



ACLU OF MAINE FOUNDATION
121 MIDDLE STREET
SUITE 301
PORTLAND, ME 04101
(207) 774-5444
WWW.ACLUMAINE.ORG

August 15, 2017

Mary Lucia
Maine Department of Corrections
111 State House Station
Augusta, Maine 04333-00111

Re: Proposed Rule Ch. 1, Detention and Correctional Standards for Counties and Municipalities

Dear Mary:

The American Civil Liberties Union of Maine is a statewide organization devoted to protecting the constitutional rights of the people of Maine. On behalf of our more than 8,500 members, we offer public comment in opposition to the Maine Department of Corrections' ("MDOC") proposed rule change for Detention and Correctional Standards for Counties and Municipalities insofar as it includes provisions for video conferencing that do not contain sufficient protections for county jail inmates (parts J.11 and J.18).

The ACLU of Maine is not categorically opposed to videoconferencing as a supplemental tool for families to connect, especially when men and women are jailed in facilities hours away from their families. However, videoconferencing should only ever be a supplemental tool, and the ACLU of Maine opposes any policy that does not protect the availability of in-person visitations. The danger of cutting off incarcerated people from their families is real, and the ACLU of Maine urges MDOC to change its proposed rule to better protect the ability of incarcerated people to have in-person contact visits with their loved ones.

MDOC's Proposed Rules Do Not Protect In-Person Visits

MDOC's proposed language for county jails does not adequately ensure that in-person contact visits will remain an option at county jails. Proposed language J.11 states that "[f]acilities *should* make provisions for contact visits *when warranted*" (emphasis added), and proposed language at J.18 allows for video visitation in jails. Again, the ACLU of Maine is not opposed to video visitation as an additional tool to keep incarcerated people connected to their families and communities.

At least one video visitation company requires that jails eliminate in-person visitation as a condition of its contract.¹ Under the DOC's current proposed rule, nothing would prevent a Maine jail from signing a contract with that company, thereby contracting away the jail's ability to allow in-person visitation. Even if a jail does not sign with that particular video visitation company, there is still a high likelihood that the jails will end in-person visits in short order. Research shows that 75 percent of jails that have used video visitation, even as a supplemental communication tool, have ended up banning in-person visits all together.² Based on the data, and without adequate protections in DOC policy, it is a question of when, not if, Maine jails ban in-person visits entirely.³

Family Visitation Is Crucial

Numerous studies demonstrate the importance of visitation for incarcerated people and their families because, among other things, it supports familial relationships, especially between parents who are incarcerated and their children,⁴ and reduces the likelihood of recidivism.⁵ The American Correctional Association, a 146-year-old organization for correctional professionals,⁶ which also provides accreditation for MDOC facilities,⁷ also

¹ Bernadette Rabuy and Peter Wagner, *Screening Out Family Time*, Prison Policy Initiative (Jan. 2015). Available at <https://www.prisonpolicy.org/visitation/report.html>. Accessed August 15, 2017.

² Natasha Haverty, *In One N.H. Jail, Inmate Visits Don't Look How You Might Think They Look*, New Hampshire Public Radio (Dec. 5, 2016). Available at <http://nhpr.org/post/one-nh-jail-inmate-visits-dont-look-how-you-might-think-they-look#stream/0>. Accessed August 15, 2017.

³ While we advocate in-person contact visits for every incarcerated person, we recognize that jails could still use classification systems to determine whether a person posed too great a threat to safety to have in-person contact visits.

⁴ New York Initiative for Children of Incarcerated Parents. "Proximity to Children: Why Being Close to Home Matters." Osbourne Association. (March 2013). Available at: http://www.osborneny.org/images/uploads/printMedia/ProximityFactSheet_OA2013.pdf.

⁵ See generally, the Prison Policy Initiative, <https://www.prisonpolicy.org/>. See also, Bernadette Rabuy and Daniel Kopf, *Separation by Bars and Miles: Visitation in State Prisons*. Prison Policy Initiative. (Oct. 2015). Available at <https://www.prisonpolicy.org/reports/prisonvisits.html>. Accessed August 15, 2017.

⁶ "About Us." The American Correctional Association. Available at: http://www.aca.org/ACA_Prod_IMIS/ACA_Member/About_Us/Our_History/ACA_Member/AboutUs/AboutUs_Home.aspx?hkey=0c9cb058-e3d5-4bb0-ba7c-be29f9b34380. Accessed August 14, 2017.

⁷ See

http://www.aca.org/ACA_Prod_IMIS/ACA_Member/Standards__Accreditation/Accredited_Facilities/Facility_Directory/ACA_Member/Standards_and_Accreditation/Accredited_Facility_Directory.aspx?hkey=861cb92c-7d8d-4b10-aa0c-c3990b905d63. Accessed August 14, 2017.

supports in-person family visitation.⁸ Additionally, there is research that demonstrates that more family visitation reduces the likelihood of misconduct in a facility,⁹ thereby making correctional facilities safer¹⁰ and supervision more manageable for corrections officers. In one study of over sixteen thousand Minnesota prisoners over four years, researchers found that, even when controlling for other factors, inmates who received family visits were 13 percent less likely to be convicted of a felony after release and 25 percent less likely to have their probation or parole revoked.¹¹

Video Visitation Does Not Provide the Same Benefits as Contact or Through-the-Glass Visits

It is widely recognized that allowing for regular in-person visits is best practices for a jail or prison. However, video visitation is not only less preferable than in-person visits, but also less preferable than through-the-glass visits.¹² A 2015 report states that “[m]ost families—the end-users of video visitation—are deeply unhappy with the combination of video visitation’s poor quality, the cost of visitation, and the fact that jails often force the service on them.”¹³

Video visitation presents limitations that in-person visits do not.¹⁴ Video visits usually offer less privacy than in-person visits, and video cameras are set up in such a way that family members cannot look their loved ones in the eyes while they speak. The videos are often pixelated, or, when a connection is slow, a person’s face might be frozen on a screen, and there is often significant audio lag. Video chats do not allow family members to assess their loved one’s physical health in the same way that even through-the-glass visits do—for example, a person’s skin color is often distorted by video, and only a person’s face rather than their whole torso is visible. For family members concerned about their incarcerated loved one’s health, these in-person cues can be crucial.

⁸ “Supporting Family-Friendly Communication and Visitation Policies.” Resolution of the American Correctional Association. Adopted at ACA Winter Conference. San Antonio, TX (Feb. 1st, 2010) (Updated Jan. 24, 2012). *Available at*: http://www.aca.org/ACA_Prod_IMIS/aca_member/ACA_Member/Govt_Public_Affairs/Pan_dR_FullText.aspx?PRCode=R0015. Accessed August 14, 2017.

⁹ Chesa Boudin, Trevor Stutz and Aaron Littman. “Prison Visitation Policies: A Fifty-State Survey.” *Yale Law & Policy Review*, Vol.32 no.1(2013): 152. *Available at*: <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1654&context=ylpr>. Accessed August 15, 2017.

¹⁰ *Id.*

¹¹ *Id.*

¹² Several Maine jails have already jettisoned contact visits. Androscoggin County Jail only allows contact visits after a person has been incarcerated for 60 days (two months). Cumberland County and Franklin County restricts visits for general population inmates to through-the-glass visits. Two Bridges’ website states that all visits are through video conference, though staff has told us that contact visits are allowed.

¹³ *Screening Out Family Time*, note 1 *supra*.

¹⁴ *See generally id.*

Importantly, video visits can be very expensive for families trying to access their loved ones. While Two Bridges jail reportedly does not charge for video visits, Hancock County Jail does charge for video visitation. Video visits can cost up to \$1.75 an hour, which is unaffordable for many with incarcerated family members: those in jail are often the poorest of our society who cannot afford the cost.¹⁵ Transitioning to a video visitation system means that only those with economic means can have contact with their families, and those without remain isolated.

Video Visitation Will Likely Disproportionately Affect Women and People with Disabilities

We are concerned that this change in policy may have a disproportionate impact on women and people with disabilities. Women, especially women of color, who have incarcerated loved ones bear most of the burden for sustaining and supporting their families.¹⁶ Indeed, one report uncovered that, of family members responsible for covering the costs of calls and visits, women account for 87% of those members.¹⁷ As video visitation becomes more normative and prices rise, women will likely bear the brunt of this policy shift.

This policy will disproportionately affect people with disabilities because nearly two thirds (64.2 percent) of people incarcerated in jails satisfy the criteria for a mental health problem.¹⁸ People with mental health disabilities will bear the brunt of this change, both in terms of sheer numbers, but also in terms of the effect of the change.¹⁹ Moreover, lack of physical touch, called by psychologists “touch hunger,” can create depression and isolation in people, making an already volatile mental health situation worse.

Video Visitation Does Not Make Jail Safer

¹⁵ One study found that those who are unable to make bail (most of a jail population) are in the poorest third of society. Bernadette Rabuy and Daniel Knopf, *Detaining the Poor: How money bail perpetuates an endless cycle of poverty and jail time*, Prison Policy Initiative (May 2016). Available at <https://www.prisonpolicy.org/reports/incomejails.html>. Accessed August 15, 2017.

¹⁶ Ella Baker Center for Human Rights, et al. (September 2015). Available at <http://whopaysreport.org/wp-content/uploads/2015/09/Who-Pays-FINAL.pdf>. After examining a range of negative impacts of incarceration including financial costs, mental and physical health, housing and employment, the authors concluded that “[t]hese impacts hit women of color and their families more substantially than others, deepening inequities and societal divides that have pushed many into the criminal justice system in the first place. Almost one in every four women and two of five Black women are related to someone who is incarcerated.”

¹⁷ *Id.* at 30.

¹⁸ See National Institute of Health, *Inmate Mental Health*, available at <https://www.nimh.nih.gov/health/statistics/prevalence/inmate-mental-health.shtml>. Accessed August 15, 2017.

¹⁹ See generally Paul Kix, Embracing the power of human touch, *Boston Globe* (Nov. 1, 2015). Available at <https://www.bostonglobe.com/ideas/2015/10/31/embracing-power-human-touch/G6vc7W0eVdHc8ybiY7nBwO/story.html>. Accessed August 15, 2017.

Some jail administrators advocate for video-visitation as a way to make jails safer. However, this logic fails on at least two fronts. First, video visitations do not reduce contraband. Here in Maine, York County Jail still sees problematic “contraband” smuggled in, despite the ban on in-person visits,²⁰ and other jails across the country have had similar lackluster results. Additionally, denying human contact to incarcerated people increases the rage and frustration they experience. A review of a county jail in Texas showed that after the jail replaced in-person visits with video visitations, the jail saw a 54 percent increase in disciplinary incidents involving contraband, an increase in overall disciplinary infractions, and a surge in assaults on prison officials.²¹

* * *

If jails want to reduce incarceration rates (and their attendant costs) and reduce problematic contraband, there are many ways to do this. Police should be incentivized to arrest fewer people. We should treat substance use disorder as a public health issue and not a criminal justice issue. More resources should be given to housing, education and job training for people leaving jail. Jails should not reduce the cost of our over-incarceration problem by further dehumanizing incarcerated people and making it harder for them to maintain relationships with their families and communities. With this in mind, the ACLU of Maine urges the DOC to revise its proposed rule to more firmly establish that in-person visits must be allowed at county jails, and that any video visitation is a supplement to that visitation.

Sincerely,



Meagan Sway, Esq.
Justice Fellow

²⁰ See Susan Sharon, *In effort to reduce contraband, more Maine jails turn to video visitation*, Bangor Daily News (Jan. 8, 2017). Available at <http://bangordailynews.com/2017/01/08/news/state/in-effort-to-reduce-contraband-more-maine-jails-turn-to-video-visitation/>. Accessed August 15, 2017.

²¹ See *Screening Out Family Time*, note 1 *supra*.