

April 10, 2007

New York City Board of Correction
51 Chambers Street
New York, NY 10007

Dear Board of Correction:

We write as students of the Fordham University School of Law in opposition to the adoption of the proposed amendments to the Minimum Standards for New York City jails. Our position arises out of concern both for how the new rules were promulgated and for the consequences of the substantive rules themselves.

Promulgation of the Rules

The process by which the proposed amendments were promulgated should have been much more inclusive. While the City Charter does not explicitly require the BOC to consult with interested parties other than the mayor and the DOC, it would have been a more efficient means to arrive at a set of "good" or "best" standards for our city's jails, if that is the goal of this amendment process.

The way in which the proposals were created is demoralizing. It seems unjust that there was such a one-sided discussion before the formulation of the amendments; that so much information is currently exempt from FOIL; that the community that will be most affected was not, for all practical purposes involved to any extent. The entirety of the situation strikes a chord dissonant with principles that brought us to law school in the first instance.

The Substantive Proposed Amendments

We believe that the proposed amendments unwarranted. The proposed amendments will have a tremendous and detrimental affect on a group of people who are innocent until proven guilty. The justifications provided for the proposals do not outweigh the prisoners' interests in health, safety, and privacy. We do not find the argument that the BOC is trying to bring NYC in line with other jurisdictions a particularly compelling one.

First of all, as far as we are aware, no evidence has been put forward showing an objective dissatisfaction with NYC standards that would compel the Board to look to other cities. Secondly, nearly all the jurisdictions the BOC cited in its Notice to justify the proposals are improper jurisdictions to model the NYC system on. These are mostly systems that are (1) dealing with system-wide over-crowding issues, which NYC is not and (2) currently engaged in protracted litigation as a result of substandard living conditions. NYC should not be following any "example" that these cities ostensibly set.

On a whole, the proposals will severely compromise the health, safety, and privacy of the prisoners. We are concerned about the following proposed amendments in particular. We specifically address these amendments as the *most* troubling for us.

The amendments on “over-crowding” will compromise the safety of all prisoners and corrections officers in the dormitory areas. The amendments call for a reduction in square footage per person from 60 feet to 50 feet and an increase of the allowable population in dormitory areas from 50 people to 60 people. Notice §1-04. If the amendment is adopted, it would result in decreased supervision of the dormitory population. This could very well result in an increase in the number of sexual and physical assaults as well as the number of prisoner property thefts.

Moreover, if the amendment is adopted, it may result in an increase in violent incidents as a whole. While it may be true that the DOC has reduced the number of stabbings in the past few years, that statistic only goes to show that the DOC has been successful in decreasing the number of weapons in circulation. Over-crowding will contribute to the already tense atmosphere in jail. Already, it is our understanding that many fights start over shortage issues- whether it be food, telephones, or television. Increasing the number of people will only serve to exacerbate this situation.

The amendments permit 23 hour lock-down for prisoners in the “protected” population in “close-custody” housing. This type of mentally taxing and inordinately restrictive housing should certainly not be forced upon those who have committed no disciplinary infraction at all. As we understand it, the “close-custody” designation was a housing classification created by the DOC in 2005. From our reading of the current Minimum Standards, this housing designation contravenes §1-06 (Amendment §1-05), which states that “the time spent by prisoners confined to their cells should be kept to a minimum...” We do not feel the BOC needs to cater to the DOC by amending the Minimum Standards to conform to what may constitute a flagrant violation of the current Standards.

We are concerned that the amendments to the recreation section will have serious consequences for the prisoners. We certainly applaud the fact that the BOC has incorporated the DOC’s practice of allowing recreation seven days a week instead of the originally stated five. §1-06. As the BOC acknowledges, “recreation is essential to good health and contributes to reducing tensions within a facility.” What we are troubled by is the proposed new language stating that “a prisoner’s access to recreation may be denied for up to five days only for misconduct on the way to, from, or during recreation.” Two aspects of the new language concern us. First, there is no indication of how serious the conduct has to be in order for access to recreation to be revoked. This leaves open the possibility that prisoners will be barred from recreation for the most trivial of conduct. Second, the language may be interpreted to permit consecutive five day denials of recreation accruing *ad infinitum*.

We are concerned about the impact of the amendments concerning telephone calls and mail surveillance on prisoner privacy (§§ 1-10 and 1-11). Specifically, it is troubling that there is no specification as to the type of notice required under that amendment, what

standard the warden is supposed to use in assessing necessity, whether a record will be kept of monitored conversations, and whether whomever will ostensibly be listening is bound to keep the information private, whether surveilled conversations will be taped, or even whether the appeals process specified in the amendments applies to the surveillance only or also to decisions on whom the prisoner will be able to call. Moreover, it is unclear how regular phone calls will be distinguished from privileged calls.

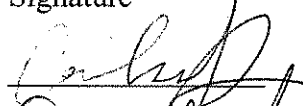
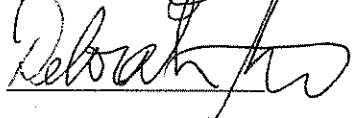
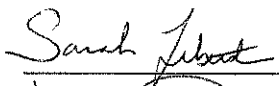
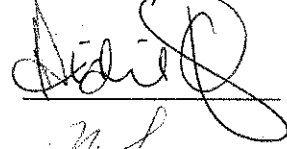


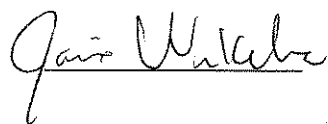
We ask that the BOC reconsider its proposals and consider the tremendously detrimental effects these changes will have on life in jail. We think that it is a boon for NYC to have an agency such as the BOC to oversee the DOC- however; the system only works if the BOC is truly guarding the interests of the communities in the jails and the people in the city at large.

Sincerely,

Fordham Law Amnesty International

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