



**Coalition to Raise the Minimum Standards  
at NYC Jails**

NYC BOARD OF CORRECTION

May 7, 2007

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Dear Members of the Board of Correction: MAY 8 '07 AM 8:01

The large turnout at April 17th's public hearing shows the extent of public concern with the Board's process and resulting proposal, and it demonstrates the need for greater public involvement than the Board has so far allowed. Unfortunately, the Board's approach has denied the public any real opportunity to speak and be heard on the important issues the proposed amendments raise. Like almost all of the speakers at the hearing, we urge you to stop this process, withdraw the proposed standards, and start over by implementing a process that will allow the many constituencies that have not yet been consulted or heard with an opportunity to discuss their ideas and concerns with you, so that the final revisions have the benefit of real input and involvement of the community.

The promulgation of the amended Standards was two-and-a-half years in the making. This process included input from the Department of Correction, to the exclusion of every other informed stakeholder. Opportunities to elicit involvement from interested parties were continually squandered. Indeed, as far back as March of 2006, the chair of the joint Board-Department revision committee indicated that the proposed amendments it intended to offer would be discussed by the full Board. Yet this never took place, nor did any attempt to allow for input from concerned and relevant individuals and groups.

Members of the public have now been given a narrow window of time in which to respond to the proposed revisions and put forth its own set of positive recommendations. This seems an impossible task, given the multitude of issues that might be addressed, including, but not limited to: overcrowding; visiting; attorney visits and court transport; access to law libraries; temperature and ventilation; hygiene and sanitation; light and noise; the use of force; the prevalence of violence; issues relating to transgender inmates; education; clothing;



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discrimination; recreation; interpreter services; surveillance;  
mail; and use of telephones.

In fact, as members of the undersigned Coalition tried to seek input from a number of interested parties and members of the public in an effort to amass a compendium of responses to the proposal, we observed firsthand the difficulty in attempting such an effort in a limited period of time.

Individuals and representatives of a number of prominent organizations attended the public hearing en masse to voice their objections to this rulemaking process. Indeed, an addendum to this letter includes just some of the many assertions put forth that the direction taken by the Board was terribly flawed. The public hearing, the first and only opportunity for members of the public to weigh in, was notable in that there was no exchange between Board members and those providing testimony. In fact, many participants had more to offer in the way of substance than was offered to them in the time allotted.

In order to restore the faith of the public, efforts must be undertaken to establish a process that honors the diversity and breadth of concern about the issues addressed in the Minimum Standards. At minimum, elements of such a process should include:

- The broadening of the window of time for a final set of proposed minimum standards to allow for responsible and informed deliberation;
- An opportunity for a dialogue between Board members and interested participants;
- An attempt to engage a wide range of relevant stakeholders, including: individuals who are currently incarcerated; former inmates; their families; legal advocates; service providers who represent notably vulnerable populations or provide reentry services; community organizing projects; community and religious leaders; etc. using a variety of forums and methods;
- The creation of issue-specific working groups, the members of which may determine a process that will best employ research, social science and best practices in the field;

It is not unprecedented, as in fact is the norm, for rulemaking bodies to actually engage interested constituents in their process. A few examples follow.

The State of California's Board of Correction endeavored to embark upon a more open process when it compelled "extensive collaboration among state and local subject matter experts to make recommendations for needed changes to the regulations." Further, when California's BOC decided to address minimum standards in its juvenile facilities, the process involved "an executive steering committee, six task forces, and participation of more than 100 juvenile facility administrators, managers, practitioners, and subject area experts."



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While the number and diversity of those individuals and groups the California BOC conferred with is notable, a reasonable rulemaking process does not necessarily have to mirror those methods used by other states' Boards of Correction. From the federal to the local level, governmental agencies employ a range of methods to solicit and consider public input, examples of which include:

Department of Transportation (DOT): The DOT initiated a series of “summits” to address highway safety issues, followed by the formation of issue-specific loose associations, with open-ended agenda, which can offer input to the DOT over the course of a two-year period. The DOT expects that participant composition will not remain constant.

Federal Aviation Administration (FAA): The FAA, seeking to encourage public participation in its decision-making processes, and issued the following formal statement: “[The FAA will take affirmative steps to] provide the public an opportunity to comment prior to key agency decisions” and to “solicit and consider public input on [FAA] plans, proposals, alternatives, impacts, mitigations, and final decisions.” The FAA’s Office of Environment and Energy has gone so far as to create a training course for agency personnel with the express purpose of teaching personnel how to engage the public in FAA decision-making.

Inter-Agency Environmental Technology Organization (IAETO): IAETO is an organization comprised entirely of government personnel that advances the development and execution of new environmental technologies. In an effort to address how to best communicate with its constituency, IAETO initiated a discussion with interested participants. Ultimately, the chair suggested the creation of “focus group” with the purpose of defining the parameters of the issue being considered.

New York City Department of Health and Mental Hygiene (DOHMH):

While accomplished in advance of a procurement process, rather than a rulemaking one, the DOHMH’s method of seeking input from other stakeholders is noteworthy. Before issuing a Request for Proposal for the provision of health and mental health care in the City jails, DOHMH asked interested parties to submit “concept papers” in order to guide their conclusions.

These are just some examples of elements that have been incorporated into practice by other agencies, which we are hopeful the BOC will take under advisement in contemplation of a more full and fair process. Regardless of the intent of the type of rulemaking scheme employed by the BOC to date, there remains no question that a host of interested and relevant parties believe the process as it stands is woefully insufficient.



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At this stage, we request a meeting with BOC members to set up a formal process in which interested parties, including those directly impacted by incarceration, can provide meaningful and ongoing input into the rulemaking process. We are confident that together we can establish a process that is both collaborative and accountable to the public. We hope to be placed on the May 10<sup>th</sup> agenda of the next BOC meeting to discuss an alternative process. Please contact Rebecca Brown, at (212) 364-5360 or [rbrown@innocenceproject.org](mailto:rbrown@innocenceproject.org), who is responsible for conveying all communication from the BOC to Coalition members.

Sincerely,

Coalition to Raise the Minimum Standards at  
New York City Jails



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**Addendum**

The following quotes were culled from written testimony submitted to the Board of Correction at April 17th's public hearing. They highlight an overarching desire for civic engagement in the BOC's rulemaking process:

“With regret, I believe your proposals to revise the minimum standards reflect your loss of independence and, accordingly, your failure to fulfill the purpose for which the board was created some 50 years ago...”

- *John Brickman, Chairman off the Board of Directors, Correctional Association & Former Executive Director, New York City Board of Correction (1971-1975)*

“I am concerned about the process that you took to get to this point. From my study of the record, and my discussions with others, other than your meetings with the Department of Correction, you did not consult people who are knowledgeable about conditions in New York City jails before going public with formal proposed amendments to the minimum standards. This is a fundamental error that I believe you must correct.... The inescapable truth is that so far you have actively consulted only one party and that party is the very agency you have been established to monitor.”

- *Michael Mushlin, Professor of Law, Pace University*

“The Board should withdraw the proposed amendments in their entirety and start over. The proposals, nominally the result of a comprehensive review of the Minimum Standards, in fact reflect a completely one-sided process in which the Department of Correction pressed its agenda; in which all parties who might have questioned or opposed the Department’s positions were excluded; and in which there was no voice to speak for the prisoners and the communities from which they come.”

- *Legal Aid Society’s Prisoners’ Rights Project*

“We ask that the Board of Correction withdraw the proposed amendments to the minimum standards for NYC correctional facilities, and reformulate its proposals based on input from us and other advocates, family members, and individuals who have directly experienced incarceration in New York City’s jails, and who can speak to the human needs of people who will be most directly affected by the proposed changes.”

- *The Bronx Defenders*



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"I look forward to seeing the standards revised to be youth-friendly, and to seeing some consistency with upholding the improved standards. One way to achieve this is to involve and listen to youth like myself who have lived and directly experienced the standards."

- *Youth Ambassador, The Osborne Association*

"The Sylvia Rivera Law Project is deeply concerned that the BOC seems to be abandoning its role as an oversight agency that must hold the Department of Correction (DOC) accountable to minimal standards for the humane treatment of prisoners in DOC care, custody, and control. We are particularly upset that BOC proposed amendments that would severely restrict the rights of prisoners without first having meaningful public discussions and debates involving the communities that are most impacted by the proposed changes. We call on BOC to withdraw all of its proposed amendments and to initiate a fair, full, open public process that meaningfully includes all the stakeholders, including prisoners; former prisoners; families, friends, and communities of prisoners; community organizing groups, service providers, and advocacy groups that work with these communities; correction staff and unions; and DOC."

- *Sylvia Rivera Law Project*

"Neither this hearing nor a short public commentary period is sufficient to address standards that affect prisoners, most of whom are presumed innocent, their families, and the public at large."

- *Innocence Project*

"...the Board erred when, in reviewing and reconsidering the Minimum Standards for the first time in 30 years, it undertook a process apparently dominated by the interests of the Department of Correction and failed to fulfill its function as an independent oversight organization with not merely the administrative and security interests of the Department at heart, but also the interests of jail populations and the community at large."

- *New York Civil Liberties Union*