

Testimony of The Legal Aid Society Prisoners' Rights Project

on

**Inmate Grievance System in
New York City's Correctional Facilities**

Presented before

The New York City Board of Correction

Presented by

**Dale A. Wilker
Attorney, Prisoners' Rights Project
The Legal Aid Society**

June 12, 2018

CHAIRMAN CEPHAS, MEMBERS AND STAFF OF THE BOARD OF CORRECTION:

Thank you for the opportunity to testify concerning the Inmate Grievance System of the New York City Department of Correction (“DOC”). The Legal Aid Society’s Prisoners’ Rights Project (“PRP”) has been dealing with the problems of the jail grievance system for 35 years. Virtually every day, our office is contacted by incarcerated persons or their families or attorneys with complaints about the failure of DOC staff to adhere to the Board’s Minimum Standards. . The Legal Aid Society is intensely interested in improving the quality of the DOC grievance process, and believe the Board of Correction plays an important role in helping create a more efficient and responsive grievance process. We applaud the Board for its reports demonstrating the clear patterns of ongoing deficiencies in the NYC jail grievance system.

It is time now for the Board to promulgate robust Minimum Standards for the jail grievance services to the City jails’ incarcerated persons. If the Board of Correction takes action to enact its report recommendations for reform as Minimum Standards, and the Department of Correction complies with them, we would see significantly better response to complaints. We suggest here that these changes to the Minimum Standards should prioritize making the grievance process more accessible, making the process easier to complete, making DOC more responsive to grievances of all types, and increasing the accountability of DOC to the constituents it serves, including by taking efforts to reduce retaliation against those that grieve.

EVIDENCE OF SYSTEMIC BREAKDOWN OF GRIEVANCE PROCESS

The Board’s two in-depth studies conclusively establish that the DOC Grievance Process has systemically broken down. According to the Board’s recent study, 40% of all complaints filed by incarcerated people were rejected as not subject to the grievance process, including 2,293 dismissed as either non-grievable complaints (N= 2,293) or as requests (N=669). Of those that were found subject to the process, 95%, or 4,435 grievances, were closed after “informal resolution,” i.e., the initial response by the grievance staff. In 2017, only 20 appeals were filed, including only one to the Inmate Grievance Resolution Committee, the first level of appeal, only 9 to the Warden, and only 10 to the Central Office Review Committee. *BOC Second Assessment at 5.*

We doubt that the 95% of grievances resolved after informal resolution solve the problem presented by the incarcerated person. We also doubt that the vast majority of people whose grievances have been denied at the earliest step in the grievance process are actually satisfied with the rejection of their grievances by the DOC grievance staff. These facts suggest to us that many incarcerated persons either do not know that their grievance has been denied and must be appealed, do not know how to proceed with an appeal, or their appeals are not being forwarded to the next level by grievance staff.

In absence of reform, in any system, people will find other ways to be heard. That is what incarcerated persons are now doing by calling 311 or PRP more often than they grieve.

Nearly 30,000 complaints to 311 were made in FY 2017, over three times the number of grievances filed with the IGRC. *Id.* Every day, individuals incarcerated in City jails call and write to PRP to ask us to complain for them to DOC Central Office, instead of using the IGRC. Many of these persons tell us that they have tried to use the IGRC, but never received a response.

These numbers demonstrate the lack of confidence that incarcerated persons have in the DOC grievance system and suggest that there is something fundamentally broken in its operation, which must be corrected by the Board.

RECOMMENDATIONS FOR MINIMUM GRIEVANCE PROCESS STANDARDS

The Legal Aid Society Prisoners' Rights Project recommends that the Board take the following actions to fix DOC's broken grievance system.

First and foremost, the Board should enact Minimum Standards as rules for the grievance process that DOC must follow.

The standards should not change which matters are grievable and which are not. The substantive scope of the grievance system as currently set forth in the DOC grievance directive is wholly appropriate. The current scope of grievable subjects should be codified by the Board as a Minimum Standard.

Access to the Process

- All complaints to the Department from whatever source derived and in whatever form received (e.g., letters, emails, phone messages, online forms) should be deemed formal grievances and processed.
- BOC should require DOC to accept as formal grievances all complaints forwarded to the Department by 311, by Legal Aid (and by any other defender or legal services organizations), by public officials, and by the BOC.
- There need to be uniform written procedures for coordinating 311 complaints within the DOC grievance process.

Currently there appears to be confusion in the jails about how 311 complaints relate to the grievance system. For example, a person incarcerated at BKDC wrote to our office that BKDC will not accept grievances if a complaint has been made to the City's 311 hotline, that using both "cancel each other out," and that the DOC Grievance Directive 3376 "has been made null and void" so his grievance was not entitled to a written response from DOC.

- All complaints on an incarcerated person's behalf to Constituent Services from attorneys, family or other sources, including from legal services organizations, government officials, etc. should be deemed grievances.
- All letters from people in DOC custody to DOC officials, such as to the Warden, the Chief of Department, the Commissioner, etc., should be deemed grievances.

- Representatives of those in DOC custody should be allowed to appeal the denial of a grievance on behalf of the individual.
- Incarcerated persons should be allowed to send their appeals by mail to the next level of the grievance process. For example, one should be allowed to mail an appeal to the Central Office Review Committee, rather than be required to go through the jail grievance staff who denied or failed to respond timely to the original grievance.
- Grievance forms, accurate instructions and the grievance directive should be freely available at all times in each housing area and the law library without having to ask an officer or other DOC staff to provide the forms.
- Locked, tamper-proof grievance boxes should be located in each housing area of each jail, and the following program areas: law library, medical clinic, intake / receiving rooms, and administrative offices.
- Grievance staff must retrieve grievances from every grievance box at least once per day.
- Tablets or kiosks should be required in every housing area and the law library.
- Minimum staffing levels should be established for grievance staff. These staffing levels should be a ratio of staff to jail population (e.g. 1 staff per 50 inmates) that is adequate to provide a timely response to each grievance.

DOC Response

- The Board should mandate written, substantive responses by the Department to every grievance for each level of the process.

The Board should know that recently the Department's Constituent and Grievance Services office has stopped providing substantive replies to The Legal Aid Society's complaints on behalf of its clients.

Indeed, DOC has even stopped acknowledging receipt of specific complaints. Instead DOC now sends an automatic computer-generated reply message that avoids any reference to the specific individual complaint. *See* attached DOC auto reply dated June 22, 2018.

These generic auto replies contain no reference whatsoever to the incarcerated person's name; provide no tracking number; and give no assurance of an investigation or substantive disclosure of DOC findings.

Instead, the Constituent Services auto reply states, in full:

Good day,

Thank you for contacting the New York City Department of Correction (DOC). We appreciate your concern and/or feedback. Your correspondence has been received and will be reviewed.

If you have any specific questions or follow up, please feel free to also call the Department of Correction Information Hotline at 718-546-1500.

Thank you again for contacting DOC.

Office of Constituent and Grievance Services
NYC Department of Correction

This practice lacks any semblance of accountability.

- The Board should mandate that the Department disclose its factual findings with respect to all complaints to the person complaining and their lawyers.
- Copies of written responses should be provided to the Board and the incarcerated person making the complaint, or on whose behalf the complaint is lodged. These responses should be accompanied by a separate appeal form clearly notifying the grievant of the right of appeal and how to complete an appeal.

Appeals

- Appeals to the jail warden should be eliminated. Following the formal grievance hearing, only one level of appeal should be required to the Central Office Review Committee (CORC).
- Response times should be shortened so that the grievance process, including appeals, can be completed within 30 calendar days.

At present, the fastest a grievance can be completed is 42 days, assuming the grievant files immediate appeals. The average length of stay of incarcerated persons in the DOC jails is 66 days. *See* DOC Website at https://www1.nyc.gov/assets/doc/downloads/press-release/DOC_At_Glance-FY18_3rdQTR_052118.pdf (last visited June 25, 2018).

- The IGRC hearing panel should include civilian, inmate and non-DOC representatives, such as clergy.
- CORC decisions should be forwarded to the Board for its review and recommendations to the Commissioner.

Protection from Retaliation

Incarcerated persons in DOC custody frequently complain to our office that they are subjected to retaliation, in the form of physical threats or assault, by DOC staff when they

submit a grievance or when our office communicates their complaint to DOC Constituent and Grievance Services. Other forms of retaliation include being denied mandated services, escorts or other privileges, including lock-out time. Such retaliation is common enough to have a name: “being put on the burn.”

- To insure the integrity of the grievance process, there must be strict penalties mandated by the Board against retaliation by staff for grievances.

Medical Grievances

Incarcerated people often use the DOC grievance process to complain about medical care and treatment, including violations of the Board’s Minimum Health Care Standards.

- The Board should mandate that DOC forward all complaints about jail medical and mental health services directly to Correctional Health Services (CHS) and should also mandate that CHS treat these complaints as formal grievances, i.e., “Patient Complaints” or “Requests for Second Opinion.” *See* CHS Protocol #INT 16.
- The Board should mandate that CHS disclose to incarcerated persons and their authorized representatives, its findings and treatment plans in response to all complaints submitted to CHS.

Like DOC, CHS also does not provide any substantive response to complaints made on behalf of incarcerated people by their representatives, such as The Legal Aid Society. CHS refuses to provide responses even when a release authorization from the incarcerated person is submitted to CHS. CHS claims that it lacks sufficient staff to provide replies, beyond form acknowledgments of receipt of a complaint.

We know, however, that each such complaint to CHS generates within CHS memos which document its findings and treatment plans for such complaints. These memos, usually in the form of emails, could easily be shared with the incarcerated person or their representatives who provide releases to CHS.

Even when an incarcerated person’s representatives formally request the client’s medical records, and specifically request emails and memos generated from their complaints, CHS ignores the request and does not disclose its investigative findings. CHS will only provide the individual’s medical chart, which does not contain the written complaint or CHS’s investigative findings.

CONCLUSION

A responsive grievance system for addressing custodial problems is essential to protecting incarcerated people’s rights and privileges under the Board’s Minimum Standards, and for maintaining safety and security of the jails. A grievance system that holds itself out as a means of solving legitimate inmate problems, but then fails to deliver on that mission, risks engendering feelings of frustration, disrespect, mistrust, betrayal and anger among the incarcerated population. Experience has shown that disturbances and violence occur in jails and

prisons when problems large and small are ignored, when frustrations mount, when tolerable daily slights become intolerable abuse and reach a critical mass. That is why a responsive and efficient grievance process is so important to maintaining safe jails.

We thank the Board, Executive Director King, and the Board's staff for its diligent investigation of this important issue and opening up the upcoming revision process and ensuring greater public participation. Thank you for this opportunity to express our perspective on the need to reform the DOC grievance process.

From: CONSTITUENT SERVICES <constituentservices@doc.nyc.gov>
Sent: Friday, June 22, 2018 5:03 PM
To: Wilker, Dale
Subject: DOC Constituent Services - Auto Reply Email Acknowledgement ***DO NOT REPLY***

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