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CITY BAR

COMMITTEE ON CORRECTIONS

April 30, 2009

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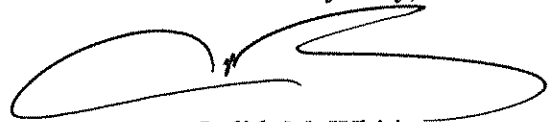
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New York City Board of Correction
Richard T. Wolf, Executive Director
Room 923
51 Chambers Street,
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-- by email and first class mail --

Dear Mr. Wolf:

Attached are comments submitted by the New York City Bar Association's Committee on Corrections regarding the New York City Department of Correction's proposals for variances from the Board of Correction's Minimum Standards for New York City Jail Facilities. Please do not hesitate to contact me if you have questions or need more information. Thank you very much.

Yours very truly,



Judith M. Whiting

**COMMENTS ON NEW YORK CITY DEPARTMENT OF CORRECTION REQUEST
FOR VARIANCES FROM BOARD OF CORRECTION MINIMUM STANDARDS FOR
NEW YORK CITY JAILS CONCERNING VISITS AND RECREATION**

Prepared by the New York City Bar Association Corrections Committee

On March 30, 2009, Commissioner Martin F. Horn of the New York City Department of Correction (the "Department") made a written request to the Board of Correction (the "Board") proposing variances for modification of the Board's Minimum Standards for New York City Correctional Facilities (the "Minimum Standards") as they concern visit and recreation schedules at New York City's jails. The Department proposes to reduce the schedule for inmates' visits from family, friends and others from five days to four days, and inmates' outdoor recreation schedule from seven days with one-hour sessions to five days with one and one-half hour sessions.

The Board requested comments on the proposed variances by April 24, 2009; that comment period has since been extended to May 1, 2009. Even with this week extension, however, this truncated time frame is not sufficient for the Board to obtain input from the community or to determine whether the proposed variances are necessary, proper, reflect sound correctional practice or will reduce the budget as asserted by the Department. These variances were proposed without the benefit of input from groups working with inmates, from inmates' families, or inmates themselves.

The New York City Bar Association (the "Association"), founded in 1870, is a private, non-profit organization of more than 22,000 attorneys, judges, and law professors, and is one of the oldest bar associations in the United States. The Association opposes these proposed variances, which may impede inmate access to legal counsel, deter family visits, negatively affect the morale of the inmate population (which, in turn, poses additional security concerns), limit inmate access to recreation in an inhumane manner, and may actually result in increased costs rather than savings.

The Board enacted the Minimum Standards to ensure the basic elements necessary to promote safe, secure, and humane environments in New York City jails. Although variances from these Minimum Standards may be appropriate under certain limited circumstances (*see* § 1-15), this does not appear to be the case here. Instead, the variances the Department proposes serve only to cut costs, but by doing so may actually undermine the Minimum Standards' fundamental purposes.

The following are the Association's comments on each of the requested variances.

REQUESTED VARIANCE: VISIT SCHEDULE

Summary of proposed changes:

The Department has requested a continuing variance from Minimum Standard § 1-09(c)(1), which requires a total of five visit days per week: three days during the week and both Saturday and Sunday must be made available for visits. The Department seeks to eliminate one of the three visit days during the week. Currently one of the three weekday visits is designated for inmates with last names starting with A-L, another weekday visit for inmates with last names

starting with M-Z, and the third weekday visit is available to any inmate. Under the proposed variance, one weekday visit would be eliminated and the other two weekday visits would be made available to all inmates. Currently, Saturday visits are available only to inmates with last names starting with A-L, and Sunday for inmates with last names starting with M-Z. Under the proposed variance, Saturday would be made available to all inmates, and Sunday visits would alternate weekly between those for inmates with last names starting with A-L and those with last names starting with M-Z.

Analysis:

The Department's proposed variance will cause many logistical problems that may actually increase costs and violate important Minimum Standards *other* than § 1-09(c)(1), which is the only standard from which the Department has sought a variance.

The proposed variance would increase the number of people visiting inmates at any one time, and thus would also impact § 1-09(b)(1) and (4), which require visiting and waiting areas to be a sufficient size, and visitors to have access to vending machines and bathroom facilities. The Department has not presented sufficient evidence to show that, should the variance be granted, visiting room space will not be overcrowded or that there will be sufficient food or bathrooms for visitors. The Department supplied partial information in response to Board of Correction inquiries but did not include the capacity of the visit areas in the various facilities. Overcrowding visit room space may pose additional security concerns that would require more staff to be on duty during visiting hours. This may well increase rather than decrease staffing costs.

Minimum Standard § 1-09(b)(3) requires the Department to make every effort to minimize waiting time and to ensure adequate shelter for people waiting to make visits. Currently, when a visitor arrives at the jail's registration desk during visiting hours, he or she is guaranteed a visit. An increase in visitors may cause a registration backlog and slow the visiting process. As a result, some visitors may not be able to visit with an inmate until after normal visiting hours, inconveniencing them and potentially requiring the Department to increase overtime. Again, the very purpose of the proposed variance is to reduce costs, including jail overtime, but it may not achieve this purpose.

Minimum Standard § 1-08 states "[p]risoners are entitled to access to courts, attorneys, legal assistants and legal materials" and "[p]risoners shall not be restricted in their communication with attorneys." Emergency situations sometimes arise in the course of a lawyer's representation of an inmate, and for certain phases of a case it is important for the lawyer to be able to visit with an inmate as often as necessary so that the inmate may assist in his or her defense. An overcrowding problem will necessarily impact inmates' access to legal counsel. Lawyers visiting the jails on Rikers Island must utilize the same buses used by non-legal visitors to cross the bridge onto Rikers Island. The variance will make it more difficult for lawyers to visit inmates on the two remaining general visiting days during the week and on Saturdays when the overcrowding will be most prevalent. If access to Rikers Island becomes difficult due to overcrowding, lawyers will constructively be limited to visits on one of the other three days of the week and on the Sunday that corresponds with the client's last name.

The logistical and overcrowding problems that would result from the proposed variance would also interfere with Minimum Standard § 1-09(c)(6). This section requires each inmate to have access to three visits per week. While the proposed variance purports to allow for this number of visits, in reality family members will be deterred from visiting due to overcrowding conditions including long waits at registration and at the Rikers Island bus.

Recommendations:

The Association recommends that the Board **NOT** grant the proposed variance to § 1-09(c)(6). The proposed variance would pose additional security concerns, impede family and legal visits, and may cost the Department more money. The proposed variance should also be rejected on procedural grounds because it will impact several other Minimum Standards from which the Department has not sought variances. See § 1-15 (describing procedures that must be followed for variance requests).

REQUESTED VARIANCE: RECREATION

Summary of proposed changes:

The Department requests to be able to “compress” inmates’ outdoor recreation schedule from seven days a week with one-hour recreation sessions to five days a week with one and one-half hour sessions. Three categories of prisoners would be exempt from the variance: adolescents, detainees in punitive segregation and detainees in close custody.

In support of the proposed variance, the Department asserts that although the total number of days that recreation is offered per week would be reduced, the total number of recreation hours that would be offered per week would increase from seven hours to seven and one-half hours. The Department also justifies the proposed variance by asserting that the proposed schedules comply with the Minimum Standards of the New York State Commission of Correction and would offer more recreation hours per week than any of the five other largest jail systems in the United States. The proposed reason for the variance is cost, and the Department asserts it will result in annual cost savings of \$4.5 million each year.

Analysis:

Minimum Standard § 1-06 (a) states that “[r]ecreation is essential to good health and contributes to reducing tensions within a facility. Prisoners shall be provided with adequate indoor and outdoor recreational opportunities.” The Department’s proposed variance, to reduce the days on which recreation is available, runs contrary to this stated policy. In addition, the proposed variance may cause many logistical problems that may actually increase costs and violate other sections of Minimum Standard § 1-06. Minimum Standard 1-06 (c), from which the Department seeks the variance, requires that outdoor recreation of at least one hour per day be provided seven days per week. This permits New York City inmates access to outdoor exercise each day of the week. While the variance request indicates that the two specific days per week that recreation would be closed may vary by facility, the Department has apparently chosen to close recreation on Wednesdays and Thursdays at all facilities.

Three categories of prisoners would be exempt from the variance: adolescents, detainees in punitive segregation and detainees in close custody. Permitting daily exercise for these three categories of individuals recognizes the importance of recreation as a jail program. However, the exemption for “adolescents” – i.e. inmates who are aged 18 and younger -- is too narrow to accomplish the perceived goal of allowing young people the exercise they need. If the Board permits this variance, it should expand this category to include inmates 21 and younger.

Changing the recreation schedule to accommodate one and one-half hour sessions appears either to require expanding the hours of recreation to include extreme early morning and evening hours or increasing the number of inmates in each recreation session. Providing recreation at times

when it is unlikely to be utilized (extreme early morning) negates the purpose of the program by discouraging participation. Overcrowding recreation is a similarly bad and unsafe outcome, would impact other provisions of the Minimum Standards from which the Department has not sought a variance, and may increase costs by requiring increased security during recreation. Overcrowding may adversely impact Minimum Standard § 1-06 (b) which requires that recreation areas be of sufficient size and allow for access to sunlight and air, and § 1-06 (d), which requires that an adequate amount of equipment is provided during recreation.

Recommendations:

The Association recommends that the Board **NOT** grant the proposed variance to Minimum Standard § 1-06 (c). The proposed variance will negatively affect the morale of the inmate population (which, in turn, poses additional security concerns), limit inmate access to recreation in an inhumane manner, and may actually result in increased costs rather than savings. The Department has not produced evidence that the variance is necessary, proper, or reflects sound correctional practice. While the Department has stated that reducing recreation days will result in a reduction of 50 corrections officers, it is not clear whether the Department intends to terminate these officers' employment or redeploy them elsewhere. Only if their employment is terminated will there be budget savings, and it is unclear whether union or other employment rules would permit this reduction (either in time to create real savings, or at all). Should the Board consider this proposed variance in any form, more than the proposed three categories of prisoners (i.e. adolescents, detainees in punitive segregation and detainees in close custody) should be exempt from the variance, including young inmates 21 years and younger. In addition, like the first proposed variance, this proposed variance should also be rejected on procedural grounds because it will impact several other Minimum Standards from which the Department has not sought variances. See § 1-15 (describing procedures that must be followed for variance requests).

Conclusion:

The Association recommends that the Board adopt neither of the two variances proposed by the Department. While proposed in order to save money, neither variance appears concretely to do so. By contrast, both proposed variances may result in unrest, overcrowding, improper limits on access to counsel, and increased overtime pay for corrections staff.

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