

John K. Carroll
President

Janet E. Sabel
Attorney-in-Chief
March 6, 2020

Mary Lynne Werlwas
Director
Prisoners' Rights Project

March 6, 2020

Jacqueline Sherman, Interim Chair
Margaret Egan, Executive Director
New York City Board of Correction
One Centre Street, Room 2213
New York, New York 10007

Re: COVID-19 Protections in NYC Jails

Dear Ms. Sherman, Ms. Egan and Members of the Board:

Thank you for ensuring that the Board of Correction will address plans for the potential spread of COVID-19 in the New York City jails at the March 10, 2020 public Board of Correction meeting.

People confined in jails during outbreaks of infectious disease are particularly vulnerable not only because of the physical environment, including poor ventilation and close proximity, but also because of the profound constraints on self-help imposed by the coercive power of incarceration. Many of the actions that public health authorities recommend we take to protect ourselves and each other – such as thoroughly and frequently washing hands with soap, seeking physical distance from others, or finding medical care if experiencing symptoms – are available to incarcerated people only with the permission and overt assistance of their jailers.

Not surprisingly, Chinese prison officials report that over 500 COVID-19 cases in the current outbreak stemmed from the Hubei province prisons.¹ Prisons were similarly impacted during the 2009 H1N1 outbreak.² Given this, it is essential that incarcerated people and their families, representatives, and communities are informed of the City's plans to protect them, their opportunities to protect themselves, and the changes in jail practices that they may expect.

We look forward to hearing CHS and DOC address their joint plans to limit the spread of COVID-19 among the workforce and incarcerated population in the NYC jails; to screen and identify people who may have been infected by COVID-19; and to treat and house those incarcerated people properly. We are particularly concerned about the capacity of DOC and CHS to protect people who are more vulnerable to infection, such as elderly people, people with certain chronic illnesses, and

¹ Evelyn Cheng and Huileng Tan, China Says More than 500 Cases of the New Coronavirus Stemmed from Prisons, CNBC, Feb. 20, 2020, *available at* <https://www.cnbc.com/2020/02/21/coronavirus-china-says-two-prisons-reported-nearly-250-cases.html>.

² David M. Reutter, Swine Flu Widespread in Prisons and Jails, but Deaths are Few, PRISON LEGAL NEWS, Feb. 15, 2020, *available at* <https://www.prisonlegalnews.org/news/2010/feb/15/swine-flu-widespread-in-prisons-and-jails-but-deaths-are-few/>.

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people with suppressed immune systems, all of whom are over-represented in the incarcerated population.

We write to highlight specific concerns that we believe are essential for the Board to address with the Department of Correction (DOC) and Correctional Health Services (CHS).

Respiratory isolation bed availability and capacity

Much of the infrastructure that DOC developed for addressing contagious disease arose during the drug-resistant tuberculosis crisis of the 1980s. Then, pursuant to a court order obtained by our office in response to the City's failure to provide adequate care, DOC constructed 140 respiratory isolation beds in the "sprungs"—temporary housing areas—in a Contagious Disease Unit of West Facility. The cells in these units rely on very specific ventilation and construction systems to provide the necessary care and containment.

With the waning of the TB response and declining DOC population, these facilities were put to different uses, including *de facto* protective custody for famous people or *de facto* punitive segregation in violation of BOC standards.³ The City recently stated that the Contagious Disease Unit has a capacity of 70 beds. See <https://rikers.cityofnewyork.us/wp-content/uploads/Justice-Implementation-Task-Force-Materials-2018-03-16.pdf>. We do not know if that number is current, nor the functional characteristics of these units for respiratory isolation; their current occupancy; and whether they have been fully maintained and are currently fit for occupancy as containment units. We therefore request that DOC and CHS address:

- The number of respiratory isolation beds fully operational and unoccupied in DOC today.
- How quickly this capacity can be expanded, such as by making operational the former units.
- The capacity of CHS and DOC respectively, to staff a contagious disease unit with appropriately trained staff.
- The number at which CDU admissions would exceed current staffing capabilities, and the plan for care at that point.

Provision of water, soap and cleaning supplies

In our understanding, thorough (lasting at least 20 seconds), frequent hand washing with soap and water and disinfecting potentially contaminated surfaces (e.g., food slots) is essential to disease prevention. We ask how CHS and DOC to describe their plan to:

- Ensure individuals have access to water as needed to clean hands.
- Provide soap to each individual.
- Provide individuals with disinfectant and materials to clean their living areas.

³ See Board of Correction, Notice of Violation of Minimum Standards at West Facility, September 29, 2016, available at <https://www1.nyc.gov/assets/boc/downloads/pdf/News/2016.09.29%20-%20Letters%20from%20BOC%20to%20DOC%20re%20West%20Facility%20Violations.pdf>

Worker protection

Incarcerated people work in the jails cleaning the housing areas, distributing meals to individual cells and collecting refuse. Such positions necessarily increase their exposure to sick individuals. We would like to know:

- What physical protective gear will be provided to each incarcerated-worker.
- What options individuals have for refusing an assignment if they do not have adequate protection.
What information has been given to incarcerated workers about their ability to protect themselves and others.

Continuing health care and essential services

During an epidemic, incarcerated people may be neglected if staff fear physical proximity, and thus ignore individuals seeking to communicate their needs. This can have dire consequences for sick people or those needing help. Moreover, even during non-epidemic periods, there is a chronic failure of DOC either to assign sufficient staff escorts for incarcerated people to move through the jails, or to allow unescorted movement. Should an individual report symptoms that require escorts to wear protective medical equipment, such limitations will only worsen. We would like information about how DOC and CHS will:

- Ensure adherence to sick call procedures.
- Ensure that cell-bound individuals have access to staff to voice their needs.
- Ensure adequate assignment of and protection of escorts.

Information to incarcerated people

Incarcerated people, their families and communities need to know how individuals can protect themselves. We ask DOC and CHS to ensure all incarcerated people and their families are given written information telling them:

- How they may seek health care, and what health care will be provided.
- How they may and should protect themselves (including how to get soap and water or disinfectant).
- What testing options are available to them.
- What rights they have to refrain from movement to potentially unsafe areas or under unsafe conditions (e.g., choosing not to leave a cell).
- How they will be informed by health authorities of their potential exposure (e.g., contacts with infected staff members, etc.).
- What changes they can expect in ordinary jail operations.

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- The available grievance remedy should they need to report a problem.

In sum, it is imperative that DOC implement its policies without compromising individuals' rights and protections to the extent consistent with health and safety. To the extent possible, the Department must avoid the interruption or suspension of external communications and essential services, including recreation, food services, religious services, visitation, and library services. Individuals in quarantine must not be treated as if they have done something wrong. Please share with us the Department's plan for how the Department intends to balance its COVID-19 response without imposing unnecessary and exaggerated restrictions on essential services for our clients.

We are all hopeful that this immediate challenge may soon be resolved, but we also recognize that this may be a situation that we will face for months or even longer. We hope that the BOC will remain vigilant as the situation evolves.

Sincerely,

Mary Lynne Werlwas