

Memorandum in Opposition to Executive Budget Proposal to Reduce Visitation at Maximum Security Prisons

Committee on Civil Rights

Civil Rights #1

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By: BUDGET

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Senate Committee: Finance

Assembly Committee: Ways & Means

THE COMMITTEE ON CIVIL RIGHTS OPPOSES THIS PROPOSAL

The New York State Bar Association Committee on Civil Rights opposes the Executive's proposal to eliminate seven days per-week visiting at New York's maximum security prisons. The Committee is familiar with the many advocates, service providers, and faith leaders for children and families, and individuals in New York State prisons, who have direct knowledge of the benefits that in-person visiting provides for the children, families, and friends of those incarcerated and for individuals in custody. Further, the Committee has considered the policy discussion relating to this issue.

The important benefits of in-person or "contact visits" are well-documented. Such visitation:

- Is critical to the lives and well-being of children with incarcerated parents. More than 80,000 children in New York State have a parent who is in prison. Visiting can reduce the trauma of separation from a parent, and maintain or strengthen the critical parent-child attachment¹;
- Promotes the "institutional adjustment" of individuals to prison, reduces disciplinary infractions, and thus, increases the safety of officers;² and,
- Promotes responsibility and transformation; encourages program participation, and supports successful reentry. Research demonstrates that individuals who remain connected to family during incarceration are more likely to succeed upon reentry and less likely to recidivate.³

¹ Poehlmann, Julie, Danielle Dallaire, Ann Booker Loper and Leslie D. Shear. 2010. Children's contact with their incarcerated parents: Research findings and recommendations. *American Psychologist*, 65(6): 575-598.

² Id.

³ Minnesota Department of Corrections, "Key Findings: The Effects of Prison Visitation on Offender Recidivism," 2; Holt & Miller (1972); Visser, C., V. Kachnowski, N. G. La Vigne, & J. Travis (2004).

Opinions expressed are those of the Section/Committee preparing this memorandum and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.

Visiting supports relationships between families and incarcerated loved ones and these relationships are critical emotionally for the children and other family members, as well as those incarcerated. The increased difficulty in sustaining these relationships through fewer visiting opportunities will have a negative effect on the well-being of children and family members, as well as on the morale of the people in prison.

Contact visiting is protected under the New York State Constitution: In *Cooper v Morin*, the New York Court of Appeals found that “[c]ontact visit[ing] of reasonable duration is required by the due process clause of the State Constitution.”⁴

The New York State Department of Corrections and Community Supervision (“DOCCS”) recognizes this right to contact visits and its importance to the individuals in its care stating in its guide to families:⁵

“Visitation by family and friends is encouraged and can be a positive influence during an inmate’s time in prison, as well as after the inmate’s release. Research has shown that an offender who receives regular visitation adjusts much better once he or she is released from prison when the privilege is used to maintain a positive relationship.”

New York State has been a national leader in its singularly enlightened understanding of the value—especially for maximum security prisoners—of contact visits.

Frequent and humane visiting opportunities were established in all New York prisons following the 1971 Attica prison rebellion, with a clear understanding that visiting was –and will always be – the most valuable “program” any corrections system can offer. During a period of extreme overcrowding two decades ago, visiting was cut back to weekends and holidays in the medium security facilities. There is no population crisis now in the State’s prisons, so visiting seven days a week should be reinstated at the medium security prisons, and certainly cutbacks should not be imposed at maximum security prisons.

Given the remote location of most of the State’s prisons, offering the flexibility to visit any day of the week is vital. In addition, given the distance traveled, the cost of travel, and the increasingly limited weekend visiting opportunities (typically visitors may visit Saturday OR Sunday), visiting less frequently but for two or more days in a row is often more practical. The proposed reduction will eliminate that opportunity altogether.

New York should not be moving away from its distinction as a leader in the recognition of the importance of maintaining family and community contacts through humane visit practices. Weekend visiting is already overcrowded in many facilities, and is made tolerable because families who are able to avoid weekend visiting do so by visiting during the week. DOCCS’ own guide for families states: “Many visiting rooms become very crowded and often visitors are told they must leave because there are others waiting to get in.”⁶

Reducing visiting days will only increase overcrowding and significantly diminish the number of people who can and do visit, with negative ripple effects. This is punitive and short-sighted.

Prisoners' Experiences Returning Home. Washington DC: Urban Institute. Accessed February 5, 2011. http://www.urban.org/UploadedPDF/310946_BaltimorePrisoners.pdf.

⁴ *Cooper v. Morin*, 49 N.Y.2d 69, 76 (1979).

⁵ See, <http://www.doccs.ny.gov/FamilyGuide/FamilyHandbook.pdf>.

⁶ *Id.*

Additionally, because incarceration disproportionately affects poor families and families of color, the burden and hardship that would flow from the proposed reduction would disproportionately fall on some of our State's most vulnerable (and resilient) families. As a point of reference, in the year following DOCC's 2010 elimination of the bus program that had been provided since 1973 – also justified for cost-savings purposes though the program only cost \$1.5 million out of DOCCS's billion dollar budget -- the number of visitors dropped by 13,000.⁷

Families with a loved one in a maximum security prison are already managing long-term incarceration which is itself extremely taxing financially and emotionally. They need and deserve the flexibility to visit any day of the week. Limiting visits to three days per-week –which in practice for a given family gives only two possible visiting days because many maximum security prisons allow only one of the two weekend visiting days regulated by letter of the alphabet-- simply cannot accommodate the current number of visitors. The proposed reduction in visitation would mean that children and families will have less in-person access to their loved ones. Video visiting and email communication are no replacement for in-person visits, and video visiting is not likely to be widely available in maximum security prisons in the near term. Furthermore, video visiting is not cost-free; expanding this option would offset at least some of the savings purported to accompany the proposed reduction in visiting days.

Most importantly, as New York explores expanding video visiting and implementing email communication, neither of these *supplements* to in-person visiting should be seen as replacements of essential contact visits. New York should reject the example of correctional facilities across the country that have entered contracts with for-profit companies that eliminate in-person visiting, replacing human contact with video visits. In several places, this practice has been challenged legally and overturned, and legislation has been introduced to ensure in-person visiting is not replaced by video visiting.⁸ Of note, one study found that assaults and infractions increased at one Texas jail when in-person visits were eliminated.⁹

Cutting back on the availability of contact between incarcerated individuals and their loved ones and children is misguided and not worth the stated savings. If, among the current 17 maximum security prisons, there are some (the most remote and inaccessible ones) that do not receive many visits during the weekdays, then other staffing plans and assignments can be explored to avoid staff spending their post watching an empty visiting room. However, several prisons – notably those in the downstate and midstate area – are very busy during the week, especially during school holidays and vacations, and would never be able to accommodate these visitors on the weekends without imposing longer lines, longer waits, shorter hours, empty vending machines, and unnecessary tension. This translates into significantly fewer visits for children and families, and those incarcerated. Visiting remains a lifeline for children, families, and those incarcerated, and an absolutely critical tool to promote peace and transformation within prisons.

⁷ Virtanen, Michael (August 6, 2012). Advocates want free NY prison visitor bus back, *Troy Record*. Retrieved from <http://www.troyrecord.com/article/TR/20120806/NEWS/308069977>

⁸ Texas passed HB 549 requiring county jails to offer in person visits. In 2016, the California Governor vetoed a similar bill. Federal Bill H.R.6441, Video Visitation in Prisons Act of 2016, would prohibit companies from restricting visiting. Law suits were filed against Securus, a video visiting company, for including no in-person visiting clauses in its contracts. See Prison Policy Initiative for more information <https://www.prisonpolicy.org/visitation/>

⁹ Video Visitation: How Private Companies Push for Visits by Video and Families Pay the Price. Grassroots Leadership (October 2014). Retrieved from <http://grassrootsleadership.org/video-visitation-how-private-companies-push-visits-video-and-families-pay-price>

Instead of reducing the visit schedule, **the state should expand visiting days at medium security facilities, reinstate transportation for visitors, and consider proximity to children and families in the prison assignment algorithm**, making visiting and the transfer and transportation of those incarcerated much less costly for both families and DOCCS.¹⁰ At the very least, New York should maintain its current visiting schedule in the maximum security facilities. New York has been able to close prisons and bring down crime, in part because of successful correctional strategies. Families from downstate urban areas already took the brunt of these successes when most of the prisons that closed were in and around New York City. Given the size of the DOCCS budget, and relatively small savings that is realized (especially compared to the negative impact on families), the proposed reduction is a largely symbolic cost-cutting measure that would have hugely detrimental effects on those whose visits will be curtailed.

Based on the foregoing, the Committee on Civil Rights **OPPOSES** the Executive Budget Proposal to reduce visiting days at maximum security prisons.

¹⁰ NY Senate Bill 1096 would require DOCCS to pilot placing 100 incarcerated parents in prisons closest to their children and evaluate the effects on parents' institutional adjustment and recidivism, and children's well-being.