



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
BRAD LANDER

January 6, 2023

Members of the Board  
NYC Board of Correction  
2 Lafayette, Suite 1221  
New York, NY 10007

**Re: Department of Correction Continuing Variance Requests**

Dear Members of the Board,

I am writing to strongly urge you to reject the Department of Correction's requests for continuing variances to Minimum Standard §§ 1-11(e)(1)(i) and 1-12(a), submitted to the Board of Corrections on November 14, 2022. These proposed variances would deny people in custody access to correspondence from their loved ones, raising serious privacy and civil rights concerns, and further fray the social bonds that are necessary for people's mental health. The variances would not actually make DOC facilities safer; in fact, they may make them less safe. The variances, would, however, function to reward a private contractor with a history of severe privacy and contract breaches, without an appropriate competitive bidding process. The Board should not empower DOC to violate basic standards for privacy, civil rights, and good government.

If you approve these variances, people in custody will not be permitted to receive physical mail from their friends or loved ones. Instead, all incoming mail would be sent to an off-site facility, scanned without the recipient present, and then uploaded to tablets provided to people in custody – by a vendor also seeking to profit from selling detainees additional content. Additionally, the variances would limit ability for friends and family members sending packages to a narrowly restricted pool of vendors.

DOC claims that these changes are needed to confront the influx of drugs into the prison and a growing number of overdoses. However, we do not find this argument credible. DOC is already empowered to open every single letter or package to people in custody, to interdict any weapons or drugs. In July, the Department of Investigation (DOI) stated that “the mail and visits are not significant entry points for contraband.” Instead, a 2018 DOI report found that security lapses enable officers to bring in drugs, yet at a City Council hearing in October, the DOC Commissioner confirmed that staff are not required to pass through body scanners.

While denying people in custody direct mail from loved ones will do little to address the problem of drugs entering Rikers, it would very likely fray the already-strained social bonds that are necessary for people's mental health and ability to thrive. I am not aware of studies that explore the impact on mental health or social bonds from receiving physical letters versus electronic

images. However, anyone who has ever received a physical letter from a friend or loved one, versus one more digital file on a screen, knows the difference.

How many of you have a letter, a card, a drawing, or a picture from a loved one on your desk or nightstand? I certainly do. They are often the things that bring us the most joy, that remind us of what really matters, and that keep us grounded in the most difficult moments. For me, they are precisely the things I look at when something makes me feel angry or hurt, to restore a sense of balance. Think about how much more that matters to people who are in custody, for whom such small items are the only personal possessions they have with them, and certainly the only ones they can take from facility to facility. With about half of people in DOC custody already suffering from some signs of mental illness, why on earth would you want to take away one of the only things that keep them connected to loved ones, to their homes, to their community?

The vast majority of mail sent to people in jail is, of course, NOT soaked in deadly drugs or designed to be weaponized. And since every single item is opened first by DOC staff, any pieces that do contain contraband are identified and confiscated before being given to the detainee. The casual and foolish cruelty here far surpasses any notional safety benefit.

The proposed variance also represents a large-scale violation of the privacy and civil rights of people in DOC custody. This is of particular concern given that the tablets, scanning, and delivery services will apparently be provided, for profit, by Securus Technologies, a vendor that has repeatedly undermined the privacy and civil liberties of people in custody. Under a contract with DOC, Securus illegally recorded thousands of phone calls between detainees and their lawyers. At the time, DOC claimed that “confidential communication between attorneys and clients is an inviolable right;” yet with this variance, they are inviting additional breaches. Once the mail of people in custody has been scanned and digitized, the risk of it being viewed by others or used without permission or warrant increases enormously. With this variance, therefore the Board would be significantly increasing the City’s liability.

In addition, the process of contracting with Securus for these devices and services has been accompanied by a lack of transparency by the Department of Correction. There has been no competitive bidding process; no Request for Proposals or scope of services has been provided. These changes would likely come with costs to the City, for the people in custody using tablet services, and for loved ones on the outside sending packages. Currently, however, neither my office nor the Board knows what those costs would be, since we have not been provided any of that information. We have many outstanding questions for the Department regarding the procurement process, the cost of devices and services, fees to people in custody, and due diligence performed before selecting this vendor, all of which remain unanswered. At a minimum, we urge the Board to table consideration of this variance request until those answers are provided.

To be clear: If properly procured, through competitive bidding with oversight of the attendant costs and terms to a responsible vendor with a proven track record of respecting the rights of those in custody, tablets that provide opportunities for communication, learning, and entertainment can help contribute to improving conditions and reducing violence in the jails. But the addition of this

technology should not replace the ability to receive mail, and guardrails must be set up to prevent violations of privacy.

In closing, I was struck by this section from the October 2022 Federal Monitoring Team's report:

[T]he disordered environment and staffing problems discussed in the “Staffing” section of this report result in the constant disruption of even the most basic services (e.g., recreation, laundry, commissary, barbershop), which creates additional frustration among the people in custody, who are already stressed by the level of facility violence, separation from their loved ones, and uncertainty in their court proceedings to name a few. (p. 56)

The proposed variance would not contribute to greater safety for incarcerated people or for DOC staff. It would, however, further the “constant disruption of even the most basic services” that the Monitor identifies. It would open the door to unwarranted surveillance that infringes upon the rights of those in custody. And it would reward a private, for-profit contractor with a history of privacy violations, without an appropriate competitive bidding process.

Before you take your vote on DOC’s request for continuing variances to minimum standards §§ 1-11(e)(1)(i) and 1-12(a), I urge you to call to mind the card, letter, picture, or drawing from a loved one that sits on your desk or nightstand. What would they urge you to do?

Sincerely,



Brad Lander  
New York City Comptroller

CC: Department of Corrections