



New York City Jails Action Coalition

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June 4, 2015

Stanley Brezenoff, Chair
Members of the Board of Correction
51 Chambers Street
New York, N.Y. 10007

Re: Department of Correction (DOC) Petition for Rulemaking

Dear Chair Brezenoff and Members of the Board:

The New York City Jails Action Coalition (JAC) does not support the initiation of rule-making on the topics included in the May 26, 2015, DOC petition. The DOC petition includes a slate of vague, arbitrary and unsupported rules changes, purportedly to address the worsening “culture of violence” in City jails that was cited in the U.S. Department of Justice (DOJ) CRIPA investigation.¹ Much of DOC’s proposal contravenes clear evidence about what really reduces violence in correctional facilities, ignores the recommendations made by the DOJ in the CRIPA investigation, and ignores DOC’s *own* data that shows that its proposals seek to address a very small part of the problem. The proposals to limit visits and to restrict packages were recently rejected by this Board in January when they were proposed for the narrower population of individuals who would be housed in Enhanced Supervision Housing Units (ESHU). There is no need to revisit those rejected proposals and the DOC has not provided a legitimate evidentiary basis for any of its other proposals.

The DOC petition does not focus on the real and urgent work that needs to be done to make our jails more humane. Given the serious deficiencies in DOC’s proposal, JAC respectfully urges the Board to vote against initiating the rulemaking process at its upcoming June 9 Board Meeting. In addition, if the Board intends to vote on whether to initiate the rule-making process at the June 9 Board meeting, members of the community should be provided the opportunity to speak *before* the Board votes. The Board should hear from the community before acting on the petition especially in light of the extremely short time period between the DOC petition and the Board meeting.

¹ U.S. Dep’t of Justice, CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island (2014) available at: <http://www.justice.gov/sites/default/files/usao-sdny/legacy/2015/03/25/SDNY%20Rikers%20Report.pdf>.

JAC Urges the Board to Establish Positive Rights, Additional Programming, and Incentives for People in City Jails

The Board should concentrate on monitoring the newly enacted limits to punitive segregation adopted in January, assisting the DOC in implementing rehabilitative programming in the ESHU and other housing areas, expanding educational and vocational programming and linkages to community services, improving access to medical and mental health treatment and increasing the ability of individuals in the jails to maintain family ties through visits and other means. The DOC must utilize modern tools to evaluate and assess programming to identify what works and what does not work. The Board should be actively involved in designing metrics and gathering real data that can inform future rule-making and DOC policy initiatives. This work of developing evidence on which to base decision-making is absent in the DOC current petition. The Board should not engage in rule-making until proposals are supported by substantial evidence.

The Department of Correction Petition

JAC has reviewed the DOC petition and we provide preliminary comments below (there has been insufficient time to permit a full and careful review). Our review of the DOC proposal raised many questions about how the proposals would work, how the proposed terminology would be interpreted (and by whom). Our preliminary questions are included below as well. The Board should not act on the DOC petition until all of these questions are answered and an evidentiary investigation of the proposals is complete.

Proposed Rollback of Recent Punitive Segregation Reform

- How (and how often) has the current safety exception for “persistent endangerment to other incarcerated individuals or staff” failed to maintain safety?
- Why is it necessary to reduce due process protection for the few individuals who may be released from ESHU and then returned to ESHU?
- What charges are eligible for the proposed increase in sentences to punitive segregation? What level of involvement is required by the person subject to the increased penalty?
- How does the waiver of the 7 days out of cell alter the overall time limits to punitive segregation under the new proposal? (If the charges are related to “A” Use of Force Incidents can DOC keep someone in punitive segregation for 180 consecutive days?)
- What charges are eligible for the proposed waiver of the 7 days out of cell between 30 days in cell?
- Why isn’t transfer to ESHU for 7 days an option that must be tried prior to eliminating a 7 day respite from punitive segregation?
- Why is the Board limited to considering information in the Department’s report in making a determination of whether the waiver procedures are necessary to ensure safety?

On January 13, 2015, the Board adopted new rules including long overdue reforms to the excessive use of punitive segregation by DOC. The new Board standards limit punitive segregation sentences to no more than 30 days per incident, served in 30-day intervals with seven-day breaks, with a maximum of 60 days in punitive segregation in any six-month period. The new standards include a safety exception for persistent endangerment to other incarcerated individuals or staff.²

These new rules were a step in the right direction that is not yet fully implemented. It is not appropriate to reconsider the rules at this time before they have been given a chance to succeed. The proposed rollback of the limitation on punitive segregation is extreme and drastic. It would permit sentences of 60 days per infraction, and periods of isolation for 90 consecutive days— an abusive and harmful length of time. In its letter to BOC, DOC references “serious assaults on staff – resulting in serious injury” in describing the incidents for which extended punitive segregation sentences would be allowed, but the text of the proposed rule may be interpreted far more broadly and, the existing rules already *include* an exception for those who commit “persistent acts of violence,” making this change unnecessary. The proposed rule would be a huge step backward in the effort to stop using the torture of solitary confinement, and a huge step back from this Board’s recent effort to initiate new rules to alter the punitive and violent culture in our City jails.

The August 2014 DOJ investigation concerning adolescent males on Rikers Island did not focus on the inmate disciplinary system. However, it noted that “based on the volume of infractions, the pattern and practice of false use of force reporting, and inmate reports of staff pressuring them not to report incidents, we believe the Department should take steps to ensure the integrity of the disciplinary process.”³ Given the lack of integrity in the current disciplinary process, allowing DOC additional discretion to mete out extended punitive segregation sentences is unacceptable. The procedural due process steps are meaningless in a system where DOC staff, noted by DOJ for false and misleading reports, control the charge, the judgment, and the sentence without limitation. Ultimately, the City should stop placing anybody in solitary confinement. The conditions of solitary confinement risk permanent physical and psychological damage to people and DOC must adopt and implement alternatives which positively impact future behavior in jail and are supported by data as an evidence-based best practices.

²These limits do not go far enough – the United Nations Special Rapporteur on Torture defines any period of solitary confinement exceeding 15 days as torture, and proscribes *any* such confinement of pre-trial detainees. Solitary confinement is well known to cause sickness, including serious mental illness, and acts of self-harm, including suicide.

³U.S. Dep’t of Justice, CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island (2014) available at: <http://www.justice.gov/sites/default/files/usao-sdny/legacy/2015/03/25/SDNY%20Rikers%20Report.pdf>.

Jail Visitation Policies

- Who determines, based on what information or proof, what is a “family or intimate relationship” that will permit visits in the City jails?
- What is the time frame for a criminal record check? Can this be done on site?
- Is it a concern that these requirements are likely to discourage visits from non-citizen family and friends?
- Will *any* probation or parole status result in exclusion from visits?
- What charges within the past year will qualify for exclusion from visits?
- How are the terms in the proposal to be defined and who will make the determination? Meaning of “good order”? “threat” versus a “serious threat”?
- Why must an appeal take 14 business days?
- Why are the requirements that the exclusion have a nexus to visitation eliminated?

The DOC petition proposes restricting visitation of people at Rikers. Currently, the visit process, is an extremely time-intensive and degrading process. Without any evidence or indication of improved safety outcomes, the proposed rules would prohibit meaningful contact, such as holding hands and hugging, except briefly at the beginning and end of the visitation period. “Young” children could be held or sit on a lap throughout the visit only if they are “family,” though the terms “young” and “family” are not defined. Whole classes of people could be denied visitation rights based on lack of a family or otherwise “validated” intimate relationship, probation or parole status, criminal history, or other factors. DOC and the Mayor’s Office have also indicated that visitors could be subject to additional searches. These changes would deny, delay, and reduce the quality of visiting, and risk *exacerbating* violence by further isolating people from their loved ones in the community.

The data and existing reports suggest that only a very small amount of contraband is introduced through visits. The BOC’s April 27, 2015 report “*Violence in New York City Jails: Slashing and Stabbing Incidents*” found that nearly 80 percent of weapons recovered in 2014 were fashioned from items found or used in the jails, and only 10 percent were likely introduced from the outside. A New York City Department of Investigation 2014 report found “that while visitors to city jails bring in some contraband, a large proportion of the illegal trafficking is carried out by uniformed guards and civilian employees.” The Department’s own data cite only 60 incidents of contraband recovery related to visits during a 9-month period in which approximately 270,000 visits occurred. Moreover, only 16 of these 60 incidents involved weapons. DOC’s own data suggests that the proportion of visitors smuggling contraband is so small as to make *any* blanket policy a patently unjust and capricious proposition. DOC simply has not demonstrated that the proposed broad-based exclusion policy would result in less contraband and/or reduce violence.

The proposed background checks of all visitors would be time-consuming and likely eliminate visits when they are most needed – close to the time of arrest. This requirement is inappropriate in a jail setting when arrest is unexpected and the need to communicate most urgent. Background checks will also have the unintended consequence of deterring visits by non-citizen New Yorkers who would fear actual or perceived immigration consequences of such checks. Avoiding immigration consequences for family members and ensuring that all people, regardless of immigration status, have the same access to community ties should be paramount in a fair and enlightened criminal justice system.

DOC already has the ability to exclude visitors or limit visits based on individualized assessments of the behavior of the individual housed in the jail or their visitor. These limitations require a nexus between an individual's behavior and the imposed limitation – problems during visits or resulting from visits, can result in visit restrictions. The proposed blanket restrictions to all visitors are unlikely to have a significant impact on the flow of contraband in the jails, but are certain to punish and discourage family members and children from visiting. Family members and other visitors already endure a long, grueling procedure in order to visit their loved ones. Visitation is known to improve reentry, reduce recidivism⁴ and reduce violence in the jails.⁵ Policies that prevent these desired outcomes, such as those proposed by the DOC, should be opposed by the Board.

The Board should focus on working with DOC on *improving* the visit process and reducing obstacles that discourage visitors. Visiting should be more welcoming and child-friendly. Fostering a community and family support network is crucial to maintaining emotional health, family and community ties, and housing, education and job opportunities upon release. The improvement of the visitation process will enable individuals in our jails (who may not yet know when they might be released from jail, or whether they will be convicted or acquitted) to better cope with time inside and prepare for release.

Prohibition on Packages

- Who is determining the pre-approved vendors for packages? What are the costs including shipping costs?
- What kinds of vendors will be approved? What kind of property that is currently permitted will be disallowed, if any?
- Why is DOC changing the time frame from 48 hours to 3 business days for delivery of packages?

⁴ See Minn. Dep't of Corr., *The Effects of Prison Visitation on Offender Recidivism* (2011), available at: <http://www.doc.state.mn.us/pages/files/large-files/Publications/11-11MNPrisonVisitationStudy.pdf>.

⁵ See Ohio Dep't of Rehab. & Corr. & Gary C. Mohr, *An Overview of Research Findings in the Visitation, Offender Behavior Connection* (2012), available at: <http://www.asca.net/system/assets/attachments/4991/OH%20DRC%20Visitation%20Research%20Summary.pdf?1350743272>.

- Why can't family members and other visitors continue to personally deliver items to the jails when they come for a visit?

DOC proposes to prohibit people in City jails from receiving any and all packages, excluding clothes for court, unless the items contained therein are purchased from approved vendors. This limitation on receiving packages, which is proposed without evidentiary basis, would create an undue significant financial hardship on people in City jails and their families. Every item provided to a person in the City jails would have to be purchased anew and would likely entail paying for delivery charges as well. Making people of limited means buy things that they already own is unreasonable and harsh. As with visitation, there is no evidence that incoming packages are a significant source of weapons that cannot be detected by the DOC when it searches packages at the jails. The proposed restrictions on packages are not likely to reduce violence and will be the cause of unnecessary hardship for families and friends of those in our jails.

Petition to BOC for Rulemaking on Sexual Abuse & Harassment in City Jails

The Jails Action Coalition supports the petition by Public Advocate Letitia James for rulemaking concerning sexual abuse and sexual harassment in City jails. Our City jail policies should be aligned with the requirements of the federal Prison Rape Elimination Act (PREA). The BOC Minimum Standards should include measures necessary to end sexual abuse including sexual harassment by requiring comprehensive training, supervision and reporting requirements. The Board should take steps to ensure that its Standards serve to eliminate sexual abuse.

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Please contact Jared Chausow at (650) 814-0565 or jchausow@bds.org or Jennifer Parish at (646) 602-5644 or jparish@urbanjustice.org if you have any questions.

Sincerely,

NYC Jails Action Coalition