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Department of Correction  
70 Franklin Street, Suite 600  
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**RE: Proposed changes to visitor regulations, 103 CMR 483**

Dear DOC staff:

The Massachusetts Chapter of the National Lawyers Guild submits these comments in opposition to proposed changes that would require pre-approval of all prison visitors and limit the number of pre-approved visitors. These changes are contrary to current research that shows the value of prison visits – for prisoners, during incarceration, and for the public following incarceration, due to reduced recidivism. The impact of these changes would cause more harm than good.

**Who we are and why we care.** The National Lawyers Guild (NLG) was founded in 1937 as the country's first racially-integrated bar association of progressive lawyers and jurists who believed in two radical notions: that lawyers should function as a force in the service of the people, and that human rights are more sacred than property rights. The NLG is the only bar association that welcomes jailhouse lawyers into its ranks. The Massachusetts Chapter of the NLG was founded in 1969. We recognize mass incarceration as one of the most urgent human rights issues of the day and, in particular, its crushing impact on people of color, the poor and LGBTQ communities.

**Well-documented benefits of prisoners maintaining outside relationships.** The DOC's own regulations currently state that it "recognizes the importance of on-going visitation between inmates and their family members, especially children, to help promote successful community re-entry of our offender population. The Department of Correction welcomes and encourages families to visit on a regular basis."<sup>1</sup> The DOC's 2015 Family and Friends Handbook includes similar language (at page 18): "The Department welcomes visitors and recognizes the importance of visits in maintaining healthy and positive relationships with family and friends and fostering successful reentry."

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*"... to the ends that human rights shall be regarded as more sacred than property interests."*

Preamble to the Constitution of the National Lawyers Guild, 1937.

This position, which we strongly endorse, only makes sense as it reflects decades of research showing how strong relationships with those outside of prison help prisoners successfully return to their communities.<sup>2 3</sup> Here are just a few examples:

- Over 40 years ago, researchers from California’s Dept. of Correction described the “strong and consistent positive relationship that exists between parole success and maintaining strong family ties while in prison.”<sup>4</sup>
- In 2012, the American Correctional Association published the findings of Maryland officials: “Family can be a critical component in assisting individuals transitioning from incarceration because family members provide both social control and social support, which inhibit criminal activity .... In contrast, those without positive supportive relationships are more likely to engage in criminal behavior.”<sup>5</sup>
- Researchers from the Vera Institute of Justice found not only that “incarcerated people who maintain supportive relationships with family members have better outcomes – such as stable housing and employment – when they return to the community,” but that 42% of those surveyed said “some of their relationships grew *stronger* during their incarceration, particularly relationships with parents (emphasis added).<sup>6</sup> The researchers came to the same conclusion about the benefits of strong outside relations when studying jails, as opposed to prisons. The great majority of prisoners in their 2012 Close to Home study planned to rely on family (82%) and friends (74%) as their support network when they were released.<sup>7</sup>
- When the Urban Institute studied Illinois prisoners, “a remarkably consistent association [was] found between family contact during incarceration and lower recidivism rates.”<sup>8</sup>
- In 2001, the Council of State Governments – currently helping Massachusetts evaluate certain of its criminal justice policies – convened a national, bipartisan Reentry Council consisting of policy makers, practitioners, experts and other stakeholders, to develop policies promoting the successful transition from prison to the community. Its 2005 report found that correctional practices that “facilitate and strengthen family connections during incarceration” can “reduce the strain of parental separation, reduce recidivism rates, and increase the likelihood of successful re-entry.”<sup>9</sup>

**Visitor Approval Process (proposed §483.10).** It is our understanding that the DOC believes a pre-approval process could reduce delays when family and friends come to visit their loved ones.<sup>10</sup> While we agree in principle with that goal, we also note that the proposed amendments retain the current practice of requiring all visitors to complete a “request to visit inmate” form (proposed §483.11(2)). Thus, it does not seem likely that delays will significantly be reduced.<sup>11</sup> Instead, it seems more likely that a cumbersome approval process will result in delays and denials that will far outweigh any possible benefits.

- **For current DOC prisoners, a logistical nightmare.** The proposed regulations describe a process that begins when a prisoner is committed to DOC custody. But presumably the new regulations would apply immediately to those already in custody, seeing as there is no provision to “grandfather” in the current DOC population. Even if the DOC limits the number of visitors as proposed (which we strongly oppose; see below), the Department would need to process from five to 10 applications for approximately 10,000 prisoners

– or anywhere from 50,000 to 100,000 applications – all at once. We seriously question whether the DOC has the capacity to do so without lengthy delays that will severely burden visitation.

The provision for two temporarily-approved visitors for new prisoners (proposed §483.10(2)(e)) also appears not to apply to prisoners already in custody. As a result, the proposed policy would at first eliminate all visits, because no one would yet be approved, and then drastically reduce them for however long it takes the DOC to process the volumes of newly created paperwork – and all this to limit visitors in a manner that flies in the face of the documented benefits of a healthy visitation system.

- **For new prisoners, isolation at a critical time.** Limiting new prisoners to only two “temporary” visitors, pending the official authorization of other visitors, severely isolates them at a critical time when outside support is needed. And those visitors’ temporary approval would become inactive if the DOC doesn’t approved their formal applications within 40 business days (proposed §483.10(2)(d)) – even if the delay is due to the DOC – completely isolating a new prisoner from outside support systems.
- **For everyone, inevitable complications, costs, snafus and delays.** The proposed approval process would rely on a system of multiple paper copies (proposed §483.10, second subsection (2)) of the application form. We cannot tell what information the form would require, as Exhibit 1 (“Mass. DOC Visitation Application”) to the proposed regulations is crossed out (see page 39). However, we assume that prisoners will be required to provide for each prospective visitor a current street address, phone number and some sort of reliable identifying number, such as a driver’s license or social security number. Prisoners will need to spend money on paper, envelopes and stamps to request that information plus a copy of an accepted form of identification. Decision-making may move back and forth between a prison’s director of security and deputy superintendent (proposed §483.10(4)) before a decision is made within an undefined “reasonable time” (proposed §483.10(6)). At every step of this cumbersome process, there would be opportunities for mistakes and delays. Then the appeals would start (proposed §483.10(7)). Finally, in the event that a prisoner manages to actually obtain approval for the maximum number of visitors allowed, a separate form and process would be required to delete approved prisoners (proposed §483.10(8)) so that the approval process could start all over again for a new visitor.
- **No provision for emergency visits.** Visits by those not pre-approved will be impossible, even for urgent reasons or due to family emergencies. It is unconscionable for the DOC to propose preventing visits in such situations.

**Limiting number of visitors (proposed §483.10(1)).** The DOC proposes to limit the number of visitors to five for maximum security, eight for medium security, and 10 for minimum or pre-release security. As we understand it, the DOC justifies its proposal as an incentive for prisoners to work their way down to lower security levels, in preparation for their eventual release.<sup>12</sup> Yet restricting the number of prisoners who can visit is a punitive measure that would apply to all

prisoners, regardless of their efforts to move to a lower security level. It would also apply to prisoners in all security levels, even those who would most benefit from its rehabilitative effect.

Furthermore, many prisoners in higher security levels shouldn't be there in the first place. Massachusetts' overreliance on higher levels of security, compared to the rest of the country, is well-documented.<sup>13</sup> As a result, the state's Special Commission to Study the Criminal Justice System unanimously called for two changes:

Recommendation #11 – Re-designate the number of maximum, medium, minimum and pre-release beds in the Department of Correction to better reflect the national averages and operate these facilities in accordance with their new designation.

Recommendation #12 – Revise the classification tool currently utilized at the [DOC] to reduce the above average placement in maximum and medium security and improve the below average placement in minimum security in conformance with evidence-based best practices as reflected in national averages."<sup>14</sup>

The critical fact here is that the report found that over-classification was a result of DOC policies, not anecdotal reports of prisoners preferring to remain in higher security settings. Indeed, it recently took a decision from the Supreme Judicial Court to override a DOC policy that automatically prevented lifers who were convicted of murder as juveniles from moving to lower security settings.<sup>15</sup> Yet, remarkably, the DOC proposes punishing all prisoners, by reducing the number of visitors they may receive, as if the DOC's systemic problems with over-classification were the fault of prisoners' themselves.

Professors Edward Latessa and Christopher Lowenkamp, at the University of Cincinnati's Division of Criminal Justice, have written extensively on the "risk principle."<sup>16</sup> While this statement was made in the context of residential treatment programs, it sums up the principle:

Squandering our scarce correctional ... resources on low-risk offenders that do not need them is a waste of those resources. More importantly, research has clearly demonstrated that when we place low-risk offenders in our more intense programs, we often increase their failure rates ... **[P]lacing low-risk offenders in these programs tends to disrupt their pro-social networks; in other words, the very attributes that make them low-risk become interrupted** (emphasis added).<sup>17</sup>

The proposal to limit the number of visitors flies in the face of the evidence-based risk principle. It subjects all prisoners to a penalty that is intended to address resistance on the part of some prisoners – we suspect there is no hard data on the actual numbers – to move to lower security levels. Not only does it punish the great majority of prisoners for the behavior of others, but it disrupts their rehabilitation. Worse, there appears to be no evidence that implementing such a policy would even work as intended. It is hard to imagine a more counter-productive policy than one that disrupts the positive social supports needed for successful reentry by punishing prisoners for circumstances typically beyond their control.

Thank you for considering our comments.

Sincerely,



Barbara J. Dougan, Esq.

<sup>1</sup> <http://www.mass.gov/eopss/docs/doc/proposed-amendments-to-regulations/103-cmr-483-visiting-procedure.pdf>.

<sup>2</sup> These studies, conducted in just the past decade, address visits by family, friends, mentors, clergy and volunteers:

- M. Tasca et al., “Families coming together in prison: An examination of visitation encounters,” *Punishment & Society* (Apr. 2016) (complex needs and fragile relationships of prisoners and their families have important implications for reentry, offender rehabilitation and family well-being);
- C. Mancini et al., “Examining External Support Received in Prison and Concerns About Reentry Among Incarcerated Women,” *Feminist Criminology* (Apr. 2016) (visits reduced family, employment, financial and stigma concerns about reentry);
- G. Duwe and B. Johnson, “The Effects of Prison Visits From Community Volunteers on Offender Recidivism,” *The Prison Journal* (Mar. 2016) (community volunteer visits significantly reduced all measures of reoffending);
- I. Brunton-Smith and D. McCarthy, “The Effects of Prisoner Attachment to Family on Re-entry Outcomes: A Longitudinal Assessment,” *British Journal of Criminology* (Jan. 2016) (visits from parents are influential in improving prisoners’ relations with their family; those with improved family relations are significantly less likely to reoffend, more likely to find work and to stop using drugs);
- A. Lindsey et al., “In Prison and Far From Home: Spatial Distance Effects on Inmate Misconduct,” *Crime & Delinquency* (Nov. 2015) (distance effects were greater for younger inmates and were partially mediated by visitation);
- L. Markson et al., “Male prisoners’ family relationships and resilience in resettlement,” *Criminology & Criminal Justice* (Sept. 2015) (positive family relationships are important for resilience in reentry after release from prison);
- M. Pierce, “Male Inmate Perceptions of the Visitation Experience: Suggestions on How Prisons Can Promote Inmate-Family Relationships,” *The Prison Journal* (May 2015) (prison policies can help nurture, rather than impede, familial relationships, which should be a leading priority among policy makers as familial support and prison visitation have been linked to reduced institutional misconduct, improved recidivism rates, and decreased intergenerational criminality);
- S. Liu et al., “Inside the Black Box: Prison Visitation, the Costs of Offending, and Inmate Social Capital,” *Criminal Justice Policy Review* (Dec. 2014) (regular visitation during incarceration may play a crucial role in successful reentry);
- J. Day et al., “Coercion and Social Support Behind Bars: Testing an Integrated Theory of Misconduct and Resistance in U.S. Prisons,” *Criminal Justice & Behavior* (Aug. 2014) (social support is not consistently related to either misconduct or resistance);
- J. Cochran, “Breaches in the Wall: Imprisonment, Social Support, and Recidivism,” *Journal of Research in Crime and Delinquency* (Mar. 2014) (prisoners who are visited early and who experience a sustained pattern of visitation are less likely to recidivate);
- S. Siennick et al., “Here and Gone: Anticipation and Separation Effects of Prison Visits on Inmate Infractions,” *Journal of Research in Crime and Delinquency* (Aug. 2013) (more frequent visits are associated with a more rapid post-visit decline in infractions).
- G. Duwe and V. Clark, “Blessed Be the Social Tie That Binds: The Effects of Prison Visitation on Offender Recidivism,” *Criminal Justice Policy Review* (May 2013) (visitation significantly decreased the risk of recidivism; visits from siblings, in-laws, fathers, and clergy were the most beneficial; revising prison visitation policies to make them more “visitor friendly” could yield public safety benefits by helping offenders establish a continuum of social support from prison to the community);
- C. Visher, “Incarcerated Fathers: Pathways From Prison to Home,” *Criminal Justice Policy Review* (Jan. 2013) (fathers who have regular contact with their children before release and report good family support

- overall are more likely to be attached to their children after release; fathers who are more strongly attached to their children work more hours per week, have better mental health, and are less likely to commit crime, get arrested, or violate conditions of their supervision);
- J. Cobbina et al., “Men, Women, and Post-Release Offending: An Examination of the Nature of the Link Between Relational Ties and Recidivism,” *Crime & Delinquency* (May 2012) (study results reinforce the importance of social ties, particularly to parents, for parolees);
- W. Bales and D. Mears, “Inmate Social Ties and the Transition to Society: Does Visitation Reduce Recidivism?,” *Journal of Research in Crime and Delinquency* (Aug. 2008) (visitation reduces and delays recidivism);
- N. La Vigne et al., “Examining the Effect of Incarceration and In-Prison Family Contact on Prisoners’ Family Relationships,” *Journal of Contemporary Criminal Justice* (Nov. 2005) (in-prison contact with family may mediate the negative effect of incarceration on family relationships and support after release);
- K. Barrick et al., “Reentering Women: The Impact of Social Ties on Long-Term Recidivism,” *The Prison Journal* (Sept. 2004) (in-prison family contact and post-release family support are protective whereas in-prison non-family contact is a risk factor).

<sup>3</sup> Indeed, so much research has been conducted in this area that there are now studies that review the many other studies. See, for example, K. DeClaire and L. Dixon, “The Effects of Prison Visits from Family Members on Prisoners’ Well-Being, Prison Rule Breaking, and Recidivism: A Review of Research Since 1991,” *Trauma Violence Abuse* (Aug. 2015); A. Friedmann, “Lowering Recidivism through Family Communication,” *Prison Legal News* (April 2014) (studies have consistently found that prisoners who maintain close contact with their family members while incarcerated have better post-release outcomes and lower recidivism rates).

<sup>4</sup> N. Holt and D. Miller, *Explorations in Inmate-Family Relationships* (1972).

<sup>5</sup> L. Charkoudian et al., “The Role of Family and Pro-Social Relationships in Reducing Recidivism,” *Corrections Today* (Aug/Sept 2012).

<sup>6</sup> R. Shanahan and S.V. Agudelo, “Piloting a Tool for Reentry,” Vera Institute of Justice (2011).

<sup>7</sup> R. Shanahan and S.V. Agudelo, “The Family and Recidivism,” *American Jails* (Sept/Oct 2012).

<sup>8</sup> R. Naser and C. Visher, “Family Members’ Experiences with Incarceration and Reentry,” *7 Western Criminology Review* 20 (2006).

<sup>9</sup> “Report of the Reentry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community,” (2005).

<sup>10</sup> Phone conversation of Sept. 23, 2016, between DOC attorney Jennifer Staples and National Lawyers Guild member Barbara J. Dougan.

<sup>11</sup> We must also note that our clients and associates often describe a major source of delay that a pre-approval process will not address: the inconsistent and arbitrary manner in which dress codes are enforced – clothing that was acceptable one week may be deemed unacceptable the next, based on the whims of individual correctional officers. Not only do such instances create delay, frustration and embarrassment for visitors, but they can prevent visits altogether.

<sup>12</sup> See note 10.

<sup>13</sup> Commonwealth of Massachusetts, “Report of the Special Commission to Study the Criminal Justice System, Vol. 1” (2014), pages 18, 34 - 35 and 44- 48.

<sup>14</sup> *Id.* at page 11.

<sup>15</sup> *Deal v. Commissioner of Correction*, SJC No. 12054 (Aug. 25, 2016).

<sup>16</sup> C. Lowenkamp and E. Latessa, “Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders,” *Topics in Community Corrections* 3, 6 (2004); C. Lowenkamp and E. Latessa, “Increasing the Effectiveness of Correctional Programming Through the Risk Principle: Identifying Offenders for Residential Placement,” *4 Criminology and Pub. Policy* 263, 277 (2005); C. Lowenkamp et al., “The Risk Principle in Action: What Have We Learned from 13,676 Offenders and 97 Correctional Programs?,” *52 Crime and Delinquency* 77, 89 (2006).

<sup>17</sup> E. Latessa and C. Lowenkamp, “What Works in Reducing Recidivism?,” *3 University of St. Thomas Law Review* 521 (2006).