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TESTIMONY OF THE FORTUNE SOCIETY

The Board of Correction

RE: Proposed rule revisions amending the minimum standards relating to correctional facilities, set forth in Chapter 1 of Title 40 of the Rules of the City of New York; specifically, the proposed revisions addressing visitation at Rikers Island.

October 16, 2015

Presented by: Barry Campbell

My name is Barry Campbell and I am the Special Assistant to the Executive Team at Fortune Society. I am testifying today on behalf of The Fortune Society, but I would like to first start by thanking all members of The Board of Correction for convening this important public hearing during their consideration of promulgating certain changes to the Department of Correction's (DOC) policies.

We strongly urge this board to:

1. reject the proposed rule changes pertaining to visiting and package policies;
2. decline to make any amendments to the due process requirements for the Enhanced Supervision Housing, and;
3. do not allow any exceptions to the current limitations on the use of punitive segregation.

First, I'd like to share with you a bit about Fortune's history. In 1967, David Rothenberg produced the off-Broadway play "Fortune and Men's Eyes." Written by John Herbert, a formerly incarcerated playwright, the play captured the experience of people living in prison. Since its founding shortly after the off-Broadway play, Fortune has served as a primary resource for New Yorkers released from jails and prisons seeking to build constructive lives in their communities; it now serves some 5,000 men and women with criminal justice histories annually. All of our programs are designed and implemented to meet the unique needs of this population through skilled, holistic and culturally competent assessments, and appropriate service provision.

We build an initial relationship with clients that fosters trust and safety to begin the healing; often a crucial prerequisite to providing services for people with justice involvement; this is further reinforced by the degree to which our staff reflects many shared life experiences of our clients. More than half of our staff are themselves either formerly incarcerated or in recovery. We believe in the importance of this cultural competency; however, it is this same cultural competency, specifically, the narratives told by our staff and clients regarding their experiences within correctional facilities, which

allows us a deeper understanding of the degrading, dehumanizing, and unhealthy experiences in such settings. Fortune has educated policymakers and advocated on behalf of criminal justice issues since our founding in 1967. We started the David Rothenberg Center for Public Policy (DRCPP) eight years ago to increase the dedicated resources that we devote to sharing this experiential knowledge and unique understanding of the criminal justice system to shape and inform policy and practices.

Fortune is grateful to be part of a community of social service agencies as well as policy advocates who stand together united against the proposed rule changes. Although we advise the rejection of all submitted rule changes currently under review, our testimony will focus on the prospective arbitrary and capricious changes to visitation policies.

The proffered changes with respect to “permitted contact” during visitation are unnecessary. Within its purview, the Department **already has authority** to deny visitation or to cease contact using booth visits for people with histories of violence or introducing contraband. These measures are sufficient to achieve the stated purpose of reducing violence by limiting the transport of weapons. There is no basis in evidence or fact to suggest that implementing these additional instruments will be any more effective than the measures already in place. Thus far, no indications as to why the tools already in place are insufficient or to what extent they are being utilized has been made public. Before implementing more restrictive policies that will affect the entire visiting population, the Department should provide evidence of the correlation between the proposed rule change and the desired outcomes.

The Department highlights that the proffered changes more closely align their definition of “permitted contact” with that of New York State. There is a **worthwhile distinction** between the Department of Correction and Community Services (DOCCS) and the NYC Department of Correction (DOC): the status of the criminal justice case for the populations they house. People in state facilities have closed cases and are serving sentences in excess of one year, while the majority of people on Rikers Island are *pretrial*

detainees. The presumption of innocence is a doctrine at the foundation of our criminal justice system and the people being housed at Rikers Island deserve the benefit of this presumption. The environment at the facilities housing pretrial detainees should reflect the principle that people are innocent of any crime(s) they may be accused of until proven guilty. The more restrictive and punitive policies used to govern people serving sentences in excess of one year should not be imposed at Rikers Island. The definition of “permitted contact” currently in place should remain differentiated from that of New York State because the respective purposes of the facilities are divergent.

The prospective change in visiting policy pertaining to **permitted contact with children** deserves profound consideration. What exactly is the Department implying by suggesting the Board impose a policy that limits children’s contact using an age barometer? There is no basis in research or psychology that dictates nine years old as the age at which severe limitation of physical contact with a loved one is appropriate. Additionally, this policy fails to take into consideration children that have developmental delays, special needs, or other extenuating circumstances who are over nine years old. This Department’s inability to assess such criteria is further evidence that this age barometer is arbitrary and capricious. If approved, this restriction of physical contact imposed by the DOC can have a lasting psychological impact both on the child and adult. The lack of physical contact with jailed parents may affect a young child’s social development. If implemented, these changes will shift family dynamics during visits dramatically.

These enhanced restrictions will ultimately lead to a **decreased sensation of meaningful physical connection** during visitation at Rikers Island. An actual physical barrier no greater than six inches in height serves as a constant reminder during visitation of the estrangement people feel while incarcerated. It is a mechanism that will lead to a heightened disconnection during visitation, uprooting the comfort visitation serves to provide. Feelings of isolation, depression, anxiety, and loneliness that already plague the facility can be exacerbated by these proposed policies. Physical contact is calming; it gives people a sense of relief at a time when life may seem unbearable. Depriving people

of this reprieve while incarcerated is drastic and it should only be used as a last resort after demonstrated evidence of contraband exchange. The current protocols already account for such occurrences and imposing further constraints through the suggested blanket policy is far too expansive and redundant.

There is a strong foundation in evidence and research that **external support plays a large role in someone's successful re-entry** and rehabilitation. By constraining people's physical connections during these fragile and vulnerable times, heightened feelings of separation may result and reintegration becomes more difficult. To that end, support comes from many different sources not limited to blood-related family. How parties are known to each other should have no impact on their ability to visit each other. Ultimately, these proffered changes may have devastating and long-lasting impacts on re-entry and rehabilitation success rates, rates at which family units remain intact through incarceration, and the overall placidity of the atmosphere at Rikers Island.

It is reasonable to seek to eliminate the introduction of contraband into Rikers Island, however, considering probation or parole status, past criminal history within seven years, and pending charges beyond contraband related offenses without demonstrating a relationship between these individuals and prohibited items is unfair and arbitrary. The Department has the capacity to provide evidence of a **correlation between contraband arrests made and classification into one of the above mentioned categories**. Without release and inspection of such a report, there is no basis to determine an increased likelihood of prohibited items being transported into the facility by people falling within these categories. Absent such a report, we cannot assess the basis for the proposed changes and determine if a reduction in violence would result from exclusions based on those categories. What we can surmise is that these proffered policies seek to discriminate against and further punish those with prior contact with the criminal justice system.

There is no basis in evidence or fact to connect prior contact with the criminal justice system as a reliable indicator for increased potential to violate visitation policy. To

insinuate such a correspondence exists is **contrary to all recent advancements in public policy**. Governor Cuomo recently announced that he will take executive action to implement twelve recommendations to remove barriers for New Yorkers with criminal convictions. President Obama has been pushing his agenda to make training programs available inside prisons, as well as opportunities for work and rehabilitation after release. The goal, according to the White House, is to make sure people with criminal histories can once again get a job, go back to school, or access housing, loans, or credit after serving their time. As a society, we are taking such great strides toward less punitive criminal justice policies, removing barriers to reentry for those with criminal justice system contacts, and creating a more rehabilitative environment during incarceration. To implement the Department's proffered policy changes would shift New York City far behind the nationwide progression and create rules contradictory to public policy.

We urge The Board of Correction members to reject all proposed policy changes pertaining to visitation and ask them to be mindful of current trends in public policy while considering the rule in its entirety.