Cohen remarked that this seems like a contradiction. Dr. Ward responded that one of the biggest issues is escort staff and both H+H and DOC are working on remedying this. Dr. Adams responded with an example. She said that last Monday at AMKC, there were 300 individuals scheduled, after a three-day weekend, but only 18% of these individuals were seen. She concluded that this was not due to lack of escort officers or inmates not otherwise being produced; rather, this is a high number of patients to be seen in a day. ED King asked how many people the AMKC clinic usually sees in a day, to which Dr. Adams responded 30 to 35. Dr. Macdonald said they try to have 13-14 doctors and PAs at AMKC so that a lot of patients can be seen. On the issue of escort officers, Commissioner Ponte stated that a class of about 750 officers are graduating the Academy while approximately 1,200 officers are going into the Academy.

Member Hamill asked about the high temperatures on Rikers this summer and if there were any related health or safety issues. Dr. MacDonald responded that this year, medical staff had not seen an increase in heat-related illnesses.

Chair Brezenoff concluded the discussion by asking Board staff to schedule a meeting with both DOC and H+H to discuss a realistic set of achievable goals and how to achieve them. He said that if the goals are not sufficiently high, the Board will help to find the resources necessary to meet a higher standard. The Chair said that while he appreciates the complexity of the issue, it has been the subject for some time and needs to be definitively addressed.

Monthly Visit Working Group Update

DOC Chief of Staff Jeff Thamkittikasem summarized the changes the Department has made in the visitation process. This includes increased training of visit staff, including customer service training; OMB funding for 34 steady visit staff; revisions to the DOC website to include announcement of new changes in the visitation process; posting of signs; separate 24-hour drop off for packages and bail payment; movement of inmate discharge to a different area; streamlined property pickup at the Perry Building; installation of three informational kiosks; the hiring of two greeters; and repairs to non-contact visit booths at GRVC. Mr. Thamkittikasem said DOC is beginning a pilot project to expedite visitors with children; continuing to do infrastructure work, including to the visit floor at GRVC; and updating the Visitor Handbook. Member Richards thanked the Department for all of the work it is doing to improve the visitation process.

Member Hamill asked what information was given to inmates and visitors at BKDC regarding visits during the lockdown. Mr. Thamkittikasem responded that the Department proactively updated 311 and the DOC website. Chief Murphy said that the Department also held inmate council meetings to alert inmates to the cancellation of visits Friday through Sunday.

Ad Hoc Violence Committee Update

Member Cohen reported that recent Committee meetings included discussion of the process for investigating allegations of sexual violence; DOC's response to alarms and attempt to limit number and

duration of locked down areas; and the use of Tasers. He said he hopes to expand the discussion of Tasers through a public forum.

Ad Hoc Adolescent and Young Adult Committee Update

Member Hamill reported that since July, there have been significant operational changes to the young adult plan, including the mixing of young adults with adults. Member Hamill then congratulated Acting Warden Brantley on her title change and commended her for her excellent efforts in implementing the young adult plan.

Member Hamill said that to date, a specific assessment of TRU, SCH, or Secure has not been done to determine whether these housing units provide safe management of behaviorally-challenged young adults. She commented that the KPI Report could be an effective assessment tool, but KPI data did not exist yet. Member Hamill said that based on her observations of these housing units, they appeared to be working well; as of the end of last week, there were only two young adults in punitive segregation; and young adults confined to punitive segregation are now receiving six hours of out-of-cell time and programming. She concluded that the time has come to end punitive segregation for young adults ages 19 through 21.

In response, both Deputy Commissioner Heidi Grossman and Commissioner Ponte stated that the Department was in compliance with the requirements of the *Nunez* Consent Judgment concerning implementation of the Young Adult Plan. The Commissioner also said that DOC had accomplished more in New York City than anywhere else in the country in terms of developing alternatives to punitive segregation for young adults. He also stated that the new housing units for young adults have not been in operation long enough to do the kind of specific assessment Member Hamill described. He also noted that the Department did a restart of GMDC's TRU unit two weeks ago in response to challenges DOC experienced in operating that unit. The Commissioner concluded by emphasizing the need to demonstrate consistent operation of these units over time.

Public Comment

The Board heard public comment from Sarah Kerr (Legal Aid Society), Cecily McMillan, Kelsey De Avila (Brooklyn Defender Services), Tanya Krupat (Osborne Society), and Victoria Phillips (UJC/JAC). These comments are available at <https://youtu.be/mJ8NQ0lkECM?t=2h1m20s>.