

**TESTIMONY OF EMILY DINDIAL, POLICY ANALYST, INNOCENCE PROJECT,
BEFORE THE NYC BOARD OF CORRECTION
RE: PROPOSED RULE CHANGES
OCTOBER 16, 2015**

My name is Emily Dindial; I am a policy analyst with the Innocence Project.

On behalf of the Innocence Project and the many exonerated people who have been housed in New York City jails, thank you for allowing me to testify today before the Board of Correction. The Innocence Project was founded in 1992 at the Benjamin N. Cardozo School of Law to exonerate the innocent through post-conviction DNA testing. We regard each exoneration as an opportunity to review where the system fell short and identify ways to prevent further injustice in the future. Our clients in NY and around the country were sustained by visits with family and friends and harmed by their experiences in solitary confinement.

Of the 330 DNA exonerations, 9% plead guilty and 25% falsely confessed to crimes they did not commit. Criminalists estimate that in well under 10% of all criminal cases, DNA can prove guilt or innocence, so we know that our DNA exonerations represent the tip of the wrongful conviction iceberg. Upwards of 80% of the Rikers population are *pretrial* detainees. We know from these numbers that a significant number of the people affected by the proposed rules are innocent. The proposed changes, in many instances, amount to punishments of people presumed to be innocent. It also punishes their family members, many of whom are forced to be away from their loved ones solely because they cannot afford bail.

Limits on Visitation

There is no convincing nexus between the apparent goal of reducing violence on Rikers and the solution of restricting visitation. The proposed rules are vague -- granting too much

discretion to decision makers based on imprecise criteria and minimal guidance. These measures are being explored while already robust security measures are in place. We know that detainees are subjected to strip searches both prior to visits and after visits. Visitors are physically searched and required to clear several metal detectors.

What we don't know is whether these changes will further reduce violence in light of the existing security measures, what percentage of weapons in jail are brought in from contact visits, or what other efforts could be made to reduce weapons before denying visits, something so fundamental to detainees and their families.

The proposed rules give additional reasons for Corrections Officers to deny visitation, such as:

- Lack of a family relationship
- The visitor's probation or parole status
- Nature of either the detainee's or visitor's felony or misdemeanor convictions for the last *7 years*.

There is no data demonstrating these factors will reduce weapons or violence in the jails or whether the criteria identified by the Board for the purposes of evaluating visitation are appropriate determinations. In fact, the proposed rule change eliminates language meant to provide a nexus between violence reduction and limited visitation rights and to prevent arbitrary decisions. Specifically, it removes the requirement that

- any determination to limit visitation be based on specific acts committed by the visitor or inmate during a visit or on specific information received and *verified* that the visitor or inmate plans to engage in acts during the visit that will threaten the safety or security of the facility

- and the requirement to provide the visitor and inmate with written notification and an opportunity to respond, prior to any determination

The elimination of these protections and the development of the new rules provide an opportunity to widen the net of individuals who might arbitrarily be denied visits with their loved ones. This policy shift, in fact, could breed the very conduct it intends to prevent; by denying visitation to inmates from their loved ones, frustration, anger and potential violence are foreseeable and preventable possibilities. Visitation fosters successful reentry for detainees and has been shown to reduce and delay recidivism rates.¹ The drastic measures proposed grants even more discretion to officers while taking away some of the few protections of detainees without any convincing support for the claim that this will reduce violence.

Solitary Confinement

The proposed rules also seek to roll back one of the important positive reforms to conditions of confinement in NY Jails that the Board passed earlier this year- limitations on the use of punitive segregation.

The use of solitary confinement is widely denounced by advocates for human rights, criminal justice reform, and mental health. The United Nations defines prolonged solitary confinement as torture and recommends a maximum use of 15 consecutive days.

In his testimony to Congress, Anthony Graves, who was exonerated through post-conviction DNA testing after serving 18 years on death row in Texas, including 10 years in solitary confinement- called the use of solitary confinement “criminal torture.” While in solitary, he suffered from sleep deprivation and was kept up by inmates who were also suffering from the psychological effects of extended periods of isolation. He described the deterioration of their

¹ William D. Bales & Daniel P. Mears, *Inmate Social Ties and the Transition to Society: Does Visitation Reduce Recidivism?*, *Journal of Research in Crime and Delinquency* (June 4, 2008).

mental health as they began to exhibit schizophrenic tendencies. He saw them smear feces on themselves, light themselves on fire, and commit self-mutilation. He witnessed suicide attempts and successes. He described their desperate attempts to escape the unbearable conditions, and how he still suffers from the experience.

There is an extremely limited process for those who want to appeal their punitive segregation sentence. The hearing is an internal review conducted by DOC employees. There is no right to counsel and a finding of guilt need only be based on the lowest possible standard- a preponderance of the evidence- satisfied by the testimony of a single witness, usually another DOC employee.

The reforms made last January created meaningful limitations on the practice of solitary confinement. One limitation mandates seven days out of solitary, after a maximum of 30 days in. The proposed rule seeks an exception to the 30 day limitation for inmates who “endanger inmates or staff” and any inmate sentenced to punitive segregation as a result of an assault on staff. However, the rules already provide an exception for inmates who engage ““in persistent acts of violence, other than self-harm, such that placement in enhanced supervision housing...would endanger inmates or staff.” The language of the proposed exception is so broad, that it could feasibly apply to any punitive segregation sentence, including non-violent infractions, and render the new limitation meaningless.

The testimony we offer today is grounded in the experience of our exonerated, factually innocent clients, and seeks to improve the reliability, and maintain the integrity and legitimacy of the criminal justice system. Many of our clients tell us that visitation was central to their will to survive and thrive. Those who were subjected to solitary confinement still suffer from its effects years after exoneration. The mental health concerns raised from extended use of punitive

segregation, the ease at which sentences of punitive segregation are granted, and the lack of a meaningful opportunity to appeal are why the limits were enacted and must be upheld. For these reasons we respectfully urge the Board reject the proposed changes under consideration. Thank you.