

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 2020 Preliminary Plan and the
Fiscal 2019 Preliminary Mayor's Management Report for the
Board of Correction

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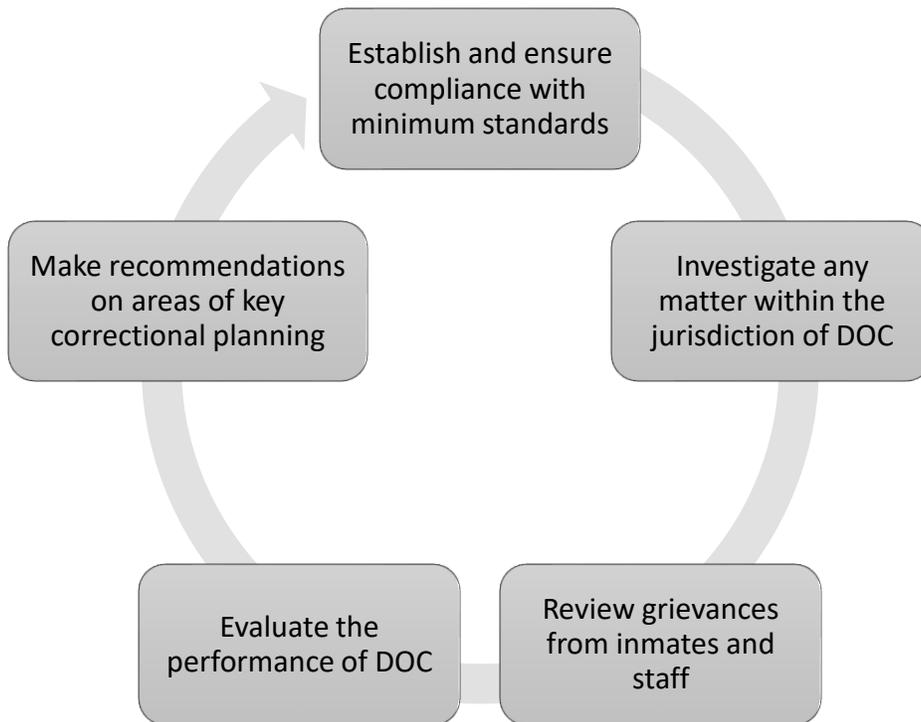
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Board of Correction Overview

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), and 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, and makes recommendations of DOC’s programs and capital planning. Additionally, the Board has field representatives in the City jails. The field 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 update, 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), monthly progress on young adult housing, 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 2020. In the first section, the highlights of the \$3.1 million Fiscal 2020 expense budget are presented in a Financial Plan Summary chart that details BOC’s budget by unit of appropriation, funding source, and headcount. This is followed by an analysis of significant budget actions included in the November and Preliminary Financial Plans for Fiscal 2019-2023. BOC does not have a Capital Budget and is not an agency featured in the Mayor’s Preliminary Management Report.

Financial Plan Summary

The BOC's budget consists of two units of appropriation (UA), one for Personal Services (PS) and one for Other Than Personal Services (OTPS). Funding supports the Board's staff, who are City employees. Included in the PS budget is funds for all of the Board's staff. Responsibilities of the staff include development of minimum standards governing DOC's operations and monitoring of the Department's compliance with these standards.

The budget largely supports the Board's staff, which is made up of four different units: nine in the Executive Director's office; seven in research; and 13 in monitoring. 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.

BOC Financial Summary						
<i>Dollars in Thousands</i>						
	FY17	FY18	FY19	Preliminary Plan		*Difference
	Actual	Actual	Adopted	FY19	FY20	FY19-FY20
Spending						
Personal Services	\$1,706	\$2,103	\$2,686	\$2,566	\$3,018	\$333
Other Than Personal Services	132	213	201	402	127	(73)
TOTAL	\$1,838	\$2,315	\$2,886	\$2,968	\$3,145	\$259
Funding						
City Funds			\$2,886	\$2,964	\$3,145	\$259
Other Categorical			0	4	0	0
TOTAL	\$1,838	\$2,315	\$2,886	\$2,968	\$3,145	\$259
Budgeted Headcount						
Full-Time Positions	22	28	37	37	38	1
TOTAL	22	28	37	37	38	1

**The difference of Fiscal 2019 Adopted Budget compared to Fiscal 2020 Preliminary Budget.*

The Board of Correction's Fiscal 2020 Preliminary Budget totals \$3.1 million, \$259,000 more than the Fiscal 2019 Adopted Budget of \$2.9 million. The personal services (PS) budget grew by \$333,000, but is offset by a decrease in the other than personal services (OTPS) budget of \$73,000. The increase is largely due to collective bargaining agreements. The sole source of funding for BOC's budget is City tax-levy (CTL). Of BOC's Fiscal 2020 Preliminary Budget of \$3.1 million, the PS budget accounts for 96 percent of BOC's overall budget and the OTPS budget accounts for four percent.

BOC's Fiscal 2019 budget increased by \$82,000 since the Adopted Budget of \$2.9 million. This is due to a \$202,000 increase in the OTPS budget, but this is offset by a \$120,000 decrease in the PS budget. The decrease in the PS budget is entirely due to adjusting the PS budget by shifting \$120,000 into the Board's OTPS budget for various needs by the Board.

Issues

The Board continues to face several issues and challenges with its oversight role of the City's jails. The top four major areas of concern and challenges are discussed below.

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.
2. **Evasion of Oversight.** At the February 2019 public meeting, the Board raise concerns about the City's attempt to evade oversight of its injury reporting process and the Minimum Standards that govern this process. The Board approved a unanimous resolution finding that the City had ignored and misread the meaning and regulatory history of the Minimum Standards.
 3. **Special Investigators Advisor (Death Reviews).** The Board had received \$86,000 in its budget to hire a special investigators advisor to review inmate deaths. However, this position was eliminated by the Office of Management and Budget (OMB) as of the Fiscal 2019 Budget. Under the Minimum Standards, the Board is required to conduct reviews of inmate deaths. According to the Board, this is a critical position that would work with the Board's Prison 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.
 4. **Technology Needs.** The Board is in need of a full rebuild of its primary data management system. The current system was built in 2006 to support its analytic and operational activities. The database contains information on Use of Force and Unusual Incident records, inmate census records, and complaint records. According to the Board, this system has become outdated. The Department of Information Technology and Telecommunications' cost estimate is \$908,000 for the initial implementation of a new system, and \$65,000 for an annual software subscription.

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.

Minimum Standards & Variances

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.

Mental Health Minimum Standards

The delivery of correctional health and mental health services is a critical part of the Board's mission. 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 the Departments of Correction, 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. See Appendix B for additional details.

Health Care Minimum Standards

The Health Care Minimum Standards, which were implemented in 1991, 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 sick call 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, the borough facilities, and in hospitals must be provided.

Sexual Abuse and Sexual Harassment Standards

The Elimination of Sexual Abuse and Sexual Harassment in Correctional Facilities Minimum 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 April 2015, the New York City Public Advocate Letitia James petitioned the Board to adopt rules consistent with national standards that the Department of Justice (DOJ) had promulgated pursuant to the Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. § 15601 (codified in 28 C.F.R. Part 115), et seq., in response to the epidemic of sexual violence in the nation's prisons and jails. The Board accepted the petition at its June 9, 2015 meeting, and after several months of fact-finding by the Board's ad hoc PREA Committee, developed proposed rules which incorporate in whole or in part many elements of the national standards.

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

Variations

The Department of Correction and NYC Health and Hospitals (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.

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;
- 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. Since 2013, the Board has published 20 reports. Below are highlights of the most recent reports from 2018 and 2019.

- **Serious Injury Reports in NYC Jails, January 7, 2019.** The Board reviewed the aggregate data on serious injuries to people in custody over time over a period of three months. The report documents discrepancies between the number of serious injuries diagnosed by Correctional Health Services (CHS) and the number of serious injuries reported internally and publicly by the Department. In 2017, DOC reported 81 percent fewer serious injuries than CHS. Some of the key findings are below.
 - From 2008 to 2017, despite a 32 percent decline in DOC population, the number of Injury to Inmate Reports generated by DOC for people in custody increased 101 percent.
 - DOC is underreporting serious injuries, and consistently reports 80 percent fewer serious injuries than CHS.
 - DOC's investigation process for injuries is plagued by delays, poor accountability, and incomplete reviews.
 - The Anna M. Kross Center (AMKC) had the highest number and rate of serious injuries.
 - On average, it took approximately two hours for seriously injured incarcerated people to receive medical attention, after a DOC supervisor was notified of the injury.
- **Satellite Intake: The First 500 Placements, October 19, 2018.** In 2016, the Board discovered people in custody being held in housing units classified as "closed" by the Department of Correction. DOC referred to these as "Alternative Intakes," "Mini-Intakes," and "9-5 Houses," but had no official designation or policy for these units. From October 2017 through January 2018, the Board tracked placements into Satellite Intakes. During this period, DOC placed 504 people in these units. Some of the key findings from the reporting period are as follows.
 - Nearly 64 percent of all Satellite Intake placements were at the George Motchan Detention Center (GMDC).
 - The top reasons provided for Satellite Intake placement include "inmate on inmate fight," "disruptive behavior," "rehousing," and "rehousing due to disruptive behavior."
 - Approximately 19 percent of Satellite Intake placements were related to a use of force or other incidents such as slashings or serious injuries.
- **Audit Report on DOC's Sexual Assault and Sexual Harassment Closing Reports, September 24, 2018.** The Board's Minimum Standards on the elimination of sexual abuse and sexual harassment in correctional facilities require DOC to meet the Prison Rape Elimination Act (PREA) requirements and a number of additional expectations around timely and robust investigation methodology and accurate reporting. The Board conducted an audit from

January 2010 to December 2017 to determine whether DOC's PREA investigations are meeting the Board's Minimum Standards. The key findings are as follows.

- There are significant gaps in the Department's investigations of sexual abuse and sexual harassment in the City's jails, including missing supervisory approval of investigations.
- The investigation reporting form is not sufficient to record, in detail, the precise investigative steps taken regarding interviews and available evidence.
- The Board found that the PREA investigations audited were not completed in a timely manner, but DOC did complete initial interviews within 72 hours of allegation, as required.

More can be found here: <http://www1.nyc.gov/site/boc/reports/board-of-correction-reports.page>

Appendices

A. Budget Actions in the November and the Preliminary Plans

<i>Dollars in Thousands</i>	FY19			FY20		
	City	Non-City	Total	City	Non-City	Total
BOC Budget as of the Adopted 2019 Budget	\$2,886	\$0	\$2,886	\$3,090	\$0	\$3,090
Other Adjustments						
DC 37 Collective Bargaining	\$48	\$0	\$48	\$83	\$0	\$83
Grant Balance Rollover	0	4	4	0	0	0
Vacancy Reductions	0	0	0	(78)	0	(78)
Various Collective Bargaining	30	0	30	51	0	51
Subtotal, Other Adjustments	\$78	\$4	\$82	\$56	\$0	\$56
TOTAL, All Changes	\$78	\$4	\$82	\$56	\$0	\$56
BOC Budget as of the Preliminary 2020 Budget	\$2,964	\$4	\$2,968	\$3,145	\$0	\$3,145

B. Minimum Standards

Mental Health Minimum Standards

Key elements of mental health minimum standards include:

- Mental health screening of all incoming inmates within 24 hours of their arrival in DOC custody;
- Training of correctional and medical staff in the recognition of mental and emotional disorders;
- Special housing areas for inmates with mental or emotional disorders in need of close supervision;
- 24-hour access to mental health services personnel for emergency psychiatric care; and
- An inmate observation aide program that employs trained, carefully selected inmates to help monitor those inmates identified as potential suicide risks.