

June 8, 2015

Dear Chair Brezenoff and Members of the Board of Correction,

We write to you again on behalf of New York City's children and families regarding the Department of Correction's recent submission (May 26, 2015) of a request to begin rule-making regarding several standards. We are particularly concerned about the requested changes to the minimum standards for visiting. We urge you NOT to vote to begin rule-making at your June 9th meeting. There is not enough time between the DOC's submission to the BOC and the next meeting, and we find the proposals regarding visiting to be so confusing that, despite areas of great concern, we are frankly not even sure how to respond. There remain too many unanswered questions and there is too much at stake.

We are dismayed at reading the DOC's letter requesting rule-making in that it seems to completely ignore BOC members' comments from the last BOC meeting on May 12th, including BOC members who emphasized the importance of visiting, suggested improving existing visiting procedures, and expressed the hope that the DOC's delay in submitting their specific request to the BOC meant that they would be taking into consideration the points that were made at the meeting and by several advocate groups and in our collective letter (submitted to the BOC on May 6, 2015).

We urge you to deny this request for rule-making regarding changing the minimum standards to visiting for several reasons:

- The request for the Department to establish the virtually unfettered ability to limit and deny specific visitors, and separately to restrict visits, including limiting contact between children and their parents is unfounded in fact /data. The data that DOC provides in its letter to the BOC do not demonstrate a need for the kind of broad, sweeping, subjective changes they are requesting. The figures they provide for contraband when viewed in the context of the total number of visitors during the period in question are not convincing.
- DOC has not instituted the other changes that offer much greater potential to reduce violence on Rikers Island. It seems reasonable and practicable to institute these changes and evaluate their effect. Since it is clear that most contraband is NOT coming in from visitors and BECAUSE visiting is in fact a *key intervention for reducing violence*, the changes to the minimum standards for visiting should only be cautiously considered as a last resort, after these other interventions have been tried and measured. The use of some of the better technology for scanning visitors and prisoners, a less punitive approach to the issue of contraband, may require legislative action, but as far as we can tell, DOC has not submitted any proposed legislation despite the fact that the session in Albany is nearly over, and despite the claim that preventing contraband coming in through visits is a high priority.
- There are too many unanswered questions in their letter. In particular, we are greatly concerned about the following:

- According to their letter, only “young children in the inmate’s family” can sit on the parent’s lap throughout the visit. How young? How will young child be defined? Who will decide the definition? On a daily basis, who will decide whether a young child is “in the inmate’s family”?
- Though the DOC suggests in one part of the proposal that their new policy is a “reactive response policy” only denying a visitor after an incident has occurred, the request to change the minimum standards contradicts this and if adopted and enforced would enable denial of visitors up front- to a contact visit or any visit, based on a very low threshold: someone deemed to pose a threat (no longer a “serious threat”) to the "safety, security or good order" of the facility, "or the safety, security or health of inmates." What is meant by a threat to the good order? Who would make this determination? When and where? Would this occur after a person arrives at Rikers Island for the visit and then be based on an assessment by a Corrections Officer? Or will each incarcerated person have to submit a list of prospective visitors for investigation and pre-approval by an unspecified level of DOC official?

The Department proposes to consider *other* criteria that also cannot be considered a "reactive response policy," and would involve lengthy investigation and significant staff discretion: for example, "lack of a family or otherwise close or intimate relationship between the inmate and the prospective visitor;" "*the inmate's* or the prospective visitor's pending criminal charges involving narcotics, weapons, gang activity, or violations of correction facility rules, if any: " the nature of *the inmate's* or prospective visitor's felony convictions or persistent narcotics of weapons- related misdemeanor convictions, if any, within the past 7 years;" "the prospective visitor's current probation or parole status;" and, "the nature of his/her conviction for which he/she was released from custody within the past year."¹

- The changes to the appeal process are also unacceptable, allowing DOC to suspend or deny a visitor for up to 14 business days (basically THREE WEEKS) before deciding about the appeal and forwarding this to BOC. As a practical matter, the majority of incarcerated individuals will no longer be at Rikers Island after 14 business days. And for those who do stay that long, being without visits for three weeks is unreasonable – even assuming the appeal is decided in their favor. In addition, we believe an appeal alleging an improper violation of the Board of Correction’s minimum standard should go immediately to the BOC, not to the same agency that made the determination.

We also write to remind you to consider the people who will be affected by these drastic changes in visiting. We, too, are deeply concerned with the violence on Rikers, but unfairly targeting the hundreds of thousands of visitors who visit appropriately, willing to endure a completely unfriendly and often dehumanizing visiting process, with long waits, is not the answer. The proposed changes are unfair and unfounded, and risk having the exact opposite effect as desired: cutting incarcerated people off from the

¹ Italics/ emphasis added.

supports they have in the community and the children, families, and significant others who they love and who provide support and outlets, will only increase violence. We remind you that thousands of those incarcerated are adolescents/ children, themselves, and also include thousands awaiting trial.

In our previous letter we mentioned the opportunity DOC has to provide visiting children with a positive experience, with a positive association with people in uniform, and with a meaningful visit with their mom or dad (or uncle or brother). The proposed changes appear to move us in the other direction which does not bode well for decreasing correctional populations or public safety.

Children who travel with a visitor who is denied entry for a reason other than “a serious threat to the safety and security of the facility, or the health and safety of other inmates” (the current minimum standard) will be devastated. Children look forward to seeing their parents and long for this contact. They get up early, excited about seeing their mom or dad. What are they to make of the fact that for no reason they can understand they are denied access to their parent? How long will they have waited before this disappointing news is delivered? And the Officer who keeps their visit from happening will be seen in a negative light.

As stated in our prior letter: the primary source of dangerous contraband is not visitors. Proposed changes to visiting should be placed on hold while DOC implements and then evaluates the effectiveness of the following actions:

- **DOC should strengthen screening, searches and security methods for reducing contraband,** both prior to entry of visitors to the visiting room and visit-exit strategies to better identify contraband. DOC should explore the use of body scanners and TSA technology that is safe, less invasive, and effective for identifying contraband;
- **DOC should install cameras and increase staffing in screening areas and in visiting rooms, throughout the visit process;**
- **DOC should evaluate the effects of improved screening and security measures on contraband levels** before changes to the visiting standards are considered;
- **DOC should speed up their proposed timeline for installing cameras and other measures that have much greater promise for reducing violence on Rikers.** Camera installation has been pushed back to an estimated 2018 date, while measures to restrict visits would presumably go into effect immediately.

At the very least, a decision by the BOC should be delayed so that DOC can explain exactly how the proposed changes would work, giving the public a meaningful opportunity to comment. In order to fully respond, we would need to know:

- At what point visits will be denied?
- Who will make the decision?
- What information will the decisions be based upon?
- Where will that information come from?
- Will criminal background checks be conducted on the spot?
- How will visitors be informed of denials or appeals,
- What is the definition of “good order”?

- What constitutes a threat?
- What age is the definition of a “young child?”
- What is the definition of family?
- Who will make these determinations and what implementation monitoring mechanisms will be put in place?

We hope you will *not* approve the DOC’s petition to begin rule-making to change the minimum standard for visiting. DOC states in its letter that it recognizes the “value and necessity of quality visitation.” We urge you to take them at their own word and to reject the proposed changes to the minimum standards for visiting.

Finally, we urge you to consider the implications of weakening the importance of the Board of Correction by weakening the standards and reducing its opportunity to promptly consider appeals. There is a reason the Board exists in the City Charter as an independent body. Despite the good fortune of New York City in its correctional leadership today and over much of its history, New York’s prisons and jails are beyond the public’s eye and over the course of our history – including the not so distant past – have been the scene of some of the most horrendous events in our country. Any attempt to curtail standards – especially those that involve bringing the public into the jail as visitors – should receive extra scrutiny and opportunity for public comment.

Thank you for your careful consideration of this critically important matter.

Sincerely,

The Bronx Defenders	Hour Children
Brooklyn Defender Services	JustLeadershipUSA
CASES	Lawyers For Children
Center for Family Representation	Legal Action Center
Center for Community Alternatives	NYU Family Defense Clinic
Citizens’ Committee for Children	The Osborne Association
Correctional Association of NY	Women’s Prison Association
The Fortune Society	
Philip Genty, Director, Prisoners and Families Clinic at Columbia University	
Permanent Judicial Commission on Justice for Children	