



Defending America's  
Abused and Neglected Kids

NYC BOARD OF CORRECTION

JUN 8 '15 AM 11:46

Stanley Brezenoff, Chair  
NYC Board of Correction  
51 Chambers Street, Room 923  
New York, NY 10007

June 5, 2015

Re: May 26, 2015 Department of Correction Petition for Rulemaking

Dear Mr. Brezenoff:

Children's Rights is a national advocate for youth in child welfare systems. Our experience with adolescents and young adults in foster care often brings us in contact with juvenile and adult corrections, as our clients are disproportionately represented in these settings. We are very concerned about the welfare of older youth within the Department of Correction, including teenagers and young adults.

We do not support the Department's proposed rules, which we believe pose grave threats to the ongoing reform of punitive segregation approved by the Board in January of this year and threaten to increase violence at City jails. While we have concerns about all aspects of the Department's rulemaking petition and join the New York City Jails Action Coalition letter to the Board about the petition as members of JAC, we have focused our comments here on the proposed changes to the visitation Minimum Standards, which will likely have devastating effects on all incarcerated people, especially youth.

### **Questionable Basis for Proposed Revisions**

The Department's proposal to amend current visitation policies and procedures relies on outsized concern about visitors introducing contraband into its facilities. Based on its own data, visits are neither the exclusive nor most frequently used channel through which contraband is brought into City jails. On the contrary, a 2014 report by the New York Department of Investigation found that "a large portion of the illegal trafficking is carried out by uniformed guards and civilian employees." Thus, these changes seem unlikely to effectively reduce weapons entering facilities, and they seem unnecessary, given the aggressive measures that the Department has already undertaken in addressing this issue.<sup>1</sup>

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<sup>1</sup> See DEPARTMENT OF CORRECTION, PETITION TO THE NYC BOC FOR RULEMAKING PURSUANT TO THE CITY ADMINISTRATIVE PROCEDURE ACT, at 2.

We urge the Board to scrutinize the data relied on by the Department to justify its proposal and whether it merits extensive changes to visitation rights, which are an integral component of every incarcerated person's wellbeing. In support of its petition, the Department states that, between January 2014 and April 2015, 442 contraband items were left in amnesty boxes by visitors who abandoned their intentions to bring these items into jails. The Department further states that 29 visitors were arrested for attempting to introduce weapons into jails and 23 inmates were found with drug or weapon contraband in post-visit searches in FY15 to date. These statistics seem insufficient to warrant a wholesale curtailment of visitation rights in City jails. First, it is unreasonable to limit visitation rights based on the number of times that visitors have actually *abandoned* their intent to engage in illegal trafficking. No actual threat to the safety, security or good order of prison facilities arose from such incidents and restricting visitation rights on this basis undermines the incentives for visitors to forgo transporting contraband into jails in the future. Second, the proposed amendments are a disproportionate response to the relatively small number of visitors arrested for attempting to traffic weapons into jails and incarcerated people found with drugs or weapons after visits reported by the Department. These statistics suggest that the Department's existing measures have already been highly effective in preventing contraband from entering prisons through visits. The Department offers no evidence that arrests and post-visit searches are less effective than blanket visitation restrictions in reducing access to contraband in City jails.

#### **Proposed Revisions to Definition of Physical Contact**

In addition to its questionable rationale, the Department proposes revisions to the definition of physical contact allowed during visits that are vague and difficult to implement in practice. The current provision on physical contact under Chapter 1, Section 1-09 (f) of the Minimum Standards states that physical contact "shall be permitted between every prisoner...*including* holding hands, holding young children, and kissing." The existing provision appears to leave room for the interpretation of physical contact to encompass actions other than those described therein. In contrast, the definition proposed by the Department is much more prescriptive, and specifically dictates that physical contact "*shall include*" kissing and a brief embrace at the beginning and end of the visitation period, as well as holding young children throughout that period. The proposed definition also eliminates an inmate's freedom to hold hands with visitors during a visit. These changes invade the privacy and autonomy of incarcerated people and their visitors, dictating exactly how each of them may interact with one another. It is unreasonable to prevent people from holding hands with their visitors while permitting the more intimate behavior of hugging and kissing. More crucially, the Department has not demonstrated that hand-holding is more likely to facilitate exchanges of contraband than hugging and kissing as to justify their exclusion from contact visits.

The Department's proposed limits on the number and duration of physical contacts during visits are similarly unjustifiable. Requiring physical embraces to be "brief" is vague and impossible to enforce without seriously interfering with incarcerated people's rights of privacy, and the rights of their visiting friends and family. To ensure compliance with this

provision, the Department will have to closely supervise visits in ways that will undoubtedly compromise the quality of those visits.

### **Proposed Revisions to Limitations on Visitation Rights**

The Department's proposed revisions to the limitation of visitation rights raise even greater concerns and may have a chilling effect on the number of visits received by incarcerated people. The Department seeks to expand such determinations to include broad considerations, none of which may form the "sole basis" of a final determination, such as: a visitor's lack of family or intimate relationship with an inmate; a visitor's criminal record, including weapons-related misdemeanor convictions; and the nature of *any* conviction for which a visitor has been released from incarceration within the past year. In its petition, the Department has not specified how long assessments of a visitor's criminal record can take or which felony convictions qualify for restrictions to visitation rights. Nor has the Department identified who specifically is responsible for making such assessments or how they will occur.

Moreover, it is difficult to understand from the petition how the intimacy of relationships between visitors and incarcerated people is relevant to the safety and security of prison facilities. Nor does the Department set forth how these qualitative determinations could possibly be made. Obviously, inquiries made about the quality of incarcerated people's relationships will grossly intrude upon the private lives of such individuals. Limiting visitation rights based on this factor also threatens to reduce opportunities to reconcile estranged relationships or to develop new relationships with members of the community beyond the confines of the City's jails. This may have a disproportionate impact on adolescents and young adults who have entered the criminal justice system with few social ties and have unique needs to develop networks of support crucial to their wellbeing both during and after their incarceration. It is manifestly unfair to use a visitor's lack of a family or intimate relationship with an incarcerated person to bolster other considerations that otherwise cannot individually form the "sole basis" for limitations on visitation rights under the Department's proposal.

Other proposed changes further expand the Department's discretion to limit visitation rights in an inconsistent and arbitrary manner. Under the existing regime, visitation rights may be limited only when the exercise of those rights constitutes a "serious" threat to the safety or security of a facility. Determinations to limit such rights must further be based on specific acts committed by a visitor during a prior visit or on specific information regarding the visitor's plans to engage in acts that threaten a facility. By removing the "serious" qualifier and the evidentiary requirement, the Department's proposed amendments allow for limitations to visitation rights based on perceived threats of any magnitude regardless of the degree of their nexus with a given visitor. Limitations to visitation rights are further broadened by the Department's proposal to include considerations of "good order" in making such determinations – a term that it has left undefined in its petition.

Furthermore, the Department's proposal risks creating a new regime that encourages potentially unfounded and unfair decisions to limit visitation rights. Currently, the Department may only deny visiting rights with a particular visitor if "revoking the right to contact visits would not suffice to reduce the serious threat." The Department's proposal to eliminate this obligation promotes imprudent decision-making without regard to less restrictive means to address threats posed by a visitor. It is also inconsistent with subdivision (f)(4) of section 1-09 of the Minimum Standards, as revised by the Department, which requires the Department to make alternative arrangements, such as non-contact visits, when it limits an inmate's contact visit rights. The quality of decision-making by the Department is further threatened by its proposed changes to how affected individuals may challenge the Department's decisions to limit visitation rights. Under its petition, the Department seeks to remove its duty to provide inmates and visitors with written notification of specific charges against them and allow them to respond *before* it decides to limit visitation and contact visit rights. The Department's petition also seeks to require individuals to challenge such decisions by first appealing to the Department before submitting an appeal to the Board of Corrections, regardless of the duration of an incarcerated person's time in custody. Together, the extended appeals procedure, which further removes the Board from these important issues, and the abridged determination process proposed raise serious due process concerns.

### **Risk of Harm to Youth in the Department's Custody**

The Department's proposed revisions to visitation policies and procedures will have profound effects on all people in City jails, who remain detained for an average of more than five months, but especially youth.<sup>2</sup> Visits are crucial to adolescent and young adult inmates in two regards: 1) they preserve kinships and other social relationships essential to a young person's emotional and mental wellbeing during his or her incarceration, and 2) they allow a young person to maintain and develop a functional social network that supports his or her re-assimilation into society upon being released from custody. By further isolating them from the outside world, the Department's proposal may lead to an increased risk among youth of developing or exacerbating mental health conditions.<sup>3</sup> Curbing visitation rights may also lead other incarcerated youth to externalize their frustration through disruptive behavior. Furthermore, the revisions suggested deprive adolescent and young adult inmates of invaluable opportunities to establish crucial life skills through interacting with supportive adults during an age of profound emotional and cognitive development.<sup>4</sup> Restricting contact with the broader community during their detention leaves them in an extremely vulnerable position when they re-enter society without the network of support necessary as they transition into adulthood. The

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<sup>2</sup> DEPARTMENT OF CORRECTION, PRESENTATION TO THE BOARD OF CORRECTION (May 12, 2015), referring to an average of 176 days among those who stay overnight.

<sup>3</sup> Prinstein, Boergers, Spirito and Grapentine, *Multi-Method Assessment Of Adolescent Suicidality In Adolescent Psychiatric Inpatients: Preliminary Results On The Relative Utility Of Suicide Assessment Approaches*, 40 JOURNAL OF THE AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY 1053-1061(2004).

<sup>4</sup> David Altschuler, Gary Stangler, Kent Berkley & Leonard Burton, Center for Juvenile Justice Reform and the Jim Casey Youth Opportunities Initiative, *Supporting Youth in Transition to Adulthood: Lessons Learned from Child Welfare and Juvenile Justice* (2009), at 8-9.

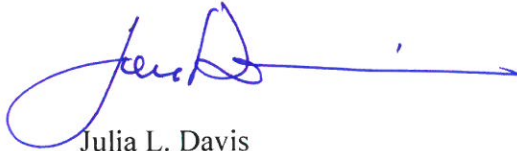


Department's proposed rules fail to recognize that institutionalized youth need *more* – not less – contact with trusted adults and peers. The failure to have such contacts may have life-long consequences.<sup>5</sup>

Finally, the petition was submitted to the Board in haste and there has been little time for public comment. It is critical for the Board to engage in a fulsome public discourse about these proposed changes to enhance its own decision-making and to help maintain public confidence in the Board's authority. We hope that the Board will permit more time for the communities impacted by the Department's proposal to review and digest the petition and respectfully request that the Board vote against initiating the rulemaking process at its upcoming June 9<sup>th</sup> public meeting.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Julia L. Davis', with a long horizontal flourish extending to the right.

Julia L. Davis  
Children's Rights

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<sup>5</sup> Jim Casey Youth Opportunities Initiative, *Trauma-Informed Practice*, at 7.

