

Stanley Brezenoff, Chair  
NYC Board of Correction  
51 Chambers Street, Room 923  
New York, NY 10007

October 16, 2015

**Re: Submission of Comments and Recommendations in Response to the Proposed Rulemaking Addressing Visitation, Packages, and Solitary**

Dear Chair Brezenoff and the NYC Board of Correction:

The Sylvia Rivera Law Project strongly objects to the proposed amendments to the Jail Minimum Standards governing the use of punitive segregation (solitary confinement), visits, and packages. These changes have been brought on a totally fabricated basis with no evidence to support them, and they inappropriately shift responsibility for violence away from the correctional officers and Department of Corrections (DOC or the Department) staff and onto the families, loved ones, and supporters of the people inside.

The Sylvia Rivera Law Project (SRLP) works with transgender, gender non-conforming, and intersex people (TGNCI people) who are of color or low-income. We offer direct legal services to people in the New York City area and people incarcerated by New York State. SRLP provides direct legal services to 300-400 New Yorkers each year and we estimate that about 66% of our clients and members are either currently in prison or jail or are on probation or parole. As the population we serve is roughly 95% people of color we know that the intersections of race and gender identity make our communities over-policed and that TGNCI people are overrepresented in jails and prisons.

This submission is based upon that knowledge as well as knowledge gained from teaching monthly classes within the new Transgender Housing Unit with the New York Legal Assistance Group in addition to our ongoing representation of the many TGNCI people held in other facilities across the city.

**Visitation**

As has been brought up in numerous other submissions, there is no evidence that the majority of incidents of violence are facilitated by visitation. In fact, the opposite is true. Visitation has - time and again - proved to decrease violence. Visitors support the mental health of those who are incarcerated, provide important community connections, and facilitate successful reentry. These proposed changes inappropriately shift the blame for violence in the jails away from correction officers and their powerful union and on to the families, loved ones, and supporters of people inside.

As experts in TGNCI identity and experiences SRLP would like to focus our comments on the particular ways that these proposed rules will impact our loved ones. We know that TGNCI people disproportionately live below the poverty line and therefore are less likely to be able to pay any bail requirements.<sup>1</sup> From our own work SRLP knows that many TGNCI people do not have family or loved ones who can easily visit them and the combination of being housed in a facility not appropriate to their gender identity and being deprived of community places many TGNCI people in an excessively vulnerable state. On our most recent visit to the THU we asked individuals what comments they had about the proposed rules. Overwhelmingly, the TGNCI people in the THU were concerned that they already have so few visits - are so isolated - that any further restrictions would leave them in basic solitary.

- One woman stated: “when people come to visit, I get so excited. It makes me feel like I am not alone. That I matter. When I leave a visit I am determined to do better and show up for the people who showed up for me.”
- Another woman said: “When I get a visit the COs know I am loved. It says there are people - sometimes people who know nothing about me, just that I am transgender and in jail - who want to show up and give me encouragement. I feel safer.”
- Yet another woman asked “If you take away my visits you take away my humanity. What person can feel whole without the love of their family, friends, and significant others?”
- During group discussion a number of the individuals in the THU wrote down: “ Jail alone isn’t a positive reinforcement to change lives. It’s in the best interest of the people inside to have visits be more open, more easily accessed, less scary for people visiting us. We don’t have any programs to attend so visits are what inspire us and link us to community. This is the treatment we need and deserve.”
- Finally, a woman who is now upstate but was previously in our class at the THU wrote the following to me: “I had a sister - not a blood sister, but another trans woman who loved me and looked after me and supported me when we were both homeless. She kept me safe and I kept her safe. When I got locked up I wanted her to visit me, but I never asked. I knew that for her to go to the island would be too much. The nasty names the guards call us, the pat downs and humiliation, the waiting. I really needed her but I didn’t want her to go through that.”

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<sup>1</sup> Grant, Jaime M., Et. Al, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011, p.2, 50-70.

With reports of the degradation, humiliation, sexual harassment, and intimidating tactics already used to deter visitors - why is the focus of this amendment to increase that and not on providing safe visits where visitors are treated as the important people that they are? The City should be working to improve visiting in the jails by reducing the waiting time for visitors; improving equipment used to conduct searches and thereby eliminating unnecessary pat frisks; communicating visit policies and procedures clearly; assigning sufficient, trained, steady staff to visit areas; and ensuring those staff have proper training regarding working with children and all identity groups; and providing appropriate space for visitors including children.

In addition, SRLP has the following concerns regarding the proposed rulemaking:

- 1) In the proposed rule change the Policy section states that the Board acknowledges the wide makeup of familial structures and bonds and that visits are an important part of maintaining positive health. Yet the proposed rules still allow for a suspicion around familial ties to be a reason for the denial of a visit if there is not a “close or intimate relationship.” Who is the arbiter of what this means? Who determines a close relationship between individuals who may be connected through identity or similar struggles but who may not have intimate knowledge of each other? Sec. 5 (x) of Paragraph (1) of subdivision (h) of section 1-09 of Title 40 of the Rules of the City of New York.
- 2) All of the proposed reasons for denying a visit based upon parole or probation status or “felony convictions or persistent narcotics or weapons related misdemeanor convictions, if any, within the past seven (7) years” “pending criminal charges” and “the nature of any conviction for which the pending visitor has been released from incarceration within the past year” and the ability to look at visitation patterns and trends are deeply suspicious to us and, we believe, will lead to racial profiling. It is well documented that communities of color and low-income communities are over-policed and over-represented in the jails and prisons. It is quite possible that someone may know multiple people in any jail or prison from their community. In addition, many support organizations - such as SRLP - offer leadership training to formerly incarcerated people to provide positive reinforcement and community support. These volunteers may be visiting multiple people in a jail to offer social services. Their past convictions or visitation patterns are not a source of worry, they are simply the most qualified people providing support to those inside. Sec. 5 Paragraph (2) of subdivision (h) of section 1-09 of Title 40 of the Rules of the City of New York.
- 3) SRLP is also deeply concerned that the proposed rules would bring appeals of visitation denials to the Department and not directly to the Board of Correction. This change drastically affects the due process rights of visitors and adds a further, complicating step to appealing visitation denials. As the agency that issued the denial

the Department is not in an appropriate place to consider the appeals. The Board, and not the Department, is the appropriate arbitrator of these concerns.

- 4) Finally, should *any* changes be adopted at all - SRLP requests that “gender identity and expression” be added to the list of reasons for why a visit shall not be denied. Sec. 5 (xi) of Paragraph (1) of subdivision (h) of section 1-09 of Title 40 of the Rules of the City of New York.

The Board must reject DOC’s proposed rules and in contrast require DOC to revamp its demeaning visit process and create rules that encourage visits and sustain the ties known to reduce recidivism and improve reentry outcomes. We must not rely on discretionary reasons for denial that disproportionately impact communities of color and TGNCI communities.

### **Packages**

The Board must reject proposed changes to the Packages Standards that would force loved ones of those inside to go through an approved vendor for all packages outside of court clothes. Loved ones will not be able to provide socks, underwear, notebooks, envelopes, and other property without purchasing it new and paying for shipping. Having to repurchase what could be delivered from home will be a financial hardship for many. In addition, the rule requires that DOC provide uniforms however SRLP already has so many reports from our members and clients that the clothing provided is inappropriately sized, too thin or too worn. SRLP has deep reservations that appropriate clothing will actually be provided should this rule be enacted.

Moreover, this rule will effect service organizations who seek to provide clothing and basic supplies to members who do not have family support to ensure they have socks to wear in drafty cells and T-shirts for the hot summers. The proposed restriction on packages is unlikely to reduce violence but will be an extreme, hardship for incarcerated individuals and their families, friends, and service organizations.

### **Solitary Confinement**

Last year the Board made significant reforms to the use of solitary confinement in city jails - reforms that place the City closer to international standards against torture. Yet this proposed rule would drastically roll back those small steps forward and allow for ongoing continual torture of select individuals.

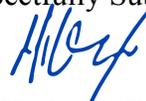
In the proposed rule it is suggested that there are a few individuals who upon release from 30 days in solitary continue to engage in violent behavior. This can hardly be surprising. The United Nations Special Rapporteur on Torture has determined that anything more than 15 days of solitary confinement constitutes torture. The psychological and physical damage to individuals isolated in a cell for 22 to 24 hours a day is well-established. We are also well aware that individuals who are young, who have mental health concerns or developmental disabilities are

especially at risk for placement in solitary due to their behavior. That such an individual would emerge fro 30 torturous days with more concerns than before is not a shocking observation. Rather than continue to torture such individuals the Department of Correction (DOC) must implement a humane disciplinary system that establishes alternative sanctions that ensure jail safety while offering a therapeutic response to aggressive behavior.

In addition, we have heard from many TGNCI individuals that whether in so-called protective custody or disciplinary solitary, they are at high risk for sexual violence. TGNCI people experience disproportionate amounts of sexual violence.<sup>2</sup> We know that TGNCI people are more likely to be placed in isolation where they experience greater risk at the hands of jail and prison staff.<sup>3</sup> To place individuals in isolation for longer increases the risk to their physical and mental health and places cisgender women and TGNCI individuals at a higher risk for sexual violence. We have heard from our clients and members that this sexual violence is often repeated, without consequence, day after day, when they are in solitary.

The Board has made admirable progress in studying the rampant violence against people in the city jails and adjusting rules to come closer to alignment with international standards. This proposed rule change is, in contrast, extensively harmful to all people held in the city jails. The Board should be part of improving conditions for incarcerated people, not endorsing policies that make it easier for DOC to ignore the basic needs and humanity of the people in its custody or to effectively punish communities of color and TGNCI people for the over-surveillance and over-criminalization they experience simply by living. These proposed changes are deeply harmful and we urge you not to endorse them.

Respectfully Submitted,



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<sup>2</sup> Sylvia Rivera Law Project *It's War in Here: a Report on the Treatment of Transgender and Intersex People in New York State Men's Prisons* 2007, p.19-23, 29, and 30; Just Detention Intl. *Targets for Abuse: Transgender Inmates and Prison Rape*, March 2013.

<sup>3</sup> See generally: Aviva Stahl, *Transgender Women in New York State Prisons Face Solitary Confinement, Sexual Assault Solitary Watch*, August 7, 2014; *Voices from Solitary: Cruel and Unusual Punishment Solitary Watch*, August 7, 2014; Testimony by the Campaign for Alternatives to Isolated Confinement, Submitted to the New York State Assembly, November 13, 2014.