



**BOARD OF CORRECTION
CITY OF NEW YORK**

APPENDIX A
VISIT RESTRICTION ANALYSIS

I. Introduction

The Minimum Standards prohibit the use of visit restrictions as punishment, but they recognize that the right to contact visits may be denied or limited when the Department determines — based on specific acts of an incarcerated person or visitor, or specific, verified information that the person or visitor plans to engage in acts — that contact visits would constitute a “serious threat to the safety or security of a facility.”¹ Under such circumstances, restrictions on visitation rights “must be tailored to the threat posed by the inmate or prospective visitor and shall go no further than what is necessary to address that threat.”² Finally, if an incarcerated person’s or visitor’s access to contact visits is restricted for any reason or any length of time, that individual may appeal the restriction to the Board.³

During the 15-month period April 1, 2016 through June 30, 2017 (“study period”), the Department issued 601 new visit restrictions to people in custody and 558 restrictions to visitors.⁴ This is an average of 40 new restrictions on people in custody per month and 37 new restrictions per month on their visitors. Of the 601 restrictions issued to incarcerated individuals, 55% (n=332) were non-contact restrictions for the duration of the person’s incarceration (“duration restriction”). On average during this period, there were 269 people in custody on the non-contact list (~3% of the DOC population). About 65% (n=175) of these people were on the list for the duration of their incarceration. In June 2017, individuals with a duration restriction had served, on average, almost 200 days without the opportunity to receive contact visits.⁵ During these 15 months, the Board issued 250 responses to visit restriction appeals. BOC granted the appeal (restoring contact visits, modifying the restriction, or correcting the restriction) in 44% (n=111) of these cases.

¹ Visiting rights may be restricted “*only* when it is determined that the exercise of those rights constitutes a serious threat to the safety or security of a facility.” Section 1-09(h)(1) and (h)(2) (“Restrictions on visitation rights”) (emphasis added).

² Section 1-09(h)(3).

³ Section 1-09(i).

⁴ A visit restriction is defined as any limitation on contact visits for more than one day. Only .2% of visits resulted in a restriction in August 2017.

⁵ This includes only people on the non-contact list on June 23, 2017.

II. Visit Restrictions and Appeals

During the study period, the Board:

- Denied 120 appeals (48%);
- Restored contact visits 85 appeals (34%);
- Modified the restriction on 15 appeals (6%);
- Corrected the restriction on 11 appeals (4%); and
- Dismissed 19 appeals as moot (8%).⁶

Approximately 31% of the appeals received concerned restrictions imposed on a visitor for threatening or verbally abusing staff or another visitor or causing a disturbance that put staff in imminent danger (“verbal abuse/disturbance”).⁷ Another 30% concerned a slashing/stabbing (18%) or possession of weapon contraband (12%).

Of the 111 appeals that the Board granted, 27% concerned restrictions for slashing/stabbing (17%) or possession of weapon contraband (10%) and another 25% were for verbal abuse/disturbance.

Table 1 below shows the breakdown of appeals received and appeals granted by type of restriction, while Table 2 shows this breakdown by facility.

Table 1 Restriction Reason	Appeals Received	Appeals Granted	% Granted of Appeals Received for Restriction Reason
Verbal abuse/disturbance	78	29	36%
Slashing/Stabbing	46	19	40%
Contraband: Drug	29	7	21%
Contraband: Weapon	29	11	38%
Contraband: Other	27	22	78%
Other	22	12	57%
Assault of Staff	12	7	50%
Unknown ⁸	3	3	100%
Assault of Visitor	2	1	50%
Assault of Inmate	2	0	0%
Grand Total	250	111	44%

⁶ An appeal was rendered moot if, for example, DOC lifted the restriction before BOC determined the appeal.

⁷ NYC DOC Directive 2007R-C Directive (Inmate Visit Procedures), Visit Limitation or Denial Grid, Offense #6, available at http://www1.nyc.gov/assets/doc/downloads/directives/Directive_2007R-C.pdf#page=39.

⁸ In these three cases, DOC was unable to produce a reason for the restriction.

Table 2 Facility	Appeals Received	Appeals Granted	% Granted of Appeals by Facility
AMKC	60	29	43%
MDC	49	27	54%
GRVC	30	13	41%
OBCC	25	9	35%
BKHD	24	7	28%
GMDC	15	7	47%
RMSC	11	6	55%
SOD	8	1	13%
EMTC	6	4	67%
VCBC	6	3	50%
WF-CDU	6	1	17%
RNDC	4	2	50%
NIC	2	1	50%
NIC Inf.	1	0	0%
BHPW	1	0	0%
BXCT	1	0	0%
Transportation	1	1	100%
Grand Total	250	111	44%

In June 2017, only 47% (n=90) of people on the non-contact list were restricted due to an incident that occurred on the way to, from, or during a visit (“visit nexus”). Additionally, only 15% of people on the June non-contact list for the duration of their incarceration were restricted due to an incident with a visit nexus.

A. Reasons for Granting Appeals

1. Insufficient Incident Documentation/Failure to Follow Protocols

Table 3 below shows the percentage and number of granted appeals broken down by the reason why the appeal was granted. BOC granted appeals primarily in cases where DOC failed to adequately document the alleged incident (37% of granted cases) or failed to follow its own protocol for restricting people, such as adhering to the DOC penalty grid (23%). Table 4 below shows that failure to adequately document the alleged instant was particularly common in appeals the Board granted related to verbal abuse or disturbance (48%, n=14, of appeals granted were due to insufficient documentation).

Table 3

Reason for Appeal Grant	%
Insufficient documentation (including no incident report or other corroborating evidence)	36% (n=40)
Failure to follow protocols	23% (n=26)
Charges dismissed or not guilty	11% (n=13)
Improved institutional record	11% (n=12)
Booth visit suffices to reduce threat	9% (n=10)
Suspicious of wrongdoing	6% (n=7)
Other	3% (n=3)
TOTAL	N=111

Table 4

Reason for Appeal Grant	%
No incident report	48% (n=14)
Failure to follow protocol	41% (n=12)
Other	10% (n=3)
TOTAL	N=29

At AMKC, for example, 14 of the 29 appeals granted (48%) were granted because there was insufficient documentation — generally, only a sentence or two limited to a boilerplate statement of the type of offending conduct that triggered the restriction. Absent an incident report that provides a detailed description of the incident, including the identity of staff who witnessed the offending conduct or discovered the contraband, the Board is unable to weigh DOC’s credibility as to what happened against the credibility of the appellant’s statement of what transpired. Additionally, there were instances in which the visit restriction had not been signed or approved correctly – one of the signature lines was blank or the same person appeared to sign in multiple places.

In other instances, the Board granted the appeal where DOC failed to follow the Penalty Grid, by, e.g., assigning more than 45 days for a first offense, choosing a penalty that was not on the Grid, or not obtaining a “supervisor’s approval prior to issuing the restriction.”⁹ In six cases, the Department restricted a person for an offense committed by another person (i.e., visitor restricted

⁹ Directive, III(F)(1)(c) at 6.

for action of a person in custody, person in custody restricted for action of a visitor¹⁰, or a visitor restricted for the action of another visitor).

► **Requests and Recommendations**

The Department should not enforce visit restrictions that do not include documentation of the alleged incident. Documentation should include an incident report as well as an infraction or arrest record, where applicable. DOC requires incident reports for similar incidents in other parts of its facility (i.e. if an officer finds contraband in the housing area, she must file an incident report) and should require incident reports here. The Board requests that, with each visit restriction imposed on a visitor or a person in custody, DOC provide it with supporting documentation for the restriction.

The Department's Penalty Grid should provide additional clarity to DOC staff to decrease the number of restrictions imposed erroneously, i.e., outside of Department protocol. To minimize the opportunity for mistakes, the Board recommends the following changes to the Notice of Restriction Form:

- Eliminate the ability to 'write-in' a restriction length
- Revise the Grid to include whether the penalty is a limitation or a denial
- Revise the Grid to include when the restriction applies only to visits between a certain visitor and certain person in custody (as opposed to a restriction on all visiting for a visitor or a person in custody)
- Separate out one-day cancellations by creating a new form section or new, separate form to record them.

2. Restrictions Imposed Without Adequate Due Process

Table 5 below breaks down granted appeals per the reason BOC granted them for the Department's most frequently used visit restriction category: slashing/stabbing or weapon possession. During the study period, the Board granted 12 appeals because the underlying charges had been dismissed or the appellant had been found not guilty on the related offense – eight (8) of these related to slashing/stabbing or weapon possession. Pretrial detainees have a state constitutional right to contact visits.¹¹ Deprivation of this right despite a finding of not guilty on the related offense raises serious due process and procedural justice issues.

¹⁰ The Board recognizes that a person in custody may be given the status of an Intended Contraband Recipient (ICR) due to the actions of a visitor. This status does not restrict access to visiting.

¹¹ *Cooper v. Morin*, 49 N.Y.2d 69, 73 (1979), cert. sub. nom. *Lombard v. Cooper*, 446 U.S. 984 (1980).

Table 5
Slashing/Stabbing or Weapon Possession Reason for Appeal Grant

Improved institutional record	38% (n=11)
Charge dismissed or not guilty	28% (n=8)
No incident report	24% (n=7)
Failure to follow protocol	10% (n=3)
TOTAL	N=29

► Recommendations

The Board recommends that DOC immediately review each person on the non-contact list for a slashing/stabbing or weapon contraband to confirm that the person was found guilty of the related infraction and share its findings with the Board.

Going forward, the Board recommends that DOC issue visit restrictions for slashing/stabbing or weapon possession only after a person has been adjudicated guilty of the offense. If an infraction is dismissed in writ court, DOC should lift any related visit restriction.

The Board further recommends greater and centralized accountability of duration restrictions, such as approval by the Chief of Department.

B. Improved Institutional Record and Six-Month Reviews

Following DOC’s new Inmate Visit Procedures Directive (as well as its previous Teletype Order No. HQ-02613-0), the Board granted 12 appeals based on a person’s “improved institutional record,” i.e., where the person had not been involved in a violent incident in the previous six months. For example, in one appeal that BOC granted in August 2016, the appellant had been on the non-contact list for two years without having committed or participated in a violent incident. As the Department improves its six-month reviews, the Board expects to receive and grant fewer appeals based on improved institutional record because the Department will have effective practices for providing appropriate relief itself.

The Visit Directive states that “[a]s a general matter, limitations to non-contact visits should not be continued beyond six months unless the inmate has engaged in further infractions or violent activity during the previous six-month period, or unless there is evidence of prior systemic activity which would support continued limitation.”

During the study period, the Department conducted 150 six-month reviews. In November 2016, when DOC first began submitting these reviews to the Board, only 36% of people eligible for such a review had received one. In June 2017, this percentage had increased to 88%. The Board

commends the Department for this significant progress; however, more work is needed to ensure that these reviews are meaningful and are conducted in accordance with the Directive.¹²

Despite the Directive's guidance that the six-month review include a presumption of reinstatement of contact visits, only three (3) of the 150 resulted in reinstatement. Fifty-three (53) of the reviews resulted in continued non-contact restrictions even though the subjects of the restriction had not had a violent infraction in the previous six months. In 40 of these cases, the individual had not received any infraction at all in the prior six-month period.

In one case, a person was given a non-contact visit restriction for the duration of her incarceration after her visitor was found to be in possession of a razor prior to the visit. Six months later, the Warden reviewed the subject's record, found that she had had no incidents prior to or after the restriction, yet recommended keeping her restricted. Six months after that — one year after the initial restriction had been imposed and 15 months after this person had been taken into custody — DOC again reviewed her record, and again determined that she had not been involved in any incidents. Nevertheless, DOC once again determined to continue her restriction. In neither review, did the Warden provide evidence that the person's contact visits posed a serious threat to the safety or security of the facility. After her second six-month review, at Board staff's suggestion, she appealed her restriction. Upon BOC granting the appeal, her contact visits were restored.

► **Recommendations**

As required by the Directive, six-month reviews should presume a person's removal from the non-contact list unless the person has been found guilty of a violent infraction during the review period or the Department can demonstrate a specific reason why contact visits would continue to pose a serious threat to the safety or security of the facility. If a person is not removed from the non-contact list as a result of the review, the reviewer should explain why a less restrictive penalty is not a safe option and include all evidence to support the decision.

Additionally, DOC should immediately re-review all people who, at the time of their review, had not received a violent infraction in the preceding six months, and share its findings with the Board.¹³ DOC should conduct periodic audits of its six-month reviews in order to identify process issues and any additional necessary guidance or training.

C. Visit Lists

1. Facility Visit Restriction Lists

The Board regularly receives reports of people who are limited to non-contact visits, but who do not appear on the non-contact list. We understand that it is the practice at certain facilities to place people on the list without administering a Notice of Restriction Form or adding the person's name to the centralized non-contact list.

To the extent this practice exists, it violates Minimum Standard § 1-09(h)(5), which requires all restrictions to "be in writing" and "state the specific facts and reasons underlying such determination. A copy of this determination, including a description of the appeal procedure, shall

¹² Directive, III(F)(2) at 7-8.

¹³ The Board will share a list of people we believe meets these criteria.

be sent to the Board and to any person affected by the determination within 24 hours of the determination.”

► Request and Recommendation

The Board requests that the Department investigate whether there is an unofficial non-contact list at each facility and immediately act to cease the practice wherever it exists.

2. Central Monitoring of Restrictions Under 180 Days

Relatedly, it does not appear that DOC is centrally monitoring restrictions of less than 180 days. The daily non-contact visit list shows only those people restricted for 180 days or more.

► Recommendation

The Board recommends the Department amend this report to include all visit restrictions placed on people in custody. This will include restrictions of any length greater than a day.

3. Visitor Watch Lists

The Board regularly receives reports of people who have been told that they are on a visitor “watch list” which flags them for a pat frisk search each time they visit. There is no mention of this list in the Department’s Directive.

► Requests

The Board is concerned about the existence, accuracy, and transparency of a watch list and, if such a watch list exists, requests the governing policy and a copy of the current list. In addition, BOC requests that the Department answer the following questions:

- Who maintains the watch list?
- Who can add people to the list, request an addition to the list, and view the list?
- If a visitor is placed on the list, what, if any, restrictions are imposed?
- Is placement on the list indefinite?
- Does DOC ever review the list to determine whether a person should be removed from it and, if so, how often are these reviews conducted?
- Does DOC alert people that they have been placed on the list?
- How does someone on the list appeal this designation?

D. Management of the Restriction System

Until recently, the Board had not been consistently receiving visit restriction notices from eight (8) facilities. The Department made changes to its processes and, as of August 11, 2017, this issue has been resolved. In several cases, however, the Board’s appeal decisions were not communicated timely to the facilities or the non-contact list and/or Visitor Express was not updated. In one case, the Board granted a visitor’s appeal in May 2017, but when the visitor attempted to visit, she was told on several occasions that the Department had not received the Board’s appeal determination letter. In another case in July 2017, the Board granted a person in custody’s appeal; however, the person called multiple times to complain that DOC continued limiting him to non-contact visits and claiming that it had not received BOC’s letter. Ultimately, in each example, communication issues were corrected and contact visits were restored.

► Recommendation

The Department recently updated its Directive to require that Visitor Express be updated after a visit restriction is lifted or modified. While this should help with management, DOC should clarify who is responsible for updating Visitor Express and how quickly it must be done.