



May 11, 2015

New York City Board of Correction
51 Chambers Street
New York, NY 10007

Dear Chair Brezenoff and Board Members,

We write today regarding several important concerns impacting the lives of the thousands of New Yorkers we represent who pass through the city jail system each year. Brooklyn Defender Services (BDS) is a comprehensive public defense office that represents half of the people who are arrested in Brooklyn annually. Through our Jail Services and Social Work staff, we interact regularly with our incarcerated clients and advocate for their well-being while detained. The vast majority of our clients detained in city jails are held simply because they are too poor to pay bail. As a result of detention, they are separated from their families and children, subjected to violence and sexual violence, and endure the torturous practice of solitary confinement.

Before submitting any substantive comments regarding recent developments discussed in the press and government hearings, we would like to raise serious concerns about the process by which rule changes have been proposed by the Department and considered by the Board. Rule-making related to the creation of Enhanced Supervision Housing was carried forth after the Department submitted proposed rules the night before the Board meeting. Stakeholders – most importantly incarcerated people and their families – did not have a meaningful opportunity to review and comment on the proposed rules. While CAPA allows for the public to testify at a public hearing, the short timeframe allows only for the hasty preparation of testimony which cannot possibly address all the implications for our clients' lives.

More recently, the Department's 14 Point Violence Reduction Plan was withheld until a city councilmember demanded it on the record during a hearing. The Board has a responsibility to ensure that incarcerated people, their families, attorneys and other advocates are meaningfully engaged in the development of proposed rules and not relegated to last-minute hearings – after all, it is the people in our city jails who will be subjected to the consequences of any action the Board takes. To this point, we urge the Board to resist any effort to initiate rule-making regarding visitation, solitary confinement, or any other matter until incarcerated people and stakeholders have had the opportunity to review any proposed rules, about which at this point we may only speculate. In addition, we request your consideration of an extended public comment period permitting all interested parties to deliver comments. Also we would welcome a change in the structure of meetings to permit stakeholders to testify prior to agency officials.

Public Advocate's Petition on Sexual Abuse and Sexual Harassment

Brooklyn Defender Services strongly supports the Board undertaking this urgent issue in our city jails. We thank Public Advocate James' office for their petition, for submitting this petition well ahead of initiation of rule-making, and for their engagement of advocates in their approach. BDS also extends strong support for the letter submitted by our colleagues at the Legal Aid Society Prisoners' Rights Project. We thank the Prisoners' Rights Project for their thorough and thoughtful review of the proposed rules. We believe the amendments LAS PRP proposes will strengthen the rules in ways fundamental to addressing the problem of sexual violence in a real and lasting way.

We encourage the Board to remember while considering new rule-making that sexual violence impacts all prisoners, not only women, LGBTI identified people, young people, or other vulnerable populations. While an emphasis on these populations is appropriate, it is imperative that remedies to this issue impact all incarcerated people, including older male juveniles and adult men. The training, supervision, reporting, investigative and other requirements in the proposed rules and amendments must be implemented and enforced across all facilities. The Board and Department must take seriously the realities of rape and sexual violence in the men's facilities, and staff must be held accountable to respond appropriately to reports of sexual violence from incarcerated men.

Brooklyn Defender Services remains concerned about the risks incarceration poses to our clients with Developmental and Intellectual Disabilities. This population is particularly vulnerable to sexual abuse in jails and prisons. While the minimum standards require identification and accommodation of these individuals, the experience of our clients makes clear there is not a meaningful or effective screening process, they are not accommodated and their safety is not protected. When our clients with cognitive impairments are assaulted physically or sexually they are simply transferred to another housing unit where they are victimized again. I refer you to the attached testimony delivered to the City Council on May 6, 2015. The Board must enforce the Minimum Standards related to this population [Mental Health Minimum Standard 2-04(c)(6)]. This enforcement should include requiring the Departments of Health and Mental Hygiene and Correction to report on the development of a more effective screening process, as well as efforts to ensure safe, not merely segregated housing, and access to developmentally appropriate programming for these individuals. If someone is so disabled as to be contraindicated for housing in the jail system, the Departments should be expected to promptly contact the courts as laid out in the Minimum Standards. These steps, in addition to those described in the Petition and LAS amendments, will contribute to an effort to better protect our most vulnerable neighbors.

Limits on Visitation

It is not possible to comment in detail on changes to visiting rules because no specific proposal has emerged. However, in recent weeks, press releases and other information suggest that the department prioritizes limits on visitors and the nature of visits with incarcerated people as an important tenet of their Violence Reduction Plan. The Department and the Mayor's Office have indicated that changes may include bars on certain visitors based on criminal history and other factors, the creation of a visitor registry, additional searches, and limits on the nature of

contact permitted during visits. The Department argues that these measures are necessary to control the flow of contraband into the jails, and reduce contraband-related violence.

We urge the Board to approach the question of violence control thoughtfully and question the Department's claims about the connection between visitors, contraband and violence. While claims have been made in the press that visitors are a major source of contraband and associated violence in the jails, the data and existing reports suggest otherwise. The Board of Correction's April 27, 2015 staff report *Violence in New York City Jails: Slashing and Stabbing Incidents* found that nearly 80 percent of weapons recovered in 2014 were fashioned from items found or used in the jails, and only 10 percent were likely to have been brought in through trafficking. In a 2014 report, the New York City Department of Investigation found "that while visitors to city jails bring in some contraband, a large proportion of the illegal trafficking is carried out by uniformed guards and civilian employees."¹ The Department's own data used to justify the need for more restrictions cite 60 incidents of contraband recovery during a 9 month period, during which approximately 270,000 visits occurred.² When put in context, the Department's data suggests that in fact the proportion of visitors smuggling contraband is so small as to make any blanket policy a patently unjust and ill-fitting proposition.

Additionally, any policy that requires background checks of all visitors may have the unintended consequence of deterring visits by non-citizen New Yorkers who will fear actual or perceived immigration consequences of such checks. Avoiding immigration consequences for family members and ensuring that people with different immigration statuses have the same access to community ties are among many reasons to base policy on individualized determinations.

The Department already has the ability to exclude visitors or limit visits for certain incarcerated people based on individualized assessments of the behavior of the incarcerated person or their visitor. Unlike the possible changes discussed in the press, these limitations require there to be a nexus between an individual's behavior and the imposed limitation, and provides a level of due process. Blanket restrictions are unlikely to have a significant impact on the flow of contraband in the jails, but are certain to punish and discourage family members and children who have been shown to foster a "peaceful correctional environment" through their visits.³ These family members already endure a grueling procedure in order to visit their loved ones. In order to understand how this process truly works, a social worker in our office experienced it for herself and has documented her experience:

I visited on a Thursday, where visiting hours ran from 1 to 7pm. As someone who had never been through the visitor center before, I didn't know what to expect. There were no clear signs directing you which line to wait in, what you should have ready or even what next steps would look like.

¹ NYC Department of Investigation Report on Security Failures at City Department of Correction Facilities. November 2014. http://www.nyc.gov/html/doi/downloads/pdf/2014/Nov14/pr26rikers_110614.pdf

² Pazmino, G. "New policy announced for Rikers Island visitors." *Capital News*, March 12, 2015.

³ Mohr, G. C. An Overview of Research Findings in the Visitation, Offender Behavior Connection. Columbus: Ohio Department of Rehabilitation and Correction, 2012; DC Public Safety Radio podcast April 2015, <http://media.csosa.gov/podcast/audio/2015/04/video-visiting-in-corrections-national-institute-of-corrections/>

You're required to go through three checkpoints when visiting someone and you can expect a wait time of three to five hours for a one hour visit. I was told to leave everything in a locker, yet I'd need \$.50 for the two lockers I was about to encounter, which DOC does not warn you on their website. At the first checkpoint I was asked to take off all layers, my shoes and walk through a metal detector while my stuff went through the x-ray. I was then required to check in according to the jail I was visiting, have my thumb print and my driver's license scanned. I proceeded to wait for the shuttle when the canine unit came around and an officer told me to remove everything from my lap and pockets and put my hands to my side while he went through my belongings. When I was dropped off in front of the jail, I repeated the process and this time there was a machine set up to wipe my hands for any chemical residue.

It took one hour to reach the second checkpoint and another two hours before I sat down with the person I came see. There's no signage about expectations and the officers wouldn't inform me why it was taking so long. The officers were unexpressive, hardly said a word and acted like I wasn't even a person. In the third checkpoint, a private area was created by a pulled screen. I was told to take off my shoes for the third time, turn my socks inside out, pull up my sleeves, use my thumbs to move across the inside of my pants, lift up my hair, open my mouth and eventually bend over and lift up my bra. By the end I felt exposed and humiliated. When I was cleared, I was told to wait again. Overall, it took me five hours of waiting and security measures for a one hour visit.

Throughout the entire process, I witnessed several families with children. I was a witness to their understanding of what it means to be institutionalized. Children were patted down, invaded by dog searches and were relentlessly waiting in lines. Visiting someone in Rikers is both psychologically and physically demanding for children and adults.

Contact visiting should be understood to mean continuous contact throughout the visit, without barriers between incarcerated people and their families. Contact visits are not simply a hug and kiss hello and goodbye. Meaningful contact is important for all incarcerated people, however, as a public defense office, we believe contact visits are essential to maintaining the sanity and emotional health of our pre-trial clients who do not yet know when they might be released from jail, whether they will be convicted or acquitted, how long they will have to survive on Rikers Island. We encourage you to review the May 6, 2015 letter submitted by a coalition of organizations representing families and children, including Brooklyn Defender Services, which details the important ways in which the possible restrictions on visiting are harmful for families, children, negatively impact incarcerated people, and unfairly impact poor communities of color.

Solitary Confinement

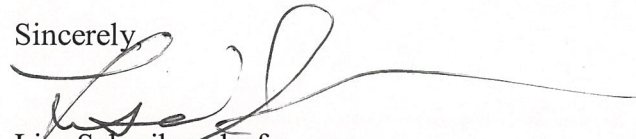
On May 7, 2015, the Daily News Reported that DOC intended to override limits on Solitary Confinement for certain incarcerated people.⁴ The article cited 29 requests for override. We urge the board to review these cases, and to evaluate these cases as a proportion of the population of people leaving solitary confinement. We have testified at length about the

⁴ Blau, R "Jail officials want to override lenient solitary rules to punish violent inmates" Daily News, May 7, 2015

detrimental effects of solitary confinement on the individuals who endure the punishment, and the negative effects solitary has on the safety of the jails at large. We will not resubmit those comments now. However, we urge the Board to monitor closely the use of extended solitary confinement stays and to inquire with the Department why they would use such overrides when the Board already approved Enhanced Supervision Housing. When our office visited the ESHU, the census was less than 50% capacity. If this unit is designed to safely house the people perceived to be the most dangerous individuals in the system, it is difficult to fathom when an extended stay in CPSU would be indicated.

Thank you for your attention to these important matters. We appreciate your responsiveness to our concerns and we hope to work with you to improve conditions in our city's long-neglected jails.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lisa Schreibersdorf', with a long horizontal flourish extending to the right.

Lisa Schreibersdorf
Executive Director