

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMITTEE ON CRIMINAL JUSTICE

CITY COUNCIL
CITY OF NEW YORK

----- X

TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON CRIMINAL JUSTICE

January 29, 2019
Start: 10:07 a.m.
Recess: 12:27 p.m.

HELD AT: 250 Broadway-Committee Rm, 16th Fl.

B E F O R E: KEITH POWERS
Chairperson

COUNCIL MEMBERS:
ALICKA AMPRY-SAMUEL
ROBERT F. HOLDEN
RORY I. LANCMAN
CARLINA RIVERA

COMMITTEE ON CRIMINAL JUSTICE

2

A P P E A R A N C E S (CONTINUED)

James Boyd
Director of Constituent and Grievance Services,
OCGS at the New York City Department of
Corrections, DOC

Becky Scott
Acting Bureau Chief of Facility Operations at the
New York City Department of Corrections, DOC

Martha King
Executive Director of the New York City Board of
Corrections, BOC

Emily Turner
Deputy Executive Director of Research of the New
York City Board of Corrections, BOC

Nashla Rivas Salas
Senior Director of Research of the New York City
Board of Corrections, BOC

Dale Wilkers
Staff Attorney with the Legal Aid Society's
Prisoners' Rights Project

Brooke Menschel
Civil Rights Counsel for Brooklyn Defender
Services, BDS

Zachary Rosner
Chief of Medicine for Correctional Health
Services, CHS

Jonathan Wangel
Senior Director of Risk Mitigation and Management
For Correctional Health Services, CHS

[gavel]

CHAIRPERSON POWERS: Who are... have the right to bring a complaint when the are denied access to their basic needs and it is important that we give them a simple and easy to navigate process to do that. While the DOC has established the office of constituent and grievance services to deal with a large volume of grievances made in DOC facilities, the Board of Corrections and others have voiced the department should do more to effectively address the grievances of incarcerated people. In June 2019, the Board of Corrections issued its second annual assessment of the grievance system. In that assessment the board reported problems with access, finding significant disparities in the number of grievance boxes in each facility and other issues which we are here to address today. Others have also testified about their client's inability to access or understand the grievance process so given these issues it should come as no surprise that the Board of Corrections reported an increase in grievances made through 3-1-1. We do however see that DOC has taken steps to improve the grievance process most recently enacting an internal directive addressing

1
2 some of the concerns that we mentioned earlier. We
3 are interceded here today to hear about
4 implementation of that new directive and how the
5 committee and the City Council can help ensure that
6 the DOC has the resources that it needs to carry it
7 out effectively. I know that the board and advocates
8 will have suggestions on how to make the grievance
9 process more accessible and I urge the Department to
10 stay and to take those suggestions into careful
11 consideration. We will also be hearing three bills
12 today that will... are aimed at improving the grievance
13 process, we'll be hearing a bill from Council Member
14 Ayala, Introduction 1340 which will require the DOC
15 to make the grievance process more efficient by
16 creating a central system where it can track all
17 complaints and give regular access to the Board of
18 Corrections. We will also be... it will also ensure
19 greater access to the grievance process by requiring
20 a number of grievance boxes to be placed in each unit
21 and will require the DOC to install electronic
22 complaint kiosks by the year 2021. The second is a
23 bill introduced by me, introduction 1370 which will
24 ensure that all complaints made by incarcerated
25 individuals or on behalf of incarcerated individuals

1
2 to 3-1-1 will be made subject to the grievance review
3 program. Additionally, it would ensure the Department
4 informs every incarcerated individual in writing
5 about the grievance process and about protections
6 against retaliation for filing a grievance. Finally,
7 it will require the Department of Health and Mental
8 Health to ensure that any health care provider it
9 contracts with to provide medical and health services
10 to incarcerated individuals to respond to medical
11 complaints within five business days. Finally,
12 Council Member Ampry-Samuel's bill, Introduction
13 1334, will require the Board of Corrections to
14 conduct a survey regarding the correctional system's
15 grievance process. With that being said I'll hand it
16 over to Council Member Ampry-Samuel to say a few
17 words, but I want to thank my staff and the staff
18 here at the Council... at the Council for helping us to
19 put together hearing and with that we will ask
20 Council Member Ampry-Samuel to say a few words on her
21 bill.

22 COUNCIL MEMBER AMPRY-SAMUEL: Thank you
23 Chair Powers for allowing me this opportunity to
24 speak on Intro 1334. This bill will require the Board
25 of Correction to conduct a survey on Department of

1
2 Correction's grievance and compliant process and then
3 publish a report of their findings and
4 recommendations for improving their procedures. If
5 this is established the procedures would be for those
6 who are being held or confined by DOC. The surveys
7 will solicit information related to gender and racial
8 group of the individual completing the survey,
9 location of occurrence, number of complaints filed by
10 such persons, satisfaction level of the grievance and
11 appeals process and whether the incident was actually
12 addressed. This will be an annual survey and shall
13 include recommendations for improvements. After
14 visiting local jails over the past year and listening
15 to DOC explain their process for addressing
16 harassment and abuse in their facilities, this
17 triggered the need to do more and this bill is not
18 farfetched because it's a direct response to the
19 recommendations made by the Board of Correction.
20 We've run the statistics that state people in custody
21 have unequal access to the complaint system depending
22 on the jail in which they are housed, facilities
23 range of the number of grievance boxes they have, and
24 the grievance coordinator's workloads very
25 dependently... vary dramatically depending on the

1 facility to which they are assigned. People in
2 custody are not informed about protections against
3 retaliation for filing complaints and in FY 2017 we
4 learned that only 0.4 percent of the people have
5 appealed any grievance decisions rendered. It's
6 unclear from the data provided by DOC how many people
7 completed all levels of the appeal process and there
8 were situations where DOC did not properly time stamp
9 a significant number of complaints thus making it
10 challenging to track compliance with informal
11 resolution and subsequent response deadlines and 41
12 percent of all cases audited had no time stamp
13 required... as required by DOC policy. With so many
14 missing holes for something that is so critical there
15 is obviously a need for better tracking and
16 monitoring system. Now going through the whole
17 procedure process and the appeal process, you know we
18 kind of joked amongst ourselves saying that, you know
19 I have a law degree and just looking at the system
20 and the process is complicated for me as someone that
21 knows the law and understands policies so I just
22 can't imagine somebody who is going through a
23 stressful situation having to go through all of the
24 different steps. So, again this is based on
25

1
2 recommendations from the Board of Correction. It will
3 also require the DOC to conduct the surveys of
4 individuals filing the grievances so with everything
5 that's going to be said and heard today I just look
6 forward to working with the Board to ensure we can
7 create a survey that will be manageable given this
8 current resource, I do understand that but the main
9 purpose is to ensure that people are heard and this
10 provides another avenue for filing a complaint. This
11 is a no brainer bill and I hope to see the support of
12 it and passing by the full Council. So, thank you
13 again for the opportunity.

14 CHAIRPERSON POWERS: Thank you and we
15 will go ahead, we will swear in, if you can raise
16 your hands and we'll have the Counsel swear you in.

17 COMMITTEE CLERK: Do you... do you affirm
18 to tell the truth, the whole truth and nothing but
19 the truth in your testimony before this committee and
20 to respond honestly to Council Member questions?

21 CHAIRPERSON POWERS: Great, thank you, if
22 you don't mind just starting by just giving us your
23 name and your titles, each, each one of you and then
24 you can start with your testimony.

1
2 JAMES BOYD: James Boyd, I'm the Director
3 of Constituent and Grievance Services at the New York
4 City Department of Correction.

5 BECKY SCOTT: Acting Bureau Chief of
6 Facility Operations, New York City Department of
7 Correction.

8 CHAIRPERSON POWERS: Okay, thank you, you
9 can begin your testimony.

10 JAMES BOYD: Good morning Chair, Chair
11 Powers and members of the Criminal Justice Committee.
12 Thank you for this great opportunity to discuss the
13 Department of Correction's inmate grievance system.
14 My name is James Boyd, I am the Director of
15 Constituent and Grievance Services at the New York
16 City Department of Corrections. Joining me is Becky
17 Scott, Acting Bureau Chief of Facility Operations,
18 who has over 25 years with DOC. Also joining us in
19 the audience are the Grievance Coordinator and the
20 Grievance Officer from the Rose M. Singer Center.
21 Today I will briefly walk you through the
22 Department's grievance system, current reform efforts
23 already underway, and our plans for future
24 improvement. I will also comment on Intro bill 1334,
25 Intro bill 1340 and Intro bill 1370, the three bills

1 COMMITTEE ON CRIMINAL JUSTICE

2 being considered today. Though now consolidated under
3 the OCGS, the Department originally had two units as
4 outlets for detainees and inmate complaints, the
5 Inmate Grievance Resolution Program, IGRP and the
6 Office of Constituent Services, OCS. IGRP was the
7 initial office created in the 1980s to serve as the
8 outlet for individuals in DOC's custody to file their
9 grievances. This process was paper based, and inmates
10 and detainees were only allowed to file their
11 complaints directly with grievance staff in the
12 facility. In 2011, the Department created the Office
13 of Constituent Services and launched a pilot that
14 captured grievances made to 3-1-1. The pilot was
15 successful, and it allowed Constituent Service staff
16 to receive and respond to inmate complaints seven
17 days a week. The complaint was sent directly from 3-
18 1-1 to the constituent service email address and a
19 notification was sent to OCS staff's email account.
20 This efficient and paperless process also made it
21 easier for OCS to aggregate and improve the DOC's
22 ability to report on trends and metrics. However, two
23 offices had difficulty reconciling duplicate
24 grievances made by inmates who used both the 3-1-1
25 system and filed paper grievances which slowed down

1 COMMITTEE ON CRIMINAL JUSTICE

2 the grievance process, delayed resolutions, and
3 frustrated officers working in the facilities. In
4 2017, these two offices merged to form the Office of
5 Constituent and Grievance Services. OCGS is comprised
6 of dedicated public servants both uniform and non-
7 uniform staff with years of service spanning from
8 three years to forty years working in the Department.
9 This merger was a reflection of the Department's
10 commitment to improve and be innovative in capturing
11 and resolving inmate complaints. Since the creation
12 of OCGS, the Department has used... has used a
13 technological system to track the life cycle of
14 complaints known as Service Desk. The application of
15 Service Desk was a bold and innovative step DOC and
16 it enabled OCGS to electronically create and assign
17 inmate complaints. This system allows OCGS to
18 centralize all inmate complaints, grievances and
19 requests regardless the method the inmate submitted
20 the complaint via grievance staff, including 3-1-1,
21 mail, advocates or third parties. Service desk
22 promotes transparency, accountability and improved
23 the agency's response times to inmate complaints. To
24 further ensure DOC is properly tracking and reviewing
25 the quality of work in the system, OCGS created a

1 COMMITTEE ON CRIMINAL JUSTICE

2 Quality Assurance unit to support and monitor
3 reporting efforts. In addition to, to reforms made to
4 structure of OCGS, the Department also made important
5 changes to its directives and forms. These changes
6 were made collaboratively with staff on the ground
7 and our colleagues at the Board of Correction. The
8 updated grievance system was created as a joint
9 collaboration between the DOC and the BOC. It was
10 designed to provide individuals in DOC's custody the
11 opportunity to file issues regarding their
12 confinement through a structured and expedient
13 process. The grievance process is designed to reduce
14 conflict and litigation while providing the
15 Department with information concerning facility
16 operations that would help it maintain a safe and
17 secure environment. In addition, as updates to the
18 directive were rolled out, the Department also
19 regularly engaged with legal advocates to keep them
20 informed of DOC's efforts to discuss their concerns.
21 In 2016, BOC released a study of the Department's
22 grievance system and the Department has since
23 implemented many of these recommendations, including:
24 utilizing the technological system designed to track
25 the lifecycle of all complaints from inception to

1 COMMITTEE ON CRIMINAL JUSTICE

2 completion; creating consistent, weekly reports;

3 increasing responsiveness to inmate complaints;

4 hiring additional grievance coordinators and

5 grievance officers to support this effort;

6 circulating new posters in the facilities to promote

7 awareness on how to file a complaint; revising the

8 current grievance directive to ensure policy is

9 aligned with practice and updating grievance forms.

10 BOC recommended biannual updates with OCGS to discuss

11 ongoing efforts to improve the grievance process by

12 the Department instead proposed meetings on a

13 quarterly basis due to the importance of this work.

14 The Department's new directive on the inmate

15 grievance procedure went into effect in December

16 2018. The updated directive includes additional

17 language about the 3-1-1 process, new appeal levels,

18 service desk system and how to handle specific

19 complaints. In addition, the inmate statement form

20 and categories were printed for the first time in ten

21 different languages including French, Mandarin, and

22 Bengali. In an effort to ensure everyone in DOC's

23 custody learned about the new procedures, OCGS

24 attended a recent inmate council meeting. A poster

25 explaining the new process also has been drafted and

1 COMMITTEE ON CRIMINAL JUSTICE

2 will be printed and hung in all housing areas in the
3 coming weeks. Inmates have multiple outlets to file
4 their complaint. Since 2015, calls to 3-1-1 have been
5 free for the inmate population, expanding access for
6 inmates to file a complaint. Although 3-1-1's
7 citywide customer service standard requires city
8 agencies to provide a response within 14 days, the
9 Department mandated a seven-day turnaround for
10 facilities and units to provide acknowledgments or
11 responses to inmate issues using our inmate complaint
12 system. There are 40 categories for individuals in
13 DOC custody to file their complaints and these
14 complaints can fall under a grievable category or
15 subject to the grievance process or non-grievable
16 category and not subject to the grievance process.
17 OCGS staff process all inmate complaints regardless
18 if the complaint is grievable or non-grievable. All
19 non-grievable issues are forwarded to the appropriate
20 unit for further review and are then entered and
21 processed through our service desk system. To submit
22 a grievance, the inmate population can file a
23 grievance with the grievance staff in the facility,
24 drop the grievance in the grievance boxes in their
25 facility or visit the grievance office. Inmates must

1 COMMITTEE ON CRIMINAL JUSTICE

2 write their grievance and requested outcome on the
3 inmate statement form and sign the form. The new
4 inmate statement form now also includes additional
5 information on the back of the form about the appeal
6 process and all grievance categories. Grievable
7 issues can be appealed whereas non-grievable issues
8 cannot. If the complaint is a grievable issue like
9 inmate account, employment or property then grievance
10 facility staff will have seven business days to
11 investigate the issue and provide a solution. If the
12 inmate is not satisfied with the resolution, then
13 they may appeal the decision and it escalates to that
14 facility's warden. The warden has five business days
15 to review the grievance and supporting documents and
16 either affirm or reject the grievance staff decision
17 or the inmate's request. If the inmate is not
18 satisfied with the warden's decision, then they can
19 appeal to the assistant chief. The assistant chief
20 would also have five days to review the grievance
21 staff's decision and warden's decisions and either
22 affirm or reject the grievance. If the inmate is not
23 satisfied with the assistant chief's decision, then
24 they can appeal to the Central Office Review
25 Committee. The CORC is comprised of the chief of

1 COMMITTEE ON CRIMINAL JUSTICE

2 department, General Counsel, Assistant Commissioner
3 for Strategic, Strategic Initiatives and myself. The
4 BOC also provides a recommendation to the CORC on the
5 inmate grievance for review and consideration. The
6 CORC constitute as the department's final decision on
7 inmate grievances. The 3-1-1 system is available to
8 individuals within DOC's care and any member of the
9 public with a loved one detained in one of our city's
10 jails. If the Department receives a complaint from an
11 inmate or third party on behalf of an inmate with
12 concerns about their safety, then it's sent directly
13 to the facility staff and their security team for
14 further handling and tracked in the OCGS electronic
15 complaint system until OCGS receive an
16 acknowledgement or its resolved. Where the inmate...
17 where the nature of the 3-1-1 call addresses a non-
18 grievable subject matter, i.e., use of force, that is
19 the responsibility of a division of DOC other than
20 OCGS to investigate and resolve, OCGS tracks the
21 complaint in its electronic system, but the content
22 and the outcome of the investigation exists within
23 the databases and systems of the investigating
24 division. All units tasked to address complaints in
25 the service desk system have seven calendar days to

1 COMMITTEE ON CRIMINAL JUSTICE

2 acknowledge they are handling the complaint or to
3 provide a response to OCGS, then OCGS supervisory
4 staff will close the complaint. When complaints are
5 not handled within the seven-day timeframe, units
6 including the facilities will receive a daily notice
7 in their email until they address the complaint in
8 the system. OCGS also sends all wardens weekly
9 reports that includes their average response times to
10 complaints, any outstanding complaints, top ten
11 complaints for the week, top three housing areas
12 filing complaints and complaint volume. The
13 facilities respective assistant chief is also copied
14 on this communication. In addition, the Bureau Chief
15 of Facility Operations, Bureau Chief of Security and
16 Chief of Department also receives a weekly report
17 with the aforementioned indicators to monitor
18 performance and responsiveness. In recent months,
19 OCGS also improved upon how grievance information is
20 reported to facility and agency leadership. The
21 Department recognizes that data on inmate complaints
22 is a valuable management tool for wardens to reduce
23 inmate tension and address institutional problems. To
24 that end, OCGS' new grievance reports provide uniform
25 leadership including the chief of the department

1 COMMITTEE ON CRIMINAL JUSTICE

2 weekly, monthly and quarterly data to track complaint
3 trends, volume and response times for all facilities.

4 The Department is ready to... is already doing many

5 reforms called for in bill Intro 1370. For example,

6 the updated inmate statement form now includes

7 information on the appeals process. Additionally, 3-

8 1-1 complaints are already part of the grievance

9 process as per the direct... the Department's

10 directive. Depending on the nature of the inmate

11 complaint, the OCGS HUB team sends any grievance

12 received via 3-1-1 to OCGS staff to check if the

13 inmate has already filed a grievance in regard to the

14 complaint. If there is no grievance on file, the OCGS

15 staff will look into the complaint and then provide

16 the inmate with a resolution within seven business

17 days similar to a grievance filed on paper. If the

18 OCGS HUB team receives a 3-1-1 complaint from an

19 inmate that is not subject to the grievance process,

20 they shall task it out in service desk to the

21 appropriate unit for handling. All units within

22 service desk have seven days to respond and close

23 their correspondence in the system and provide the

24 inmate with an acknowledgement. The Department has a

25 zero tolerance for anyone who prevents an inmate from

1 COMMITTEE ON CRIMINAL JUSTICE

2 filing a complaint or acts of retaliation because
3 they filed a complaint as stated in our directive.
4 The Department also instituted multiple pathways for
5 an individual to report if they feel they have
6 retaliated against as a result of filing a grievance.
7 Currently inmates do not receive a formal
8 acknowledgement from the Department for 3-1-1
9 complaints that are considered non-grievable. 3-1-1
10 staff provides inmates with a correspondence number
11 to confirm their, their complaint was submitted to
12 the Department. The Department is actively working on
13 a plan to devise an efficient way to provide inmates
14 with an acknowledgement for non-grievable 3-1-1
15 complaints. However, all 3-1-1 complaints are logged
16 in the Department's electronic OCGS complaint system,
17 reviewed by OCGS staff and either resolved by OCGS
18 staff or forwarded to the appropriate area of concern
19 within the Department for investigation and
20 resolution. The Department supports the intention of
21 Intro bill 1370 but would like to work with the
22 Council to identify the most effective means of
23 communicating with inmates about the appeal process.
24 The Department supports the spirit of Intro bill 1340
25 but have some concerns. Specifically, the Department

1 COMMITTEE ON CRIMINAL JUSTICE

2 supports the idea of additional grievance boxes,
3 however we would like to work with the Council to
4 discuss ways... to discuss the best placement of
5 grievance boxes, focusing on highly trafficked areas.
6 However, DOC has concerns about the information
7 sharing in this bill and believes DOC is prohibited
8 to share certain grievance concerns due to HIPPA
9 regulations. Lastly, while the Department supports
10 innovative methods of communicating with inmates
11 about the status of their grievances, the aging state
12 of our existing facilities alone make the
13 technological objectives of this bill, which would
14 necessitate the complex installation of wi-fi
15 throughout the facilities, incredibly time consuming
16 and costly to achieve. Furthermore, the Council and
17 the Board of Correction have expressed strong
18 interest in seeing the Department develop a case
19 management system for PREA cases and improve the
20 electronic tracking of a number of other metrics,
21 including our bail process. Development and
22 implementation of another central technological
23 management solution would place a strain on our
24 limited technological resources and will likely slow,
25 slow the development and implementation of these

1 COMMITTEE ON CRIMINAL JUSTICE

2 other important projects. The Department and BOC have
3 a good working relationship, especially when it comes
4 to our efforts to better address grievances. As such,
5 the Department does not believe this mandated survey
6 is necessary... is needed. The Department already
7 publicly posts quarterly reports about the grievance
8 process as required by Local Law 87 of 2015, the most
9 recent is enclosed. The BOC also has access to the
10 Department's inmate complaint system and the board
11 can review all inmate complaints at any time, which
12 enhances our collaborative efforts and better enables
13 both agencies to improve the grievance system. In
14 addition, DOC currently shares information with BOC
15 on a weekly and monthly basis. Although, although the
16 Department has made substantial strides in improving
17 the grievance system, there is always more that we
18 can do. OCGS continues to monitor the service desk
19 system and refine it in order to better capture
20 pertinent information and align it with new changes
21 within the current grievance process. OCGS also
22 randomly audits grievance staff's work for quality
23 assurance purposes and to ensure that efforts are
24 consistent with the grievance directive. The
25 Department is continuously working to address primary

1 COMMITTEE ON CRIMINAL JUSTICE

2 complaints and intend to develop a strategic plan on
3 how to best tackle these issues. DOC is also working
4 closely with our academy to revise the curriculum as
5 it relates to grievances and improve pre-promotional
6 trainings for captains, assistant deputy wardens on
7 the inmate grievance system and their role in
8 addressing inmate issues. The Department appreciates
9 the Council's interest and support in this very
10 important work. We look forward to continuing working
11 with the Council to improve the inmate grievance
12 system and extend an opportunity to the Council to
13 visit our grievance staff. Thank you again for the
14 opportunity to testify today and we are happy to
15 answer any questions.

16 CHAIRPERSON POWERS: Thank you and I want
17 to note that we've also been joined by Council Member
18 Rivera as well. So, thank you for the testimony. I
19 want to start just with a few questions on the bills
20 and your comments on the bills. First on 1370 the...
21 just a comment to talk about the most effective means
22 of communicating with inmates about the appeals
23 process which sounds like a concern that you... there's
24 a concern about how to do that, is that... what, what
25 is the concern?

1 COMMITTEE ON CRIMINAL JUSTICE

2 JAMES BOYD: On how to communicate with...

3 [cross-talk]

4 CHAIRPERSON POWERS: Yes... [cross-talk]

5 JAMES BOYD: ...the inmate population...

6 [cross-talk]

7 CHAIRPERSON POWERS: Yes... [cross-talk]

8 JAMES BOYD: Well what we've done with
9 the new inmate statement form is provide that
10 information on the back of the inmate statement form.
11 So, previously the inmate statement form was one
12 sided now it's double sided so it's very... so this
13 information is very transparent on the back of the
14 inmate statement form, so they have this information
15 first hand in addition to all of the grievance
16 categories is listed on the back of the form.

17 CHAIRPERSON POWERS: And is this
18 information... could... is it in the inmate handbook as
19 well?

20 JAMES BOYD: It will be, we've, we've
21 added a new insert in the inmate handbook.

22 CHAIRPERSON POWERS: And, and you're
23 doing that or done it or when, when is that... [cross-
24 talk]

25

1 COMMITTEE ON CRIMINAL JUSTICE

2 JAMES BOYD: I have to follow up, but I
3 can check on the status.

4 CHAIRPERSON POWERS: Okay. And the... on
5 bill 1340 a concern around the, the cost and I guess
6 limited resources related to technology can you talk
7 to us more about the concerns and... you know I don't
8 necessarily view... I, I understand from a resources
9 standpoint we don't certainly view all these things
10 to be competitive with each other but I understand
11 there's limited resources, has... just so... talk about
12 case management system for PREA and improving
13 electronic tracking on a number of other metrics...
14 other, other... is the agency asking for more resources
15 this year to implement any of that or, or otherwise
16 ask for other resources to be compliant with a bill
17 like this or otherwise and what, what is the agency
18 asking for then in case... in case of the other things
19 we're talking about?

20 JAMES BOYD: So, I definitely... I, I... we
21 do believe, you know technology will always help make
22 this process more efficient but I think we want to,
23 you know have an opportunity to, to look at what
24 technological interface with the inmate population
25 would look like and you know take some time and

1 COMMITTEE ON CRIMINAL JUSTICE

2 definitely engage the Council as we flush out the
3 details of what that could possibly look like in the
4 facilities.

5 CHAIRPERSON POWERS: Okay. Our staff will
6 follow up to talk about the three bills that, that
7 are being heard today. I wanted to start just, just
8 with a stat that jumped out to me and caused concern
9 around the grievance process and I was hoping you
10 could maybe give... maybe give us some insight on this
11 which is that in, in... the Board of Correction found
12 41 percent of forms were not time stamped, 58 percent
13 did not indicate if the grievant rejected or accepted
14 the complaint... the complaint... the claim and 64
15 percent were missing a signature, you know I think
16 those caused them concern, it certainly cause us, us
17 concern and makes it difficult to understand the
18 compliance and whether the, the person filing the
19 grievance was, was happy with the resolution, wanted
20 to appeal it or other information including even if
21 they were... you know if they were aware of it because
22 there's no signature on it. Can you... can you tell us
23 why the Department is not getting even basic
24 information, not time stamping, not, not having forms
25 filled out about whether it was rejected or accepted?

1 COMMITTEE ON CRIMINAL JUSTICE

2 That seems to be... that seems to be an important part
3 of this process and leaves folks like us who or the
4 board without a real understanding of what's
5 happening when it's not basic information, can you
6 explain to us why that information is missing and,
7 and what steps you're taking to, to make sure that
8 that information is not missing in the future?

9 JAMES BOYD: So, this is an area of the...
10 of the Board study, we're in agreement in terms of
11 simplifying of grievance forms and this is actually
12 what we've done to make sure it's a little more
13 transparent and make sure it's, you know simplified
14 language for the inmate population to know what the
15 process is, they have to sign the form now because
16 previously there wasn't really no mandate for them to
17 sign the form and I think we wanted to make this more
18 of a standard process that if we were going to look
19 into your grievance that you have to affirm by
20 signing the form but in regards to the time stamps,
21 you know staff had time stamps, it was as... it was as
22 simple as getting new ink for the time stamps so, you
23 know we are in full compliance of insuring that staff
24 do have operational time stamps in the facilities, my
25 team every week are pulling grievances out of our

1 COMMITTEE ON CRIMINAL JUSTICE

2 system to do some quality assurance to make sure that
3 staff are signing, inmates are signing and that these
4 documents are time stamped so this is something that
5 we're always looking at.

6 CHAIRPERSON POWERS: But... yeah, just to...
7 just to follow up on that, we're saying 41 percent of
8 forms are not time stamped because the department
9 didn't have ink?

10 JAMES BOYD: I mean this... I think this is
11 the area where we're moving away from, I think this
12 is the, the, the BOC's narrative in their study is
13 what we're working from, you know there could have
14 been resource issues, when both units were separate
15 but this is where we're trying to move it away from
16 and provide greater oversight with our staff and make
17 sure that they're in compliance with the directive,
18 this is my role, this is my supervisory team's role
19 to ensure that all forms are clearly documented in
20 the system, signed and time stamped as well but I
21 don't want to say that they did not have any time
22 stamps, they could have... I'm just saying it could
23 have been as simple that they needed, needed new ink,
24 you know at that, that appropriate time that the

1 COMMITTEE ON CRIMINAL JUSTICE

2 information was being shared with the Board of
3 Correction.

4 CHAIRPERSON POWERS: I say this with all
5 respect but I, I think you should understand my
6 concern if we're not being able to have an
7 understanding of whether somebody was receiving...
8 with... these... because this process works on a time
9 frame of when you have to receive... when you have to
10 receive a response from the Department of Corrections
11 if, if we're find... I mean if, if part of this answer
12 is, we don't have ink but certainly there's... I'm sure
13 there's other parts of it that would raise a real
14 concern for us, and I think that when we find out...
15 for instance... and I... and I, I won't mention... I mean
16 I, I have a copy of the form, the form's not that, to
17 me, that complicated... [cross-talk]

18 JAMES BOYD: Uh-huh... [cross-talk]

19 CHAIRPERSON POWERS: ...to understand in
20 terms of where to check, reject it, accept it in
21 terms of the claim and it, it seems like the DOC is
22 just out of compliance with it and, and I, I don't
23 think I've heard a response in terms of why we can't
24 get... and, and of course this is part of an audit so I
25 know that some... perhaps the numbers wholesale are,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMITTEE ON CRIMINAL JUSTICE

are a bit different but it does seem to me like we're well out of compliance or well out of what the process should look like but I'm not... I'm still not sure if I understand why for instance 42 percent of people... of the... of the cases audited didn't get somebody able to even say whether they rejected or accepted the complaint.

JAMES BOYD: I mean... so we can't, you know... and... has to willing to, you know sign the form but you know it goes back to ensuring that, you know staff is doing their due diligence and you know overseeing that responsibility to make sure that we're in compliance with our directive, you know we would have to look at the snapshot of when the Board looked at this information but again this is the system that we're working away from to make sure that we're in compliance of this work and make sure that, you know staff is completing the forms thoroughly.

CHAIRPERSON POWERS: And do... for the signature for instance why, why is a signature necessary for... on the form?

JAMES BOYD: For the inmate.

CHAIRPERSON POWERS: Yeah.

1 COMMITTEE ON CRIMINAL JUSTICE

2 JAMES BOYD: I think it's another way to
3 affirm that, you know for all parties that you want
4 our receipt of providing your statement and you're
5 affirming that you want somebody to look into this
6 matter. I don't think we want to start taking forms,
7 it, it wouldn't be good standard or practice is to
8 take forms that are not signed, we... [cross-talk]

9 CHAIRPERSON POWERS: I, I agree with you.

10 JAMES BOYD: Yeah...

11 CHAIRPERSON POWERS: But 36 percent
12 aren't signed and that's the... that's an issue.

13 JAMES BOYD: Right and I... and again
14 Council Member this is the system we're working away
15 from, that... I think that's not going to be the case
16 going forward as we have new grievance forms and with
17 this system being so transparent, we can do random
18 audits ourselves to look at this work. Really prior
19 to the system, you know they... you know it was more of
20 a paper based system so with the use of this new
21 technological system at any time from our desktops we
22 can randomly audit staff just to make sure they're in
23 compliance of those simple measures of making sure
24 that the inmate signed the form, staff signed the
25 form and these documents are time stamped.

1 COMMITTEE ON CRIMINAL JUSTICE

2 CHAIRPERSON POWERS: Okay and how often
3 do... how often is DOC planning to do audits?

4 JAMES BOYD: As, as frequent as possible.

5 CHAIRPERSON POWERS: Every day, I mean...
6 [cross-talk]

7 JAMES BOYD: Yeah, I mean... [cross-talk]

8 CHAIRPERSON POWERS: ...that... every day...
9 [cross-talk]

10 JAMES BOYD: ...this information is
11 accessible right on our desktops at any time, I mean
12 I definitely know the system is always up and running
13 on, on my desktop at all times so you can always
14 check, you know who's doing what, what they're
15 putting into the system, you can click on it in real
16 time to see what documents they're uploading into the
17 system so, you know this is part of somewhat of our
18 day to day tasks, I mean we kind of back this in,
19 into the way we look at our work on a day to day
20 basis.

21 CHAIRPERSON POWERS: Okay, can we talk
22 about the length of the process for a second since we
23 were just talking about the time stamps and, and, and
24 representation of the time. The... there's a new... I
25 know you guys put some new steps into the process and

1 COMMITTEE ON CRIMINAL JUSTICE

2 edited the process in terms of... for the grievance
3 process; A, can you just tell us some of the changes
4 that were made in terms of the process for appealing
5 and filing grievance and appealing and second, any
6 consideration to the timeline, the, the length? I
7 think today the whole process can take about ten
8 weeks. I... you know a lot of steps in that process,
9 any consideration to making that process shorter or,
10 or less steps involved in order to get sort of a, a
11 resolution to, if you wanted to go through the full
12 appeal process?

13 JAMES BOYD: Yeah, exactly, I think this
14 work we're always going to have to evolve, this is
15 work we're always going to evolve to figure out
16 what's efficient and what's working and what's not
17 working so, the appeals process is something that
18 we're always going to consider to figure if we need
19 to refine and obviously we want to simplify both for
20 staff as well the... for the inmate population. We
21 don't want to make the process inefficient but what
22 was your first question, I'm sorry?

23 CHAIRPERSON POWERS: My first question
24 was just talk to us about the changes that were made
25

1 COMMITTEE ON CRIMINAL JUSTICE

2 in terms of the process... the actual process, the
3 appeals process?

4 JAMES BOYD: So, we... the original appeals
5 process mandated staff schedule hearings, which... and
6 they would have to schedule hearings with the inmate
7 and you know other parties to come down to the
8 grievance office which could be very time consuming
9 and not the best use of, of time considering, you
10 know what the inmate shared on the inmate's statement
11 form is usually sufficient information for you to
12 look into their complaint so we removed that process
13 as an appeals process and added the assistant chief
14 as another appeal level after the warden because we
15 feel like, you know it's by... you know it was a big
16 leap in the appeals process for an appeal to go from
17 the warden to the CRC and you know in all fairness I
18 think adding another stake in supervisory support
19 especially from the assistant chief who supervises
20 multiple facilities would add a layer of support and
21 they can look at this... through these complaints
22 through the lens of all of their operations that's
23 under their purview not just that particular facility
24 where they're getting this appeal.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMITTEE ON CRIMINAL JUSTICE

CHAIRPERSON POWERS: Okay and can you tell us how many appeals happened at each level last year?

JAMES BOYD: Give me one second. So, last year in calendar year 2018 we had one appeal to the warden's office and no appeals... and one appeal to the CRC.

CHAIRPERSON POWERS: Sorry, say that again, so... [cross-talk]

JAMES BOYD: Uh-huh... [cross-talk]

CHAIRPERSON POWERS: ...one... none to the CRC... [cross-talk]

JAMES BOYD: One, one to the CRC...

CHAIRPERSON POWERS: One to the CRC...

JAMES BOYD: And one to the warden's office.

CHAIRPERSON POWERS: Then one to the warden's office. And how about to the commanding officer, to the... how... [cross-talk]

JAMES BOYD: That's, that's the... that's the warden, the commanding officer.

CHAIRPERSON POWERS: Okay, sorry.

JAMES BOYD: Yeah.

1 COMMITTEE ON CRIMINAL JUSTICE

2 CHAIRPERSON POWERS: And how many... how
3 many to the commanding officer?

4 JAMES BOYD: Just one.

5 CHAIRPERSON POWERS: Just one, that seems
6 incredibly low, why is that?

7 JAMES BOYD: I mean it's the inmate's
8 discretion if they want to appeal, sometimes inmates
9 are... could be not satisfied with the resolution but
10 then feel like they don't need to appeal like... and
11 that's to their discretion if they feel like they
12 want to escalate the complaint to another level but,
13 you know it is accessible to them, if they feel like
14 they want to, you know escalate their complaint but
15 it's not... it's not... it's not a frequent occurrence
16 where you have a lot of inmates appealing their
17 grievances.

18 CHAIRPERSON POWERS: How, how many total...
19 can... how many total grievances did you get?

20 JAMES BOYD: For calendar year 20...

21 [cross-talk]

22 CHAIRPERSON POWERS: Yeah... [cross-talk]

23 JAMES BOYD: ...18... [cross-talk]

24 CHAIRPERSON POWERS: Yeah.

25 JAMES BOYD: 9,251.

1 COMMITTEE ON CRIMINAL JUSTICE

2 CHAIRPERSON POWERS: 9,251 and only one
3 appealed, that seems... that seems low beyond belief,
4 what... I don't even... I have, have to even think about
5 what even percentage of that is, I mean doesn't that
6 make... doesn't that strike you to think that the
7 appeals process itself has some issue related to... I,
8 I'm, I'm obviously just speculating that, you know if
9 9,251 filed a grievable complaint... [cross-talk]

10 JAMES BOYD: Uh-huh... [cross-talk]

11 CHAIRPERSON POWERS: ...that's what that
12 number represents?

13 JAMES BOYD: Uh-huh.

14 CHAIRPERSON POWERS: And only one
15 appealed, that would strike me as either an issue
16 with folks not knowing exactly how to go through the
17 appeals process or some other obstacle related to the
18 appeals process because I don't know any institution
19 where 9,251 people would complain about something and
20 then only one would decide to appeal it.

21 BECKY SCOTT: If I could interject so..
22 [cross-talk]

23 CHAIRPERSON POWERS: Sure... [cross-talk]

24 BECKY SCOTT: ...the total amount in regard
25 to our total population we have several inmates that

1 COMMITTEE ON CRIMINAL JUSTICE

2 file multiple, multiple grievances so this is not
3 representative of one per inmate per se, you may have
4 some that are repeatedly filing grievances on every
5 level. In addition, having served as a warden with
6 the Department we have other mechanisms to engage the
7 population than this process, we have inmate council
8 meetings, our staff are touring the facilities, the
9 Department is engaged so a lot of issues are
10 addressed prior to this process so when inmates have
11 issues and the programming staff deals with this as
12 well. So, there are other platforms for the
13 population to have issues and concerns addressed.

14 CHAIRPERSON POWERS: I understand that
15 but 9,000 people did decide to participate in that
16 process and so... and only one decided that it was
17 worth fight... doing an appeal on so I, I... it just
18 strikes me as incredibly... an incredibly low
19 percentage that are going through that process and
20 perhaps is not reflective just of people who are...
21 well actually a follow up question to that is how
22 many people filed grievances last year?

23 JAMES BOYD: Individually?

24 CHAIRPERSON POWERS: Yeah.

1 COMMITTEE ON CRIMINAL JUSTICE

2 JAMES BOYD: We would have to break that
3 out.

4 CHAIRPERSON POWERS: Okay... [cross-talk]

5 JAMES BOYD: ...and follow up with you.

6 CHAIRPERSON POWERS: My, my point just
7 being that, you know I, I understand people make
8 multiple complaints and perhaps not everybody wants
9 to go through the process and not everybody wants to
10 go through an appeals process and there are other
11 ways to do it, again it just strikes me as a, a low
12 number relative to the entire... the entire... the large
13 number and it, it does at least warrant a look at
14 whether the people have a full understanding of the
15 appeals process, whether it's complicated, whether it
16 mean... whether they can go through that process on
17 their own or need somebody to help them with that
18 process, whether it is... you know whether it... there's
19 transparency around it, it does... to me just make a
20 question about the disparity... the, the discrepancy
21 between those who start that process and, and those
22 who decide to appeal. I just wanted to ask another
23 question sort of related to this which is, I have
24 your stats from the second quarter of 2019 which I
25 assume are maybe the, the, the most recent available

1 COMMITTEE ON CRIMINAL JUSTICE

2 stats. You have a number that is 12 informally
3 resolved grievances that went... so you have... I'll just
4 read these out; 14 withdrawn, 23 transfer discharge,
5 12 informally resolved, 1,094 resolved at formal
6 level, zero at the warden's level, zero at the CORC.
7 What is informally resolved represent?

8 BECKY SCOTT: I'm sorry, Council Member
9 if I may... [cross-talk]

10 CHAIRPERSON POWERS: Yes... [cross-talk]

11 BECKY SCOTT: ...speak to the prior point...
12 [cross-talk]

13 CHAIRPERSON POWERS: Yeah, sure... [cross-
14 talk]

15 BECKY SCOTT: ...the number... the volume.
16 So, for calendar year 2018 a total of 20 inmates got
17 counted for 2,100 filed grievances...

18 CHAIRPERSON POWERS: 20 for 2,100, okay.

19 BECKY SCOTT: So, that's just 20 inmates
20 out of the department, over 2,000 grievances combined
21 between them.

22 CHAIRPERSON POWERS: Okay.

23 BECKY SCOTT: So, just to give some
24 context.

1 COMMITTEE ON CRIMINAL JUSTICE

2 CHAIRPERSON POWERS: Yeah... no, thank you
3 for that and thank you for giving that, that
4 statistic quickly. And just wanted to... so, two
5 informally resolved, can you explain what that means?

6 JAMES BOYD: It means it was resolved on
7 a formal level from the grievance coordinator or the
8 grievance officer. We changed the verbiage in our
9 directive to formal, it basically means the same
10 thing, we just felt like informal might have been not
11 the most... best way to define how it was used, I mean
12 we prefer to use the term informally by saying that
13 inmates could informally get their issues addressed
14 by the housing area officers but for the grievance
15 process we now use the, the word formal resolution
16 not informal. So, we'll be updating this report as
17 well.

18 CHAIRPERSON POWERS: Okay. Can you talk
19 to us... what, what are the... what are the top five
20 categories of grievance... what... which categories of
21 grievable offenses are the... your top five that we see
22 the most complaints?

23 JAMES BOYD: So, it varies but
24 historically what we've seen as the top five
25 grievable complaints is usually inmate account,

1 COMMITTEE ON CRIMINAL JUSTICE

2 employment, property, medical and sometimes
3 commissary.

4 CHAIRPERSON POWERS: Okay and staff?

5 JAMES BOYD: Staff is a non-grievable but
6 that is... we see, you know some complaints,
7 considerable volume of complaints on staff.

8 CHAIRPERSON POWERS: Okay and when you
9 say those are the top five those are your... those are
10 based on last year's numbers or they're... your sharing
11 anecdotally what are the... [cross-talk]

12 JAMES BOYD: Anecdotally but I can share,
13 thank you.

14 CHAIRPERSON POWERS: Okay... [cross-talk]

15 JAMES BOYD: Share last years. So, in
16 calendar year 2018 the top five grievances kind of as
17 I mentioned just briefly was employment, medical,
18 staff, inmate account and classification.

19 CHAIRPERSON POWERS: Okay and do you have
20 2017?

21 JAMES BOYD: Employment, staff, inmate
22 account, medical and jail time.

23 CHAIRPERSON POWERS: So, similar for the
24 two years. So, when you receive year after year if
25 you see similarities in terms of how many complaints

1 COMMITTEE ON CRIMINAL JUSTICE

2 you're getting in terms of which ones register the
3 highest categories what steps does DOC take to look
4 at those issues because if they're... if they're the
5 frequent flyers in terms of the issues that keep
6 popping up in terms of complaints does that trigger
7 any process if they're repetitive and if they're
8 similar year after year and, and what does... steps
9 does DOC take to address those if they're not... if it
10 starts to appear like these are... these are, you know
11 repetitive ones over the years and it's not... it's...
12 you know it would seem to want to raise steps beyond
13 just responding to individual and maybe more
14 systematic citywide response. Can you tell us if that
15 triggers any particular process or how DOC handles
16 with... the ones that are sort of year after year
17 complaints?

18 BECKY SCOTT: So, as the commanding
19 officer and or chief of a division I would look at
20 these categories to determine if... what is driving
21 this category and what's needed to abate it and
22 that's done in two folds. So, I have meetings with my
23 leadership team in the facility and perhaps if in a
24 facility and jail time is a high category then I meet
25 with my team that's assigned for that function and

1 COMMITTEE ON CRIMINAL JUSTICE

2 find out where's the breakdown, is he reporting the
3 information to the population, is it a resource issue
4 of not getting this done, what exactly is driving it
5 and a part of that conversation has to include the
6 inmates as well. So, again that would be something
7 that I would look at. So, for classification inmate
8 accounts and medical those are meetings that we meet
9 every single week and then this is what would be on
10 the agenda to perhaps flesh out for medical what
11 exactly is the issue; is it access or is it care and
12 that's something that I will collaborate with the
13 medical team to get to the bottom of it and there's
14 obviously some indicators that we are overriding
15 concern if there's a sexual assault allegation or
16 anything of that nature those are prior, prioritized,
17 anything that's concerning a safety issue is
18 prioritized and that's dealt with immediately so
19 that... these are decision... this is information that
20 would drive a resource if it's necessary but
21 definitely to resolve it because it is a domino
22 effect in the facility.

23 CHAIRPERSON POWERS: Okay and... okay,
24 thank you... thank you for, for that answer. I just
25 want to... back... one that you... I think you mentioned,

1 COMMITTEE ON CRIMINAL JUSTICE

2 and we saw was jail sentence calculations, what are..
3 what is that... I mean that is essentially about
4 somebody disputing how much time they.. [cross-talk]

5 BECKY SCOTT: So, the inmate population
6 has a range of skill set in calculating their own
7 incarceration time so that, that often comes down to
8 having a meeting and for them to review their
9 custodial time and that may include other
10 jurisdictions and then we have to also liaison with
11 custody management to confirm all custodial time that
12 you may have had in other jurisdictions or in our
13 custody or in a hospital setting where you were under
14 confinement to give you the proper credit. Often it
15 just involves getting a jail time certificate to
16 confirm their custody time.

17 CHAIRPERSON POWERS: Okay. I want to come
18 back, but I want to hand it over to Council Member
19 Holden who I know has some... a few questions.

20 COUNCIL MEMBER HOLDEN: Yeah so thank you
21 for your testimony. Chief I'd like to ask you a
22 question on officers, lets say... and, and, and you're...
23 and in testimony we heard that the Department has
24 zero tolerance for anyone who prevents an inmate from
25 filing a complaint or acts of retaliation, how many

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMITTEE ON CRIMINAL JUSTICE

officers were reprimanded for that, do we have... do we have a number on that?

BECKY SCOTT: I don't have that number with me sir... [cross-talk]

COUNCIL MEMBER HOLDEN: Okay, can you get that... [cross-talk]

BECKY SCOTT: ...I can get back to you... [cross-talk]

COUNCIL MEMBER HOLDEN: ...for us because... [cross-talk]

BECKY SCOTT: ...yes...

COUNCIL MEMBER HOLDEN: We want to... if there's... if you're... if you're saying there's zero tolerance, we'd like to see that as, you know if there... is there proof of that. Also, on the grievance categories obviously you, you just mentioned that there are some grievances that are more severe than others. So, let's say you get a 3-1-1 call on a secure... there's a category here called security risk watch group, let's say somebody fears for their safety and you get a call from, it could be 3-1-1 from outside the facility or inside, what's the turnaround because I've had experience with 3-1-1 and

1 COMMITTEE ON CRIMINAL JUSTICE

2 sometimes the turnaround is ridiculous so do you...
3 what is the turn... [cross-talk]

4 BECKY SCOTT: I want to apologize based...
5 of... on... the city of New York on your satisfactory...
6 [cross-talk]

7 COUNCIL MEMBER HOLDEN: No, no, no, it's
8 just sometimes... on certain agencies I'm not saying
9 yours I'm just saying experiences over the time... over
10 years, it's gotten better in certain areas but just...
11 this is... let's say a security risk or let's say
12 somebody's threatened and you get that over 3-1-1
13 what's the turnaround usually?

14 BECKY SCOTT: The service desk sends that
15 out to the facility management team including myself
16 immediately, those are investigated immediately.

17 COUNCIL MEMBER HOLDEN: So, the operators
18 put it in categories... let's say 3-1-1 operator...
19 you're leaving it up to them to decide is... no?

20 BECKY SCOTT: No... [cross-talk]

21 COUNCIL MEMBER HOLDEN: So, so tell us
22 how it works... [cross-talk]

23 JAMES BOYD: So, so just to clarify so
24 that complaint is immediately sent to our... my unit.
25 That's something as the chief just mentioned we

1 COMMITTEE ON CRIMINAL JUSTICE

2 immediately process, any time sensitive complaints we
3 are immediately processing and the staff at the
4 facility as well as the chief's team is going to
5 handle it expeditiously so it gets funneled through
6 us, we process it in our system and we task it out to
7 the appropriate unit for appropriate follow up and
8 handling.

9 COUNCIL MEMBER HOLDEN: So, you, you... in
10 the matter of an hour or two hours... [cross-talk]

11 JAMES BOYD: Minutes... [cross-talk]

12 COUNCIL MEMBER HOLDEN: ...it could vary...
13 [cross-talk]

14 JAMES BOYD: ...some, somebody is always
15 looking at this stuff so it's a matter of minutes of
16 just filling in the details in our system and sending
17 it out...

18 COUNCIL MEMBER HOLDEN: Yeah but
19 sometimes it depends on, on the... on how the complaint
20 comes across, obviously communications can, can vary
21 and a security risk should be treated like... almost
22 like a 9-1-1 not a... so, I'm just... I'm just concerned
23 and, and if, if we, we find that there's some
24 retaliation or there's something... some threat that
25 was made that wasn't addressed in a timely fashion

1 COMMITTEE ON CRIMINAL JUSTICE

2 and... you know and in visiting Rikers I guess it was
3 about ten months ago, Keith we, we did get a lot of
4 complaints from the grievance process that the, the
5 detainees felt they weren't getting proper recourse,
6 they weren't getting it addressed, they were, you
7 know wrongly accused and we hear that from... you know
8 a lot and obviously sometimes it's, it's true and..
9 but I'm concerned about the number of grievance
10 officers that... you said you were going to... you're
11 going to hire more or you have hired more?

12 JAMES BOYD: We have hired more.

13 COUNCIL MEMBER HOLDEN: How many more?

14 JAMES BOYD: We have 11 grievance
15 officers in total.

16 COUNCIL MEMBER HOLDEN: Eleven and how
17 many... what's the total... you have a total of 11
18 grievance officers?

19 JAMES BOYD: Total of 11 grievance
20 officers.

21 COUNCIL MEMBER HOLDEN: New hires?

22 JAMES BOYD: They've been on the job..
23 they've been with us for more than a year and a half.

24 COUNCIL MEMBER HOLDEN: So, there's a
25 total of 11 throughout the whole system?

1 COMMITTEE ON CRIMINAL JUSTICE

2 JAMES BOYD: Yes, one at each facility.

3 COUNCIL MEMBER HOLDEN: That doesn't
4 seem... [cross-talk]

5 JAMES BOYD: And the grievance... [cross-
6 talk]

7 COUNCIL MEMBER HOLDEN: ...like a lot.

8 JAMES BOYD: Well and a grievance
9 coordinator too so it's grievance officers and its
10 grievance coordinators so it's 15 grievance
11 coordinators, 11 grievance officers, they work
12 together collaboratively in each facility.

13 COUNCIL MEMBER HOLDEN: And do you get
14 the average case load per officer?

15 JAMES BOYD: We don't calculate average
16 case load, we don't calculate... we don't have case
17 load guidelines, you know the, the way the operations
18 work is that it fluctuates on a day to day and in
19 some of our larger facilities what we do is we'll
20 assign a grievance officer or a grievance coordinator
21 a set of housing areas and then they will service
22 that housing areas on a weekly basis.

23 COUNCIL MEMBER HOLDEN: Yeah, I just... I'm
24 just wondering though if we hired double the amount
25 of grievance officers would we improve the system,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMITTEE ON CRIMINAL JUSTICE

the answer would be yes because it would be less time I would imagine, do you agree with that?

JAMES BOYD: I mean we would have to explore, I mean you know what that would look like and where the... where would be the most efficient way to use those resources but that's something we would have to consider and consult with our financial team on what that looks like.

COUNCIL MEMBER HOLDEN: Alright, I had... it looks... so, the grievance office, office, let's say it... you... in the facility there's a grievance officer is that 24/7?

JAMES BOYD: No.

COUNCIL MEMBER HOLDEN: Okay, what... so, let's say you have a grievance and it... you, you want to drop it in the... in the box and, and get it addressed, could you tell me is it like the weekends you don't have a grievance officer working or...

JAMES BOYD: So, they work Monday through Friday... [cross-talk]

COUNCIL MEMBER HOLDEN: Monday through Friday... [cross-talk]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMITTEE ON CRIMINAL JUSTICE

JAMES BOYD: ...staff but inmates also have access to call 3-1-1 and we're looking at that seven days a week... [cross-talk]

COUNCIL MEMBER HOLDEN: Right... [cross-talk]

JAMES BOYD: ...so if you do drop a grievance in a grievance box and it's Friday then yes, it's likely that that won't be addressed until Monday morning but if you do have something more pressing you need to address at a specific timeframe then that inmate is going to call 3-1-1 instead of dropping a grievance in that grievance box.

COUNCIL MEMBER HOLDEN: And just for my last question, the grievance categories is... you said there were some that were more severe than others, do you have those in, in any category like red and... you know do you have color coordinated or a severe... you know severity number on these... on these categories?

JAMES BOYD: Well I mean it's... we do have specific categories like I said that are time sensitive so like back to what you earlier mentioned like protective custody, where they fear for safety or sexual allegations or assault allegations those

1 COMMITTEE ON CRIMINAL JUSTICE

2 are... those are more of our pressing items that we're
3 going to handle immediately so those... [cross-talk]

4 COUNCIL MEMBER HOLDEN: Can, can we get a
5 breakdown of that, what is handled right away versus
6 what is not... [cross-talk]

7 JAMES BOYD: So... [cross-talk]

8 COUNCIL MEMBER HOLDEN: ...I mean that
9 would... that should be a chart that we have to, to
10 review.

11 JAMES BOYD: Okay, yeah.

12 COUNCIL MEMBER HOLDEN: And we'll see if
13 it... you know where are the... complaints are coming
14 from, what categories so maybe the more severe are
15 being handled but the, the ones that are in middle
16 areas might not be... [cross-talk]

17 JAMES BOYD: Uh-huh... [cross-talk]

18 COUNCIL MEMBER HOLDEN: ...and that's where
19 the, the problems are coming from so we just need to
20 see that if you can get that to us.

21 JAMES BOYD: Okay, we'll follow up, thank
22 you.

23 COUNCIL MEMBER HOLDEN: Okay, do you have
24 anything to say Chief or... because I see you got...
25 okay, thank you.

1 COMMITTEE ON CRIMINAL JUSTICE

2 CHAIRPERSON POWERS: Thank you, we've
3 also been joined by Council Member Lancman as well. I
4 share Bob's frustration with 3-1-1 but not relative
5 to you guys. I just, just have... wanted to keep going
6 in terms of a few follow up questions. I wanted to
7 just, just start back with another question which I
8 wanted to ask earlier which is, how do the categories
9 of grievable versus non-grievable get decided and who
10 decides which, which items go into those categories?

11 JAMES BOYD: So, many of these categories
12 have historically always been categories since the
13 inception of the, the grievance system, I mean what
14 we're doing now is always evolving what categories we
15 need to remove or add based off the trends and
16 metrics we're capturing so if we see that, you know
17 there are certain grievance categories that's not
18 applicable then we'll remove them, if we are seeing
19 certain trends that we're not capturing at a
20 grievance category then we'll think about adding
21 them. Just recently we've... you know with the new
22 directive we changed some categories even moved the
23 grievance process which was a grievable category, we
24 moved that to a non-grievable category so we're
25 always looking at this to figure out how to right

1 COMMITTEE ON CRIMINAL JUSTICE

2 size the operation as well as making sure that the
3 categories reflect the current buckets of grievable
4 and non-grievable.

5 CHAIRPERSON POWERS: And I know you said
6 housing was taken out of grievable offense, is there
7 a reason why you took housing out of that?

8 JAMES BOYD: Right because that's usually
9 an inmate requesting to be transferred and that's
10 something that can only be done on a facility level
11 so that's something that needs to be escalated and
12 handled by the warden's office and their team.

13 CHAIRPERSON POWERS: Okay and also, I
14 think noise and personal hygiene were also taken out,
15 is... were those moved and... [cross-talk]

16 JAMES BOYD: So... yes, noise was moved
17 because we, we don't hear any noise complaints
18 anymore. Personal hygiene is still a grievable
19 category.

20 CHAIRPERSON POWERS: It's still a
21 grievable category?

22 JAMES BOYD: It still is a grievable
23 category.

24 CHAIRPERSON POWERS: Okay...

25 JAMES BOYD: Yes.

1 COMMITTEE ON CRIMINAL JUSTICE

2 CHAIRPERSON POWERS: Okay. The... a couple
3 other questions, how do you... when you... when the 3-1-1
4 call comes in how do you... how do you ensure that the
5 adequate follow up happens after the 3-1-1 call comes
6 in? So, how do we know that after the call is
7 received that somebody actually went out and went to
8 file... went to go and speak to somebody to actually
9 file the complaint, what, what... is there a process in
10 place to ensure that happens?

11 JAMES BOYD: For, for a non-grievable or
12 grievable?

13 CHAIRPERSON POWERS: For grievable.

14 JAMES BOYD: So, yes, so staff... we'll
15 send that to the staff in the facility, it will put
16 them on a time... a time schedule that they have to
17 respond by seven days, they're always engaging with
18 their supervisor as well, you know so she's always
19 following up with them to see what the status is of
20 complaints that we're sending to them so there's
21 always that dialogue as well in addition to the
22 workload that they're capturing directly from the
23 facility but when we send something to the them that
24 is 3-1-1 that is grievable its putting them on a time
25 system that they got to respond within seven days so

1 COMMITTEE ON CRIMINAL JUSTICE

2 if they don't respond in seven days, well really
3 before that... if they don't respond before seven days
4 the supervisor is following up to see what the status
5 of that complaint is and most staff don't want to be
6 in the red, you know they want to give an inmate a
7 response, they always want to be in compliance and
8 we're mandated that they be in compliance of the
9 directive which is to be responsive and provide a
10 resolution in seven days.

11 CHAIRPERSON POWERS: And what... and if, if
12 you call 3-1-1 and you... it's a non-grievable offense
13 what happens?

14 JAMES BOYD: Then we're sending that... it
15 comes through our unit and our OCGS hub team is going
16 to track that, put in the appropriate information and
17 send that to the appropriate unit for, for the
18 handling.

19 CHAIRPERSON POWERS: And then what... if I
20 file the... if I'm the one who places the call then how
21 do I know if... what... like how am I made aware of
22 what's happening in terms of it being sent to the
23 appropriate unit?

24 JAMES BOYD: So, at the inception of the
25 3-1-1 call the customer service rep at 3-1-1 is

1 COMMITTEE ON CRIMINAL JUSTICE

2 immediately providing you a correspondence number and
3 that's the same number that the Department gets to
4 track the 3-1-1 correspondence so that is kind of the
5 initial acknowledgment that this complaint is being
6 sent to the Department for further handling.

7 CHAIRPERSON POWERS: And I take that
8 complaint number and then I can follow up, how do I
9 know what to do with that complaint number to find
10 out it went to... it's non-grievable it went to this
11 unit because it's about housing or it's about a non...
12 another non-grievable, how do... what actually... what
13 does that complaint number actually do in terms of me
14 knowing what's the status of my complaint?

15 JAMES BOYD: So, it doesn't give you a
16 status, but it definitely gives you confirmation of
17 acknowledgement that this was shared with the
18 Department for further handling. In terms of
19 acknowledgment this is something that we are trying
20 to figure out a plan about how to kind of give
21 acknowledgments for 3-1-1 but we, we have to continue
22 to have those discussions in turn... internally to
23 figure out what's the most efficient way. I would
24 also add that this is information... this is language
25 we added in our recent directive as our further

1 COMMITTEE ON CRIMINAL JUSTICE

2 demonstration of support for this we, you know
3 believe it's the right thing to do in theory but we
4 have to figure out what's the most efficient way of
5 operationalize it to provide an acknowledgement of a
6 3-1-1 non-grievable to the inmate population.

7 CHAIRPERSON POWERS: Is there a reason
8 you couldn't send a staff person to that... to that
9 person to say this is a non-grievable offense it was
10 sent to this unit and somebody from there will be
11 following up with you or to have... be, beyond
12 acknowledgment that my call was received and I have a
13 number and the DOC has acknowledged it... [cross-talk]

14 JAMES BOYD: Uh-huh... [cross-talk]

15 CHAIRPERSON POWERS: ...it seems like that
16 then gets lost and that person may have no
17 information about what happened to this non-grievable
18 complaint I made so I think the question is, is there
19 a process that the DOC could put in place to make
20 sure that person understands even though its not a
21 grievable offense going through the regular process
22 that they still are getting some, some resolution to
23 the complaint they made through 3-1-1?

24 JAMES BOYD: Uh-huh...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMITTEE ON CRIMINAL JUSTICE

BECKY SCOTT: If I can add, non-grievable investigations are conducted at the facility level so they are sent immediately to the commanding officer who assigns someone to investigate, part of that investigation which will be assigned to a supervisor in the rank of captain would be to go out and directly communicate with whoever filed the non-grievable complaint, perhaps get a statement if they agree to give a statement but if not conduct a face to face interview as part of the investigation that they have to provide within a certain prescribed time frame back to the commanding officer and what was the outcome.

CHAIRPERSON POWERS: That happens today?

BECKY SCOTT: 100 percent... yes.

CHAIRPERSON POWERS: So, if I called 3-1-1, non-grievable, I make a complaint, it goes to the appropriate unit... facility... at the facility... [cross-talk]

BECKY SCOTT: The service desk will forward it out to the respective facility and the facility commanding officer will assign it as an investigation.

1 COMMITTEE ON CRIMINAL JUSTICE

2 CHAIRPERSON POWERS: Okay. I... another,
3 another question I had was e3-1-1 is... seems to be so
4 heavily utilized now versus the process of filling
5 out the... I mean its sort of the first place people
6 seem to be going, do you have an understanding of why
7 3-1-1 is being used at high... at a much higher level
8 than the process of the paper form?

9 BECKY SCOTT: The 3-1-1 process is open
10 longer than the grievance office, so the grievance
11 office is open Monday through Friday, no holidays,
12 during business hours; 3-1-1 is open for the entire
13 time that you're in your housing areas except for
14 when you sleep.

15 CHAIRPERSON POWERS: What, what... when...
16 what are the hours, Monday through Friday?

17 BECKY SCOTT: For the grievance office?

18 CHAIRPERSON POWERS: Yeah, uh-huh.

19 BECKY SCOTT: That's open on an
20 administrative level Monday through Friday during
21 business hours.

22 CHAIRPERSON POWERS: So, nine to five...

23 JAMES BOYD: Yeah, about... [cross-talk]

24 BECKY SCOTT: Whatever the operation of
25 the facility, the... [cross-talk]

1 COMMITTEE ON CRIMINAL JUSTICE

2 CHAIRPERSON POWERS: Okay... [cross-talk]

3 BECKY SCOTT: ...inmate phones are
4 available... [cross-talk]

5 CHAIRPERSON POWERS: Uh-huh... [cross-talk]

6 BECKY SCOTT: ...throughout the day so it's
7 just by sheer interaction you have more
8 accessibility, you can make more complaints.

9 CHAIRPERSON POWERS: Uh-huh and do you...
10 do you think it represents anything around people's
11 fear of doing it through a formal process... I mean the
12 call isn't... I mean it's not anonymous but it's...
13 somebody will come talk to you but it also to me
14 would... could represent the idea that somebody finds
15 that process to be...

16 BECKY SCOTT: I, I think the opposite, I
17 think that it affords you an opportunity to discuss
18 something that you may not want to go and be seen in
19 the grievance office, you can now confidentially make
20 a complaint about whoever you want to talk about in
21 total privacy anonymously, no one knows and hears
22 what you're saying but you so I just think it's a...
23 [cross-talk]

24 CHAIRPERSON POWERS: No, we're, we're...
25 [cross-talk]

1 COMMITTEE ON CRIMINAL JUSTICE

2 BECKY SCOTT: ...more suited.. [cross-talk]

3 CHAIRPERSON POWERS: ...we're in agreeance
4 on that, that's what I was saying.

5 BECKY SCOTT: Right, so I think by that
6 process alone it's more accessible by the inmates and
7 I think they like that system a little bit better and
8 it's free so...

9 CHAIRPERSON POWERS: Nice, right. In
10 horizon and, and.. horizon is this.. is this process
11 the same if you.. for filing a grievance.. if you want
12 to file a grievance is there a process, is it.. and
13 is it the same since we've moved.. we're moving folks
14 off of Rikers to Horizon, are we.. what is the process
15 in terms of filing a grievance at horizon?

16 JAMES BOYD: So, so ACS oversees the
17 grievance process for residents at horizon.. [cross-
18 talk]

19 CHAIRPERSON POWERS: And do you have any
20 idea... understanding of whether it's... reflects this,
21 similar, same appeals process, same time frames?

22 JAMES BOYD: I, I mean... they have
23 discretionary which is the most appropriate grievance
24 process for them, I... my understanding that I do

25

1 COMMITTEE ON CRIMINAL JUSTICE

2 believe inmate residents are using the 3-1-1 system
3 at horizon.

4 CHAIRPERSON POWERS: Okay. The... just a
5 couple other questions here, what types of complaints
6 trigger the new preliminary evidentiary review stage
7 which precludes appeal and review?

8 JAMES BOYD: Usually issues that are
9 totally against department policy, I don't have an
10 example with me but it's usually something that an
11 inmate is requesting through a grievance that
12 conflicts with the department policy and when staff
13 felt like they thoroughly investigated and the inmate
14 says now he wants to pull your decision and staff
15 feel confidently that they thoroughly investigated
16 this matter they trigger this preliminary evidence
17 review which immediately gets forwarded to the
18 supervisor and has a quick turnaround of a couple of
19 business days but it's usually a conflict of
20 department, departmental policy with things that
21 doesn't need to escalate to the warden's office
22 because there won't be a, a different decision if it
23 was escalated to the grievance... to the warden's
24 office.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMITTEE ON CRIMINAL JUSTICE

CHAIRPERSON POWERS: Okay, we were made aware of one case that was given to the Board of Corrections on February 2nd of last year for an advisory opinion... [cross-talk]

JAMES BOYD: Uh-huh... [cross-talk]

CHAIRPERSON POWERS: ...to CR... CORC level, it was a case where an incarcerated person wanted to work in the law library and was denied the ability to do so, the BOC, I think... I believe offered an opinion, it was contrary to the opinion that was... the decision that was rendered. By your statistics I guess that was the one case that went to CORC if there was only one, can you tell us about the, the department's decision contrary to that opinion, it was an... it was sort of a unanimous vote not to follow the BOC's opinion on that and can you give us any information about that process?

JAMES BOYD: So, I'll, I'll jump... I'll start and then the Chief will probably add but we definitely reviewed the BOC's recommendation and considered there, their recommendation but it was a mental health inmate who wanted to work in a law library and there were concerns... security concerns that initiated our response and overall our decision

1 COMMITTEE ON CRIMINAL JUSTICE

2 on that particular grievance but there is policy on
3 why that grievance wasn't affirmed in the inmate's
4 decision and I'll let Chief Scott add.

5 BECKY SCOTT: When awarding inmate
6 assignments the goal is safety and security so we
7 have to look at all the factors of who the individual
8 inmate is and what exactly is the job that you're
9 applying for, is there overriding concerns that this
10 would be at a risk for the facility to assign you to
11 that that particular assignment will not be afforded
12 to you for those reasons which may or may not be
13 shared with the particular inmate however, that
14 doesn't negate other opportunities that are less of a
15 security risk. So, although the law library is
16 typical for very low risk inmate population because
17 you have access to the entire inmate population as
18 they go through that area but like I said they can
19 also be considered for less... assignments that are
20 not... holds the same security risks.

21 CHAIRPERSON POWERS: So, in this case
22 individuals are deemed to be a security risk?

23 BECKY SCOTT: I don't have the details of
24 that inmate, I'm giving you the policy surrounding
25 awarding inmates' assignments.

1 COMMITTEE ON CRIMINAL JUSTICE

2 CHAIRPERSON POWERS: Okay. And, and, and
3 would I be... I'd be correct then to say that was the
4 one person who went to the CORC in... [cross-talk]

5 JAMES BOYD: Correct... [cross-talk]

6 CHAIRPERSON POWERS: ...the calendar year
7 of 2018?

8 JAMES BOYD: Yes, that's correct.

9 CHAIRPERSON POWERS: Okay. The... there was
10 some reports around sort of having unequal access to
11 the grievance system depending on which facility you
12 are in and depending on where you were housed, can
13 you talk about steps that you're taking to increase
14 access?

15 JAMES BOYD: I think back to the Chief's
16 point, increased access is 3-1-1, I mean this is
17 directly accessible in all inmate's housing areas, it
18 was a call that was made free in 2015 so that, that
19 is our commitment and has been a demonstrative
20 commitment by the department to expand access for
21 inmates to file a complaint. In other facilities we
22 are strategically looking at, you know where to apply
23 grievance boxes in areas where there's high inmate
24 foot traffic as another route for inmates to file
25 their complaint.

1 COMMITTEE ON CRIMINAL JUSTICE

2 CHAIRPERSON POWERS: Okay. The... in terms
3 of where... you know in terms of progress moving
4 forward here, in terms of ensuring that forms are
5 filled out correctly and there's access and I think
6 3-1-1 is a... is a good access point and open, open
7 longer than the office is, can you tell us other
8 areas where the Department of Correction is seeking
9 to improve access, improve transparency and to make
10 improvements whether it's even just sort of access
11 points for folks and what, what we here and the board
12 and others who are here can anticipate and other
13 areas that you're looking for improvement and more
14 efficiency?

15 JAMES BOYD: I think our reporting
16 structures, you know we want to... we want to continue
17 to make glandular reports to make sure that we're
18 looking at the root causes of some of these systemic
19 issues so we definitely want to improve our, our data
20 capabilities to make sure that we're providing good
21 information to help the facilities kind of deal with
22 some of these institutional problems, you know
23 another level of access to the... for the inmates to
24 the grievance system is a grievance staff, you know
25 these are dedicated, skilled individuals as I

1 COMMITTEE ON CRIMINAL JUSTICE

2 mentioned in my testimony who engages with the inmate
3 population on a daily basis and many of them resolve
4 issues before it escalates to a grievance which I
5 think is a tout to their achievements and, and their
6 savviness when it comes to addressing inmate issues.
7 So, I think we want to continue to make sure that
8 we're providing the professional development to our
9 staff and making sure that they continue to engage
10 the inmate population, they, they attend inmate
11 council so they frequently have their ear to the
12 ground to hear what's going on in all facilities, you
13 know liaison with facility leadership and making sure
14 they bring any pressing issues that's not being
15 caught as a grievance to OCGS supervisory and
16 management team on a daily basis.

17 CHAIRPERSON POWERS: Thank you and, and I
18 would ask if this department also could look at
19 simplifying into the process and shortening the
20 process in addition to forms and making it easier for
21 folks to fill out forms, to also look at a process
22 where... I mean I... I'll, I'll tell you the two things
23 that concern me the most here are A, incomplete
24 forms, I mean there's a... there's a number of things
25 but amongst them incomplete forms, not having enough

1 COMMITTEE ON CRIMINAL JUSTICE

2 information, that, that ensures that people who are
3 looking, the board and others who are... who are
4 looking at it have complete information about whether
5 somebody is, is... will... wants to go through the
6 appeals process, whether they have met... they've been...
7 they've gone through this process in a timely manner
8 and those aren't accusations but they certainly give
9 us clarity and comfort that the process is working
10 and, and second to the, the low amount of appeals but
11 I understand that there are a number of people that
12 drive the numbers here, there's still... there's still
13 many who are not captured in that 20 person number
14 and of course this number rotates as, as the number
15 of people in custody and who's in custody changes and
16 it strikes me as incredibly low meaning that the
17 process is either difficult to understand... [cross-
18 talk]

19 JAMES BOYD: Uh-huh... [cross-talk]

20 CHAIRPERSON POWERS: ...or... while I do
21 believe there are probably some mitigations happening
22 and people are getting it resolved that that process
23 is long and complicated and perhaps somebody on their
24 own can't go through this process independently so
25 that would be, you know areas around simplification

1 COMMITTEE ON CRIMINAL JUSTICE

2 of the process to make it more easier to understand,
3 more efficient and certainly getting complete
4 information would be areas I'd ask the department to
5 look at as well. I know the Board is looking at it
6 and I think will probably do another report sometime
7 in the future later this year and I think that we
8 would... we would ask for those areas to be looked at
9 amongst others here in this process. Oh yeah, the
10 other thing I wanted to ask is just access to the
11 forms so individuals or people working with them or
12 family members whoever, have you considered putting
13 the grievance forms online?

14 JAMES BOYD: No, we, we do have some
15 concerns about posting the grievance forms online out
16 of concerns that they would publicly be used in
17 disingenuous ways, a lot of the forms are for
18 internal staff purposes only and really for if an
19 inmate escalates an appeal so what... we wouldn't want
20 to put these public... these internal documents on our
21 public web, website and have folks misleadingly
22 submitting these forms to various entities as if an
23 inmate either appealed or filed a grievance when in
24 actuality they didn't so I think we do have some
25 concerns posting the forms online but we can

1 COMMITTEE ON CRIMINAL JUSTICE

2 definitely take a look at what forms might be, you
3 know for public consumption and we can talk about
4 that internally. Another thing I want to add Council
5 Member is that, you know another way we're trying to
6 be very transparent and I think that's really the
7 goal with the grievance process is to put a lot of
8 this information up front so the inmates are educated
9 or further educated on the process is putting up
10 posters, you know kind of blasting all of the
11 facility housing areas as well as other areas where
12 inmates congregate with posters, with clear, simple
13 language forms about how to file a grievance, where
14 to talk to the grievance officer, the days they're in
15 for Monday through Friday and the, the... another mode
16 of an outlet to file a complaint if you're not in
17 communication with a grievance by call... you know
18 filing a 3-1-1 complaint.

19 CHAIRPERSON POWERS: I appreciate that
20 and just to go back to your first point with the
21 concern about people using those in disingenuous
22 ways, can you just clarify what you mean by that?

23 JAMES BOYD: Well a lot of the forms that
24 we have are appeal forms so we wouldn't want... and
25 they're for DOC staff purposes only so we wouldn't

1 COMMITTEE ON CRIMINAL JUSTICE

2 want to put the warden's forms, the assistant chief's
3 form as well as the CORC form up on the public
4 website when these are for DOC internal purposes
5 only. I think there might be some concerns that these
6 forms will be wrongfully used and, and filed in
7 different... inappropriate ways and we would not... I
8 think that's something we wouldn't want... to let that
9 get away from us.

10 CHAIRPERSON POWERS: Is it... is that the...
11 is the concern that somebody would file on behalf of
12 somebody else?

13 JAMES BOYD: Correct... [cross-talk]

14 CHAIRPERSON POWERS: ...without their
15 permission?

16 JAMES BOYD: Correct, that's a
17 possibility that can happen, yes.

18 CHAIRPERSON POWERS: Is it... is it even
19 possible... if that's the concern is it even possible
20 to put it up with, I don't know, some, some language
21 on there very clearly that it's a not a form for
22 public use, I, I mean I think the... I think A, I mean
23 I think the access to the form itself makes some
24 sense because I think people do need some...
25 occasionally assistance with it but also I think

1 COMMITTEE ON CRIMINAL JUSTICE

2 there probably could be a way to make it clear that
3 the version that's online is not for public use or,
4 or something like that, we'll follow up with the...
5 with you on that as well. I... that concludes... I'm... it...
6 my questions, I think we are going to hear from the
7 Board of Corrections and I, I just wanted to ask is,
8 is somebody from CHS here, Health and Hospitals here?
9 You guys are here. Okay, are you guys testifying? Not
10 test... okay. We... can, can, can we... I think we, we had
11 one question for you if somebody can... wants to answer
12 it.

13 [off mic dialogue]

14 CHAIRPERSON POWERS: Thank you, just
15 state your name and, and we'll... you have to...

16 COMMITTEE CLERK: If everyone could raise
17 their right hand? Do you affirm to tell the truth,
18 the whole truth and nothing but the truth in your
19 testimony before this committee and to respond... to
20 respond honestly to Council Member questions?

21 JONATHAN WANGEL: Yes.

22 ZACHARY ROSNER: Yes.

23 CHAIRPERSON POWERS: Thank you. A couple
24 of... just questions for CHS, when a third party
25 contacts the department on behalf of, of a person

1 COMMITTEE ON CRIMINAL JUSTICE

2 with a grievable issue through 3-1-1 or through,
3 through the form can you just tell us how CHS handles
4 that compliant?

5 JONATHAN WANGEL: Sure, so there's an
6 acknowledgment of the complaint typically happens
7 within one business day, if it's a holiday or weekend
8 it may take a little bit longer... [cross-talk]

9 CHAIRPERSON POWERS: Can you just speak
10 into... speak... [cross-talk]

11 JONATHAN WANGEL: Sure, so there's an
12 acknowledgement within one business day, you know
13 weekends, holidays might take a little longer, if the
14 complaint that comes in is an emergency its handled
15 in real time whether it's after hours, weekends,
16 holidays there's somebody 24 hours a day that will
17 address the complaint, its raised with site
18 leadership, if it's a medical complaint the head
19 doctor at the facility and its responded to
20 immediately.

21 CHAIRPERSON POWERS: And we had a stat, I
22 think came to the Board of Corrections report that 86
23 percent of CHS complaints came from the outside, 56
24 percent from 3-1-1, can you tell us any inclination
25 or reason why that's... [cross-talk]

1 COMMITTEE ON CRIMINAL JUSTICE

2 JONATHAN WANGEL: 3-1-1 is definitely the
3 primary means of, of, you know reporting, you know I
4 guess possibly for reasons that were discussed before
5 the vast majority come in through 3-1-1. For fiscal
6 year '18 3-1-1 was the top, they come in from the
7 public, legal aid or DSE.

8 CHAIRPERSON POWERS: Okay and how many
9 grievances did, did CHS receive last year?

10 JONATHAN WANGEL: Complaints for fiscal
11 year '18 was 2,914.

12 CHAIRPERSON POWERS: 2,000..

13 JONATHAN WANGEL: 914.

14 CHAIRPERSON POWERS: 914 and what were
15 the categories that registered the highest?

16 JONATHAN WANGEL: Access to care, medical
17 care and prescription related.

18 CHAIRPERSON POWERS: And similar question
19 to DOC I had earlier which is when you receive
20 categories that keep registering high what steps do
21 you take to resolve those beyond the individual...
22 resolve the individual complaints?

23 JONATHAN WANGEL: Yeah, so we're always...
24 we're... sorry, we're always working, we partner with
25 both DOC and the Board, we've met as late as this

1 COMMITTEE ON CRIMINAL JUSTICE

2 month to increase efficiency in the process, we look
3 at trends if the process needs to be changed it's
4 changed, we address it, whatever means is necessary
5 to make the process better.

6 CHAIRPERSON POWERS: But is... do you have
7 a formal process by which you look at the categories
8 and say... [cross-talk]

9 JONATHAN WANGEL: Yes, there's a regular
10 meeting, leadership meets and, and it reviews.

11 CHAIRPERSON POWERS: How... and how often?

12 JONATHAN WANGEL: Monthly.

13 CHAIRPERSON POWERS: Monthly. Did you
14 have any feedback on the bills that we're hearing
15 today?

16 JONATHAN WANGEL: Just that, you know as
17 I said before we'd be aimed to respond acknowledge
18 within a day other than that CHS is still reviewing.

19 CHAIRPERSON POWERS: Okay and do you have
20 a... is it... is it a similar appeal process for CHS?

21 JONATHAN WANGEL: It's... there is an
22 appeal process whether... for care I'd defer to Doctor
23 Rosner but there is an appeal that can get bumped up
24 through leadership and it's looked at again.

1 COMMITTEE ON CRIMINAL JUSTICE

2 CHAIRPERSON POWERS: What is that
3 process, what is it... [cross-talk]

4 JONATHAN WANGEL: The complaint is
5 reviewed by leadership if it's for care again I defer
6 to Doctor Rosner.

7 ZACHARY ROSNER: Zack... Zachary Rosner,
8 Chief of Medicine for Correctional Health Services.
9 So, there... the written process there's sort of
10 internal complaints that we receive and there's
11 appeal and second opinion requests that are reviewed
12 systematically. Generally, for 3-1-1 and outside
13 complaints we end up talking directly to the patient
14 and so we are dealing with those things in real time
15 one on one with patients and... so the, the appeal
16 process exists but its done kind of face to face at
17 the facility level with the site medical leadership.

18 CHAIRPERSON POWERS: Okay. I think we
19 will end there, thank you CHS for getting up as well,
20 thank you for being here, thank you to DOC and we
21 look forward to working with you on other ways to
22 improve, we'll follow up with comments on the bills
23 and, and thank you for, for your testimony and for
24 your work, thank you... [cross-talk]

25 BECKY SCOTT: Thank you.

1 COMMITTEE ON CRIMINAL JUSTICE

2 JAMES BOYD: Thank you.

3 [off mic dialogue]

4 CHAIRPERSON POWERS: Alright, thank you.

5 We will continue with the Board of Corrections, we're
6 going to ask you to swear in so we will have the
7 Counsel swear you in, thanks and, and again same
8 thing if you can please state your name and your
9 title at BOC, thanks.

10 COMMITTEE CLERK: Okay, everyone's hands
11 are raised, do you affirm to tell the truth, the
12 whole truth and nothing but the truth in your
13 testimony before this committee and to respond
14 honestly to Council Member, Member questions?

15 MARTHA KING: Yes.

16 CHAIRPERSON POWERS: Okay, thank you, you
17 can testify.

18 MARTHA KING: Good morning Chair Powers
19 and members of the Committee on Criminal Justice. My
20 name is Martha King and I'm the Executive Director of
21 the New York City Board of Correction. The board is
22 the city's independent oversight agency for the jail
23 system. It promulgates minimum standards, monitors
24 compliance with these standards and provides general
25 oversight for the Department of Correction and Health

1 COMMITTEE ON CRIMINAL JUSTICE

2 and Hospitals' Correctional Health Services. Today I
3 am joined by Emily Turner, Deputy Executive Director
4 of Research, and Nashla Rivas Salas, Senior Director
5 of Research who leads our assessments of DOC's
6 grievance program. When New Yorkers voted to
7 strengthen the Board by codifying its mandates in the
8 City Charter, those requirements included creating
9 procedures to hear grievances by, or on behalf of any
10 person confined under the jurisdiction of the
11 Department. Complaints from people in custody are
12 often requests for help on urgent concerns, including
13 healthcare, safety, connection to loved ones, and
14 work. New Yorkers recognized that an effective
15 grievance system would help to promote safety and
16 fairness in the jails, identify institutional
17 problems, and address individual issues before they
18 turn into crisis. Beginning in 1977, the Board
19 collaborated with DOC to create and evaluate a
20 grievance system for incarcerated people. Our
21 involvement continues in multiple ways. Today, when
22 incarcerated people appeal to the highest level, the
23 Board provides a recommendation on that grievance
24 matter. The Board, per its minimum standards, also
25 provides an appellate opinion in eight categories of

1 COMMITTEE ON CRIMINAL JUSTICE

2 DOC issued restrictions. For instance, in 2018, the
3 Board responded to approximately 400 appeals from
4 people in custody or visitors about restrictions they
5 believed they had been unduly issued on their visits.
6 Lastly, Board staff provide an impartial review of
7 system patterns and make recommendations to improve
8 the overall grievance system. In June 2018, BOC
9 released our second assessment of DOC's grievance
10 program. We found a system that, despite a few
11 improvements in recent years, had major structural
12 problems, including a lack of critical policies for
13 responding to tens of thousands of 3-1-1 calls each
14 year; unequal access and availability; and a
15 confusing and underutilized appeal process. These
16 structural problems lead to unmet needs, increased
17 tensions, perceptions of unfairness, and unaddressed
18 systematic issues in the city's jails. Today, I will
19 summarize some of our key findings while discussing
20 recent, significant improvements and three areas
21 where DOC must still act. Over the past years as DOC
22 updated its grievance policy, the Board provided
23 extensive feedback and DOC made important
24 improvements. For instance, DOC clarified their
25 process for responding to 3-1-1 complaints. New

1 COMMITTEE ON CRIMINAL JUSTICE

2 policy requires that staff provide timely
3 acknowledgement of all 3-1-1 complaints. Up until
4 now, 3-1-1 complaints did not automatically initiate
5 the formal grievance process. These are critical
6 changes since recently 79 percent of DOC's complaints
7 came through 3-1-1, and the number of calls to 3-1-1
8 increased 49 percent from Fiscal Year '16 to '17.
9 DOC's new policy also requires they provide more
10 information to people in custody about the process.
11 Information on which complaints are grievable is now
12 automatically provided on grievance forms. New forms
13 have clearer instructions, specifying timeframes for
14 appeal and response and now clarify which DOC offices
15 handle non-grievable matters. DOC has also hired
16 additional staff. Since January 2017, DOC's grievance
17 office has used an electronic system called service
18 desk to track all complaints. Service desk should
19 help DOC to better comply with its policies and
20 improve accountability. It will also assist in the
21 Board's monitoring. The Department recently provided
22 us with direct access to service desk, and Board
23 staff can now check the status of complaints, review
24 patterns and sample complaints for future audits. Our
25 assessments have found that an increasing number of

1 COMMITTEE ON CRIMINAL JUSTICE

2 complaints, and nearly 40 percent of complaints in
3 Fiscal Year '17 are considered non-grievable, such as
4 complaints about safety and staff unprofessionalism
5 and misconduct. Over the last five years, the number
6 of non-grievable complaints has nearly tripled and
7 the portion of non-grievable complaints has nearly
8 doubled. Complaints about DOC and CHS staff comprised
9 55 percent of non-grievable complaints in Fiscal Year
10 '17. In these cases, complainants are not entitled to
11 a formal resolution or appeal. New policy requires
12 the DOC grievance office to notify the grievant of a
13 referral to a different office regardless of whether
14 the complaint was made via 3-1-1 or on paper.

15 However, grievant are not informed about what the
16 investigation will entail or if they will receive a
17 response. We continue to urge DOC to create a
18 coordinated and transparent system to ensure that
19 people receive written responses about the conclusion
20 of the investigations into their non-grievable
21 complaints. The electronic service desk system should
22 allow for such coordination, regardless of which DOC
23 office is investigating. Our assessment found that
24 the grievance appeal process is broken. If someone
25 files a grievable complaint, the person is entitled

1 COMMITTEE ON CRIMINAL JUSTICE

2 to an initial response and the opportunity to appeal
3 three times. Yet, nearly 95 percent of complaints are
4 closed after the initial DOC response. In Fiscal Year
5 '17, only 20 grievances or .4 percent were appealed,
6 and only ten appeals received a decision at the
7 Department's final stage of review. Contrary to
8 policy, none of those appeals were provided to the
9 Board prior to DOC's decision. As further evidence of
10 poor tracking and management of the appeals, we found
11 that DOC's data shows that there were even more
12 appeals at later stages than the earlier ones. As
13 part of our recent assessment, we audited 262
14 complaint files. Many of the grievance forms audited
15 by the Board were incomplete. Forty one percent of
16 these cases were not timestamped, making it
17 impossible to track compliance with response
18 deadlines. Fifty eight percent of audited complaints
19 did not indicate if the grievant accepted or rejected
20 the resolution and of these 64 percent were also
21 missing the signature of the complainant. Without
22 this information, it is impossible to know if the
23 grievant wanted to appeal or even received a
24 response. From start to finish, the full appeal
25 process can take more than ten weeks to complete. We

1 COMMITTEE ON CRIMINAL JUSTICE

2 have recommended that DOC shorten and simplify the
3 grievance appeal process. DOC's new policy, instead
4 of shortening the process, adds a new, opaque step
5 called a preliminary evidentiary review, making it
6 even more difficult to appeal. We found that five
7 complaint categories made up nearly 50 percent of all
8 grievances received by DOC. These areas have been the
9 top complaints consistently for the past five years.
10 These frequent complaints concern DOC staff, jail
11 employment, financial accounts, jail sentence
12 calculations; and personal property. Because such
13 stark and persistent patterns signal areas of DOC
14 operations that need to be reviewed and improved, we
15 recommended DOC develop an action plan to evaluate
16 and address the drivers of the top grievance
17 categories. An effective grievance system must use
18 its data to problem solve, to improve conditions and
19 reduce the number of future complaints and potential
20 lawsuits against the Department. Complaints against
21 DOC staff have grown most precipitously by 248
22 percent from Fiscal Year '13 to Fiscal Year '17. In
23 Fiscal Year '17, staff complaints represented 13
24 percent of all complaints received by DOC. Therefore,
25 we further recommended DOC to develop a system wide

1 COMMITTEE ON CRIMINAL JUSTICE

2 approach on this issue and one that is coordinated,
3 coordinated with the Department's significant staff
4 development efforts and the early warning system
5 required by the Nunez Consent Judgement. These action
6 plans are needed to assist in preventing and
7 decreasing the number of overall complaints, but DOC
8 has not pursued. Our next assessment will be released
9 in June 2019. We look forward to working with DOC,
10 CHS and the Council on efforts to improve the
11 complaint system for people in custody and we thank
12 you for taking up these important issues today. We're
13 happy to answer any questions and to discuss the
14 proposed legislation.

15 CHAIRPERSON POWERS: Thank you, can you
16 give us... I want to talk just... the three bills that
17 are before the City Council today, can you speak to
18 us about any comments, concerns or feedback that you
19 on the three bills?

20 EMILY TURNER: Yes. So, in terms of the
21 bill to require to make the grievance process more
22 efficient we support the legislation and believe it's
23 critical to have reporting on this issue. The bill
24 introduces measures the Board has previously
25 recommended regarding the implementation of an

1 COMMITTEE ON CRIMINAL JUSTICE

2 electronic kiosk system for the filing of grievances
3 and improved mechanisms to better report and handle
4 complaints. We believe the requirements proposed in
5 this bill will increase the efficiency of the system
6 allowing to... allowing for better documentation and
7 review and monitoring of the grievance process so
8 we're in support of that bill. We also support the
9 bill in relation to 3-1-1 complaints made by
10 incarcerated individuals requiring protection against
11 retaliation and responses to 3-1-1 complaints. So, we
12 support the legislation and it's important to note
13 that DOC's updated directive does already address
14 some of the issues in this bill which is a good sign.
15 Under the updated directive individuals are required
16 to receive acknowledgement of all non-grievable
17 complaints received by 3-1-1 in three calendar days,
18 it's our understanding this has not yet been
19 implemented but we look forward to continuing to work
20 with DOC to identify issues and improve their
21 response to both grievable and non-grievable
22 complaints so we are in support of the second bill.
23 In terms of the third bill we agree with the spirit
24 and intent of the bill. It's critical to collect
25 information and learn from and share information

1 COMMITTEE ON CRIMINAL JUSTICE

2 about the experiences of people in custody and the
3 experiences of people going through the grievance
4 process however we have concerns about the Board's
5 capacity to conduct a survey of every individual
6 who's filed a complaint as it would require
7 significant resources from the Board which we do not
8 currently have. Further, even limiting the scope of
9 what is proposed in the legislation would be highly
10 resource intensive and difficult. For example, if we
11 were to limit the bill to, to survey every single
12 individual but even a sample, sampling in a jail
13 setting is very difficult. If we wanted to... if we
14 were to get a representative sample which we would
15 want to have a representative sample in such a
16 situation by the time we understood exactly how to
17 sample and... proportionately and correctly many
18 individuals may have already left custody. So, sort
19 of how this... how this kind of survey would get... would
20 be accomplished is something that we're looking
21 forward to working together with your staff to figure
22 out what makes sense in terms of how we could
23 incorporate their perspectives and feedback and
24 recommendations from people in custody. We have
25 already publicly committed and will be completing an

1 COMMITTEE ON CRIMINAL JUSTICE

2 annual assessment of the grievance process in an
3 ongoing way and are actively working to incorporate
4 the perspectives of people in custody into our annual
5 assessments and we believe that one of the goals
6 Council Member Ampry-Samuel mentioned at the start of
7 the hearing was to make sure, you know we understand
8 what is actually happening and one of the ways that
9 we've been able to do that is through our auditing
10 which may be a more effective approach to get to, to
11 more information about compliance with policy.

12 CHAIRPERSON POWERS: Okay, thank you. We
13 will have our staff reach out to talk about concerns
14 on, on, on the last bill you discussed, and we will
15 also if there's any other recommendations in terms of
16 even just amending the bill to make it accommodating
17 to the purpose, you're serving we're... we'll be happy
18 to see language changes as well. Can you just talk to
19 us about the new directive and implementation of it
20 and your feedback on, on... in terms of how
21 implementation is going in terms of the new directive
22 and the changes?

23 EMILY TURNER: So, the Department's
24 directive went into effect on December 10th and has
25 not yet been fully implemented. With that said much

1 COMMITTEE ON CRIMINAL JUSTICE

2 of this directive was formalizing many of the
3 structures and procedures that were already in
4 practice such as the merger of the office of
5 constituent services and the grievance staff. In
6 terms of implementation we know that the department
7 has trained all of the OCGS staff on the new
8 directive and they report that staff are familiar
9 with the procedures and time frames. The department
10 is still in the process of, of drafting and
11 finalizing the inmate handbook and other education
12 materials which will be important to educating people
13 in custody about the new policy and we know that they
14 are working on a poster to, to distribute across all
15 facilities that will explain the new process and
16 further clarify grievable versus non-grievable
17 matters. One of the major changes as we've discussed
18 in the new directive is the requirement that OCGS
19 staff provide acknowledgement of non-grievable
20 complaints, acknowledgments are not currently being
21 provided as required by the new policy and DOC
22 reports that there are... they are currently exploring
23 sort of the staffing and potential technology
24 solutions that could assist with implementing this
25 practice, that's, you know one, one benefit to the

1 COMMITTEE ON CRIMINAL JUSTICE

2 kiosk system could be better communication with
3 people in custody about the process and receiving a
4 more direct way to check on the status of complaints
5 so we... so, that is one area where we're concerned
6 that it doesn't appear that there is a plan yet for
7 how they will come into compliance with the new
8 requirements of the policy and we think it is
9 important that the department provide some
10 acknowledgment, I think that will go a long way to
11 reducing the number of calls to 3-1-1. If you...
12 imagine you call 3-1-1 and you don't get a response
13 or you don't have, have some documentation that the
14 department has in fact received that matter and is
15 moving forward it... forward with it or which
16 department that is moving forward with your
17 complaint, I could imagine you're going to be calling
18 over and over again to see until that issue is
19 resolved so receiving at least that initial
20 acknowledgement will go a long way to I think reduce...
21 overall reducing the number of complaints but we
22 don't yet have a plan or we're not aware of a plan
23 for how that will be implemented.

24 CHAIRPERSON POWERS: Okay, thank you and

25 I want to... just from your testimony you mentioned a

1 COMMITTEE ON CRIMINAL JUSTICE

2 confusing and underutilized appeal process, something
3 that we had... I had I guess discussed with the... with
4 the department in their testimony which was that... you
5 mentioned I think stats from FY 2017, I think the
6 stats we discussed were from last year, it's... it
7 struck me but I... but I certainly stand corrected and,
8 and willing to, to be educated otherwise that the,
9 the appeal process was being underutilized relative
10 to the number of complaints that were coming in. Can
11 you talk to us about, when you say confusing and
12 underutilized appeal process are there concerns about
13 why it's underutilized and what concerns you have
14 about it being confusing?

15 EMILY TURNER: So, one of the findings
16 from the... our last assessment that has actually since
17 been addressed is updating the, the actual forms so
18 that you can clearly indicate when you want to
19 appeal. Prior versions of the form there was no sort
20 of explicit way on the form to indicate that you were
21 seeking the appeal process and so that is one
22 improvement that has been made since our assessment
23 but I think that, that understanding those steps in
24 the process, I don't think that that has been... that
25 people in custody fully understand all of the steps

1 COMMITTEE ON CRIMINAL JUSTICE

2 that go into an appeal and in terms of initiating an
3 appeal that was a barrier when you get a response and
4 there's no clear way to... written way to acknowledge
5 that you want to move forward.

6 CHAIRPERSON POWERS: So, the forms then
7 today have, I think one form has yes, no and I want
8 to appeal which I, I'm... I don't know why the, the no
9 means but it says yes, no, I want to appeal that's a...
10 that's, that's since December of 2018?

11 EMILY TURNER: Yes...

12 MARTHA KING: Yes.

13 CHAIRPERSON POWERS: And... so, that would
14 be one way to lead one to understand how to... that
15 they can go through an appeal process through that.
16 Are there other barriers that you see to the appeals
17 process today beyond that in terms of initiating and
18 having somebody understand that there is an appeals
19 process and how to go through it?

20 MARTHA KING: So, I'm not sure that we
21 have enough information to answer that question yet.
22 I think the data... I'm just focusing on this issue for
23 a bit more, you know the, the data that... what is it
24 20 people filed 2,000 complaints suggests... the fact
25 that people are filing multiple and multiple

1 COMMITTEE ON CRIMINAL JUSTICE

2 complaints could also represent the fact that the
3 appeal process isn't being utilized. I think because
4 so few people have actually used it, we don't know
5 what the problem is in getting through the process.
6 As you know we've only received one appeal at the
7 highest level and we've never seen any others. The
8 data also suggests just a confusing pattern or a lack
9 of information on the department side about what's
10 actually happening with the appeals process so, you
11 know the fact that... and then what year was that,
12 Fiscal Year '17 or... so there was... at the first level
13 at the IGRC we... there was one appeal then at the next
14 level there were nine appeals and then at the final
15 level there were ten, I don't know how that was
16 possible, it... maybe that first step was being skipped
17 which also might suggest that there still is space to
18 even eliminate a, a step in the process as we have
19 suggested.

20 CHAIRPERSON POWERS: Or there was
21 misinformation related to... [cross-talk]

22 MARTHA KING: Yes, or that and, and or
23 that, yes.

24 CHAIRPERSON POWERS: I, I just want to
25 clarify that point is that the third part of the

1 COMMITTEE ON CRIMINAL JUSTICE

2 process had ten appeals, but the first appeal had
3 one, is that correct?

4 MARTHA KING: The first level.

5 EMILY TURNER: Yeah.

6 CHAIRPERSON POWERS: Right, meaning
7 somebody either... it either skipped the process or
8 there was not tracking of who went through...

9 NASHLA RIVAS SALAS: So, the first level
10 of appeal was the IGRC which Mr. Boyd addressed and
11 said that they weren't really happening, the hearings
12 weren't really happening because new information
13 wasn't coming out from these hearings, also I think
14 the hearings required grievance coordinators,
15 officers and inmate reps to be part of it and not,
16 not every facility had all the staff that was needed
17 since then the department has now hired additional
18 staff and as was mentioned, you know there is now an
19 officer at every facility where in the past there
20 wasn't and its an officer dedicated specifically for
21 a grievance where in the past it had been a programs
22 officer was being shared among all these different
23 offices and so I think that might have been reason
24 why that wasn't happening but...

1 COMMITTEE ON CRIMINAL JUSTICE

2 CHAIRPERSON POWERS: Okay and are there
3 other recommendations in terms of how to improve the
4 process understanding or taking advantage of the
5 appeals process?

6 EMILY TURNER: Well I think critically to
7 understanding all aspects of the new directive will
8 be the education materials that are distributed to
9 people in custody which have not yet gone, gone out
10 so once those are in place, I think that should make
11 a difference.

12 CHAIRPERSON POWERS: Got it, okay. Are
13 there... we, we talked a little bit earlier about
14 grievable versus non-grievable and which are going to
15 different categories so has the Board made any
16 recommendations in terms of categories that should be
17 grievable or non-grievable in terms of how to
18 categorize or sort it out?

19 NASHLA RIVAS SALAS: We haven't really
20 made recommendations on what should be grievable or
21 non-grievable but we have been working with the
22 Department to add additional subcategories to the... to
23 the grievable and non-grievable categories to have a
24 better understanding of what type of complaints so
25 that's something that comes up during our quarterly

1 COMMITTEE ON CRIMINAL JUSTICE

2 meetings that we have with them. So, for instance,
3 staff complaints were a very broad category and so
4 now the department has added additional subcategories
5 that will give a better idea of what type of staff
6 complaints are coming in.

7 CHAIRPERSON POWERS: So, that's been a...
8 that's been a... you've added... you've recommended and
9 that's been accepted by them and it's starting I
10 guess now... [cross-talk]

11 NASHLA RIVAS SALAS: Yes... [cross-talk]

12 CHAIRPERSON POWERS: ...in terms of
13 understanding more... okay..

14 NASHLA RIVAS SALAS: Correct.

15 CHAIRPERSON POWERS: The... in terms of
16 the... we... I raised an issue earlier with the BOC
17 issuing an opinion on the likes of one case last year
18 which was I think the... BOC came out with an opinion
19 and contrary opinion offer, can you give us any
20 information about that either particular instance or...
21 and I should say, the board's feeling about how they
22 participate in that process in terms of appeals,
23 whether they're... you... the board believes there should
24 be earlier intervention or opinions offered or other
25

1 COMMITTEE ON CRIMINAL JUSTICE

2 places where they could be participants in the
3 appeals process?

4 MARTHA KING: So, I think absolutely we'd
5 be happy to be involved earlier in the process
6 especially when the numbers look this way so if
7 there's only ten people or one person getting to the
8 final level, we would like to know what... earlier on
9 in the process what are the appealed issues. In that
10 case that you're referring to we urged... our opinion,
11 our recommendation to DOC was to reconsider their
12 decision on preventing this person from working in
13 the law library and it was not accepted. He... I mean I
14 can give you some more... I mean this, this person was
15 about 56 years old, we didn't believe any of his
16 characteristics suggested a high security risk and he
17 in fact, you know in the documents... there was not
18 only concern about security risks but concern about
19 his mental health status and so from our perspective
20 this was not only an issue of security but also
21 potentially an issue of discrimination so we rewrote
22 a detailed opinion and... but this is how the process
23 works and of course DOC is... can disagree with our
24 opinion but at least our opinion is there and this
25 person can use that opinion in whatever additional

1 COMMITTEE ON CRIMINAL JUSTICE

2 appeals or actions he takes. I should also note that
3 he had previously worked in a law library which was
4 another I thought important factor in the
5 consideration given to him in this case when he was
6 asking again, he was in a, a new facility so he... in a
7 different facility he was allowed to work in the law
8 library.

9 CHAIRPERSON POWERS: Thank you. Thank you
10 for sharing that. If the Board receives a complaint
11 directly how is that handled?

12 MARTHA KING: So, we receive... let's me
13 step back and say, so as I noted in the testimony
14 there's sort of three... our three main functions in
15 the system are to one, provide this additional
16 recommendation when people appeal to the highest
17 level then to also respond to appeals in these eight
18 categories of restrictions like visit restrictions,
19 it could be restrictions on your ability to practice
20 your religion or go to the law library and then we do
21 these large scale audits and reviews aimed at
22 understanding and improving the overall system. So,
23 that's the... our primary function. Throughout all of
24 that we also take complaints in five ways; from staff
25 and from people in custody, from advocates, from

1 COMMITTEE ON CRIMINAL JUSTICE

2 friends and family, we take them in person at our
3 office, in person in the jails, by letter, online,
4 phone and people also come testify at our hearings
5 and could file a... we could take a complaint in that
6 way. When we get those types, types of complaints
7 what we're looking at are really three issues. One,
8 does that complaint need to be referred out, so is
9 there a potential issue of corruption, do we need to
10 refer it to do DOI, is it an... is it an immediate
11 medical need and we need to get that to CHS. Two,
12 we're looking at whether or not the DOC and
13 correctional health complaint process has already
14 been used by the person and has that... has the DOC and
15 CHS complaint process failed and then do we need to
16 step in because of that. Yeah, so does that answer
17 your question?

18 CHAIRPERSON POWERS: In, in terms of if
19 you receive a... if somebody skips 3-1-1 and says to
20 you I have a grievance... a grievable offense and I
21 want to make a complaint you then send that to the
22 Department of Corrections or how does that... how does
23 that then go into the process which is established by
24 the DOC?

1 COMMITTEE ON CRIMINAL JUSTICE

2 MARTHA KING: Yes, we would send it to
3 OCGS.

4 CHAIRPERSON POWERS: Okay.

5 NASHLA RIVAS SALAS: Just to add that's
6 one of the things that we discuss is our quarterly
7 meetings when complaints come in. We, we discuss
8 issues that either come up from our staff in the
9 facilities or from grievance staff in the facilities
10 and then we go over what's the proper way to handle
11 those and how do we refer those back to the
12 department when we get them.

13 CHAIRPERSON POWERS: Okay, thank you and
14 just a follow up question from earlier actually,
15 when, when was BOC added in as a step in the process
16 in terms of issuing a... an opinion at the CR... or the
17 last appeal?

18 MARTHA KING: I'm looking at Laura...
19 because she knows the history best here and then
20 actually... our role actually used to be stronger,
21 could... maybe could we get back to you with a
22 specific... [cross-talk]

23 CHAIRPERSON POWERS: Sure... [cross-talk]

24

25

1 COMMITTEE ON CRIMINAL JUSTICE

2 MARTHA KING: ...time line because our role
3 has changed and as I understand it, it actually used
4 to be much more central to the process.

5 CHAIRPERSON POWERS: Okay, can you both
6 follow up with us with that... changes in that process
7 in terms of changes to BSU's role and also any
8 information in terms of how many appeals are... how
9 many times you have issued opinions on appeals and
10 potentially outcome?

11 MARTHA KING: In the... in our history,
12 yes.

13 CHAIRPERSON POWERS: Yes, that'd be
14 great. Alright, is the BOC... has, has the BOC
15 considered minimum standards related to, to
16 grievances?

17 MARTHA KING: Yes, I think that, you know
18 it has been recommended to us actually quite recently
19 by legal aid and I think it is something that the
20 board would like to review as an option, currently
21 we're pursuing a different line of role making and
22 that's focused on restrictive housing and our
23 capacity is all there right now.

24 CHAIRPERSON POWERS: Okay, so... but
25 potentially in the future you'd be looking at it and

1 COMMITTEE ON CRIMINAL JUSTICE

2 you have a... you have another assessment coming out in
3 June 2019 I think you're... that's what your testimony
4 says, are, are there other recommendations that
5 you've been considering in addition to the ones that
6 you've put out recently that you would be part... that
7 could potentially be part of the 2019 assessment or
8 is it... or does it follow... I mean it can follow the
9 assessment of course but I'm... are there other things
10 that you have suggested or recommended that have not
11 been yet adopted or you have not made a formal
12 recommendation on?

13 EMILY TURNER: So, we use the quarterly
14 meetings to make recommendations such as... that...
15 similar to what Nashla referenced of... you know when
16 we have smaller recommendations about how we work
17 together or about how things are being recorded, we
18 can make those recommendations in quarterly meetings
19 and the department has been very responsive in
20 working with us on those and for the assessment in
21 general we try an make data driven recommendations so
22 we'd want to take a complete look at the data for our
23 next round of recommendations in that assessment but
24 we've also with the directive process, I think we
25 went through at least three rounds of very detailed

1 COMMITTEE ON CRIMINAL JUSTICE

2 extensive feedback, not all of our feedback made it
3 into the new directive but, but a lot of it did and
4 so I think keeping the dialogue open between DOC and
5 OCGS has been helpful in, in making a lot of
6 improvements.

7 EMILY TURNER: And I will also just add
8 on that, you know what we try to do is as issues are
9 identified then modify our approach with the next
10 assessment so, you know one of the issues... obviously...
11 or two of the issues that we should look at and
12 sample for in the upcoming audit is under... better
13 understanding the lack of use of the appeal process,
14 you know that could be one focus where we try to dive
15 deeper and better understand that and then also an
16 issue that we tried to look at more deeply in the
17 last report but I still think we need to go further
18 is the issue of the non-grievable complaints and
19 really focusing in and auditing on those. So, another
20 words past recommendations can help shape... issues of
21 concern can help shape what the next report looks
22 like.

23 CHAIRPERSON POWERS: I want to thank,
24 thank you for that answer, I, I wanted to just follow
25 up, you, you have a chart that you submitted with

1 COMMITTEE ON CRIMINAL JUSTICE

2 your testimony, resolutions and appeals, grievance
3 resolution stage, stages with a party chart that is
4 almost... I'll hold it up, it's almost entirely blue
5 that says informally resolved, 95 percent of
6 complaints were closed after the initial OCGS
7 response, can you explain what you mean... what that
8 means and what... in this case I think we had a
9 conversation about informally versus formally but...
10 [cross-talk]

11 EMILY TURNER: Uh-huh... [cross-talk]

12 CHAIRPERSON POWERS: ...what does that mean
13 to be informally resolved?

14 EMILY TURNER: So, that means that an
15 individual filled out a grievance form and they
16 received a response from a grievance coordinator and
17 that was the end of the matter so, it... there was no
18 further appeal, there is no... [cross-talk]

19 NASHLA RIVAS SALAS: No... yeah, informally
20 used to mean the response directly from the grievance
21 coordinator without a hearing, formal response would
22 be considered if a hearing happened at the previous
23 ITRC level but no longer exists.

24 CHAIRPERSON POWERS: Can you... can you
25 appeal an informally resolved complaint?

1 COMMITTEE ON CRIMINAL JUSTICE

2 NASHLA RIVAS SALAS: Yeah, you would
3 appeal... so, the first interaction, the initial
4 response would be the informal response and if you
5 disagreed with that you would appeal to the next
6 level. In the old directive, in the old system the
7 next level would be the IGRC, in this new directive
8 the next level is appeal to the warden.

9 CHAIRPERSON POWERS: Okay...

10 EMILY TURNER: So, now... yeah, now all
11 responses even just the initial response they receive
12 from a grievance coordinator, that initial form is
13 considered a formal response under the new directive.

14 CHAIRPERSON POWERS: Okay. We... I think...
15 well first of all I want to thank you for your report
16 and also your recommendations as well, I think that
17 some of the comments and questions earlier were, I
18 think shared amongst... does... how the appeal process
19 work, making sure there's transparency, I'm sort of
20 thankful to the DOC for adopting some of those and
21 also for staying here and hearing testimony as well.
22 I think as we look at the bills here in the City
23 Council, we certainly will work with both the DOC and
24 the BOC around questions, comments or concerns that
25 you have related to that but... so I'm, I'm going to

1 COMMITTEE ON CRIMINAL JUSTICE

2 stop my questions right there, I think Council Member
3 Holden has a question.

4 COUNCIL MEMBER HOLDEN: Yeah, I'm sorry
5 I, I missed a good deal of the... of your testimony
6 because I was over at another committee meeting where
7 I had three bills so... being heard. So, I just have... I
8 missed... maybe I missed it in the previous testimony
9 but with... when you audited the 262 complaints 41
10 percent of these were not time stamped why would that
11 happen, is there not enough machine... time stamp
12 machines or what's going on?

13 MARTHA KING: I think it could be because
14 either a machine wasn't working or as Mr. Boyd
15 mentioned something as simple as the machine didn't
16 have ink...

17 COUNCIL MEMBER HOLDEN: So, the machine
18 didn't have ink... [cross-talk]

19 MARTHA KING: But I can't... [cross-talk]

20 COUNCIL MEMBER HOLDEN: ...but couldn't
21 somebody take like, you know a signature and just
22 stamp it with, you know some kind of rubber stamp
23 that would actually... somebody can handwrite it in
24 there, wouldn't that be like another step if the
25

1 COMMITTEE ON CRIMINAL JUSTICE

2 machine didn't have ink, they could actually fill it
3 out?

4 MARTHA KING: Yeah.

5 COUNCIL MEMBER HOLDEN: You've seen those
6 rubber stamps, I mean it's old technology but you've
7 seen them where you can actually make one up for
8 pennies and actually fill it in because I, I, I just
9 find that... 41 percent that's alarming and that needs
10 to be addressed with some solution other than well
11 the machine doesn't have enough ink...

12 MARTHA KING: Right, I, I agree
13 absolutely there should have been a... [cross-talk]

14 COUNCIL MEMBER HOLDEN: Yeah... [cross-
15 talk]

16 MARTHA KING: ...a secondary system here
17 if... [cross-talk]

18 COUNCIL MEMBER HOLDEN: Yeah... [cross-
19 talk]

20 MARTHA KING: ...the machines aren't
21 working or there's not ink. Right now, since there...
22 since DOC is using an electronic system this
23 shouldn't be an issue because it'll be... [cross-talk]

24 NASHLA RIVAS SALAS: It'll be... [cross-
25 talk]

1 COMMITTEE ON CRIMINAL JUSTICE

2 MARTHA KING: ...obvious when someone's
3 responding in the electronic system, they won't need
4 to time stamp. Is that... am, am I saying something
5 true?

6 NASHLA RIVAS SALAS: Well unless the...
7 [cross-talk]

8 MARTHA KING: No, they still... [cross-
9 talk]

10 COUNCIL MEMBER HOLDEN: Could you get the
11 mic closer I can't...

12 NASHLA RIVAS SALAS: Sorry, they still...
13 they still have to time stamp, they're still required
14 to time stamp... [cross-talk]

15 EMILY TURNER: If they receive it on
16 paper... [cross-talk]

17 NASHLA RIVAS SALAS: ...if they receive a
18 paper form.

19 COUNCIL MEMBER HOLDEN: So, they have to
20 time stamp so can we come up with a rubber stamp
21 solution just for, you know the interim, I mean just...
22 is that possible because I don't want to... we don't
23 want to see another 40 percent...

24 NASHLA RIVAS SALAS: Right...

25

1 COMMITTEE ON CRIMINAL JUSTICE

2 COUNCIL MEMBER HOLDEN: ...just... because
3 then its impossible to track, then it could have been
4 any time... [cross-talk]

5 NASHLA RIVAS SALAS: Right... [cross-talk]

6 COUNCIL MEMBER HOLDEN: ...and then we, we
7 can't recognize the abuses.

8 NASHLA RIVAS SALAS: Right.

9 COUNCIL MEMBER HOLDEN: Okay, thank you,
10 alright.

11 CHAIRPERSON POWERS: You got to go out
12 and buy him a stamp my friends. Thank you for that.
13 I'm going to end my questions there because I know we
14 are a bit limited on time here in the room today.
15 Thank you to BOC for your testimony and we'll follow
16 up with you on, on the bills as well, thank you.
17 Thank you. Our next panel we have two folks; we have
18 Dale Wilker from Legal Aid Society and we have Brooke
19 Menschel from Brooklyn Defender Services.

20 [off mic dialogue]

21 CHAIRPERSON POWERS: Alright, thank you,
22 thanks for being here, we will... we're going to put
23 you on the clock I think just momentarily, we'll give
24 you five minutes, more than the, the normal three and
25 then we'll obviously have questions and we'll, we'll

1 COMMITTEE ON CRIMINAL JUSTICE

2 ask follow ups as well so we'll just wait for our...
3 for our folks to be ready to do the clock.

4 DALE WILKERS: Thank you Mr. Chairman.

5 CHAIRPERSON POWERS: Great and we can
6 start in any order, I usually go left to right and
7 just if you can share your name and your affiliation
8 and then you can read your testimony.

9 DALE WILKERS: My name is Dale Wilkers,
10 I'm a Staff Attorney with the Legal Aid Society's
11 Prisoners' Rights Project, I'm joined here by Kayla
12 Simpson also a Staff Attorney at Prisoners' Rights.

13 BROOKE MENSCHEL: My name is Brooke
14 Menschel, I'm the Civil Rights Counsel at Brooklyn
15 Defender Services.

16 CHAIRPERSON POWERS: Great, thank you.

17 DALE WILKERS: Chairman Powers, members
18 of the Committee and staff we submit this testimony
19 on behalf of the legal Aid Society and thank Chairman
20 Powers and members of the Committee on Criminal
21 Justice for the opportunity to present our, our views
22 on this very important issue of reforms of the
23 grievance system of the New York City Department of
24 Correction. We support the three bills under
25 consideration today seeking to improve the jail

1 COMMITTEE ON CRIMINAL JUSTICE

2 grievance system, more broadly we urge the council to
3 incorporate the following principles for the DOC
4 grievance process in any legislation that it enacts.

5 In order for a grievance to use and quickly resolve
6 jail problems the grievance system must be explained
7 in plain and simple language. DOC issued a new
8 grievance directive last month, while it makes some
9 improvements in other ways its worse. It certainly
10 fails the basic test of being easy to read and in
11 this case a member... member Ampry-Samuel is not alone.

12 Recently five PRP attorneys met and tried to
13 understand the new directive, we're still unsure as
14 to how it works or how to advise our clients. The
15 grievance process secondly must be accessible. We
16 support Member Ayala's bill to install electronic
17 kiosks, the locations of these kiosks should be
18 easily accessible by putting them in every jail
19 housing area and the jail law libraries. Third, the
20 grievance process must be completed quickly. The new
21 process can take up to 100 calendar days to complete,
22 that is longer than ever before. There are many ways
23 to get to a simple complete process such as
24 shortening response times and eliminating multiple
25 steps of appeal. We think that the best solution is

1 COMMITTEE ON CRIMINAL JUSTICE

2 require the grievance system that it takes no more
3 than a month to complete and has far fewer steps in
4 the process. We recommend only two steps; first the
5 jail grievance filing and second the appeal to
6 central office headquarters. This is exactly how the
7 jail medical grievances have worked for years, two
8 steps. Third, the... or the grievance process must be
9 free from retaliation for using the grievance system.
10 This protection is vitally important. We support
11 legislation which addresses this issue, but the new
12 directive has a provision about frivolous use that
13 could easily deter or be used to punish someone for
14 filing a grievance. Any bill should expressly
15 prohibit the Department from actually retaliating
16 against or punishing someone for filing a grievance.
17 Next the grievance process must accept third party
18 complaints. Complaints in any form to DOC from
19 attorneys, family or others on behalf of the
20 incarcerated person should be treated the same by the
21 grievance process as a grievance filed by a person in
22 jail. Thank, thank you for the additional time. The,
23 the Department's directive is not clear what happens
24 to third party complaints from the city's 3-1-1
25 hotline or by email or letters or ordinary phone

1 COMMITTEE ON CRIMINAL JUSTICE

2 calls from attorneys, family members or others. We
3 support Chairman Power's bill to clarify the legal
4 effect of 3-1-1 calls and we have submitted some
5 written suggestions and amendments to strengthen and
6 further that goal. A word about medical grievances
7 which is the source of confusion to many people in
8 jail. The medical grievance process is and has always
9 been separate and apart from the DOC grievance
10 process because health care is provided by the New
11 York City Health and Hospitals Corporation and the
12 Health Department therefore, DOC properly rejects any
13 grievances filed with the Department about medical
14 treatment however, the Council should mandate that
15 DOC forward all complaints about jail medical and
16 mental health services directly to the proper agency
17 which is Correctional Health Services at HAC and that
18 these forwarded complaints be treated the same by CHS
19 under its existing procedures as any other complaint
20 about medical treatment. Thank you for the
21 Committee's attention to this long-neglected topic, I
22 and Miss Simpson are happy to answer any questions
23 which the Committee may have.

24 CHAIRPERSON POWERS: Thank you, I... we'll
25 move on and then I'll ask question I just wanted to

1 COMMITTEE ON CRIMINAL JUSTICE

2 note, I think you in your testimony mentioned
3 attaching amendments to those bills, I don't think we
4 have that as part of your testimony... oh but, but I
5 think... oh, I stand... I stand corrected, thank you, go
6 ahead.

7 BROOKE MENSCHER: Thank you Chairman
8 Powers and other members of the Council for hearing
9 our testimony today and for considering this very
10 important issue. As the Council is aware, the ability
11 to access and submit grievances is critical to
12 preserving the rights of our clients and all
13 incarcerated individuals and also to resolving issues
14 that they encounter in the city's jails. Nonetheless,
15 the DOC system... the DOC grievance system we believe
16 is highly flawed and despite recent amendments and
17 revisions to the system it remains incredibly
18 problematic. The reality that our clients face in the
19 city jails is far different than the reality that we
20 heard described on the first panel. What they
21 encounter is an archaic confusing system that is very
22 difficult if not impossible to navigate. The concerns
23 that we have are multifaceted. First, the process
24 itself as we've heard repeatedly today is very
25 confusing. The 28-page directive that was issued in

1 COMMITTEE ON CRIMINAL JUSTICE

2 December is difficult to understand for our clients
3 and as we've heard just now from Legal Aid and
4 earlier today from Council Woman Ayala is very
5 difficult to understand for the advocates who seek to
6 assist our clients as well. Further, information is
7 not readily available to people who do try to access
8 the system. We heard a bit of discussion about the
9 forms not being attached to the online copy of the
10 directive which we think is highly problematic and
11 data on appeals that has been discussed quiet a bit
12 earlier today demonstrates how hard it is for our
13 clients to understand what it is that they should do
14 even if they get past the initial stage. Even if
15 people do figure out how to access the system the
16 actual process does not match what is laid out in the
17 directive. The forms themselves are largely
18 inaccessible, officers... we hear reports that officers
19 refuse to provide the forms, that the OCGS is not in
20 particular housing areas, that our clients have never
21 encountered somebody who has... who works for the
22 grievance office. We also hear that forms are not
23 available in housing units or other areas that they
24 are supposed to be under the directive. These
25 concerns are even more problematic for people who are

1 COMMITTEE ON CRIMINAL JUSTICE

2 housed in specialty units where often the only access
3 to, to submit a grievance would be through OCGS and
4 we hear that they do not come around to those units
5 as regularly as they're mandated to under the
6 directive. Third, even if a person does manage to
7 submit a grievance, we hear very... we hear
8 consistently from our clients that they think doing
9 so may be pointless. They rarely if ever receive an
10 acknowledgement and a much, much less any type
11 substantive response that will actually address or
12 resolve their issue. The new policy, even though
13 these concerns have been existent for quite a while
14 and we and Legal Aid and others have made the
15 Department aware of them, the new policy does not
16 resolve most of these issues. Our clients continue to
17 face the same hurdles to understanding, accessing,
18 submitting and resolving complaints. Just last week
19 one client told us that since October he has
20 submitted 35 grievances and he's not received an
21 acknowledgment or resolution to even a single one. We
22 can and must do better. We support the Council's
23 effort to increase transparency and accountability
24 and to embrace the appropriate use of technology
25 including by allowing traffic... tracking and accessing

1 COMMITTEE ON CRIMINAL JUSTICE

2 information about grievances. We have a few specific
3 suggestions to the bills that are included in our... in
4 our written testimony. Thank you for your attention
5 to this important issue, we applaud the Council's
6 efforts and we echo the concerns made by Legal Aid.
7 Thank you.

8 CHAIRPERSON POWERS: Thank you and thanks
9 for both testimony and we have, I think your
10 recommendations inside your testimony as well. The
11 first question I wanted to ask was just to the point
12 you had made about one client who had 35... had made 35
13 complaints had no received... had received... had not
14 received any follow up to that, can you give us any,
15 without violating any sort of personal information
16 here but can you give us a sense of what types of
17 grievances this... that, that individual was filing
18 for?

19 BROOKE MENSCHER: So, I believe that
20 there were a few that related to housing conditions
21 and perhaps one related to medical, but I'd have to
22 check, I could get... I could follow up after.

23 CHAIRPERSON POWERS: Okay, thank you and
24 to the point around, you know I think our, our
25 clients asking whether they should bother submitting

1 COMMITTEE ON CRIMINAL JUSTICE

2 grievances since they never hear back and request
3 help from our office to follow up on their behalf,
4 what is the type of follow up that you do on behalf
5 of somebody who files a grievance, doesn't hear or
6 doesn't feel like they've gotten the appropriate
7 response... [cross-talk]

8 BROOKE MENSCHER: Sure... [cross-talk]

9 CHAIRPERSON POWERS: ...what is that... what
10 does that process look like?

11 BROOKE MENSCHER: Sure, so it depends a
12 little bit on the type of issue, our social workers
13 and our jail services staff are the initial first,
14 first defense and first advocates so we will often go
15 directly to the DOC unit that we believe would be
16 responsible for resolving the issue whether it be
17 custody management or health and hospitals if it's...
18 if it's medical, sometimes raising issues with, with
19 the general counsel's office and on occasion to the
20 grievance office but almost across the board no
21 matter what efforts we make within DOC just frankly
22 we usually are not able to resolve an issue until we
23 bring in the Board of Correction.

24 CHAIRPERSON POWERS: Okay and on
25 restrictive housing units you mentioned that there's

1 COMMITTEE ON CRIMINAL JUSTICE

2 no viable alternative to submitting a grievance from
3 restrictive housing, are... is there a suggestion in
4 terms of another way for an individual to shoot
5 through... [cross-talk]

6 BROOKE MENSCHER: Sure... [cross-talk]

7 CHAIRPERSON POWERS: ...housing to file a
8 grievance?

9 BROOKE MENSCHER: So, I'm... I think that
10 we may want to add something to what I'm about to say
11 but initially under the directive the, the OCGS is
12 mandated to come around with a certain frequency and
13 I think that... we just don't believe that that's
14 happening as its mandated and actually having those
15 visits regularly and going in and going either door
16 to door or making their presence known in a way that
17 people don't fear retaliation if they actually say
18 oh, hi I want to talk to you that would be an
19 important initial step. We've... we hear that... from a
20 few people we've heard things like oh, they may come
21 in, but somebody just stands there and says does
22 anybody need to talk to us and I can't be the one guy
23 yelling out of my... out of my unit saying hey, yes, I
24 do. So, even if it was to say make sure people don't
25 fear retaliation and that they know there is an

1 COMMITTEE ON CRIMINAL JUSTICE

2 opportunity to have those conversations
3 confidentially without identifying themselves and
4 putting a target on their back that would be a good
5 first step.

6 CHAIRPERSON POWERS: Alright, thanks. I
7 have a couple follow ups, but I wanted to ask... let
8 Council Member Holden ask...

9 COUNCIL MEMBER HOLDEN: Yes, thank you
10 for your testimony Brooke. That one client that you
11 said 35 complaints, never got a response, over what
12 time period was that?

13 BROOKE MENSCHER: That's what he reported
14 to us and what we understand from his situation and
15 it was since October until, you know a few weeks... two
16 weeks ago maybe.

17 COUNCIL MEMBER HOLDEN: So, that's,
18 that's quite serious that... and, and you're answer
19 from the Board was?

20 BROOKE MENSCHER: We haven't yet followed
21 up... [cross-talk]

22 COUNCIL MEMBER HOLDEN: You haven't...
23 [cross-talk]

24 BROOKE MENSCHER: ...about the board...
25 [cross-talk]

1 COMMITTEE ON CRIMINAL JUSTICE

2 COUNCIL MEMBER HOLDEN: Okay... [cross-
3 talk]

4 BROOKE MENSCHER: ...on that particular
5 client.

6 COUNCIL MEMBER HOLDEN: Now we under... we
7 understand that this process is complicated, the
8 grievance process, are there any other city or states
9 that do it right that we could look at and maybe
10 study their process and say, hey pick up on that one
11 it's a little bit more direct and understandable?

12 DALE WILKERS: Well the New York City
13 Department of Health does it right, they have a
14 twostep grievance process, it takes about three to
15 four weeks to complete.

16 COUNCIL MEMBER HOLDEN: And that you
17 think would definitely work in this, or actually it
18 was worth a try in, in this system?

19 DALE WILKERS: Certainly because an
20 extended grievance process particularly when inmates
21 are... don't understand it or are incapable of
22 understanding it and remember there are a sizable
23 percentage of inmates who have serious mental
24 illnesses, 40 percent or more, a very simple
25 grievance process is, is really important because you

1 COMMITTEE ON CRIMINAL JUSTICE

2 can get stuck in the appeals and from a lawyer's
3 perspective what makes this critically important is
4 the application of the federal law which says if you
5 don't complete a grievable issue in the grievance
6 process you cannot get justice in federal court for,
7 for a federal civil rights violation.

8 COUNCIL MEMBER HOLDEN: Uh-huh. So, you
9 think that by the, the time period so long that many
10 of the same inmates are putting in the same
11 complaints and that's what we've heard, some of that,
12 that if we shortened it, we could eliminate many
13 complaints possibly, is that plausible?

14 BROOKE MENSCHER: So... I mean I would
15 agree with that I also think that there are a number
16 of just sort of fundamental problems like we've heard
17 that people are regularly using the grievance process
18 submitting things over and over again often about the
19 same issue but if they're not receiving an
20 acknowledgement then... or a receipt or a resolution to
21 their issue that's how they are still attempting to
22 actually go through the process but then we hear on
23 the flip side and there are some language in the
24 directive I believe about the later submissions won't
25 necessarily be counted as grievances. So, people are

1 COMMITTEE ON CRIMINAL JUSTICE

2 a little bit just sort of between a rock and a hard
3 place trying to figure out if they don't get a
4 resolution what's next, they can call their lawyers
5 especially if they're represented by our offices but
6 there's not a very clear okay, you submitted it
7 automatically, it... you can... a second grievance on the
8 same issue is considered an appeal and if you don't
9 receive a response then you've exhausted for purposes
10 of federal law or generally for purposes of a
11 grievance being closed in this... for data counting
12 purposes. I think on the issue of whether there are
13 other models off the top of my head I, I can't think
14 of which one it is but there are a number of cities
15 and we'd be happy to follow up that have two page
16 directives that say... it's a twostep process, this is
17 the form, if you can't access the form you can submit
18 it on a piece of paper that includes your name, your
19 identity, identifying number and the date and
20 information and then you will get a response in ten
21 days if not... if you don't get a response you should
22 consider that your request was denied and then you
23 can submit an appeal in the same way.

24

25

1 COMMITTEE ON CRIMINAL JUSTICE

2 COUNCIL MEMBER HOLDEN: Yeah, I... you know
3 I think that would be a good idea if you can get back
4 to us... [cross-talk]

5 BROOKE MENSCHER: Sure... [cross-talk]

6 COUNCIL MEMBER HOLDEN: ...on that because
7 we'd like to study some success stories rather... you
8 know rather than just hypothetical let's try... I think
9 it does have... I think we all agree here, at least I
10 do and I, I can speak for others here that have
11 already said it that they... it has to be simplified,
12 this is much too... you know I mean look at this, this
13 is complicated and this needs to be simplified and
14 communications are important to, to everyone here so,
15 yeah, if you can get back on some of the other, you
16 know state or local facilities that are doing it
17 right we'd, we'd appreciate that, thank you.

18 CHAIRPERSON POWERS: Thank you, I just
19 have a few more questions. One is on just generally
20 on the categories, I've asked this to everybody, but
21 do you feel like the categories make sense in terms
22 of what's grievable and non-grievable?

23 DALE WILKERS: Well we support excluding
24 certain categories from the grievance process because
25 they are essential civil rights issues that, that are

1 COMMITTEE ON CRIMINAL JUSTICE

2 probably not best resolved in the grievance process
3 itself, I mean uses of force and assaults and things
4 like that do... well especially uses of force trigger
5 their own investigatory process and that plays out
6 in... that's been the subject of numerous federal court
7 oversight. What strikes us as a little unclear on
8 the... on the grievable side is that there's a category
9 called other, which is I suppose a catch basin but if
10 you put in grievable as other then you sort of open
11 the, the door to some judge later on saying well we
12 think that should be grievable because it said other
13 and that... any sort of a new shy could be... could be
14 thrown into this exhaustion of administrative
15 remedies hopper the federal law imposes. So, I think
16 the grievable categories should be well defined and
17 exclusive and the non-grievable process... categories
18 we don't have particular objections to obviously if
19 they're outside the grievance process that makes it
20 simpler, but they should also be well defined.

21 There's an issue called housing and I didn't know
22 until today that that meant transfers from one
23 housing area to another as opposed to something about
24 the housing area or getting into housing from a bull
25 pen that you've been kept in for days or weeks at a

1 COMMITTEE ON CRIMINAL JUSTICE

2 time, that's unclear and that, that should be
3 specifically spelled out.

4 CHAIRPERSON POWERS: Okay. Thank you and
5 the... I think you had made a point about third parties
6 relating to OCGS complaints filed by third parties;
7 attorneys, advocates, public officials, BOC, family
8 members as a trigger for the grievance system, you
9 think that's not the case today, a family member
10 calls or... [cross-talk]

11 DALE WILKERS: It's unclear... it's, it's
12 unclear, the, the previous directive going back to
13 the mid-2000s clearly excluded third party complaints
14 where they had been accepted in some ways before
15 although it wasn't quite as important back then but
16 yes, that's, that's another way to make the grievance
17 process work. If, if an... if a representative of the
18 inmate can present the grievance to the department
19 and shepherd the appeal process through and the
20 department would accept that as if the inmate
21 themselves had, had filed the grievance just as
22 lawyers do in court all the time on behalf of a
23 client that would make, make it more certain that the
24 grievance process could be completed.

1 COMMITTEE ON CRIMINAL JUSTICE

2 CHAIRPERSON POWERS: Got it and I know
3 the, the... we'll, we'll follow up with the Department
4 to find out what that... what's, what's allowable here
5 and also, you know I think they had mentioned sort of
6 a complaint earlier about putting the forms online
7 related to the way that could be used and I would
8 imagine that concern gets reflected here as well so,
9 we will follow up with them as well on that so I
10 thank you... [cross-talk]

11 DALE WILKERS: May, may I just say one
12 thing?

13 CHAIRPERSON POWERS: Sure... [cross-talk]

14 DALE WILKERS: ...about that, previous
15 directives have always put the forms online, the
16 department can simply put a water mark on the form
17 that says sample or you know some other thing that
18 says that it's not to be used for filing a grievance
19 and, and we provided you an example of that with our...
20 with our testimony.

21 CHAIRPERSON POWERS: Right, sample, right
22 here...

23 DALE WILKERS: Sample.

24 CHAIRPERSON POWERS: I agree, I think I
25 had made a similar comment earlier... [cross-talk]

1 COMMITTEE ON CRIMINAL JUSTICE

2 DALE WILKERS: And we... and we didn't make
3 that, that particular document, that was provided to
4 us by the department.

5 CHAIRPERSON POWERS: Got it, thank you.
6 Thank you for sharing that. On retaliation have you
7 heard about retaliation for anybody who's making a
8 complaint?

9 DALE WILKERS: We hear about it all the
10 time on any number of issues not just grievances but
11 people are threatened with grievous physical harm by
12 officers if they complain about the officers and then
13 many times we hear and we heard this this week this
14 actually occurs as the inmate predicted, some inmates
15 we know have been killed by officers, the most
16 significant one was a few years ago when an inmate at
17 the infirmary was beaten to death so that is a real
18 problem. Ordinary retaliation, discouragement from
19 filing grievances I think that plays a significant
20 role, we know also that in the inmate culture there's
21 the old expression that I can remember back from the
22 80s of snitches get stitches and with the activity of
23 gangs in the... in the jail that has been reported by
24 the Department of Investigation and the Inspector
25 General that that can be a real problem also because

1 COMMITTEE ON CRIMINAL JUSTICE

2 as the Inspector General reported a significant
3 portion of the Department's officer corp. are gang
4 members themselves.

5 BROOKE MENSCHER: May I just add to that?

6 In addition to people who are directly threatened
7 with retaliation the overall chilling effect across
8 the board for our clients who hear that someone else
9 was threatened with retaliation is pretty extreme so
10 even if they're not hearing it directly it does
11 prevent people from reaching out and trying to file
12 grievances.

13 CHAIRPERSON POWERS: Okay, thank you. I'm

14 going to just ask one or two more questions here. One
15 is you, you had a recommendation, this is from the
16 Legal Aid Society, CORC decisions should be
17 automatically forwarded to BOC for its review
18 regarding conformity with city rules, can you explain
19 that recommendation?

20 DALE WILKERS: I'm sorry, I didn't hear

21 the first part of it.

22 CHAIRPERSON POWERS: It was a... just a...

23 there's a recommendation here that CR... the CORC
24 decision should be automatically forwarded to BOC for

1 COMMITTEE ON CRIMINAL JUSTICE

2 its review regarding conformity with city rules, I
3 just wanted to better understand that recommendation.

4 DALE WILKERS: Well it, it, it basically
5 is... speaks to the right hand telling the left hand
6 what's going on, if, if the... if the central office
7 review committee makes a particular decision on a
8 grievance and the grievance has a particularly... a
9 particular policy implication that, that shows that
10 for instance the, the rules weren't followed, the
11 person wasn't allowed to access mandated services
12 that obviously has to implicate DOC staff for not
13 following the rules that, that, that generated the
14 grievance in the first place and you know an
15 effective department also works on, on the other
16 side, the inmates can grieve and have their problems
17 resolved but if it shows that there's a problem with
18 staff not following department procedures or rules or
19 breaking the law then the department's other function
20 is to discipline that staff which is why on the
21 retaliation end we think the Council should enact as
22 part of the legislation against retaliation specific
23 either administrative penalties that must be imposed
24 for retaliation or criminal penalties.

1 COMMITTEE ON CRIMINAL JUSTICE

2 CHAIRPERSON POWERS: Okay, thank you.

3 Thank you for both of your testimony here today. We
4 have to... we have your recommendations both in writing
5 and, and from the process as well so thank you for
6 your advocacy and, and your testimony as well and
7 we'll certainly follow up on your recommendations.

8 DALE WILKERS: Thank you Chairman Powers.

9 CHAIRPERSON POWERS: Thank you. Thanks so
10 much. That is the conclusion to our hearing today. I
11 want to thank DOC for being here to testify and
12 staying, BOC as well, and thank you to everybody who
13 came here today to share their thoughts on the
14 grievance process. We will certainly look forward to
15 the BOC's I think June 2019 assessment also to
16 continue to follow up with all those who had
17 recommendations in terms of language for today's
18 hearing. I want to thank Council Member Holden for,
19 for coming back and staying, thanks so much. This is
20 concluded.

21 [gavel]

22

23

24

25

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date

February 27, 2019