

*City of New York
Board of Correction*

MEMORANDUM

To: Members of the Board of Correction

From: Richard T. Wolf, Executive Director

Date: April 23, 2010

Subject: Bi-monthly staff report – Update: DOC’s “footwear exchange” program

Summary

This bi-monthly staff report provides updated information regarding the Department of Correction’s efforts to provide institutional footwear to all prisoners. In February, 2009 we reported that beginning in December, 2008, when the Department confiscated prisoners’ personal sneakers, shoes and boots, and required prisoners to wear institutional canvas slip-on footwear (“Patersons”), DOC encountered significant operational problems. Insufficient quantities of slip-ons, especially in the most common sizes, made it necessary for DOC to allow some prisoners to retain their personal footwear. Other prisoners were issued slip-ons that were too large or too small. Most facilities lacked adequate storage space for confiscated footwear. This caused the loss of some prisoners’ personal footwear, and some prisoners had to wear orange or black canvas slip-ons to trial; still others were released from custody in canvas slip-ons because their personal footwear could not be found. Finally, DOC began its system-wide prisoner footwear exchange without establishing written procedures explaining to DOC staff how prisoners might retain supportive footwear. This created considerable confusion and some hardship: one facility even confiscated orthopedic footwear from prisoners with prosthetic limbs.

DOC took several actions in response to the Board’s February 2009 report:

- Some facilities constructed new storage areas, with numbered bins to store and facilitate retrieval of confiscated footwear.
- Computer-based systems were put in place that significantly reduced the incidence of misplaced footwear. Whenever possible, confiscated footwear now is kept with a prisoner’s stored personal property.
- A new Operations Order¹ was issued by the Chief of the Department in May, 2009. The Order formalized many of the footwear exchange procedures that DOC had put into effect following the system-wide confiscations in December, 2008. The Order provides that DOC staff is not to confiscate an incoming prisoner’s “prescription footwear or foot support items” unless medical staff

¹ Operations Order 04/09 (“Inmate Footwear”), effective 05/15/09.

determines that the special footwear is not medically required.² The Order also prohibits DOC staff from confiscating a prisoner's personal footwear during a housing area search, if the prisoner has a signed medical consultation form authorizing use of the personal footwear.³

Despite the Order, uniformed staff members in some jails continue to confiscate prisoners' personal supportive footwear during searches, even when a prisoner has obtained written authorization from a medical provider to wear it. Confiscation also sometimes occurs when a prisoner is transferred to a different jail from the facility at which he received medical authorization.

The new Operations Order has done nothing to remedy the most significant of the problems reported by the Board and acknowledged by the Department: DOC continues to be unable to maintain adequate inventories of canvas slip-ons in the most common foot sizes. Some prisoners must wear Patersons that do not fit. Others wear damaged, ripped slip-ons because DOC is unable to replace them promptly. Still other prisoners must wear institutional shower slippers or visit slippers or "flip-flops" purchased in the commissary. Finally, other prisoners have been allowed to retain their personal footwear.

Introduction

Even before the Board's comprehensive revisions to the Minimum Standards took effect in June, 2008, the Department targeted for prompt implementation one element of an amendment to §1-03(g) ["Personal Hygiene – Clothing"]. The amendment broadly authorizes DOC to require all prisoners to wear institutional clothing, but only after the Department first establishes and operates a laundry service capable of providing clean clothing every four days to all prisoners⁴ and secure storage facilities for prisoners' confiscated personal clothing.⁵ Former Commissioner Martin Horn acknowledged that for the Department to establish the clothing services mandated as pre-conditions by the Board, DOC would have to build expensive storage and retrieval facilities, and this would take time. So, the Commissioner decided that DOC would move ahead only with a footwear exchange, and would indefinitely delay implementing a requirement that prisoners wear uniforms.⁶

During the Standards review and amendment process, the Department repeatedly advocated for the amendment authorizing it to require prisoners to wear institutional clothing by observing that many fights among prisoners were attributable to personal clothing and footwear. DOC told the Board that if all prisoners wore the same clothing

² §III(A)(6).

³ §III(I)(3).

⁴ §1-03(h)(i).

⁵ The storage facilities must enable DOC to retrieve promptly and clean prisoners' personal clothing for trial court appearances, and also to retrieve personal clothing upon a prisoner's release from custody. §1-03(h)(ii).

⁶ At the Board's May 2008 meeting, Commissioner Horn said, "The easiest and, from a security perspective, the most effective way to begin will be to confiscate all civilian shoes, and to prohibit shoes from being sent to inmates." (Minutes, p. 7.)

and the same footwear, fights would be reduced. In fact, the Department already had prohibited prisoners from receiving or wearing certain “high end” sneakers, footwear constructed with metal shanks, and sneakers within which one could conceal contraband.

Almost six months after the amendment took effect, uniformed staff at all City jails confiscated prisoners’ personal footwear and issued canvas slip-ons. Since December, 2008 DOC has attempted to require that all prisoners wear institutional footwear, unless a medical provider determines a prisoner’s medical condition requires that he/she wear supportive or orthopedic footwear. In most of these cases, institutional boots are issued to the prisoner by DOC. However, when a provider determines that a prisoner’s medical condition is not addressed by institutional boots, the prisoner may be authorized to wear personal footwear, or orthopedic footwear may be prescribed.

Findings

1. As we reported in February, 2009, the Department continues to be unable to provide properly-sized institutional footwear for all prisoners because it is unable to acquire and/or maintain sufficient quantities of canvas slip-ons, especially in the most common men’s sizes.

Approximately 100,000 newly-admitted prisoners enter New York City jails each year.⁷ Except for a very small number of prisoners for whom orthopedic or “special” supportive footwear is prescribed by a provider, all should be issued institutional canvas slip-on footwear or institutional boots. Whenever a prisoner’s institutional footwear becomes damaged, it should be replaced promptly.

Recent BOC staff field observations establish that the Department continues to be unable to provide properly-fitting, undamaged institutional footwear to all prisoners. The Department does not dispute that it persistently violates the requirement of Operations Order 04/09, which requires that, “[Each jail] shall ensure that sufficient quantities of department issue footwear are maintained at the facility at all times.”⁸

It is difficult to accurately gauge the extent of the problem of chronic shortages of institutional-issue footwear. Most jails do not maintain lists of incoming prisoners who are not issued institutional footwear, and jails employ different procedures to attempt to distribute institutional footwear to prisoners who do not receive it at admission. Oftentimes, the procedures are “hit-or-miss”.

- At some jails, the laundry officer brings pairs of canvas slip-ons with him/her when exchanging laundry at housing areas. If a prisoner previously has not been issued slip-ons and if the officer has a pair in the prisoner’s size, the officer will provide slip-ons in exchange for the prisoner’s footwear.⁹

⁷ Mayor’s Management Report, Preliminary Fiscal 2010 (February 2010), p. 125.

⁸ Operation Order 04/09, §III(J)(1)(a).

⁹ Operation Order 04/09, §III(G) provides that *worn* footwear is to be exchanged “during the weekly linen exchange.” A prisoner’s first pair of Patersons is supposed to be issued at intake. §III(A)(1).

- Some facilities, upon receiving a delivery of slip-ons from the Central Storehouse, deploy uniformed staff to main jail corridors, where they look for prisoners walking by in personal footwear. If staff has a pair of slip-ons in the prisoner's size, they will confiscate the prisoner's personal footwear and issue him Patersons.
- The Operations Order provides that prisoners "...may file any complaints concerning the return or wearing of footwear with the grievance office."¹⁰ Until recently, prisoners would come to a jail's grievance office to complain about having no institutional footwear, or damaged or ill-fitting slip-ons or boots. Some grievance offices kept a "stash" of Patersons to help resolve prisoner complaints. In March, however, Chief of Department Larry Davis countermanded the Operations Order via email, directing that the Inmate Grievance Resolution Program (I.G.R.P.) should "discontinue the tracking and reporting of Footwear Grievances."¹¹ The Chief's email was forwarded to all facilities without further explanation.

Jail inventories

An examination of jail inventory and footwear distribution records for March, 2010 revealed shortages in the most common sizes of canvas slip-ons at most adult male jails. Three examples are presented below:

- Eric M. Taylor Center (EMTC)
At the beginning of March, EMTC had an inventory of 1882 pairs of Patersons, but there were no pairs in sizes 8, 9, 10 or 11 – the most common men's sizes.¹²

During March, EMTC received a total of 888 pairs of slip-ons from the Central Storehouse, of which only 468 pairs were sizes 8 through 11.

983 "new-admission" prisoners entered EMTC in March 2010. 515 new-admission prisoners were issued institutional canvas slip-ons, and 468 did not. EMTC's records do not reveal why hundreds of new admissions did not receive institutional footwear. Presumably many arrived from another jail and already were wearing slip-ons.¹³ However, many prisoners arrive at EMTC wearing personal footwear, and some did not receive a pair of Patersons because the facility ran out of their size: by the end of the month, all 468 pairs in the most common sizes had been distributed, and the inventory was zero for sizes 8 through 11.¹⁴

¹⁰ §III(B)(5).

¹¹ Email from Davis, Larry to Wax, Ari, March 4, 2010, 8:29 A.M.

¹² "Sneaker inventory" consisted of 216 pairs, size 4; 108 pairs, size 12; 552 pairs, size 13; 792 pairs, size 14; 68 pairs, size 15; 7 pairs, size 17; 10 pairs, size 18; and 9 pairs, size 19. "E.H.S. Monthly Sneaker Inventory: EMTC, March 2010".

¹³ One facility confiscates Patersons from prisoners who are being transferred to another facility.

¹⁴ "E.H.S. Monthly Sneaker Inventory: EMTC, March 2010".

- Anna M. Kross Center (AMKC)
At the beginning of March, AMKC’s inventory consisted of only 20 pairs of canvas slip-ons, but there were no pairs in sizes 8, 9, 10 or 11 – the most common men’s sizes.¹⁵

During March, AMKC received a total of 1232 pairs of slip-ons from the Central Storehouse, of which only 668 pairs were sizes 8 through 11.

1025 “new-admission” prisoners entered AMKC in March 2010 and all were issued institutional canvas slip-ons, according to AMKC’s records. This means that many prisoners must have received very large or very small “Patersons”.

By the end of March, AMKC reported that it had no pairs of slip-ons on-hand.¹⁶ Furthermore, the jail did not receive another shipment of slip-ons until April 15th.¹⁷ Thus, any prisoner newly-admitted to AMKC between March 31st and April 15th presumably did not receive Patersons.¹⁸

Some examples of prisoners wearing personal footwear appear below:¹⁹



¹⁵ “Sneaker inventory” consisted of 10 pairs, size 15 and 10 pairs, size 16. “E.H.S. Monthly Sneaker Inventory: AMKC, March 2010”.

¹⁶ “E.H.S. Monthly Sneaker Inventory: AMKC, March 2010”.

¹⁷ “Stores Transfer, AMKC, 4/15/2010”. The facility received 120 pairs each of size 8 and size 9, 96 pairs of size 10, 52 size 11, and 72 size 12. On April 16th, AMKC received an additional 12 pairs of size 10 and 78 size 12. “Stores Transfer, AMKC, 4/16/2010”

¹⁸ There are no records indicating how many prisoners during this period entered AMKC wearing Patersons issued by a transferring jail.

¹⁹ The photographs were taken on April 9, 2010.

- Robert N. Davoren Center (RNDC)
At the end of March, RNDC’s inventory consisted of 16 pairs of size 6 slip-ons.²⁰ On April 5th, the facility received 348 pairs in various sizes, all of which were distributed promptly. On April 21st, with the inventory again down to 16 pairs, size 6 only, BOC staff observed dozens of adolescent prisoners going to school in shower slippers, visit slippers, and flip-flops (which often are worn over socks).



Central Storehouse inventory

In FY10, DOC has received 41,534 pairs of Patersons, and is awaiting 14,140 more. On April 21, 2010 we were informed that there were no pairs of canvas slip-ons in sizes 8-12 on-hand in the DOC Central Storehouse for distribution to the jails.²¹ A shipment was expected “soon”, but an anticipated date of arrival was not known.

2. The institutional canvas slip-ons provided to prisoners are flimsy and poorly constructed, and fall apart when wet. Facilities should replace worn and ripped slip-ons frequently, and this further contributes to inventory shortages. There are wide disparities among facilities in the number of pairs of footwear replaced due to “wear and tear”.

Prisoners must wear institutional footwear at all times. Flimsy Patersons are supposed be worn in the exercise yard, to school and to court for all appearances except trial. As a prisoner’s slip-ons deteriorate, the prisoner is at greater risk of slipping, tripping, or falling. If prisoners suffer Paterson-related injuries, the City may face liability exposure.

At the Board’s March 2009 public meeting, former Commissioner Horn said that Department-issued “sneakers are not durable and need replacement after a few weeks.”²² He showed the Members a sturdier sneaker, which he said balanced DOC’s security concerns and the obvious need for sturdier footwear. In April, 2009, DOC announced a

²⁰ “E.H.S. Monthly Sneaker Inventory: RNDC, March 2010”.

²¹ What remained were: 7944 pairs sizes 4-7; 4074 pairs size 14; and 621 pairs sizes 15-19.

²² March 12, 2009 BOC meeting minutes, p.2.

contract for the purchase of more than 718,000 pairs of sturdier sneakers, at a per-pair cost of \$1.85.²³

The manufacturer never delivered the sturdier sneakers, and the vendor told the City it could not deliver them for the agreed-upon contract price. In January, 2010 Chief Davis told us that DOC had arranged for several small shipments of sneakers, but could not provide anticipated dates for delivery.

DOC continues to distribute the flimsy canvas slip-ons. Operations Order 04/09 mandates that each jail “shall ensure that worn footwear is inspected and exchanged during the weekly linen exchange. Clothes box officers shall conduct inspections and exchange footwear weekly as needed.”²⁴ A once-weekly opportunity to exchange damaged Patersons could mean that a prisoner would have to walk around in damaged slip-ons for almost a week. Also, the Order gives no guidance as to how and where clothes box officers are to inspect and exchange Patersons, nor does the Order explain how a clothes box officer would know inspections/exchanges were “needed”.

The number of pairs of Patersons replaced by each facility is a function of the jail’s on-hand supplies:

- In February, 2010 the George R. Vierno Center (GRVC), with an average daily prisoner population of 1111,²⁵ reported issuing 691 pairs of replacement canvas slip-ons “due to wear and tear”²⁶. The Otis Bantum Correctional Center (OBCC), with an average of 465 more prisoners each day than GRVC, replaced only 116 worn pairs in February.²⁷
- Similarly in March, 2010, RNDC, with an average daily census of 1311 prisoners, replaced 115 pairs of Patersons,²⁸ yet EMTC (average daily census: 1670) replaced only 36 pairs.²⁹

Prisoners at all jails complain to BOC field representatives that their “Patersons” are damaged, but they are unable to obtain replacements. In each of the following examples, the state of disrepair of each prisoner’s slip-ons suggested to the field representative that the deterioration had occurred over a period of several days or longer, thereby tending to confirm prisoners’ claims about the difficulties encountered when attempting to obtain replacement Patersons.

²³ The sneakers were described as canvas, low-top sneakers with three Velcro closures, rubber-toe cap, vulcanized construction, with a reinforced counter-patch for enhanced heel support. “Summary of Award.” Department of Citywide Administrative Services, Bid. No. 00900754, April 27, 2009.

²⁴ §III(G)(1).

²⁵ Average daily prisoner population, by facility, by month, is calculated by BOC DataManager, using census data provided by the Department of Correction.

²⁶ “E.H.S. Monthly Sneaker Inventory: GRVC, February 2010”.

²⁷ “E.H.S. Monthly Sneaker Inventory: OBCC, February 2010”.

²⁸ “E.H.S. Monthly Sneaker Inventory: RNDC, March 2010”.

²⁹ “E.H.S. Monthly Sneaker Inventory: EMTC, March 2010”.

- One prisoner slip-ons were observed to be “in bad condition. His sole was separated from his shoe and the shoe was ripped in the front.” The BOC field representative spoke with the officer at the facility clothes box and immediately obtained a replacement pair.³⁰
- A prisoner with “broken Patersons” said that he had a court appearance and asked a BOC field representative for assistance. The field representative spoke to a captain and arranged for prompt replacement.³¹
- A prisoner told a field representative that the facility did not always replace damaged footwear during the weekly linen exchange, and as a result he was wearing damaged slip-ons. Facility staff disputed the assertion, but provided a replacement pair promptly.³²



3. Until recently, some jails were denying prisoners access to programs and services unless they were wearing Patersons or provider-authorized orthopedic or supportive footwear.

Operations Order 04/09, §III(H) [“Footwear while outside of assigned housing”] reads

All inmates are required to wear Department authorized footwear while outside of their assigned housing units. *The wearing of “Slippers” outside of an inmates (sic.) assigned housing unit is not authorized.* An inmate who is found to be wearing slippers while traveling outside of his or her housing unit shall be directed to return to their housing unit to change into authorized footwear... [Emphasis added.]

In some jails, prisoners who were issued shower slippers or visit slippers, or who had purchased commissary “flip-flops” because the jail could not provide them with canvas slip-ons in their size, were sent back to their housing areas when seen by staff walking in a corridor. Other prisoners were not allowed out of their housing areas unless they were wearing Patersons. This meant that some prisoners were denied access to recreation and law library – in violation of the Minimum Standards – because DOC could

³⁰ Complaint No. 2010/0394.

³¹ Complaint No. 2009/1634.

³² Complaint No. 2010/0173.

not provide them with Patersons. We brought this problem to the attention of jail administrators, and are informed that the practice has been discontinued. However, the ban against wearing slippers outside of housing areas has not been rescinded from the Operations Order.

4. Some of the issues regarding medically-necessary footwear, identified in the Board’s February 2009 report, remain unresolved. DOC staff does not always adhere to the procedures delineated in Operations Order 04/09 regarding confiscation of provider-authorized “supportive footwear”, especially during housing area searches and inter-jail transfers. The Department of Health and Mental Hygiene (DOHMH) has accepted a subordinate role to DOC on some medical questions involving prisoner footwear.

Confiscations of medically-approved personal footwear and replacement with Patersons or slippers can result in significant pain when a prisoner who requires more support than Patersons provide attempts to ambulate. Board staff has helped many prisoners retrieve their medically-authorized special footwear. An example:

For three months, a prisoner housed in the NIC Infirmary had been permitted to retain his custom-made sneakers for use with his prosthetic leg. However, during a search on March 29th, a captain confiscated the sneakers. She told the prisoner she would give him institutional-issue boots at the conclusion of the search. The prisoner told BOC staff that he was given a receipt for the sneakers, but no boots. On April 1st, the prisoner was ordered to be moved to another housing area in the Infirmary, but he refused to go until he received back his sneakers. Uniformed staff used force to move him, resulting in injuries to his face, hand and shoulder.



In a memo to Prison Health Services regarding footwear issues, DOHMH’s subordinated role was made clear. The former Assistant Commissioner of Correctional Health Services wrote, “...(I)n the rare case where the inmate does require more supportive footwear [than that provided by a pair of Patersons] the provider should write a consult to DOC requesting ‘supportive footwear’. DOC will manage that request.

Patients unhappy with their footwear should be directed to the DOC grievance process.” [Emphasis added.] This policy remains in effect.³³

Jails have adopted two different approaches to prevent the confiscation of medically-approved institutional boots. Some spray-paint the toes and/or backs of the heel of the boots. A painted pair is thereby identified as “medical” whereas an unpainted pair should be boots assigned to a prisoner-worker. BOC staff has received several complaints from prisoners that “medical” boots are taken by security staff who spray-paint the entire boot with several bright colors. Prisoners complain that staff returns the boots saying, “Now you are an official clown.”



A different approach to prevent the confiscation of “supportive footwear”, especially boots, has been developed by the clinic captain at OBCC. At OBCC, when a prisoner receives medical approval for footwear other than canvas slip-ons, the captain creates a special photo ID card to be carried by the prisoner at all times. This otherwise excellent idea has been stymied occasionally when paperwork “falls through the cracks”.³⁴

Another medical footwear issue involves “foot items”, including “arch supports, inserts, wedges, etc.” which, according to Operations Order 04/09, is supposed to be available for purchase in jail commissaries. The Order declares, “No Medical

³³ Memorandum from J. Hershberger to T. Parks and D. Doherty, December 2, 2008. *See also* footnote 11 (email from Chief of Department announcing that jails no longer are required to track and report footwear grievances). The policy appears to sometimes have been interpreted to mean that if a prisoner believes boots are inappropriate for his condition and that he requires different footwear – including orthopedic shoes, for example – he must “grieve” the issue with the Department of Correction rather than return to the provider who made the medical decision. Indeed, prisoners have told us that providers resist authorizing supportive footwear other than the institutional boots issued by DOC.

³⁴ For example, a medical consult for special footwear was written in mid-November, 2009. The paperwork was misplaced or lost. The prisoner complained to Board staff and in February 2010, he finally received his special shoes.

Consultation Form is required for those foot items purchased from the commissary. However, commissary staff shall instruct any inmates purchasing foot items to maintain their receipt for such items as proof of purchase.”³⁵

The problem is that commissaries do not offer “foot items” for sale.

5. Requiring prisoners to wear institutional footwear has not yielded reductions in violence among prisoners.

In support of its request that the Board amend Minimum Standards §1-03(g) [“Personal Hygiene – Clothing”], the Department said that prisoners fight over sneakers and, that by confiscating *all* personal footwear, the Department would be removing an important cause of prisoner-on-prisoner fights. This observation was embraced by the Board. As Vice Chair Michael Regan observed during the discussion preceding the Board’s vote on the proposed amendment, “I think many of us who spend some time in Rikers understand that this is a safety enhancement, but it requires some very complicated and focused management in order to correctly implement this program.”³⁶

The Department reports the number of fights among prisoners each month on its Monthly Security Reports. In fact, prisoner-on-prisoner fights have *increased* since the Department-wide footwear exchange occurred in December, 2008.

Inmate/Inmate Fights	Fights	Rate³⁷	Census	Days
Jan-Nov 2008	3,033	2.068	13,575	335
Jan-Nov 2009	3,300	2.317	13,216	334
Dec/2009 – Feb/2010	885	2.344	13,004	90

Sources: DOC Monthly Security Reports, Daily Census provided by DOC, BOC DataManager.

The rate of reported fights among prisoners in the eleven months following December 2008 – footwear exchange month – increased by 12% over the rate for the eleven months preceding the system-wide footwear exchange. This phenomenon continued over the past three months, for which the rate is 13.3% higher than the eleven months preceding the exchange.

The rate of fights among prisoners was lower when all prisoners wore their personal footwear than it has been since most prisoners have been wearing institutional canvas slip-ons. However, because the reports provided by DOC typically do not describe the causes of fights we are unable to determine whether the increase in rate of reported fights is connected to DOC’s footwear exchange program.

³⁵ §III(B)(4).

³⁶ Transcript, Meeting of the NYC Board of Correction, November 8, 2007, p. 61.

³⁷ Rate = incidents per 100 inmates per 31 days

Conclusion

Although the Department has resolved some of the footwear confiscation and exchange problems identified in the Board's February 2009 report, others remain. If the Department of Correction continues to confiscate prisoners' personal footwear, it must take steps to ensure that it maintains inventories in quantities sufficient to provide appropriately-sized, sturdy footwear to all prisoners. DOHMH should assume direct responsibility for all medical-related footwear decisions.

Board staff will continue to work with DOC and DOHMH to resolve the remaining issues identified in this report.