

THE COUNCIL OF THE CITY OF NEW YORK

Hon. Corey Johnson
Speaker of the Council

Hon. Keith Powers
Chair, Committee on Criminal Justice



Report of the Finance Division on the
Fiscal 2021 Preliminary Plan for the

Board of Correction

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Board of Correction Overview

The Board of Correction (BOC or the Board) is a nine-person, non-judicial oversight board that regulates, monitors, and inspects the City’s correctional facilities. The Board members are appointed by the Mayor, the Council, and presiding justices of the Appellate Division of the Supreme Court for the first and second judicial departments (in joint nomination with the Mayor). These are non-paid appointments. The Board members serve on a rotating basis for terms of six years, and the Mayor designates the Chair from among the members. The City Charter mandates the Board’s five functions.

The Board monitors conditions in the City’s jails, investigates serious incidents, evaluates the performance of the Department of Correction (DOC or the Department), reviews inmate and employee grievances, makes recommendations for DOC’s programs and capital planning, and produces ad hoc reports. Additionally, the Board has field representatives in the City jails. The field

Board of Corrections' Five Functions:

1. Establish and ensure compliance with minimum standards
2. Investigate any matter within the jurisdiction of DOC
3. Review grievances from inmates and staff
4. Evaluate the performance of DOC
5. Make recommendations on areas of key correctional planning

representatives conduct site visits at all facilities operated by DOC. Field representatives handle prisoner and staff complaints, investigate suicides, homicides and other violent and unusual incidents, and help with the delivery of basic services and calm tensions in the facilities.

The Board holds public meetings on the second Tuesday of each month,

except April, August, and December. The public meetings consist of public comments on votes, presentation of limited variance requests to BOC Minimum Standards, discussion and votes on variance requests by the Board members, correctional health services updates, and reports from BOC’s visits to DOC facilities. Through the public meetings, the Board monitors ongoing issues at DOC. This includes the Department’s use of Enhanced Supervision Housing (ESH), monitoring DOC staff’s use of body scanner technology, the length of lockdowns and their impact on programs, implementation of the Prison Rape Elimination Act (PREA), and monthly progress of Health + Hospital’s Correctional Health Services (CHS).

This report provides a review of BOC’s Preliminary Budget for Fiscal 2021. The Fiscal 2021 expense budget is presented in a Financial Plan Summary chart that details BOC’s budget by unit of appropriation, funding source, and headcount. BOC does not have a Capital Budget and is not an agency featured in the Mayor’s Preliminary Management Report.

Financial Plan Summary

BOC Financial Summary						
<i>Dollars in Thousands</i>						
	FY18	FY19	FY20	Preliminary Plan		*Difference
	Actual	Actual	Adopted	FY20	FY21	FY20-FY21
Spending						
Personal Services	\$2,103	\$2,298	\$3,018	\$2,968	\$3,039	\$20
Other Than Personal Services	213	297	295	345	140	(155)
TOTAL	\$2,315	\$2,594	\$3,313	\$3,313	\$3,178	(\$135)
Funding						
City Funds			\$3,313	\$3,313	\$3,178	(\$135)
Other Categorical						
TOTAL	\$2,315	\$2,594	\$3,313	\$3,313	\$3,178	(\$135)
Budgeted Headcount						
Full-Time Positions	28	29	38	38	38	0
TOTAL	28	29	38	38	38	0

**The difference of Fiscal 2020 Adopted Budget compared to Fiscal 2021 Preliminary Budget.*

The Board of Correction's Fiscal 2021 Preliminary Budget totals \$3.2 million, \$135,000 less than the Fiscal 2020 Adopted Budget of \$3.3 million. The personal services (PS) budget grew by \$20,000, while the other than personal services (OTPS) budget decreased by \$155,000. Since the Fiscal 2020 Budget was adopted, the OTPS budget for Fiscal 2020 has increased by \$50,000 and the PS budget decreased by \$50,000. This decrease is due to adjusting the PS budget and shifting \$50,000 into the Board's OTPS budget for various needs by the Board. This action had net zero impact on the budget. The sole source of funding for BOC's budget is City tax-levy (CTL).

The PS budget accounts for \$3 million or 96 percent of BOC's Fiscal 2021 Preliminary Budget of \$3.2 million. Staff play a crucial role in the BOC's oversight mission and their responsibilities include development of Minimum Standards governing DOC's operations and monitoring of the Department's compliance with these standards. BOC staff includes the Executive Director's office, research units, and monitoring units. The Monitoring team has standards specialists who conduct site visits at DOC facilities, as well as court pens and hospital wards. The standards specialists have unfettered access to the jails in order to promote compliance with the Board's Minimum Standards. In Fiscal 2020, BOC's Budget has been consistent since the Adopted Budget of \$3.3 million. However the Fiscal 2021 budget decreases slightly to \$3.2 million.

Board of Correction's New Executive Director

Margaret Egan became the Board's new Executive Director in January 2020. Egan served as an executive at CUNY, was senior advisor to the Lippman Commission, oversaw culture-change research at DOC, and was Governor Cuomo's Assistant Secretary for Public Safety prior to her appointment. Margaret Egan is the third Executive Director of the Board since 2014.

Issues

The Board continues to face several issues and challenges with its oversight role of the City's jails. As the City undergoes a number of important changes to its criminal justice system, there are five areas of concern that the Board has requested additional funding to address.

1. **Independent Budget.** According to the Board, in order to meet its mandate and facilitate more structured oversight of the City's jails, the Board requires greater authority and independent resources. In order to achieve this, an adequately funded and staffed

oversight board is critical to ensuring short and long-term change. As a result, the Board has expressed that an independent budget, like that of the Independent Budget Office's (IBO), is necessary to ensure effective correctional oversight during changes in Administration.

On November 5, 2019, New Yorkers overwhelmingly approved a ballot measure to amend the City Charter and link the Civilian Complaint Review Board's (CCRB) budget to the NYPD's budget. BOC and CCRB are both independent oversight boards with their origins in Mayor Robert F. Wagner's administration. Both boards have appointed members from a number of different stakeholders and share similarities in their roles to investigate, recommend, and review policies and practices of the DOC and NYPD respectively. Tying BOC's budget to the Department is a way to ensure the BOC has consistent resources to carry out its critical oversight responsibilities.

2. **Technology Needs.** Utilizing technology is central to the Board's oversight role in the City's criminal justice system. Recently, the Board has not received sufficient resources to pursue the data-driven oversight that it has used to drive reform in the City's jails. The Board requires more resources to enhance their data collection and analysis capabilities. This enhancement would enable the Board to develop a system to intake complaints from incarcerated people and then provide analyses that can shape Minimum Standards, oversight, and accountability. The current system was built in 2006 to support its analytic and operational capacities but, according to the Board, this system has become outdated. The Department of Information Technology and Telecommunications' (DOITT) cost estimate is \$908,000 for the initial implementation of a new system, and \$65,000 for an annual software subscription for the full system upgrade. The full system upgrade has gone unfunded and now BOC is splitting the project into phases and seeking funding for each phase. The Board requests \$262,600¹ for the first phase of these critical upgrades.
3. **Borough Based Jails and Closing Rikers Oversight Staff.** In order to adequately monitor the operations of the DOC as it closes facilities on Rikers Island and transitions to borough based jails, the Board has requested \$234,063 for three positions for Borough Based Jail oversight. The Board has an integral role to play in monitoring the progression of Borough Based Jails and providing input as DOC transitions and evolves. These positions would help the Board play an active role in shaping the Borough Based Jails facilities.
4. **City Research Scientist.** The Board requires \$86,830 for a City Research Scientist position to serve on the Task Force on Issues Faced by Transgender, Gender Non-Conforming, Non-Binary, and/or Intersex (TGNCNBI) People in Custody. The Board was mandated to convene this task force through Local Law 145 of 2019 for a period of five years. This task force provides an important opportunity for collaboration between the City and affected populations to improve the safety and resources for TGNCNBI people in custody. The Board has not been able to devote sufficient resources to this task force, although it has requested funding for a position in the last two fiscal years.
5. **Special Investigations Advisor (Death Reviews).** The Minimum Standards require the Board to conduct reviews of inmate deaths.² This would work with the Board's Prison

¹ Board of Correction Complaints & Appeals Management System Cost Review, New York City. Department of Information Technology and Telecommunications, 2019.

² N.Y.C. Rules, Tit. 40, Ch. 3, Sec. 10.

Death Review panel, which consists of representatives from the Board, DOC, and H+H, to integrate and emphasize the findings of the independent investigations and ongoing policy and practices issues relating to the deaths. The Board requested a resources to fulfill this mandate in Fiscal 2018. In the Fiscal 2019 Preliminary Plan, The Board had received \$86,000 in its budget to hire a special investigations advisor to review inmate deaths. However, this position was eliminated by the Office of Management and Budget (OMB) as of the Fiscal 2019 Budget. The Administration should restore \$86,830 to BOC for this position.

Jail Regulations

The Board of Correction establishes and ensures compliance with Minimum Standards regulating conditions of confinement, correctional health, and mental health care in all City correctional facilities. The following sections provide an overview of the minimum standards, variances, and highlights of the Board's published reports. Additionally, the Board may be petitioned to establish rules for DOC. The rulemaking process is codified in the Minimum Standards and gives the Board a set structure through which rules can be introduced, accepted, or amended. The Board must also publish its regulatory agenda with stated objectives, reasons, and schedule for proposed rules.

Minimum Standards & Variances

Correctional Facilities Minimum Standards

In 1978, the Board adopted a set of sixteen Minimum Standards to provide what it considered to be the basic elements necessary to ensure the safe and humane housing of inmates. The original Standards include provisions ensuring non-discriminatory treatment of inmates and inmate access to courts, religious services, telephones, visitors, and recreation. The original Standards remained substantially unchanged until 1985. In 2014 and 2015, the Board engaged in additional rounds of rulemaking that resulted in amendments to the Board's Minimum Standards. This included new standards regulating punitive segregation and Enhanced Supervision Housing (ESH). ESH is a unit within the jails used by DOC to closely monitor what the Department considers to be the most dangerous inmates in custody. Additionally, Minimum Standards include reporting requirements that the Department must adhere to in order to comply with the Board's standards.³

Punitive Segregation Minimum Standards

In 2019, BOC introduced rules that address DOC's use of restrictive housing and punitive segregation (PSEG). BOC proposed a new chapter of the Minimum Standards, *Chapter 6: Restrictive Housing*, and amendments to *Chapter 1: Correctional Facilities*. These rules will establish protocols for the use, duration, qualifications, and exemptions of restrictive housing in DOC facilities and codify reporting requirements for the Department. The public rulemaking process is ongoing.

³ N.Y.C. Rules, Tit. 40, Ch. 1.

Mental Health Minimum Standards

Spurred by its longstanding concern about inmate suicides, the Board held public hearings in the early 1980s to explore the quality and availability of mental health services provided to inmates. Thereafter, the Board worked collaboratively with DOC, the Department of Health and Mental Hygiene, the Mayor's Office of Operations, the Office of Management and Budget and contract service providers to develop Mental Health Minimum Standards for the City's jails. When the Mental Health Standards were implemented in 1985, New York City became the first jurisdiction in the country to *voluntarily* require the provision of appropriate mental health staffing and other resources to individuals incarcerated in its jails. The Mental Health Minimum Standards contains nine standards for medical and mental health treatment for the Department.⁴

Health Care Minimum Standards

The Health Care Minimum Standards includes sixteen standards which were implemented in 1991 and require that the quality of services provided to inmates be consistent with "accepted professional standards and sound professional judgment and practice." For instance, on weekdays inmates must have access to care within 24 hours of requesting it; medical intake screening must occur within 24 hours of entering DOC custody, and timely access to follow-up care and specialty clinics on Rikers Island, borough facilities, and in hospitals must be provided.⁵

Sexual Abuse and Sexual Harassment Standards⁶

The Elimination of Sexual Abuse and Sexual Harassment in Correctional Facilities Minimum Standards, twelve standards, which were implemented in 2016, are designed to detect, prevent, and respond to sexual abuse and sexual harassment of persons incarcerated in jails and other facilities operated by the Department.

In 2016, the Board implemented Sexual Abuse and Sexual Harassment Minimum Standards that are equivalent to the PREA Standards. In October 2018, the Board passed a resolution requiring the Department to produce a Corrective Action Plan that addresses a commitment and timeline for implementation of the steps necessary for the Department to achieve compliance with Minimum Standards and PREA. The Department's Corrective Action Plan can be found on the website: https://www1.nyc.gov/assets/boc/downloads/pdf/prea_corrective_action_plan_february_2019.pdf

Variances

DOC and H+H may apply for a variance from a specific subdivision or section of the minimum standards, mental health care minimum standards or health care minimum standards when compliance cannot be achieved or continued. Variances also allow additional opportunities for the Board's oversight because they also include reporting requirements that the Department must adhere to in order to be compliant with the variance.

The Board may include requirements as conditions on granting a variance. Any conditions are listed in the Record of Variance action. Some examples of recurring variances submitted by DOC and H+H are as follows:

- Minimum Standard 1-02(c)(1). Extends date by which the Department shall implement the requirement that inmates aged 19-21 be housed separately and apart from inmates over the age of 21;

⁴ N.Y.C. Rules, Tit. 40, Ch. 2.

⁵ N.Y.C. Rules, Tit. 40, Ch. 3.

⁶ N.Y.C. Rules, Tit. 40, Ch. 5.

- Minimum Standard 1-16(c)(1)(ii). Allows the Department to house people in custody ages 18-21 in Enhanced Supervision Housing; and
- Minimum Standards 2-05(b)(2)(i-ii). Allows psychiatrists to see and evaluate stable adult patients on psychotropic medication in the general population at least every 28 days, rather than every 14 days.

Published Reports

The Board conducts independent research of DOC and publishes its reports online and during the de Blasio Administration, the Board has published 26 reports. Below are highlights of the most recent reports from 2019 and 2020.

- **Body Scanners and Separation Status, January, 2020**

The Department of Correction began using body scanners in the summer of 2019 and between July 2019 and November 2019, DOC conducted 11,212 scans. If an individual's scan leads to the discovery of a weapon or contraband, or if they refuse to be scanned, they are placed in separation status, a highly restrictive housing area. Separation status includes isolated confinement for close to 24 hours. Between July and November, there were 45 separation status placements.⁷

This report outlines several concerns in the Department's use of body scanners and their role in placing people in separation status.

1. Staff conducted body scans without adequate training. Supervisors overseeing body scan operations had not completed required training for the use or review of body scanner results.
2. Staff who had not completed required trainings placed people in Separation Status.
3. The use of Separation Status circumvented the Board's minimum standards and were overly restrictive.⁸

- **Jail Conditions and Operations during July 2019 Heat Emergency, September 2019**

In September 2019, BOC released a report detailing the status of air conditioning in DOC facilities. The eight page report outlined numerous instances where DOC's intense heat procedures were not followed, including water temperature, facility temperature, and access to fans, ice, and water.

⁷ "Body Scanners and Separation Status in New York City Jails," New York City Board of Correction, January, 2020. https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2020.01.13%20FINAL%20Separation%20Status%20Body%20Scanner%20Public%20Report_to%20PDF.pdf

⁸ Id.

Several recommendations were made, split into short and long-term goals. Short-term goals included:

1. More fans in non-air conditioned housing units;
2. More outlets to accommodate more fans; and
3. A formal procedure to test the water temperature in facilities a couple days prior to an anticipated heatwave.

Long-term recommendations called for the installation of air conditioning for the roughly 58 percent of inmates who currently reside in housing units without air conditioning.⁹

⁹“NYC Jail Conditions and Operations during July 2019 Heat Emergency Final Report and Recommendations” New York City Board of Correction, September 2019. <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/BOC-Heat-Report-and-Recommendations-2019-09-09.pdf>