

Statement
to the
New York City Council
Committee on Fire and Criminal Justice Services
Elizabeth Crowley, Chairperson
by
Dina Simon, Acting First Deputy Commissioner
New York City Department of Correction
December 15, 2015

Examining the Unique Issues Facing Women in City Jails

Good afternoon, Chairperson Crowley and members of the Committee on Fire and Criminal Justice Services. I am Dina Simon, Acting First Deputy Commissioner of the New York City Department of Correction. Thank you for the opportunity to testify today regarding the unique issues facing women in city jails. This is an important topic and we appreciate your attention to it.

Since Commissioner Ponte came to our Department in 2014, he has emphasized that populations must be managed according to their unique needs. This philosophy can be seen in the changes to managing the adolescent population, the young adult population, the seriously mentally ill population, and we are applying it to the female population, as well.

Information about the population

In order to frame the unique needs facing women in city jails, we would like to provide some background on this population.

Women make up about 10% of admissions into DOC custody, but only 7% of the average daily population, which reflects their shorter lengths of stay as compared to men. The average length of stay for women is 39 days; the average length of stay for men is 59 days. Half of all females admitted to our custody are discharged in a week or less. About 60% of admitted women are released in less than two weeks and about 75% are released in less than a month. Of the 6,604 female inmate admissions in fiscal year 2015, fewer than 1,100 were in custody for three months or longer.

Women spend less time in custody because, as a group, they are admitted to custody for less serious crimes than men. For example,

- 35% of women are in custody on a top charge of a violent offense vs. 44% of men
- 23% of women are in custody on a top charge of a drug offense vs. 17% of men
- 13% of women are in custody on a top charge of a property crime vs. 6% of men

As with the male population, most of the women in custody are detainees whose cases have yet to be resolved. This means their lengths of stay are uncertain, as they can either be bailed out or released by the court at any time.

All of the females in DOC custody are housed in the Rose M. Singer Center, or RMSC, on Rikers Island.

Challenges Facing Women in DOC Custody

DOC recognizes that any gender responsive programming and strategies must respond to the significant needs that women in our custody have and the challenges they face. About 70% of the women in our care are known to mental health. The most common issues our women face are depression, anxiety, adjustment disorder, and personality disorders. Additionally, a significant number of women admitted to custody test positive for drugs. If mental health and substance abuse issues are not resolved, they are likely to seriously impact on a woman's successful reentry to the community.

Another significant obstacle to reentry is the lack of support received by many women in custody. Female inmates are visited less frequently than male inmates. A few issues contribute to this discrepancy. First, drug addiction and mental illness can sever ties with family and friends. This is true for men and women (men who suffer from drug addiction or mental illness are also visited less frequently), but these issues affect a higher proportion of women. It is also possible that female inmates get fewer visitors because the social stigma of incarceration is greater for women. Whatever the cause, this lack of support is something that must be considered when we are providing programming and preparing women for discharge back to the community.

Programs

The Commissioner has placed an emphasis on increasing programming for all inmates in custody. We have increased programming for adolescents and are doing so for young adults. We are also working to provide five hours of daily programming for the adult population.

The Department currently offers a variety of programs to address women's unique needs in the areas of reentry, employment and substance use needs. We are constantly looking to add to this catalogue in order to more holistically address the varied and changing needs of our population.

A major program component for women is currently provided through our Individualized Correction Achievement Network, or I-CAN. The program focuses on individuals who are at moderate to high risk of recidivism and partners with the Osborne Association and Fortune Society to provide the tools and support needed to ensure a successful reentry to the community along with a variety of program offerings such as relapse prevention, anger management, parenting workshops, work readiness, and cognitive behavioral therapy. The I-CAN programming uses Seeking Safety, an evidence-based, trauma-informed therapy proven effective for women with substance abuse and mental illness. Upon release, I-CAN participants receive assistance with employment, housing and substance use referrals. Earlier this year, the program was funded for expansion, enabling us to increase the number of individuals we serve from 2,270 to 6,400.

A range of other programs address women's educational and vocational needs. All 16-17 year olds attend school at the East River Academy. The Department of Education's Office of Continuing Adult Education offers GED programming for adults. DOC's Workforce Development Unit offers work readiness programming that enables participants to create resumes, prepare cover letters, and practice interviewing. The Manhattan College allows women who already have a high school diploma or GED the opportunity to earn three credits towards a college degree. The Horticultural Society of New York operates the Greenhouse Project, which includes classroom instruction followed by hands-on experience that includes designing, installing, and maintaining the multi-use gardens. Upon release, participants can join an internship program. Single Stop,

available through a partnership with the Center for Urban and Community Services, assists city-sentenced women who are 18 or older with public benefits, eviction prevention, and other civil legal matters including, rap sheet error correction.

Several other programs focus on substance use, the impact of violence, and creative arts. Substance use treatment programming is provided through A Road Not Taken, which uses cognitive behavioral therapy to provide individual and group counseling. Steps to End Community Violence offers workshops that promote healing and social change, and provides assistance with custody issues including counseling, home visits and foster care services. A number of other providers offer leisure time activities including creative writing groups, drama classes offered by Stella Adler Studio, Zumba classes, and yoga classes. The Ministerial Services staff and Volunteer groups offer religious services and prayer groups and respond to women requesting assistance.

As I mentioned, the Department is working to expand program offerings so that all adults in the system receive five hours of programming per day. As part of our efforts to meet this goal, the Department has identified women-specific programming as an area for expansion. Program staff are looking for providers who may be able to address the needs of incarcerated women, since their pathways to incarceration and needs while incarcerated are often different than men's. We have identified a number of vendors who have experience with reentry services and we are assessing their ability to provide the programming requested. Additionally, the agency is hiring more counseling and reentry staff, who will be trained on the unique needs of incarcerated women.

In many cases, the best way for us to help women, both to not be readmitted to our custody and to improve their lives, is to securely connect them with the assistance, services, educational, and job training resources that they need to be successful once discharged from our custody. To get a better sense of what those needs are and what programs would be most helpful for the women in our custody, this past summer program staff surveyed more than 100 women, representing a cross section of the population. The survey focused on what the women would like to be doing with their time in custody as well as their reentry concerns and discharge planning needs. In terms of idleness reduction, an overwhelming majority of women were interested in exercise classes, domestic violence awareness classes, opportunities to be creative, and ways to deal with stress. For discharge planning, popular areas of interest include help finding affordable housing, domestic violence advocacy, assistance in regaining custody of their children, classes about strengthening parenting skills and interpersonal relationships, and classes about managing feelings and emotions. Interest in several areas of vocational training and educational services ranked high on the list among most of the population, particularly related to high school equivalency classes and general classes to improve reading and writing. These survey results are helping program staff create new programs and expand or modify current ones.

Nursery

RMSC has a nursery where a mother can live with her child until that child is a year old. To be housed in the nursery, a mother must apply and be accepted. The assessment is based on criteria including criminal history, behavior while in custody, and ACS history. Pregnant women may apply to keep their babies after they are born, and women who gave birth prior to entering DOC custody may also apply to have their infants brought in to live with them.

The nursery census has been very low in recent years, so we have reexamined our nursery admission standards while actively encouraging expectant mothers to apply. That being said, the safety of all of the children in the nursery must be the top priority, so mothers who might pose a safety risk are not admitted. Use has increased recently; there are four mothers and four babies in the nursery today.

In the nursery, the mothers are with their children all day. The mother can take the baby to visits and some programs. If a mother needs to go to court or attend a program where she cannot take her infant, another inmate who is a trained caretaker serves as the babysitter. A full-time nurse works with the mothers and infants in the unit.

Regarding the proposed Introduction 899, the Department can provide the Council with information about the nursery, but we do not think it is necessary to formalize the reporting of these few data in a reporting bill.

PREA

The Department has been working to come into compliance with PREA requirements. Six areas of the Commissioner's 14 Point Antiviolence Reform Agenda are PREA-related. These are:

1. Redefining the investigations division to ensure PREA training and integrity
2. Designing a recruitment, hiring, and staff selection plan in accordance with PREA
3. Expanding targeted training to add PREA training and specialized investigations and medical/mental health staff training
4. Improving leadership and culture to address a code of silence and to monitor retaliation
5. Creating an integrated classification and housing strategy that takes PREA's screening requirements and housing decision-making into account
6. Redefining first line incident response and ensuring all staff know and perform all PREA required response and reporting duties

In addition to these overarching initiatives, specific PREA compliance action plans are underway. A PREA Implementation workgroup, consisting of DOC and partner agency staff, has been created to initiate comprehensive efforts towards achieving PREA compliance at all facilities.

In July, the Commissioner and the Chief of Department issued a teletype informing all DOC about the PREA initiative, including the law and its application. Staff were told to expect changes in policy, procedure, and training and were advised that PREA would be rolling out agency-wide in the coming months. Also in July, the Commissioner and the Chief announced, via teletype, a new requirement that all supervisory staff (captains and above) conduct and document unannounced rounds at various times to all parts of all facilities where inmates have access, in order to identify and/or deter staff sexual abuse and sexual harassment. These announcements were a clear statement of DOC's full commitment to achieving PREA compliance.

In November, the Department held a PREA leadership symposium for all uniformed leadership in the agency, to introduce them to the standards and requirements under federal law. A new formal PREA policy is being created now.

The Department expects to have complete camera coverage of inmate areas in RMSC by the end of calendar year 2016.

DOC has also entered into an MOU with Safe Horizons, which provides a rape crisis hotline and in-person victim advocates for any victim needing or requesting emotional support services.

Additionally, the Department has established and staffed a hotline for private reporting (to non-uniformed staff) of all allegations of sexual abuse, harassment, and retaliation, consistent with PREA standards. Information about this hotline is posted throughout the DOC facilities.

Importantly, earlier this year, DOC partnered with The Moss Group. The Moss Group is a leading expert in the implementation of PREA. They provide technical assistance, operational assessments, and staff training. The Moss Group has been assessing our system and helping us create a plan to come into compliance. Our partnership with the Moss Group will continue for the next two years.

Conclusion

As I have discussed, the Department is committed to providing effective gender responsive programs and strategies and we are in the process of identifying ways to build on our current approach to supporting women in our custody. The Department is an active participant in the Young Women's Initiative, led by City Council, and we are committed to working with YWI partners to identify ways in which we can better support young women in NYC, including those in DOC custody. Also, as part of our overall initiative on PREA, the Department will be implementing gender-responsive training sessions for uniformed and non-uniformed staff in the facility. Finally, we are in the early stages of a process to create a gender-specific version of the Inmate Handbook, which will be given to all women upon admission to custody.

Thank you again for the opportunity to testify today. My colleagues and I will now be happy to answer any questions that you have.

FOR THE RECORD

**Testimony before the City Council Committees
on Fire and Criminal Justice, and Women's Issues
Re: Women on Rikers Island**

Tanya Krupat, Program Director
New York Initiative for Children of Incarcerated Parents
The Osborne Association

December 15, 2015

Thank you for the opportunity to speak with you today. My name is Tanya Krupat and I am the Program Director of the New York Initiative for Children of Incarcerated Parents at the Osborne Association. The New York Initiative was launched in 2006 and is a statewide policy reform effort to improve the lives of New York's children who have experienced the arrest and/or incarceration of a parent.

I and many others across the City have spent the last 9 months testifying and meeting to oppose the changes to visiting that the Department of Correction, with the support of the Mayor, were pursuing; changes that would take NYC backwards, and would have set unprecedented visit restrictions making it even harder than it already is to visit Rikers. Tomorrow, the Board of Correction will vote on an amended set of changes that – thankfully- are much less restrictive; their positive response to months of outcry from communities and faith-based leaders conveys hope that public opinion and the voices of those directly affected and those who work with them, matter and can actually influence decision-making. With this hope in mind, I thank you for calling this hearing to focus on women on Rikers.

I would like to focus on the need for a different approach to working with women that is trauma-informed, and gender-sensitive, and how we might begin to get here, making a positive difference not only for women incarcerated on Rikers, but for the staff who work there as well.

Women on Rikers- who make up less than 10% of the detained and sentenced populations- have special needs. Data and research reveal that women do not go to jail for the same reasons men do; their pathway to get there is distinct, they have greater parental responsibilities and a greater likelihood of having dependents, as well as having significant trauma histories. As a result, they need different programming and different approaches. Trauma-informed, gender-sensitive has the potential to reduce infractions/tickets, increase Officer safety and improve the overall environment, as well as- importantly- supporting women's well-being.

While RMSC is a jail and security is the number one concern, there are ways to operate and respond that assume or expect trauma and are prepared to respond to it in ways that minimize harm for all. One such method of training is the Crisis Intervention Team (CIT) model that DOC is currently rolling out on a small scale at two men's jails for those categorized as mentally ill. This approach is not just applicable and appropriate for those with acute mental illness, however; it is an effective tool with anyone and should be operationalized across all jails, prioritizing RMSC given the high rates of trauma among incarcerated women. All COs in RMSC should be trained in this method.

Additionally, steps should be taken to address the frequent turn-over of the staff and leadership within the jail. The current process for promoting DOC staff to Deputy Wardens is that they have to gain experience as a Deputy Warden of Security, Programming, and Administration at various jails. This means they rotate frequently before becoming Warden and even after being promoted to Warden, they may rotate between jails. This is not such a challenge for the other jails which

all serve men, but for Rose M Singer- the only jail housing and serving women- this is a significant deterrent to effective “population management” (to use DOC’s term) not to mention trauma-informed and gender-sensitive programming.

As with other special populations, staff should be chosen/ assigned to RMSC who *want* to work with women. Staff at RMSC should receive different, specialized training that is gender-sensitive and trauma-informed and should receive compensation and recognition for committing to work with women over time.

Lastly, because visiting Rikers is currently a very arduous process, with no special accommodations made for children, many women choose NOT to have their children visit them. As a result, many women lie to their children about where they are. Of course, it is possible that even with the best conditions for visiting some of these women would still chose not to tell their children the truth, but many would tell the truth and would see their children, and their children would get to see their mothers. We and other programs facilitate child-friendly visiting days with special arrangements safeguarding children and providing a more child-sensitive environment; under these conditions, women choose to have their children visit them.

For the past 15 years, children in foster care have been afforded the ability to see their mothers in a more child-sensitive environment as they are allowed to visit on Tuesdays when no public visiting takes place. Children NOT in foster care should have the same opportunity. We call on the City Council to explore offering visiting for children that could happen on Mondays or Tuesdays when only those bringing children would be visiting, where trained Officers who *wanted* to work with children would be assigned to the visitor processing and visiting room, where toys and games could be provided and a snack or two allowed (within reason and abiding by security parameters).

The Department of Correction estimates that 36,000 child visitors come to Rikers each year, yet few of these children are to women. In fact, RMSC receives fewer visitors than any jail on the island. This is a shame and has ripple effects that are not seen but deeply felt. Among those invisibly affected are children unable to focus in school classrooms, who feel angry, who worry about their moms, who miss her deeply, who wonder why their mother who is in “college” can’t come home or be visited, who regress or “act out.”

We call on the City Council to continue its focus on women on Rikers and to expand this focus beyond the nursery to include a different approach altogether to women on Rikers, starting with Officer selection and training at the Academy, steady Officer and executive team assignment to RMSC, trauma-responsive training and gender-sensitive programming, and then extending to creating a designated time for children to visit that is outside of existing public visiting hours, or includes a monthly family visiting day for starters.

The benefits of these changes are extensive and urgently needed for the women, their children and families, and for the staff and Department as well.

Thank you.

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Committee on Fire and Criminal Justice Services
jointly with the
Committee on Women's Issues
December 15, 2015
Testimony of the Women's Prison Association & Home

Good afternoon, and thank you for the opportunity to speak before you about issues facing women at Rikers.

WPA supports the proposal to require regular reporting on the nursery at Rikers Island. Information about the number of children born to women in custody and how many of those are placed in the nursery, and for how long, will help the City and its private partners plan for the care and services that these families may need. In addition, information about where children are placed when they are not with their mothers or after they leave the nursery will shed light on the resources and family situations of women in custody.

The information that is likely to be revealed will demonstrate that women who are at Rikers cannot easily call upon stable resource networks to provide for their newborn children—in fact, most women will have been raised in chaotic, impoverished households. We know that the underlying reasons for women's criminal behavior commonly include trauma, parental stress, active psychosis, a history of mental illness and a sexual abuse history. These factors are in addition to, and different from, the characteristics evident in both women and men who commit crime—things like antisocial associates, a criminal history, poor use of leisure time, family dysfunction and a host of economic and social deficits.

When the City does assess detainees or inmates—whether for classification, programming, or discharge planning purposes—there is an opportunity to gather valuable information about the women who are in custody, and, more importantly, *why* they are involved in criminal behavior. It is critically important-- and this is the point I want to make today-- that women are assessed using a tool that includes the specific issues that comprise significant criminogenic risk for women, but not for men. These women-specific factors—a trauma history, active symptoms of mental illness, parental stress, prior history of mental illness, sexual abuse—are not included in the general assessments that are considered valid for everyone and are broadly used to make decisions about placement inside correctional facilities and discharge planning.

I cannot overstate the importance of using a gender-validated tool for women — such as the Women's Risk and Needs Assessment or the SPIN-W-- to guide any decisions and programming by the Department of Correction and other City agencies. The results of using a gender-neutral or a gender-validated assessment for women to assess a woman's discharge planning needs will yield very different results for the same woman. For example, a woman with a history of drug arrests who is assessed using the gender-neutral tool will likely be sent to a co-ed outpatient drug treatment program and

may stop attending for no apparent reason. Using a women's gender-validated assessment for the same woman, the primary criminogenic risks of prior trauma, sexual abuse, antisocial associates and parental stress could be identified, and case planning would therefore include connection with/maintenance in mental health services, engagement with evidence-based groups that weave relational theory into cognitive behavioral restructuring and support. Selection of drug treatment and other community programming would take into account the woman's sexual abuse and trauma history, seeking providers who implement trauma-informed practices and, where appropriate, single-gender groups. Parental stress would be addressed by providing education and direct coaching on child development and interaction, age-appropriate play, and strategies for discipline using positive reinforcement and redirection.

It is obvious that we get different results when we use the right tools. I think of how I used to try to use a regular screwdriver for a Phillips'-head screw—maybe I can turn it part of the way, but it's just not going to work right! It's kind of like that.

Unfortunately, the Department of Correction opted out of gender-specific contracting a few years ago when the Rikers Island Discharge Enhancement (RIDE) ended and was re-bid as the I-CAN program. In the I-CAN iteration, the Department required that applicants submit proposals to provide discharge support for sentenced inmates returning to each borough. It was not possible for an agency to apply to serve only women and the program model relied upon the Department's administration of a gender-neutral assessment to identify needs and develop a discharge plan. For my agency, it was clear that this approach was a miss. Sadly, though, it has resulted in a loss for women who are at the jail.

I often find myself in conversations where participants complain about the inadequacy of education or medical or mental health care inside jails and prisons. We could have a long conversation about that, but I would prefer to ask you to focus on using the moment that we do have, when women are first detained, to invest energy in understanding the risks that have contributed to their alleged criminal behavior and using this data to guide our responses to their crimes. If there is a safe way to keep a woman in the community, we can connect her with the services that will address her criminogenic risks and, in the process, help her become more successful at functioning in the community. We can do this without sending her to the jail, an environment and experience that activates a trauma response for many women, and disrupts routines of medication, childcare, work and relationship momentum. While there are, clearly, problems, if we can start with an accurate description of each woman's needs, we can begin to solve those problems for the long term.

Thank you.

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TESTIMONY

The New York City Council

Committee on Fire and Criminal Justice Services and
Committee on Women's Issues

Public Hearing on

Proposed Legislation: Int. No. 899 - In relation to requiring the department of
correction to report on the Rikers Island Nursery program
& Oversight: Examining the Unique Issues Facing Women in City Jails

December 15, 2015
New York, New York

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INTRODUCTION:

Thank you for the opportunity to testify about the unique issues facing women in the City jails, including the Nursery program. We submit this testimony on behalf of The Legal Aid Society, and thank Chairs Elizabeth S. Crowley and Laurie A. Cumbo, the Committee on Fire and Criminal Justice Services, and the Committee on Women's Issues for inviting our thoughts on the subject.

Since 1876, The Legal Aid Society has been committed to providing quality legal representation to low-income New Yorkers. We are dedicated to ensuring that no New Yorker is denied access to justice because of poverty. Since its inception over 40 years ago, the Prisoners' Rights Project ("PRP") of The Legal Aid Society has specifically advocated on behalf of New Yorkers in our City jails and State prisons. Our advocacy includes both litigation and working for legislative and policy reforms that improve jail and prison conditions, including educational and vocational programming, reentry services, the sexual abuse of women in custody, and the continuity of medical and mental health care for our clients.

Need for Oversight on All Issues Impacting Women in Custody

We applaud the Council for working to increase oversight of women's issues in the city jails. But given the scope and severity of the issues confronting women in jail we do not believe that they can all be adequately covered in today's hearing. Rather, **we recommend that the Council hold hearings on each of the following subjects.**

Sexual abuse of women in custody: There is a pervasive and deeply entrenched culture of sexual abuse of incarcerated women by correctional staff at the Rose M. Singer Center on Rikers Island. Some of the horrific nature of this abuse is detailed in the Complaint in *Jane Doe v. City of New York, et. al.*, No. 15 Civ. 3849 (AKH) (S.D.N.Y. 2015); other examples are described in a letter we sent to the Board of Correction.¹ This culture has been permitted to flourish for years, with the named plaintiffs subjected to sexual misconduct including rape and sexual abuse by staff over a period of years. Despite the obviousness of the abuse, staff took no steps to stop it.

Most women in custody do not report abuse, with reports of abuse reflecting just the tip of the iceberg.² Like sexual crimes on the outside, sexual abuse is an underreported crime. Some of the reasons for not reporting are the same including a sense of humiliation and embarrassment, or fear that the complaint will not be credited, or not wanting to re-experience the trauma by reliving it and talking about it to investigators and law enforcement. Many of the reasons are exacerbated in confinement. Most fundamentally, there is simply no way to escape from the

¹ See Letter from Dori Lewis, Legal Aid Society to Richard Wolf, Board of Correction, Executive Director Board of Correction ("BOC") (May 11, 2015) ("LAS letter to the Board of Correction"), available at <http://www.nyc.gov/html/boc/downloads/pdf/BOC%20PREA%20comments%20final.pdf>

² U.S. Dep't of Justice, *Prison Rape Elimination Act Regulatory Impact Assessment: United States Department of Justice Final Rule 17-18* (May 17, 2012), http://www.ojp.usdoj.gov/programs/pdfs/prea_ria.pdf [hereinafter U.S. DOJ, *Regulatory Impact Assessment for PREA Final Rule*] (concluding, based upon the Bureau of Justice Statistics' survey, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09*, that between 69% and 82% of inmates who reported sexual abuse in response to the survey stated that they had never reported an incident to corrections staff).

abuser: a woman in jail is locked up with the abuser and colleagues guarding her and controlling all aspects of her life. The women are terrified of retaliation, examples of which are graphically described in the *Jane Doe* Complaint. When anonymous surveys have been conducted by the Bureau of Justice Statistics, women at the Rose M. Singer Center have reported some of the highest rates of abuse in the country.³

The Board of Correction has pending before it a Petition for Rule-Making Concerning Sexual Abuse and Sexual Harassment in New York City Jails submitted by Letitia James, the Public Advocate.⁴ These proposed rules, in conjunction with the modifications suggested by the Legal Aid Society in our Letter to the Board of Correction, are an essential first step towards mitigating the problem. These proposed Rules address many of the problems, requiring cameras, more enhanced supervision, training of staff and much more. The recommendations made by Legal Aid contain some additional requirements that we believe are needed to provide more teeth to rules that are otherwise too vague and so will not be sufficient to address the problem. Therefore, it is imperative that the Board adopt these Rules, and **we urge the Council to recommend to the Board of Correction that they adopt the Public Advocate’s Petition for Rule-Making, with the modifications urged by the Legal Aid Society.**

Transgender persons in custody: We first commend the Department of Correction (“the Department” or “DOC”) for maintaining the voluntary Transgender Housing Unit (“THU”) for transgender women confined in male jails. There is no question that it has provided a safer environment for many of our clients, and has been a remarkable success.⁵ Women report a safety and comfort level in the unit that they do not have in other locations at Rikers. In the past several months, we have heard of virtually no sexual assaults—by incarcerated persons or by staff—on the unit. Because correctional staff choose to work on the unit they are self-selected to have less animus toward transgender people, with the result that we have received almost no complaints of derogatory language and verbal harassment by staff assigned to that unit. Trainings of staff by advocates and others have led to a largely respectful environment. Complaints about inappropriate searches by staff assigned to the unit, including sexually abusive cross-gender pat frisks, have plummeted. Access to medical care has been facilitated since most of the individuals confined on the unit receive similar types of medical care, including hormone treatments.

This does not mean that improvements are not needed in the treatment of transgender women confined in DOC custody. There is no public Directive describing the THU and setting out admission procedures or criteria. As a result we have seen delays in individuals being processed for admission to the THU, particularly if they either declined admission at reception or

³While 1.8% of jail inmates nationwide reported experiencing sexual victimization *by correctional staff*, the rate at the women’s only jail on Rikers Island is 5.9%, triple the national rate. Allen J. Beck et al., U.S. Dep’t of Justice, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12* 8, 13 tbl. 4 (2013), <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.

⁴ See Petition to the NYC Board of Correction for Rulemaking Pursuant to City Administrative Procedure Act Concerning Sexual Abuse and Sexual Harassment in New York City Jails, available at <http://www.nyc.gov/html/boc/downloads/pdf/040815-%20Petition%20to%20the%20NYC%20Board%20of%20Correction-3.pdf>

⁵ The LAS Letter to the Board of Correction contains a requirement that the Transgender Housing Unit be maintained. See Letter at 17-18. This is a critically important requirement and we have heard that the Department may be considering closing it. We hope that this is not the case.

signed out of the unit and then changed their mind. Inadequate programming opportunities are offered in the THU. Many individuals in the unit complain about the levels and appropriateness of the hormone treatments they are receiving, and some transgender women outside the THU have experienced significant delays in obtaining any hormone treatment at all. There have been some marked lapses in the continuity of medical and mental health for transgender individuals who are released from custody, demonstrating that more appropriate discharge planning is needed.

Transgender women, particularly those confined outside the unit, have reported serious allegations of sexual assaults by other incarcerated individuals. They also report that staff still engage in harassing and abusive behavior, sometimes forcibly removing hair pieces, taking bras away, and engaging in repeated and harassing searches. This is in significant part due to the Department's insistence on housing persons based solely on genitalia. As a result, we hear too often from women confined in male jails, and less frequently but still too often, from men confined in female jails, that they are repeatedly subject to abusive conduct by other incarcerated persons and also by correction staff. Moreover, transwomen who are not on the unit often report that they are forced into solitary confinement, usually in involuntary protective custody. Critically important steps to help address these problems are contained in the Public Advocate's Petition for Rulemaking, which is why **we again urge the Council to recommend adoption of the Petition by the Board, as modified by the recommendations of The Legal Aid Society and by other advocates for transgender persons in custody. It is also why we urge the Council to hold hearings specifically concerning the treatment of transgender persons in Department custody.**

Gender-specific, trauma-informed programming and treatment—A large percentage of women in custody report experiencing sexual or physical abuse prior to incarceration,⁶ with significantly higher numbers of women than men in jail and prison reporting such histories.⁷ The

⁶ See e.g., Bureau of Justice Statistics, U.S. Dep't of Justice, PRIOR ABUSE REPORTED BY INMATES AND PROBATIONERS, April 1999, available at <http://www.bjs.gov/content/pub/pdf/parip.pdf> (Reporting that almost half of the women in the nations jails and prisons say they were physically or sexually abused before their imprisonment. A third of the women in state prisons said they had been raped before their incarceration. Women in the nations prisons and jails also report higher levels of abuse as children than women in the general population, with more than a third of female state prison and jail prisoners saying they were abused as children, compared to estimates from 12-17% of females in the general population.); Browne, A., Miller, B., & Maguin, E. (1999) Prevalence and severity of lifetime physical and sexual victimization among incarcerated women. *International Journal of Law and Psychiatry*, 22, 301-322 (finding higher rate of abuse history than BJS data, with 70% of incarcerated women interviewed in a New York maximum security prison reporting physical violence and nearly 60% reporting sexual abuse.)

⁷ See e.g., Bureau of Justice Statistics, U.S. Dep't of Justice, PRIOR ABUSE REPORTED BY INMATES AND PROBATIONERS, April 1999, available at <http://www.bjs.gov/content/pub/pdf/parip.pdf> (39.0 percent of female state prison inmates report that they were sexually abused before admission to state prison versus 5.8 percent of males); *Keeping Vulnerable Populations Safe Under PREA: Alternative Strategies to the Use of Segregation in Prisons and Jails*, Vera Institute of Justice; Angela Browne, Allison Hastings, Kaitlin Kall and Margaret diZerega, March 2015 (at 11-13) (“[W]omen in the criminal justice system report more extensive victimization histories – of sexual and physical abuse- than women who have not been incarcerated or men who have been incarcerated. In one study of women in ... maximum security prison, more than half (59%) of women in the study reported childhood sexual molestation and 77 percent reported lifetime physical or sexual assaults by non – intimates.”)

Department must provide appropriate trauma-informed programming that does not re-trigger past trauma. This programming must be available to all incarcerated women, including those sentenced on misdemeanor offenses. In addition, careful attention must be paid to the discharge planning that accompanies such programming, to ensure that those released from custody are connected to the crucial services they require outside of jail. This is a complex issue requiring expert assistance in implementing recognized best-practices for treatment and housing. Testimony from experts should be obtained. **We urge you to hold a hearing on the need for gender-specific, trauma-informed programming, especially for those women who were raped or otherwise sexually abused prior to, or while in, custody.**

Importance of Proposed Nursery Legislation; Int. No. 899 - In relation to requiring the department of correction to report on the Rikers Island Nursery program.

The Legal Aid Society writes in support of Int. No. 899 - In relation to requiring the department of correction to report on the Rikers Island Nursery program. This bill requires the Department of Correction to increase reporting about the Nursery program and pregnant women under its care. We support amending Title 9 of the New York City Administrative Code to require public reporting about pregnant women in custody and the Nursery on Rikers Island. We include in our comments recommended revisions to the bill and provide specific changes to the statute to implement the recommended revisions.

In 1982, this office became aware that the Department was not permitting babies to stay with their mothers. We brought suit in both federal and state court on behalf of incarcerated mothers and their babies.⁸ The litigation was resolved when the Department agreed to create and maintain a Nursery program. The Nursery program was created to comply with Correction Law Section 611, which protects newborns and infants of incarcerated mothers by providing that they may stay with their mothers in jail and prison for up to 18 months of age.⁹ Since then, we regularly fight for mothers and babies to participate in the Nursery programs in jail and prison to prevent the nightmare scenario in which a newborn is torn from her mother's arms just a day or two into life. To maintain and enhance these services, The Legal Aid Society endorses the proposed legislation to increase oversight through reporting requirements about pregnant women in the Department's custody and the Nursery program.

Separating newborns from their mothers causes the infants harmful physical and emotional changes.¹⁰ Conversely, keeping mothers and newborns together is critical for the development of a strong bond between mother and child. It permits the formation of secure attachments, which translate to better life outcomes for the children.¹¹ Additionally, the Nursery

⁸ See *Ryan v. Koch*, 82 Civ. 3642 (PNL) (S.D.N.Y 1982) and *Earth v. Koch*, Index No. 44549/1983 (N.Y. Cnty. 1983).

⁹ See Correction Law Section 611.

¹⁰ "Neurochemical studies show that disruptions to the attachment process affect the growth and development of the brain, as well as social functioning, aggressiveness, reaction to stress, and risk for substance abuse during adulthood." M.W. Byrne, et. al., *Maternal Separations During The Reentry Years For 100 Infants Raised in a Prison Nursery*, 50 Family Court Review 77, 87 (2012).

¹¹ Several studies show that babies who form secure attachments to their mothers have better life outcomes than babies who do not. For example, "the American Psychological Society found that infants who bond securely with

gives incarcerated women an opportunity to breastfeed their babies if they choose to do so; the benefits of breastfeeding are well known.¹²

Despite the legal requirement and the benefits of the Nursery program for mother and child, the Department's Nursery census has trended markedly down since 1991 and rather significantly so since around 2007.¹³ The reason why significantly fewer mothers and babies have been able to participate in the Nursery program is not clear. For many years it was due to limitations on admission to the Nursery contained in the City's Command Level Order, which were modified only after a mother who was improperly denied Nursery admission prevailed in the Appellate Division, Second Department and the lawsuit was before the Court of Appeals.¹⁴ Because there is currently no mandated reporting about Nursery admissions, denials, or conditions, we can only speculate that it is a combination of lack of notice to pregnant women or women with infants that they can apply for the Nursery or how to do so, the Department's chilling women from applying, inappropriate denials of applications to the Nursery, and removals from the Nursery. Without knowing the source of the decrease in the Nursery population, the Council, the Department, advocates, and others cannot take steps to increase the accessibility of the Nursery.

Application Denials: We have not been asked to intervene to correct improper Nursery admission denials in the past two years. We do not know if this means that admission decisions are now being made properly. If that is the case, we commend the Department for its most recent determinations and the leadership of Warden Michele Clifford. Unfortunately, because there is currently no reporting on Nursery admissions and denials, we do not know with any confidence whether the process is actually working better.

their mothers become more self-reliant and have higher self-esteem as toddlers. Later in life, this translates into successful peer relationships and the ability to better cope with life stressors." Women's Prison Ass'n, *Mothers, Infants and Imprisonment: A National Look at Prison Nurseries and Community-Based Alternatives* 8-9 (May 2009), <http://www.wpaonline.org/pdf/Mothers%20Infants%20and%20Imprisonment%202009.pdf> (citing Beth Azar, *The Bond Between Mother and Child*, American Psychological Society (September 1995)), <http://www.thelizlibrary.org/liz/APA-Monitor-attachment.html>); see also Anne E. Jbara, *The Price They Pay: Protecting the Mother-Child Relationship Through the Use of Prison Nurseries and Residential Parenting Programs*, 87 Ind. L.J. 1825, 1828 (2012) (discussing the benefits of early bonding).

¹² After examining recent publications and systemic reviews about breastfeeding, the American Academy of Pediatrics found breastfeeding resulted in, among other things, 36% reduced risk of Sudden Infant Death Syndrome, 27% - 42% reduced risk of clinical asthma, 30% reduced risk of type 1 diabetes, 40% reduced risk of type 2 diabetes, 15% - 30% reduced risk of obesity, and 15% - 20% reduced risk of childhood leukemia and lymphoma (depending on type). American Academy of Pediatrics, *Breastfeeding and the Use of Human Milk*, 129 Pediatrics e829-30 (2012), <http://pediatrics.aappublications.org/content/early/2012/02/22/peds.2011-3552.full.pdf>. Moreover, "both short and long-term benefits accrue to mothers who breastfeed." AAP at e831. Notably, "a large prospective study on child abuse and neglect perpetuated by mothers found, after correcting for potential confounders, that the rate of abuse/neglect was significantly increased for mothers who did not breastfeed as opposed to those who did." *Id.* (citing Strathearn L. et al., Does Breastfeeding Protect Against Substantiated Child Abuse and Neglect? A 15-year Cohort Study, 123 Pediatrics 483 (2009)).

¹³ See Board of Corrections, Nursery Census Data (2012) (produced in response to FOIL request and on file with this office).

¹⁴ See *Matter of Duarte*, 91 A.D.3d 778 [2d Dep't 2012], *app. dismissed*, 20 N.Y. 3d 1067 [2013].

Moreover, changes in policy and leadership occur quite often and it would be imprudent not to anticipate that problems with Nursery application denials will resurface in the future. Consequently, it is essential that this legislation, along with our recommendations, be enacted.

The Department should be required to report what factors were considered and how they were weighed in concluding that admission was not in the best interest of the child instead of merely listing a stated reason for denial. Through administrative advocacy and litigation we have brought on behalf of incarcerated mothers (in both Department jails and State prisons), we have learned that the central defect in inappropriate Nursery admission denials is the failure to properly weigh the myriad factors that *must* be considered in a best interest of the child analysis. Historically, custodial authorities have incorrectly treated the admission decision more like a check list, where the presence of any one factor militating against admission (such as drug addiction, prison disciplinary incident, or prior Administration of Child Services involvement) is reason enough for denial. This reporting legislation will allow the Department, the Council and advocates to identify unlawful denials and see more precisely how the unlawful determination was made.

Removals: For the same reasons, we recommend that the Department be required through legislation to report on removals from the Nursery.

These additional reporting requirements are not overly burdensome. The law and human dignity understand that separating an incarcerated mother from her newborn should only be done in “exceptional circumstances.”¹⁵ Therefore, if the Department is making its determinations properly, there should be very few denials and removals about which to report.

Consequences of Denial: We also do not know what happens to the babies who are rejected from the Nursery and taken away from their mothers. But, we have every reason to believe it is the beginning of a cycle of trauma to the baby, disruption to the family, unstable housing and placement in the foster care system. It is important for all of us to find out what happens when a woman's application to the Nursery is denied so that we can take steps to implement remedies and best-practices that may be appropriate based on the facts. For these reasons, we endorse the legislation's proposal that the Department report on the number of pregnant women who apply to the Nursery program, what happens to their applications, and what happens to the infants who are not admitted to the Nursery and separated from their mothers during the important neonatal period. We recommend the same reporting requirements be made for women who have children under 18 months of age when they enter custody in order to include all the children whose interests are protected by Correction Law 611.

Lack of Applications: The low Nursery population may also reflect that few women apply for the Nursery. The purpose of Correction Law Section 611 is to protect newborns and infants by giving them an opportunity to reap the lifelong benefits that come from bonding and forming secure attachments with their mothers at the beginning of life. To this end, we should all be encouraging women in custody who are pregnant or have children under 18 months old, to apply for Nursery admission.

¹⁵ *Apgar v. Beauter*, 75 Misc. 2d 439, 441 (Tioga Cnty. 1973).

The Health Awareness Program section of Command Level Order 72/14 “The Nursery Program” lays out a plan for alerting women who are pregnant or have an infant that they can apply for the Nursery. The Health Awareness Plan should include a provision that the Department inform women about the benefits their children will gain by remaining with them. Currently, we do not know whether the Health Awareness Plan is being carried out. Therefore, we recommend requiring that the Department report on its efforts to inform and educate women about the Nursery, including how many women were and were not informed about the program.

Staffing shortage: The current under-usage of the Nursery may also reflect lack of adequate and stable staffing; we understand that there has been no Nursery Director for about two years, with only a part time nurse assigned to the Nursery during the past year, though we do not know if this kind of understaffing has been common in recent years. Staffing reports would help the Council and advocates identify when there is a problem so that we can make efforts to remedy it. Therefore, we recommend requiring the Department to report on staffing of the Nursery.

Services and programs: We endorse the proposal that the Department publish the programs and services available to mothers and their newborns in the Nursery. This will help the Council and advocates identify programming gaps. For example, it is critical that there are parenting classes for the mothers, but we do not know whether or how often these classes are held. The Department should provide a wide range of programs for mothers and children in the Nursery to take full advantage of the time in the Nursery to enrich the relationship between mother and child.

Lastly, there are two issues that are very important to pregnant women in jail, whether or not they are applying for admission to the Nursery.

Pregnancy housing unit: We recommend adding a new section to the proposed bill that protects pregnant women by requiring, when feasible, that they are assigned to a dedicated housing unit and that the Department report on pregnant women’s housing assignments. Keeping pregnant women together will facilitate their access to needed nutritional, medical and other pre-natal care, assist with discharge planning, and allow for valuable peer support. It will also facilitate informing pregnant women about their rights to seek placement in the Nursery, which may help to remedy any under-usage of the Nursery.

Shackling: We recommend requiring the Department to report in detail on the use of shackles on pregnant women and women who have recently given birth. The use of such restraints anticipating delivery or during recovery after birth is dangerous to the well-being of the mother and child. Correction Law Section 611 contains an absolute bar on the shackling of women during labor, on admission to the hospital for delivery, and during recovery after giving birth. Restraints are also prohibited during transport to and from the hospital for the purpose of giving birth except in “extraordinary circumstances, where restraints are necessary to prevent such woman from injuring herself or medical or correctional personnel.” In these situations, the Department must “make and maintain written findings” whenever restraints are used. We recommend that these findings be reported in addition to being maintained.

We recommend that the Department be required to report on all instances when shackles are used on pregnant women in custody because restraints should not be used on women at any time during their pregnancy, or for eight weeks after delivery. This corresponds with an amendment to Correction Law Section 611 prohibiting such shackling that was recently passed by the State Legislature.¹⁶

¹⁶ See A.6430-A/S.00983-A. This legislation is awaiting action by Governor Cuomo. We also base the recommended language on our experience litigating *Reynolds v. Ward*, 81 Civ. 107 (S.D.N.Y). Although the Consent Judgment in that case has now ended, it resulted in the prohibition on the shackling of pregnant women at municipal hospitals due to the risk of medical complications. Although DOC was allowed to use shackles on pregnant women if they could articulate a clear and convincing reason why the patient posed a clear and present danger of escape, in the final years of the litigation (and we believe to the present) no pregnant women were shackled and no escapes or other risks to security resulted.

Proposed Amendments to Nursery Legislation; Int. No. 899

Our specific proposals for additions to the bill are in bold face and recommended deletions are crossed out.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to requiring the department of correction to report on the Rikers Island Nursery program.

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 9-135 to read as follows:

§ 9-135 Rikers Island Nursery Report. a. Definitions. For the purposes of this section, the following terms shall have the following meanings:

“Child” means any person under the age of two years whose mother is in the custody of the department.

“Nursery” means any department facility or series of facilities designed to accommodate newborn children of incarcerated mothers, pursuant to New York state correctional law section 611 or any successor statute.

“Staff” means anyone, other than an inmate, working at a facility operated by the department.

“Use of force A” means a use of force by staff on an inmate resulting in an injury that requires medical treatment beyond the prescription of over-the-counter analgesics or the administration of minor first aid, including those uses of force resulting in one or more of the following treatments/injuries: (i) multiple abrasions and/or contusions; (ii) chipped or cracked tooth; (iii) loss of tooth; (iv) laceration; (v) puncture; (vi) fracture; (vii) loss of consciousness;

including a concussion; (viii) suture; (ix) internal injuries, including but not limited to, ruptured spleen or perforated eardrum; and (x) admission to a hospital.

“Use of force B” means a use of force by staff on an inmate which does not require hospitalization or medical treatment beyond the prescription of over-the-counter analgesics or the administration of minor first aid, including the following: (i) a use of force resulting in a superficial bruise, scrape, scratch, or minor swelling; and (ii) the forcible use of mechanical restraints in a confrontational situation that results in no or minor injury.

“Use of force C” means a use of force by staff on an inmate resulting in no injury to staff or inmate, including incidents where use of oleoresin capsicum spray results in no injury, beyond irritation that can be addressed through decontamination.

b. The commissioner shall post on the department website by the 30th day of January **each year and on a yearly quarterly basis thereafter**, a report containing information pertaining to the department’s Nursery for the prior **quarter calendar year. All reports shall be maintained on the department website.** Such quarterly report shall include:

1. The total number of children admitted to the Nursery, and the average daily population of children in the Nursery.

2. The total number of children born while their mothers were in the custody of the department, and the total number of such children who were admitted to the Nursery following their birth.

[new section] The total number of pregnant women in custody. For the last report of the calendar year, the total number of pregnant women that were in the custody of the department for the preceding twelve months.

3. The total number of **Nursery applications submitted for children born while their mothers were in the custody of the department who were ~~not admitted~~ denied admission to the Nursery following their birth, and the reasons such children were not admitted. And for each denial, what factors were considered and how they were weighed in concluding that admission was not in the best interest of the child.** For any such children, the department shall also list the placement of such child in the following categories: (i) with a family member; (ii) with New York city administration for child services or any similar governmental agency; or (iii) any other placement.

[new section] The total number of Nursery applications submitted for children under 18 months of age at the time their mother entered custody of the department, the total number of such children who were denied admission to the Nursery. And for each denial, what factors were considered and how they were weighed in concluding that admission was not in the best interest of the child. For any such children, the department shall also list the placement of such child in the following categories: (i) with a family member; (ii) with New York city administration for child services or any similar governmental agency; or (iii) any other placement.

[new section] The total number of mothers removed from the Nursery program and the reasons for removal.

[new section] Total number of women informed about the program and how they were informed.

[new section] The total number of times restraints were used on pregnant women while in custody, and for each instance when such restraints were used the type of restraints, the duration of the restraints, and the reason for application of the restraints.

The total number of times restraints were used while in transport to the hospital for the purpose of giving birth, after admission to the hospital, while giving birth, and while in recovery in the hospital; and for each instance when such restraints were used the type of restraints, the duration of the restraints, and the reason for application of the restraints.

The total number of times restraints were used on women during the eight week period post-partum period, and for each instance when such restraints were used the type of restraints, the duration of the restraints, and the reason for application of the restraints.

4. The ~~total mean and median~~ length of stay for ~~each children~~ in the Nursery, and the reasons why any such stay was terminated. For any children whose stay in the Nursery terminated for any reason other than the discharge of their mother from the custody of the department or that the child reached an age at which they were no longer eligible to be housed at the Nursery, the department shall also list the placement of such child in the following categories: (i) with a family member; (ii) with New York city administration for child services or any similar governmental agency; or (iii) any other placement.

5. The programming available to inmates in the Nursery, including but not limited to the following subjects: parenting, mental health, drug and/or alcohol addiction, vocational, or other life skills.

6. The services available to children in the Nursery, including but not limited to the following categories: health services, health services for children with special needs, educational, and recreational

[new section] The number of full and part time staff assigned to provide programming and services to inmates and children in the Nursery.

7. The following information by indicating the rate per 100 female inmates in the custody of the department who were not housed in the Nursery: (i) fight infractions written against inmates; (ii) violations of departmental rules committed by inmates and reported by departmental staff; (iii) incidents of use of force A; (iv) incidents of use of force B; (v) incidents of use of force C; and (vi) incidents of use of force C in which chemical agents are used. Such information shall be compared with those same rates per 100 inmates housed in the Nursery.

[new section] Pregnant women in the custody of the department should, to the extent feasible, be held in housing areas designated exclusively for pregnant women. The department shall report the numbers of pregnant women held in each housing unit that contains any pregnant women on the first day of each quarter.

CONCLUSION:

Thank you for holding this hearing and for your careful attention to incarcerated women including mothers and their babies.



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BY E-MAIL

Richard T. Wolf, Executive Director
Members of the New York City Board of Correction

John Boston
Project Director
Prisoners' Rights Project

Re: Public Advocate's Petition for Rulemaking

Dear Mr. Wolf and Members:

We write to endorse the Petition of the Public Advocate, Hon. Letitia James, to the NYC Board of Correction ("Board") for Rulemaking Pursuant to the City Administrative Procedure Act Concerning Sexual Abuse and Sexual Harassment in New York City Jails ("Petition") and join in asking the Board to exercise its authority to regulate our jails in this area. The Rules are needed for the Board to fulfill its mandate to regulate and monitor conditions in the jails; without these Rules, no enforcement mechanism exists to ensure that needed steps are taken to prevent custodial sexual abuse.¹ We urge the Board not only to adopt the Rules proposed by the Public Advocate but also to clarify and strengthen them, particularly as they pertain to staff sexual abuse of prisoners.

The Legal Aid Society communicates daily with individuals confined in New York City Department of Corrections ("DOC") custody about a wide range of issues including sexual abuse. Staff from the Legal Aid Society Prisoners' Rights Project ("PRP") served on the National Prison Rape Elimination Commission's Standards Development Expert Committee, and submitted congressional testimony concerning the proposed Prison Rape Elimination Act Standards. Because of our longstanding involvement in trying to reduce the substantial risk of staff sexual abuse,² we focus our comments on the problem of sexual abuse by staff of prisoners, and the steps needed to stop or at least substantially limit this abuse. The Criminal Defense Practice is the primary provider of indigent defense services in New York City and the largest public defender in the country. Our attorneys, in the

¹ The National Standards for the Detection, Prevention, Reduction and Punishment of Prison Rape for Adult Prisons and Jails, ("National Standards"), 28 C.F.R. Part 115 (2012) require audits of compliance and certification of compliance by the Governor with their requirements concerning prisons, but not with respect to local jails. See Petition 17-20. If certification is not provided, prisons can lose a portion of their federal funding. No comparable sanction applies to local jails, such as DOC.

² PRP has been counsel for over a decade to a putative class of women prisoners challenging policies and practices enabling the sexual abuse by male correctional staff in NYS Department of Corrections and Community Supervision custody in Amador v. Andrews, 03-CV-0650 (S.D.N.Y.) (KTD).

course of their criminal defense work, commonly learn of and seek to assist with their clients' experiences of mistreatment in jail, including sexual abuse.

Sexual violence is at record proportions within DOC, part of the unprecedented levels of violence in DOC documented by the Board in its recent report on stabbing and slashing incidents.³ Sexual violence both helps drive, and is a product of, the long-standing problems in DOC recognized by the Mayor⁴ and the “deep-seated culture of violence” identified by the United States Department of Justice.⁵ The reports of sexual violence cited in the Petition rely on reports issued by the Bureau of Justice Statistics. Petition at 20-22. Our own discussions with clients confirm the extent of this horrific abuse, and make clear the urgent need for the Board to adopt the Rules proposed by the Public Advocate. What follows are our recommendations and arguments for adopting amendments to the Petition.

Our Clients Report a Pervasive Risk of Sexual Abuse in DOC Custody.

Women held in DOC custody have reported a systemic culture of sexual abuse at the women’s jail, Rose M. Singer Center (“RMSC”). The culture of sexual abuse at RMSC is perceived by many of the women that we have interviewed as an “open secret” within the facility. Women have reported abuse that ranges from non-consensual sexual acts to sexually abusive touching, and sexual verbal harassment. The power dynamic is often based upon a series of threats and incentives to deter women from reporting the abuse. Further, women who report the abuse are treated as adversaries, rather than as the victims of abuse, by DOC staff, and often times are subject to retaliation by other inmates and staff for reporting. Moreover, many of the women who have filed official complaints are never informed by the investigative agency as to the status of their complaints.

It is common for women to report that female inmates at RMSC are seen sitting on the laps of male correction officers and “passed around” among the officers in the various housing areas. It is also a common occurrence that correction officers will grope and grab women’s breasts, buttocks, or vaginal areas at will. Unwarranted verbal sexual harassment is commonplace as well.

³ The Board documented a 335.4% increase in the rate of slashing and stabbing incidents from 2009 to 2014. The number of slashing and stabbing incidents increased 260.0% from 25 in 2009 to 90 in 2014, during a period when the average daily population of the jails dropped 17.3%, from 13,194 inmates in 2009 to 10,909 inmates in 2014. Board of Correction Report “Violence in New York City Jails, Slashing and Stabbing Incidents,” at p. 1, April 27, 2015, available at: http://www.nyc.gov/html/boc/downloads/pdf/reports/Slashings_stabbings_CRP_2015_04_27_FINAL.pdf.

⁴ “The problems at Rikers have literally been decades in the making. Things that have come out in the last year or two didn’t just happen recently – they were the results of policies and choices and realities that went on for decades.” Transcript of December 17, 2014 press conference available at: <http://www1.nyc.gov/office-of-the-mayor/news/567-14/transcript-mayor-de-blasio-commissioner-ponte-end-punitive-segregation-adolescent>.

⁵ See Department of Justice “CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island,” at p. 3 (August 4, 2014), available at <http://www.justice.gov/usao/nys/pressreleases/August14/RikersReportPR/SDNY%20Rikers%20Report.pdf>.

For example, women have reported the following to us:

- A mentally ill teenager detained at RMSC reported to us that she was groped during a suicide attempt. A male correction officer who had been verbally sexually harassing her discovered her while she attempted suicide and entered the cell and tore down the sheet which she had used to try to hang herself from and then proceeded to fondle her breasts.
- Several women have described incidents where male correctional officers have entered their cells without notice and began to openly masturbate. And several women have reported male correction officers making sexual advances and remarks and then proceeding to masturbate in common areas such as dayrooms or the control center when they thought only they and the female inmate were present.
- Several women have reported correction officers entering their shower areas and watching them shower while sexually verbally abusing them.
- A woman reported that in exchange for coveted posts on the outside work-detail unit at RMSC, she and other women were required to perform oral sex on male correction officers to keep their inmate work assignments where they picked up cigarette butts left outside of the facility.
- Several women have reported a culture where women are “passed around” among male correction officers’ laps in their housing areas. The expectation is that the male officers are entitled to abusively fondle and touch the women on their breasts, buttocks and vaginal areas, apparently as a source of amusement. Women who refused were shunned by the officer and often denied basic entitlements such as hygiene items, out of cell lock out time, and in some cases even food.
- Several women have reported seeing correction officers take women into private areas out of view to sexually assault and abuse them. One woman reported that while she was detained at RMSC, a correction officer would choose a different woman each night to sexually abuse when he was on post in the housing area. The correction officer would take a woman out of her cell and then lead her to a closet out of view where he would sexually abuse her. The woman who reported this feared that one night he would pick her. This was an open secret in the housing area and women feared retaliation if they filed any complaints.
- Several women have reported a practice known as “show me for show me.” These women reported that correction officers shine lights with their flashlights into their cell windows in the evening hours or enter their cells and demand that the women expose themselves to the officers. In exchange, the correction officers will expose themselves and in some cases masturbate. Sometimes a token of contraband will be given in exchange for the woman’s silence.

- One woman reported that she became pregnant while detained at RMSC for over a year. She was repeatedly raped and sexually abused by more than one correction officer. She miscarried while in custody. She was eventually sent back to RMSC where she received constant threats and mistreatment by DOC staff because she reported the abuse. The mistreatment and stress became so deplorable she attempted suicide and was hospitalized for mental health treatment several times during her detention. She was eventually moved out of DOC custody.

Ending Custodial Sexual Abuse Presents a Unique Challenge.

Several features of custodial sexual abuse make it a unique problem within jails and one that requires a particularized response.

First, almost without exception, sexual abuse takes place in private, outside of the view of witnesses and cameras. This fact makes it particularly hard to prove and means that there must be vigilance in preventing sexual abuse.

Second, as a group, women in custody are particularly vulnerable to staff sexual abuse. More than 80% of women in custody experienced sexual or physical assault before incarceration.⁶ Social science researchers have found that people are more likely to be abused if they experienced prior abuse.⁷ Because childhood abuse is often perpetrated by a loved friend or family member, many individuals in custody, particularly women who are incarcerated, experience intense confusion about abusive treatment. As a result, they may have problems setting appropriate boundaries and are more vulnerable to abuse, particularly by men in authority.

Third, staff sexual abuse in detention is a vastly underreported crime⁸ for a number of complex and related reasons. Just as in the community, one reason it is rarely reported is the trauma and stigma associated with sexual assault. This fear and trauma are exacerbated for the majority of women in custody who have a history of prior abuse; their apprehension

⁶ See, e.g., Angela Browne et al., Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women, 22 INT'L J.L. & PSYCHIATRY, 301, 310-322 (1999) (study of women in New York State's Bedford Hills Correctional Facility finding that 94% of the women studied had experienced physical or sexual abuse in their lifetime, 82% had been severely physically or sexually abused during childhood, and 75% had suffered serious physical violence by an intimate partner during adulthood.)

⁷ See, e.g., Cindy L. Rich et al., Child Sexual Abuse and Adult Sexual Revictimization, in FROM CHILD SEXUAL ABUSE TO ADULT SEXUAL RISK: TRAUMA, REVICTIMIZATION, AND INTERVENTION 49 (Linda J. Koenig et al. eds., 2003) (review of nine studies investigating the relationship between childhood sexual abuse and subsequent sexual assault revealed consistent support for phenomenon of revictimization, with each study finding women with a history of childhood abuse two to three times more likely to experience adult sexual abuse compare with women who did not experience earlier abuse.)

⁸ United States Dep't of Justice, Regulatory Impact Assessment for PREA Final Rule, at 17-18 (May 17, 2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_ria.pdf (concluding, based upon the Bureau of Justice Statistics' survey, Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09, that between 69 percent and 82 percent of inmates who reported sexual abuse in response to the survey stated that they had never reported an incident to corrections staff.)

about reporting sexual assault is heightened because their prior reports may have been ignored, or worse, caused the destruction of their families.

Furthermore, people in custody and are more likely to be reluctant to complain if they feel complicit in the current sexual abuse. For example, a prisoner may have engaged in sexual conduct with an officer in exchange for protection, or some other *quid pro quo*. She may feel ashamed or embarrassed about her participation. A prisoner has no practical way of saying “no” in the coercive prison environment, potentially recreating her vulnerability as a child who experienced abuse. Whatever her initial response to the abuse, she has no way of stopping it: she is an abuse victim with no way out of the relationship, with no safe haven to retreat to.

Victims of abuse in custody also rarely come forward because they think that they will not be believed. They are, unfortunately, correct.⁹ Without physical proof the reality is that the word of a correction officer will always be credited over that of the incarcerated person. Unless the prisoner has physical proof of the abuse, the officer is permitted to continue guarding prisoners. Yet physical proof is difficult to obtain. Not all sexual contact results in physical evidence, and use of a condom may prevent physical evidence from being left. Our experience shows that repeated credible complaints lodged against an officer and other indicia of misconduct are ignored without physical proof (DNA or sperm). The officer maintains his position, and may even be allowed to continue to guard prisoners alone and at night.

The dynamic of victims of sexual abuse being reluctant to report because they fear that they will not be believed is further complicated by the fact that victims may experience a wide range of painful, traumatic symptoms that negatively affect their ability to report. As a result, victims who do come forward may not be able adequately to explain what happened. For example, reports may be delayed and victims may not be able to recount the events of abuse in a linear narrative fashion.

People in custody are also deterred from reporting sexual abuse because they fear they will be punished or retaliated against for reporting. Victims of sexual abuse have to worry that they will be placed in some form of isolated confinement once the abuse is reported, even though this is nominally done to protect them. They are afraid of being disciplined for admitting to the sexual contact, or for lying about it if they are not believed. Retaliation is a risk for all incarcerated individuals who complain about their treatment, but the likelihood of retaliation or intimidation is especially great in response to complaints about staff sexual abuse since sexual abuse complaints can result in staff being criminally charged and their family life disrupted.

⁹ Survey of Sexual Violence in Adult Correctional Facilities, 2009–11 - Statistical Tables, <http://www.bjs.gov/content/pub/pdf/ssvacf0911st.pdf> at 7-8. In 2011 New York State, with a population of approximately 55,000, had 184 allegations of staff sexual misconduct and substantiated four. *Id.* As to staff sexual harassment (which is defined as verbal harassment), New York State had 24 allegations and substantiated two. With respect to inmate-on inmate sexual abuse, five out of 60 allegations of nonconsensual sexual acts were substantiated, while three of fourteen allegations of abusive sexual contact were substantiated.

In addition to the many reasons why victims of abuse are unlikely to report it, correctional staff also rarely report sexual misconduct by other staff, claiming that without witnessing an actual sexual act they cannot be sure that something untoward occurred or is occurring. This failure to report may be for the purpose of protecting other staff or from a belief that the abuse is not serious, *i.e.*, that the individual purportedly wants it to happen, or is “damaged goods” so there is no serious harm resulting from another incident of abuse.

Preventing Custodial Sexual Abuse Through Supervision and Investigatory Practices.

As the Rules proposed by the Public Advocate demonstrate, there are steps that correction officials can take to reduce custodial sexual abuse, even if the trauma and stigma associated with sexual abuse cannot be avoided. Correction officials control how they supervise staff and investigate reports of sexual abuse within their facilities. Within the areas of both supervision and investigation, there are policies and practices that correction officials can institute to better prevent and deter custodial sexual abuse.

For example, with respect to investigations of sexual abuse, staff must be required to report warning signs of abuse that they observe, and correction officials must promptly act on indicia of sexual abuse. In addition, clear rules are required that mandate that a person’s statement not be disregarded because she is in custody and the alleged perpetrator is a staff person. It is also critical that investigators and supervisory staff communicate about allegations and evidence of abuse, even when sufficient proof cannot be found to substantiate an allegation.

Above all, supervision is essential for deterrence. Extensive camera coverage within the facility is needed both to prevent acts of abuse and to provide corroboration of the fact that the abuse could have happened as reported by the individual. Supervisors must be able to provide additional supervision of staff when there are credible complaints of abuse. And finally, special populations, such as women and LGBTI prisoners, deserve special attention to protect them from harm.

We therefore urge the Board to adopt the Rules proposed by the Public Advocate with the following clarifications and additions:¹⁰

RECOMMENDATIONS

1. System-Wide PREA Coordinator Requirement.

DOC has established a position for a system-wide PREA coordinator and BOC should incorporate this position as a requirement in their Petition. Such a position is necessary so that there is one person with central authority for implementing these rules

¹⁰ Some of our additions and modifications come directly from the National Standards, while some come from our own experience in trying to address the problem of prison sexual abuse.

across the system, who can function as a point person for victims and advocates to contact. We recommend adding the language of the National Standards to the Petition.¹¹

Chapter 1 of Title 40 at (k) should be amended to include:

DOC must appoint an upper level, DOC-wide PREA Coordinator. This person must have sufficient time and authority to develop, implement and oversee a plan to comply with these rules in all of its facilities.

2. Background Checks: Hiring and Promotion.

The Petition tracks the National Standards in requiring screening of staff before hiring. (Petition at 7-8.) This screening is essential in light of the serious shortcomings in DOC hiring practices identified by the Department of Investigation.¹²

The Petition prohibits hiring and promotion of staff if they have “engaged” in sexual abuse. (Chapter 1, Title 40 1-18, (b)(1)(i)). The Petition also requires DOC and DOHMH to “consider any incidents of sexual harassment” in making these decisions. (*Id.* at (b)(2)). We recommend making it explicit that both terms include “allegations” of sexual abuse and/or harassment. In addition, our recommendation provides for supervision of individuals who may be hired despite evidence that raises concerns about past sexual abuse and/or harassment by those individuals.

Chapter 1, Title 40 at § 1-18 (b) should be amended to include:

If the screening assessments result in indicia of reasonable suspicion that the applicant has psychological problems or may engage in sexual abuse and/or sexual harassment, or if the applicant is initially rejected by DOC for employment and is only hired after an appeal of that decision, the indicia shall be provided by DOC to its Wardens. DOC shall develop policies and procedures to monitor such applicants closely.

Chapter 1, Title 40 at § 1-18 (b)(1), which bars hiring of persons who present a risk of engaging in sexual abuse, should be amended to include (supplemental language in bold):

- (i) has engaged in sexual abuse and/or sexual harassment in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution;
- (ii) has been convicted of engaging in or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent;

¹¹ See 28 C.F.R. § 115.11.

¹² New York City Department of Investigation Report on the Recruiting and Hiring Process for New York City Correction Officers, January, 2015 available at: http://www.nyc.gov/html/doi/downloads/pdf/2015/jan15/pr01rikers_ aiu_011515.pdf

- (iii) **has been the subject of a final order of protection issued by a criminal court or family court related to domestic violence, stalking, or harassment;**
- (iv) has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (i) or (ii) of this section; or
- (iv) **has been the subject of credible complaints of having engaged in the activity described in paragraph (i) or (ii) of this section.**

3. Supervision and Video Camera Coverage.

The Petition requires DOC to develop, document and make best efforts to comply with a staffing plan and placement of cameras to protect inmates from sexual abuse. (Petition at 8-9.) We endorse the proposed rules set forth in Rule § 1-18(c) and recommend that they be supplemented to include more detail with respect to four topics: (a) staffing plans; (b) supervisory rounds; (c) the use of cameras and the maintenance of digital videos; and (d) searches of staff.

a. **Staffing Plans.**

The Petition calls for DOC and DOHMH to “develop, document and make its best efforts to comply on a regular basis with a staff plan that provides for adequate levels of staffing...to protect inmates against sexual abuse,” and details factors that the agencies must consider. (Petition at 8-9). We recommend the Petition be supplemented to include language like that of the National Standards, which requires that such plans be developed, and updated on an annual basis.¹³

Chapter 1 of Title 40, §1-18(c)(1) should be amended as follows (supplemental language in bold):

The Department of Correction and Department of Health and Mental Hygiene shall ensure that each facility it operates shall develop, document and make its best efforts to comply on a regular basis with **an annual** staffing plan that provides for adequate levels of staffing, and the Department of Correction shall provide video monitoring to protect inmates against sexual abuse.

b. **Supervisory Rounds.**

In addition to the rules it proposes with respect to supervision, the Petition should require frequent and unpredictable supervisory rounds and prohibit staff from alerting other staff in advance of supervisory rounds, so that supervision will serve to deter, prevent, and identify sexual abuse. Frequent, unannounced, and unpredictable rounds serve as a critical deterrent to staff sexual abuse. We therefore recommend the Petition be supplemented to include language on this topic from the National Standards concerning supervision.¹⁴

¹³ See 28 U.S.C. § 115.13.

¹⁴ See 28 U.S.C. § 115.13.

Chapter 1 of Title 40, §1-18 at (c) should be amended to include as §1-18(c)(3):

DOC must have a policy and practice of upper-level supervisors conducting and documenting unannounced rounds during both day and night shifts to identify and deter staff sexual abuse and sexual harassment. The policy must prohibit staff from alerting other staff that supervisory rounds are occurring by telephone or other means (this practice is sometimes known as a “trip call” or a “call-ahead”), unless the communication is related to legitimate operational functions of the facility.

To avoid any ambiguity as to what this provision requires, we further propose the following rules, either as subparagraphs to paragraph §1-18(c)(3) *or* as appropriate recommendations to DOC for inclusion in its policies, if they are too specific for the purposes of the Board’s Rules:

- (i) DOC supervisory staff shall make frequent rounds, with each Captain making rounds to each area that is under his or her supervision at least twice per shift unless prevented by legitimate security concerns, and more if possible. Rounds shall be conducted at unpredictable and varied times, with varied entry points if possible, and shall include repeated visits close in time to the same areas. Scrutiny shall be paid to isolated areas in the jails.**
- (ii) DOC supervisory staff shall instruct all correction officer staff that alerting fellow officers of supervisory rounds is not permitted; shall monitor whether this rule is being followed; and shall discipline staff for insubordination if they determine that staff are ignoring or have violated this rule.**
- (iii) The disciplinary measures that DOC imposes on correctional officer staff for announcing supervisory rounds shall be sufficiently serious to serve as a deterrent.**
- (iv) Both during an investigation or upon the completion of an investigation, if there is a reasonable and credible basis upon which to believe that an officer is engaging in sexual abuse, particularly where there have been repeated allegations concerning the same officer, DOC shall monitor the officer’s behavior closely by conducting additional unannounced rounds of the officer’s post, by targeted monitoring of the officer’s behavior through the use of cameras to review his interactions with prisoners on a repeated and frequent basis including through real-time review. (A “reasonable and credible basis” includes allegations that are found to be “substantiated” or “unsubstantiated” but not allegations that are found to be “unfounded.”)**
- (v) Notwithstanding privacy concerns, if DOC receives serious, credible, and repeated complaints that sexual abuse is occurring in an area without cameras, DOC shall immediately install cameras and monitor in that location.**

c. Cameras and Maintenance of Digital Video.

The Petition requires that the DOC provide video monitoring to protect inmates against sexual abuse. (Petition at 8). Cameras provide important corroboration that, for example, an individual was taken out of her cell during the middle of the night. They also can show when an individual and staff member are in an isolated location, permitting DOC to put the onus on staff to justify the interaction.

We recommend the Petition be amended to include language that requires DOC to take into account repeated allegations of sexual abuse involving a particular staff member or location within the facility when making decisions about camera placement. Furthermore, because of the reluctance to report sexual abuse, and with the advent of inexpensive digital storage, we believe it critical that the proposed Rules contain a provision requiring that tapes be maintained for at least six months and longer in the case of a report of sexual assault.

Chapter 1 of Title 40, §1-18 at (c) should be amended to include as §1-18(c)(4):

Digital video and sound recording cameras shall be installed and be operational in every DOC jail and transport vehicle. They shall be installed in every housing area, program area, and mess hall. Cameras shall be installed in isolated locations where sexual abuse is likely to occur (e.g., storage closets, laundry rooms, slop sink areas, and loading docks) or in areas in which sexual abuse is repeatedly reported to have occurred. Cameras shall be installed to monitor the area(s) to which staff members against whom repeated complaints of sexual abuse are made are assigned. Cameras shall have the capacity for live-action review.

Chapter 1 of Title 40, §1-18 at (c) should be amended to include as §1-18(c)(5):

Digital video from all cameras shall be maintained for no less than six months. If a report of sexual abuse is made, video from all cameras monitoring the location(s) in which the sexual abuse is alleged to have taken place shall be maintained for five years.

d. Searches of Staff.

Because sexual abuse by staff may include providing vulnerable prisoners with basic items to which they might not otherwise have access, and searches of staff coming to Rikers have been extremely lax,¹⁵ we recommend the Petition be amended to include language regarding these searches.

¹⁵ See New York City Department of Investigation Report on Security Failures at City Department of Correction Facilities, November 2014, available at <http://s3.documentcloud.org/documents/1354724/d-o-i-report-on-security-failures-at-correction.pdf>

Chapter 1 of Title 40, §1-18 at (c) should be amended to include as §1-18(c)(5):

DOC shall conduct reasonable searches of all correction staff on entry to a jail, and as needed, to deter entry of (i) condoms, (ii) contraband, and (iii) other materials used by staff to facilitate the sexual abuse of incarcerated individuals.

4. Screening for Sexual Abuse and Threat During the Intake Process.

Corrections officials often see the only viable means for protection to place prisoners in some form of “protective” or “administrative” custody in order to protect them after an allegation of abuse. While this may be necessary, the use of segregated confinement should be minimized to the extent possible. As a result, we urge that the language of the National Standards¹⁶ be incorporated into the Proposed Rules.

Chapter 1 of Title 40, Proposed Section 1-18 at (f) should be amended to include:

- (8) Inmates at high risk for sexual victimization must not be placed in involuntary segregated housing, unless there are no other available alternative means of separating the inmate from likely abusers. If an assessment of available alternatives cannot be made immediately, the facility may hold the inmate in involuntary segregated housing for less than 24 hours while the facility completes the assessment. Inmates must be assigned to segregated housing only until an alternative means of separation is arranged. This period must not exceed 30 days.**
- (9) If there are no alternative means, the facility must clearly document the basis of the facility’s concern for the inmate’s safety and the reason why no alternative means can be arranged. The facility must review the housing assignment every 30 days to determine whether continued separation is necessary.**
- (10) If an inmate is placed in segregated housing for this purpose, the inmate must have access to programs, privileges, education, and work opportunities to the extent possible. If access to any of these opportunities is restricted, the facility must document which opportunities have been limited, the duration of the limitation, and the reason for the limitation.**

5. Sexual Abuse Response and Investigation.

a. Prisoners Should Not Be Disciplined for Reporting Abuse.

The Petition proposes that the Department take a number of steps to facilitate confidential reporting of staff sexual abuse and sexual harassment (Petition at 12). We endorse these recommendations, and, in light of prisoners’ reluctance to report sexual abuse as described above, we believe a limitation on disciplining prisoners for reporting sexual abuse and harassment similar to that contained in the National Standards¹⁷ should also be included.

¹⁶ See 28 U.S.C. §115.43.

¹⁷ See 28 U.S.C. § ____.

Chapter 1 of Title 40 at §1-19(a)(1)(iv) shall be supplemented as follows:

(iv) Inmates shall not be punished for filing a complaint related to alleged sexual abuse or sexual harassment.

b. Limits Should be Placed on the Use of Segregated Confinement Following a Report of Abuse.

The Petition proposes that the Department take steps to protect inmates who are subject to an imminent risk of sexual abuse and to protect them from retaliation following abuse (Petition at 13). We endorse these recommendations, but in light of the devastating consequences of isolated confinement, the same restrictions on the use of involuntary segregated confinement that we suggest above should likewise apply following a report of abuse as is required by the National Standards.¹⁸

Chapter 1 of Title 40 at §1-19(e)(1) should be amended to include:

The provisions of Chapter 1 of Title 40, Proposed Section 1-18 at (f)(8)-(10) shall apply following a report of sexual abuse.

c. Staff's Duty to Report Warning Signs of Abuse Must Be Made Explicit.

It is a critical first step, as proposed in the Petition, that staff be required to report "any knowledge, suspicion or information regarding an incident of sexual abuse or sexual harassment..." (Petition at 12-13). However, we suggest that this is not enough. It is important that there be a clear requirement that staff also be required to report "warning signs consistent with sexual abuse" that they observe. They need to understand that they need to report staff engaging in favoritism, spending significant amounts of time with a prisoner, engaging in horseplay with a prisoner, or repeatedly asking a prisoner to come early or leave late from programs. While such conduct may be innocent, staff should have to report it so that supervisors can take appropriate steps to deter and prevent any escalation of misconduct.

Chapter 1 of Title 40 Section §1-19 should be amended at (a)(2) to include (supplemental language in bold):

The Department of Correction and Department of Health and Mental Hygiene shall require all staff to report immediately and according to Department policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the Department, **including any warning signs or red flags consistent with such abuse**; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

¹⁸ 28 C.F.R. §115.68.

6. Investigations.

Many factors make it difficult for victims of sexual abuse to report abuse. One of those factors is that when they do report sexual abuse, particularly with allegations of staff sexual abuse, their reports are rarely credited.¹⁹ The Petition (at 14-15) requires that credibility be assessed and not judged solely on the basis of a person's status as an incarcerated individual or staff member. This requirement is essential to ensure that the claim of an incarcerated victim may be considered sufficient to substantiate an allegation against staff. To provide additional guidance and clarity to overcome the fundamental bias inherent in jail investigations, we recommend an evidentiary standard should be established. The evidentiary standard must be set out clearly and at a minimum must track the National Standards and require no higher than a "preponderance of the evidence."²⁰

In addition, it is not enough to require that repeated prior allegations of abuse be "reviewed." Prior reports of allegations of abuse involving the same alleged staff perpetrator should be considered substantive evidence of propensity, as is permitted by the Federal Rules of Evidence, Rule 415.

Chapter 1 of Title 40 at § 1-19 at (f) should be amended to include:

(10) The evidentiary standard for administrative investigations of staff sexual abuse must be no higher than a preponderance of the evidence.

(11) Physical evidence shall not be required for a determination of whether the standard of proof is met in investigations of staff sexual abuse

(12) A statement by an incarcerated person may be sufficient by itself to meet the standard of proof to show that a staff person engaged in sexual abuse.

(13) All prior allegations of sexual abuse involving the alleged perpetrator or allegations revealed in the course of the investigation of sexual assault, including similar patterns of abuse, shall be considered.²¹ DOC investigative staff shall maintain information about prior sexual abuse allegations in an easily retrievable manner and shall review all prior allegations involving the same correction staff when undertaking each new investigation. Allegations of

¹⁹ For example, in New York State, only about 2 percent of staff sexual abuse allegations lead to substantiated findings. Survey of Sexual Violence in Adult Correctional Facilities, 2009–11 - Statistical Tables, <http://www.bjs.gov/content/pub/pdf/ssvacf0911st.pdf> at 7-12 (In 2011 New York State, with a population of approximately 55,000, had 184 allegations of staff sexual misconduct and substantiated four. As to staff sexual harassment (which is defined as verbal harassment) New York had 24 allegations and substantiated two.

²⁰ See 28 U.S.C. § 115.71-72.

²¹ See *People v. Molineaux*, 168 N.Y. 264 (1901); Fed. R. Evid. 415.

similar patterns of abuse by more than one alleged victim shall be given substantial weight in support of meeting the burden of proof. Repeated similar allegations of sexual abuse shall be given substantial weight in support of a finding of credibility on the part of the alleged victim.

(14) Unless prevented by legitimate security concerns, all available and practicable investigative tools shall be used in assessing whether the standard of proof is met to believe that a staff person engaged in sexual abuse. These tools shall include: review of materials from cameras (i.e., video and audio); fingerprinting in all cases where it could be probative; the placement of hidden cameras where they could reasonably be believed to lead to corroborative evidence; and, as appropriate and in conjunction with trained law enforcement staff, covert surveillance techniques.

7. Discipline for Staff.

The Petition does not provide for rules regarding disciplinary hearings. Because DOC is involved in the disciplinary process, we recommend amendments that permit DOC to proffer evidence of patterns of sexual misconduct, as is permitted in New York State criminal prosecutions and by the Federal Rules of Evidence. *See People v. Molineaux*, 168 N.Y. 264 (1901); Fed. R. Evid. 415. In addition, staff who preside over, and make decisions in, disciplinary hearings need specialized training to evaluate reports of abuse, which may be delayed or otherwise affected by the trauma experienced by the victim. They should be trained to recognize the unique challenges faced by persons coming forward after experiencing severe trauma.

Chapter 1 of Title 40 § 1-19 at (h) should be amended to include:

- (5) The standard of proof at hearings for discipline of staff shall be preponderance of the evidence.**
- (6) Evidence of prior allegations of abuse involving the alleged perpetrator, or allegations revealed in the course of the investigation of the sexual assault, including similar patterns of abuse, shall be offered as evidence at the administrative hearings where disciplinary charges against staff are considered.**
- (7) Arbitrators and prosecutors at administrative hearings where disciplinary charges against correction staff are considered will receive training on the impact of sexual abuse on the reporting of such complaints.**

8. Sexual Abuse Incident Reviews Must Be Conducted.

Sexual abuse is underreported and that will be difficult to change. In addition, it will be difficult to alter the long-standing bias against crediting complaints made by incarcerated individuals against correction staff and the reluctance of staff to report one another for misconduct. We are optimistic that the rules proposed in the Petition and in this document will begin to create these needed changes, at least in part by creating a means of enforcement of the PREA standards.

Requiring sexual abuse incident reviews, in which high-ranking DOC staff review and consider the appropriate response to allegations of sexual abuse, is an additional reform that we believe is critical to the process of change. Supervisors must be involved in considering whether additional supervision of a particular staff person, or area, is required, and in documenting the reasons for the decision. Likewise, supervisors must be involved in the review of policies to determine whether they have contributed to sexual assaults by DOC staff. We recommend the Petition be supplemented to include language like that in the National Standards, which require the involvement of high-ranking staff in the review of allegations of sexual abuse.²²

Chapter 1 of Title 40 should be amended to include:

DOC must conduct a sexual abuse incident review within 30 days of the conclusion of every sexual abuse investigation where allegations were found to be either substantiated or unsubstantiated. Reviews do not need to be conducted for allegations that were determined to be unfounded. Upper-level management officials should conduct these reviews, with input from line supervisors, investigators, and medical or mental health practitioners.

- (a) The review team should consider a need for policy or practice change and whether the incident was motivated by race,**

²² See 28 U.S.C. § 115.86.

ethnicity, gender identity, LGBTI identification/status/perceived status, gang affiliation, or other group dynamics.

(b) The team should also examine the area where the incident allegedly occurred to assess whether physical barriers to observation in the area (by either cameras or supervisory staff) enable abuse. Further, the team should assess staffing levels and whether monitoring technology should be deployed or improved. As to staff sexual abuse allegations, the team should also examine whether additional supervision of the accused staff is needed by either increased rounds or additional video monitoring and, in assessing this need, the team shall consider whether repeated credible complaints of abuse have been alleged.

(c) The team should prepare a report of its findings. The report should include determinations of considerations and recommendations for improvements. These reports should be submitted to the facility head and the PREA compliance manager. If the facility does not implement the recommended improvements, they must document their reasons.

9. Special Populations Require Specific Rules.

As repeated studies and reports have made clear, particular populations of prisoners are at substantially higher risk of sexual assault than others. These include women prisoners,²³ youthful inmates,²⁴ LGBTI persons in custody,²⁵ and prisoners with disabilities and with limited English proficiency. For that reason, clear rules for their treatment are required, as recognized by the Petition and by the National Standards. 28 U.S.C. §§ 115.5, 115.14-16, 115.33, 115.42, 115.82.

Below we focus on the proposed Rules contained in the Petition which we believe require strengthening or clarification.

²³ See Bureau of Justice Statistics Report: Sexual Victimization Reported by Adult Correctional Facilities, 2009-2011, <http://www.bjs.gov/content/pub/pdf/svraca0911.pdf> at 1 (Note) (women prisoners have a higher rate of reported sexual abuse although smaller portion of inmate population); see also Angela Browne, et al., "KEEPING VULNERABLE POPULATIONS SAFE UNDER PREA: ALTERNATIVE STRATEGIES TO THE USE OF SEGREGATION IN PRISONS AND JAILS," at 11-13 (identifying risk factors for women prisoners).

²⁴ See Angela Browne, et al., "KEEPING VULNERABLE POPULATIONS SAFE UNDER PREA: ALTERNATIVE STRATEGIES TO THE USE OF SEGREGATION IN PRISONS AND JAILS," at 13-14 (identifying risk factors and strategies for youthful prisoners).

²⁵ See also Angela Browne, et al., "KEEPING VULNERABLE POPULATIONS SAFE UNDER PREA: ALTERNATIVE STRATEGIES TO THE USE OF SEGREGATION IN PRISONS AND JAILS," at 15-16 (citing studies showing while 3.5 percent of heterosexual male inmates reported being sexually victimized by an inmate, by contrast 39 percent of gay men and 34 percent of bisexual men reported such victimization; lesbians and bisexuals reported twice the rate of sexual abuse by staff as heterosexual women, and a study in California found that transgender women housed in a men's facility were 13 times more likely to have been sexually abused by other inmates than non-transgender people).

a. Searches of LGBTI Prisoners.

The Petition (at 9) seeks adoption of the language from the National Standards requiring training of “staff in how to conduct... searches of transgender and intersex inmates, in a professional respectful manner, and in the least intrusive manner consistent with security needs.” While we certainly agree with this recommendation, we do not believe it goes far enough. Instead, we believe that unless there are exigent circumstances a transgender or intersex prisoner’s request for staff of a certain gender to conduct the search should be honored. Accordingly, we propose the following amendment.

Chapter 1 of Title 40 §1-18(d)(6) should be amended to include (supplemental language in bold):

The Department shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible consistent with security. **Unless exigent circumstances require an immediate search, the Department shall make best efforts to conduct the search by staff of the gender requested by the prisoner.**

b. Housing of LGBTI Prisoners.

In the Summary submitted by the Public Advocate, she clearly intends that the proposed rules make clear that “housing assignment cannot be based solely on anatomy.” Petition at 2. Yet the proposed Rules (Petition at 12) do not make this explicit, and many agencies have interpreted the National Standards to require something less. To avoid any ambiguity in this area, we suggest that this be made explicit as indicated below.

The Department has also set up a voluntary housing area for transgender female prisoners confined in a male facility (“THU”). This is an important component of any continuum of safe housing for these individuals, so long as any transgender female prisoners continue to be so confined. As a result we urge the amendments to § 1-18(g)(4) identified below.

Chapter 1 of Title 40 §1-18(g) should be amended to include (supplemental language in bold):

Housing Transgender and Intersex Inmates. Placement in a male or female jail shall not be based solely on a prisoner’s assigned sex at birth. In deciding whether to assign....

Chapter 1 of Title 40 § 1-18 at (g)(4) should be amended to include:

The Department shall maintain a housing program for female transgender prisoners who they have determined cannot be safely housed in a women’s jail. Assignment to such housing shall be voluntary. Prisoners in such housing shall have reasonable access to the same programs as other inmates in that jail.

10. Data Collection.

A longstanding issue in addressing custodial sexual abuse is the lack of transparency and knowledge about the scope and severity of the problem, particularly as experienced by special populations (including women, LGBTI prisoners, and the disabled). In addition, a recurring problem has been that staff sexual abuse is that staff about whom repeated credible complaints have been lodged are nonetheless allowed to return to employment with no additional supervision. We therefore support the following additions to the data to be collected by the Department and to be provided to the Board.

Chapter 1 of Title 40 §1-19(i)(1) should be amended to include the following (supplemental language in bold):

(1) The Department shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions. **The data the Department shall collect includes the number of allegations of sexual abuse by special populations of prisoners, the numbers of substantiated allegations from each such population, the number of staff who have reported observing sexual abuse, or warning signs of sexual abuse and the number of staff disciplined for failing to make such reports, the number of staff about whom reports of abuse have been made, the number of such staff about whom prior allegations of abuse have been lodged, the number of such staff who have remained employed at DOC, and the number of such staff remaining employed at DOC about whom additional supervision has been directed.**

Respectfully submitted,

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Planned Parenthood of New York City

**Planned Parenthood of New York City
Testimony in support of Proposed Int. No. 899**

Good afternoon. I am Julienne Verdi, Director of Government Relations at Planned Parenthood of New York City (PPNYC). I am pleased to be here today to provide testimony in support of Proposed Int. No. 899. Planned Parenthood of New York City thanks our strong supporter and Chair of the New York City Council Committee on Fire and Criminal Justice, the Hon. Council Member Elizabeth Crowley for her leadership in convening this hearing. We'd also like to thank Speaker Melissa Mark-Viverito, the Committee on Fire and Criminal Justice and the entire City Council for their dedication to issues that impact women in incarceration, and we welcome the opportunity to discuss ways we can work together to improve healthcare services for women in the criminal justice system.

As a sexual and reproductive health care provider, we see nearly 50,000 patients annually in our five health centers located in all five boroughs of New York City. PPNYC provides sexual and reproductive health services including birth control; emergency contraception; gynecological care (including cervical and breast cancer screenings); colposcopy; male reproductive health exams; testing, counseling, and treatment for sexually transmitted infections; the HPV vaccine; HIV testing and counseling; pregnancy testing, options counseling (including adoption) and abortion. As a trusted safety net provider in New York City we understand firsthand the structural inequities that affect a person's access to quality, compassionate health care.

PPNYC supports Proposed Intro. 899, which would require the New York City Department of Corrections to report on the Rikers Island nursery program. The nursery program offers a critical point of bonding and care for new mothers and their children, and this legislation would enable city agencies and advocates be better informed on the services provided in the nursery, as well as eligibility into the program and any use of force on inmates.

The need to address issues that impact women in the criminal justice system is more important than ever. The number of women incarcerated in the United States has grown by over 800% in the last three decades, more than double the increase of the male prison population.¹ PPNYC encourages the City Council to address the wide-range of health issues and experiences affecting incarcerated women. Female inmates are predominately mothers and have high rates of a history of trauma, substance abuse and mental illness.² Many are survivors of domestic violence or childhood sexual abuse.³ Given the high rates of trauma, it is critical that healthcare for women in New York City jails be trauma-informed.

Women's specific healthcare needs must not be overlooked. Comprehensive care for female inmates includes routine gynecological exams, sexual assault support, pregnancy support and abortion. We recommend that routine check-ups include breast exams, cervical cancer screenings, HIV and STI testing as requested and timely follow-up care as needed, and that New York City's policy is enforced. Just as

¹ Cooper, M., West, H., & Sabol, W. (2009). National Prisoner Statistical Data Series - Bureau of Justice Statistics. Office of Justice Programs, U.S. Department of Justice, NCI(228417). Retrieved December 11, 2015, from <http://www.bjs.gov/content/pub/pdf/p08.pdf>

² The Sentencing Project (2012, September 1). Incarcerated Women Factsheet. Retrieved December 11, 2015, from http://www.sentencingproject.org/doc/publications/cc_Incarcerated_Women_Factsheet_Sep24sp.pdf;

³ The Correctional Association of New York (2009, April). Women in Prison Fact Sheet. Retrieved December 11, 2015, from <http://www.correctionalassociation.org/resource/women-in-prison-fact-sheet>

important as providing access to care; however, is ensuring a healthy doctor-patient relationship. Female inmates at Rikers Island have reported cases of physician assault, and so we urge the Department of Corrections to ensure stringent accountability measures are in place.⁴

In order to better understand and improve the reproductive and gynecological services provided in New York City jails, PPNYC recommends the New York City Department of Corrections report on the provision of contraceptive services for female inmates in NYC jails. In accordance with the New York State Commission of Correction's 2008 memo to Corrections administrators, jails should permit women "to continue taking previously prescribed hormonal therapy during incarceration, i.e., in a manner no different from most other prescription medications prescribed by an offender's primary care physician."⁵ Contraception is prescribed for a variety of health reasons, including to prevent pregnancy, and the decision of whether or not to use contraception must be left to a patient and their physician. Conflicting reports on the provision of contraceptive services in correctional facilities evidences the need for clear public reporting.

All New Yorkers deserve access to, quality health services, and correctional facilities have an obligation to enact and uphold policies that ensure inmates' access to care. Jails and prisons can help address health inequities incarcerated women face by providing timely access to critical services. When it comes to sexually transmitted infections, women in New York City jails are twice as likely as men to be diagnosed with HIV and female inmates experience higher rates of Hepatitis C.⁶ Jails serve as a critical access point to care, able to provide screening, counseling, and follow-up care at no cost for individuals at high risk of transmission.

Comprehensive care also includes personal hygiene, and for women, this includes menstrual products. Access to feminine hygiene products is a basic human right and an issue of dignity and health. New York City correctional facilities should ensure all female inmates are provided with an adequate amount of feminine hygiene products upon request. Women should not be forced to acquire a medical permit or spend their commissary earnings to achieve a basic standard of hygiene.

Lastly, PPNYC recommends the Department of Corrections report on the use of restraints on pregnant inmates and new mothers, both in the nursery program as well as during transport. Shackling during pregnancy and recovery after birth is dangerous and degrading and puts a person's health and safety at risk. The use of restraints on pregnant individuals heightens the risk of blood clots, limits the mobility needed for a safe pregnancy and delivery, and increases the risk of falling, which can potentially cause miscarriage.⁷ The American Congress of Obstetricians and Gynecologists (ACOG), the American College of Nurses-Midwives (ACNM) and the American Medical Association (AMA) all condemn the use of shackles during pregnancy.⁸ The AMA has even called the practice "barbaric."⁹ The New York State

⁴ Eichelberger, E. (2015, September 10). In Harm's Way: Seeking Medical Care, Female Rikers Inmates Say They Faced Sexual Abuse. Retrieved December 11, 2015, from <https://theintercept.com/2015/09/10/female-rikers-inmates-medical-care-sexual-abuse-allegations/>

⁵ New York State Commission of Corrections (2008, March 3). Chairman's Memorandum No. 4-2008, RE: Reproductive Services for Women in Jail. Retrieved December 11, 2015, from http://www.nyclu.org/files/Correction_Memo_080304.pdf

⁶ Porr, T. (2015, May 18). Breaking The Silence Around The "Silent Epidemic" Of Hep C. Retrieved December 11, 2015, from <http://fortunesociety.org/2015/05/18/breaking-the-silence-around-silent-epidemic-of-hep-c/>.

⁷ The American Congress of Obstetricians and Gynecologists (2011, November 1). Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females. Retrieved December 11, 2015, from <http://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Health-Care-for-Pregnant-and-Postpartum-Incarcerated-Women-and-Adolescent-Females>

⁸ *Id.*

Planned Parenthood of New York City

Assembly and Senate recently passed legislation prohibiting the use of restraints during pregnancy and eight weeks postpartum. The legislation is currently awaiting Governor Cuomo's signature. PPNYC urges Governor Cuomo to sign the shackling bill and further urges New York City to enact measures to assess compliance and public reporting tools for when restraints are used. The reports should track the total number of times restraints are used on pregnant inmates and during postpartum care while in custody, as well as the reason for the use of restraints and the duration of use.

Planned Parenthood of New York City is committed to advancing compassionate nonjudgemental healthcare for all New Yorkers, no matter what. Putting a woman's health and safety at risk because she is jail is cruel and undermines patient choice and dignity. We urge the Council to pass Proposed Intro. No. 899 and further address the wide-range of health issues affecting incarcerated women in New York City.

Thank you for the opportunity to testify on this important issue and I would be happy to take any questions or provide additional information.

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Since 1916, Planned Parenthood of New York City (PPNYC) has been an advocate for and provider of reproductive health services and education for New Yorkers. Through a threefold mission of clinical services, education, and advocacy, PPNYC is bringing better health and more fulfilling lives to each new generation of New Yorkers. As a voice for sexual and reproductive health equity, PPNYC supports legislation and policies to ensure that all New Yorkers—and, in fact, people around the world—will have access to the full range of reproductive health care services and information.

⁹ Walker, E. (2010, June 6). AMA: House of Delegates Backs Ban on Shackling Inmates in Labor. Retrieved December 11, 2015, from <http://www.medpagetoday.com/MeetingCoverage/AMA/20692>



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

**Kelsey De Avila – Social Worker, Jail Services
*BROOKLYN DEFENDER SERVICES***

Presented before

**The New York City Council Committees on Women and Fire, Correction, & Criminal Justice
Oversight Hearing Examining the Unique Issues Facing Women in City Jails
& Intro 0899-2015**

**A Local Law to amend the administrative code of the city of New York, in relation to requiring
the Department of Correction to report on the Rikers Island nursery program.**

December 15, 2015

My name is Kelsey De Avila and I am a Social Worker in the Jail Services division at Brooklyn Defender Services. Thank you for this opportunity to address the Council. My testimony will address a range of issues which impact our female clients who are incarcerated at the Rose M. Singer Center (RMSC, or “Rosies”) on Rikers Island, including a number of problems related to the nursery program. We support the adoption of intro 0899, and encourage the Council to go even further in its oversight of the women’s jail.

Presently, our city jails fail to provide services to address the multitude of issues that specifically impact women. When compared to their male counterparts, our female clients who are incarcerated are more likely to suffer from a mental illness (recently more than 70%) and chronic medical conditions; they are more likely to be unemployed or underemployed; they are much more likely to have histories of trauma and to be survivors of sexual and physical abuse; they are more often the primary caretakers of children while in the community; and horrifyingly, they are much more likely to experience sexual abuse while incarcerated. Rather than receiving targeted services and programming to address these serious and wide-ranging issues, our clients at Rosies frequently experience triggers of Post-Traumatic Stress Disorder and new traumas. Notably, the bulk of the top charges that bring women into contact with the criminal justice system may be related to histories of drug and alcohol addiction – a clear indication that the War on Drugs continues to wreak havoc in the lives of the clients, families, and communities we serve.

The programming that is available at Rosies is inconsistent and poorly promoted – most of our clients report learning about available programs through word-of-mouth. Programs may also be inaccessible for many women because they are only offered in certain units, or require an escort. Escorted movement throughout the jail may be wise to ensure safety, however, chronic understaffing means that escorts are often unavailable, limiting access to programming, medical and mental health care, and delaying counsel visiting.

Visiting

The visiting room at Rosies includes space for women to play with their children. However, this room is open at the discretion of the officer, which means not every mother and child have the opportunity to use it. To add, for the last several months, water has been leaking from the ceiling gathering in a putrid puddle, molding toys and books, and rendering the space unusable. Despite offers from Hour Children to replace toys and beautify the space, the Department has failed to fix the leak or repair the room. Instead, DOC has exerted significant resources pursuing rule changes which would limit contact between incarcerated women and their families.

Staff Sexual Abuse

Sexual abuse by staff of women at Rosies has become endemic and must be an urgent priority of the council. According to court documents filed by Public Advocate Letitia James, your Department of Correction has failed to transmit reports of sexual assault to the NYPD for investigation in 114 of 116 cases, including 61 that were allegedly carried out by Rikers staff, which is disturbing and shameful. Our jails should be subject to oversight which go above and beyond the Prison Rape Elimination Act (PREA): camera coverage should be expanded and include particularly dangerous places like transport buses; meaningful investigations must take place immediately; staff must be held accountable promptly; and most importantly we need to ensure the protection of the survivor.

Pregnant and Incarcerated

One of our clients is a 16 year old sharing a cell with a pregnant woman. The pregnant woman was in pain and asked our client to get her some water. The officer told our client that the pregnant woman needed to do it herself. The officer did not use the opportunity to get help or alert medical staff. Instead, an argument arose and our client received a ticket, or infraction, for disrespecting staff when she advocated for this woman to get attention. Officers need to be properly trained to work with pregnant women; we can't allow this kind of mistreatment towards people to go unnoticed; pregnant women should be housed together to ensure better access to programs, medical attention and other resources.

New Mothers

With regard to the Nursery unit, we echo the comments and testimony offered by others including the Legal Aid Society and Hour Children. Maintaining parental bonds is essential to the well-being of children and mothers alike, and the positive impacts will be felt beyond the jail

in communities throughout the city. The Nursery program is an opportunity for women to receive parenting resources and support, which should continue for both the mother and child after the program.

We are encouraged by reports that denials to the Nursery have slowed, however, we are hopeful that the provision in Int 0899 requiring reporting on reasons for denials will eventually yield greater approval rates. One major criterion for denial is previous ACS involvement. Based on our experience representing parents in Family Court, we know that the range of allegations constituting “abuse and neglect” is extraordinarily broad and should not be grounds for denial. For example, having had a dirty house has no relationship to one’s ability to parent in the nursery setting. Timeliness of application processing should also be scrutinized, and should be included in the bill. Applications for placement to the nursery should not take months to process, as has been the case in the past. Such delays are contrary to the very purpose of the program, namely to maintain mother-child bonds. The issue is not solely one of facility capacity; the Nursery can hold up to fifteen women, and on my last visit, held only four.

We recently represented a client who had a 6 month-old child and was breast feeding at the time of her arrest. She was incarcerated pre-trial and was not told by DOC how long she and her child would be separated before being approved to co-reside at RMSC. We’ve received information from DOC staff that the approval process can take up to four months. There should be little to no gap of separation from a mother and their child. Such separation can be damaging to the child’s development and dangerous to a mother’s mental health. Among the many risks is the onset of post-partum depression, which First Lady Chirlane McCray has described as a major concern for this Administration. We also know the positive benefits breastfeeding has on the mother and child. The New York City Department of Health and Mental Hygiene recommends it and offers support to breastfeeding women in the community, yet DOC apparently does not make it a priority. The approval process needs to be expedited and the presumption should be to allow women and their children to participate, unless they present a serious threat to physical safety.

Mother-child bonding does not cease to be important on the child’s first birthday, yet the Nursery Program is only available during this first year of infancy. The Nursery Program should be expanded to allow children to remain with their mothers through their entire infancy as is permitted in several state prison systems, or even longer - through their pre-school years - as is permitted in many other countries’ correctional systems. At the very least, mothers who are serving sentences at Rosies that only exceed their young children’s birthdays by a few months should be allowed to stay in the program to prevent separation prior to re-entry. Additionally, the Council and the Administration should dedicate more resources to mothers in the community, including by investing in re-entry assistance, parental support, education, and job-placement assistance for mothers who come into contact with the criminal justice system.

Illegal and Unconscionable Shackling of Pregnant Women

Finally we implore the Council to immediately require that the Department adhere to existing state law (Correction Law 611) prohibiting shackling of pregnant women. Currently, pregnant women who are taken to community hospitals for treatment are shackled at their wrists

and ankles, with chains around their waists. Even when women receive abdominal surgeries, they are shackled at the hospital and during transport. This practice is illegal, inhumane and unnecessary, and poses extreme risk to the health of the mother and her pregnancy.

Conclusion

The Council has a responsibility to ensure the safety of all New Yorkers. The abuse and particularly the sexual violence taking place in the jails is an emergency and it is unacceptable. Platitudes like “reform takes time” are an insult to people and families who are suffering now. The vast majority of the women at Rosies simply should not be in jail – they are there simply because they are too poor to pay bail. To expose these women to a regime of sexual violence and abuse simply because they are poor is so morally abhorrent as to shock the conscience. The Council should prioritize access to services, alternatives to incarceration, and an end to pre-trial detention in all but the most serious cases.

Thank you for your consideration of my comments.

Rikers

Testimony

From: M. Jane <janestanicki@msn.com>
Sent: Sunday, December 13, 2015 7:30 PM
To: [REDACTED]

Testimony - City Council, Dec. 15, 2015

My name is Jane Stanicki. For most of the last decade I have visited the Rose M. Singer Center nursery each week as a volunteer advocate representing Hour Children, an organization that has worked with detained, incarcerated and formerly incarcerated women and their children for 30 years.

At the outset, I would like to applaud the Council for expressing concern for the women at Rikers. I understand that issues around violence in the men's jails have dominated the work of DOC, but those of us who are active at the women's facility wonder why it often seems there are no women at all at Rikers. Actually, there are over 500, most are mothers, the majority are not charged with a violent crime, and, in fact, many should not be there at all.

As to the main issues of today's hearing: it is the case that three or four years ago DOC too-often denied admission to the nursery, often with no explanation whatsoever. If pressed, a vague term such as 'nature of the crime' might be used but it was essentially meaningless. After using the public comment period at a Board of Correction meeting two years ago to call attention to this situation, both ACS and DOC were challenged to begin following their own guidelines. For the last two years the situation has been quite different. It is true that ACS review can cause a woman to be denied the nursery -- ACS should answer for themselves.

It is also the case that mental health issues can be a basis for denial,

but these also need to be separated from DOC decisions.

I think it is important to separate out what are really issues with DOC, and not other agencies. DOC has plenty to answer for, but let's make sure the focus is appropriate.

As to the use of force, I am unaware of such a problem in my almost ten years of weekly visits.

It is very important to note that the current Singer administration, under Warden Michele Clifford, is an immense improvement. She actually cares about the women themselves, both in and out of the nursery and she even uses terms such as gender differences, a phrase I'd never heard a Warden or Dep. use --- ever. And if DOC would stop the mindless rotation of Wardens, perhaps she might be permitted to stay long enough to truly implement significant change.

There really ARE issues to be raised about Singer. First and foremost is the simple fact that DOC does not seem to understand that women are not just small men -- they are different and deserve to be treated as such. The male, militaristic model that informs the policies and treatment of women is simply wrong. It totally denies gender differences and an abundance of very good social science research.

If the Council wishes to improve the lives of the women at Singer, I suggest attending to the matters of their physical and mental health and nutrition. Medical and counseling services are inadequate and sometimes incompetent. The recognition that most women there are

mothers is often completely lost. Attention to re-entry is ineffective at best,
and often non-existent.

Over the last year there have been people trying to make a difference:
Assistant Commissioner Homer Venters and his staff have instituted new
programs; Councilmen Van Bramer and Dromm, and Board of Correction
members Hamill and Cohen have spoken up in helpful ways, but these
voices and efforts are too few. They need support.

Lastly, if the Council really wants to make a difference for women,
I urge you to support alternatives to incarceration -- they are out there,
including bail funds so that fewer women would be needlessly taken from
their children. I further urge you to stop putting women in solitary confinement,
and to end the practice of shackling women when transporting them to the
hospital.

Most of all, remove the women from Rikers Island where the policies in
place are unsuitable, even when sensitively enforced. The
women should be in smaller groups, they should have a stable, well
trained staff who genuinely want to work with them, and programs that
promote a successful return to their families and the community.

Thank you.

Oversight Hearing – Examining the Unique Issues Facing Women in City Jails

Tuesday, December 15, 2015
Council Chambers, City Hall
New York, NY

Testimony of
Alex Abell
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Good afternoon. My name is Alex Abell, and I am the criminal justice advocate at the Urban Justice Center Mental Health Project. I am also a member of the NYC Jails Action Coalition. As an advocate with the Urban Justice Center, I visit NYC jails to speak with incarcerated people who are receiving mental health treatment about discharge planning services. This group includes detained and sentenced individuals. I visit Rose M. Singer Center, the women's jail, once a month, and I interview 20 people during each visit. So over the past year, I have spoken with roughly 220 women incarcerated in NYC jails who are receiving some level of mental health treatment. Some of these conversations are short, some are long, but all revolve around the topic of mental health treatment, both in the community and inside the jail itself. I am going to talk today about what I have heard from these women.

It is well established that the City jails are now providing services for which they were not designed. People should not go to jail to receive treatment for a mental illness, or for a substance use disorder. Nor should they be in jail because they are poor. And yet, there they are. Work is slowly being done to reduce the number of incarcerated people, but we must acknowledge that right now, this second, there are many women incarcerated at Rikers Island who would be better off in another setting. So we must consider them, and what we are doing for them – not only because it is our moral responsibility to help someone who is suffering, but because it is the smart thing to do from a public health and safety standpoint. Almost all of these women will be coming home – and soon.

When I say that these women are suffering, I mean that many are suffering from mental illnesses, many are suffering from substance abuse disorders, and most—more than 9 out of every 10 women—have suffered trauma in their lives. Ninety-one percent of incarcerated women have experienced physical violence. Seventy-five percent of incarcerated women have suffered sexual abuse. It is well documented that the criminal justice system, with its explicit mandate to

control and maintain power over the body of the incarcerated individual, has great and terrible potential to re-traumatize trauma survivors. Trauma, re-traumatize—this is not just jargon. People who have suffered trauma tend to react to being re-traumatized in ways that are terrible for them, terrible for whatever facility or location they happen to be within, and terrible for the community when they come home. Experiencing trauma—whether in interactions with their peers, with corrections staff, or by being separated from traditional support systems in the community—can cause people to relapse if they are fighting substance abuse, to experience a break if they are dealing with a mental illness, or perhaps to return to some type of violent or criminal behavior. The women who are incarcerated on Rikers are coming home soon, and they will be trying to take care of their children, hold down jobs, and survive, like all of us. And if we want it to work (for them and us), for them not to be re-incarcerated, for their kids not to go into foster care, for them to be working, and for them to be happy, we have to recognize the role that their time being incarcerated plays in their ability to live successful lives. We are witnessing and endorsing a traumatic, horrible cycle. And it is so unnecessary.

All women, the evidence shows, would benefit from staff who have been trained in trauma-informed care. Most women in jail have experienced serious trauma. It is ignorant of us then not to train every single person employed at Rose M. Singer (and Rikers in general) in trauma-informed care. This means the clinicians, and it means the officers. This does not mean that officers should become clinicians, but it means that they should be aware of the special impact that their professionalism and behavior while on the job has on the behavior of the women who are in their custody, and thus the safety of the jail and of the community. And it is not enough to simply be nicer, and it is not to put the onus for this on officers—trauma informed care is a specific, rigorous training, and it is up to us to give it to them. Every single person on Rikers, myself included, needs it.

What the women I visit at Rose M. Singer want is treatment. Nearly half of the women I speak to want more counseling, or talk therapy. Many want access to specialized programs to deal with their history of intimate partner abuse, their substance abuse issues, or their anger issues.

There are programs right now that are working—for instance, the STEPS to End Family Violence program, which helps women who have been incarcerated as a result of being abused by their intimate partners, and the ITU (Intensive Therapy Unit) program. Women ask me all the time to help them get into these programs, but there are limited spots, so there are waiting lists. Why aren't these programs expanded? Why aren't they available? They work. There are PACES units in the men's facilities, which provide a clinical setting on Rikers—why are there no PACES units for women? Why won't we pay for these things now? We are paying for them later, and in greater amounts, both in financial and emotional terms. Why aren't we paying for more, better trained mental health staff? Why aren't we thinking about these women on Rikers as an extension of ourselves? Because that is what they are. The same system that has benefitted us in some way has failed them. So why aren't we taking better care of ourselves? The women that I meet on Rikers are asking for that.

Testimony presented by Kelly Grace Price, December 15, 2015 to the City Council of NYC ref: Women on Rikers Island. When I walked home barefoot from Rikers on May 11, 2011 it was NOT the first time I had walked the streets of NYC without shoes. On September 11, 2001 I walked home to my little duplex on e 5th st between avenues A and B barefoot after taking off my baby blue pony skin, three-inch sling backs to run from the blast cloud that chased us down Broadway earlier that day as we fled the collapsing towers. CO Robelto kindly informed me when I was checked into Rikers earlier that week that I would not be receiving my shoes back. Sure enough, when by the grace OF god I WAS BAILED OUT OF RIKERS my beautiful high-heeled sandals were NOT in my property bag. This is how women at Rikers are received: by CO's who let us know that no matter who we were on the outside of that KILLER ISLAND that inside we are at their mercy: conscripted to their every whim and mercy.

Who are the women on Rikers? When I was sent there by Cyrus Vance Jr. and his band of mewling ingénues he calls assistant district attorneys I was accused of merely "ANNOYING" my batterer. You see Mr. Vance, the man who also happens to go by the title of District Attorney of Manhattan, needed the proffer my abuser was providing him and his operation "CREW CUT" to bring down all the gangs in the Grant Houses, the Manhattanville projects, the goodfellas gang, the 137th st crew and the "Money Avenue Gang." Vance and his team knew their valuable source of information would stop talking if they prosecuted him for throwing me through a fish tank, choking me until I passed out and causing lacerations on my posterior that maimed my genitals. The DA and his SVU team led by Audrey Moore and stewarded by Maria Strohbehm conveniently labeled me a fabricator without reviewing one ER report, interviewing one neighbor, or following ANY of the NYPD handbook requirements for a DV investigation. Nor did they follow any of the tenants of McKinney's crime victims' laws when evaluating my claims of his trafficking of me.

I was thrown on Rikers, without being given the chance to make bail, and crying, shaken, still mis-carrying my baby loaded onto the bus to Rikers. I eventually got all 324 counts of aggravated harassment charged under a statute, CPLR 240.30, found unconstitutional last year by NY Courts Chief Judge Jonathan Lippmann and faced thousands of years in prison if convicted of "harassing my batterer." On Rikers I found myself eventually at a dinner table breaking bread with a little old plump lady with silver hair and a twinkle in her eye. "What are you in here for?" I asked casually. "I killed my husband, he was a cop." She said without an iota of emotion. The woman was Carol Sheehan and anyone following the news in 2011 knew her name. In lieu of being murdered by her retired NYPD sergeant husband she got a hold of the gun he told her he was going to kill her with first and, well, and, the result was NOT optimal for him.

I'm here to tell you that 75% of the women in the RSMC are survivors: of violence, of abuse, of trafficking and we are the ones being re-victimized by not only malicious Cos who rape and enslave us, but by a criminal justice system that allows our batterers and abusers to use it against us to further torture and diminish us, our hopes, our dreams, our unborn and born children and our families.

I am a fourth generation daughter of the city of NY. My grandparents, my namesake, Grace, and my Grandfather Dick, both GREAT Americans were married on e 29th st at the little church around the corner. Is this how the most progressive city in the world treats its daughters? I urge you: move the women off Rosies. Island Jails are not for women, and women do NOT belong on island jails. I knew walking home barefoot from Rikers that I would survive that hell, I have survived walls of fire and brimstone far greater than anything that the DOC, CY Vance and the NYPD could EVER conjure-up for me. My concern is not for myself and my future now: but for those women not born to be warriors like I was, for the Jane Does and the Maria Valdezes. What of them? How many other victims must suffer? I urge you to examine how many women are thrown onto Rikers on cross-complaints when they have gone to the authorities like me at their darkest hour? How many are still on Rikers suffering?

Inmate Price Kelly
Last First

Property Receipt

Institution RMSC

A No 768932 2011
year

Date 05/07/11

Exhibit 6 page 1

- NYSID # 07961819M
- Book and Case # 3471100788
- Sentence # _____

CONTROL/CUFFLOCK# _____

WHERE WAS PROPERTY TAKEN:
 Admission Housing Area - Specify: _____ Other - Specify: _____
 Was this property taken on a search: Yes / No

I. Personal Items		II. Clothing			III. Jewelry		
No.	Articles	No.	Articles	Color	No.	Article	Description
	Radio		Coat/Jacket				Y W CS
	Personal papers		Pants			Tooth Cap	
	Pocketbook		Belts			Neck Chain	
	Gloves		Shoes/Sneaker			Earring	
	Glasses		Shirt/Blouse			Charm	
	Wig		Skirt			Bracelet	
	Wallet	2	Boots	Black		Watch	
	Keys		Hat			Ring	

Identification: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	On Person	Same Name?		**Please Note: Description Color: Y-Yellow Metal W-White Metal CS-Color of Stone INSTRUCTIONS 1. If you receive more than one (1) item on a line, (e.g., coat/jacket) circle appropriate item then enter the number.	IV. Miscellaneous	
		Y	N		No.	Article
U.S. Passport						
Green Card						
Driver's License						
Other Government-issued photo ID						
Birth Certificate						
Social Security Card						
Other:						

The above item(s) has been received from you because:

- It is not on the list of items which are permitted in this facility
- The quantity is in excess of that allowed in this facility.
- It may create a health, safety or security hazard, and therefore, you are not permitted to have it in your possession.
- You have submitted the item to us voluntarily for safekeeping.
- Other _____

Inmate did not receive boots. CD # 14330

Robello
Signature of person taking property

[Signature]
Signature of Inmate

14944
Shelf ID #

05/07/11
Date

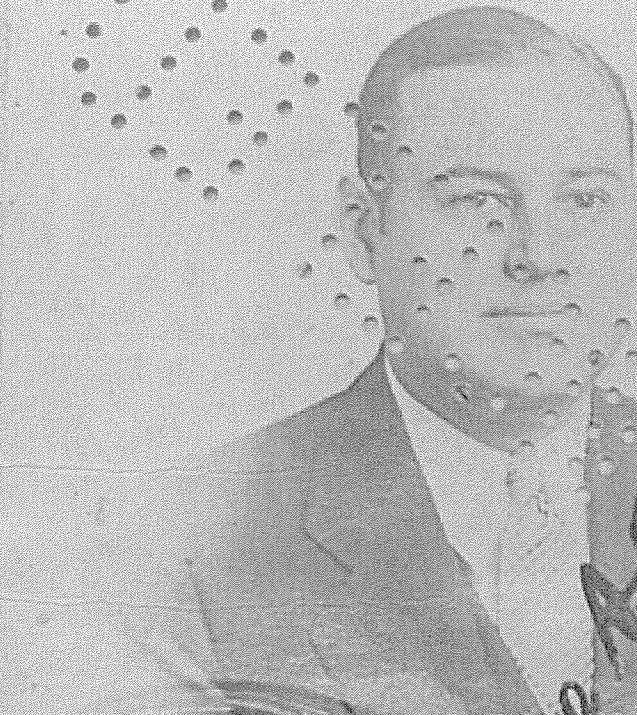
Robello
Print Name

0349
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SEE APPEAL AND DISPOSAL PROVISIONS ON OTHER SIDE.

Distribution:
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Photograph of beaver



Charles A. Rice

person to whom the license of
issued. In witness whereof the
of the Department of State is







**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

Name: EVIE Litwok (PLEASE PRINT)

Address: _____

I represent: Jails Action Coalition

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

Name: Kelly Grace Price (PLEASE PRINT)

Address: 534 W 137th

I represent: Jails Action Coalition (SPINY)

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

Name: MS. YONA GRANDCHOFF (PLEASE PRINT)

Address: _____

I represent: JAIL ACTION COALITION, SVU, RIVERDALE, PROTECT

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 12/15/15

Name: Alex Abell (PLEASE PRINT)

Address: _____

I represent: Urban Justice Center

Address: 40 Rector St.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

Name: Homer Venetia MD (PLEASE PRINT)

Address: River

I represent: NYC Health & Hospitals

Address: Chase Medical Office

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 12/15/15

Name: Natalie Block-Lewin (PLEASE PRINT)

Address: ~~40 Rector St~~ 40 Rector St. N.Y. NY

I represent: Jails Action Coalition

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 899 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Georgia Lerner

Address: 110 2nd Ave NYC 10003

I represent: Women's Prison Association & kin

Address: same

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: GEORGIA LERNER

Address: WOMEN'S PRISON ASSOCIATION

I represent: 110 2nd Ave, NY, NY 10003

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 899 Res. No. _____

in favor in opposition

Date: 12/15

(PLEASE PRINT)

Name: JANE Stanicki

Address: 35 E 85th St NYC

I represent: Home Children

Address: 12th St LIC

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Kelsey De Avila

Address: _____

I represent: Brooklyn Defense Services

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 899 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: CARDLINE HSU

Address: 199 Water St, NY, NY 10038

I represent: The Legal Aid Society

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 12/15/15

(PLEASE PRINT)

Name: Michele Clifford

Address: 19-19 Hazen Street, Elmhurst NY

I represent: Dept. of Corrections

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: SEAN CUSSEN

Address: _____

I represent: NYC DEPARTMENT OF CORRECTION

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: WINETTE SAUNDERS

Address: _____

I represent: NYC Dept. of Correction

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 12/15/15

(PLEASE PRINT)

Name: Dina Simon

Address: _____

I represent: NYC Department of Correction

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 12.15.15

(PLEASE PRINT)

Name: CYNTHIA BRANN

Address: _____

I represent: NYCBOC

Address: 175-20 ASTORIA BLVD E. ELMHURST

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 899 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Julienne Verdi

Address: 7A Franklin hwy S1 NY 10306

I represent: Planned Parenthood of NYC

Address: 26 Bleeker St NY NY 10012

Please complete this card and return to the Sergeant-at-Arms