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| Seal2  **CHARLES D. BAKER**  Governor  **KARYN E. POLITO**  Lt. Governor | The Commonwealth of Massachusetts  Executive Office of Public Safety & Security  One Ashburton Place, Room 2133  Boston, Massachusetts 02108  Tel: (617) 727-7775  TTY Tel: (617) 727-6618  Fax: (617) 727-4764  [www.mass.gov/eops](http://www.mass.gov/eops) | **THOMAS A. TURCO, III**  Secretary |

**MINUTES OF OPEN MEETING FOR THE SPECIAL COMMISSION TO STUDY THE HEALTH AND SAFETY OF LGBTQI PRISONERS ON MAY 31, 2019**

The commission convened at 10:05 a.m. in Room 109, Massachusetts State House, Twenty Four Beacon Street, Boston, MA 02133.

Members present:

* Jennifer Gaffney (chair) (JG)
* Honorable David Mills (DM)
* Pam Klein (PK)
* Michael Cox (MC)
* Elizabeth Matos (EM)
* Sheriff Patrick Cahillane (PC)
* Jennifer Levi (JL)

1. Minutes

JG opened the meeting with the opportunity for commission members to vote on approving the minutes from last meeting. The motion was allowed by unanimous vote.

1. Discussion of DOC responses to inmate issues compiled by JG, previously disseminated to Commission members.

JG: Deputy Superintendent has spoken with inmate regarding use of pronoun and resolved issue. Staff have received training on use of pronouns. Inmate’s desired electrolysis and breast forms, as well property (bra) have been approved by DOC.

MC: Inmates are confused about availability of resources such as breast forms and electrolysis.

SD: Breast forms and electrolysis have been easier to get following meeting in April 2019. Dermatology appointments remain difficult to schedule.

PC: Staff needs more training. With additional mandates, funding for training is an issue (i.e. implementing medically-assisted treatment). Wellpath and other agencies should be involved in developing training.

JG: Cultural competency is a goal for DOC.

JL: Raised concerns about availability of electrolysis.

SD: Discussed requirements for electrolysis, difficulty in scheduling dermatology appointments.

MC: Suggested policy on electrolysis as possible recommendation of Special Commission.

MP: DOC policy on this issue currently stands, with updated policy pending.

JL: Discussion of current policy regarding providing services: Hormone treatment – will new developing policies include standard of care? Believes that Dr. Steven Levine does not subscribe to WPATH standard of care, and that he does not believe surgery falls within standard of care. Cited recent Idaho case.

MP: Wellpath is required to follow WPATH guidelines by contract, including Dr. Levine. Overwhelming security concerns are an exception. SD noted concerns.

1. Discussion of issues raised in inmate letters to the Commission, previously disseminated to Commission members.

MC: Wants additional data related to PREA, including county facilities to make previous years PREA data available for the public.

JG: Data on PREA investigations re: restrictive housing, etc. is impossible to collect on the part of DOC. Lack of mechanism to do so makes collecting this data unduly burdensome.

MC: Would like to vote on additional data re: PREA investigations.

PC: Raised confidentiality concerns with information on PREA investigations.

JG: There is a separate commission for restrictive housing, this commission should focus on task at hand.

JM: Collecting data is nearly impossible. Recommendations on this issue can be included in commission’s report.

MC: Would accept redacted reports (i.e. names).

PC: Redacting process is unduly burdensome, many investigatory reports are 50 pages long. There is additional identifying information in investigatory reports beyond just names. Any policy would require careful consideration in order to not violate PREA standards.

MC: Raised issue regarding viable vs. non-viable reports. Believes public is entitled to data.

JG: Providing copy of every PREA report for past three years is impossible. PREA investigator is already mandated by DOJ to audit every year.

MC: PREA audits are insufficient.

JG: Cannot re-audit every report.

JG: Reasonable to recommend tracking PREA data. Regarding data on consensual sex: Cannot go back beyond June 2017 when new charges were added. Discussed disposition of cases at DOC facilities.

SD: Regarding HIV/STI testing: 120-160 STI tests per month, with 1-2 HIV cases per year, only one case of Hepatitis C in past 90 days.

**DOC provided the following data on HIV and STI:**

The current HIV population is 120 across the DOC. The number of newly diagnosed for the previous 3 years (delin by year) - no way to determine (per Jenn Gaffney).

1. Presentation by Mitzi Peterson, Director of Behavioral Health for DOC.

MP: 2 policies: currently for gender dysphoria, and also pending policy for gender nonconforming.

Inmates undergo mental health appraisal, do not need to identify gender preference. But if inmate discloses, forwarded to primary care provider (PCP). If already receiving hormone treatment, inmate may resume treatments immediately Gender Dysphoria (GD) committee – addresses tangible possibilities, then medical possibilities. Medical restriction is different from restrictive housing.

JL: Are there medical/mental health committees comparable to GD committee?

SD: (MAT) medically assisted treatment for addiction is an example.

MP: New gender-nonconforming policy (GNC) in 2017, prior to passage of Criminal Justice bill. Intent of policy is to accommodate those who are not diagnosed GD. Policy has allowed people who were previously classified under GD to now utilize GNC policy to access services. Has led to reduction in GD pop, increase in GNC pop.

JG: New identification cards include preferred gender and preferred gender of search personnel. IMS includes preferred pronouns. This also impacts gender of transportation personnel.

MP: Once identified, inmates meet with mental health staff. Inmates need to meet identity requirements under Massachusetts law. The idea is to prevent abuse of GNC, as there have been cases of people not truly needing it. Self-ID triggers identification process. This takes place during the medical intake process, not classification process. Providers can then address requests re: gender. Inmate needs to document prior to carrying out routine prison business (i.e. search, transportation). Inmates also get choices re: canteen.

MC: Are GD people able to access GNC options?

MP: Yes. GD applies to treatment for GD. GNC does not require DOC to say someone has DSM-V disorder.

JL: Raised concerns despite positive intent to destigmatize. Do not want to delegitimize underlying issues of seeking hormones. Distress is inherently present. Dual path is a problem. No other examples of a comparable path, medical model.

MP: We do not want to raise people to a higher level of distress. GNC is still a medical condition. Provided contemporaneous example.

PK: Reiterated dual path concern. Questioned if GD committee/path should be eliminated.

MP: Intent of GNC is an effort to move forward. This is a fairly new policy.

JL: Does prior GD diagnosis limit inmate to GD treatment path?

MP: Past diagnosis does not require GD path. Diagnosis of GD must be reconfirmed.

JL: Regarding transfers and placements, what is considered? Is height, weight, or build?

MP: If inmate is already in system, requests go through the superintendent to behavioral health. Security review is conducted first.

JG: Build/size is just one issue of many that is considered in transfers.

JL: Considering build/size is violative of spirit of the law, and should not be considered. This should be addressed in recommendations.

JG: There is only one women’s facility, there are concerns regarding perimeter security. Build/size is only one consideration among many.

JL: Are surgeons contracted by Wellpath? Are they available to do all kinds of surgeries?

SD: Doctors out of Boston Medical Center are contracted by Wellpath.

1. Presentation by Dr. Steven Descoteaux, State-wide Medical Director for Wellpath:

Wellpath conducts medical screening upon intake in state prison system, as well as intake for pretrial at Framingham and other programs. Inmates undergo an assessment by a nurse, then by a medical provider next business day. This screening entails: medical history, medical conditions, substance abuse (Care Act), sexual trauma (PREA) four questions, mental health screening (partially open ended, partially observational, and includes a monitoring option for mental health cases), dental questions. There is a low threshold for continuing hormone treatment. HPV medication is available to all women and men, pelvic exams are available and remain available because some patients are not comfortable with such an exam immediately upon intake.

Significant issues regarding over prescribing of medications.

Hepatitis C testing: an opt-out is available to inmates, those who have opted out are re-approached in 60-90 days. Since August 2018 hundreds of patients have been treated.

HIV testing: Out of hundreds of tests per month, 1 new HIV case. Providers are working on earning trust of patients regarding confidentiality.

EM: Posed question about accessibility of medical records.

MP: Electronic records are more secure, DOC is in process of converting to 100% electronic records.

DM: Posed question regarding prevalence of sex in facilities. How prevalent is sex among men in prisons?

SD: Low number of HIV cases.

DM: Posed questions about SD’s medical opinion on condoms and sex in facilities.

JG: Consensual sex in facilities is prohibited by law. Condoms can prevent evidence collection in cases of rape or drug possession.

PC: Concern about inmates secreting condoms full of drugs. Currently seeing issues with Suboxone. Cited *Farmer v. Brennan,* 511 U.S. 825 (1994). COs cannot be deliberately indifferent to sexual abuse, they have an affirmative duty to protect those in custody. Presents a slippery slope for corrections staff.

EM: Pushed back on preservation of evidence justification. With a low rate of sexual assault cases being reported, prevalence of consensual sex vs. rape must be considered. Mitigate against risk. Cites to introduction and expansion of medically-assisted treatment for addiction.

DM: Raised concerns that reducing special management population can reintroduce perpetrators into general population.

EM: Secure adjustment units are available. The purpose of law is not move everyone to general population.

JG: Posed question that by providing condoms, are we approving of behavior?

EM: Similar approach to teen sex, abstinence.

JG: Rules are in place. Sex of any kind is prohibited. Concern that condoms would create more consensual sex. Mixed messages.

MC: Agrees that availability of condoms could lead to more sex taking place. California requires condoms be available, study demonstrates success of program. Also cited Vermont policy.

MP: Vermont has a different model from California. Medical provider provides condoms rather than a dispenser being available in the housing unit. In Pennsylvania, inmates can order condoms through canteen.

1. Discussion of concerns raised by David Mills in his Memorandum previously disseminated to Commission members.

DM: A lack of data beyond only a few inmate letters makes fact finding difficult. Drafting memo re: health and safety of tens of thousands of inmates and professionals needs to be impactful. Open meeting law concern- His belief is that Commission can observe interview process in an institution without deliberating. Believes that Commission should be able to communicate about anything, including issues related to the Commission.

**Data Breakdown on Consensual Sex Disciplinary Reports from 1/1/18-1/1/19:**

There were 27 total guilty findings and 1 that was a CWOF.

Here is the breakdown:

13 at MCI-Framingham

5 at NCCI-Gardner, plus the 1 CWOF

5 at the Treatment Center for the Inmates, civils can’t be tracked

2 at Norfolk

1 at Shirley

1 at OCCC

**Discipline**

Number of employees disciplined for PREA related infractions – since 1/1/18 – 4, 2 of which were terminated

Number of employees disciplined for LGBTQ mistreatment -We don’t have a specific rule violation or LGBTQI mistreatment; however, a query for the terms lesbian, gay, bisexual or transgender in our database was run and didn’t come up with anything.  Our attorney that handles staff discipline didn’t have a recollection of any discipline being issued for LGBTQI mistreatment.

**Grievances**

Aggregated data for LGBTQ-related grievances –can currently only get the numbers for GD inmates - 42 grievances total – There were 16 filed by one inmate and 7 by another.  18 of the 42 were in regards to GD related issues/treatment

JG: Commission is based upon more than approximately 30 letters.

PK: Discussed issue of data collection. Suggested distributing questionnaire.

DM: Any final report may require a massive footnote stating that a proper and complete data collection would require massive resources. Discussed frustration that legislation provided insufficient resources.

JG: Handed out draft report to Commission members. Commission will follow up with thoughts either via email or at next in-person meeting.

JL: Asked question regarding availability of Prep (pre-HIV medication).

SD: Would support Prep being available, but unaware of current cases.

PC: Prep is available in county facilities. Most effective prior to release, similar to medically-assisted treatment for addiction.

SD: More in favor of recommendations nearing re-entry, rather than blanket requirement to provide medication. Budget issue regarding Prep, expensive medication.

MC: Believes that state Department of Public Health funds Prep for non-inmate population.

Public comments:

Attendee from Boston Area Rape Crisis Center: Would be in favor of proposing recommendations on: a) Restrictive housing regarding PREA. In her experience, inmates choose not to report due to potential classification into restrictive housing, which they feel is retaliatory in nature rather than for their safety, and; b) Condoms. In her experience, she has not observed perpetrators utilizing condoms to prevent evidence collection.

Attendee from Fenway Health: Posed question regarding committees on medically-assisted treatment, Hepatitis C, and GD.

SD: Provided explanations for need for these 3 committees. In these cases, conditions can be difficult to one professional to manage.

MC: Posed question regarding the traditional role of the GD committee.

MP: There is no solitary confinement in Massachusetts DOC by definition. GD committee is not a “gatekeeper” in response to MC’s question.

Attendee from Harvard: Posed question regarding how inmate is identified as GD.

MP: GD in addition to PCP. Inmate just needs to self-identify. Next edition of DSM intends to remove mental health diagnosis of GD.

Public session concluded at 1:24 p.m. Commission moved into executive session.

Next meeting date: Tentatively July 24, 2019 10 a.m.-1 p.m in Boston. Will attempt to schedule June and August meetings in Worcester area. Commission will look into remote call-in options and potential of resulting issues regarding quorum and public presence.

Next agenda will include motions from current (5/31/19) agenda.

PK: Will begin to draft report on data collection issue.

The meeting was adjourned at: 1:35 p.m.