New York City Jails Action Coalition
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November 2, 2015

Stanley Brezenoff, Chair
Members of the Board of Correction
1 Centre Street, Room 2213
New York, NY 10007

Dear Chair Brezenoff and Members of the Board:

We write in response to the Testimony of Commissioner Joseph Ponte regarding proposed rule changes related to visiting, packages, solitary confinement and Enhanced Supervision Housing. The testimony is dated October 16, 2015, but was not posted to the Board of Correction website until after business hours on the evening of October 23, 2015, after the close of the public comment period pursuant to CAPA. It is unclear when the testimony was received by the Board. What is clear is that the testimony was not offered publicly to provide any time whatsoever for the public to review and respond to it within the extension granted at the October 16 hearing to permit comment through October 23. With this letter we provide a limited response to Commissioner Ponte's testimony. This letter does not reflect a comprehensive view of our concerns about the proposed rules, and should be considered in addition to previously delivered testimony. We rely on the previous testimony of our members, other advocates, community members, incarcerated people and their families, to serve as a more complete representation of the numerous serious concerns regarding the proposed rules.

Before we address Commissioner Ponte's testimony, we raise an additional procedural concern with the rule-making process. As we approach the November 10, 2015 meeting, there is no clear understanding among advocates and community members about what changes may have been made to the proposed rules, whether the Board will vote on a different version of the proposed rules, and what, if any, opportunity there may be for public comment based upon any changes made. We urge the Board to promptly make public any revised rules which may be voted on at upcoming meetings, and to publish the agenda for the November 2015 meeting immediately. We ask that you provide for a meaningful opportunity for public comment *prior* to any vote, and to delay any vote as necessary to provide adequate time for public review and comment on rules which may be significantly different than those discussed at the October 16, 2015 hearing. We trust that the Board values input from the public and directly impacted New Yorkers as crucial to its mission to oversee the Department of Correction.

Although the Commissioner's testimony purports to respond to concerns raised during the October 16, 2015 hearing, there is no response to concerns raised regarding the lengthening of punitive segregation sentences to 60 days for assault on staff, no response to concerns raised about diluting due process for people discharged from Enhanced Supervision Housing, and no information regarding proposed rules language to change the appeals process for people who are

denied visits. We trust that these proposed rule changes will be stricken, and the current rules language will remain unchanged on these topics, as they have not been defended by the Department on the record.

Commissioner Ponte's testimony obfuscates the reality of how solitary confinement is being used in our city jails. During the October 13, 2015 Board meeting, Dr. Venters described the population who are presently the subject of overrides in solitary confinement. He described individuals who suffer from mental illnesses that are exacerbated by isolation, leading to more problematic behavior, and prolonged solitary stays. The Commissioner's argument that overrides are necessary to preserve punitive segregation as an "effective tool" to respond to incidents does not address this reality, and rests on a false premise that more isolation will somehow yield different results. We urge the Board to consider what definition the Department gives to "effective" in this case. "Effective" cannot simply mean "most convenient" – when isolation fails to correct behavior it is unreasonable to argue that more of the same response will achieve different results. The use of punitive segregation does not and should not replace more effective and compassionate training and psychoeducation for officers so that incidents are appropriately diffused, redirected and resolved. Moreover, the disregard for individuals with mental illness who remain in punitive segregation at this time is exceedingly callous, dangerous and contrary to the intent of the reforms to the Standards adopted in January to exclude those with serious psychiatric disabilities.

When the Board adopted limits to solitary confinement, it acknowledged the harm of lengthy stays in isolation. The harm has not changed. People in our jails are still experiencing the harm. In May of this year the United Nations Crime Commission adopted the "United Nations Revised Standard Minimum Rules for the Treatment of Prisoners" to be known as the "Mandela Rules."[1] These agreed on new rules for the treatment of prisoners prohibit as torture any isolated confinement such as punitive segregation that lasts longer than 15 days and prohibits its use for individuals "with mental or physical disabilities when their conditions would be exacerbated by such measures." New York City must not walk in the other direction. We must tackle this issue with the urgency it deserves. The Board must reject this proposed rule change that is put forth as a violence reduction measure but does not reduce violence. The Board must not permit the Department of Correction to use punitive segregation at a level that clearly violates human dignity and is torture.

The Commissioner's testimony clarifying proposed changes to visiting is extremely alarming. As noted in the October 27, 2015 letter to the Board from the Legal Aid Society, the methodology described for screening possible visitors represents a patent invasion of privacy. It is disturbing that the Department feels they have the authority to inquire into the backgrounds and relationships of tens of thousands of New Yorkers, and restrict access to friends and loved ones for people who are *presumed innocent.* We urge the Board again to reject the proposed rules for all the reasons submitted previously, and also to avoid complicity in a dangerous undertaking by this Department that includes no protections against dissemination and misuse of information gathered. The Commissioner's testimony includes intrusions that are contrary to American values of liberty, freedom of association and privacy, and which threaten to violate our

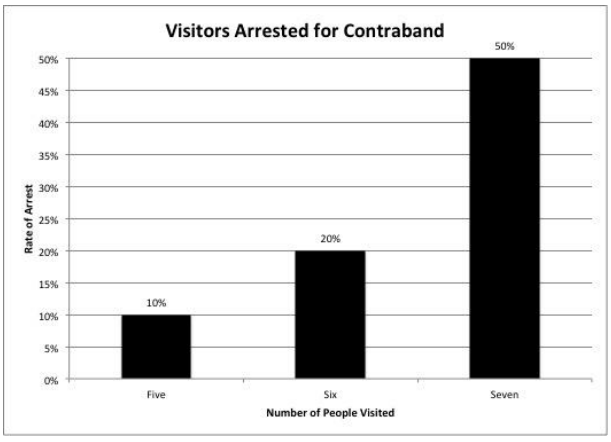
[1] The Commission has transmitted the Rules to the Economic and Social Council for subsequent adoption by the UN General Assembly at the end of the year.

state Constitution's guarantee that innocent people have a right to have contact with their loved ones.

The Commissioner's testimony uses language to suggest that they care to make visiting better and proudly reports that the Department has engaged with stakeholders to that end. However, the reality is that they have done *nothing* to actually improve visiting. As noted in the October 21, 2015 letter to the Board from the community members on the Department's Visiting Workgroup, their concrete suggestions to the Department about ways to improve visiting have been met with expressed enthusiasm from Department staff but no actual results. Even more troubling, when community members requested specific data about contraband and other issues so that they might understand the challenges from the perspective of the Department, the relevant information was not shared. Any claim from the Department about their commitment to improve visiting should be viewed in light of their failure to actually engage with community members on the Visiting Workgroup and take action beyond false assurances.

The Commissioner's testimony presents data about the frequency of arrest for individuals who visit more than one person in jail. However, the testimony does not describe in any real terms the scope of the data. For example, the Department notes that 25% of people who visited 9 or more people were arrested for contraband. This could mean 100 people out of 400 were arrested. It could also mean 5 people out of a total of 20 were arrested. In all likelihood, this data reflects that 1 person out of a total of 4 was arrested for bringing in contraband. Without knowing the scale of the data in hard numbers, comparing rates alone creates an illusion of a trend where one may not exist or where it is actually clearly insignificant and meaningless.

If we assume that there are fewer visitors who visit 9 people compared to 8, and even fewer compared to 7 and so on, 1 arrest made within each of these groups will represent a relatively higher percentage of their group. For example, if 10 visitors visit 5 or more times and 1 is caught with contraband, the result is a 10% arrest rate. If 5 visitors visit 6 or more times and 1 is arrested for contraband, the result is a 20% arrest rate. If 2 visitors visit 7 people and one is arrested, the result is a 50% arrest rate. If we look to the rate alone, it *appears* that there is a clear correlation between the number of people visited and likelihood of arrest.



However, if you consider the *scale*, the opposite is suggested – there is no correlation at all, the rate simply reflects a difference in scale, not an increased likelihood of smuggling contraband.

The data offered in the Commissioner's testimony should be discarded because rates are useless without scale or consistency in sample size. There is still no concrete data to support the Department's position that their undertaking to create "risk profiles" about tens of thousands of individuals is warranted.

Finally, the Commissioner's testimony regarding the proposed changes to packages does not assuage our concerns. The Department continues to claim that the issuance of uniforms and other essential items will mitigate costs to families. The disastrous result of the Department's roll-out of uniforms in a small number of facilities thus far suggests that the Department will *not* provide adequate clothing to people in city jails. The Board Standard requiring laundry services is not being adhered to by the Department. Standard § 1-03(h). In fact individuals in our jails are forced to wash their clothing and uniforms by hand in cell and bathroom sinks. The Department has not demonstrated that it will provide adequate clothing or laundry services. The Board should not permit changes to the standards on packages that will force poor families to expend their limited funds to compensate for the demonstrated shortcomings of the Department. No compelling evidence has been presented to support the need for this rule change. The Board should not condone the foreseeable burden on poor families, simply for the convenience of Department staff and when the Department has so recently demonstrated its inability to comply with Board Standards.

We appreciate your consideration of these comments and request that this response be made part of the public comments to the Proposed Rules. In addition, we request that you promptly make public the agenda for the November 10, 2015 meeting as well as any revised version of rule changes being considered, and delay any vote to provide time for meaningful public input on any revisions.

Sincerely,

New York City Jails Action Coalition