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June 3, 2015

Stanley Brezenoff, Chair
Members of the Board of Correction
51 Chambers Street
New York, N.Y. 10007

Re: Department of Correction Petition for Rulemaking

Dear Chair Brezenoff and Members of the Board:

The DOC Petition Should Not be Considered Until the July BOC Meeting

The DOC petition should be put over until the July meeting so that the community may fully address the substance of the proposed petition. In our letter of May 15, we suggested that unless the Department of Correction (DOC) submitted a petition by May 19, 2015, the Board should put over any submission until the July meeting so that the community may fully address the substance of the proposed petition. The DOC submitted a petition for rule making dated May 26, 2015; that petition was made public after 5 p.m. on that date. The time period between May 27 and June 9 is far too limited for submission and review of comments concerning issues as important to the community and to the residents of the jails as visiting, packages and the disciplinary system. The Board should not rush to engage in additional rule-making on matters that were recently considered and that require careful consideration. The proposals on visits and on packages were not merely recently considered by the Board, they were recently rejected by the Board after a public hearing when proposed in a more limited fashion – solely for Enhanced Supervision Housing Units (ESHU).

The DOC has not fully implemented the amended Standards that went into effect in January. The DOC has not redrafted necessary policies and procedures to ensure that DOC staff are following the current Standards. For example, rather than ending the use of punitive segregation for 16 and 17 year olds, DOC hearing officers were, until the practice was challenged by a Board member, sentencing youth to punitive segregation time at disciplinary hearings and holding that time in abeyance until the youth turns 18. This action was directly contrary to the Board's stated intent to prohibit youth "from being sentenced to punitive segregation" and "[a]n inmate excluded from punitive segregation for any of these reasons at the time of an infraction may not be placed in punitive segregation at a later date for the same infraction, even if the inmate's age or health status have since changed." Statement of Basis and Purpose Amended Rule Adopted January 13, 2015, pp. 2 and 4, and

amended Standard § 1-17 (b)(3), available at:
http://www.nyc.gov/html/boc/downloads/pdf/BOCRulesAmendment_20150113.pdf.

To permit the DOC to pursue new changes now, including limits to visitation and changes to the new Board Standards concerning punitive segregation, is precipitous and without factual basis. Reports, investigations and audits released during the last year alone have uncovered significant criminal activity, wrongdoing, and operational failures at DOC.[1] The DOC must be required to fully implement the current reforms and measure their effectiveness. The BOC should evaluate, monitor and analyze the implementation and performance of the recent reforms before consideration of additional changes to its Standards.

Our concern is accentuated by the amount of new information that was aired at the Board's May meeting that may be relevant to the Department's request, and by Member Jones Austin's observation that the Department would be well advised to consider the things that were said at the meeting in formulating their petition – a recommendation that appears to have been ignored completely.[2] Issues raised at the May meeting included: the lack of nexus between visits and contraband, the lack of nexus between visits and violence, the need for steady correction staff assigned to visits, overuse of the package room (pat frisks, storage), lack of filled K9 positions, broken machinery used to detect contraband, increased use of lockdowns in violation of Board Standards, and failure of DOC to report the number of hours lockdowns continued (contrary to prior practice). There were observations about visit rooms that were functional and had good sight lines for staff and good equipment for contact visits that limited the risk of contraband. There were also observations about visit rooms that were not functional, they had poor sight lines and lacked appropriate tables to limit the risk of contraband. And, notably, the non-contact visit areas were reportedly very poor, lacking good vision and communication capabilities for

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[1] *See, e.g.*, Report of the NYC Board of Correction Ad Hoc Violence Committee, May 12, 2014 (reporting on staff sources of contraband and excessive lockdowns by DOC in violation of Board Standards) video of presentation available at: https://www.youtube.com/watch?v=gODXKSqD6Ck&feature=youtu.be (beginning at 4:14); Report of the NYC Department of Investigation, *New York City Department of Investigation Report on Security Failures at City Department of Correction Facilities* (November, 2014) (report issued after a DOI investigator walked into numerous jails unmolested despite having his pockets stuffed with drugs and weapons.) available online at:
http://www.nyc.gov/html/doi/downloads/pdf/2014/Nov14/pr26rikers_110614.pdf; Department of Justice (DOJ), *CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island* (August, 2014) (identifying a pattern and practice of false and misleading reports by DOC staff), available at http://www.justice.gov/usao/nys/pressreleases/August14/RikersReportPR/SDNY%20Rikers%20Report.pdf.

The Board also reported in each of its ESHU reports that many of the ESHU requirements are not being recorded by DOC staff to provide for adequate oversight. *See Preliminary report on DOC's implementation of Enhanced Supervision Housing as of March 3, 2015* and *Follow-up report on enhanced supervision Housing as of April 30, 2015,* available at:
http://www.nyc.gov/html/boc/html/Reports/board_reports.shtml.

[2] *See* video of the Board's May 12, 2015 meeting, at time 1:09:10 available at:
https://www.youtube.com/watch?v=gODXKSqD6Ck&feature=youtu.be.

visits. Overall the Board reported that lockdowns increased (doubled in the last 6 months), visits are discouraged and that there is no effect on the level of violence.

Although careful analysis of the current DOC petition is not possible before the June 9 Board meeting,[3] we note that there are multiple areas of confusion, lack of clarity, and broad language utilized in the petition that raise significant concerns. For example:

- Who can visit under the proposal? What is a family or intimate relationship and who will decide? How long does a criminal record check take? What misdemeanor weapon charges qualify for visit restriction—*e.g.*, a seven year old misdemeanor for having an otherwise legal gravity knife? What convictions within a year qualify for exclusion?

- What is "good order"? what is a "threat" versus a "serious threat"? Any threat now results in visit restrictions? Even a threat, *e.g.,* to take legal action or contact a City officeholder or agency?

- Isn't the amount of time for deciding appeals – 14 business days – unreasonable for a jail setting where time in custody may be short in duration?

- Isn't a 3 business day time frame for delivering packages unreasonably long for a jail setting where time in custody may be unpredictably short in duration?

- Who is determining the pre-approved vendors for packages? What are the costs including shipping costs?

- Why is there a need to reduce the due process protection for the few individuals who may be released from ESHU and then returned to ESHU?

- What are the overall time limits to punitive segregation under the new proposal, if any? There is a proposed increase in sentences and a proposed waiver of the 7 days out of cell.

In addition to these questions, we address some of the substantive elements of the DOC petition below in this preliminary response. However, we do not believe that the Board should act on the DOC petition until all of these questions are answered and the evidentiary basis for the proposed rule changes are provided to the Board and to the public. This has not been done.

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[3] The analysis in this letter is mostly adapted from prior submissions and addresses the portions of the Department's proposal that are identical to its previous submission directed to ESHU. Analysis of those aspects that are *not* identical remains to be completed and cannot be submitted before the June 9, 2014 Board meeting. Persons and organizations that were not involved in the previous proceedings are not well situated to make even this level of comment.

The Board Must Not Retreat From Reforms to Punitive Segregation

It is well settled that the use of isolated confinement, called "punitive segregation" in our City jails, causes serious physical, psychological and developmental harm.[4] New York City has finally,[5] through the new Minimum Standards passed by the Board in January, 2015, joined in a national trend to reduce the harmful use of isolation. [6] Evidence supporting this needed reform was overwhelming.[7]

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[4] *Jones'El v. Berge*, 164 F.Supp.2d 1096, 1101 (W.D. Wisc. 2001) (isolated confinement is "known to cause severe psychiatric morbidity, disability, suffering and mortality [even among those] who have no history of serious mental illness and who are not prone to psychiatric decompensation."); *Koch v. Lewis*, 216 F.Supp.2d 994, 1001 (D. Ariz. 2001) (experts agreed that extended isolation causes "heightened psychological stressors and creates a risk for mental deterioration"); *Ruiz v. Johnson*, 37 F.Supp.2d 855, 907 (S.D. Tex. 1999), *rev'd on other grounds*, 243 F.3d 941 (5th Cir. 2001), *adhered to on remand*, 154 F.Supp.2d 975 (S.D. Tex. 2001) (the court described administrative segregation units as "incubators of psychoses-seeding illness in otherwise healthy inmates and exacerbating illness in those already suffering from mental infirmities"); *Langley v. Coughlin*, 715 F. Supp. 522, 540 (S.D.N.Y. 1988) (citing expert's affidavit regarding effects of SHU placement on individuals with mental disorders); *Baraldini v. Meese*, 691 F. Supp. 432, 446–47 (D.D.C. 1988) (citing expert testimony on sensory disturbance, perceptual distortions, and other psychological effects of segregation), *rev'd on other grounds sub nom. Baraldini v. Thornburgh*, 884 F.2d 615 (D.C. Cir. 1989); *Bono v. Saxbe*, 450 F. Supp. 934, 946 ("Plaintiffs' uncontroverted evidence showed the debilitating mental effect on those inmates confined to the control unit."), *aff'd in part and remanded in part on other grounds*, 620 F.2d 609 (7th Cir. 1980); *Madrid v. Gomez*, 889 F. Supp. 1146, 1235 (N.D. Cal. 1995) (concluding, after hearing testimony from experts in corrections and mental health, that "many, if not most, inmates in the SHU experience some degree of psychological trauma in reaction to their extreme social isolation and the severely restricted environmental stimulation in the SHU") *rev'd in part on other grounds*, 190 F.3d 990 (9th Cir. 1999).

[5] DOC expanded its punitive segregation capacity by 27% in 2011, and another 44% in 2012. resulting in more punitive segregation cells than it had in the 1990's when DOC housed many thousands more people than it does today. The Board report "*Comparison of Historical Rates of Violence Between Inmates and Rates of Staff Use of Force on Inmates*" showed that the increase in the use of punitive segregation did not reduce inmate-on-inmate violence system-wide and did not reduce use of force by staff against individuals housed in the jails..

[6] Prior to the Board amendments, DOHMH and DOC did institute some reforms in the creation of Clinical Alternative to Punitive Segregation (CAPS) units for individuals with serious mental illness and Restricted Housing Units (RHU) for individuals with "non-serious" mental illness who have broken DOC rules. The CAPS unit provides a therapeutic setting with enhanced treatment services and appears to be succeeding at housing individuals who were unable to adapt to general population or Mental Observation (MO) housing. The RHU continued to be extremely punitive in nature and was not providing a respite to long terms of isolation for the individuals with mental illness housed in them. It remains unclear whether the RHU will be more successful now after the changes in the Board Standards.

[7] According to information gathered by DOHMH, incarcerated individuals with mental illness were more likely than others to be injured while in custody and more likely to end up in punitive segregation. Andrea Lewis to Homer Venters, Memorandum, March 14, 2012, "Medical Informatics, New York City Department of Health and Mental Hygiene and Correctional Health Services." In September 2013, a report to the New York City Board of Correction by their mental health experts, Drs. James Gilligan and Bandy Lee, recommended that no individuals with mental illness should be placed in solitary confinement, that *no individuals at all* should be subjected to the prolonged solitary confinement in use in the City jails because *"it is inherently pathogenic – it is a form of causing mental illness."* Gilligan, Lee, *Report to the New York Board of Correction (Sept. 2013).*at p. 16, available at:

Per the newly adopted Board standards, punitive segregation is now limited to 30 days for any single infraction, and 30 consecutive days overall, with 7 days out before the person may be returned to punitive segregation. No one can be held in punitive segregation for more than 60 days within a six-month period unless the person continues to engage in "persistent acts of violence" that can't be addressed by placement in an enhanced supervision housing unit (ESHU). Minimum Standard § 1-17(d)(3). People with grade 2 offenses and non-violent grade 1 offenses must get 7 hours out-of-cell a day in punitive segregation. And, the practice of making individuals serve "owed time" from prior incarcerations is eliminated. The new Board standards also exclude from *both* punitive segregation and ESHU: young people – all 16 and 17 year olds are excluded (and this will extend to "young adults" 18-21 year olds by January 1, 2016, if necessary funding is available), and individuals with disabilities – anyone with serious mental or serious physical disabilities or conditions.[8]

In its petition, DOC has proposed to decimate these reforms before they are given the opportunity to succeed. If adopted, the DOC petition would permit sentences of 60 days per infraction, and permit 90 consecutive days in punitive segregation without respite from this harsh confinement (possibly longer considering the ability to obtain 3 waivers of the 7 day out provision). The DOC thus proposes to reinstate cruelly high penalties to punitive segregation, as a part of an anti-violence plan, contrary to data concerning its correlation to violence in the jails. The Board reported in 2014 that "the increase in the use of punitive segregation did not reduce inmate-on-inmate violence system-wide" and reported "rates of use of force by correction officers on inmates at the end of 2014 [prior to the new rules adopted in January, 2015] were at an all-time high."[9] In that report, the Board wisely called

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http://www.nycjac.org/storage/Gilligan%20Lee%20Report%20%20Final.pdf. The Department of Justice ("DOJ") issued a report concerning adolescent males on Rikers Island in August 2014. In the report, DOJ identified and reported on the dangerous over-utilization of punitive segregation in the City jails stating that "the DOC relies far too heavily on punitive segregation as a disciplinary measure, placing adolescent inmates – many of whom are mentally ill – in what amounts to solitary confinement at an alarming rate and for excessive periods of time." (DOJ 8/4/2014 Report , p. 3) The DOJ cautioned that its "focus on the adolescent population should not be interpreted as an exoneration of DOC practices in the jails housing adult inmates. Indeed, while we did not specifically investigate the use of force against the adult inmate population, our investigation suggests that the systemic deficiencies identified in this report may exist in equal measure at the other jails on Rikers." *Id.* The report is available at http://www.justice.gov/usao/nys/pressreleases/August14/RikersReportPR/SDNY%20Rikers%20Report.pdf. *See also* 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) (study conducted by employees of DOHMH makes numerous findings that illustrate that solitary confinement is a dangerous and self-defeating practice and indicates a need to reconsider the use of solitary confinement as punishment in jails).

[8] The new Standards are available at http://www.nyc.gov/html/boc/downloads/pdf/BOCRulesAmendment_20150113.pdf

[9] *See* Board staff report "*Comparison of Historical Rates of Violence Between Inmates and Rates of Staff Use of Force on Inmates*" (2014), available at: http://www.nyc.gov/html/boc/downloads/pdf/reports/Report%20on%20Violence%20Trends%202014%20Update.pdf.

for "an evidence-based investigation of the root cause of this crisis" "so that appropriate remedies and reductions in injuries to inmates might be achieved." Yet nothing in the DOC proposal reflects any such evidence-based investigation. Instead, the DOC references "serious assaults on staff – resulting in serious injury" in describing the incidents for which extended punitive segregation sentences would be allowed while requesting language in the Board Standards that may be interpreted broadly and arbitrarily by DOC staff. The current exception in the Standards, cited above, for those who commit "persistent acts of violence" make this proposed change both unnecessary and ripe for abuse.

The Board should not consider the DOC proposals to change the disciplinary process without an investigation and evidentiary support for its proposals. The DOJ called for DOC to take these steps in August 2014 "based on the volume of infractions, the pattern and practice of false use of force reporting, and inmate reports of staff pressuring them not to report incidents, we believe the Department should take steps to ensure the integrity of the disciplinary process."[10] Until such steps are taken, the Board should not be providing DOC the discretion to mete out extended harmful punitive segregation sentences as they currently propose in their petition.

The Proposed Limitations to Visitation are Overly Restrictive and Harmful

The DOC petition seeks to limit the physical contact incarcerated individuals may have with visitors, broaden the criteria for restricting visitors, and establish a visitor registry. A few months ago the Board of Correction rejected such limits on visiting proposed for individuals placed in the new Enhanced Security Housing units.[11] The Board heard a chorus of disapproval from the public and advocates in their testimony for the December 19, 2014 hearing on the proposals to limit visitation.[12] It was clearly expressed, and supported by data, that individuals who maintain close family ties are less like to be repeat offenders, and that the jail system should not be taking action to interfere with family

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[10] U.S. Dep't of Justice, CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island fn 45, p. 49 (2014) available at: http://www.justice.gov/sites/default/files/usao-sdny/legacy/2015/03/25/SDNY%20Rikers%20Report.pdf. The DOJ also cautioned that its "focus on the adolescent population should not be interpreted as an exoneration of DOC practices in the jails housing adult inmates. Indeed, … our investigation suggests the systemic deficiencies identified in this report may exist in equal measure at the other jails on Rikers." Id at p. 3.

[11] *See* New York City Board of Correction, Notice of Adoption of Rules, approved January 13, 2015, at 9. The Department had requested the denial of contact visits to all persons held in the newly authorized Enhanced Supervision Housing Unit (ESHU), but the Board approved the deprivation of contact visits only based on an individualized finding at a hearing. The Board also rejected proposals to limit visits to individuals in ESHU to a pre-approved list (*i.e.,* a visitor registry) and to limit those persons who can visit. The Department is now repeating these requests and making them applicable to *all* individuals in the jails even though it was rejected for people housed in the ESHU.

[12] The hearing transcript, written testimony and tapes from the hearing are on the Board of Correction website at http://www.nyc.gov/html/boc/html/meetings/RuleChanges_2015.shtml.

relations by limiting visiting or making it more difficult or unpleasant. According to the American Bar Association:[13]

> Maintaining personal connections through contact visits improves the lives of incarcerated individuals, their families, and the community in three important ways. First, people who receive visits from and maintain relationships with friends and family while incarcerated have improved behavior during their time in custody,[14] contributing both to a safe and more rehabilitative atmosphere in the facility. Second, individuals who maintain relationships have more successful transitions back to society than those who do not.[15] For example, the Minnesota Department of Corrections found that prisoners who were visited were 13 percent less likely to be reconvicted of a felony and 25 percent less likely to return to prison on parole violation.[16] Third, families and children that are able to visit their relatives in jail benefit greatly from maintaining family ties during a time that can often cause family trauma.[17]

The ABA's conclusions are consistent with those of other research finding that people who maintain family ties during incarceration and benefit from the support of family after

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[13] Letter, American Bar Ass'n Governmental Affairs Office to Chairperson, Committee on the Judiciary and Public Safety, Council of the District of Columbia (June 19, 2013), pp. 2-3, available at http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2013june19_dcvisitation_l.authcheckdam.pdf. This letter was written in support of allowing contact visits in the District of Columbia jails in addition to video contact.

[14] *See* ABA Standards for Criminal Justice: Treatment of Prisoners, Standard 23-8.5 cmt. at 260. *See also* Virginia Hutchinson et al, U.S. Dep't of Justice, Nat'l Inst. of Corr., *Inmate Behavior Management: The Keys to a Safe and Secure Jail*, 8 (August 2009) (noting that maintaining contact with family and friends (including visitation) is integral to behavior management in the jail setting and that a failure to meet this important social need can lead to depression and inappropriate behavior in the under-custody population); Karen Casey-Acevedo & Tim Bakken, *The Effects of Visitation on Women in Prison*, 25 Int'l J. Comp. & App. Crim. Just. 48 (2001); Richard Tewksbury & Matthew DeMichele, *Going to Prison: A Prison Visitation Program*, 85 Prison J. 292 (2005); John D. Wooldredge, Inmate Experiences and Psychological Well-Being, 26 Crim. J. & Behav. 235 (1999).

[15] *See* Jeremy Travis et al, Urban Institute, *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry* 39 (June 2001) ("Studies comparing the outcomes of prisoners who maintained family connections during prison through letters and personal visits with those who did not suggest that maintaining family ties reduces recidivism rates.") (internal citation omitted).

[16] *See* Minnesota Dept. of Corr., *The Effects of Prison Visitation on Offender Recidivism* (Nov. 2011), pp. 18-21.

[17] *See* Hairston, C.F. *Family Ties During Imprisonment: Important to Whom and for What?* 18 Journal of Sociology and Social Welfare 87-104 (Mar. 1991) (literature review of research showing maintenance of family ties improves mental health of inmates' children and increases likelihood of family reunification after release).

release have better reentry outcomes than those who are unable to do so,[18] and that maintaining family ties with a parent who is in custody also has significant, salutary effects on the child's well-being, including possibly improving the child's chances of staying out of the criminal justice system.[19] Against this background, and with specific reference to contact visits, the ABA has stated in its Criminal Justice Standards for Treatment of Prisoners (emphasis supplied):

> For prisoners whose confinement extends more than [30 days], correctional authorities should allow contact visits between prisoners and their visitors, especially minor children, absent an individualized determination that a contact visit between a particular prisoner and a particular visitor poses a danger to a criminal investigation or trial, institutional security, or the safety of any person.[20]

The provision of contact visits absent an individualized determination is also required by the state Constitution. The New York Court of Appeals has held that pre-trial detainees have a state constitutional right to contact visits, subject to reasonable security precautions, and that any denial of contact visits must be done based on individualized consideration, not meted out in wholesale lots. *Cooper v. Morin*, 49 N.Y.2d 69, 81 n.6 (1979). This right is embodied in the State Commission of Correction Minimum Standards at 9 NYCRR § 7008.6 (a) ("Physical contact shall be permitted between a prisoner and his visitors.").

To our direct knowledge, the DOC has violated the current visit standards on several recent occasions – imposing booth visits absent justification under the rules which require a nexus between some conduct and the visitation process. Minimum Standards § 1-09(h)(2, 3). In one such case, the DOC restricted a client's visits to booth visits *and* failed to provide the Legal Aid Society with the paperwork for several months. DOC reported that the decision was "under review by DOC." When the paperwork was finally provided it was clear that the booth visit restriction was in violation of DOC rules but we were informed that the restriction would continue. This was particularly outrageous in that the delay in

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[18]Travis et. al., *Families Left Behind: The Hidden Costs of Incarceration and Reentry*, 6 (Urban Institute 2005) ("Studies comparing the outcomes of prisoners who maintained family connections during prison through letters and personal visits with those who did not suggest that maintaining family ties reduces recidivism rates") (internal citation omitted).

[19] *See* Allard & Greene, *Justice Strategies: Children on the Outside*, 22-23 (Justice Strategies 2012) (noting that self-worth and connectedness impact risk of criminal justice involvement and recommends facilitating prison visits to boost those feelings); Nickel et. al., *Children of Incarcerated Parents: An Action Plan for Federal Policy Makers*, 13 (Council of State Governments 2011) ("Strong parent-child relationships may aid in children's adjustment to their parents' incarceration and help to mitigate many of the negative outcomes for children that are associated with parental incarceration") (citation omitted).

[20]ABA, Criminal Justice Standards for Treatment of Prisoners, Standard 23-8.5(e) (Visiting), available at http://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/Treatment_of_Prisoners.authcheckdam.pdf, p. 259.

providing documentation robbed our client of the ability to use the writ process to obtain relief before the scheduled end of the visit restriction. In two other cases booth visits were imposed after individuals were found with weapons even though there was no nexus between the weapon and a visit, as required by the Board Standards, and in another case booth visits were imposed after an assault on a Captain that had no nexus to visits. Given the all too frequent failure by DOC to follow Board Standards and its own policies, the attempt to increase restrictions on visits should not be considered.

The Board was correct to reject earlier attempts to limit and restrict visits and should not entertain rule-making on this topic now. There is a lack of a connection between visit restrictions, violence reduction and reduction in contraband in the jails. A recent Board of Correction report found that "the vast majority of weapons are found in areas other than intake and visits and that the majority of weapons found in the jails are inmate-made or fashioned from materials already inside the jails."[21] The data collected by the Board suggests that further restricting the already heavily supervised visiting process will not be of much help in reducing the prevalence of weapons in the jails, and the human cost of restricting visits will be great. The data provided by the DOC to support its proposals is lacking.

As noted above, the Board raised issues at its May meeting concerning the lack of nexus between visits and contraband and the lack of nexus between visits and violence. Observations by the Board's Ad Hoc Committee on Violence indicated that there are many ways to improve the visit process and improve safety *without* limiting contact visits: there is a need for steady correction staff to be assigned to visits, a need for better space for pat frisks, a need to staff open positions in the K9 unit, a need to fix and replace broken machinery used to detect contraband, and a need to make all of the visit rooms functional (good sight lines and furniture designed to permit contact without the risk of contraband exchanges). Fixing staff, supervision and physical plant issues should be a priority first, *before* any consideration of limitations on contact visits and access to visits.

<u>The Proposed Limitations on Receiving Packages are Overly Restrictive and Harmful</u>

The limitation of packages to those received from an "approved vendor" is a substantial deprivation to incarcerated persons and their families. Most individuals incarcerated in City jails are indigent and most of their families are poor. Yet the DOC proposed rule would require individuals or their families to purchase items new (and often pay for delivery) even if they own perfectly serviceable items at home, or if family members are able to obtain them cheaper at local vendors. For people living on the economic edge—or over it, as are many individuals in our jails—this is an unnecessary and onerous economic barrier.

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[21] New York City Board of Corrections, *Violence in New York City Jails: Stabbing and Slashing Incidents*, at p. 7 (April 22, 2015), available at http://www.nyc.gov/html/boc/downloads/pdf/reports/Slashings_stabbings_CRP_2015_04_27_FINAL.pdf .

In support, the basis is stated to eliminate "the potential for receipt of contraband concealed in such items." In its prior request for a variance requiring this same restriction for individuals in the ESHU, DOC asserted that "It simply is not realistic to expect that the Department can detect *every* miniscule scalpel which may be secreted within a hard-cover book, every strip of suboxone which may be inserted into a magazine, or every small parcel of cocaine which can be hidden within a pair of sneakers." (Variance request, Oct. 22, 2014, at p. 3) (emphasis supplied)).

No human activity can be 100% successful, without exception. However, the careful searching of items both visually and with a metal detector should uncover contraband with very few exceptions. DOC must assign and supervise sufficient staff to complete careful searches. We note the recent arrest of a Corizon employee and a 20 year veteran correction officer on contraband smuggling,[22] and the Department of Investigation report demonstrating a massive failure by jail staff to perform proper searches of staff entering the jails, one of whom—actually a DOI investigator—had his pants stuffed full of contraband drugs and weapons.[23] It appears that the solution to contraband in the jails is not to oppressively restrict individuals housed in the jails, it is to require staff to do their jobs properly.[24]

The restriction on publications is unwarranted. The right to obtain and read published material is protected by the First Amendment. And the right to receive printed material that is available to the public from "any source, including but not limited to family, friends or publishers" is embodied in the State Commission of Correction Minimum Standards at 9 NYCRR § 7026.1 (a). Individuals in our jails who will be restricted from receiving written material from their families and friends will often not be able to afford to buy them from "approved vendors" and *the City jails do not have libraries other than the law libraries.*[25] Individuals in our jails should have access to reading material and any Board Standard on this issue should encourage rather than restrict such access. One of the

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[22] These arrests were reported by the *New York Times* on May 15, 2015. The article is available at: http://www.nytimes.com/2015/05/16/nyregion/2-arrested-on-smuggling-charges-at-new-york-city-jails.html?_r=0

[23] This incident was reported by the *New York Times* on November 6, 2014. A newly released Department of Investigations report indicated that visitors to city jails may be the source of some contraband, but that a large proportion of the illegal trafficking *is carried out by uniformed staff* and civilian employees: "'Given the extent of smuggling that we know goes on and given what we know about what's coming in from visitors, a lot of stuff has to be coming in from guards and employees because this stuff doesn't magically appear,' said Mark Peters, the Department of Investigation commissioner." The article is available at: http://www.nytimes.com/2014/11/07/nyregion/rikers-island-undercover-investigator-contraband-inquiry.html?hp&action=click&pgtype=Homepage&module=second-column-region&region=top-news&WT.nav=top-news.

[24] A FOIL request issued to the DOC in November, 2014 included a request for evidence of the need to restrict packages based on the DOC variance request submitted to the Board that month. No material was provided in response in time for the December hearing and there has *still* been no response as of June 3, 2015.

[25] Even the Supreme Court decision that upheld a "publisher only" rule—which restricted only hardcover books, not softcover books and magazines—did so for a jail that was conceded to have a "relatively large" library for its population. *Bell v. Wolfish*, 441 U.S. 520, 552 & n.33 (1979).

biggest problems of correctional management is mitigating idleness and its consequences—especially in jails, which have many fewer programs and activities than do prisons. It is a terrible mistake to limit reading, the cheapest and most cost-effective means of giving people in jail something worthwhile to do.

DOC may make adjustments to the property regime. For example, if it is the practice that families and friends bring in very large stacks of books and magazines, a reasonable limit on the number that could be delivered at one time may be appropriate. But this Board should not be adopting as a minimum standard an across-the-board denial of the only access to reading matter that some people can afford. The Board should not amend Section 1-13 and should put DOC on notice that its intent to impose this to the entire jail population regardless of any actual risk, will not be countenanced.

In a letter to the Board dated February 9, 2015, we detailed the monitoring tasks incumbent upon the Board to guarantee the implementation of the new Standards. Given these tasks, and the DOC's history of failure to implement and follow its own policies and procedures, the Board should not engage in additional rule-making before measuring the effects of the implementation of the current Standards. We recommend that the Board reject the current petition for additional rule-making as untimely.

Very truly yours,

Sarah Kerr

SARAH KERR
Staff Attorney
JOHN BOSTON
Project Director