

NYC Board of Correction
Public Hearing and Opportunity to Comment on Proposed Rule
October 23, 2015

**Prepared Testimony of Commissioner Joseph Ponte,
NYC Department of Correction**

As the Commissioner for the NYC Department of Correction, I submit this written testimony to reiterate the importance of the proposed changes to the BOC minimum standards for staff and inmate safety and in answer to the concerns raised during the October 16th public hearing. I have had multiple opportunities to discuss the proposed rules changes with the Board of Correction, members of various advocacy groups, faith and community leaders, and other important stakeholders. I have appreciated these discussions, and further appreciate the significance of the public hearing as an open forum in which members of the public are provided with an additional opportunity to express their opinions and concerns.

Since becoming the Commissioner, I have worked diligently to address the multitude of issues that have long plagued the Department. Through the implementation of the 14-point anti-violence agenda, the Department has advanced a number of initiatives geared towards cultural change and addressing the root causes of violence within our facilities. In addition, I have worked to implement changes that more effectively utilize punitive segregation, including a more rationale limitation on maximum sentences and historically owed time. The Board's adoption of the proposed rules changes would have a significant impact in further advancing our anti-violence agenda.

My written testimony focuses on the areas that have raised public concern – specifically related to visits, punitive segregation, and packages – with the goal of providing clarification regarding the Department's plans if these rules changes are adopted.

Visit Changes

First, it is important to note that the Department recognizes the importance of visits and the positive impact it has on the individuals in DOC custody both during their incarceration and for their successful return to the community. Approximately 75% of our inmates return directly to our communities, and DOC is committed to facilitating a smooth transition for those individuals. Maintaining a connection with family and friends is beneficial to everyone involved. We also understand the difficulties encountered by those visiting our jails, especially those on Rikers Island. The visit process, including travel, often takes several hours, the areas are loud and somewhat chaotic, searches are uncomfortable, and the process is stressful. We do not wish for these issues to result in a friend or family member being dissuaded from visiting.

The Department is committed to establishing a new visit process that creates a more welcoming atmosphere conducive to quality interactions with loved ones. To that end, the Department has stood up and is engaging in a visit working group, facilitated by my Chief of Staff, comprised of staff, visitors, and advocates who have all provided insight into the staff's and public's concerns and suggested changes, which will positively impact the overall visit experience. This dialogue has enhanced overall communication among the involved parties, and it is my hope that it also reflects the Department's intentions to encourage – not hinder – visits. Initial recommendations include better, more proactive communication by the DOC regarding visit rules, such as posting



dress codes and permissible items lists in the Q100 bus and increased sign visibility on the Island. Additionally, the DOC plans to maintain consistent staff in the central visitors' area and provide them with appropriate training while also working aggressively to explore physical infrastructure changes to improve both the experience and process and flow of visitor traffic to reduce wait times while enhancing security.

It is critical to acknowledge that maintaining safety is paramount to improving the visit process. The current constraints on visits under which the Department must operate create an unsafe environment for staff, visitors, and inmates alike. Currently, a visitor may request to see almost anyone, for any reason. While most visitors have a legitimate purpose for the visit, a few visit with intentions that can have serious safety and security implications. This can include visitors that are hoping to pass weapons, drugs, or other contraband to inmates, or otherwise provide direct communication or orders related to gang activity or other criminal activity. The Department is seeking to establish a streamlined visit process that encourages visits while ensuring facility safety. DOC is requesting the ability to modify or restrict visits using a risk assessment review that considers several components of a visitor's profile.

DOC is proposing the creation of a risk assessment review that examines objective information, such as relevant criminal activity, known gang affiliation, and relevant intelligence, to determine – over the course of time – whether a visitor or an inmate is taking advantage of the visit process to further criminal activity. I want to be very clear: we would look at visitors with the assumption that they are coming for legitimate reasons and that they should be welcomed. Meeting any single criterion, in and of itself, will not result in the imposition of a visit modification or restriction. Furthermore, the Department would effectuate any restriction in a progressive manner that applies the least restrictive means of addressing the specific identified safety concern. Currently, DOC must take a reactive stance as we primarily have the ability to limit visits after an incident has occurred. The proposed rule change would grant DOC the ability to develop a review process and system, managed by our Correction Intelligence Bureau, that analyzes and corroborates individual factors and broader trends to assess whether a particular visit is truly providing the kind of sustaining and healthy support that the DOC encourages – or whether that visit is a safety risk.

Screening visitors is good correctional practice conducted by correctional systems across the country. Adopting a risk assessment process serves to identify visitors and inmates that are likely engaging in ongoing criminal activity, like drug trafficking or gang operations, in order to enable those visits to be appropriately modified. This proactive identification will allow positive, healthy, and legitimate visitor interactions to proceed with fewer disruptions from visitor arrests or hostile disturbances. Furthermore, DOC would be able to prevent victims from receiving visits from those against whom they have orders of protection. While the Department is not in the business of defining what may constitute a "positive" visit, we do know what a particular set of negative visits are – and those are ones in which an inmate or a visitor can promote ongoing criminal behavior or bring in contraband, thereby making it ever less likely that the inmate will be able to re-enter society in a non-criminal, constructive manner.

The visitation risk assessment review will not restrict first time or one-time visitors to Rikers. The risk assessment process will be conducted by a specialized, independent unit within DOC's Correction Intelligence Bureau, one that is operating off data and intelligence and consistently corroborating all available sources of information. Decisions to modify or restrict visits will be made by managers and senior-level decision makers, with further review by other senior-level decision makers at the Assistant Chief and Chief levels to ensure appropriate checks and balances. Such decisions will be made and communicated in advance of the visitor's arrival, and visitors will

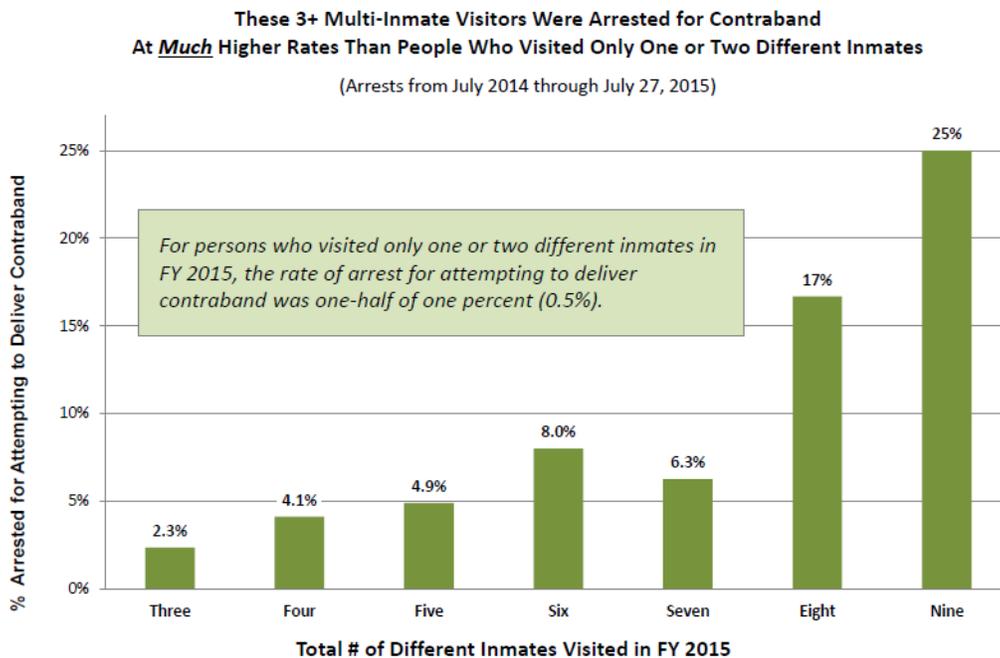


have ample time to appeal the decisions. Visitors will not be denied or restricted from visits due to DOC's lack of capacity or because appropriate checks have not been completed in time.

Many have questioned what specific criteria would be utilized to screen visitors. If the rules changes are adopted, the Department will develop criteria via the process as outlined below:

- First, details about visitors must be collected.
- Second, that information must be compared to arrest and incident information, to see what patterns connect them.
- Third, use those patterns to determine markers for "red flags" for visitors.
- Finally, implement the screening criteria, identify red flags, and determine which flagged visitors represent a serious threat to the safety and security of a facility.

A weighted system will be created, in which certain factors provide greater basis for restriction than others (for example, those focused on gang affiliation and active involvement, contraband smuggling or movement, or physical safety and harm) and must contribute to an overall risk profile or pattern that raises concern about the nature of the visit(s). The risk analysis will inform what action will adequately address the safety concern in the least restrictive manner – whether it be through greater supervision of the visit, a non-contact visit, or, as a last resort and with sufficient evidence, a visit denial. The Department's preliminary analysis of factors that may be an indicator of criminal activity related to visits has revealed a direct correlation between the number of inmates a visitor sees and visitor arrests. Less than 1% of those who visit one or two inmates are arrested, but 25% of those who visited nine inmates or more inmates were arrested. Less than 2% of those who visited in FY15 visited three or more inmates; DOC has sufficient staffing resources to conduct a comprehensive assessment of this small group and determine each individual's risk level.



Note: The one visitor who visited ten different inmates in FY15 was not arrested but one of the two visitors who visited 11 different inmates in FY15 was arrested, for an eleven inmates visited arrest rate of 50%.



The number of inmates being visited, plus other (to be determined) factors, will be considered. For example, the visitor who visited the most inmates during the period examined was a reporter, which explains why she was visiting so many inmates, and indicates that she did not likely pose a threat. If a visitor is visiting several people whom we know are related, that too explains the number of inmates being visited by one individual and indicates that the visitor is likely not a threat. If, however, a visitor is visiting numerous inmates and is known to DOC or NYPD as a drug dealer (especially if he/she had been known to smuggle or distribute drugs while in DOC custody), the visitor might be restricted. Similarly, if a visitor is known to DOC or NYPD as passing along gang intel or orders he/she might be restricted from visiting.

Frequent visitors who are known to DOC and who have no record of issues can be designated as “low risk” visitors who can be processed more quickly. This will benefit family members who visit frequently, as well as those who serve as positive influences for inmates, even if the visitors are former inmates themselves. We are aware that many former inmates now live productive, successful lives and work to help current inmates do the same. We want to encourage these positive influences, not hamper them.

Punitive Segregation Changes

The Department is requesting modifications to the punitive segregation rules that were adopted earlier this year. We are not seeking to roll back reforms or undue the Board’s intentions in the use of punitive segregation. In fact, the Department should be recognized for aggressively adopting significant changes to its punitive segregation policies, including the elimination of historically owed time, lowering the maximum sentence from 90 days to 30, and instituting limitations to no more than 60 days in 6 months except for overrides in a very small number of cases. We believe this is a more responsible and effective use of punitive segregation. We have also eliminated it for 16-17 year olds, and will be eliminating it for 18-21 year olds by early next year. The proposed rules changes are founded upon departmental observations since the implementation of the new punitive segregation rules, and the unanticipated issues that have arisen. The Department’s goal is to address these issues, strengthen the disciplinary system, and keep our facilities safer for staff and inmates alike.

The key modification requested is to provide the Chief of Department the authority, in exceptional circumstances, to override the 7-day-out reprieve following thirty consecutive days in punitive segregation. The waiver of the mandated 7-day-out period would be considered as an option for those inmates who commit infractions that would qualify him/her for pre-hearing detention, i.e. inmates whose actions threaten the safety and security of the facility and who should be immediately removed from the population. The Chief of Department must approve the waiver in writing and state why retaining the inmate in punitive segregation is necessary to ensure the safety of inmates or staff. As with the 60-day override, the Department must immediately provide the Board and the relevant Correctional Health Authority with a copy of the Chief of Department’s approval.

Several people have asked why inmates who reinfraction are not put in the newly established Enhanced Supervision Housing (ESH). These inmates might be candidates for ESH, but not until after they have served their punitive segregation sentence. ESH is not a punitive unit and it should not be thought of as such. To put someone in ESH as a response to his/her infraction would be inappropriate and would compromise the integrity of the unit. ESH is meant to be rehabilitative and restorative. For the unit to be successful, inmates and staff need to work towards that goal. Rehabilitation can not be fostered if inmates and staff view the unit as a version of punitive



segregation. Punitive segregation is a disciplinary measure to address rule violations. Punitive segregation should be a deterrent – ESH should not.

Finally, using ESH in place of punitive segregation does not address a significant question: what should be done with someone who assaults someone else while in ESH? If an inmate is released from punitive segregation to ESH and assaults a staff member or an inmate a few days later, that inmate must be (1) removed from the unit to ensure the safety and stability of the unit and (2) placed in punitive segregation. If ESH is being used as a punitive segregation unit, then there is no ramification for violence within ESH.

The most effective deterrent of misbehavior is swift, consistent consequences for that behavior. The imposition of a punitive segregation sentence that begins immediately after an infraction is much more effective in modifying behavior than a sentence that is started a week after the fact. In order to be truly effective, the sentences must consistently start immediately following the action. If an inmate cannot be returned to punitive segregation for seven days, the deterrent of punitive segregation is weaker, because the inmate faces no immediate consequences.

Most importantly, there is a safety concern for dealing with those who violently infract during this 7-day-out period. Currently, DOC does not have an alternative placement that is as secure for responding immediately to such an act. DOC has offered, in rule, to explore and develop alternative options to punitive segregation, including partnering with the Vera Institute to review and offer up potential alternatives.

These modifications to the punitive segregation rules ensure that punitive segregation is used appropriately. Ensuring appropriate and consistent use is critical to the overall reform in the use of punitive segregation that the Department is undertaking. Again, we are actively examining our use of punitive segregation and determine how to develop and utilize better alternatives. We are also creating incentive-based housing programs to encourage and reward those who participate in programs and do not infract. By offering more incentives to all inmates, we are also creating a new disciplinary option: loss of the incentive. Punitive segregation will no longer be the only disciplinary option, but it is still an essential tool, if it can be used effectively. The rule modifications we are seeking would allow it to be used effectively.

Package Changes

The Department is seeking to limit the way packages are sent to inmates, but we are also working to make those packages unnecessary by providing needed items to inmates ourselves. The Department is enacting a plan to have everyone wear uniforms, and it is working with the public library to provide greater library access to all inmates. These are just a few of the ways that DOC is changing the dynamic of the facilities, ensuring that inmates have essential items while maintaining safety. It is important to note that we are not stopping loved ones from sending permissible personal tokens, such as photographs, which are so important to people who are incarcerated. We are working to reduce the need to send bulk items that can easily be used to hide contraband. Our staff search every package, but they may miss contraband items, and those items may pose real threats to safety and security once inside the jail.

I hope that this prepared testimony clarifies what the Department seeks to accomplish and answers any outstanding questions. I invite further conversation on these critical matters.

