



**THE COUNCIL
OF
THE CITY OF NEW YORK**

October 16, 2015

Board of Correction
1 Centre Street, Room 2213
New York, NY 1007

Dear Board Members:

We submit these comments to express our opposition to the rule changes currently under consideration by the Board of Correction (BOC). We urge you to implement meaningful reform instead of adopting the published proposal.

Earlier this year, the BOC took a significant step in adopting minimum standards that limit the amount of time an individual can be held in punitive segregation. The rules now proposed by the BOC wrongfully call for permanent exceptions to these maximum periods that individuals can be kept in extreme isolated confinement. Furthermore, we are deeply troubled that the proposed amendments will allow the Department of Correction (DOC) to restrict a visitor based on their status rather than on specific acts of an incarcerated individual or their visitor.

The BOC's proposed rules amount to a rollback of hard-fought reforms and, if adopted, will move the DOC in the wrong direction. The U.S. Department of Justice, New York City Council, medical and legal experts, and countless advocates have expressed grave concerns about the systemic failures and inhumane conditions at Rikers Island. Business as usual cannot be an option for our jails. We are perplexed that the rules proposed by the BOC are nearly identical to those submitted by DOC Commissioner Joseph Ponte, and we must question the seriousness with which his agency is taking calls for reform.

Rather than restrict visitation and increase the use of punitive segregation, the DOC should focus on evidence-based solutions aimed at reducing violence in its facilities, easing reentry, and lowering recidivism rates. It is especially important for the DOC to identify and remove rank-and-file officers and leaders who perpetrate abuses and contribute to the influx of contraband and increase in violence.

Given that the BOC is proceeding with rulemaking, we hope to encourage you to heed the calls for meaningful reform and implement measures that would serve to both reduce violence and improve overall conditions.

GENERAL	
Proposed Rule	Our Comment
Definitions - Changing the term “prisoner” to “inmate”	<ul style="list-style-type: none"> We oppose the use of either word. The DOC should avoid using terms that imply criminality or dehumanize individuals. Instead of “prisoner” or “inmate,” the DOC and BOC should use “individual,” “incarcerated individual,” or “detainee.”

VISITATION	
Proposed Rule	Our Comment
§ 1 (3) - Policy	<ul style="list-style-type: none"> The proposed rules seem to acknowledge the importance of maintaining personal connections for improving outcomes both during confinement and upon reentry. Indeed, visitation with friends, family, and others plays an instrumental role in an individual’s ability to maintain social connections and should therefore be encouraged and facilitated by the DOC. Incarcerated individuals are entitled to visits. The DOC should not be the arbiter of who is worthy to visit incarcerated individuals based on the DOC’s determination of visitors’ relationships to those individuals. Barring any clear, documented security concern, the BOC should not seek to define who is allowed to visit. The BOC should not limit visitation based on any definition of “family.” Although the proposal appears at first glance to make a positive step by broadening the definition of “family,” this change leaves too much discretion to the DOC, which already struggles to implement an adequate visitation system. Rather, all visitors who pass security clearance should be allowed to visit. As for the frequency of visits, the BOC acknowledges that incarcerated individuals are entitled to receive “periodic” personal visits; however, the term “periodic” is vague and should be clearly defined. The DOC must explain the reason for this modification.
§ 1 (1)(iv), (v)-(viii) – Exceptions to segregating	<ul style="list-style-type: none"> We agree with the proposal that pre-trial and post-trial detainees above the age of 21 years old should

<p>pre- and post-trial individuals</p>	<p>be separated.</p> <ul style="list-style-type: none"> • We recommend that the BOC incorporate a reporting requirement to measure how many detainees in enhanced supervision housing units, adolescent housing areas, housing areas designated for detainees ages 18 to 21 inclusive, and housing areas for pregnant detainees are pre-trial versus post-trial.
<p>§ 2 (f) – Recreation for individuals in the contagious disease units (CDU)</p>	<ul style="list-style-type: none"> • In addition to reading materials, the DOC should provide games, arts and crafts, and other appropriate materials for in-cell recreation. • The procedure for incarcerated individuals to obtain materials of their choosing, within reason, should be simple and explained to all incarcerated individuals. The BOC should set Minimum Standards for how the DOC provides such materials and processes requests. • We support providing reading materials in the six most commonly spoken languages in facilities. • The BOC must clarify whether this provision applies to incarcerated individuals when there is no inclement weather. • The BOC must define “communicable” diseases and “contagious” diseases, and clarify whether individuals with communicable diseases are restricted in the same way as those with contagious diseases.
<p>§ 4 – Allow visitors and incarcerated individuals to hold hands throughout a visit, touching and kissing</p>	<ul style="list-style-type: none"> • At a minimum, the DOC must allow for physical contact throughout the visiting period. Unless the DOC demonstrates a need for restricting touching or kissing on a case-by-case basis, the New York State constitutional right to contact visits in jails should not be subject to an inflexible Minimum Standard.¹ • This proposed Minimum Standard should be rejected because it does not provide any flexibility in permitting touching and kissing, regardless of circumstances. Kissing, embracing, and touching should be allowed as long as they would be acceptable in a public place or aid in the introduction of contraband. • Given the importance of physical contact to relationship stability and the mental health of incarcerated individuals, the DOC must explain why restricting touching and kissing between those

¹ *Cooper v. Morin*, 49 N.Y.2d 69, 81 n.6 (1979).

	<p>incarcerated and their visitors is necessary.</p> <ul style="list-style-type: none"> • The DOC must explain specific deficiencies in current procedures aimed at preventing visitors from bringing contraband into facilities, which involve fairly invasive searches and are facilitated by modern technology. • The DOC must provide evidence showing the extent to which contraband has been passed through because of the allowance of purportedly excessive contact and how reducing the length of embraces can help stem the influx of contraband. • The BOC should not impose restrictions for holding children based on the child’s age. The DOC should explain the basis for restricting incarcerated individuals from holding children above the age of nine. • The DOC should not impede visits with a six-inch partition, which hampers the ability to hold hands or engage in otherwise permissible touching. The DOC should only be allowed to require the partition if it is imposed as an alternative to a non-contact visit.
<p>§ 5 (1)-(2) – Visitation factors</p>	<ul style="list-style-type: none"> • The DOC must not be allowed to restrict visitation unnecessarily. The BOC should only restrict visitors with documented histories of passing contraband, or of creating disruptions or past incidences of violence in city jails, as either as visitors or incarcerated individuals. • The BOC must not restrict visitation based on a visitor’s criminal history, pending cases, or lack of family relationship. Rather, the DOC must only be allowed to restrict visitation on a case-by-case basis, <i>i.e.</i>, where there is an identifiable threat to the safety, security, or health of incarcerated individuals or facilities. <ul style="list-style-type: none"> ○ (1)(viii)-(ix): The DOC must provide individualized evidence to support exclusions based on criminal records or pending cases, and there must be a direct nexus between the criminal record/pending case of an incarcerated individual or prospective visitor and the safety and security of the facility. ○ (1)(x): The BOC must not use an incarcerated individual’s lack of a family relationship as a factor in restricting visitation. It is especially important for

	<p>individuals who lack family relationships to maintain connections with those on the outside. The way the proposal is written effectively eliminates current protections ensuring those without family relationships can still receive visits. (The BOC restricts visitation on the basis of a lack of a family relationship (under (1)(x)) while including an exception (under (2)(i)) which then allows the DOC to use an individual’s lack of a family relationship as a factor for denying visitation.)</p> <ul style="list-style-type: none"> ○ (2)(ii): The BOC must not restrict visitation on the basis of a visitor’s probation or parole status without requiring that the DOC provide individualized evidence to support such a determination, and there must be a direct nexus between the visitor’s probation or parole status and the safety and security of the facility. ○ (2)(iii) & (iv): The BOC must not restrict visitation on the basis of an incarcerated individual’s or visitor’s felony convictions without requiring that the DOC provide individualized evidence to support such a determination, and there must be a direct nexus between an incarcerated individual’s or visitor’s felony convictions and the safety and security of the facility. ○ (2)(v): Pending criminal charges involving narcotics, weapons, or gang activity should only be grounds for restricting visitation if the DOC provides individualized evidence to support a direct nexus between the visitor, their alleged criminal record, and the incarcerated individual. <ul style="list-style-type: none"> ● Gender identity should be included as a distinct category under (1) (rather than inclusion under the term gender) for protection against denial of visitation. ● The BOC must clarify whether there are visitation limits for individuals held in ESU and CDU. These individuals are in particular need of visitation.
§ 5 (3)-(6) – Denials and appeals	<ul style="list-style-type: none"> ● The original language of these sections should be retained, which states that denials, revocations, or limitations of visitation should only be based on specific acts committed by the visitor during a prior

	<p>visit that demonstrate his or her treat to the safety and security of a facility, or on specific information received and verified that the visitor plans to engage in acts during the next visit that will be a threat to the safety or security of the facility.</p> <ul style="list-style-type: none"> • The BOC invokes the maintenance of the “good order” of facilities as a justification for the revocation of visitation; the BOC must define this term. • The BOC must clearly set forth what constitutes a threat to the safety, security, or good order of the facility. • The DOC should only move to deny, revoke, or limit visitation after a determination has been made that such a threat exists. • The BOC should include clear language in the Minimum Standards stating that visitation can only be restricted after a proceeding to deny, revoke, or limit visitation. • The BOC should not increase the amount of time that the Board has to review and issue a written decision upon an appeal beyond five days. Denials must be determined and communicated in a timely manner, and appeals must be considered in a timely manner. • We oppose the BOC proposal that appeals be heard by the DOC (as the agency allegedly violating rights) rather than the BOC. • The DOC should provide all incarcerated individuals with a clear and easily navigable guide that outlines the appeal process so that those who have been denied visitation can seek immediate redress. • When action is necessary, the DOC should diminish visitation rights without full revocation, and the DOC should look to least restrictive options first. Full revocation of visitation rights should only be a last resort when other limitations are insufficient.
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MAIL	
Proposed Rule	Our Comment
General	<ul style="list-style-type: none"> • We oppose the BOC’s proposals to restrict packages received by incarcerated individuals. The DOC links the influx of contraband to the increase in stabbings and slashings; however, the Board has

	<p>reported that confiscated weapons used in such incidents have mostly been improvised out of materials commonly available within jails. The DOC should provide evidence that packages are frequent sources of contraband and that the current policy is inadequate and can only be remedied by limiting packages sent from pre-approved vendors.</p>
§ 6	<ul style="list-style-type: none"> • The BOC should not remove the original language of this section, which provides a clear rationale for restricting mail packages to protect public safety or maintain facility order and security.
§ 8	<ul style="list-style-type: none"> • (1): The BOC should not extend the period of time for the delivery of packages from 48 hours to three business days. The BOC should provide the basis for the proposed change, which could potentially delay delivery of mail from 24 up to 144 hours, an inordinate and unacceptable hindrance (particularly considering the DOC does not operate according to business days). • (2): The DOC should provide every incarcerated individual with a copy of a list of prohibited items in addition to posting such a list in a general common area. • (3): We strongly oppose the restriction of mail containing only items purchased from pre-approved companies. <ul style="list-style-type: none"> ○ This proposal would prevent a range of personal and other items from reaching incarcerated individuals. The DOC should not promote profiteering by private companies. ○ The DOC must provide a list of pre-approved companies, as well as the criteria for such determination. ○ This restriction is unnecessary as the DOC already searches packages. • The BOC must not prohibit personal delivery of packages to a facility during visiting hours. Visitors should be allowed to personally deliver packages to jail facilities, allowing them to save on postage and avoid delivery delays.

ENHANCED SUPERVISION HOUSING (ESH) DUE PROCESS	
Proposed Rule	Our Comment
§ 9 (1), (7)	<ul style="list-style-type: none"> • We oppose this unacceptable and unwarranted proposal to allow the DOC to return an individual

	<p>to ESH without any review if they have allegedly reoffended within 45 days of their release. This proposal strips incarcerated individuals in ESH of their due process rights and deprives them of the opportunity to appeal.</p> <ul style="list-style-type: none"> • The DOC must provide justification for removing due process rights for individuals in ESH, who are facing an extended stay in such a potentially damaging environment and may be in particular need of such protections. The DOC must also provide evidence that this approach will reduce violence and improve outcomes for individuals involved. • Commissioner Ponte stated the need for this amendment so that the DOC can maintain “flexibility to determine appropriate housing placement and incentivize good behavior through step-down programs to transition inmates out of ESH”; therefore, the BOC must state why this can only be accomplished by denying due process for those placed in ESH.
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PUNITIVE SEGREGATION	
Proposed Rule	Our Comment
§ 10 (1)	<ul style="list-style-type: none"> • We oppose a permanent variance or amendment to the Minimum Standards that would allow the DOC to override the recently enacted Minimum Standards for punitive segregation time limitations. The proposed exceptions are vague, failing to define what types of actions constitute a danger to incarcerated individuals and staff. Long periods of isolated confinement have been described as torture by experts and are counterproductive to violence-reduction efforts. • We oppose allowing the proposed exception to the 60-day maximum for punitive segregation within a six month period. <ul style="list-style-type: none"> ○ Given that repeated and prolonged periods of isolated confinement fail to prevent violence at city jails, we must seriously question the efficacy of punitive segregation. ○ The DOC should seek alternatives to the use of punitive segregation, which the United Nations calls torture after 15 days. ○ The BOC must seek to ascertain the extent to which Correction Officers may be

	<p>contributing to the occurrence of violence and influx of contraband.</p> <ul style="list-style-type: none"> ○ The DOC can meet Commissioner Ponte’s stated need to “send a clear message to staff that the department supports them, and to inmates that there are meaningful consequences for seriously assaulting a staff member” without imposing inhumane punitive measures such as punitive segregation.
<p>§ 10 (2)-(7)</p>	<ul style="list-style-type: none"> • Should the BOC grant permanent variances or amendments to the Minimum Standards for punitive segregation as requested by the DOC: <ul style="list-style-type: none"> ○ (2): The word “must” is stronger than “shall” and should not be replaced. ○ (3)(i): Self-harm, a pervasive type of violence and indicator of severe mental distress, should be expressly exempted as a form of violence for which these exceptions can apply.² ○ (3)(i)-(ii): The BOC should ensure that multiple non-violent infractions, as well as self-harm, are not included as qualifying exceptional circumstances for waiving limits on punitive segregation. ○ (3)(iii): The BOC must explain why the Chief of Department rather than the Commissioner or Board should be designated to approve a waiver. Furthermore, the BOC should state a time limit within which approval for a waiver must be provided. ○ (5)-(6): The BOC proposal is an unjustifiable exception to the Minimum Standards. In a worst case scenario, if the proposed amendments to the Minimum Standards are approved, prolonged punitive segregation could amount to more than 100 days. ○ (7): Mental health rounds should be conducted daily for all prisoners held in punitive segregation for any amount of time.

² See Kaba, Lewis, Glowa-Kollisch, Hadler, Lee, Alper, Selling, MacDonald, Solimo, Parsons & Venters, *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 AM. J. PUBLIC HEALTH 442, 445 (2014).

REPORTING	
Proposed Rule	Our Comment
§ 11	<ul style="list-style-type: none"> • We support reporting on the use of punitive segregation. However, we do not believe it is sufficient for the DOC to self-audit and report on its progress in these areas. Instead, such reports should be prepared with outside, independent oversight. • The DOC must comply with all reporting requirements in a timely manner. Reports should distinguish between pre-trial and post-trial individuals.

The culture of brutality at Rikers Island calls for a dramatic policy shift, but these rule changes will only exacerbate problems without addressing the underlying issues plaguing New York City jails. If the DOC truly wishes to reduce violence, it must put thought and care into designing a research-based program of rehabilitation.

We believe the DOC must implement a thorough plan, guided by jail reform experts, to end reliance on punitive segregation and similar measures. This would include community-building activities, life skills classes, and creative projects that focus on pride, self-respect, and learning rather than destructive impulses, for example, projects such as gardening, dance or music classes, animal therapy, and nutrition lessons. We commend the DOC for working towards this with adolescents and young adult populations and encourage you to expand such activities throughout the jails. We hope to see the DOC put activities like these into place, which utilize knowledge and compassion, and have the potential create a population less violent and less likely to reoffend.

Thank you for your consideration. We look forward to continuing to work with you to improve conditions in our jails.

Sincerely,



Daniel Dromm
New York City Council Member, 25th District



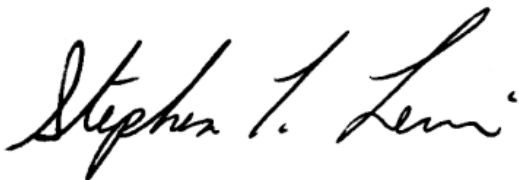
Corey Johnson
New York City Council Member, 3rd District



Brad Lander
New York City Council Member, 39th District



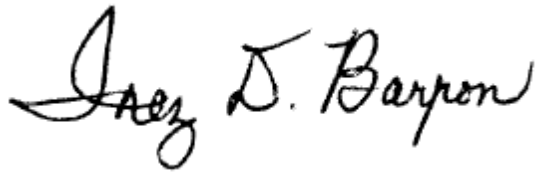
Carlos Menchaca
New York City Council Member, 38th District



Stephen Levin
New York City Council Member, 33rd District



Mark Levine
New York City Council Member, 7th District



Inez Barron
New York City Council Member, 42nd District



Margaret Chin
New York City Council Member, 1st District



Andy King
New York City Council Member, 12th District



Robert Cornegy
New York City Council Member, 36th District



Antonio Reynoso
New York City Council Member, 34th District



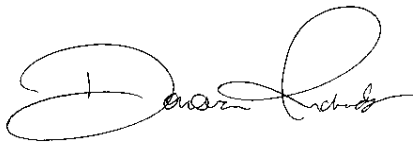
Helen Rosenthal
New York City Council Member, 6th District



Annabel Palma
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