



Office of the Bronx District Attorney

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Report of the Investigation  
into the Death in Custody of  
Layleen Polanco

**June 4, 2020**

**Public Integrity Bureau**

Bronx County District Attorney's  
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**OVERVIEW OF INVESTIGATION**

Layleen Polanco died in her jail cell located at the Rose M. Singer Center on June 7, 2019. In the aftermath of her passing, the Department of Investigation (“DOI”), the Office of the Chief Medical Examiner (“OCME”), the New York City Police Department as well as the Bronx County District Attorney’s Office (“Office”) were notified that an incarcerated person died while in New York City Department of Correction (“DOC”) custody. DOI immediately began identifying potential witnesses and surveillance cameras that captured the events of that day. Once made aware of the incident, the Bronx County District Attorney’s Office opened an investigation into Ms. Polanco’s death.

Over the course of six months the Office conducted an in-depth investigation into, not only the events of June 7, 2019, but the events leading up to that date. Throughout this investigation, the Office issued grand jury subpoenas to numerous hospitals and health care providers – receiving over a thousand pages of medical records from 2016 onward. Additionally, grand jury subpoenas were issued for pharmaceutical records for the same date range. New York City Department of Correction records, as well as Westchester County Department of Correction records were collected and analyzed. This Office also interviewed Correction Officers and incarcerated persons – both present and not present on June 7, 2019. Additionally, the Bronx District Attorney’s Office interviewed medical staff who responded on June 7, 2019. This Office also interviewed friends and family members of Layleen Polanco. The results of that investigation are contained herein.<sup>1</sup>

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<sup>1</sup> Certain information obtained and analyzed as a part of the Office’s investigation has been omitted from this report as required by grand jury secrecy provisions, as noted herein (See *C.P.L. § 190.25* (Grand Juries are secret proceedings)).

## **RESULTS OF INVESTIGATION-OVERVIEW**

Layleen Polanco, (hereinafter “Ms. Polanco”), was a 27-year-old transgender incarcerated person housed at the Rose M. Singer Center on Rikers Island. On June 7, 2019, she was found unresponsive inside of her cell by Correction Officers and was later pronounced dead on scene. The Office of the Chief Medical Examiner found that the cause of Ms. Polanco’s death was “sudden unexpected death in epilepsy due to mutation in her CACNA1H gene,” ruling the manner of her death as natural. Ms. Polanco suffered from a seizure disorder and had other medical issues prior to June 7, 2019.

Although a complete discussion of the events leading up to Ms. Polanco’s death is presented under FACTUAL SUMMARY, below, what follows is a brief outline of the events that took place on June 7, 2019<sup>2</sup>:

- At 10:45 AM, Ms. Polanco was escorted from her cell to the health clinic to discuss her hormone replacement therapy. She returned to her cell at approximately 11:20 AM.
- At 11:30 AM, Ms. Polanco requested water and juice, which was provided by a Correction Officer.
- At 11:45 AM, Ms. Polanco was given lunch, which she took and ate.
- At 12:20 PM, Ms. Polanco requested more food, which was given to her. This is the last time anyone describes Ms. Polanco as responsive.
- Between 12:20 PM and 2:40 PM, Correction Officers and civilian staff looked inside Ms. Polanco’s cell. They all report similar observations – Ms. Polanco was laying on the bed, on

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Certain records were provided by the family of Ms. Layleen Polanco, and information gathered from those records are referenced in this report, as noted herein.

<sup>2</sup> All times are approximate.

her stomach, with the covers pulled up to her chin, face exposed, facing the wall closest to her. All the witnesses reported that they believed she was asleep.

- At 2:40 PM, Correction Officer Gales knocked on Ms. Polanco's cell door, and there was no response. Gales called Correction Officer Williams and Captain McZick to Ms. Polanco's cell. The three entered the cell. This was the first time since Ms. Polanco returned from the clinic that day that anyone, besides Ms. Polanco, entered her cell.
- At 2:48 PM, Captain McZick went to her post and notified the medical team of an emergency. She then returned to Ms. Polanco's cell with an automated external defibrillator (AED). Unfortunately, the AED was unable to find a pulse. Officers Williams, Gales, and Captain McZick began taking turns performing CPR on Ms. Polanco.
- At 2:55 PM, the first wave of medical responders arrived at Ms. Polanco's cell. They were PA Roche and RN Olowoyo. Ordering DOC staff outside of the cell, they took over the scene and began assessing Ms. Polanco's vitals. PA Roche found Ms. Polanco to be unresponsive and cool to the touch. The two began performing CPR and, at 3:20 PM, alerted an emergency medical services team (EMS) and doctors from Urgicare, located on Rikers Island.
- Dr. Devezin, LPN Medor, RN Harrison and RN Brown also responded to Ms. Polanco's cell. The entire medical team began taking turns providing chest compressions at 3:00 PM.
- At 3:26 PM, Dr. Trope and EMS arrived on scene. Dr. Trope began administering CPR for the next twenty minutes as well as Narcan to Ms. Polanco.
- At 3:45 PM, Dr. Trope pronounced Ms. Polanco dead.

## DECEDENT'S BACKGROUND

### **I. PERSONAL BACKGROUND**

Ms. Polanco was born on October 4, 1991. She was raised by her family in Yonkers, New York. Her mother and siblings described her as loving and gentle, citing her love of animals and the care she provided them. As she got older, Ms. Polanco became more involved in the transgender community. Eventually, Ms. Polanco began performing with the House of Xtravaganza – a prominent house in the underground New York City ballroom scene. Ms. Polanco was heavily involved in performances with Xtravaganza. She frequently performed in ballroom events and took home first prize.

### **II. CRIMINAL HISTORY**

Ms. Polanco had prior misdemeanor arrests and convictions, the majority of which were prosecuted by the Westchester County District Attorney's Office in Yonkers Criminal Court. At the time of her death, she had two open cases in New York County, one from 2017 and the other from 2019. Ms. Polanco had bench warranted on the 2017 matter, a misdemeanor, four separate times.<sup>3</sup> The 2019 case stemmed from a dispute with a taxi driver wherein Ms. Polanco was alleged to have refused to pay the fare and bitten the taxi driver. When Ms. Polanco was arrested for the 2019 case, she was brought before a judge who heard both the 2017 and 2019 matter on April 16, 2019. The New York County District Attorney's Office asked for bail on both cases and the court set bail on each case in the amount of \$500 cash, \$500 insurance bond and \$500 partially secured bond. The New York County District Attorney's Office was unable to secure a supporting deposition for the 2019 case, and therefore, her bail on that case was reduced to \$1.<sup>4</sup> The total amount of bail that resulted in

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<sup>3</sup> On nearly all of her cases, Ms. Polanco bench warranted multiple times. Her rap sheet shows five failures to appear as well.

<sup>4</sup> The bail was reduced to \$1.00 so that Ms. Polanco could receive credit for time served on that case. The bail on the 2017 case was not reduced since the District Attorney's Office had a fully converted information and were ready.

Ms. Polanco's confinement on Rikers Island on June 7, 2019, was \$501.00 cash, \$501 insurance bond and \$501 partially secured bond.<sup>5</sup>

### **III. TIME ON RIKERS ISLAND**

When Ms. Polanco arrived on Rikers Island on April 16, 2019, she reported that she was 27, had no mental, physical or developmental disabilities, and that she was male-to-female transgender.<sup>6</sup> Ms. Polanco requested to be housed in a transgender-specific housing unit, and the New York City Department of Correction (hereinafter "DOC") ensured that she was housed accordingly, with certain exceptions as further discussed below.<sup>7</sup>

During her time on Rikers Island, according to internal DOC documents, Ms. Polanco was deemed by DOC to be "highly assaultive."<sup>8</sup> She received two infractions during her time at Rikers Island, one for assaulting an incarcerated person and another for assaulting a Correction Officer. On May 29, 2019, as a result of these incidents, Ms. Polanco was moved to a more secure housing area within the Rose M. Singer Center where she was housed in a cell alone.<sup>9</sup>

According to a DOC infraction report, the initial incident occurred on May 6, 2019, and involved Ms. Polanco and another incarcerated person ("May 6, 2019 Incident").<sup>10</sup> According to the paperwork, Ms. Polanco initiated the incident, striking the other incarcerated individual multiple times

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<sup>5</sup> Cash bail is bail paid in the form of cash, bail bond or credit card. Insurance bond, or insurance company bail bond, is a surety bond, executed by a licensed bail bond company. Partially secured bond is a bond, other than an insurance company bail bond, secured by a deposit of a sum of money not exceeding ten percent of the total amount of the bail, i.e. \$50.01 for a \$501 partially secured bond.

<sup>6</sup> Department of Correction Intake Questionnaire.

<sup>7</sup> Department of Correction Intake Questionnaire.

<sup>8</sup> Mental Health Status Notification and Observation Transfer Form.

<sup>9</sup> Hearing Report and Notice of Disciplinary Disposition 3471900243.

<sup>10</sup> Infraction Report # 63/19

in the face, causing a laceration. After this incident, on May 20, 2019, Ms. Polanco made a three-way phone call, which corroborated that the incident took place. As a result of that incident, Ms. Polanco was given an infraction with a hearing date of May 20, 2019, wherein DOC would render a verdict and, if applicable, a punishment.

On May 14, 2019, DOC noted that Ms. Polanco was showing “radical changes in behavior,” citing the May 6, 2019 Incident.<sup>11</sup> The staff made note that “any unusual action or behavior . . . should be brought to the attention of the Mental Health Staff.”<sup>12</sup>

The second incident occurred on May 15, 2019. According to DOC infraction paperwork, Ms. Polanco advanced towards a Correction Officer and made hand gestures towards the officer’s facial area.<sup>13</sup> As she was approaching, the officer ordered Ms. Polanco to stop and the officer extended her right arm. Ms. Polanco then struck the correction officer in the right forearm, which DOC deemed an “assault on staff.”<sup>14</sup> After the incident, Ms. Polanco was found sitting on the floor of the intake cell, refusing to engage with staff. That same day, Ms. Polanco was transported to Elmhurst Hospital where she was reportedly being aggressive and refusing to cooperate with hospital staff, according to NYC H+H records.<sup>15</sup>

After evaluation at Elmhurst Hospital, Ms. Polanco was transferred to the Psychiatric Prison Ward at Elmhurst Hospital for psychiatric monitoring.<sup>16</sup> On May 24, 2019, Ms. Polanco returned to Rose M. Singer Center.<sup>17</sup>

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<sup>11</sup> DOC Referral of Inmates to Mental Health Services Form filed out on May 14, 2019.

<sup>12</sup> Referral of Inmates to Mental Health Services Form filled out on May 14, 2019

<sup>13</sup> DOC Incident Report Form Dated May 15, 2019.

<sup>14</sup> Id.

<sup>15</sup> NYC H+H Records dated May 16, 2019, provided by the family of Ms. Polanco.

<sup>16</sup> Inmate Inquiry Screen dated May 16, 2019; Notification of Request for Evaluation for Civil Commitment Form.

<sup>17</sup> DOC Inter-Facility Transfer Report

On May 20, 2019, DOC held a hearing for the May 6, 2019 Incident. During that hearing they found Ms. Polanco guilty of assaulting a fellow incarcerated person and causing injuries. As a result of that finding of guilt, Ms. Polanco was ordered to complete twenty days in Punitive Segregation.<sup>18</sup>

On May 30, 2019, Doctor Colleen Vessell said that Ms. Polanco was medically cleared to be placed in Punitive Housing, stating that Ms. Polanco's medical condition was "stable" and that there was no specific reason why she could not be housed in Punitive Housing Unit.<sup>19</sup> As a result of this determination on May 30, 2019, Ms. Polanco was transferred from general population of the Transgender Housing Unit at the Rose M. Singer Center to a Punitive Housing Unit at the Rose M. Singer Center where she was to serve her twenty (20) day punishment.<sup>20</sup>

### **MEDICAL HISTORY**

In connection with her intake into the New York City Department of Correction system, Ms. Polanco made DOC aware that she suffered from a seizure disorder.<sup>21</sup> Efforts made by DOC relative to Ms. Polanco's seizure disorder have been omitted from this report due to grand jury secrecy provisions. Ms. Polanco suffered at least two documented, visible seizures during her time on Rikers Island.<sup>22</sup>

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<sup>18</sup> Hearing Report and Notice of Disciplinary Disposition 3471900243.

<sup>19</sup> DOC Rules and Regulations regarding Punitive Housing are discussed below.

<sup>20</sup> According to NYC H+H records received from Ms. Polanco's family; Hearing Report and Notice of Disciplinary Disposition 3471900243.

<sup>21</sup> NYC DOC Intake Questionnaire and Prison Rape Enforcement Act Questionnaire.

<sup>22</sup> According to NYC H+H records received from Ms. Polanco's family.



Ms. Polanco's first documented visible seizure on Rikers Island occurred on May 4, 2019.<sup>23</sup> As a result of the seizure Ms. Polanco was placed on monitoring.<sup>24</sup> She had another seizure on May 10, 2019, and was taken to the clinic and administered her prescribed anticonvulsant medication.<sup>25</sup>

### **FACTUAL SUMMARY**

On June 7, 2019, Ms. Polanco was found unresponsive in her cell in the Rose M. Singer Center at 2:40 PM by Correction Officer Williams. Notifications to medical staff were made and she was ultimately pronounced dead on scene at 3:45 PM. As stated previously, the information provided herein is based upon information from DOC video surveillance, documents acquired by the Office and interviews of witnesses.<sup>26</sup>

At 10:45 AM, Ms. Polanco left her cell and was escorted out of the housing area to the clinic so that she could inquire about when she would receive her next hormone treatment.<sup>27</sup> At 11:20 AM, Ms. Polanco was escorted back to her cell by Correction Officer Garcia.<sup>28</sup> An incarcerated person, who was assigned as a Suicide Prevention Agent (hereinafter "the SPA")<sup>29</sup> for the unit, made rounds every fifteen (15) minutes that day between 8:00 AM to 1:45 PM, checking on all incarcerated persons,

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<sup>23</sup> According to NYC H+H records received from Ms. Polanco's family.

<sup>24</sup> According to NYC H+H Records received from Ms. Polanco's family.

<sup>25</sup> According to NYC H+H Records received from Ms. Polanco's family.

<sup>26</sup> The District Attorney's investigation included interviews with medical staff, DOC staff, and fellow incarcerated persons as well as Ms. Polanco's friends and family. Additionally, we reviewed over a thousand pages of Ms. Polanco's medical records going back from 2016 and hours of video footage obtained from DOC.

<sup>27</sup> DOC Video Angle 87.164-RMSC-H12-LOWER-REAR-RT2-2019-06-07\_05h00min00d000ms (hereinafter "DOC Video Angle 87.164"). At 10:47 Ms. Polanco is seen exiting her cell, being placed in handcuffs and escorted off camera.

<sup>28</sup> DOC Video Angle 87.164 shows Ms. Polanco being escorted back to her cell at 11:22 AM.

<sup>29</sup> Suicide Prevention Agents are incarcerated persons who the Department of Correction assigns to patrol a housing area to be on the lookout for unusual activity that may indicate an incarcerated person is depressed or at risk for suicide.

including Ms. Polanco.<sup>30</sup> At 11:40 AM, Ms. Polanco requested water from Williams.<sup>31</sup> Shortly thereafter, Williams handed her the water. At 11:45 AM, the SPA and Williams gave Ms. Polanco her lunch, consisting of turkey, fried rice, green beans, carrot and celery salad, a banana and whole wheat bread.<sup>32</sup> Ms. Polanco then asked the SPA for more food, which the SPA brought to her cell at 11:50 PM.<sup>33</sup> Ms. Polanco's empty lunch tray was retrieved by the SPA from her cell at 12:00 PM.<sup>34</sup> At 12:20 PM and 12:35 PM, the SPA was checking on cells and checked on Ms. Polanco,<sup>35</sup> she reported nothing out of the ordinary. When the Office interviewed the SPA on July 22, 2019, she could not specifically recall what Ms. Polanco was doing at these times.

According to video surveillance, at 12:50 PM, the SPA made her rounds again and looked into Ms. Polanco's cell.<sup>36</sup> When she glanced into the cell, she saw Ms. Polanco, who she believed to be asleep, under the blankets, with her head towards the wall closest to her face.<sup>37</sup> Within a minute of the SPA checking into Ms. Polanco's cell, Captain Davis and Correction Officer Gales, who were circling the housing area, passed by and looked into Ms. Polanco's cell.<sup>38</sup> According to both Captain Davis

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<sup>30</sup> The District Attorney's Office interviewed the SPA and she stated that she made her rounds every 15 minutes. A review of DOC Video Angle 87.164 shows that she, for the most part, made her rounds roughly every 15 minutes.

<sup>31</sup> Based on interviews with both the SPA and CO Williams; confirmed by DOC Video Angle 87.164.

<sup>32</sup> The food items described are based off a review of the housing area logs wherein the food that was served that day was documented. It should be noted, however, that the SPA stated in an interview that lunch that day was ground meat.

<sup>33</sup> DOC Video Angle 87.164 shows the SPA approach Ms. Polanco's cell and putting something into the food slot. According to the SPA, this was a second serving of food that Ms. Polanco requested.

<sup>34</sup> DOC Video Angle 87.164 shows the SPA approaching Ms. Polanco's cell and retrieving a food tray from the food slot at 12:01 PM.

<sup>35</sup> DOC Video Angle 87.164 shows the SPA approach Ms. Polanco's cell at 12:20 PM and look inside as she closes the food slot. The video also shows the SPA approach Ms. Polanco's cell at 12:35 PM and look inside.

<sup>36</sup> DOC Video Angle 87.164 shows the SPA looking into Ms. Polanco's cell at 12:50 PM.

<sup>37</sup> When viewed from the outside looking in, Ms. Polanco's bed was pushed up against the left wall within sight of the window in the door facing outside.

<sup>38</sup> According to DOC Video Angle 87.164, the correction officers appeared to be glancing into every cell they pass, however they did pause at Ms. Polanco's cell and looked in. Based upon a review of DOC paperwork and interviews, it is unclear why they paused at Ms. Polanco's cell.

and Gales, they both saw Ms. Polanco asleep under the blanket, with her head facing the wall closest to her face. At 1:25 PM, a mental health professional was being escorted around the housing area with Garcia, to begin group therapy sessions.<sup>39</sup> Shortly thereafter, Garcia and the mental health professional approached Ms. Polanco's cell and offered her a puzzle, but Ms. Polanco did not respond when they called into her cell.<sup>40</sup> They reported that she was asleep on her side and, therefore, they left the puzzle on the food slot in her cell for her.<sup>41</sup>

At 1:40 PM, as shown in video surveillance, Williams approached Ms. Polanco's cell again to check on her. At roughly the same time, Gales, along with the therapist, approached Ms. Polanco's cell to try and wake her up for group therapy. They stood in front of Ms. Polanco's cell for two minutes, taking turns peering into Ms. Polanco's cell, without ever entering.<sup>42</sup> Both Williams and Gales reported seeing the same thing: Ms. Polanco laying on her stomach, facing away from the door and toward the wall closest to her bed, with a blanket pulled up to her head. According to Williams, Ms. Polanco's face was unseen as her cell was dark and she was facing a wall. Gales reported that she believed Ms. Polanco was breathing and that she was asleep with headphones in. The two Correction Officers walked away without entering the cell.

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<sup>39</sup> It should be noted that DOC offers group therapy sessions for all incarcerated persons, including those housed in Punitive Segregation, as Ms. Polanco was.

<sup>40</sup> DOC Video Angle 18.164 shows them approaching Ms. Polanco's cell. The fact that they offered Ms. Polanco a puzzle and found her to be nonresponsive is based upon interviews conducted with staff.

<sup>41</sup> In Segregated Housing on Rikers, cells have a tray where items, such as food, can be placed and delivered to the incarcerated person in that particular cell.

<sup>42</sup> DOC Video Angle 18.164 shows Officer Gales approach Ms. Polanco's cell and peer inside at 1:40 PM. DOC Video Angle 18.164 shows the therapist approach next at 1:41 PM and began speaking with Officer Gales. At this time, CO Williams began approaching as well. The fact that they were trying to wake her up for group therapy is based upon interviews of staff. The Correction Officers left Ms. Polanco's cell at 1:42 PM according to DOC Video Angle 18.164.

At 1:46 PM, Gales approached Ms. Polanco's cell again, according to her, to see if Ms. Polanco wanted to leave her cell, but again Ms. Polanco did not respond to her knocks.<sup>43</sup> Gales stated that, even at this time, she thought everything was fine with Ms. Polanco. At 2:27 PM, Williams walked by Ms. Polanco's cell again and looked inside.<sup>44</sup> According to Williams, she did this to see if she wished to leave her cell for art therapy; believing Ms. Polanco to still be asleep, she walked away.

#### **I. THE INCIDENT & MEDICAL RESPONSE**

At 2:40 PM, Correction Officer Gales began to grow concerned with Ms. Polanco's lack of movement. Because of that concern, and despite her shift ending in twenty minutes, she and Williams again approached Ms. Polanco's cell to ask Ms. Polanco if she would like to come out for TV time.<sup>45</sup> Ms. Polanco was in the same position from the last time they checked – laying on her side with her head towards the wall with the blanket over her. Gales began knocking on Ms. Polanco's cell door and received no response. Gales reported growing more and more concerned at this point since Ms. Polanco had not moved and was non-responsive to repeated attempts to wake her for quite some time. At that point, they opened the door and began calling out for her from inside her cell.<sup>46</sup>

Williams notified Captain McZick that they needed help at the cell. Williams and Gales say they were hesitant to enter the cell due to Ms. Polanco's previous assault on staff; therefore, Captain McZick was notified to prop the door open while both officers entered Ms. Polanco's cell. When

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<sup>43</sup> DOC Video Angle 18.164 shows Officer Gales approach Ms. Polanco's cell at 1:46 PM, however, it does not appear that she knocks on the door.

<sup>44</sup> According to DOC Video Angle 18.164 Officer Williams approached Ms. Polanco's cell at 2:27 PM and looked inside.

<sup>45</sup> This information comes from interviews with both Officer Williams and Officer Gales. DOC Video Angle 18.164 shows Officer Gales approach Ms. Polanco's cell and look inside at 2:40 PM. She then walked away, and Officer Williams approached the cell at 2:43 PM and looked inside. At 2:44 Officer Williams is seen approaching again and began knocking on Ms. Polanco's door.

<sup>46</sup> According to DOC Video Angle 18.164, Gales and Williams opened Ms. Polanco's cell door at 2:46 PM. At 2:47 PM Captain McZick appears on video.

Captain McZick got to the cell, she held the door open while the two officers entered to investigate. They found Ms. Polanco in the bed and turned her over. They found that she was unresponsive, had vomit on her face, and was not breathing. At 2:48 PM Captain McZick went to her post to notify medical of an emergency and returned with an automated external defibrillator (AED) bag.<sup>47</sup> According to interviews, at 2:50 PM, the officers applied the defibrillator to Ms. Polanco's chest, yet there was never a detectable heartbeat to deliver a shock.<sup>48</sup> Because the AED could not identify a heartbeat, the officers took turns performing chest compressions until the first medical team arrived. Additional DOC staff members arrived to assist with chest compressions, including Captain Davis and Captain Briggs at 2:50 PM.

The first medical team from the clinic at the Rose M. Singer Center consisted of PA Roche and RN Olowoyo. They arrived at Ms. Polanco's cell at 2:55 PM and found Ms. Polanco on her bed with the AED device attached.<sup>49</sup> When the medical team arrived, they ordered the DOC staff to leave Ms. Polanco's cell so that they could provide medical care.<sup>50</sup> According to PA Roche, Ms. Polanco was unresponsive, pulseless, breathless, had bluish lips, foam coming from her mouth, and her body was cool to the touch. PA Roche and RN Olowoyo began performing CPR and notified EMS as well as the staff from Urgicare.<sup>51</sup> PA Roche administered Narcan nasally and Epinephrine via an IV line to Ms. Polanco. More medical staff, including doctors and nurses, arrived at Ms. Polanco's cell from the

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<sup>47</sup> Automated external defibrillators are applied to a patient's chest to identify a heartbeat. If the instrument finds a detectable pulse, it will deliver a shock to start the heart. If there is no pulse, the instrument will not do anything.

<sup>48</sup> Captain McZick can be seen on DOC Video Angle 87.164 returning to the cell with the AED bag.

<sup>49</sup> DOC Video Angle 87.164 shows them arriving at 2:55 PM.

<sup>50</sup> According to interviews with both medical staff and corrections staff.

<sup>51</sup> While the first responding team were medical professionals, they do not specialize in emergency medicine. Therefore, they notified EMS and Urgicare to send trained staff.

clinic. The medical staff took turns performing CPR on Ms. Polanco and administered Narcan and Epinephrine two more times.

EMS and Dr. Trope of Urgicare arrived at roughly the same time, at approximately 3:26. PM Dr. Trope stated that Ms. Polanco was cool to the touch, her jaw was clenched, and she had vomit pouring from her oropharynx. He administered three more doses of Epinephrine and, along with EMS, performed CPR. At 3:45 PM, Dr. Trope stopped the CPR and pronounced Ms. Polanco dead.

In total, CPR was performed nonstop for approximately one hour, six doses of Epinephrine, and three doses of Narcan were delivered. Throughout the entire process, the AED was never able to identify a shockable pulse.

## RIKERS ISLAND POLICY AND PROCEDURES

### I. SUPERVISION OF INCARCERATED PERSONS

Correction Officers at Rikers Island are bound to follow the DOC Employee Rules and Regulations (hereinafter “the rules and regulations”). The rules and regulations lay out the policy for supervision of incarcerated persons. There, Correction Officers can find protocol on general supervision, medical attention, discipline and death.

Correction Officers, generally speaking, have a duty and obligation to “look after the [incarcerated person’s] welfare and to ensure that [incarcerated persons] receive proper food, clothing and medical treatment.”<sup>52</sup> Further, Correction Officers “must observe ‘signs of life’ in each [incarcerated person] on post.”<sup>53</sup> The rules and regulations define “signs of life” as any observation of the incarcerated person that assures the officer that they are alive. For example, “the rise and fall of the chest indicating the [incarcerated person] is breathing, snoring, or some body movement.”<sup>54</sup>

The rules and regulations go on to give guidance on what an officer is to do if they cannot obtain a “sign of life.” If they cannot obtain any signs of life, the correction officer must alert the officer on post to notify the captain in the control room and request medical assistance. Further, the Correction Officer “shall also render emergency first-aid as appropriate.” When there is a case of an emergency where CPR is required, “all qualified staff members have a responsibility to render such aid until the arrival of medical personnel.”<sup>55</sup> Moreover, if an incarcerated person is confined to a punitive

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<sup>52</sup> DOC R&R 7.05.010

<sup>53</sup> DOC R&R 7.05.060

<sup>54</sup> Id.

<sup>55</sup> DOC R&R 7.05.070

segregation unit, the correction officers are to observe them “at least once every half-hour on each tour of duty<sup>56</sup>.”

## **II. TRANSGENDER HOUSING**

DOC also has policies in place to determine where a gender-nonconforming incarcerated person should be housed. First, if an incarcerated person’s securing order indicates that they are transgender they start off with a presumption of being housed at a female facility. If the incarcerated person indicates that they want to be housed at a female facility they can be sent to either the Transgender Housing Unit of a female facility or they can refuse that option. If they refuse the transgender housing facility option, they can also be housed in the General Population of the gender with which they identify, so long as they are approved by the Transgender/Intersex Housing Committee.

## **III. PRE-HEARING DETENTION AND PUNITIVE SEGREGATION**

Directive 4501R-D, DOC lays out the standards relating to incarcerated persons in pre-hearing detention and punitive segregation. The directive states that the purpose of punitive housing is to “segregate [incarcerated persons] who have demonstrated violent behavior or have violated the law or Inmate Rules while incarcerated within the NYC Department of Correction.”<sup>57</sup> Punitive Segregation is split between three categories. These categories are Punitive Segregation I, Punitive Segregation II and Restricted Housing Unit. Punitive Segregation I is for incarcerated persons who were found guilty of Grade I infractions. While in Punitive Segregation I, incarcerated persons spend up to twenty-three (23) hours per day in their cells. Punitive Segregation II is for incarcerated persons who were found guilty of non-violent or Grade II infractions and they are locked inside of their cells for seven (7) hours per day. Finally, the Restricted Housing Unit is for incarcerated persons who have been found

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<sup>56</sup> DOC R&R 7.05.160

<sup>57</sup> DOC Directive 4501R-D (II) (B)



guilty of an infraction and sentenced to a disciplinary penalty imposing punitive segregation as a sentence.

According to the directive there are incarcerated persons who are not permitted to be assigned to Punitive Segregation housing. Adolescents and incarcerated persons with “serious mental or physical disabilities or conditions”<sup>58</sup> are barred from being placed there.

The directive also discusses mental and medical health services. According to the directive, medical staff are to visually observe and communicate with the incarcerated persons in Punitive Segregation at least once a day (Monday through Friday). The reasoning for this is to ensure that incarcerated persons have access to daily sick calls and for medical staff to assess the medical condition of incarcerated persons.

According to the directive, only in an emergency, or at the directive of medical staff, is an incarcerated person permitted to be taken to the clinic. Should medical staff identify an incarcerated person in need of additional treatment, they are supposed to arrange for them to be brought to the clinic for additional medical or mental health evaluation and treatment.

### **SUMMARY OF MEDICAL EXAMINER FINDINGS**

On June 8, 2019, New York City Deputy Medical Examiner Avneesh Gupta, M.D. (Dr. Gupta) performed a comprehensive autopsy of Ms. Polanco’s body. Dr. Gupta noted that Ms. Polanco was a “well developed, well-nourished averaged framed” person. Dr. Gupta found that Ms. Polanco was 5’3” and 161 pounds at the time of her death.

An autopsy report was issued by the Office of the Chief Medical Examiner on August 2, 2019. The Medical Examiner concluded that Ms. Polanco’s manner of death was natural and that the cause of death was “sudden unexpected death in epilepsy (SUDEP) due to a mutation in the CACNA1H gene.”

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<sup>58</sup> *Id.*

The U.S. National Library of Medicine defines the CACNA1H gene as a

T-type member of the alpha-1 subunit family, a protein in the voltage-dependent calcium channel complex. Calcium channels mediate the influx of calcium ions into the cell upon membrane polarization and consist of a complex of alpha-1, alpha-2/delta, beta, and gamma subunits in a 1:1:1:1 ratio. The alpha-1 subunit has 24 transmembrane segments and forms the pore through which ions pass into the cell. There are multiple isoforms of each of the proteins in the complex, either encoded by different genes or the result of alternative splicing of transcripts. Alternate transcriptional splice variants, encoding different isoforms, have been characterized for the gene described here. Studies suggest certain mutations in this gene lead to childhood absence epilepsy.<sup>59</sup>

According to the Medical Examiner, pathogenic variants in this gene have been associated with a variety of seizure disorders wherein, when the patient is having a seizure, there are no outward showing signs of the seizure or the patient may not even know they are suffering from a seizure. This specific gene variant, and those specific seizure disorders, are high risks for Sudden Unexplained Death in Epilepsy. Furthermore, other genetic and environmental factors directly influence how severe the symptoms can be and how the symptoms express themselves.

The Medical Examiner concluded that there was evidence of recent seizure activity including vomit on Ms. Polanco's mouth and face, lacerations on her lower lip, a laceration on the right angle of her upper lip and a bite mark on the right side of her tongue. A neuropathologic diagnosis of Ms. Polanco's brain showed a history of epilepsy and recent seizures. The toxicology report showed no signs of illicit drugs yet did show that Ms. Polanco had 9.4mh/L of Levetiracetam in her body, an anticonvulsant prescription drug used to treat seizures.

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<sup>59</sup> <https://ghr.nlm.nih.gov/gene/CACNA1H>.

## **ANALYSIS OF CRIMINAL CHARGES**

The standard of proof for the prosecution in all criminal actions is proof beyond a reasonable doubt. The prosecution is required to prove each and every element of the charged offenses beyond a reasonable doubt. Beyond a reasonable doubt has been defined as “proof that leaves you so firmly convinced of the defendant’s guilt that you have no reasonable doubt of the existence of any element of the crime or of the defendant’s identity as the person who committed the crime.” *See Federal Pattern Criminal Jury Instructions*. This is the highest legal burden in the United States.

The Bronx District Attorney’s Office has concluded that we would be unable to prove beyond a reasonable doubt that any specific individual committed any specific crime associated with the death of Ms. Polanco. As such, the Bronx District Attorney’s Office will not be seeking any criminal charges related to this unfortunate event.

### **A. HOMICIDE OFFENSES**

Homicide offenses in New York, for the purposes of this Report, are broken down into three categories: Murder, Manslaughter and Criminally Negligent Homicide. These general categories are separated by degree – Murder in the First Degree, Murder in the Second Degree, Manslaughter in the First Degree, Manslaughter in the Second Degree, and Criminally Negligent Homicide.

#### **I. Murder**

There are three relevant theories of Murder in the Second Degree:<sup>60</sup> (a) intentionally causing the death of another; (b) with a depraved indifference to human life, recklessly engaging in conduct which creates a grave risk of death to another; (c) causing the death of another during the commission of an

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<sup>60</sup> Murder in the First Degree requires the same elements as Murder in the Second Degree with the addition of special circumstances not found here. As such, this Report will deal with only Murder in the Second Degree in this Section.

enumerated felony. Because there is no evidence that anyone intended to cause the death of Ms. Polanco here, this Report will analyze only a depraved indifference standard for Murder in the Second Degree.

To be guilty of Murder in the Second Degree one must, under circumstances evincing a depraved indifference to human life, recklessly engage in conduct which creates a grave risk of death to another person, and thereby causes the death of another person. Depraved indifference to human life is defined, by case law, as “an utter disregard for the value of human life—a willingness to act not because one intends harm, but because one simply doesn't care whether grievous harm results or not.” *People v Waite*, 108 AD3d 985, 986 (3rd Dept. 2013). A person acts recklessly when they are “aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists.” *P.L. § 15.05(3)*. However, depraved indifference requires more than just mere negligence and recklessness, it requires the actor to have a mental state of “extreme wickedness, or abject moral deficiency, or a mischievous disregard for the near certain consequences of his irresponsible act.” *See People v. Hafeez*, 100 N.Y.2d 243 (2003); *People v. Feingold*, 7 N.Y.3d 288, 295 (2006).

The defendant's actions must be imminently dangerous and so substantially grave as to present very high risk of death to another. *See People v. Wells*, 53 A.D.3d 181 (1st Dept. 2008); *see also People v. Atkinson*, 21 A.D.3d 145 (2nd Dept. 2005). Moreover, the act must be committed under circumstances evincing a wanton indifference to human life or a depravity of mind coupled with uncommon brutality. *See Wells*, 53 A.D.3d 181; *see also People v. Suarez*, 6 N.Y.3d 202 (2006).

Here, we conclude there is insufficient evidence to establish guilt, of depraved indifference to Ms. Polanco's life, beyond a reasonable doubt. As outlined in the factual setting, Gales and Williams repeatedly checked in on Ms. Polanco throughout the day – and she was responsive for a portion of the day. When they noticed that she was non-responsive for a prolonged period of time, they opened

the cell and called for Capt. McZick to assist them. They refused to enter the cell until Capt. McZick came to prop the door open, believing Ms. Polanco was still alive. When they realized the severity of the situation, they began performing CPR and Capt. McZick requested immediate medical attention. These actions do not evince a ‘wanton indifference to human life’ sufficient to meet the standards of Murder in the Second Degree.

Moreover, Dr. Vessell could not be held liable under this theory for a death so far removed from her decision to medically clear Ms. Polanco for Punitive Segregation. The decision to permit Ms. Polanco to be placed into Punitive Segregation, even with her seizure disorder, did not present such a high risk of death as to render it a culpable act. Ms. Polanco’s unfortunate and untimely death was not so foreseeable as to “be imminently dangerous and so substantially grave as to present very high risk of death to another.” *Wells*, 53 A.D.3d 181.

Without proving that: (1) Dr. Vessell knew that the seizures Ms. Polanco was having were deadly; (2) that she knew it was likely that she would have another serious seizure during her time in Punitive Housing; (3) and that Punitive Housing would have an adverse effect on life saving measures should Ms. Polanco have a seizure while housed there, the elements of Murder in the Second Degree cannot be established with respect to Dr. Vessell. For these reasons, we do not feel we could prove this charge beyond a reasonable doubt.

## **II. Manslaughter**

Manslaughter in the Second Degree<sup>61</sup> is broken up into two sections: (a) recklessly causing the death of another person; (b) intentionally causing or aiding another person to commit suicide. This report will analyze only the first section: recklessly causing the death of another person.

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<sup>61</sup> As with Murder in the First Degree, Manslaughter in the First Degree is not applicable here – requiring an intentional mental state that cannot be said to be present with these facts.

The defendant must be aware of and consciously disregard a substantial and unjustifiable risk that death or injury would result from their actions to be found culpable for Manslaughter in the Second Degree. *See People v. Briskin*, 125 A.D.3d 704 (2nd Dept. 2012). Further, there must be more than an obscure or merely probable connection between the defendant's conduct and the victim's death – the ultimate death should have been foreseeable. *See People v. DaCosta*, 6 N.Y.3d 181 (2006).

Here, we would not be able to prove that Dr. Vessell could have foreseen that Ms. Polanco would die while in Punitive Segregation. There is no evidence to suggest that Dr. Vessell knew or should have known Ms. Polanco would suffer a life-threatening seizure in the near future. While Ms. Polanco suffered two documented seizures while on Rikers Island, they were quickly dealt with and she was discharged from medical care shortly thereafter. It also cannot be said that seizures – while dangerous – pose such a substantial risk of death as to make death the foreseeable outcome. Moreover, it cannot be established that Ms. Polanco would have survived even if she was housed in general population. The Office cannot establish, beyond a reasonable doubt, that Dr. Vessell, in her decision to allow Ms. Polanco to be transferred to Punitive Segregation, consciously disregarded a substantial and unjustifiable risk resulting in Ms. Polanco's death.

The Office also finds that it could not prove that any of the correction officers in charge of monitoring Ms. Polanco throughout the day can be held liable under this statute. Even if they were aware that Ms. Polanco had a seizure disorder, there is no evidence that they were aware that she was suffering from a seizure on that day. All evidence shows that Williams and Gales believed Ms. Polanco was asleep. Without specific knowledge that Ms. Polanco was suffering from a medical emergency, it cannot be established that they consciously disregarded a risk to Ms. Polanco's life by not entering her cell sooner.

### **III. Criminally Negligent Homicide**

Criminally negligent homicide occurs when the defendant causes the death of another person by failing to perceive a substantial and unjustifiable risk that such death will occur. *See P.L. § 125.10*. Criminal liability cannot be predicated upon every careless act, merely because its carelessness results in the death of another. *See People v. Lewis*, 53 A.D.2d 963 (3rd Dept. 1982). Further, the carelessness required to be held liable for Criminally Negligent Homicide is significantly higher than for ordinary civil negligence. *See People v. Heber*, 192 Misc.2d 412 (Kings Cnty. Sup. Ct. 1973). Criminal negligence requires a level of blameworthiness in the conduct that caused the death, or a level of risk so grave as to cause the defendant to be culpable. *See People v. Murphy*, 88 A.D.2d 1000 (2nd Dept. 1982).

The Office finds that there is insufficient evidence to establish this charge against either the doctor who treated Ms. Polanco or the correction officers who were present beyond a reasonable doubt.

Firstly, as to Doctor Vessell, the decision to medically clear Ms. Polanco to be placed in Punitive Segregation does not rise to the level of criminal negligence. There is no evidence in the medical reports that, at the date she was placed in Punitive Segregation, Ms. Polanco's seizure condition was so severe that there was a substantial risk that death would occur. On the contrary, Ms. Polanco had suffered two seizures wherein she was treated and released from the medical ward the same day.

Additionally, to be held criminally liable, there must be a connection between the action or neglect, and the cause of death. This element is lacking here. It is uncertain at what time Ms. Polanco began to suffer a seizure and to the degree this seizure was showing outward signs. Therefore, there is no evidence that Punitive Segregation contributed to Ms. Polanco's death, nor that it interfered with life support efforts.

Secondly, as to Williams, Gales and Capt. McZick, the Office finds that their actions do not rise to the level necessary to establish, beyond a reasonable doubt, that they were criminally negligent. There is no evidence that they acted with the level of carelessness required by the statute. They periodically checked in on Ms. Polanco and reportedly saw her lying in bed – thinking nothing was

wrong, none of them entered the cell. They complied with their requirement to make their rounds. Once they believed that something was wrong, they began rendering first aid and Capt. McZick notified medical of an emergency. Because of this, the Office finds that it cannot establish, beyond a reasonable doubt, the crime of Criminally Negligent Homicide.

**B. Official Misconduct**

The only other offense with potential applicability to these facts is Official Misconduct, and only as to the correction officers. A person is guilty of official misconduct when they are a public servant and, with intent to obtain a benefit or deprive another person of a benefit, they knowingly refrain from performing a duty which is imposed upon them by law or clearly inherent in the nature of their office. *See P.L. §195.00(2)*.

Williams, Gales, and Captain McZick are public servants for the purposes of this statute and as part of their duties as correction officers they must ensure the safety and well-being of incarcerated persons in their care. However, there is no evidence that they had any knowledge that Ms. Polanco was suffering from a seizure when they made their rounds. Without that knowledge, they could not knowingly refrain from performing their duties to inform medical of an emergency. As such, they cannot be charged with this crime.



## CONCLUSIONS

As noted above, DOC Rules and Regulations do not define what serious physical and mental condition is for the purposes of Punitive Segregation. Moreover, the purview of this Office is not to determine whether the decision to place Ms. Polanco into Punitive Segregation after her return from Elmhurst Hospital and while she was suffering from a documented seizure disorder, was wrong; rather, the purview of this Office is to determine whether that decision rose to the level of criminal behavior. As outlined in THE ANALYSIS OF CRIMINAL CHARGES section of this Report, the Office does not believe that such a high threshold was met.