

STATEMENT
by
Elizabeth Gaynes
THE OSBORNE ASSOCIATION
to
NEW YORK CITY
BOARD OF CORRECTION

October 16, 2015

***SUBJECT: PROPOSED REVISIONS TO MINIMUM STANDARDS
FOR NEW YORK CITY JAILS REGARDING VISITING***

Good morning. I am Elizabeth Gaynes, President and CEO of the Osborne Association, an 85-year old nonprofit organization offering treatment, educational, vocational and family programs at sites in the Bronx, Brooklyn, and Newburgh, as well as 20+ state prisons (for men and women, minimum, medium and maximum security) and 6+ city jails (including RNDC, RMSC, VCBC, GRVC and GMDC). My predecessor who led Osborne for 40 years was Austin McCormick, who was the Commissioner of DOC under Mayor Fiorello LaGuardia. Our founder was warden of Sing Sing 100 years ago. Our roots run deep.

Our services at Rikers Island include discharge planning, jail-based services, and follow-up case management and support services following release. At the state level, we manage a range of educational and therapeutic programs, many focused on families, including hospitality centers for visitors at 7 prisons, family visiting centers at 5 prisons offering child-friendly activities within visiting rooms, as well as video-visiting, visit coaching, and transportation. I mention this range of programs, and our history, so that you understand that we are well grounded in both the historic and day to day operations of secure facilities, and that when I share our concerns about the proposed rule changes, I can assure you that we understand that jail and prison operations are complicated and multi-faceted, and that those responsible for running them have daunting responsibilities and need resources and support.

I also want to mention that I have personally been working in prisons and jails since 1971, in connection with the Attica Brothers defense, as a criminal defense lawyer and as a prisoners rights lawyer during the 1970's which were truly the good old days in terms of courts defining the constitutional rights of incarcerated individuals. Starting as early as 1973, I was visiting Erie County, Monroe County and Onondaga County jails and penitentiaries. And I have, in the 40+ years since visited prisons and jails in 10 states, as well as 6 countries in Europe, North America, and Africa (and that's not counting Alcatraz and Robben Island.)

I also have a clear memory of the creation of the Board of Correction's minimum standards, which sprang almost directly from what we all learned – or should have learned – from the Attica Prison rebellion, which some of us are old enough to remember and the rest of us should learn about if we want to address the crisis in our jails and prisons. Attica, called the most deadly one-day encounter between Americans since the Civil War, actually led to a number of reforms including contact visiting throughout NY State and City, and the creation of minimum standards and the formal authorization for the Board of Correction represented – just a few years post-Attica – an important evolution in recognizing the rights of accused and convicted individuals while incarcerated.

When I visited Rikers Island in 1978, as an attorney, and was detained for several hours because they accused me of bringing a bullet (which they found on the floor several minutes after I had passed through the search area), I called the Board of Correction. Regardless of the high esteem in which I hold the leadership of our jails, I believe the role of the BOC in maintaining minimum standards despite the fashions of the day, is of critical importance, and I have been disturbed by the specter of the Board lowering the standards involving visiting without the justification as required by the rules, without the data required by logic, and without the detailed explanation of how these new procedures would work. I am especially concerned about the proposal that the appeal process for visitors who are denied contact visits, that has served so well for so long, may be derailed by the proposal that DOC have a role in the appeal, and a role that potentially delays the decision until long past the average length of stay of a prisoner.

Despite my enormous personal respect for this Commissioner, he is the 7th commissioner I have worked with pretty closely, and standards cannot rest on the progressive values or good intentions of any one commissioner or, for that matter, any one mayor. That's why we have a Board of Correction, and that's why departures from long-respected standards must pass a high bar that do not depend on confidence in those currently in charge.

Of all the possible reasons for changing visiting standards, the worst one is that it brings it in line with other systems outside New York State. First of all, New York State prisons offer visiting that is 10 times better than Rikers Island. Maximum security prisons in NY allow visiting 7 days a week, as well as overnight visiting for families. Medium security facilities have visits all day weekends and holidays. People in close custody sit at the front of the visiting room but can still visit all day if it isn't crowded. Incarcerated individuals wear normal looking clothing (prison greens with their own shirt). Searches are serious, both for visitors and for incarcerated men and women who are strip searched following the visit, in fact I have a special bra without underwire that I wear to Sing Sing because the magnetometer is turned up so high, but with few exceptions, visiting is inclusive and clearly understood by the prison administration to be essential to orderly facilities and successful reentry. By contrast, when Osborne was attempting, some years back, to build a children's play area in one of the visiting rooms on Rikers Island, several correction officers informed us that the last thing we should do is make visiting nicer for children, and children shouldn't visit at all, and what kind of parent would bring a child to the jail. Rather than making it harder to visit, we should be reinforcing the importance of family visiting, and selecting officers to work in the visiting room and perform the searches who are able to greet and serve visitors in a welcoming manner.

It is certainly true that New York City's jails and New York State's prisons are subject to higher minimum standards than most facilities across the country, but this is something for which we should be rightly proud. And these standards have likely contributed to a low crime rate and falling prison populations, with no clear evidence that they have made jails less safe. Why would the Board now tempt fate by moving backwards?

One of the challenges in opposing this watering down of standards is that DOC's petition doesn't actually have an explanation for the request. Contrary to CAPA, we have not been provided with the "basis and purpose" of this change to City rules and laws, and a "clear explanation of the rule" is absent, making it difficult for the public to evaluate comprehensively the value, quality and impact of a proposal.

There is no data connecting violence to visiting, and no evidence that a better search process and more cameras wouldn't achieve a better result. And given the enormous amount of DOC resources that will be required to handle background checks and appeals, there are few benefits to spending money that could be spent on programs and cameras and searches of all who enter our jails – especially those staff who are the source of much of the problem.

Of particular concern is the proposal that DOC be involved in the appeals AT ALL, in any capacity, for the first time in the Board's history. Not only does this extend the time to an unconscionable level, assuming a visitor could be barred prior to the appeal being finally decided, but it fundamentally eviscerates the power and purpose of the Board of Correction. It doesn't even require that DOC appeal-decisions be made by specialized staff not under the command of the decision maker, or that visits be continued until a final decision by the Board.

As Black Lives Matter and others concerned with police violence continue to press for new and expanded oversight of law enforcement agencies, New York is fortunate to have established an independent oversight agency for our corrections department, not beholden to any political interest or agenda, but committed to upholding standards that are truly the minimum a civilized society ought to accept. We ask you to continue to uphold standards that, if they rise above the minimum accepted in Chicago and Los Angeles, if they rise above the minimum accepted in Buffalo or Ithaca, you take pride in that, and not seek to level this bloodied playing field.

I am confident that my colleagues will have adequately addressed my other concerns about the proposed lowering of the standards.

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