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**Restrictive Housing Oversight Committee
Meeting Minutes**

Date: January 23, 2020
Time: 11:00AM-1:00PM
Place: McCormack Building
Ashburton Café Function Room
1 Ashburton Place
Boston, MA

Chairman Peck called the meeting to order at 11:08am. He stated that the recent events that have occurred at Souza-Baranowski have led to a criminal investigation and that this meeting is not the time or place to mention that matter as the investigation is ongoing.

Review/Vote on December Meeting Minutes

On the second page, first paragraph, she is reading that Ten Block they are out 21 hours a day but that is for the LPU which should be clarified. Bonnie said the notes are very detailed but that the second sentence on page 4 at the beginning of the first paragraph. Bonnie said the prisoners were very clear about the lack of opportunities in the prison and not restrictive housing. There was a motion to adopt the minutes by Bob and seconded by Chris Fallon.

Jamelia Morgan Presentation

Jamelia began by saying much of her research focuses on the law and the protections law provides to those with disabilities in prison. She said that she looks at using treatment as opposed to punishment. She stated that disability is a status we can use to better understand treatment in prisons. She said she uses psychiatric disability to refer to mental illness or SMI to de-stigmatize disabilities. She said most incarcerated people in America have a disability. 26% reported having a physical disability and that some may not feel comfortable reporting that they have a disability. She said most of the focus with restrictive housing is on those with mental illness or psychiatric disability. She stated that there are also developmental or intellectual disabilities which have a 3-4% reporting rate. She mentioned that chronic conditions are also considered disabilities. She is going to focus on how the institution can respond to these needs as well. She said they are dealing disproportionately dealing with those that have trauma in their past. She said incarcerated people with psychiatric disabilities are twice as likely to be in restrictive housing as those without. The social science literature confirms that solitary confinement can lead to the degradation of mental health which causes further disabilities which can lead to more discipline

and more placement in RH. She worked in systems where the RH population has gone down and the incidents of violence have gone up. She said when prisons reduce the numbers of individuals in RH, the use of force incidents go up because they are left with the most disruptive inmates in RH. When looking at the issue of people incarcerated with disabilities, she mentioned access to mental health and medical as being an issue. She said if you have to make reasonable accommodations for those with disabilities and that this failure to accommodate is key. The ADA was enacted 30 years ago and had been a bipartisan effort because these people had been excluded and put in state-run hospital with photo essays like Christmas in Purgatory show that. In 1996, the Supreme Court said the ADA applies to prisons, jails, and the vendors in those facilities. She said there is a discrimination prohibition and an integration mandate. The public entity has to make reasonable modifications to processes as an accommodation unless there are safety or budgetary restrictions. The determination for safety and direct threat exception needs to be confirmed by medical staff and be an individualized assessment. Blanket policies may not work because it isn't based on an individual assessment. She went through affirmative obligations and noted that we have to accommodate those with disabilities in our prisons. She spoke about who is disabled according to the ADA. Disabilities can be very broad as identified under the ADA. She said the DOJ states housing must be in the most integrated setting. The integration mandate stated any detainee with a disability cannot place anyone in a higher security classification because they have a disability. What accessibility could mean is wheelchair access can access and move around the space. For those receiving medical treatment, in medical isolation units, those with disabilities cannot be housed there unless they are receiving ongoing medical care. She said the regulations prohibit any access to visitation. She has spoken to ADA Coordinators and they say this can happen at one facility but not at every facility. The integration mandate has been used to challenge restrictive housing. She mentioned not using restrictive housing as not a manifestation of disabilities since that violates the law. She said one particular case where the regulations were used was in Pennsylvania where the DOJ published a letter of findings and what happened was the RH units were used to manage those with behavioral problems but that violated ADA without responding to the policies and without providing pathways out that take the disabilities into consideration. Another case in California involved an inaccessible cell in RH where disabled folks were put in there because they could not be accommodated anywhere else. Being in RH as a custody-style placement due to safety risks are also prohibited by the ADA. When thinking of conditions in RH, there can be many opportunities for legal action. The failure to allow for that individual assessment can account for a violation of ADA. She discussed that prisons are required to take proactive measures laid out in Title II to ensure open communication, assisted video phones, etc. Communication disabilities can be addressed when looking at the plant and at the conditions of confinement within the prison. She wanted the group to think about individuals who have comprehension issues and wind up in restrictive housing due to their not comprehending what is going on and lashing out. She spoke about the limits of this and mentioned that budgetary constraints and staff constraints can be a huge issue. She said there needs to be objective evidence that there is a safety or security risk is required to deny an accommodation. When speaking about best practices, she noted it has been very encouraging to see the mandate for this group and make sure that the individuals in RH are not being unnecessarily placed there. She said relying on the ADA coordinators has been very important and her disability organizations that have done great work. Brandy H. asked Jamelia if she had any recommendations or thoughts on how they should handle the legislative aspect of the report. She said they should point to other states and what they have

done. She said looking at other models would be helpful. When looking at the literature, she believes restrictive housing is harmful and exacerbates disabilities. Meaningful mental health staff interactions can help the individual as well. Chris F. asked about how to do with someone who does not have an obvious disability. He said oppositional defiance disorder folks that are required to stand for count could refuse on these grounds but a correctional officer would write a d-report for this inmate. He noted that is where the punishment often varies and there is sometimes the appearance of disparate treatment. He asked how correctional staff should navigate that. Jamelia said the appearance of fairness is a big thing and that tension around appearing to permit unacceptable behaviors could impact safety as well. She said the correctional officer would not have specific knowledge of this disability due to HIPAA violations and that there isn't one concrete answer. Chris said that as an administrator, a correctional officer needs to write a report and if they do not, it can be an issue. Bonnie stated that the Committee is missing data from the county Sheriffs and the DOC. She stated that Massachusetts does have units that take folks out of RH due to behavioral disorders. She mentioned the SAU where people are out of their cells about 4 hours a day and the DDU has a unit for those with SMI where they have an hour and a half of individual outdoor rec and an hour and a half of restart chair time. She said that the resources question is a tough one but she is wondering how the resources issue is being addressed in other states. Chris said it is approximately \$300k for the twenty-nine beds per year for each inmate. Bonnie mentioned an inmate that was waiting for a specialized unit was in RH for months. Jamelia said when looking at litigation, she sees resource investments as being more cost-effective than paying legal fees after a suit brought against them as a result of an ADA violation. Bonnie asked if the waiting list creates a legal vulnerability. She said the Olmstead case decision challenges lengthy waiting lists in MG v. Cuomo which challenged the NY DOC. She noted that budgetary restrictions can be very difficult. Sheriff Bowler brought up the issue of unfunded mandates. Bob F. said the ADA provides fundamental alteration but you can almost never have that as a defense. He noted that cost is not always something a defendant raises. He mentioned some issues with the Olmstead case and mentioned that most of the litigation has been brought up under the Eighth Amendment. He stated that courts have been pretty conservative in these cases and the Supreme Court has said prison officials should be given deference. Bob also said this also occurs with special education where someone that is getting special attention. He stated that anytime you do these types of things, you have to identify these individuals as different to deal with their disability.

Update from Subcommittee Chairs

Bonnie T. said she and her subcommittee plan to meet today after the full Committee meeting. Bob F. said his subcommittee is deeply engaged in and hoping to start writing their report very soon. Hollie M. gave the update for Marlene S. and said they will be pulling data from Texas to see how RH is effecting prison order and control there. She is going to provide everyone with the Nebraska Report as well.

Future Speakers

Bonnie T. requested there be a reserved agenda item to have someone speak about their experience being incarcerated and that she had asked for Ronicia to be on the agenda. As for the Souza incident, she stated that while the Committee does not need to go into specific disciplinary or criminal matters, it should be on the agenda and she had requested that as well. She said for the member comments, she would like to include that it is tremendously important to have the

correctional officers and DOC administrators on the board but also for formerly incarcerated folks to have a voice. She said that the group needs to think deliberately about inviting someone to the table to speak. She said the whole controversy around Souza should be discussed as a group and that the Committee should invite someone with lived experience. Chair Peck stated that as it is an ongoing investigation, they will not be able to speak about the incident. He stated Committee members have spoken to upwards of fifty inmates currently in restrictive housing. He said he does not mind putting Ronicia Kennerly on the agenda for a future agenda. Chair Peck also stated the Committee should also hear from line correctional officers and their perspectives at a future date. Bonnie said folks with line CO experience are already on the Committee but no one with lived experience being in restrictive housing. She suggested having some time set aside in the agenda for the formerly incarcerated going forward. Chris said the Committee often gets a myopic view and that it may want to hear from those who successfully navigated restrictive housing and incarceration as well.

Bonnie T. mentioned that there was no disability data in the quarterly report and Hollie M. clarified that there is data on disability in both the biannual and quarterly report.

Member Comment

Bonnie T. said the Committee had a good tour at Souza and that there is a lack of programming and access to validated rehabilitative programming. Bonnie said the Committee went there after a number of lockdowns and that the inmates say it serves as collective punishment and that it gives gangs time to organize. She said these are crucial questions this Committee needs to deal with. She also mentioned that officers are expressing they feel that they are in an unsafe environment due to the CJRA. She said that she wants to work through the safety issues for both inmates and administrators. She said that there is a need to explore a change in climate so these kinds of things do not erupt and while officers have fears, it is not true that CJRA causes more violence. Andy suggested putting “climate” on a future agenda. Chris F. mentioned that the lack or addition of programming is not directly correlated to prison violence. Kevin F. said when the group was at Old Colony Correctional Center, they were saying they don’t have opportunities for programs that specifically offer good time.

Public Comment

Mary Valerio stated that programming has a lot to do with violence in prisons. She said the Washington State prison system has 3600 correctional officers and 25,000 inmates and that Massachusetts has just as many correctional officers with not nearly as many prisoners. She said the population is dropping rapidly and that the general population at Souza is at 51% and asked what DOC is doing with the remaining population. She knows someone who has been on a waiting list for nine years to learn how to read. She said the counts are down so she wants to know how a culture change will occur.

Cassandra from MASC said that she was offended by Chris calling public comment anecdotal stories and that these stories are true.

Jurrell Laronel said the incident at Souza was very unfortunate because the Commissioner has already approved new correctional officers. Jurrell said he has a case with an assault on a correctional officer and he is not here to blame or point fingers. He said he feels that the DOC

and correctional officers union are taking isolated incidents and using that to justify the way they do things. He said that while this incident did not happen in a restrictive housing unit, we need to find a way to get over this impasse.

A formerly incarcerated person spoke about the issues with drugs in Massachusetts prisons. He said the Committee needs more folks who have formerly been incarcerated to interact and discuss with the Committee.

There was a motion to adjourn by Bob and seconded by Chris. The meeting adjourned at 1:00pm.