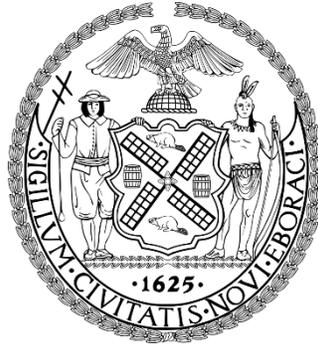


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## **THE COUNCIL OF THE CITY OF NEW YORK**

### **COMMITTEE REPORT AND BRIEFING PAPER OF THE JUSTICE DIVISION AND HUMAN SERVICES DIVISION**

Jeffrey Baker, Legislative Director  
Brian Crow, Deputy Director, Justice Division  
Andrea Vazquez, Deputy Director, Human Services Division

#### **COMMITTEE ON CRIMINAL JUSTICE**

Hon. Keith Powers, Chair

#### **COMMITTEE ON WOMEN AND GENDER EQUITY**

Hon. Darma V. Diaz, Chair

**April 27, 2021**

### **Oversight: Women's Experiences in City Jails**

**Int. No. 1209** By Council Members Rosenthal, Ampry-Samuel, Cornegy, Ayala and Yeger

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to permitting pregnant incarcerated individuals in department of correction custody to utilize doula and midwife services in the delivery room

**Admin. Code:** Adds Section 9-156

- Int. No. 1491** By Council Members Rosenthal, Brannan, Chin, Lander and Yeger  
**Title:** A Local Law to amend the administrative code of the city of New York, in relation to requiring the commissioner of correction to develop a comprehensive training program for investigation of sexual crimes  
**Admin. Code:** Adds Section 9-157
- Int. No. 1646** By Council Members Rosenthal, Louis and Yeger  
**Title:** A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of correction to use an electronic case management system to track investigations of sexual abuse  
**Admin. Code:** Amends Section 9-156

**I. Introduction**

On April 27, 2021, the Committee on Criminal Justice, chaired by Council Member Keith Powers, and the Committee on Women and Gender Equity, chaired by Council Member Darma V. Diaz, will hold a joint oversight hearing on *Women’s Experiences in City Jails*. In addition, the Committee on Criminal Justice will hear: Introduction No. 1209, in relation to permitting pregnant incarcerated individuals in Department of Correction custody to utilize doula and midwife services in the delivery room; Introduction No. 1491, in relation to requiring the Commissioner of the Department of Correction to develop a comprehensive training program for investigation of sexual crimes; and Introduction No. 1646, in relation to requiring the Department of Correction to use an electronic case management system to track investigations of sexual abuse. Witnesses invited to testify include representatives from the New York City Department of Correction (“DOC” or “Department”), the Correctional Health Services (“CHS”), and legal services providers, advocacy groups and organizations, and other interested stakeholders.

## II. Background

### A. *Incarcerated Women in the United States*

Over the past several decades, there has been a significant shift in women’s involvement within the criminal legal system nationally.<sup>1</sup> This can be traced back, in part, to the implementation of more expansive law enforcement efforts and stricter drug sentencing laws, as well as post-conviction barriers to reentry that uniquely affect women.<sup>2</sup> As a result, the number of incarcerated women in the U.S. increased by more than 700 percent between 1980 and 2019, from 26,378 to 222,455.<sup>3</sup> Including probation and parole, women currently account for more than one million people in the criminal legal system’s total supervised population.<sup>4</sup> Additionally, while there are many more incarcerated men than women, the rate of the increase of incarceration of women has been twice that of men since 1980.<sup>5</sup>

In 2019, the national rate of incarceration for Black women was more than 1.7 times the rate for white women, and the rate of incarceration for Latinx women was 1.3 times the rate for white women.<sup>6</sup> As the rate of incarceration for Black women has declined since 2000, the rate for Latinx and white women has increased.<sup>7</sup> Between 2000 and 2019, the rate of incarceration in state and federal prisons declined by 60 percent for Black women as the rate increased by 41 percent for white women.<sup>8</sup> Additionally, more than 60 percent of women in state prisons have a child under the age of 18.<sup>9</sup>

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<sup>1</sup> The Sentencing Project, “FACT SHEET: Incarcerated Women and Girls” (Nov. 2020), *available at* <https://www.sentencingproject.org/wp-content/uploads/2016/02/Incarcerated-Women-and-Girls.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Akua Amaning, “Advancing Gender Equity for Justice-Impacted Women in the Aftermath of COVID-19.” Center for American Progress (Mar. 29, 2021), *available at* [Opportunities-for-Gender-Equity-cx.pdf](#).

<sup>5</sup> *Supra* note 1.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

While the rate at which women are incarcerated varies from state to state, women in state prisons are more likely than men to be convicted of a drug or property offense: 26 percent of women in prison have been convicted of a drug offense compared to 13 percent of incarcerated men; and 24 percent of incarcerated women have been convicted of a property crime compared to 16 percent of incarcerated men.<sup>10</sup> The proportion of incarcerated women convicted of a drug offense increased from 12 percent in 1986 to 26 percent in 2018.<sup>11</sup> Having a criminal record significantly restricts one’s access to employment, housing, education, and other basic resources critical to successful reentry into society, and can now exacerbate COVID-19-related challenges.<sup>12</sup> Annually, nearly two million women are released from jail or prison with a criminal record that can create barriers that keep them in a cycle of poverty and recidivism.<sup>13</sup>

#### *B. Incarcerated women in New York City*

In New York City, DOC provides for the care, custody and control of persons accused of crimes or convicted and sentenced to one year or less of jail time.<sup>14</sup> The Department manages ten correctional facilities, eight of which are located on Rikers Island, as well as two hospital prison wards and court pens in each of the City’s five boroughs.<sup>15</sup> During Fiscal Year (“FY”) 2020, DOC handled over 23,000 admissions and an average daily population of 5,841.<sup>16</sup> During the first six months of FY 2021, 56.2 percent of detainees identified as Black, 32.9 percent as Hispanic, 5.9 percent as white, 3.3 percent as Other, and 1.7 percent as Asian.<sup>17</sup> Approximately four percent of

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<sup>10</sup> Supra note 1.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> “About the New York City Department of Correction” New York City Department of Correction, *available at* <https://www1.nyc.gov/site/doc/about/about-doc.page>.

<sup>15</sup> Id.

<sup>16</sup> New York City Council, Report of the Finance Division on the Fiscal 2022 Preliminary Plan for the Department of Correction (Mar. 22, 2021), *available at* <https://legistar.council.nyc.gov/MeetingDetail.aspx>.

<sup>17</sup> Supra note 16.

detainees identified as women,<sup>18</sup> most of whom were detained at the Rose M. Singer Center (“RMSC”) at Rikers Island.<sup>19</sup>

A 2021 report that analyzed New York City jail admissions from 2008 to 2017 found high levels of racial disparity among women: about five percent of Black women have been jailed compared to two percent of Latinx women and fewer than one percent of white women.<sup>20</sup> Overall, Black women face higher risks of jail incarceration than white men.<sup>21</sup>

Incarcerated women are especially likely to suffer from prior abuse and trauma, which can precipitate other mental health problems and, in some cases, increase risk for substance abuse.<sup>22</sup> According to a 2017 report by the Independent Commission on New York City Criminal Justice and Incarceration Reform, of the women incarcerated at RMSC, 80 percent have children and about 85 percent have substance abuse problems.<sup>23</sup> Most have suffered trauma and violence from men, and two-thirds reported having a mental illness.<sup>24</sup> About 70 percent of the women at RMSC are awaiting trial.<sup>25</sup>

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<sup>18</sup> “NYC Department of Correction at a Glance: Information for the First 6 Months of FY2021.” Department of Correction, [DOC At Glance first6 months FY2021-030921.pdf](#)

<sup>19</sup> “Facilities Overview.” NYC Department of Correction, *available at* <https://www1.nyc.gov/site/doc/about/facilities.page>.

<sup>20</sup> Bruce Western, Jady Davis, Flavien Ganter, & Natalie Smith, “The cumulative risk of jail incarceration.” Proceedings of the National Academy of Sciences in the United States of America (Apr. 20, 2021), *available at* <https://www.pnas.org/content/pnas/118/16/e2023429118.full.pdf>.

<sup>21</sup> *Id.*

<sup>22</sup> Independent Commission on New York City Criminal Justice and Incarceration Reform, “A More Just NYC” (2017), *available at* [Lippman Commission Report FINAL.pdf](#).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Suzanne Singer, “The Women’s Jail at Rikers Island Is Named for My Grandmother. She Would Not Be Proud.” NY Times (May 12, 2020), *available at* [womens-jail-rikers-island-covid.html](#).

In recent years, there have been a number of reports of routine abuse,<sup>26</sup> unsanitary conditions,<sup>27</sup> and denied medical and mental health services<sup>28</sup> at Rikers Island. At the start of the COVID-19 pandemic, women at Rikers complained about a lack of sufficient personal protective gear and not receiving hand sanitizer.<sup>29</sup> No woman has died while in DOC custody as a result of COVID, however, it is unknown if any women died post-release after contracting COVID while in a DOC custody.

In 2019, the City Council voted to close Rikers Island by 2026 and replace it with four smaller borough-based jails.<sup>30</sup> In 2020, due to COVID-related delays, this deadline was pushed to 2027.<sup>31</sup> With the pending closure of Rikers Island, the City is planning to move incarcerated women into a single jail—a wing within a larger jail—next to the Queens Criminal Courthouse in Kew Gardens.<sup>32</sup> Advocates and local leaders have raised concerns that this plan ignores the specific needs of incarcerated women and have advocated for a separate facility that would only house women.<sup>33</sup>

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<sup>26</sup> Benjamin Weiser, “\$1.2 Million City Settlement With Rikers Inmates Who Accused Guard of Rape” NY Times (May 9, 2017), available at [rikers-inmates-who-accused-guard-of-rape-settle-suit-for-1-2-million.html](#).

<sup>27</sup> Christina Carrega, “Shampoo, watery soap to disinfect: Conditions on Rikers Island during COVID-19 unsafe, some inmates say” ABC News (Mar. 29, 2020), available at [shampoo-watery-soap-disinfect-conditions-rikers-island-covid](#).

<sup>28</sup> Michael Winerip & Michael Schwartz, “Rikers: Where Mental Illness Meets Brutality in Jail” NY Times (Jul. 14, 2014), available at [rikers-study-finds-prisoners-injured-by-employees](#).

<sup>29</sup> Jan Ransom & Alan Feuer, “‘We’re Left for Dead’: Fears of Virus Catastrophe at Rikers Jail” NY Times (Mar. 30, 2020), available at [coronavirus-rikers-nyc-jail](#).

<sup>30</sup> Matthew Haag, “N.Y.C. Votes to Close Rikers. Now Comes the Hard Part.” NY Times (Oct. 17, 2019), available at [rikers-island-closing-vote](#).

<sup>31</sup> Rachel Holliday Smith, “Manhattan Jail Design Forges Ahead Even as Plan to Replace Rikers is Delayed to 2027” The City (Oct. 19, 2020), available at [manhattan-jail-tombs-replace-rikers-delayed-nyc](#).

<sup>32</sup> David Brand, “New Queens Jail Would House All Detained Women in NYC” Queens Daily Eagle (Mar. 22, 2019), available at [new-queens-jail-would-house-only-women](#).

<sup>33</sup> David Brand, “Proposed 200-bed women’s jail deserves more attention, advocates say” Queens Daily Eagle (Sept. 11, 2019), available at [womens-jail-plan-specifics-kew-gardens-queens-nyc](#).

### III. Sexual Victimization

The Prison Rape Elimination Act (“PREA”) is a federal law adopted in 2003 that focuses on sexual assault of incarcerated people.<sup>34</sup> PREA was adopted “to provide for the analysis of the incident and effects of prison rape in federal, state, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape.”<sup>35</sup> PREA applies to local jails, however the tools for enforcement in local jails are different than for state prisons, as state prisons may lose federal funding for a lack of PREA compliance, but local jails cannot.<sup>36</sup> In 2016, the Board adopted the Sexual Abuse and Sexual Harassment Minimum Standards (“SASHMS”), which are in line with federal PREA standards, to ensure that DOC complies with federal PREA standards and reports on its compliance.<sup>37</sup>

In March 2018, DOC posted its annual SASHMS assessment report that provided PREA and non-PREA data for calendar years (“CY”) 2016 and 2017.<sup>38</sup> That report revealed that there was an 86 percent increase in the number of staff-incarcerated individual sexual harassment and a 66 percent increase in incarcerated individual-incarcerated individual sexual harassment.<sup>39</sup> DOC attributed the increase in reported incidents to its robust reporting mechanisms.<sup>40</sup> In August 2018, DOC issued its bi-annual SASHMS assessment report that evaluated sexual abuse and sexual harassment incidents from January 2018 to June 2018.<sup>41</sup> While the report did not disaggregate the

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<sup>34</sup> Prison Rape Elimination Act of 2003, Public Law 108-79, 108th Congress, available at <http://www.ojdp.gov/about/PubLNo108-79.txt>.

<sup>35</sup> Id.

<sup>36</sup> See 28 C.F.R. §§ 115.5; 115.501(b); 77 Fed. Reg. 37106, 37115.

<sup>37</sup> Board of Correction, Notice Adoption of Rules, 2016, at [PREA Rules - FINAL FOR POSTING 11.10.16 w certification.pdf \(nyc.gov\)](#)

<sup>38</sup> Department of Correction, *NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum Standards 5-40 Assessment Report*, March 2018, at [Annual-Sexual-Abuse-and-Sexual-Harassment-Assessment-Report.pdf \(nyc.gov\)](#)

<sup>39</sup> Supra note 39, p. 2.

<sup>40</sup> Hearing Transcript (Part 1) of the Committee on Criminal Justice jointly with Committee on the Justice System and Committee on Women of the New York City Council, September 6, 2018, p. 9 at [Legistar](#)

<sup>41</sup> NYC Department of Correction, *NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum Standards 5-40 Assessment Report*, August 2018, at [Bi-Annual August 2018.pdf \(nyc.gov\)](#)

data by gender, it shows that the total number of sexual abuse and sexual harassment incidents decreased by approximately 31 percent, from 332 during the second half of 2017 to 229 during the first half of 2018.<sup>42</sup> DOC attributed the decline to measures it took to address the issue of sexual abuse and harassment in its jails, including establishing a dedicated team of investigators to investigate sexual abuse and harassment incidents, designing of specific housing areas for persons who are potential sexual victims, installing approximately 13,000 surveillance cameras, and incorporating PREA into training of new recruits, staff, contractors, and volunteers.<sup>43</sup>

The most recent bi-annual SASHMS assessment report, released February 2021, which evaluated PREA incidents that were made between July 2020 and December 2020, shows that the total number of sexual abuse and sexual harassment incidents increased by about 92 percent from previous reporting period.<sup>44</sup> By facility, RMSC saw a 60 percent increase in the number of reported PREA incidents from the previous period.<sup>45</sup> DOC claimed that the overall increase in reported incidents is due to the change in the definition of sexual harassment mandated by the Board and a small number of incarcerated people making many unsubstantiated or unfounded complaints.<sup>46</sup> According to DOC, 10 people in custody were responsible for reporting 99 (or, about 46 percent) of the 216 allegations of staff-on-incarcerated persons sexual abuse and sexual harassment during the reporting period.<sup>47</sup> The report does not indicate that any of these individuals were women or transgender women.

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<sup>42</sup> Id., p. 2.

<sup>43</sup> Id., pp. 13-15.

<sup>44</sup> New York City Department of Correction NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum Standards 5-40 Assessment Report – February 2021, p. 2, at [Bi-Annual 5-40 Report February 2021.pdf \(nyc.gov\)](#)

<sup>45</sup> Id., p. 4.

<sup>46</sup> Supra note 45, p. 3

<sup>47</sup> Id.

Since the SASHMS assessment reports do not disaggregate PREA data by gender it is difficult to gauge the number of PREA incidents that are reported by women. Pursuant to Local Law 21 of 2019, however, DOC must report on sexual abuse and harassment, which requires disaggregated data by gender.<sup>48</sup> However, these reports do not provide a full picture of sexual abuse incidents reported, as they include only reported incidents that occurred within the preceding six-month period for which the investigation lasted longer than 90 days and cases that were closed within the preceding six months.<sup>49</sup> Therefore, while this data is not generalizable, it offers insights about sexual abuse and harassment incidents in City jails.

*A. Cases Closed in the Preceding Six Months*

The most recent report, which accounts for July 2020 to December 2020, shows that there were 160 cases closed within the preceding six-months.<sup>50</sup> Of those cases, about four percent and 24 percent were cases in which the victims were women and transgender women, respectively.<sup>51</sup> In addition, about 18 percent of the closed cases involved male perpetrators where the victims were transgender women. Of those, about 13 percent and four percent of the perpetrators were male staff and incarcerated men, respectively. There were no cases that involved male perpetrators where the victim was a woman. However, about three percent of the closed cases involved female perpetrators where the victims were women. Of those, about two percent and one percent of the perpetrators were female staff and incarcerated women, respectively. Still, the overwhelming number of closed cases involved male perpetrators.<sup>52</sup>

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<sup>48</sup> New York City Department of Correction, Semi-Annual Sexual Abuse & Harassment Report Bi-Annual Comparison Report July 1<sup>st</sup>, 2020 – December 31<sup>st</sup>, 2020, at [FINAL Sexual Abuse Second Half CY20.pdf](#)

<sup>49</sup> *Id.*, p. 1.

<sup>50</sup> *Id.*, p. 9.

<sup>51</sup> *Id.*, p. 10.

<sup>52</sup> *Supra* note 48, p. 6.

## B. Completed and Pending Investigations

Equally important is the number and percentage of cases that occurred within the preceding six-month period for which the investigation lasted longer than 90 days and those that were closed within the preceding six months. There was a total of 82 cases in which investigation lasted more than 90 days. Of those, there were six cases in which the victims were female. Also, of those 82 cases, 22 cases are pending investigations after 185 days and one case is pending investigation after 280 days. Regarding the resolution of 160 closed cases, 53 percent were unsubstantiated, 45 percent was unfounded, and about two percent were substantiated.<sup>53</sup>

## IV. Visitation

### A. Visitation Policies at New York City Jails during the COVID-19 Pandemic

Prior to the COVID-19 pandemic, incarcerated women in New York City were permitted to visit with up to three visitors at the same time, with visits lasting one hour and the maximum number to be determined by conditions set forth in each facility, availability of space, and volume of visitors and incarcerated persons.<sup>54</sup> Detainees, or individuals awaiting the outcome of a criminal justice proceeding and have not been sentenced,<sup>55</sup> were also allowed to receive visits three times per week.<sup>56</sup>

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<sup>53</sup> Id., p. 10.

<sup>54</sup> NYC Department of Correction, *Visit Guide* (2017), available at [https://www1.nyc.gov/assets/doc/downloads/pdf/2017\\_Visit%20Handbook\\_12.22.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/2017_Visit%20Handbook_12.22.pdf); [https://www.closerosies.org/p/visiting-a-loved-on#:~:text=Inmates%20are%20permitted%20to%20visit,\(3\)%20times%20per%20week](https://www.closerosies.org/p/visiting-a-loved-on#:~:text=Inmates%20are%20permitted%20to%20visit,(3)%20times%20per%20week); See PrisonPro, Rose M. Singer Center (last visited Apr. 21, 2021), available at <https://www.prisonpro.com/content/rose-m-singer-center>; NYC Department of Correction, *Visit Schedule* (last visited Apr. 21, 2021), available at <https://www1.nyc.gov/site/doc/inmate-info/visit-schedule.page>.

<sup>55</sup> NYC Department of Correction, *Visit Guide* (2017), available at [https://www1.nyc.gov/assets/doc/downloads/pdf/2017\\_Visit%20Handbook\\_12.22.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/2017_Visit%20Handbook_12.22.pdf).

<sup>56</sup> Close Rosie's, *Visiting a Loved One at Rose's* (last visited Apr. 21, 2021), available at [https://www.closerosies.org/p/visiting-a-loved-on#:~:text=Inmates%20are%20permitted%20to%20visit,\(3\)%20times%20per%20week](https://www.closerosies.org/p/visiting-a-loved-on#:~:text=Inmates%20are%20permitted%20to%20visit,(3)%20times%20per%20week); Note that the department has considered amending visit protocol for safety and security reasons several times in recent years, See Joseph Ponte, *Letter to the NYC Board of Correction* (May 26, 2015), available at <http://www.nyc.gov/html/boc/downloads/pdf/DOC%20Petition%20to%20the%20NYC%20Board%20of%20Correction%20>

In mid-March 2020, DOC and CHS implemented social distancing protocols and a COVID-19 symptom screening process for all persons entering jail facilities.<sup>57</sup> Around the same time, Mayor de Blasio signed Executive Order Number 100, exempting DOC from various BOC minimum standards requiring the provision of congregate services and visitation in jails.<sup>58</sup> On March 18, 2020, DOC suspended all in-person visits “to protect the health and safety of those who live and work on Rikers Island and other city jail facilities.”<sup>59</sup> During this time, the City continued to provide all persons in custody with free domestic phone calls<sup>60</sup> and implemented a tele-visit initiative to enable people in custody to remain in contact with their families and communities,<sup>61</sup> including with their own personal computer or mobile device.<sup>62</sup>

In September 2020, DOC announced plans to reinstate in-person family visits.<sup>63</sup> However, as of April 21, 2021, visitation has not yet resumed at the RMSC, beyond virtual visits, and it is

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[20for%20Rulemaking.pdf](#); Meg O’Connor, *Proposed Rikers Visitation Rules Stir Debate* (last visited Apr. 21, 2021), available at <https://www.gothamgazette.com/5882-proposed-rikers-visitation-rules-stir-debate>.

<sup>57</sup> *Id.*; NYC Department of Correction, *Testimony for Commissioner Brann before the NYC City Council* (Sept. 20, 2020), available at [https://www1.nyc.gov/site/doc/media/Commissioner\\_Brann\\_Testimony\\_09\\_21\\_20.page](https://www1.nyc.gov/site/doc/media/Commissioner_Brann_Testimony_09_21_20.page).

<sup>58</sup> Council of the City of New York, *Committee Report: Oversight - The Department of Correction and Correctional Health Services Management of COVID-19 in Jails* (Sept. 21, 2021), available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4625485&GUID=E4BD64DD-51FB-4970-82EF-E911CDF10A18&Options=&Search=>; NYC Department of Corrections, *COVID-19 Response Timeline* (last visited Apr. 21, 2021) available at <https://hhinternet.blob.core.windows.net/uploads/2020/08/covid-19-significant-events-timeline.pdf>.

<sup>59</sup> NYC Department of Corrections, *Advisory: NYC Department of Correction is Suspending in-person Visits Effective Wednesday March 18* (last visited Apr. 21, 2021) available at [https://www1.nyc.gov/assets/doc/downloads/press-release/ADVISORY\\_Visits\\_%20suspension-031720.pdf](https://www1.nyc.gov/assets/doc/downloads/press-release/ADVISORY_Visits_%20suspension-031720.pdf); See NYC Department of Correction, *Visit Schedule* (last visited Apr. 21, 2021), available at <https://www1.nyc.gov/site/doc/inmate-info/visit-schedule.page>.

<sup>60</sup> NYC Department of Corrections, *Advisory: NYC Department of Correction is Suspending in-person Visits Effective Wednesday March 18* (last visited Apr. 21, 2021) available at [https://www1.nyc.gov/assets/doc/downloads/press-release/ADVISORY\\_Visits\\_%20suspension-031720.pdf](https://www1.nyc.gov/assets/doc/downloads/press-release/ADVISORY_Visits_%20suspension-031720.pdf).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> NYC Department of Correction, *Testimony for Commissioner Brann before the NYC City Council* (Sept. 20, 2020), available at [https://www1.nyc.gov/site/doc/media/Commissioner\\_Brann\\_Testimony\\_09\\_21\\_20.page](https://www1.nyc.gov/site/doc/media/Commissioner_Brann_Testimony_09_21_20.page); See also Reuven Blau, *Family Visits for Inmates at City Jails Gearing Up for Return After a Lost Year* (Mar. 18, 2021), available at <https://www.thecity.nyc/2021/3/18/22339188/family-visits-for-inmates-at-city-jails-gearing-up-for-return-after-a-lost-year> (explaining that the state prison system also “began allowing visits to resume on Aug. 6 with some restrictions. But that was halted on Dec 30 when COVID-19 cases started spiking.”)

unclear when visits might resume.<sup>64</sup> The Department has indicated to the Council that it will use Department of Health and Mental Hygiene guidelines in determining when and how in-person visitation is appropriate.<sup>65</sup> City jail officials have stated they are “waiting for the COVID-19 infection rate throughout the city — and behind bars<sup>66</sup> — to go down before resuming in-person visits.”<sup>67</sup> After over a year without visitation,<sup>68</sup> DOC has shared that when in-person visiting hours do resume,<sup>69</sup> it will be with additional safety precautions,<sup>70</sup> such as pre-registration, reduction of visit floor capacity to ensure social distancing, and additional screening.<sup>71</sup> DOC has also stated that tele-visits<sup>72</sup> and other “efforts that have been beneficial to the happiness and wellbeing of

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<sup>64</sup> Information provided on a phone-call to the Department of Corrections (Apr. 21, 2021). See <https://hhinternet.blob.core.windows.net/uploads/2021/03/CHS-COVID-19-data-snapshot-20210318.pdf>; Joseph Spector, *New York prisons are resuming visitations amid COVID. These are the rules.*

(Aug. 5, 2020), available at <https://www.democratandchronicle.com/story/news/politics/albany/2020/08/05/new-york-prisons-resume-visitations-amid-covid-these-rules/3297655001/> (describing policies for state jails).

<sup>65</sup> Council of the City of New York, *Committee Report: Oversight - The Department of Correction and Correctional Health Services Management of COVID-19 in Jails* (Sept. 21, 2021), available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4625485&GUID=E4BD64DD-51FB-4970-82EF-E911CDF10A18&Options=&Search=>.

<sup>66</sup> See NYC Health and Hospitals, *Correctional Health Services* (Mar. 17, 2021), available at <https://hhinternet.blob.core.windows.net/uploads/2021/03/CHS-COVID-19-data-snapshot-20210318.pdf>.

<sup>67</sup> Reuven Blau, *Family Visits for Inmates at City Jails Gearing Up for Return After a Lost Year* (Mar. 18, 2021), available at <https://www.thecity.nyc/2021/3/18/22339188/family-visits-for-inmates-at-city-jails-gearing-up-for-return-after-a-lost-year>; See also The Council of the City of New York, *Transcript: The Department of Correction and Correctional Health Services Management of COVID-19 in Jails* (Sept. 21, 2020), available at <https://legistar.council.nyc.gov/View.ashx?M=F&ID=8821556&GUID=2D6ED4D3-74B9-48EB-8016-578DA3AB80FE>.

<sup>68</sup> Reuven Blau, *Family Visits for Inmates at City Jails Gearing Up for Return After a Lost Year* (Mar. 18, 2021), available at <https://www.thecity.nyc/2021/3/18/22339188/family-visits-for-inmates-at-city-jails-gearing-up-for-return-after-a-lost-year>.

<sup>69</sup> See NYC Department of Correction, *Visit Schedule* (last visited Apr. 21, 2021), available at <https://www1.nyc.gov/site/doc/inmate-info/visit-schedule.page>.

<sup>70</sup> NYC Department of Correction, *Testimony for Commissioner Brann before the NYC City Council* (Sept. 20, 2020), available at [https://www1.nyc.gov/site/doc/media/Commissioner\\_Brann\\_Testimony\\_09\\_21\\_20.page](https://www1.nyc.gov/site/doc/media/Commissioner_Brann_Testimony_09_21_20.page).

<sup>71</sup> NYC Department of Correction, *Testimony for Commissioner Brann before the NYC City Council* (Sept. 20, 2020), available at [https://www1.nyc.gov/site/doc/media/Commissioner\\_Brann\\_Testimony\\_09\\_21\\_20.page](https://www1.nyc.gov/site/doc/media/Commissioner_Brann_Testimony_09_21_20.page) See also [https://law.yale.edu/sites/default/files/area/center/liman/document/prison\\_visitation\\_policies.pdf](https://law.yale.edu/sites/default/files/area/center/liman/document/prison_visitation_policies.pdf) (explaining that, generally speaking, there are “three layers of rules govern prison visitation” policies and protocol: (1) administrative regulations (e.g., general grants of rulemaking authority to correctional administrators), (2) policy directives (e.g., more detailed rules promulgated by those administrators and which apply to the system as a whole, and (3) facility-specific rules, which can “vary considerably and are usually the most detailed”).

<sup>72</sup> See Reuven Blau, *Family Visits for Inmates at City Jails Gearing Up for Return After a Lost Year* (Mar. 18, 2021), available at <https://www.thecity.nyc/2021/3/18/22339188/family-visits-for-inmates-at-city-jails-gearing-up-for-return-after-a-lost-year> (discussing the program, also flagging that tele-visits can take up to two weeks to coordinate).

individuals in custody,”<sup>73</sup> such as chaplaincy hotlines, social service requests, and attorney video-conferences,<sup>74</sup> will also continue to be available as in-person visitation resumes.<sup>75</sup> Additionally, advocates say it is yet to be seen how policies and procedures might be affected by the ongoing availability of COVID-19 vaccinations.<sup>76</sup>

### *B. The Importance of Visitation Options for Incarcerated Women in New York City*

In New York City, 80 percent of women in jail have children.<sup>77</sup> This is in line with national statistics: most incarcerated women are mothers and the primary caregivers to young children, ranging from 56 percent in federal prisons to 70 percent in local jails.<sup>78</sup> For incarcerated women with children “separation is a major source of stress during incarceration. Typically, they face challenges just staying in touch as well as planning for reuniting when they are released. Because so many women in jail are single parents, their incarceration aggravates already strained finances and support systems.” Accordingly, visitation programs are important for not only incarcerated individuals but they also benefit the institutions themselves and the children of these incarcerated

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<sup>73</sup> NYC Department of Correction, *Testimony for Commissioner Brann before the NYC City Council* (Sept. 20, 2020), available at [https://www1.nyc.gov/site/doc/media/Commissioner\\_Brann\\_Testimony\\_09\\_21\\_20.page](https://www1.nyc.gov/site/doc/media/Commissioner_Brann_Testimony_09_21_20.page).

<sup>74</sup> *Id.*

<sup>75</sup> Reuven Blau, *Family Visits for Inmates at City Jails Gearing Up for Return After a Lost Year* (Mar. 18, 2021), available at <https://www.thecity.nyc/2021/3/18/22339188/family-visits-for-inmates-at-city-jails-gearing-up-for-return-after-a-lost-year>; See NYC Department of Correction, *Testimony for Commissioner Brann before the NYC City Council* (Sept. 20, 2020), available at [https://www1.nyc.gov/site/doc/media/Commissioner\\_Brann\\_Testimony\\_09\\_21\\_20.page](https://www1.nyc.gov/site/doc/media/Commissioner_Brann_Testimony_09_21_20.page).

<sup>76</sup> Chelsea Rose Marcius, *‘My decision was, I’m going to get vaccinated’: NYC jails are the first to get COVID vaccine, but Rikers Island doctors are still calling for inmate releases* (Feb. 21, 2021), available at <https://www.nydailynews.com/coronavirus/ny-covid-vaccine-rikers-island-high-risk-patients-20210221-c75ahw4p3begfkjllkg4doka6i-story.html>; Troy Closson, *The High-Risk Group Left Out of New York’s Vaccine Rollout* (Jan. 26, 2021), available at <https://www.nytimes.com/2021/01/26/nyregion/new-york-vaccine-prisons.html>; See also NYC Department of Correction, *Testimony for Commissioner Brann before the NYC City Council* (Sept. 20, 2020), available at [https://www1.nyc.gov/site/doc/media/Commissioner\\_Brann\\_Testimony\\_09\\_21\\_20.page](https://www1.nyc.gov/site/doc/media/Commissioner_Brann_Testimony_09_21_20.page)

<sup>77</sup> Catesby Holmes, *Can New York City Replace Rikers’ Women’s Wing With a ‘Healing’ Jail?* (Sep. 11, 2019), available at <https://nextcity.org/daily/entry/can-new-york-city-replace-rikers-womens-wing-with-a-healing-jail> (explaining that, according to DOC “individuals in custody continue to be made aware of vital public health guidance surrounding mask use and social distancing via posters, informational flyers, and conversations with DOC and CHS staff”).

<sup>78</sup> National Commission on Correctional Health Care, *Women’s Health Care in Correctional Settings* (last visited Sep. 21, 2021), available at <https://www.ncchc.org/womens-health-care>; According to the Pew Charitable Trusts, in the United States, 2.7 million children have a parent in jail or in prison. Bruce Western and Becky Pettit, *Collateral Costs: Incarceration’s effect on Economic Mobility*, Pew Charitable Trusts (2010), available at [https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs\\_assets/2010/collateralcosts1pdf.pdf](https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1pdf.pdf).

women.<sup>79</sup> Research shows that visits can help reduce prison misconduct and recidivism among incarcerated women,<sup>80</sup> as well as positively affect their child’s well-being.<sup>81</sup> Visitations can also improve the chances that families will remain intact when a former incarcerated individual reenters the community.<sup>82</sup>

However, despite their status as parents, incarcerated women in New York City jails are visited less frequently than incarcerated men, according to DOC.<sup>83</sup> The Department offers a few potential explanations for this discrepancy, the first being related to drug addiction and mental illness.<sup>84</sup> According to DOC, about 70 percent of women in New York City jails experience mental health issues; the most common issues are depression, anxiety, adjustment disorder and personality disorders.<sup>85</sup> Further, according to DOC, a “significant number of women admitted to [DOC’s]

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<sup>79</sup> Jaime Joyce, *Let’s Make it Easier for Kids to Visit Incarcerated Parents*, THE MARSHALL PROJECT (May 10, 2019), available at <https://www.themarshallproject.org/2019/05/10/let-s-make-it-easier-for-kids-to-visit-incarcerated-parents#:~:text=Inmates%2C%20institutions%20and%20children%20benefit,former%20inmate%20reenters%20the%20community>.

<sup>80</sup> Minnesota Department of Corrections, *The Effects of Prison Visitation on Offender Recidivism* (2011), available at <https://nicic.gov/effects-prison-visitation-offender-recidivism#:~:text=Visitation%20has%20a%20significant%20effect,a%20greater%20impact%20on%20revocations> (also explaining that a fractured parent-child bond can have negative consequences that can last a lifetime)

<sup>81</sup> Jaime Joyce, *Let’s Make it Easier for Kids to Visit Incarcerated Parents*, THE MARSHALL PROJECT (May 10, 2019), available at <https://www.themarshallproject.org/2019/05/10/let-s-make-it-easier-for-kids-to-visit-incarcerated-parents#:~:text=Inmates%2C%20institutions%20and%20children%20benefit,former%20inmate%20reenters%20the%20community>.

<sup>81</sup> Steve Christian, *Children of Incarcerated Parents*, NTL CONFERENCE OF STATE LEGISLATURES (Mar. 2009), available at <https://www.ncsl.org/documents/cyf/childrenofincarceratedparents.pdf> (research shows that “parental incarceration can affect many aspects of a child’s life, including emotional and behavioral well-being, family stability and financial circumstances”).

<sup>82</sup> Jaime Joyce, *Let’s Make it Easier for Kids to Visit Incarcerated Parents*, THE MARSHALL PROJECT (May 10, 2019), available at <https://www.themarshallproject.org/2019/05/10/let-s-make-it-easier-for-kids-to-visit-incarcerated-parents#:~:text=Inmates%2C%20institutions%20and%20children%20benefit,former%20inmate%20reenters%20the%20community>.

<sup>83</sup> Christina Boyle, *Women at Rikers Get Fewer Visits than Men Inmates* (Aug. 14, 2011), available at <https://www.nydailynews.com/news/crime/women-rikers-island-visitors-men-inmates-article-1.945039>

<sup>84</sup> Jaime Joyce, *Let’s Make it Easier for Kids to Visit Incarcerated Parents*, THE MARSHALL PROJECT (May 10, 2019), available at <https://www.themarshallproject.org/2019/05/10/let-s-make-it-easier-for-kids-to-visit-incarcerated-parents#:~:text=Inmates%2C%20institutions%20and%20children%20benefit,former%20inmate%20reenters%20the%20community>.

<sup>85</sup> The Council of the City of New York, *Testimony: Oversight - Examining the Unique Issues Facing Women in City Jails* (Dec. 15, 2015), available at <https://legistar.council.nyc.gov/View.ashx?M=F&ID=4191110&GUID=25438168-0B08-4394-B36F-172541AE8D11>.

custody test positive for drugs.”<sup>86</sup> Mental health issues and drug use “can sever ties with family and friends ... which is true for men and women ... but these issues affect a higher proportion of women.”<sup>87</sup> It is also possible that incarcerated women receive fewer visitors because the social stigma of incarceration is greater for women.<sup>88</sup> Advocates argue that this lack of support is something that must be considered when providing programming and preparing women for discharge back to their community.<sup>89</sup>

In addition to conventional visitations, the City has endeavored to create additional opportunities to connect incarcerated mothers, especially with their families. Since 1980, for example, the New York Public Library (“NYPL”) has provided reading materials and programming to incarcerated New Yorkers and their families, in collaboration with NYPL’s Correctional Services department.<sup>90</sup> This includes assisting with resources for video visitation, which allows people in any DOC facility the ability to connect with parents and children via video through reading and conversation, often from a library site,<sup>91</sup> and the “Mommy & Me” program: a story-time project with incarcerated parents, which records them reading a favorite storybook for their children.<sup>92</sup> In December 2018, New York City First Lady Chirlane McCray and DOC announced the expansion of the “Crafting Family Connections” program, a partnership with the Children’s Museum of Manhattan, which seeks to unite families of incarcerated women by bringing select mothers, children, and their custodial caregivers to the museum when it is closed

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> Prison Fellowship, *Needs of Female Prisoners* (last visited Apr. 21, 2021), available at

<https://www.prisonfellowship.org/resources/training-resources/in-prison/prison-culture/needs-of-female-prisoners/>.

<sup>89</sup> See, e.g., Wendy Sawyer, *Who’s helping the 1.9 million women released from prisons and jails each year?* (Jul. 19, 2019), available at <https://www.prisonpolicy.org/blog/2019/07/19/reentry/>.

<sup>90</sup> The New York Public Library, *The New York Public Library and New York City Department of Correction Celebrate Grand Opening of New Library at Manhattan Detention Complex* (May 2, 2018), available at <https://www.nypl.org/press/press-release/may-2-2018/new-york-public-library-and-new-york-city-department-correction>.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

to the public.<sup>93</sup> The program, which received funding through DOC and The Mayor’s Fund for New York City to run through the end of 2020, was open to women serving time at Rikers and those awaiting sentencing.<sup>94</sup> Around the same time, DOC created several policies to make visitation more “family friendly” by expanding the Children of Incarcerated Parents Program (“CHIPP”),<sup>95</sup> improving visiting areas,<sup>96</sup> and providing free shuttle buses for visitors coming from Harlem and Brooklyn.<sup>97</sup> DOC also expedites the security procedures for children visiting Rikers, to the extent possible.<sup>98</sup>

## V. Childcare

Historically, studies have shown that new mothers who stay with their young children in prison or jail-based nursery programs have lower rates of recidivism.<sup>99</sup> Not only are many incarcerated women parents, but many women are pregnant at the time of their incarceration, including four percent of women in state prisons, three percent of women in federal prisons and

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<sup>93</sup> The City of New York, *First Lady Chirlane McCray and Department of Correction Announce Expansion of Groundbreaking Program Uniting Families of Incarcerated Women Through 2020* (Dec. 17, 2018), available at <https://www1.nyc.gov/office-of-the-mayor/news/601-18/first-lady-chirlane-mccray-department-correction-expansion-groundbreaking#:~:text=LadyNewsOfficials-.First%20Lady%20Chirlane%20McCray%20and%20Department%20of%20Correction%20Announce%20Expansion,of%20Incarcerated%20Women%20Through%202020&text=The%20program%2C%20E2%80%9CCrafting%20Family%20Connections,is%20closed%20to%20the%20public>; See also Jeffery C. Mays, *Chirlane McCray to Lead Effort to Help Female Inmates at Rikers* (Feb. 1, 2018), available at <https://www.nytimes.com/2018/02/01/nyregion/chirlane-mccray-rikers-women-inmates.html>.

<sup>94</sup> The City of New York, *First Lady Chirlane McCray and Department of Correction Announce Expansion of Groundbreaking Program Uniting Families of Incarcerated Women Through 2020* (Dec. 17, 2018), available at <https://www1.nyc.gov/office-of-the-mayor/news/601-18/first-lady-chirlane-mccray-department-correction-expansion-groundbreaking#:~:text=LadyNewsOfficials-.First%20Lady%20Chirlane%20McCray%20and%20Department%20of%20Correction%20Announce%20Expansion,of%20Incarcerated%20Women%20Through%202020&text=The%20program%2C%20E2%80%9CCrafting%20Family%20Connections,is%20closed%20to%20the%20public>.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> NYC Department of Correction, *Press Release: DOC Launches Free, Express Visitor Bus Service to Riker’s Island* (Apr. 25, 2018), available at [https://www1.nyc.gov/assets/doc/downloads/press-release/DOC\\_Visitor\\_Bus\\_Press\\_Release\\_4.25.18.pdf](https://www1.nyc.gov/assets/doc/downloads/press-release/DOC_Visitor_Bus_Press_Release_4.25.18.pdf).

<sup>98</sup> NYC Department of Correction, *Visit Guide* (2017), available at [https://www1.nyc.gov/assets/doc/downloads/pdf/2017\\_Visit%20Handbook\\_12.22.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/2017_Visit%20Handbook_12.22.pdf);

<sup>99</sup> Anne E. Jbara, *The Price They Pay: Protecting the Mother-Child Relationship Through the Use of Prison Nurseries and Residential Parenting Programs*, 87(4) *IND. L. J.* (2012), available at <https://www.repository.law.indiana.edu/ilj/vol87/iss4/10/>.

about five percent of women in jails nationwide.<sup>100</sup> Most incarcerated women who are mothers are also the primary or sole caretaker for their children.<sup>101</sup>

In an effort to address an expecting or existing mother's childcare needs, the RMSC on Rikers Island is equipped with a 25 bed nursery<sup>102</sup> that provides an area for new mothers to care for their newborn children.<sup>103</sup> Currently, New York is one of only 11 states that permit pregnant, incarcerated women to stay with their newborn children while in custody.<sup>104</sup> State law also permits a child born outside of a custodial environment to be cared for by their mother in the nursery facility if their mother is admitted to the custody of the DOC while the child is under the age of one.<sup>105</sup>

In 2016, the New York City Council passed, and Mayor de Blasio signed into law, Local Law 120 of 2016<sup>106</sup>, which requires that all incarcerated women at Rikers be informed of the nursery option and for DOC to produce an annual report on the use of the nursery,<sup>107</sup> including with regards to information on:

- The reasons any children were denied admission to the nursery;<sup>108</sup>

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<sup>100</sup> Women in Prison Project, *Women in Prison Fact Sheet*, Correctional Association of New York (Apr. 2009), available at [https://www.prisonpolicy.org/scans/Families\\_Fact\\_Sheet\\_2009\\_FINAL.pdf](https://www.prisonpolicy.org/scans/Families_Fact_Sheet_2009_FINAL.pdf).

<sup>101</sup> World Health Organization, *Women's health in prison: urgent need for improvement in gender equity and social justice* (last visited Apr. 21, 2021), available at <https://www.who.int/bulletin/volumes/87/6/09-066928/en/>.

<sup>102</sup> DOC publicly available information, available at <http://www.nyc.gov/html/doc/html/about/facilities-overview.shtml>

<sup>103</sup> Correction Officer's Benevolent Association, Inc., *Rose M. Singer Center* (last visited Apr. 2, 2021), available at <https://www.cobanyc.org/rose-m-singer-center>.

<sup>104</sup> Jie Jenny Zou, *Access Denied: Pregnant inmates struggle to gain entry to prison nursery programs*, THE NEW YORK WORLD (Oct. 20, 2014), available at <http://thenewyorkworld.org/2014/10/20/prison-nursery/>; See also Erin Ostheimer, *Baby Cribs in Prison Cells: Assessing Opinions about Prison*

*Nursery Programs by Humanizing Incarcerated Mothers* (Mar. 2016), available at <https://digitalworks.union.edu/cgi/viewcontent.cgi?article=1193&context=theses> (citing that 9 states, not 11, offer this option); Cheryl Corley, *Programs Help Incarcerated Moms Bond With Their Babies In Prison* (Dec. 6, 2018), available at <https://www.npr.org/2018/12/06/663516573/programs-help-incarcerated-moms-bond-with-their-babies-in-prison>.

<sup>105</sup> *Id.*; Erik Ortiz, *Rikers' prison moms pen lullabies for their newborns behind bars* (Apr. 1, 2013), available at <https://www.nydailynews.com/new-york/rikers-inmate-moms-pen-prison-lullabies-article-1.1304753>.

<sup>106</sup> The Council of the City of New York, Local Law 120 of 2016 (Oct. 18, 2016), available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2460425&GUID=CA5BAD30-1654-449F-9269-3D19C1DAD176&Options=&Search=>.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

- The placement of children born while their mother was in DOC custody if that child was not admitted to the nursery;<sup>109</sup>
- The length of stay in the nursery;<sup>110</sup>
- Programming and services available in the nursery;<sup>111</sup> as well as
- Rates of violence that could occur in the nursery.<sup>112</sup>

The aim behind the legislation<sup>113</sup> was to require DOC to provide reasons for admission or denial to compel DOC to more carefully review and analyze each incarcerated woman’s circumstances<sup>114</sup> and result in the nursery “operating at its greatest capacity.”<sup>115</sup> This Riker’s Island Nursery Report<sup>116</sup> includes data going back to 2016.<sup>117</sup> According to the report, during CY 2020, four applications for the nursery were submitted; two were approved, one was denied, and one was still pending at the time of reporting.<sup>118</sup> Zero children were admitted to the nursery.<sup>119</sup> In CY 2019, the year prior to the COVID-19 pandemic, eight applications were submitted; three were approved

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<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> The Council of the City of New York, Council Member Vanessa Gibson, *Transcript: Oversight - Examining the Unique Issues Facing Women in City Jails* (Dec. 15, 2015), available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2531285&GUID=40DE2718-FCC1-4CF1-B5E6-3E31B15990AF&Options=&Search=>.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> See NYC Department of Correction, *Rikers Island Nursery Report CY2020* (2020), available at [https://www1.nyc.gov/assets/doc/downloads/pdf/Nursery\\_Report\\_CY2020.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Nursery_Report_CY2020.pdf).

<sup>117</sup> NYC Department of Correction, *Rikers Island Nursery Report CY2020* (2020), available at [https://www1.nyc.gov/assets/doc/downloads/pdf/Nursery\\_Report\\_CY2020.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Nursery_Report_CY2020.pdf); See also NYC Department of Correction, *Rikers Island Nursery Report CY2019* (2019), available at [https://www1.nyc.gov/assets/doc/downloads/pdf/Nursery\\_Report\\_CY2019.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Nursery_Report_CY2019.pdf); NYC Department of Correction, *Rikers Island Nursery Report CY2018* (2018), available at [https://www1.nyc.gov/assets/doc/downloads/pdf/Nursery\\_Report\\_CY2018.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Nursery_Report_CY2018.pdf).

<sup>118</sup> NYC Department of Correction, *Rikers Island Nursery Report CY2020* (2020), available at [https://www1.nyc.gov/assets/doc/downloads/pdf/Nursery\\_Report\\_CY2020.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Nursery_Report_CY2020.pdf).

<sup>119</sup> *Id.*

and two were denied.<sup>120</sup> Two children were admitted to the nursery that year.<sup>121</sup> The year prior to that, CY 2018, showed similar results, with eight applications being submitted; four that were approved and four that were denied.<sup>122</sup> One child was admitted to the nursery.<sup>123</sup>

In fact, over the five years that DOC has been publicly reporting this data, the highest number of applications in one year was nine (in 2016),<sup>124</sup> and the highest number of children admitted to the nursery was two (in 2017 and 2019).<sup>125</sup> Research shows that nurseries like the one at RMSC provide an important way for mothers serving time to nurture and maintain a strong bond with their children.<sup>126</sup> In addition to prison nursery programs “providing mothers and babies with the tools necessary to succeed upon leaving prison,”<sup>127</sup> they have also been proven to foster the imperative mother-child attachment bond,<sup>128</sup> “which bears a positive effect on children later in life.”<sup>129</sup>

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<sup>120</sup> NYC Department of Correction, *Rikers Island Nursery Report CY2019* (2019), available at [https://www1.nyc.gov/assets/doc/downloads/pdf/Nursery\\_Report\\_CY2019.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Nursery_Report_CY2019.pdf).

<sup>121</sup> *Id.*

<sup>122</sup> NYC Department of Correction, *Rikers Island Nursery Report CY2018* (2018), available at [https://www1.nyc.gov/assets/doc/downloads/pdf/Nursery\\_Report\\_CY2018.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Nursery_Report_CY2018.pdf).

<sup>123</sup> *Id.*

<sup>124</sup> *See Id.*

<sup>125</sup> *See Id.*

<sup>126</sup> See, e.g. Erik Ortiz, *Rikers’ prison moms pen lullabies for their newborns behind bars* (Apr. 1, 2013), available at <https://www.nydailynews.com/new-york/rikers-inmate-moms-pen-prison-lullabies-article-1.1304753>.

<sup>127</sup> Analisa Johnson, *The Benefits of Prison Nursery Programs: Spreading Awareness to Correctional Administrators Through Informative Conferences and Nursery Program Site Visits* (last visited Apr. 21, 2021), available at <https://www.bu.edu/writingprogram/journal/past-issues/issue-9/johnson/#:~:text=In%20addition%20to%20prison%20nursery,on%20children%20later%20in%20life>.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*; See also Joseph R. Carlson Jr., *Prison Nurseries: A Pathway to Crime-Free Futures*, U.S. DEPARTMENT OF JUSTICE (2009), available at <https://www.ojp.gov/ncjrs/virtual-library/abstracts/prison-nurseries-pathway-crime-free-futures>; Anne E. Jbara, *The Price They Pay: Protecting the Mother-Child Relationship Through the Use of Prison Nurseries and Residential Parenting Programs*, 87(4) IND. L. J. (2012), available at <https://www.repository.law.indiana.edu/ilj/vol187/iss4/10/>.

## VI. Health care

Women in custody have unique health care needs since they are more likely to suffer from substance use disorder, prior trauma and abuse, mental illness, and sexually transmitted infections than incarcerated men.<sup>130</sup>

### A. Medical Care

The Board's health care minimum standards requires that incarcerated persons be provided with health care that is "maintained at a level consistent with legal requirements, accepted professional standards and sound professional judgment and practice."<sup>131</sup> CHS is responsible for providing health and mental health care in the jails, while DOC is responsible for providing security and transportation to these services.<sup>132</sup>

All new intakes are required to undergo a health screening.<sup>133</sup> During the last quarter of 2020, the monthly average wait time for CHS to complete a health screening for a new intake at RMSC was between 7.2 to 8.6 hours.<sup>134</sup> The average wait times at RMSC were higher than almost every other DOC facility during this time period.<sup>135</sup>

According to DOC's most recent report on medical non-production, there were 364 instances of missed medical appointments at RMSC in February 2021.<sup>136</sup> Twenty-six were due to court, 316 were due to refusals by the patient, five were walkouts, three were due to programming

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<sup>130</sup> Sufirin, Carolyn., Kolbi-Molinas, Alexa, & Roth, Rachel. (2015). *Reproductive Justice, Health Disparities And Incarcerated Women in the United States. Perspectives on Sexual and Reproductive Health*, 47(4), 213–219. <https://doi.org/10.1363/47e3115>

<sup>131</sup> 40 RCNY § 3-01(a)(1).

<sup>132</sup> *Access to Health and Mental Health Care (July-December 2017)*. New York City Board of Correction, May 2018, [www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/Access%20to%20Health%20July%20-%20December%20Final%20Draft\\_5\\_7\\_18.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/Access%20to%20Health%20July%20-%20December%20Final%20Draft_5_7_18.pdf)

<sup>133</sup> 40 RCNY § 3-04(b)(1).

<sup>134</sup> *CHS Access Report: October – December 2020*. Correctional Health Services, 15 Jan. 2021, [www1.nyc.gov/assets/boc/downloads/pdf/Reports/chs-access-report-cy20q4.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/chs-access-report-cy20q4.pdf).

<sup>135</sup> *Id.* During the month of December, the average wait time for a health screening for a new admission to RMSC was 7.2 hours; the average wait time in December for new admissions at the Anna M. Kross Center was 7.7 hours. During the same month, the Manhattan Detention Complex had only one new admission who waited 15 hours.

<sup>136</sup> "Medical Non-Production Report - February 2021." Department of Correction, [www1.nyc.gov/assets/doc/downloads/pdf/Medical\\_Non-Production\\_Report-February\\_2021.pdf](http://www1.nyc.gov/assets/doc/downloads/pdf/Medical_Non-Production_Report-February_2021.pdf).

conflicts, and 14 were for “other.” Of the 316 refusals, 294 no longer wanted the service, 15 wanted to go later, and six did not provide a reason. Of the five walkouts, three did not want to wait upon arrival and two waited and then decided to leave.

In April 2018, CHS announced the launch of telehealth services for incarcerated women on Rikers Island. According to CHS, a trip to the hospital for specialty care appointments can take hours and can cause patients to forgo regular programming they receive in jail, leading some female patients to refuse an appointment.<sup>137</sup>

### *B. Prenatal and Postpartum Care*

The Board’s health care minimum standards requires that pregnant incarcerated individuals are provided with “comprehensive counseling, assistance, and medical care consistent with professional standards and legal requirements.”<sup>138</sup> CHS and DOC are required to provide pregnant incarcerated individuals with gynecological and obstetrical care, medical diets for prenatal nutrition, necessary laboratory tests, and special housing when deemed necessary by medical personnel.<sup>139</sup> Pregnant incarcerated individuals are also entitled to receive an abortion in a licensed medical facility within a reasonable timeframe.<sup>140</sup>

CHS is required to take steps to ensure that pregnant incarcerated individuals can give birth “in a safe and appropriately equipped medical facility outside of the correctional facility.”<sup>141</sup> New York state law prohibits the use of restraints (commonly referred to as “shackling”) during the transport of pregnant incarcerated individuals, and within eight weeks after the delivery or

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<sup>137</sup> “Telehealth Service Launched for Women at Rikers Island.” NYC Health + Hospitals, 10 Apr. 2018, [www.nychealthandhospitals.org/pressrelease/telehealth-service-launched-for-women-at-rikers-island/](http://www.nychealthandhospitals.org/pressrelease/telehealth-service-launched-for-women-at-rikers-island/).

<sup>138</sup> 40 RCNY § 3-06(e)(1).

<sup>139</sup> 40 RCNY § 3-06(e)(2).

<sup>140</sup> 40 RCNY § 3-06(e)(3).

<sup>141</sup> 40 RCNY § 3-06(e)(4).

pregnancy outcome, except under extraordinary circumstances.<sup>142</sup> Shackling is not only inhumane, but also “interfere[s] with the ability of health care providers to safely practice medicine by reducing their ability to assess and evaluate the mother and the fetus and making labor and delivery more difficult. Shackling may put the health of the woman and fetus at risk.”<sup>143</sup> According to state reports, from 2017 to 2019, no women in custody in New York State were shackled while pregnant.<sup>144</sup> There was one instance in 2017 in which a woman was accidentally shackled seven weeks after giving birth.<sup>145</sup>

Newborn children may be housed with their mothers in DOC’s nursery, unless a determination is made that it would not be in the best interest of the child.<sup>146</sup> DOC and CHS must screen nursing mothers, whether they gave birth while in custody or not, for eligibility for the nursery program “with appropriate speed.”<sup>147</sup> Pregnant incarcerated individuals may also be provided with access to adoption or foster care services upon request.<sup>148</sup>

### *C. Mental Health Care*

The Board’s mental health care minimum standards require incarcerated persons to be provided with a mental health screening within 24 hours of intake,<sup>149</sup> 24-hour access to mental health services for emergency psychiatric care,<sup>150</sup> and special housing areas for those with mental

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<sup>142</sup> N.Y. Correct. Law § 611(1).

<sup>143</sup> The American College of Obstetricians and Gynecologists. “Committee Opinion No. 511; Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females.” *Obstetrics & Gynecology*, vol. 118, no. 5, Nov. 2011, pp. 1198–1202., doi:10.1097/aog.0b013e31823b17e3; available at [https://journals.lww.com/greenjournal/Citation/2011/11000/Committee\\_Opinion\\_No\\_\\_511\\_\\_Health\\_Care\\_for.50.aspx](https://journals.lww.com/greenjournal/Citation/2011/11000/Committee_Opinion_No__511__Health_Care_for.50.aspx).

<sup>144</sup> Department of Correction and Community Supervision, Use of Restraints During Transport of Pregnant Incarcerated Individuals 2017-2019, available at [cls-611-use-of-restraints-during-transport-of-pregnant-incarcerated-individuals-report.pdf](#)

<sup>145</sup> *Id.*

<sup>146</sup> N.Y. Correct. Law § 611(2).

<sup>147</sup> 40 RCNY § 3-06(e)(7).

<sup>148</sup> 40 RCNY § 3-06(e)(6).

<sup>149</sup> 40 RCNY § 2-02(b)(1).

<sup>150</sup> 40 RCNY § 2-03(b)(2).

or emotional disorders in need of close supervision.<sup>151</sup> DOC and CHS staff must be trained in the recognition of mental and emotional disorders.<sup>152</sup> DOC also operates an observation aide program that employs trained, carefully selected incarcerated persons to help monitor those who have been identified as potential suicide risks.<sup>153</sup> During the last quarter of 2020, 50 percent of new intakes at RMSC were referred to mental health services upon intake.<sup>154</sup> Ninety-eight percent of referrals were seen within 72 hours.<sup>155</sup>

In 2015, DOC testified that about 70 percent of women in New York City jails experience mental health issues; the most common issues were depression, anxiety, adjustment disorder and personality disorders.<sup>156</sup> According to the daily jail census, that number is likely to be much higher now.<sup>157</sup>

#### *D. Feminine Hygiene Products*

In 2016, the Council passed a law requiring DOC to provide incarcerated women with feminine hygiene products at no cost, as soon as practicable upon request.<sup>158</sup> In 2018, New York State passed a law requiring feminine hygiene products to be provided at no cost in all correctional facilities.<sup>159</sup> However, these items are not readily available; incarcerated individuals must request feminine hygiene products from correction officers to receive them. According to advocates, there have been instances when corrections officers asked invasive, embarrassing questions in response

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<sup>151</sup> 40 RCNY § 2-04(c)(1).

<sup>152</sup> 40 RCNY § 2-02(c).

<sup>153</sup> 40 RCNY § 2-02(d).

<sup>154</sup> CHS Access Report: October – December 2020. Correctional Health Services, 15 Jan. 2021, [www1.nyc.gov/assets/boc/downloads/pdf/Reports/chs-access-report-cy20q4.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/chs-access-report-cy20q4.pdf).

<sup>155</sup> *Id.*

<sup>156</sup> The Council of the City of New York, *Testimony: Oversight - Examining the Unique Issues Facing Women in City Jails* (Dec. 15, 2015), available at <https://legistar.council.nyc.gov/>.

<sup>157</sup> Daily Inmates in Custody. NYC OpenData. [Daily-Inmates-In-Custody](https://data.cityofnewyork.us/Daily-Inmates-In-Custody). On April 22, there were 266 women in DOC custody; 225, or 84 percent, were designated as Brad-H.

<sup>158</sup> Local Law 82 of 2016.

<sup>159</sup> Chap 392/2018.

to a request for feminine hygiene products.<sup>160</sup> This has led some to purchase products from the commissary or ask others to talk to correction officers on their behalf.<sup>161</sup>

## VII. Violence and Use of Force

There has been a steady increase in violence in all DOC facilities in recent years. According to the most recent Preliminary Mayor's Management report, released in January 2021, the rate of violence among people in custody increased by 15 percent and the rate of assaults of staff increased by 23.2 percent from the previous reporting period.<sup>162</sup> Moreover, the growth in the rate of violent incidents among people in custody was 16.3 percent, and the number of slashing and stabbings incidents increased 16 percent, from 106 to 123, between FY 2019 and FY 2020.<sup>163</sup> The Department blames the increase on the growing number of violent individuals in its custody as a result of bail reform and decarceration efforts expedited by COVID-19, which led to the release of individuals deemed low risk.<sup>164</sup> Publicly available information on violence does not differentiate incidents involving women from overall violence statistics, however in a 2015 Council hearing on this topic, the DOC testified that there were no stabbings or slashings involving women.<sup>165</sup>

In July 2019, DOC began using body scanners on people in custody to detect contraband.<sup>166</sup> The Board recommended that DOC implement a policy that would prohibit the use of such

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<sup>160</sup> Greenberg, Zoe. "In Jail, Pads and Tampons as Bargaining Chips." *The New York Times*. 20 Apr. 2017, [www.nytimes.com/2017/04/20/nyregion/pads-tampons-new-york-womens-prisons.html](http://www.nytimes.com/2017/04/20/nyregion/pads-tampons-new-york-womens-prisons.html).

<sup>161</sup> *Id.*

<sup>162</sup> Mayor's Office of Operations, Preliminary Mayor's Management Report: January 2021, available [https://www1.nyc.gov/assets/operations/downloads/pdf/pmmr2021/2021\\_pmmr.pdf](https://www1.nyc.gov/assets/operations/downloads/pdf/pmmr2021/2021_pmmr.pdf)

<sup>163</sup> Mayor's Office of Operations, Mayor's Management Report: September 2020, available [https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2020/2020\\_mmr.pdf](https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2020/2020_mmr.pdf)

<sup>164</sup> *Supra* note 136.

<sup>165</sup> New York City Council Hearing of the Committee on Fire and Criminal Justice Services, December 15, 2015, hearing transcript at p. 90, available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2531088&GUID=2A489E28-531B-402F-87CE-9300CFFA172F>

<sup>166</sup> New York City Board of Correction, Body Scanners and Separation Status in New York City Jails (Jan. 2020), available [www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2020.01.13%20FINAL%20Separation%20Status%20Body%20Scanner%20Public%20Report\\_to%20PDF.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2020.01.13%20FINAL%20Separation%20Status%20Body%20Scanner%20Public%20Report_to%20PDF.pdf).

scanners on women, as there was no practical way to rule out pregnancy before each scan.<sup>167</sup> DOC agreed to exclude women in their body scanning policy.<sup>168</sup>

In addition to the increase in violence, there has also been an increase in the use of force generally (“UOF”) in DOC facilities. According to the 10<sup>th</sup> *Nunez* Report, the UOF rate remains significantly high since the Consent Judgement took effect.<sup>169</sup> The UOF rate has continued to increase even though the jail population has declined significantly since the Consent Judgement. However, despite the upward trends, the UOF rate varies significantly by facilities. RNDC, the young adult facility, and GRVC, a special management unit, have some of the highest UOF rates compared to RMSC.<sup>170</sup> While UOF rates at RMSC are lower than most other jails, in the past five years, the jail has seen no improvement and, between 2018 and 2019, saw an increase in the rate of UOF.<sup>171</sup>

## **VIII. Restrictive Housing**

Any person in DOC custody may be placed in punitive segregation when found guilty of certain offenses.<sup>172</sup> Punitive segregation is a restrictive housing area where people are locked in their cells for up to 20 hours a day.<sup>173</sup> According to DOC public reporting required by local law, punitive segregation for women is in one of two units, a restrictive housing unit (“RHU”) and a

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<sup>167</sup> *Id.*

<sup>168</sup> New York City Board of Correction, Department of Correction Response to the Board of Correction Report of Body Scanners and Separation Status in NYC Jails (Feb. 2020), available [www1.nyc.gov/assets/boc/downloads/pdf/Reports/final\\_doc\\_response\\_to\\_boc\\_findings\\_2\\_7\\_2020.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/final_doc_response_to_boc_findings_2_7_2020.pdf).

<sup>169</sup> Steve J. Martin et. al, Tenth Report of the Nunez Independent Monitor (Oct. 2020), p. 25, available at <https://www1.nyc.gov/assets/doc/downloads/pdf/10thMonitorsReport102320AsFiled.pdf>.

<sup>170</sup> *Id.*, 21.

<sup>171</sup> *Supra* note 142, p. 21,

<sup>172</sup> 40 R.C.N.Y. § 1-17

<sup>173</sup> Testimony of DOC Commissioner Cynthia Brann, Committee on Criminal Justice Hearing on Ending Solitary Confinement in New York City Jails, New York City Council, December 11, 2021. Transcript available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4700625&GUID=25B9C5BC-8F1C-4959-B91E-392E52454C5C&Options=&Search=>.

clinical alternative to punitive segregation unit (“CAPS”).<sup>174</sup> According to the Board of Correction, RHU and “traditional punitive segregation” in RMSC are in the same housing area, designated the “Special Central Punitive Segregation Unit for Women.”<sup>175</sup>

#### A. RHU

RHU was established as an incentive-based approach to behavior modification for incarcerated persons with non-serious mental illness diagnoses.<sup>176</sup> According to the Board of Correction, programs offered to women in the RHU and women in “traditional PSEG” at RMSC are indistinguishable.<sup>177</sup> All the women are offered the same number of hours outside their cells and the same services.<sup>178</sup> Department policy indicates that women are to receive up to seven out-of-cell hours either at recreation, art therapy, group therapy, clinic, showers, court, or in the dayroom.<sup>179</sup> When women are seated at tables for art and group therapy or to watch TV, they are handcuffed to the table by one wrist attached to a chain.<sup>180</sup>

In DOC’s most recent report on punitive segregation, between January 2021 and March 2021, 17 women in RMSC were placed in RHU for at least one day.<sup>181</sup> From October to December

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<sup>174</sup> “Punitive Segregation Quarterly Report: Fiscal Year 2021, January - March.” NYC Department of Correction, [www1.nyc.gov/assets/doc/downloads/pdf/LL90%20FY21Q3.pdf](http://www1.nyc.gov/assets/doc/downloads/pdf/LL90%20FY21Q3.pdf).

<sup>175</sup> *The Death of Layleen Xtravaganza Cubilette-Polanco*. New York City Board of Correction, 23 June 2020, [www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2020.06\\_Polanco/Final\\_Polanco\\_Public\\_Report\\_1.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2020.06_Polanco/Final_Polanco_Public_Report_1.pdf).

<sup>176</sup> NYC Department of Correction Closes Mental Health Assessment Unit for Infracted Inmates (January 6, 2014), New York City Department of Correction, available at <http://www.nyc.gov/html/doc/downloads/pdf/press-releases/jan6-2014.pdf>.

<sup>177</sup> *The Death of Layleen Xtravaganza Cubilette-Polanco*. New York City Board of Correction, 23 June 2020, [www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2020.06\\_Polanco/Final\\_Polanco\\_Public\\_Report\\_1.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2020.06_Polanco/Final_Polanco_Public_Report_1.pdf).

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> “Punitive Segregation Quarterly Report: Fiscal Year 2021, January - March.” NYC Department of Correction, [www1.nyc.gov/assets/doc/downloads/pdf/LL90%20FY21Q3.pdf](http://www1.nyc.gov/assets/doc/downloads/pdf/LL90%20FY21Q3.pdf).

2020, 19 women in RMSC were placed in RHU for at least one day.<sup>182</sup> From July to September 2020, 4 women in RMSC were placed in RHU.<sup>183</sup> From April to June 2020, 13 women in RMSC were placed in RHU.<sup>184</sup>

On June 7, 2019, Layleen Xtravaganza Cubilette-Polanco died in a cell in the RHU of RMSC.<sup>185</sup> She was a 27-year-old Afro-Latinx transgender woman.<sup>186</sup> According to media reports, Ms. Polanco had suffered an epileptic seizure and DOC staff failed to check on her every 15 minutes, as required, and she had been ignored for periods of 35, 41, and 57 minutes during her last hours.<sup>187</sup> On May 24, 2019, a CHS psychiatrist refused to authorize Ms. Polanco to be placed in RHU due to her history of seizures.<sup>188</sup> However, on May 29<sup>th</sup>, a CHS mental health clinician authorized the placement, pending medical clearance<sup>189</sup> and on May 30<sup>th</sup>, a CHS medical doctor cleared the placement.<sup>190</sup>

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<sup>182</sup> “Punitive Segregation Quarterly Report: Fiscal Year 2021, October - December.” NYC Department of Correction, [https://www1.nyc.gov/assets/doc/downloads/pdf/FY2021\\_2nd\\_Quarter.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/FY2021_2nd_Quarter.pdf).

<sup>183</sup> “Punitive Segregation Quarterly Report: Fiscal Year 2021, July - September.” NYC Department of Correction, [https://www1.nyc.gov/assets/doc/downloads/pdf/FY2021\\_1st\\_Quarter.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/FY2021_1st_Quarter.pdf).

<sup>184</sup> “Punitive Segregation Quarterly Report: Fiscal Year 2020, April - June.” NYC Department of Correction, <https://www1.nyc.gov/assets/doc/downloads/pdf/LL90%20FY20%20Q4.pdf>.

<sup>185</sup> *The Death of Layleen Xtravaganza Cubilette-Polanco*. New York City Board of Correction, 23 June 2020, [www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2020.06\\_Polanco/Final\\_Polanco\\_Public\\_Report\\_1.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2020.06_Polanco/Final_Polanco_Public_Report_1.pdf).

<sup>186</sup> *Id.*

<sup>187</sup> Ransom, Jan, and Ed Shanahan. “17 Rikers Guards Will Be Disciplined in Death of Transgender Woman.” *The New York Times*, 26 June 2020, [www.nytimes.com/2020/06/26/nyregion/layleen-polanco-rikers-transgender-death.html?action=click&module=RelatedLinks&pgtype=Article](http://www.nytimes.com/2020/06/26/nyregion/layleen-polanco-rikers-transgender-death.html?action=click&module=RelatedLinks&pgtype=Article).

<sup>188</sup> *The Death of Layleen Xtravaganza Cubilette-Polanco*. New York City Board of Correction, 23 June 2020, [www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2020.06\\_Polanco/Final\\_Polanco\\_Public\\_Report\\_1.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2020.06_Polanco/Final_Polanco_Public_Report_1.pdf).

<sup>189</sup> *Id.* at 6.

<sup>190</sup> *Id.* at 6-7.

## B. CAPS

CAPS provides a hospital-style clinical-driven treatment-focused environment<sup>191</sup> and is not punitive.<sup>192</sup> Individuals placed in CAPS are not confined to their cells.<sup>193</sup> Out-of-cell time is based on clinical determination of the individual's ability to positively interact with peers and staff.<sup>194</sup> Clinical staff is available at all times during the day and evening and work together with uniformed staff to respond to an incarcerated individual's needs.<sup>195</sup> Clinical staff also engage incarcerated individuals in individual and group therapy, as well as supervised activities.<sup>196</sup> Individuals placed in CAPS are returned to the general population or similar units when they have "successfully demonstrated stability and an ability to maintain good behavior."<sup>197</sup> Due to the individualized nature of CAPS, an individual's length of stay in CAPS varies based on treatment goals and behavior.<sup>198</sup>

In DOC's most recent report on punitive segregation, between January 2021 and March 2021, 15 women in RMSC were placed in CAPS for at least one day.<sup>199</sup> From October to December 2020, 45 women in RMSC were placed in CAPS for at least one day.<sup>200</sup> From July to September

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<sup>191</sup> NYC Council Hearing, Examination of Violence and the Provision of Mental Health and Medical Services in New York City Jails, 6/12/14, hearing transcript p 22, available at <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=589576&GUID=FB085AFF-A594-437F-BEB3-085CE04D6AB1&Options=info&Search=>

<sup>192</sup> *Id.* at 22.

<sup>193</sup> *Id.* at 22-23.

<sup>194</sup> Report to the Board of Correction: Efforts to Reform Punitive Segregation and Create Therapeutic Alternatives to Address Persistent Violence by Individuals in NYC Department of Correction Custody (June 27, 2017), New York City Department of Correction, p 4, available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/July-11-2017/DOC-Report-on-Punitive-Segregation-Reforms-6-27-17.pdf>

<sup>195</sup> "Clinical Alternatives to Incarceration / Restrictive Housing Unit (RHU)." Department of Correction, [www1.nyc.gov/site/doc/media/caps-rhu.page](http://www1.nyc.gov/site/doc/media/caps-rhu.page).

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> "Punitive Segregation Quarterly Report: Fiscal Year 2021, January - March." NYC Department of Correction, [www1.nyc.gov/assets/doc/downloads/pdf/LL90%20FY21Q3.pdf](http://www1.nyc.gov/assets/doc/downloads/pdf/LL90%20FY21Q3.pdf).

<sup>200</sup> "Punitive Segregation Quarterly Report: Fiscal Year 2021, October - December." NYC Department of Correction, [https://www1.nyc.gov/assets/doc/downloads/pdf/FY2021\\_2nd\\_Quarter.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/FY2021_2nd_Quarter.pdf).

2020, 25 women in RMSC were placed in CAPS.<sup>201</sup> From April to June 2020, 26 women in RMSC were placed in CAPS.<sup>202</sup>

## **IX. Programming**

Under New York City law, DOC is required to offer people in custody at least five hours of programming per day except if the person is housed in punitive segregation or ineligible or unavailable for programming, or where providing programming or education creates a safety risk.<sup>203</sup> Research shows that evidence-based programming that addresses criminogenic and behavioral health needs of people in custody have improve their behavior and effectively reduced recidivism.<sup>204</sup> Gender-specific programming – treatment and support services designed to meet the unique needs of women in custody – is an essential correctional strategy to prepare women and girls in custody for life outside the correctional setting.<sup>205</sup> Such programming addresses the life factors of incarcerated women, including poverty and lack of skills, single motherhood, sexual and physical abuse, substance abuse problems, and psychiatric disorders.<sup>206</sup>

In the CY 2019 Annual Programs Report, DOC reported a total of 31 programs/program providers that offered vocational skills trainings with certification, counseling, and evidence-based programs through social service providers that addressed healthy relationships, relapse prevention, family reunification, and financial literacy.<sup>207</sup> Of the 31 reported programs/program providers, four

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<sup>201</sup> “Punitive Segregation Quarterly Report: Fiscal Year 2021, July - September.” NYC Department of Correction, [https://www1.nyc.gov/assets/doc/downloads/pdf/FY2021\\_1st\\_Quarter.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/FY2021_1st_Quarter.pdf).

<sup>202</sup> “Punitive Segregation Quarterly Report: Fiscal Year 2020, April - June.” NYC Department of Correction, <https://www1.nyc.gov/assets/doc/downloads/pdf/LL90%20FY20%20Q4.pdf>.

<sup>203</sup> New York City Administrative Code § 9-110.

<sup>204</sup> Grant Duwe, The Use and Impact of Correction Programming for Inmates on Pre- and Post-Release Outcomes (June 2017), *National Institute of Justice*, available at <https://www.ncjrs.gov/pdffiles1/nij/250476.pdf>

<sup>205</sup> See, Barbara Bloom and Stephanie Covington, Gender-Specific Programming for Female Offenders: What is it and Why is it Important, *The Center for Gender and Justice*, available at [Gender-Specific Programming for Female Offenders What is it and Why is it Important](#)

<sup>206</sup> *Id.*

<sup>207</sup> New York City Department of Correction, Local Law 112 of 2016 Annual Program Report (April 2020), available at [DOC CY2019 Annual Programs Report.pdf](#)

were targeted to women in custody.<sup>208</sup> Two were vocational programs, *Fresh Start Culinary Arts* and *SMART/Greenhope Culinary Arts*, which offered 10 weeks of training in culinary arts skills.<sup>209</sup> One was a counseling program, *Girl Vow*, which offered female empowerment and mentoring group sessions,<sup>210</sup> and another was a *SMART/Greenhouse*, an evidence-based initiative focused on vocational training, reentry services, and family supports.<sup>211</sup> In the CY 2020 Annual Programs Report, of a total 27 programs/program providers, only two were targeted to incarcerated women and girls, offering 2.5 hours of programming, five days per week: *Girl Vow* and *SMART/Greenhope*.<sup>212</sup> Both programs/program providers had in total 1,055 participants in CY 2020.<sup>213</sup>

#### *COVID-19 Impact on Programming*

In March 2020, DOC suspended in-person programming to mitigate the spread of COVID-19 in City jails.<sup>214</sup> According to the CY 2020 Annual Program Report, DOC “moved quickly to procure and provide books, notebooks, pencils, Gameboys, and tablets to help reduce idleness and set up dedicated hotlines so that people in custody could stay directly connected to program staff and community providers.”<sup>215</sup> DOC also “prepared, delivered, followed up on, and retrieved self-guided programming packets” to support the programmatic needs of people in custody in the early stages of the pandemic.<sup>216</sup> The report provided no information on whether DOC is evaluating the

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<sup>208</sup> Id.

<sup>209</sup> Id.

<sup>210</sup> Id.

<sup>211</sup> Id.

<sup>212</sup> New York City Department of Correction, Annual Program Report Calendar Year 2020, available at [Programs Report-CY20.pdf](#)

<sup>213</sup> Id.

<sup>214</sup> Id.

<sup>215</sup> Id.

<sup>216</sup> Supra note 143.

delivery of programming through self-guided packets and tablet and the impact it has had on engagement and participation among people in custody.

## **X. Trauma-Informed Care Training and Practices**

Women in jail often suffer from trauma related to sexual and physical abuse. Trauma-informed care, which takes stock of the nature of trauma and promotes environments conducive to healing and recovery, is a critical component to rehabilitation.<sup>217</sup> When trauma-informed practices are not incorporated into services and programs, there is a strong possibility of triggering or exacerbating trauma symptoms and re-traumatizing a person.<sup>218</sup> Pursuant to Local Law 123 of 2016, DOC must report on its trauma-informed care practices and training.<sup>219</sup> In the CY 2019 Annual Report, DOC reported training 384 recruits in 2019 in trauma informed care and cultural competency.<sup>220</sup> DOC also reported training a total of 8,792 uniformed and non-uniformed staff and 1,188 incarcerated people in mental health first aide training since 2014 and 2016, respectively.<sup>221</sup> The mental health first aid training provides information on how spot signs of distress among incarcerated people who may have mental illness.<sup>222</sup> Additionally, the Department reported training 9,114 staff in safe crisis management, “a common framework to prevent, support and/or manage disruptive and aggressive behaviors,” since 2014.<sup>223</sup> DOC purports that it partners with program providers to offer trauma-informed programming through group counseling sessions and evidence-based curricula, including Seeking Safety, Beyond Trauma, and SELF.<sup>224</sup> Considering incarcerated women are more likely to have experienced past trauma and be in need

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<sup>217</sup> New York City Department of correction, Annual Report on Use of Trauma Informed Care (April 2020), available at [DOC CY2019 Trauma Informed Care Report.pdf](#)

<sup>218</sup> Institute on Trauma and Trauma-Informed Care, What is Trauma-Informed Care?, University at Buffalo Center for Social Research, available at [what-is-trauma-informed-care](#).

<sup>219</sup> Supra note 148.

<sup>220</sup> Id.

<sup>221</sup> Id.

<sup>222</sup> Id.

<sup>223</sup> Id.

<sup>224</sup> Id.

of mental health services, it is critical that DOC staff is trained in trauma-informed care, mental health first aid, and safe crisis management.

## **XI. Issues and Concerns**

At today's hearing, the Committees will explore concerns related to the DOC and its female population, the role the Department plays in providing and ensuring adequate care for incarcerated women, as well as how the COVID-19 pandemic has affected the DOC's policies regarding incarcerated women. In doing so, the Committees will investigate how the Department is addressing unique needs for incarcerated women related to physical and mental health, visitation, childcare, and programming. Furthermore, the Committees seek to find out how the Department has been handling reported acts of sexual victimization and how they plan to better protect the female population from these acts. The Committees would also like to explore how rates of violence and the use of force vary among the female population in DOC facilities. Lastly, the Committees would like to examine what types of steps have been taken by the Department to expand its substance use disorder treatment programs and how these programs address the unique needs of incarcerated women. The Committees look forward to hearing testimony regarding the legislation being considered.

## **XII. Legislation**

A brief summary of the bills being heard at this hearing is provided below.

Introduction No. 1209 would permit incarcerated individuals in New York City who give birth while in DOC custody to utilize doula and midwife care or services in the delivery room. Where permitting a doula or midwife is not possible because it would substantially impact the safety or security of the individual, the bill would require DOC to provide an explanation. This law would take effect immediately upon enactment.

Introduction No. 1491 would require DOC to develop a comprehensive training program for investigations of sexual crimes. DOC investigators would be required to complete the training, and the Department would be required to make annual reports on the training program, including its components, the number of investigators who participated in the training, and the experts consulted in developing the training. This law would take effect 180 days after it becomes law.

Introduction No. 1646 would require DOC to track all information regarding sexual abuse and harassment cases in an electronic case management system. This law would take effect immediately upon enactment.



Int. No. 1209

By Council Members Rosenthal, Ampry-Samuel, Cornegy, Ayala and Yeger

A Local Law to amend the administrative code of the city of New York, in relation to permitting pregnant incarcerated individuals in department of correction custody to utilize doula and midwife services in the delivery room

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 9 of the administrative code of the city of New York is amended by adding a new section 9-156 to read as follows:

§ 9-156 Doula and Midwife Access in Delivery Rooms. a. Definitions. For purposes of this section, the following terms have the following meanings:

Doula. The term “doula” means a trained person who provides continuous physical, emotional, and informational support to a pregnant person and the family before, during or shortly after childbirth, for the purpose of assisting a pregnant person through the birth experience; or a trained person who supports the family of a newborn during the first days and weeks after childbirth, providing evidence-based information, practical help, and advice to the family on newborn care, self-care, and nurturing of the new family unit.

Midwife. The term “midwife” means means an individual who is licensed or certified to practice midwifery in New York state.

b. All pregnant incarcerated individuals, in labor and in the custody of the department, upon request, shall be permitted to utilize doula or midwife services and care in the delivery room, unless so permitting would substantially impact the safety or security of such individual, in which case such doula or midwife service and care shall be permitted at the point such safety or security risk has abated. The department shall submit to the speaker of the council on or before August 1, 2019, and annually thereafter, a report in a machine-readable format providing an explanation for



cases where the department has determined that it is not possible or practicable to permit  
doula or midwife services and care in the delivery room.

§ 2. This local law takes effect immediately.

RQ / BM  
LS # 7811; 5:35pm  
10/26/2018 12:30 p.m.



By Council Members Rosenthal, Brannan, Chin, Lander and Yeger

A Local Law to amend the administrative code of the city of New York, in relation to requiring the commissioner of correction to develop a comprehensive training program for investigation of sexual crimes

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 9 of the administrative code of the city of New York is amended by adding a new section 9-157 to read as follows:

§ 9-157 Sexual crimes investigation training. a. Definitions. For the purposes of this section, the term “sexual crimes” means any offense specified in article 130 of the penal law.

b. Sexual crimes investigation training program. The commissioner, after considering information from outside experts, shall develop and implement a victim-centered sexual crimes investigation training program designed to develop skills related to the investigation of sexual crimes and the specific needs of victims of sexual crimes. The curriculum shall include nationally recognized best practices and factors contributing to the complexity of sexual crimes investigations, including the depth of victimization, the negative social consequences for victims of sexual crimes, the trauma and neurobiological damage inflicted by sexual crimes, the complexity of victim management, the falsity or partially truthful disclosure of complaints, the large unreported rate of sexual crimes and any other training deemed relevant to sexual crimes cases by the commissioner. Such program shall include the following training components: the Forensic Experiential Trauma Interview method, specialized investigative training for sexual crimes cases in confinement settings, Sexual Assault Forensic Examiner training, victim advocate based training and any other training courses currently offered by the department relating to the investigation of sexual crimes and any other training deemed relevant to sexual assault cases by



the commissioner, except that the commissioner may eliminate a training component or replace a training component with an alternative component in order to provide comprehensive victim-centered training. Such program shall include a proficiency examination or demonstration for each training component and shall be of a length that the commissioner determines is sufficient to allow investigators to develop proficiency in utilizing such skills.

c. Training requirement. All newly assigned department investigators shall complete the sexual crimes investigation training program defined in subdivision b of this section and shall be required to demonstrate proficiency in subject matters covered by such program before engaging with victims of sexual crimes; however, such investigators may engage with victims before completing such program if such engagement is under the supervision of an experienced investigator or supervisor, or in circumstances where no experienced investigator or supervisor is available. Any department employees assigned as investigators as of the effective date of the local law that added this section must demonstrate proficiency in subject matters covered by such program within one year of such date, and any department employees assigned as investigators after such effective date must demonstrate such proficiency within one year of assignment.

d. Training report. No later than January 30, 2020, and every January 30 thereafter, the commissioner shall post on the department's website a report setting forth the training components of the sexual crimes investigation training program defined in subdivision b of this section, including the instructors, purpose, length and format of each training component, the specific reasons for eliminating or replacing any training component, and the number of department investigators during the previous calendar year that: (i) participated in such program, (ii) failed to demonstrate proficiency required pursuant to subdivision c of this section on their first attempt, disaggregated by subject matter, and (iii) successfully demonstrated proficiency on all subject



matters required pursuant to subdivision c of this section. Such report shall also include any experts consulted pursuant to subdivision b of this section in developing such training.

§ 2. This local law takes effect 180 days after it becomes law, except that the commissioner of correction shall take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

NAB  
LS #8240  
3/12/19



Int. No. 1646

By Council Members Rosenthal, Louis and Yeger

A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of correction to use an electronic case management system to track investigations of sexual abuse

Be it enacted by the Council as follows:

Section 1. Section 9-156 of the administrative code of the city of New York, as added by local law number 21 for the year 2019, is amended by adding a new subdivision i to read as follows:

i. The department shall collect, manage, and store all information required pursuant to this section electronically.

§ 2. This local law takes effect immediately.

AS  
LS 8239  
5/23/19

