



CHAIRMAN'S MEMORANDUM

NO. 12-2005 September 13, 2005

TO: SHERIFFS, COMMISSIONERS OF CORRECTION, JAIL ADMINISTRATORS

RE: Inmate Visitation

An inmate's right to receive visitation while confined in a local correctional facility is guaranteed by both the New York State Constitution and the Commission of Correction's Minimum Standards [Part 7008 of Title 9 of the New York Codes, Rules and Regulations]. In the past few months, routine Commission evaluations and investigations into inmate grievance appeals have exposed deficiencies in the provision of inmate visitation at certain facilities. In an effort to provide clarification as to what the Commission considers acceptable compliance, the following is offered:

Visitor Lists

As provided in 9 NYCRR §7008.5(a), "any properly identified person shall, with the prisoner's consent, be permitted to visit that prisoner." To facilitate visitation and reduce waiting times, an inmate may be allowed to provide a list of persons with whom the inmate consents to visit. However, the practice of requiring an inmate to establish an advance list of visitors' names, and thereafter denying visits with persons not on the list, will be considered a violation of this standard.

Visitation Schedules

The chief administrative officer of each facility is required by 9 NYCRR §7008.3(b) to "establish and publish a schedule of visits to ensure that each inmate has the opportunity for at least two visits per week." Such a schedule must inform both the inmate and the visitor the days and times a "properly identified person" may arrive at the facility to visit a particular inmate. A facility may not require a prospective visitor to schedule a visit in advance, either by telephone, in person, or otherwise. Appointments may be accepted and encouraged by a facility in an effort to facilitate visits and reduce waiting times, provided those without appointments are not denied visits.

Physical Contact

Although "physical contact" is not defined in the Minimum Standards, 9 NYCRR §7008.6(b) provides that "[p]risoners and their visitors shall be required to conduct themselves in a manner consistent with reasonable standards of public decency." Collectively, these standards have long been interpreted by the Commission to mean that inmates and visitors participating in a contact visit must be allowed to engage in any

physical contact that does not violate reasonable standards of public decency. In an effort to achieve consistency throughout the state, the Commission has required that facilities allow, at a minimum, visitors and inmates to share a brief embrace and kiss on the lips at the beginning and end of each contact visit.

Limitation of Visitation

As set forth in 9 NYCRR §7008.8, an inmate’s visitation may be denied, revoked or limited when it is determined that a visit constitutes a threat to the safety, security or good order of the facility. Subdivision (b) of that section further provides that “[s]hould a determination be made to deny, revoke or limit a prisoner’s contact visits, alternative arrangements for affording the prisoner visits shall be made, including but not limited to noncontact visits.” Therefore, in the common instance where a visitor is suspected of passing contraband to an inmate via contact visitation, it is expected that, absent additional circumstances, a noncontact visit will alleviate the threat to the facility and must therefore be offered. In instances where a threat will not be alleviated by a noncontact visit, such as the existence of an Order of Protection between the inmate and the visitor, such visits may be revoked entirely. Finally, 9 NYCRR §7008.8(c) requires the chief administrative officer to document any limitation or revocation of an inmate’s visitation in writing, stating the specific facts and reasons underlying such determination.

Attorney Visitation

_____ Facilities must allow, as required by 9 NYCRR §7031.2(a), “visits between prisoners and their legal counsel at times not unduly disruptive of facility routine.” The Commission has historically interpreted “times not unduly disruptive of facility routine” to mean any time the facility is not in “lock down” status. As such, a facility may not limit attorney visitation other than during the facility’s “lock down” schedule, nor may attorneys be required to schedule such visitation in advance. Of course, attorney appointments may be accepted and encouraged by a facility in an effort to facilitate visits and reduce waiting times, provided those without appointments are not denied visits.

Alan J. Croce, Chairman/Commissioner