



Testimony of

**Commissioner Cynthia Brann, Deputy Commissioner Townsend, and AC Yelardy  
New York City Department of Correction**

before the

**New York City Council Committees on  
Criminal Justice, the Justice System, and Women**

regarding

**Sexual Abuse and Harassment in City Jails**

September 6, 2018

Good morning Chair Powers, Chair Lancman, Chair Rosenthal and members of the Criminal Justice, Justice System, and Women Committees. I am Cynthia Brann, the Commissioner of the Department of Correction (DOC). I am joined by Bureau Chief of Security Chief Canty, Deputy Commissioner of Investigations and Trials Sarena Townsend, and Assistant Commissioner of PREA Faye Yelardy, as well as Dr. Zachary Rosner, Chief of Medicine for Health + Hospitals/Correctional Health Services (CHS).

In 2015, the Department put in place multiple top-to-bottom reform initiatives simultaneously. In order to address the overall safety and security of everyone in our facilities, these reforms included implementing both the Federal Nunez Consent Decree and PREA, as well as many other efforts. In our testimony today, we will focus on the current and planned efforts the Department has undertaken in order to address the issue of sexual abuse and sexual harassment in our facilities. When I first came to the Department three years ago, I took on the role of Deputy Commissioner of Quality Assurance, and by then, the Department had begun targeting this issue from multiple angles, including committing to bringing itself into compliance with the federal Prison Rape Elimination Act, or PREA. Since then, we have worked collaboratively with experts in the field, including advocates, and other City agencies to implement various operational elements, sweeping staff training initiatives, and innovative housing strategies to move toward not only compliance with PREA, but broader, more comprehensive best practices that ensure everyone who enters our facilities – staff and inmate alike – remain safe. It is critically important that the Department take every possible step in keeping people safe from abuse and harassment of any kind.

PREA Ambassadors function as PCMs in facilities where there are currently no PCMs. Together, these two roles function as the regular faces of PREA, providing inmates with all rules, policies, and procedures as it pertains to the Department's zero tolerance policy for sexual abuse and sexual harassment.

The Department has successfully trained over 7,300 DOC staff on PREA, with training provided to all incoming recruits, and there are monthly scheduled trainings for all DOC non-uniform staff, contractors, and volunteers. This 4-hour training is designed to be as concise as possible while including a meaningful discussion that covers key areas of the PREA Standards. The following topics are discussed: What is PREA and Zero Tolerance; PREA Implementation in the NYC DOC; Right to be Free from Sexual Abuse, Sexual Harassment, and Retaliation for Reporting; Prevention and Detection; Response and Reporting; Professional Boundaries; and Effective and Professional Communication on the Job. While Correctional Health Services (CHS) has been part of this training effort from the beginning, in February 2018, CHS began conducting a PREA training designed specifically for its health staff in addition to required online specialized training. To date, CHS has trained over 1000 staff members.

As part of the PREA standard on responsive services, the Department has posted Coordinated Response Plans, which are written plans coordinating the actions taken by facility, PREA Team, and medical staff in response to an incident of sexual abuse, in every facility. If an allegation of sexual misconduct is made against a DOC staff member, the staff member is immediately separated from the housing unit, and CHS confidentially evaluates the patient to provide appropriate medical treatment and mental health services and a referral for forensic evaluation as warranted.

As of February 2018, the Department began a new screening process, which uses a questionnaire provided at intake to determine an inmate's risk of sexual victimization, as part of the Electronic Screening Tool. The Department uses the responses to the questionnaire to determine the most appropriate housing options for that individual, with the goal of that person's safety, as well as the safety of those around him or her, at the forefront. During medical intake, CHS identifies patients with a history of abuse, and connects them to sexual abuse advocates to provide appropriate counseling and connection to care and victim services through the Sexual Abuse Advocacy (SAA) program. Patients are offered follow-up appointments with CHS within 14 days, and to date, CHS has conducted 312 initial counseling sessions with patients and 275 follow-up sessions. The SAA program is completely voluntary and patient-driven, and patients can request, accept, or decline services. When patients are discharged from DOC custody, CHS offers referrals to community-based programs upon request.

PREA compliance is measured at the individual facility level rather than at the Department level. While DOC has been implementing the PREA standards across the Department, the audits will be conducted on a facility-by-facility basis. The first facility, Rose M. Singer, will be audited by a DOJ-certified reviewer in the spring of 2019. Pending the results of that audit, any corrective action will

phone calls, reviewing the inmate and staff backgrounds, collecting any other evidentiary paperwork, and then documenting all of these steps in a report. Critically, this also involves ensuring that the alleged victim is immediately separated from the alleged subject and that the alleged victim inmate receives mental health, victim services, and medical services.

Any time an inmate alleges that he or she was sexually abused, the Investigation Division sends that information to the Department of Investigation for clearance to investigate. The Department of Investigation will either clear the case and allow us to investigate, or they will ask the Department to stand down, and they will take the case themselves. If the matter is cleared for investigation, the Investigation Division assigns the investigation to one of the 24 investigators now assigned to the PREA team. If, during ID's investigation, criminality is found, we may re-refer the case back to the Department of Investigation or the District Attorney's Office.

All sexual abuse and sexual harassment allegations are thoroughly investigated within 72 hours of the allegation being reported; however, as of June 2018, the Department had a significant backlog of 1,216 PREA cases that had not yet been formally closed. A PREA-reportable allegation is one that meets the definitions as delineated in the PREA Standard. These reportable allegations include staff on inmate consensual and non-consensual acts, staff on inmate sexual harassment, inmate on inmate non-consensual sex acts, inmate on inmate abusive sexual contact and inmate on inmate sexual harassment. Because the Investigation Division is currently understaffed, and because all of the steps just described take time, it is not unusual for a PREA team investigator to get called out to another allegation before he or she is able to close an investigation. Therefore, despite having conducted the preliminary investigation, and ensuring that the alleged victim is interviewed, separated from the alleged subject, and given all appropriate services, these cases often remain open.

As of June 2018, the PREA team was composed of 19 investigators, with each investigator averaging 95 cases, and each case taking well beyond the Board standard requiring all cases be closed within 90 days of the allegation being made. Because the team is in the process of hiring additional staff, and because ID adheres so firmly to the 72-hour rule, PREA investigators have been unable to close their cases in a timely fashion. By implementing new strategies, ID has been able to make progress against the backlog.

The Department's main strategy is to add investigative and supervisory staff to the Investigation Division's PREA team and structure a workable timeline for the closure of backlogged cases. While the Department interviewed candidates, interim solutions were put into place. For example, in order to reduce the amount of time it takes to close out these already-investigated cases, the Department revised the PREA closing memorandum, making it more efficient and streamlined while still containing all relevant information. Streamlining the closing memo has helped reduce the amount of time each investigator must dedicate to the otherwise time-consuming paperwork involved in closing cases. Another interim strategy was to assign a PREA-certified supervisor from the Trials and Litigation Division to close PREA-related cases, which has compounded the time-saving of the new

closely align to other similar reporting requirements already in place, such as reporting on a bi-annual rather than quarterly basis.

Finally, I would like to restate that the Department has a zero tolerance policy for anyone – inmate, staff, or third-party – who commits sexual misconduct in its facilities, and that those found to have engaged in criminal behavior are subject to the fullest extent of the law in this regard.

The Department has undertaken major efforts over the past three years to address the issue of sexual assault and sexual harassment in its facilities, and significant progress can be noted. One assault or harassment is too many, but using the multi-faceted approach we have just described, the Department will continue its efforts to keep everyone who enters its facilities safe.

Thank you for the opportunity to testify today and we are happy to answer any questions that you have.



NEW YORK CITY  
BOARD OF CORRECTION

Statement before the New York City Council

Committee on Criminal Justice  
Keith Powers, Chair  
Committee on the Justice System  
Rory I. Lancman, Chair  
Committee on Women  
Helen Rosenthal, Chair

September 6, 2018  
By Martha W. King, Executive Director  
New York City Board of Correction

Good morning, Chairs Lancman, Powers, and Rosenthal and Members of the Committees on Criminal Justice, Women, and the Justice System. My name is Martha King, and I am the Executive Director of the New York City Board of Correction, the independent oversight agency for the City's correctional facilities. The Board promulgates Minimum Standards which regulate jail conditions, monitors compliance with these Standards, and provides general oversight for the Department of Correction and Health + Hospitals' Correctional Health Services. Today, I am joined by a Board member who was appointed by the City Council, Dr. Robert Cohen, and the Board's Deputy Executive Director of Research, Emily Turner.

In November 2016, the Board passed 42 Minimum Standards that are designed to detect, prevent and respond to sexual abuse and harassment of people who are incarcerated in the NYC jails. The Board's Standards build from the federal Prison Rape Elimination Act regulations and have additional requirements, like more details regarding investigations, the provision of rape crisis counseling and advocacy services to victims, and the release of bi-annual assessments and corrective actions. These Standards are groundbreaking because they secure local oversight and enforcement, including Board monitoring and a private right of action for individuals in custody to pursue if the Department or Correctional Health fails to comply with their obligations.

Since September 2017, Board staff have reported every six months at the Board's public meetings on the progress and challenges in DOC's and Correctional Health's implementation of these Standards. DOC has made progress in a few areas: creating new policies which reflect the Board's requirements; training staff; creating ways for people to report abuse; and providing education on zero tolerance and reporting. The Board's primary concerns have been the high number of allegations of sexual abuse and harassment, and DOC's investigations into these allegations. These

investigations take too long to complete and often lack all required components. It is, therefore, not surprising that substantiation rates of these complaints are lower than national averages and that we still have a great deal of work to do to build the accountability necessary to prevent abuse in NYC's jails.

Rates of sexual victimization in NYC jails have been higher than national averages since at least 2011.<sup>1</sup> The Bureau of Justice Statistics identified a nationwide rate of 8.03 allegations per 1,000 people incarcerated in jails in 2015, the most recent data available. This is lower than the NYC jail rates of 12.6 in the last half of 2017 and 9.91 for the first half of 2018.<sup>2</sup>

Today I will provide updates in three areas of the Standards where the Board has focused:

- Investigations;
- Screening of people in custody for risk; and,
- Housing and safety of transgender people in custody.

### **Investigations**

Since the new Standards on sexual abuse, there is little evidence that the investigations process has improved or become more effective. Timely and comprehensive investigations are central to compliance with Board Standards. Without effective investigations, DOC's efforts at prevention, accountability, and discipline will also be unsuccessful. Investigations into sexual abuse and harassment allegations are not being completed within 90 days as required. Approximately, ninety-four percent of 2016 and 2017 investigations are still open and pending. Substantiation rates in NYC are also lower than national averages. This unfortunately is a long-standing trend. In 2016, the Board found that the Department's investigations were significantly deficient in terms of timeliness, thoroughness, and objectivity.

Following a discussion of violations of the Board's investigation Standards at its April 2018 public meeting, DOC developed and presented a corrective action plan at the June public meeting. The plan aims to close the backlog of cases older than 90 days by February 2019 and to increase staffing and reduce caseloads. The Board is monitoring and hopeful about potential progress under this plan. The Board will release an audit of 42 DOC investigation files on September 14<sup>th</sup> and will conduct such an audit annually to assess the adequacy of these investigations.

### **Screening of people in custody and use of risk screenings**

At the foundation of DOC's ability to protect people in their custody from sexual abuse is their ability to accurately assess people for risk of victimization and to use this information to inform housing decisions. The Board's Standards and PREA require that the Department's intake screening process assess people in custody for their risk of being sexually abused or sexually abusive toward others. The screening must consider many things, such as: disability status; criminal history; whether the person is or is perceived as gay, lesbian, bisexual, transgender, intersex, or gender non-conforming; previous experience of sexual victimization; and a person's own perception of vulnerability.

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<sup>1</sup> The BJS Survey defines "sexual victimization" as the "oral, anal, or vaginal penetration, hand jobs, touching of the inmate's butt, thighs, penis, breasts, or vagina in a sexual way, and other sexual acts occurring in the past 12 months or since admission to the facility, if shorter."

<sup>2</sup> Although time periods for rates differ, the trend remains that NYC rates are consistently higher than nationwide rates.

The Board's September 2017 report noted deficiencies with the Department's method of screening for risk and found that DOC was not meeting these Standards because of obstacles to tracking and using information gleaned from a paper-based intake screening. Therefore, the Board unanimously passed a resolution in October 2017 requiring corrective action to quickly implement an electronic method of screening. As a result, in January 2018 DOC implemented an electronic screening process. This electronic screening allows DOC to track people at risk of sexual victimization, reassess everyone at 30 days, and use this information to inform housing, work, education, and program assignments. This is important progress that should increase safety, and we continue to monitor the impact.

### **Housing and safety of transgender people in custody**

The Board has also focused its work on increasing the safe housing options for transgender people in custody. National data and the Board's own data show transgender people in custody are at higher risk of victimization in jail. When the Department announced it would close the Transgender Housing Unit, the Board was vocal in its opposition. The Board believes the Unit to be an important option for people who voluntarily apply to be housed there.

We also published a study of the Transgender Housing Unit in February 2018. The report led to an improved management and application system for the Unit and, in turn, an uptick in the number of people placed there. The THU has been further improved because DOC moved it from a men's jail to the women's jail where transgender women face less harassment and abuse and are better integrated into services. There are several recommendations from the Board's report that DOC should still pursue, including a planning taskforce with community members and additional staff training.

The Standards prohibit the housing placement of a transgender or intersex person based solely on the person's external genital anatomy, and they require DOC to make housing determinations on a case-by-case basis that considers gender identity. Today, NYC jails still rely on a determination of gender based on a person's anatomical appearance, and there is no evidence that DOC is currently considering gender identity or using a case-by-case approach. The City's recent announcement that DOC will begin housing by gender identity and the involvement of the Commission on Human Rights should yield significant progress. The Board will monitor implementation once this begins and will publish an updated analysis of DOC's approach to housing transgender people in 2019.

In the coming months, BOC will be focused on three oversight goals. First, we will continue to drive data transparency and accountability on implementation of the Standards. Next week, we will release a public compliance dashboard of DOC's and Correctional Health's PREA-related reports and requirements. The Board will continue working closely with the Department to develop, use and share the data needed to drive practice and policy improvements that will increase safety in the jails. Second, we will closely monitor the Department's corrective action plan to close the backlog of investigations. We will monitor the quality of investigations closely by conducting annual audits. Lastly, we will continue to call on DOC to create an effective post-incident review process for cases of sexual abuse. These sexual abuse incident reviews, required by BOC's and federal PREA Standards, should involve facility staff and leadership in reviewing conditions that contributed to a substantiated or unsubstantiated complaint of sexual abuse. The reviews are

intended to identify the steps needed to reduce further risk and incidents. To date, the Board has only received reports on five Sexual Abuse Incident Reviews, but the Standards require them for all closed investigations unless a complaint is unfounded.

In closing, the Board supports the Council's efforts to increase transparency and reduce sexual abuse and harassment in the jails through the legislation proposed today and looks forward to working with Council Members on this legislation and other efforts. Thank you for the opportunity to testify today.



**FOR THE RECORD**

**FOR THE RECORD**

**Testimony at the City Council Committee on Women's Hearing on  
Sexual Harassment in Jails and of Jail Visitors**

**September 6, 2018**

**Tanya Krupat**

**Director**

**Osborne Center for Justice Across Generations**

**The Osborne Association**

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Thank you for this opportunity to speak about such a critically important issue as sexual harassment and sexual abuse in jails. My name is Tanya Krupat and I am the Director of the Osborne Center for Justice Across Generations, the policy arm of the Osborne Association. My testimony focuses on the sexual harassment and sexual assault and overall treatment of visitors.

As you may know, Rikers alone (without adding in visitors to borough jails) receives about 700 visitors per day. With five visiting days per week, this comes to 3,500 visitors per week. This significant number does not include the children under age 16 who accompany adults to visit their parents, family members, or others. In other words, significant numbers of New Yorkers—mostly women—visit Rikers and NYC jails and their well-being is deeply affected by how they are treated when they visit. As hard as visiting is emotionally and logistically, at no time should visitors also experience being touched inappropriately, groped, fondled or worse, or verbally sexually harassed, all violations which are degrading, humiliating, unnecessary, and sexually explicit.

Osborne has several windows into the experiences of visitors: we hear about visiting from the families that video visit at the public libraries since we partner with the Brooklyn Public Library on their video visiting program. We hear about visiting from our programs for children with incarcerated parents and our support for their caregivers; from our participation in the effort to close Rikers and design visiting for future borough jails where visitors share their current experiences and their solutions for improved visits in the near future. And from our efforts to inform visitors about the new DOC visiting buses and help them prepare in advance to “be good visitors” by knowing about dress code, rules, contraband items and more before they arrive. We also participate in numerous task forces, workgroups, and committees to improve the visitor experience and shift the culture that currently surrounds visiting.

It is important to place the unacceptable sexual harassment, sexual abuse, and negative treatment of visitors within context. We know that there are DOC staff who are invested in stopping this and are interested in resolving problems, but there is a deep and systemic culture that creates a barrier that must be acknowledged so that it can be dismantled: there is a fundamental belief by many of those who work in the corrections and the criminal legal/ punishment systems that visitors are not “customers” to be treated with dignity and respect, but are an extension of people they view as criminal. All visitors also become associated with contraband, although less than 1% of visitors are found to have contraband, and various reports and investigations confirm that the majority of contraband comes in through staff, uniformed and civilian. While this is not the view of all or even most of those who choose a career in corrections, there remain serious gaps in both training and the process by which corrections staff are selected to have contact with visitors.

To say that a visitor should never be sexually assaulted (applying the broad definition of this from the federal code of regulations referenced in Councilmember Dromm’s proposed Inro 1090) by an Officer or corrections staff is setting the bar beyond low. We know that the visiting

process does not have to be traumatizing; it can be done courteously and professionally without sacrificing security or a focus on violence reduction in the jails. Over the last 30 years, Osborne has operated programs in state prison visiting rooms (including maximum security prisons) and hospitality centers, and we have observed visitor processing and visits literally thousands of times in two dozen prisons. We have staff working in nearly 30 corrections facilities and know that we are as endangered by contraband as anyone else, and have every interest in keeping it out. We also know that most of it comes in through staff. In the interest of full disclosure, we tell you that over the last 30 years we have terminated at least 7 staff members for bringing in contraband, including marijuana, Vitamin C, cigarettes, and letters. (They are not in a union.) We know, as everyone knows, that visitors are not the only or even major source of contraband, but that meme is used to treat visitors in a way that fails to recognize that they are the most powerful arrow in the quiver of resources that can help people successfully come home.

At the same time, given that we know that there are visitors who - for a variety of reasons - bring contraband, there ought to be a better way to confront and manage the situation. *At no time* should this include physical interaction between corrections staff and visitors that crosses the line into sexual harassment, assault, and abuse. It should not include verbal sexual harassment

Possibly as a result of media coverage and the pending class action law suit against DOC by visitors who report being sexually abused, DOC recently issued a new policy (in June, 2018) that requires video surveillance in visit areas and “prohibits inappropriate contact” between DOC staff and visitors. As DOC and other entities monitor the effectiveness of this new policy, we additionally recommend the following concrete actions:

1) **Training**

- Training of Officers interacting with visitors
- Revise training at the Academy and all staffing levels to shift the culture that views visitors as criminals, and treats every visitor as someone bringing in contraband. The large majority of visitors are allies in the desire to keep jails safe and violence-free.

2) **Greater monitoring of and accountability for the treatment of visitors including:**

- Swift disciplinary action regarding Officers who sexually assault a visitor- there is no justification for this and it is contrary to DOC policy, in addition to being a criminal act;
- Staff assignments: Mechanisms for choosing which staff interact with visitors (posts, steady versus assigned Officers, seniority)
- Passage of Dromm’s proposed Intró. 1090 (with the modifications proposed below), and,
- Creating incentives and positive recognition/ rewards for DOC staff who positively interact with visitors and exemplify courteous, professional behavior

- Revising staff performance reviews to include interacting with visitors (and any positive feedback or complaints) so these are directly tied to decisions about promotions and salary increases.

Thank you.

### Recommended revisions for Dromm's Proposed Intro 1090

Councilmember Dromm is proposing a bill that would require DOC to report on the number of complaints by visitors related to sexual abuse or inappropriate processing/ searches as well as the number of hours of training Officers receive about visiting if/ when they are going to be interacting with visitors. The reporting is required annually. We recommend that the number of complaints could reported on at least quarterly; annually is not frequent enough for DOC or the Board of Correction or the City Council to do anything about it.

Where "professional" is defined, the list should be preceded by "including but not limited to..."

When defining "visitors," include that this includes visitors under age 16 who are not registered in the visitor system because they must be accompanied by an adult; complaints tracked and reported on should include any made by or on behalf of a child or youth visitor.

Data requested to be reported in total and only desegregated by gender of the visitor; it should also be desegregated by location- whether a borough jail (which one) or Rikers.

Dromm's proposed bill applies the definition of "sexual abuse" that is in the federal code of regulations (cited in his bill) and includes the following:

#### § 115.6 Definitions related to sexual abuse and assault.

Sexual abuse of a detainee [*substitute visitor here*] by a staff member, contractor, or volunteer includes any of the following acts, if engaged in by one or more staff members, volunteers, or contract personnel who, with or without the consent of the detainee [visitor], engages in or attempts to engage in:

(1) Contact between the penis and the vulva or anus and, for purposes of this paragraph (1), contact involving the penis upon penetration, however slight;

(2) Contact between the mouth and the penis, vulva, or anus;

(3) Penetration, however slight, of the anal or genital opening of another person by a hand or finger or by any object that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(4) Intentional touching of the genitalia, anus, groin, breast, inner thighs or buttocks, either directly or through the clothing, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(5) Threats, intimidation, harassment, indecent, profane or abusive language, or other actions or communications, aimed at coercing or pressuring a detainee to engage in a sexual act;

(6) Repeated verbal statements or comments of a sexual nature to a detainee;

(7) Any display of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, or

(8) Voyeurism, which is defined as the inappropriate visual surveillance of a detainee for reasons unrelated to official duties. Where not conducted for reasons relating to official duties, the following are examples of voyeurism: staring at a detainee who is using a toilet in his or her cell to perform bodily functions; requiring an inmate detainee to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a detainee's naked body or of a detainee performing bodily functions.

Preconsidered Int. No.

By Council Member Dromm

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 sexual abuse of visitors

Be it enacted by the Council as follows:

1           Section 1. Subdivision a of section 9-140 of the administrative code of the city of New  
2 York, as added by local law number 85 for the year 2015, is amended to read as follows:

3           a. Definitions. For the purposes of this section, the following terms have the following  
4 meanings:

5           Borough jail facility. The term "borough jail facility" means any department facility in  
6 which inmates are housed by the department and that is located outside Rikers Island.

7           City Jail. The term "city jail" means any department facility in which inmates are housed  
8 by the department.

9           Professional. The term "professional" means a person who is properly identified as  
10 providing services or assistance to inmates, including lawyers, doctors, religious advisors, public  
11 officials, therapists, counselors, and media representatives.

12           Sexual Abuse. The term "sexual abuse" has the same meaning set forth in section 115.6  
13 of title 38 of the code of federal regulations, or any successor regulation.

14           Staff. The term "staff" means anyone, other than an inmate, working at a facility operated  
15 by the department.

16           Visitor. The term "visitor" means any person who enters a city jail with the stated  
17 intention of visiting an inmate at any city jail, or any person who is screened by the department

1 for visitation purposes, including but not limited to professionals and any person who registers to  
2 visit an inmate in the department's visitor tracking system.

3 § 2. Subdivision b of section 9-140 of the administrative code of the city of New York is  
4 amended by adding new paragraph 7 and 8 to read as follows:

5 7. The total number of complaints made to the department regarding sexual abuse of  
6 visitors by staff at city jails, the number of such complaints made regarding visitors at borough  
7 facilities, and the number of such complaints regarding visitors at Rikers Island. This  
8 information shall be reported in total and disaggregated by the gender of such visitor.

9 8. The number of hours of training conducted for staff who regularly interact with visitors  
10 regarding the search of visitors. Notwithstanding any other provision of this section, the  
11 information in this paragraph shall be reported on a yearly basis.

12 § 3. This local law takes effect immediately, provided that the first report required by  
13 paragraph 8. of subdivision b of the administrative code of the city of New York, as added by  
14 section 2 of this local law, shall be submitted no later than February 1, 2019.

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**The Bronx  
Defenders**

**Redefining  
public  
defense**

**New York City Council  
Committee on Criminal Justice, Committee on Justice System & Committee on Women  
Joint Oversight Hearing on  
Sexual Abuse and Harassment in City Jails  
September 6, 2018  
Testimony of The Bronx Defenders  
By Deborah Lolai**

Good morning, Chair Lancman, Chair Powers, Chair Rosenthal and committee members. My name is Deborah Lolai and I am a criminal defense attorney and the LGBTQ client specialist at The Bronx Defenders. Thank you for the opportunity to testify before you today on this important matter.

The Bronx Defenders is a community-based and nationally recognized holistic public defender office dedicated to serving the people of the Bronx. The Bronx Defenders provides innovative, holistic, client-centered criminal defense, family defense, immigration representation, civil legal services, social work support, and other advocacy to indigent people of the Bronx. Our staff of over 300 represents approximately 28,000 individuals each year. In the Bronx and beyond, The Bronx Defenders promotes criminal justice reform to dismantle the culture of mass incarceration.

I am here today to speak about experiences of sexual abuse and harassment against transgender women in city jails. As part of my role as the LGBTQ Client Specialist, each year I represent hundreds of transgender people who are facing criminal charges, many of whom are or have been incarcerated pre-trial.

I will start by sharing this simple fact: Nearly 100% of transgender women are sexually abused or harassed while incarcerated in our city jails, and this is because they are placed in men's jails.

The process of a transgender woman being arrested and incarcerated in New York City is as follows: When a transgender woman is arrested, she is placed in men's holding cells, or in a cell by herself, by the NYPD. She is then brought to Central Bookings and is placed in cell with men, or in a cell by herself, while she awaits her arraignment. Throughout this process, she is the subject of jokes and ridicule about her gender identity by officers. If bail is set or if she is



remanded, she will go through intake through the Department of Corrections, which determines where she will be placed. From the initial contact with the NYPD through the end of incarceration, the experiences of transgender women are horrific.

In New York City, there is a Transgender Housing Unit (THU). The THU is a unit that transgender women could apply to be placed in during their incarceration. It was created as a result of the disproportionate rate of sexual abuse against incarcerated transgender women. There is a limited number of beds at the THU. Applications are regularly rejected, and it can be days or even months before a transgender woman is placed there. At best, the THU has been managed inadequately.<sup>1</sup> Transgender women should always be informed about the option of being placed in the THU but, as the recent Board of Corrections' (BOC) report shows, they are regularly not informed of this option.<sup>2</sup> In fact, what I hear regularly from my clients is that when a transgender woman already knows about the existence of the THU, they are discouraged by DOC staff from making a request to be placed there.

As a result, transgender women are sent to men's jails - either in protective custody or in general population. This is why sexual abuse and harassment occurs at such an alarming rate against transgender women. It is happening at the hands of other inmates and Corrections officers. The experiences of our clients range from being called insulting transphobic names, to being forced to pull down their bras by male correction officers and having their breasts fondled, to being raped.

This happens every day to transgender women in our city jails. I will briefly share several clients' stories among the many dozens I know:

The first client I will tell you about is a young transgender woman who was incarcerated at a men's jail as she was awaiting trial. Prior to her arrest, she was a homeless because her family rejected her after she came out as transgender. During her incarceration at Rikers Island, she was raped by an inmate and severely traumatized. After this, she lived every moment of her incarceration with extreme fear. She did not have a criminal record prior to her arrest, and she was not guilty of the crime she was charged with. Yet she pled guilty to a felony because doing so meant she would get out of jail and not have to live with the constant threat of being raped again. This is a common experience and occurrence.

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<sup>1</sup> *An Assessment of the Transgender Housing Unit*. Board of Corrections, February 2018, <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/THU%20FINAL%20Feb%202018.pdf>

<sup>2</sup> *Id.* at 12

Another client of mine was also incarcerated in the men's unit at Rikers Island. She was placed in general population, where she was raped in the shower. After reporting the rape, she was placed in protective custody, in the same facility where she was attacked. Three days later, another inmate was able to come into her cell during count and she was raped again.

These are stories that need to be told. They need to be told because we are failing to keep incarcerated transgender women safe.

The bills before your Committees today -- requiring period public reporting of lock-ins and incidents of sexual abuse among residents of, and visitors to, the City's jails -- are a small but important step toward increased transparency in this crucial area long overdue for reform. The Bronx Defenders strongly supports them all.

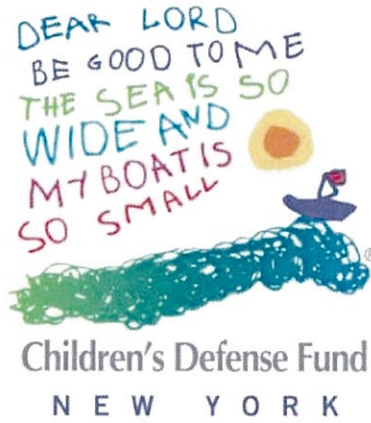
In addition, the Mayor announced on April 16th of this year that by October 16th all inmates would be housed in accordance with their gender identity.<sup>3</sup> We are unaware of any significant planning by DOC to make this real, have grave doubt about whether it will occur, and urge the Council to monitor the situation closely and to schedule an oversight hearing before the end of the year.

Thank you.

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<https://www1.nyc.gov/office-of-the-mayor/news/193-18/mayor-de-blasio-department-correction-will-house-incarcerated-individuals-according-to>



## **Oversight Hearing on Sexual Abuse and Harassment in City Jails**

**Testimony of Julia L. Davis, Esq.**

**Director of Youth Justice and Child Welfare**

**September 6, 2018**

The Children's Defense Fund's (CDF) Leave No Child Behind® mission is to ensure every child a healthy start, a head start, a fair start, a safe start and a moral start in life, and successful passage to adulthood with the help of caring families and communities. CDF provides a strong, effective and independent voice for all the children of America who cannot vote, lobby or speak for themselves. We pay particular attention to the needs of poor children, children of color and those with disabilities. CDF–New York's unique approach to improving conditions for children combines research, public education, policy development, community organizing and advocacy activities, making us an innovative leader for New York's children, particularly in the areas of health, education, early childhood, child welfare and juvenile justice.

We would like to thank the Committee on Criminal Justice, the Committee on Women, and the Committee on the Justice System, for this opportunity.

We continue to be alarmed by reports of sexual abuse and harassment in our city's jails. While all incarcerated people should be safe from abuse, we speak today with special concern for adolescents and young adults, including LGBTQ youth, who are at a higher risk of sexual victimization than older incarcerated people.

### *The Department Faces a Backlog of Cases*

Under current rules set forth by the New York City Board of Correction, written to harmonize with federal obligations under the Prison Rape Elimination Act (PREA), the Department of Correction must complete investigations of abuse or harassment within 90 days. Based on data reported by the Department in June 2018:

- There were approximately 1,295 investigations pending, including allegations from 2015-present.<sup>1</sup>
- Out of the 1,295 cases requiring investigation, 1,216 were not closed in a timely manner and were over 90 days old.<sup>2</sup> These cases had not received final review or dispositions.<sup>3</sup>
- Ninety-four percent (94%) of the 2016 and 2017 investigations of sexual abuse and sexual harassment remained open and pending (1,851 open cases out of 1,974 complaints).<sup>4</sup>

According to the federal monitor in the *Nunez* litigation, “[t]he lack of timely case closure severely compromises the integrity of the Department’s response to allegations of sexual assault.”<sup>5</sup> It poses grave risks to not only the individual victims of abuse, but also the larger community of people incarcerated in our jails. And, it continues to shield the Department from the accountability necessary to promote safety.

### *The Department’s Investigations Result in Very Low Rates of Substantiation*

It is important to note that where the Department has completed investigations, rates of substantiation remain much lower than national averages — in 2016 and 2017, a total of four complaints were substantiated in NYC. In contrast, according to a 2011 U.S. Department of Justice Survey of adult correctional facilities, an estimated 21% of allegations of staff sexual misconduct and 15% of allegations of staff sexual harassment in the jails were substantiated.<sup>6</sup> This raises significant questions about the quality and integrity of investigations, and the likelihood that current results may be under-counting actual victimization.

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<sup>1</sup> NYC Department of Correction, June 2018 PREA Investigations Corrective Action Plan, available at: <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/June-12-2018/PREA%20Public%20Corrective%20Action%20Plan.pdf>

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

<sup>3</sup> NYC Department of Correction, Sexual Abuse and Sexual Harassment Minimum Standards 5-40 Assessment Report – August 14, 2018 report, available at: [https://www1.nyc.gov/assets/doc/downloads/pdf/Bi-Annual\\_August\\_2018.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Bi-Annual_August_2018.pdf).

<sup>4</sup> Public Meeting of the Board of Correction, June 12 2017, video available at: <https://www1.nyc.gov/site/boc/meetings/jun-12-2018.page>.

<sup>5</sup> Fifth Report of the Nunez Independent Monitor, dated April 18, 2018 at 161-62.

<sup>6</sup> Public Meeting of the Board of Correction, June 12 2017, video available at: <https://www1.nyc.gov/site/boc/meetings/jun-12-2018.page>.

*The Department's Investigatory Process is Weak*

It has been reported that Department staff have not “dependably” completed incident reports related to sexual abuse and harassment.<sup>7</sup> According to the *Nunez* monitor, investigations continue “to evidence significant structural problems such as the failure to interview key witnesses, long delays to witness interviews, and apparent failure to ask effective follow-up questions or to collect relevant evidence.”<sup>8</sup> Thorough and timely investigations are essential to ensuring the integrity of the process, to addressing risk, serving those who have been victimized, protecting the population, and ensuring appropriate consequences for those who commit acts of abuse and harassment.

*City Council Oversight is Necessary*

This is a critical time for City Council oversight. While the Department has stated that it expected to close 300 pending cases in its backlog by August, it is not clear whether that goal has been met.<sup>9</sup> Similarly, the Department's current corrective action plan to bring it into compliance with City law states that it intends to close all cases older than 90 days by February 2019.<sup>10</sup> We urge these Committees to hold the Department accountable to its corrective action, to scrutinize the Department's forthcoming reports to the Board of Correction on its progress, and to continue to demand that the Department complete thorough and timely investigations of all allegations of harassment and abuse in our City's Jails.

Thank you for carefully considering our testimony. If you have any questions or you would like further information, please contact Julia L. Davis, Director of Youth Justice and Child Welfare, Children's Defense Fund-NY at 212-697-0882 / [JDavis@childrensdefense.org](mailto:JDavis@childrensdefense.org).

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<sup>7</sup> Fifth Report of the Nunez Independent Monitor, dated April 18, 2018 at 161.

<sup>8</sup> Id. at 162.

<sup>9</sup> Public Meeting of the Board of Correction, June 12 2017, video available at: <https://www1.nyc.gov/site/boc/meetings/jun-12-2018.page>.

<sup>10</sup> Id.



**BROOKLYN  
DEFENDER  
SERVICES**

**TESTIMONY OF:**

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

**Presented before**

**The New York City Council Committees on Criminal Justice and Women  
Oversight Hearing Examining Sexual Abuse and Harassment in City Jails**

**September 6, 2018**

My name is Kelsey De Avila, and I am a Jail Services Social Worker at Brooklyn Defender Services. Thank you for this opportunity to address the Council on the sexual abuse and sexual harassment that too many of our clients suffer in our city jails. BDS provides comprehensive public defense services to more than 30,000 people each year, thousands of whom are detained or incarcerated in the city jail system either while fighting their cases or upon conviction of a Misdemeanor and a sentence of a year or less. BDS' Jail Services Division provides supportive services and direct advocacy on behalf of our clients in Department of Correction (DOC) custody. This testimony is composed primarily of the accounts of our clients whose voices are underrepresented at today's hearing.

There should no longer be any question that rape and sexual violence are real and serious problems in our jails that demand attention. Whether a person is detained pre-trial and presumed innocent, as is the majority of the population in city jails, or enduring incarceration as a punishment or perhaps awaiting transfer to upstate prisons, they are New Yorkers – sons, daughters, mothers, fathers, cousins, friends, and neighbors. Yet they are often called “packages” or worse by DOC staff, and treated accordingly. We continue to urge the City to end the inhumane treatment of incarcerated New Yorkers and close the jails on Rikers Island. If the City cannot keep people in its custody safe, policymakers in all levels of government should question whether such custody should even be permitted.

**The ‘Deep-Seated Culture of Violence’ at DOC Includes Sexual Violence**

On August 4, 2014, the U.S. Attorney's Office for the Southern District of New York (USAO SDNY) issued a report to DOC regarding its Civil Rights of Institutionalized Persons Act (CRIPA) investigation of the jails on Rikers Island. The investigation infamously found a “deep-

seated culture of violence [that] is pervasive throughout the adolescent facilities.” However, directly impacted people, attorneys and social workers who serve them, and indeed the Department itself all know that this culture extends throughout the City’s jail system, and includes sexual violence. (In a footnote, the report noted that the investigation did not focus on sexual assault, but raised concerns that DOC was underreporting it.)<sup>1</sup> A former federal jail warden and then-member of the Board of Correction (BOC) once said in a public meeting, in regards to staff sexual assault at Rikers Island, “As long as we are going to have prisons we are going to have sexual abuse in prisons.”<sup>2</sup> A Department of Justice survey found that, on any given day, 50 of the 800 people held at the Rose M. Singer Center (Rosie’s) were being sexually victimized the staff, making it one of the worst jails for such abuse in the country.<sup>3</sup> (The daily population at Rosie’s is now closer to 530.) Nevertheless, in each and every news article about an allegation of sexual misconduct by DOC staff, the agency’s response invariably includes its supposed “zero tolerance” policy. Whatever the policy, in practice, the DOC fails to protect people and hold officers accountable.

According to a June 2018 report by the agency, allegations of sexual abuse and sexual harassment increased by nearly 40% from 2016 to 2017 (823 to 1151), which the agency attributes to improved reporting mechanisms and other reforms implemented as part of an effort to comply with the federal Prison Rape Elimination Act (PREA). We do not accept this explanation as fact, given the enormous increase in reports amidst declining overall admissions and average daily population. Even so, staff sexual misconduct and harassment comprise 70% of these allegations. Allegations of staff sexual misconduct increased approximately 16% (322 to 374) and allegations of staff sexual harassment increased approximately 86% (232 to 432) during this period. At the time of the report, of the 823 allegations in 2016, the agency had only found three incidents to be substantiated. The vast majority of investigations (739) remained pending. In 2017, though the number of allegations increased, only one incident had thus far been deemed substantiated. 1112 investigations remained pending at the time of the report.<sup>4</sup>

This should be disturbing to the Council: Over a thousand cases are still pending, and DOC staff are allowed to remain employed despite pending allegations, and no action will be taken against them until the case is officially closed. Notably, our detained clients are subject to extremely punitive treatment and conditions – and exposed to this epidemic of sexual violence – while they fight criminal allegations against them.

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<sup>1</sup> Jocelyn Samules et al., RE: CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island (USAO SDNY 2014), <https://www.justice.gov/sites/default/files/usao-sdny/legacy/2015/03/25/SDNY%20Rikers%20Report.pdf>.

<sup>2</sup> Nick Malinowski, NYC Official Says Rape Is Inevitable at Rikers Island: If True, We Cannot Send Anyone There, *Huffington Post*, Dec. 6, 2017 at [https://www.huffingtonpost.com/nick-malinowski/nyc-official-says-rape-is\\_b\\_10600320.html](https://www.huffingtonpost.com/nick-malinowski/nyc-official-says-rape-is_b_10600320.html).

<sup>3</sup> John H. Tucker, Rape at Rosie's, *New York Mag.*, <http://nymag.com/daily/intelligencer/2018/06/rape-at-rikers.html>.

<sup>4</sup> NYC Dep't of Corr., NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum Standards 5-40 Assessment Report (2018), <https://www1.nyc.gov/assets/doc/downloads/pdf/Annual-Sexual-Abuse-and-Sexual-Harassment-Assessment-Report.pdf>.

*Mr. C's BDS attorney referred him to me after learning an officer had denied him food. When I met with Mr. C, he reported that the officer denying him food was the same officer who, during a separate incarceration a couple of years ago, watched and encouraged the brutal rape of Mr. C by three other incarcerated men inside the bathroom of his dorm. Mr. C has since undergone surgery to repair the tissue damage done to him that night and has made multiple attempts at suicide by swallowing razors. Two years later, Mr. C was in the custody of the same officer. The officer remembered Mr. C and shared with other residents of the unit that Mr. C was raped repeatedly and would only address him as 'pussy' and 'faggot'. Other staff regularly witnessed these comments but did not intervene. We reported the abuse to DOC and requested Mr. C's immediate transfer to another unit, and were able to secure his release within a couple days. This officer continued to work for DOC following the incident.*

### **DOC's Failure to Comply with Minimum Standards**

In 2016, pushed by survivors of Rikers Island, other activists, public defenders, and Office of the Public Advocate, the BOC adopted new rules to “detect, prevent, and respond to sexual abuse and sexual harassment” in City jails. One of the new rules, for which we and others fought, was a requirement that DOC install security cameras on in its buses, where people in custody are particularly vulnerable, as part of a one-year pilot program. The Department had roughly two years to meet its obligations, including providing a written report on the efficacy of the pilot by September 1, 2018. (The pilot itself was to be instituted by July 31, 2017.)<sup>5</sup> As of this writing, DOC is in violation of this rule and recently requested a variance to allow for an extension of the deadline while it works to install cameras in one single bus.<sup>6</sup> The Council should note that BOC's rule referred to the plural form of “vehicles” – not one bus.

<sup>5</sup> NYC Bd. of Corr., Notice of Adoption of Rules (2016), <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2016-PREA/PREA%20Rules%20-%20FINAL%20FOR%20POSTING%2011.10.16%20w%20certification.pdf>.

<sup>6</sup> NYC Dep't of Corr., Letter to NYC BOC re: Minimum Standards §5-04(g) “Supervision and Monitoring” – Transport Vehicle Camera Pilot Program and Written Report (2018), <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/September-14-2018/NYC%20Department%20of%20Correction-BOC%20Sexual%20Abuse%20and%20Sexual%20Harassment%20Minimum%20Standards%20-%2005-04%20-%20Transport%20Vehicle%20Camera%20Pilot%20and%20Report.pdf>.



*Earlier on the day that Ms. A was raped, she had appeared in court with her lawyer. After her appearance, she requested to leave on the 3 pm bus back to Rikers. While she was in transit, Ms. A was raped by a male officer at the back of the bus in a parking lot on Rikers Island, all while the driver of that bus sat and watched. When she reported the incident, the bruises on her wrists and thighs were clearly visible. The two officers on the bus held Ms. A against her will and tortured her without anyone noticing or questioning the missing bus, the missing officers, the missing woman or why it took more than 10 hours for Ms. A to travel from court to her housing unit.*

*When she returned to her housing unit, a female DOC officer noticed that Ms. A was not acting herself and confronted Ms. A about her behavior. Ms. A felt safe with this female DOC officer and recounted the rape hoping for a safe way to report. In response, the female DOC officer told Ms. A that it would be safer if Ms. A reported it to her attorney, rather than the female DOC officer making a report. Ms. A took this to mean that the officer, herself, was afraid to report. Our client felt extremely vulnerable and alone during this time. Even the female DOC officer, an employee of the Department, seemed aware of the current culture of violence within DOC and unwilling or unable to fully protect the people in her custody.*

*We reported the rape to DOC and DOI and requested the latter, as an independent entity, investigate. We also reported it to the Bronx District Attorney's office. For Ms. A's safety we requested her transfer to another facility. There, she was placed in solitary confinement after spitting on an officer who was antagonizing her. To the best of our knowledge, the Bronx District Attorney's office declined to investigate, DOI punted to DOC, and DOC's investigation is ongoing while the officers involved continue to work for the Department.*

Another BOC rule requires DOC to complete all investigations of sexual abuse and sexual harassment allegations no later than 90 days from the Referral Date, absent extenuating circumstances outside of the Department's control.<sup>7</sup> Although this rule became effective on January 2, 2018, as discussed above, the vast majority of investigations stemming from 2016 and 2017 remain pending. The lack of accountability at DOC, therefore, is not limited to a few bad actors, but rather is endemic to the agency.

### **DOC's Failure to Properly Investigate Allegations of Sexual Harassment and Abuse**

As part of its internal reform process to comply with PREA, DOC increased the options for filing complaints, and increased staffing for the Investigations Division. Nonetheless, we have not seen a commensurate increase in protections for people in custody or accountability for staff. DOC

<sup>7</sup> NYC Bd. of Corr., Notice of Adoption of Rules (2016), <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2016-PREA/PREA%20Rules%20-%20FINAL%20FOR%20POSTING%2011.10.16%20w%20certification.pdf>.

often fails even to take interim measures after allegations are reported. For example, one of the quickest ways to help protect people from harm, or continued harm, in jail settings is to transfer them to different units or facilities. This approach does not meaningfully address the root causes of jail violence, but it is an easily accessible tool for intervention in the moment. We often find that DOC only transfers people threatened with or victimized by sexual violence when we advocate on their behalf. Mr. W, a BDS client, was an exception, but only because he took extreme measures to advocate for himself:

*Mr. W was raped by another incarcerated man on his housing unit. Mr. W took proactive steps and reported the rape to 311 and his housing officer. Despite his own self-advocacy, neither he nor the other man were moved. Our client continued to report the sexual assault to DOC officers and even a DOC captain, yet still was not moved. Mr. W was raped again in the same housing unit by the same man a week later. Investigators finally interviewed Mr. W, but despite their interaction, Mr. W was not separated from the man. Mr. W was raped again. More than two weeks later, our client spit on a DOC officer and only then was he moved to another, more restrictive housing unit. He knew that by committing an “assault” on DOC staff, he would finally be moved. It was an act of desperation after being repeatedly failed by those in power.*

Regardless of the complaint mechanism they use, our clients who report sexual harassment or abuse are visited by members of DOC’s Investigations Division, who come in plainclothes and wearing badges. Everybody inside—incarcerated people and staff alike—knows them, making people who report extremely vulnerable to retaliation. DOC regularly fails to protect them, surely dissuading others from making reports.

### **Sexual Abuse, Cavity Searches and Broader Corporal Control**

Among the many serious and life-altering harms of incarceration in New York City is the routine sexual degradation involved in contraband searches. Often, the searches, themselves, are deliberately punitive, used by staff not as a response to a reasonable suspicion of the presence of contraband but rather to assert authority and control or to “send a message.” Incarcerated people are regularly subject to cavity searches, which are susceptible to all manner of abuse.

*Mr. L reported that he was sexually abused during a routine housing search. DOC officers entered his cell, yelling, only to rough him up before he was even fully awake. One officer then held Mr. L’s head down with one hand while using the other hand to sexually abuse him. Fortunately, our client felt safe enough after the incident to call 311 to report the incident. Mr. L had difficulty defecating after the abuse and reported that he was experiencing extreme pain and bleeding. Months after the abuse, our client still reported discomfort, continues to have difficulty sleeping and trusting others around him due to the trauma of this incident.*

The Council should recognize that the epidemic of sexual misconduct exists on a continuum of corporal control that deprives and dehumanizes incarcerated people. The power dynamics that make any and all sexual conduct between staff and incarcerated people coercive under the law play out in countless other ways, as well.

*During a tour of the Rose M. Singer Center on Rikers Island, Ms. M shared her difficulty in getting extra toilet paper and feminine hygiene products from DOC staff. She shared how she would have to beg officers for assistance, only to be treated with disrespect that made her feel less than fully human and ashamed. Ultimately, the jail controls the cleanliness, health, and feelings of self-worth for all incarcerated people.*

### **The Victimization of People with Intellectual and Developmental Disabilities**

It is important for this conversation to include people with intellectual and developmental disabilities. This population is at particular risk for sexual victimization, and particular attention should be paid to their needs, even beyond the intake risk-assessment. We appreciate the work Correctional Health Services has done to better screen individuals who come into the custody of the Department and augment services for all victims of jail-based sexual trauma, but we know that too many incidents go undetected only increasing these clients' risk for abuse.

*Mr. D is a young man with moderate mental retardation as well as mental health issues. During his incarceration, he was frequently the target of extortion and harassment. Mr. D had trouble following the rules and was disliked by many correction officers. As a result, he never felt comfortable asking for their help, even in the most extreme of circumstances. Mr. D learned to tolerate the abuse he suffered while incarcerated until he finally told us that what he described as "horseplay" had gone too far – he was being forced to endure sexual abuse by another person in his dorm – and was being ignored or undetected by staff. When we became involved, we were able to secure Mr. D's transfer to another unit, and eventually out of jail.*

### **Conflicts of Interest in DOC Investigating Itself**

Executive Order 16 states, "upon receipt of any information concerning corrupt or other criminal activity or conflict of interest related to his or her agency, the Inspector General of such agency shall report directly and without undue delay such information to the Department of Investigation (DOI), and shall proceed in accordance with the Commissioner's directions."<sup>8</sup>

<sup>8</sup> NYC Executive Order 16 Section 4(e)

Staff sex abuse is criminal behavior that should always be referred to and investigated by DOI. Currently, DOC is permitted to conduct investigations of sex abuse by its own staff members, as reported by the agency at City Council hearings and Board of Correction meetings. In our experience, reports by our clients regarding sexual abuse by a DOC staff member are referred to both agencies, but DOI generally allows DOC's Investigation Division to conduct the investigation. This is a blatant conflict of interest and may contribute to the shockingly small number of cases referred for criminal prosecution by DOC.

The Charter of the City of New York (the City Charter) makes clear, "The jurisdiction of the commissioner [of the Department of Investigation] shall extend to any agency, officer, or employee of the city."<sup>9</sup> DOI thereby has jurisdiction to conduct investigations related to allegations of sex abuse by New York City Corrections Officers, which would resolve the abovementioned conflict of interest. Furthermore, the City Charter requires that "upon completion of the investigation, [the Commissioner of DOI] shall also forward a copy of his [or her] written report or statement of findings to the appropriate prosecuting attorney."<sup>10</sup> Currently, there is no written policy that states what constitutes an appropriate case for DOI to defer investigations to DOC's Investigation Division. The Council should push the agency to establish clear boundaries that would allow appropriate and thorough investigations without bias.

### **Sexual Harassment and Abuse of Visitors**

Earlier this year, the New York City Jails Action Coalition (JAC) published a report, *'It Makes Me Want to Cry': Visiting Rikers Island*, documenting the horrific experiences families, friends, and others face when visiting Rikers Island to support a loved one. The report, which is based on interviews with more than a hundred visitors, makes clear that the epidemic of sexual misconduct extends to the staff who screen visitors. The acts described in the report include being told to "show [their] underwear not only in front of officers but in front of other visitors; forced to strip down to their underwear, [told to] show COs their genitals, [forced to] suffer through inappropriate touching of their breasts and genitals, and [forced to] undergo cavity searches."<sup>11</sup>

In an NBC I-Team report, Stephanie Sanchez reported that she was ordered into a bathroom in the Brooklyn House of Detention and threatened with arrest if she did not comply with an officer's order. "By the time she was finished touching the top, like my breasts weren't even in my bra. My bra was all the way up to my neck," Sanchez said. "She (the officer), went in, she went inside, she moved around, touched my private area. And I just had to stand there. I was in shock," she said.

<sup>9</sup> Charter of the City of New York, Chapter 34 § 803(d)

<sup>10</sup> Id. § 803(c)

<sup>11</sup> NYC Jails Action Coal., 'It Makes Me Want to Cry': Visiting Rikers Island (2018), <http://nycjac.org/wp-content/uploads/2018/01/VISITING-RIKERS-ISLAND-JAILS-ACTION-COALITION-1.9.18.pdf>.

Shauntay Mayfield was also threatened that if she did not consent to the search, officers would contact ACS. “They told me, Oh, ACS is going to get involved. I know you have kids. You want to go home to them tonight?” she recounted.

BDS stands with JAC and their recommendations in order to hold the Department accountable and keep visitors safe from sexual abuse by DOC staff. As an initial step, the City Council’s Committee on Oversight and Investigations should launch an independent and transparent investigation into the allegations of sexual abuse and unlawful strip searches.

As stated in the NYC JAC report, “visiting is a crucial piece to improving reentry and decreasing recidivism, improving jail safety and the mental health of incarcerated people, and helping families who deal with the collateral consequences of incarceration to maintain ties with their loved ones.” Yet, “many visitors report that COs’ behavior as a major concern and hindrance during visits” and fear and “risk of sexual abuse during unlawful strip searches” is a major barrier to visiting. Forcing people to choose between risking exposing themselves to possible sexual abuse or not visiting a loved one is disgraceful and the City should no longer turn a blind eye to the reality of the torture we are putting the families and loved ones of incarcerated people through.

### **Conclusion**

If the people exposed to the soaring rates of sexual harassment and abuse in City jails were treated that way by any other government agency Councilmembers and other policymakers would have long ago called for the resignation of the Commissioner as well as fundamental structural reforms, if not elimination of the agency. Abuse complaints are rising and the City has no plan to improve accountability for staff. Even with the highly-publicized incidents of sexual abuse of visitors, DOC has reported no disciplinary actions against staff. Imagine what is happening behind the gate. Hundreds of complaints languish for years without any results or immediate changes to protect victims. DOC officers, who hold the profound responsibility for the care and custody of incarcerated people and yet use their position to abuse, are still working in extremely powerful positions for the Department. The policies in place are important, but they mean very little when DOC does not enforce them. No matter what side of the gate they are on, everyone deserves to be safe from sexual harassment and abuse. The City must finally address the underlying failures of the Department of Correction or remove people from its custody.

Thank you for your time and consideration of my comments. If you have any questions, please feel free to reach out to Jared Chausow, our Senior Policy Specialist, at 718-254-0700 ext. 382 or [jchausow@bds.org](mailto:jchausow@bds.org).



**TESTIMONY**

The New York City Council

Committee on Fire and Criminal Justice, jointly with  
Committee on Justice System  
Committee on Women

Public Hearing on

**Oversight - Sexual Abuse and Harassment in City Jails**

And In Support of:

Proposed Legislation: Int. No.1090  
In Relation To: Requiring the Department of Correction  
To Report on the Sexual Abuse of Visitors

September 6, 2018  
New York, New York

Prepared by:  
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## INTRODUCTION

Thank you for the opportunity to testify about the need for oversight to address sexual abuse and harassment in the New York City jails, and in support of Proposed Legislation, Int. No.1090: In relation to requiring the Department of Correction to report on the sexual abuse of visitors.

We submit this testimony on behalf of The Legal Aid Society, and thank Chairs Keith Powers, Chairperson of the Committees on Criminal Justice; Rory Laneman, Chairperson of the Committee on Justice System; and Helen Rosenthal, Committee on Women for the opportunity to share our thoughts on this important subject.

The Prisoners' Rights Project of The Legal Aid Society has substantial experience in crafting measures to prevent and deter the scourge of custodial sexual abuse that plagues our jails and prisons, including the jails run by the New York Department of Correction ("the Department" or "DOC"). We have participated as members of the National Prison Rape Elimination Commission's Standards Development Expert Committee, testified before a sub-committee of the U.S. House Judiciary Committee relating to the Commission's recommended standards, and advocated extensively before the New York City Board of Correction (the "Board") about Standards to Eliminate Sexual Abuse and Sexual Harassment In Correctional Facilities ("the Board's Standards"), 40 RCNY Chapter 5 (2016). Our advocacy is rooted in our extensive experience advocating for our clients who report sexual abuse while in the Department's custody and our substantial litigation involving sexual abuse by staff.<sup>1</sup>

We applaud the Council for working to improve oversight of our City's jails to redress the sexual abuse and harassment of persons confined in DOC custody. It has become apparent that the National Prison Rape Elimination Act Standards ("PREA Standards"), 28 C.F.R. Part 115 (2012), as incorporated into the Board's Standards, are not enough.

## SUMMARY OF RECOMMENDATIONS

- 1) There is no accountability without timely, unbiased and thorough investigations, since no disciplinary action against staff will be taken without a finding that the allegation is substantiated. The DOC investigatory process, however, is thoroughly broken and has proven itself to be so for years. **An investigative entity independent of the Department is needed.**
- 2) Cameras are essential for both the deterrence and investigation of sexual abuse. **Body cameras should be required whenever staff is alone with a person outside the view of fixed cameras.**

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<sup>1</sup> The Legal Aid Society has been counsel in two putative class actions on behalf of incarcerated women challenging policies enabling sexual abuse by male correctional staff in the New York state prisons, and in several other individual cases. See *Amador v. Andrews*, 03-cv-0650 (S.D.N.Y.) (KTD); *Jane Jones 1-6, v. Annucci et al.*, 16-cv-1473 (RA)(AJ) (S.D.N.Y. March 3, 2016). We are also counsel in *Jane Does 1 and 2 v. City of New York and Benny Santiago* ("Jane Does"), 15-cv-3849 (AKH) (S.D.N.Y. May 19, 2015), a challenge to the sexual abuse of incarcerated women by staff in NYC DOC and has recently filed *Doe v. City of New York, Jose Cosme and Leonard McNeil*, 1:18-cv-07889 (S.D.N.Y. Aug. 29, 2018), a case on behalf of a woman alleging repeated abuse at the Rose M. Singer Center.

- 3) **Safe housing for vulnerable populations with sufficient trained and well-supervised staff must be provided.**
- 4) The Department has proven itself incapable of meaningfully self-auditing to address sexual abuse. Its self-assessments and Corrective Action Plans have been narrow in scope, unreliable and inadequate. The Board of Correction is being asked to function as a PREA auditor, without the requisite resources or expertise. **Either the Board should be given the resources needed to fully and meaningfully monitor the PREA Standards or an independent review board should be created to monitor sexual abuse in our jails, with their findings and recommendations made public.**
- 5) **Greater transparency is needed**, including making public, subject to redaction for personally identifiable information 1) all data required to be provided by DOC to BOC pursuant to 40 RCNY §5-40(d); 2) a random sample of investigations conducted into staff sexual abuse, including any prior investigations involving the same staff person; and 3) data concerning the sexual abuse and harassment of visitors as contained in Proposed Legislation Int. No. 1090: In relation to requiring the Department of Correction to report on the sexual abuse of visitors.

### **Sexual Abuse and Harassment Is Pervasive In Our Jails.**

Persons subjected to sexual abuse are understandably reluctant to come forward, given the humiliation and embarrassment associated with this abuse. This reaction is intensified when the abuse occurs in a carceral setting, where the survivor fears retaliation and knows, correctly, that complaints are futile since a prisoner's word alone will never be credited. Because incarcerated persons are often afraid of the repercussions from saying "no" to a staff person's demand for sexual activity, they may try to make the best of a wretched situation, and accept contraband or go along with the pretense that the relationship is a romantic one. This in turn can be construed as consent, with other staff not taking such abusive relationships seriously, fostering a culture of indifference.

This context is crucial for understanding reports of abuse and harassment by people in DOC custody. For years—and we see no reason to believe that the situation has changed—sexual abuse in custody has been widely underreported.<sup>2</sup> Given that reported allegations represent only the tip of the iceberg, the data provided by the Department of Correction in its August 2018 Standards 5-40 Assessment Report ("DOC August 2018 Report") is alarming. Even if, as the Department states, allegations decreased in the first half of 2018 to 229 reports of sexual

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<sup>2</sup> Sexual abuse is widely acknowledged to be underreported outside of jails and prisons. In custody, it is substantially underreported. See DOJ Regulatory Impact Assessment, 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](http://www.ojp.usdoj.gov/programs/pdfs/prea_ria.pdf) (concluding that, based upon the 2008-2009 BJS survey, between 69 percent and 82 percent of inmates who reported sexual abuse in response to the survey had never reported an incident to corrections staff).



misconduct,<sup>3</sup> this is merely a correction to a peak reached by years of a surging number of complaints.<sup>4</sup> An astonishing 135 of the reports involve abuse by staff.<sup>5</sup> Even now, allegations of abuse by other incarcerated people are increasing.<sup>6</sup>

The Department will likely proffer a litany of reasons to discount these numbers. Their rationales have changed over time: sometimes they say that the rise in allegations is not because there is more abuse but because reporting mechanisms have improved (which would not explain why numbers are now purportedly decreasing); sometimes they claim people complain to achieve some secondary gain, such as being moved away from staff they do not like (ignoring that incarcerated people have no assurance they will be moved, or to where, and that reporting sexual abuse is embarrassing and painful); and sometimes they say that a small number of people file a significant number of complaints, implying that alone proves these complaints false (ignoring the fact that the vast majority of complaints are not from these same people, and that some people are indeed repeatedly targeted for abuse).

The rationale this time is different: the Department tries to minimize the significance of the reports of staff abuse by saying that the majority occur during a use of force, strip search, pat frisk, contraband retrieval or escort.<sup>7</sup> We are not sure of the Department's point in emphasizing this, since such interactions between staff and incarcerated people are an obvious flashpoint, and serious abuses can occur during these events; for example, we are aware of degrading incidents of sodomy that have occurred during searches. Furthermore, the percentage of staff misconduct during these events has gone down as compared to the last six months of 2017.<sup>8</sup> And the fact remains that a significant number of incidents do not occur during these events—acts that constitute crimes under the New York Penal Law or that involve inappropriate touching or voyeurism--yet the Department provide us with no information about the scope or type of these assaults or rapes.

In other words, it is impossible to know what to make of the information provided by the Department in its August 2018 Report, other than to recognize that serious abuse continues to be reported. We are on track for the Department to receive more than 450 allegations of sexual misconduct this year. That number is too high. Immediate steps need to be taken to foster the safety of some of the most vulnerable New Yorkers. While there are many failings in the treatment of persons who have been subjected to sexual abuse—from inadequate reporting mechanisms<sup>9</sup> to a lack of access to adequate crisis support following trauma—we focus on issues

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<sup>3</sup> See NYC Department of Correction: NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum Standards 5-40 Assessment Report-August 14, 2018 (“DOC August 2018 Report”) at 6-7, available at [https://www1.nyc.gov/assets/doc/downloads/pdf/Bi-Annual\\_August\\_2018.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Bi-Annual_August_2018.pdf)

<sup>4</sup> See data from 2015, 2016 and 2017, respectively, available at [https://www1.nyc.gov/assets/doc/downloads/pdf/Report\\_Regarding\\_Sexual\\_Abuse\\_Allegations\\_Incidents.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Report_Regarding_Sexual_Abuse_Allegations_Incidents.pdf); [https://www1.nyc.gov/assets/doc/downloads/pdf/Report\\_Regarding\\_Sexual\\_Abuse\\_Allegations\\_Incidents\\_CY16.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Report_Regarding_Sexual_Abuse_Allegations_Incidents_CY16.pdf) and [https://www1.nyc.gov/assets/doc/downloads/pdf/Report\\_Regarding\\_Sexual\\_CY2017.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Report_Regarding_Sexual_CY2017.pdf).

<sup>5</sup> See DOC August 2018 Report at 6.

<sup>6</sup> *Id.* at 5-6.

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

<sup>8</sup> *Id.* 6.

<sup>9</sup> A review of the DOC website fails to show any mechanisms available for family and friends to report sexual abuse of persons in custody. Even Alabama does a better job. See <http://www.doc.state.al.us/facility?loc=21> (“The agency shall ensure that all allegations of sexual abuse and sexual harassment are referred for an administrative or criminal investigation. Submit an Investigative Request or send an email to [DOC.PREA@doc.alabama.gov](mailto:DOC.PREA@doc.alabama.gov) to report an allegation of sexual abuse or sexual harassment.”)

pertaining to accountability of staff who engage in abuse, and safe housing for all.

### **The Department's System for Investigations Is Wholly Broken**

Effective investigations are the foundation of accountability, since staff are not disciplined until an allegation of sexual misconduct is substantiated. There is no assurance that timely, competent and professional investigations of sexual misconduct are occurring. Rather, the investigative process of sexual misconduct seems largely a black hole, one where complaints go to die.

Two City agencies have primary responsibilities for investigating sexual abuse in the City jails. DOC's Investigation Division investigates complaints of sexual assaults and harassment allegedly committed *by* incarcerated people.<sup>10</sup> The Department of Investigation (DOI) is charged with investigating complaints against staff and allegations of rape.<sup>11</sup> However, after preliminary review of a case, DOI can decide to send a case back to DOC for investigation.<sup>12</sup> In addition, DOC is required to report allegations of sexual assault and harassment to local law enforcement to conduct a criminal investigation.<sup>13</sup>

We have virtually no information about DOI's efforts: we do not know which cases are referred back to DOC for investigation or how many. We do not know how DOI decides. We do not even know what role, if any, DOI plays before returning an investigation to DOC, or even whether physical proof is promptly obtained in all cases where it should be.

We do know some basic information about DOC's investigations. First, we know that the investigative process has been compromised by substantial delays. DOC's policy requires investigations conducted by the Investigation Division to be completed within sixty days of the complaint<sup>14</sup> while the Board's Standards allow ninety days.<sup>15</sup> The truth gets buried when investigations are delayed: physical and video evidence becomes unavailable and memories blur. Yet DOC's investigations into sexual abuse languish, often for years: according to the Department's statistics issued in 2018, 739 of 823 (or 90%) of allegations were pending from 2016, and 1112 of 1151 (or 97%) of allegations were pending from 2017.<sup>16</sup> The federal monitor in *Nunez v. City of New York* has detailed similar delays, finding in his most recent Report that "The lack of timely case closure *severely compromises* the integrity of the Department's response to allegations of sexual assault."<sup>17</sup>

Second, the DOC Investigation Division has proven for years that it is *unable* to competently and fairly investigate staff misconduct. The federal monitor in *Nunez* has repeatedly found the

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<sup>10</sup> See DOC Directive 5011, *Elimination of Sexual Abuse and Sexual Harassment*, 31 (December 31, 2008), available at [https://www1.nyc.gov/assets/doc/downloads/directives/5011\\_R\\_A\\_Sexual\\_Harassment\\_n.pdf](https://www1.nyc.gov/assets/doc/downloads/directives/5011_R_A_Sexual_Harassment_n.pdf).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 32.

<sup>14</sup> *Id.* at 31.

<sup>15</sup> See 40 R.C.N.Y. § 5-30(m).

<sup>16</sup> See DOC August 2018 Report, at Table 3, available at, [https://www1.nyc.gov/assets/doc/downloads/pdf/Bi-Annual\\_August\\_2018.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Bi-Annual_August_2018.pdf).

<sup>17</sup> See *Nunez v. City of New York*, 11 Civ. 5485 (LTS)(JCF) (S.D.N.Y. Oct. 21, 2015) Fifth Report of the Nunez Independent Monitor, (filed 4/18/2018) at 161-162, available at [https://www1.nyc.gov/assets/doc/downloads/pdf/Fifth\\_Monitor\\_Report.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Fifth_Monitor_Report.pdf) (emphasis supplied).

investigative process for sexual abuse allegations involving adolescents to “continue[s] to evidence significant structural problems such as the failure to interview key witnesses, long delays to witness interviews, and apparent failure to ask effective follow-up questions or to collect relevant evidence.”<sup>18</sup> It is thus no surprise that the Department almost never substantiates any allegations of abuse: in all of 2017 the Department substantiated only one of 367 reports of staff sexual abuse and only one of 143 reports of inmate-inmate sexual abuse.<sup>19</sup> To our knowledge virtually no staff has been disciplined for sexual misconduct since the Board Standards were promulgated.

The Department maintains that they will turn things around by hiring more investigators,<sup>20</sup> by revising a form used to close investigations<sup>21</sup> and by using Captains to conduct certain investigations.<sup>22</sup> In its most recent Report, DOC details the efforts it has made, indicating that the ID PREA Team has increased since May, 2016 from one supervisor to four supervisors and from six investigators to twenty-four, with a goal of having thirty investigators and two Deputy Directors (instead of one) by the beginning of 2019.<sup>23</sup> This is commendable, but it does not answer the core problems in how DOC conducts investigations.

We are skeptical that these are solutions. First, it is not clear what the Department’s net gain has been, with staff often leaving almost as quickly as new investigators are hired. We are concerned that ID fills many vacancies with Temporary Duty officers—correctional staff who are likely to return to working in the jails after their stint at ID.<sup>24</sup> These officers know that any day they might be transferred back to working side-by-side with the very people they are now investigating, inhibiting their independence and neutrality. Having captains conduct investigations likewise defeats the purpose of having trained and objective investigators conduct investigations. Both serve only to reinforce the lack of trust people in custody legitimately feel about the bias inherent in an agency investigating itself.

Nor is it clear that this number of investigators is sufficient to address the number of allegations of sexual misconduct the Department has received. While DOC reports that from April-July, 2018, they closed 111 cases,<sup>25</sup> from July 2017-June 2018 they were only able to close 179 cases total.<sup>26</sup> While certainly on the right trajectory, at this rate the Department cannot investigate all of its current and backlogged cases.

Needless to say, the quality of investigations is a concern, and it would be no gain for the Department to gain speed at the expense of accuracy. Yet they seem now to be coming to

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<sup>18</sup> *Id.*, at 162.

<sup>19</sup> See e.g., Sexual Abuse Allegations and Incidents, CY 2017,

[https://www1.nyc.gov/assets/doc/downloads/pdf/Report\\_Regarding\\_Sexual\\_CY2017.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Report_Regarding_Sexual_CY2017.pdf) ()

<sup>20</sup> See PREA Investigations Corrective Action Plan, NY Department of Correction (June 2018), available at

<https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/June-12-2018/PREA%20Public%20Corrective%20Action%20Plan.pdf>

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

<sup>22</sup> See DOC August 2018 Report at 10.

<sup>23</sup> See DOC August 2018 Report at 13.

<sup>24</sup> See Fourth Report of the Nunez Monitor, at 139-140, available at

[https://www1.nyc.gov/assets/doc/downloads/pdf/Fourth\\_Report\\_Nunez\\_Independent\\_Monitor\\_10.10.17.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Fourth_Report_Nunez_Independent_Monitor_10.10.17.pdf).

<sup>25</sup> See DOC August 2018 Report at 11,.

<sup>26</sup> *Id.* at 10.

immediate, and biased, conclusions. They have come to “preliminary findings” on virtually every allegation they have received since July 2017.<sup>27</sup> The problem is that they appear to be rushing to judgment<sup>28</sup> and concluding that that virtually every allegation is either unsubstantiated or unfounded. According to the Department’s most recent data, the Department has found only three allegations—even preliminarily—to be substantiated.<sup>29</sup>

Conducting sexual abuse investigations is not simply a matter of checking boxes or streamlining a form and calling a case closed. Closing investigations for the sake of closing them helps no one: allegations must be competently, fairly and thoroughly investigated. The Department has not understood this fundamental obligation, and so we believe that they should not be entrusted with the duty to investigate themselves.

### **Body Cameras Are Essential**

From our experience cameras are the single most important tool in addressing custodial sexual abuse. They deter misconduct. They provide an objective lens through which investigators can view complaints, both helping to vindicate persons who are falsely accused and to ensure that corroboration exists when credible allegations are made.<sup>30</sup>

While the fixed cameras required by the *Nunez* Consent Judgement must continue to be maintained after the Judgment terminates, *see* 40 RCNY § 5-04((h)-(i), more is needed to deter sexual abuse.<sup>31</sup> Sexual abuse tends to occur in small enclosed areas where incarcerated people are not expected to be—storage closets, laundry rooms, and slop sink areas. To the extent that fixed cameras are not installed throughout all locations in the jails, we believe staff persons should be required to use body cameras if they are alone with an incarcerated person in an area outside the view of the fixed cameras. Given the breadth of the *Nunez* requirements, this should rarely happen. The failure to wear such a camera, regardless of what the camera shows, should be a basis for discipline.

### **Safe Housing for Vulnerable Populations Is Needed**

Although Board Standards require screening for vulnerability to sexual abuse, *see* 40 RCNY § 5-18, DOC utterly fails to provide safe housing to vulnerable people in its custody. Every month

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<sup>27</sup> *Id.* at 10.

<sup>28</sup> In their PREA Investigations Corrective Action Plan, the Department claimed that they were completing all investigations within 72 hours of receipt of the complaint. They provided no explanation for the steps they were taking to “complete” the investigation but it is hard to imagine that they were complying with the requirements for a professional investigation (*see* 40 RCNY §§ 5-30(a)-(e), 5-31) in that period of time.

<sup>29</sup> *See* DOC August 2018 Report at 10.

<sup>30</sup> *See, e.g.*, “Spying on Attica: How Nearly 2,000 Cameras Tamed America’s Most Notorious Prison” (April 9, 2018), available at <https://www.themarshallproject.org/2018/04/09/spying-on-attica>. Cameras are not, however, a panacea. If there is a culture of impunity, staff will continue to engage in misconduct. Cameras work as an investigative tool if people report, and people in custody are understandably reluctant to report staff misconduct given the power disparity and risk of retaliation. But when someone feels safe enough to report, then cameras can play a dispositive role. *See e.g. Patterson v. State of New York*, 44 Misc. 3d 1230(A) (Ct. Cl. Aug. 29, 2014). (officer tipped his hat at the video camera after sexually assaulting a women in custody; she only complained after she was transferred away from him).

<sup>31</sup> Because of the obstacles to reporting sexual abuse in custody, we believe footage should be required to be maintained for longer than the ninety days required by the Board Standards. *See* 40 RCNY §5-04(j).

we hear from people in custody, particularly transgender and gender nonconforming persons, who tell us that they have been subjected to harassment and abuse, including on occasion even forcible rape. These incidents can occur even in protective custody. Sometimes people who complain are moved, but if so, it is usually to intake cells with no bed and no place to sleep, and where the provision of medical and mental health services is severely compromised, often at the time the incarcerated person most desperately is in need of care. After a stay in intake that can last for days, the person is moved to another unit, and then when problems recur, to another intake cell. The cycle continues again and again and again.

We applaud the Department and the Human Rights Commission for finally recognizing its obligations to house people based presumptively on gender identity<sup>32</sup> and for moving the Transgender Housing Unit to the Rose M. Singer Center, the women's jail. This has been an extraordinary success for the women lucky enough to be housed in it. But many are still left out in the cold. For all those people—who the Department has chosen not to admit to the THU or who the Department has admitted only to be removed if they have any kind of problem--there is no safe housing.<sup>33</sup>

This lack of safe housing extends not just to transgender women, although they are most vulnerable; it includes other vulnerable populations including gender non-conforming, intersex, gay, and queer persons. It is a particular conundrum for those people who are sexually vulnerable but who the Department has decided also pose a risk.<sup>34</sup>

DOC is operating a shell game when it comes to housing, one with serious repercussions. Intake cells are inhumane: people should never have to stay in them for longer than twenty-four hours. Repeated sexual abuse continues with DOC hoping that simply changing someone's housing area, without more, will somehow miraculously protect vulnerable people.

We believe DOC should be required to create vulnerable population units, with substantially more staff and protection than offered in current protective custody housing units. This is not a new concept to the Department: indeed, when the Department first threatened to close the THU, they talked about creating vulnerable persons units in its place. We opposed this proposal because, first, they are not a substitute for the THU, which is important and should remain open; and second, because DOC's proposal was horribly ill-defined and ill-conceived. There was no actual plan for these units; DOC had no idea who would staff them, how many staff would be assigned, how staff would be trained, how frequently supervisors would be present, or what

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<sup>32</sup> See "Mayor de Blasio announces Department of Correction will house incarcerated individuals according to gender identity" (April 18, 2018), available at <https://www1.nyc.gov/office-of-the-mayor/news/193-18/mayor-de-blasio-department-correction-will-house-incarcerated-individuals-according-to>

<sup>33</sup> See Board of Correction Report "An Assessment of the Transgender Housing Unit," (February, 2018) available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/THU%20FINAL%20Feb%202018.pdf>.

<sup>34</sup> The Department labels people as SV (for sexually vulnerable) or SA (for sexually aggressive), a remarkably unsophisticated categorization of people. See Corrective Action Plan to Comply with Minimum Standards § 5-17 and § 5-18 (October 24, 2017), available at [https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/PREA\\_SCREENINGTOOL/2017-10-25-Corrective-Action-Plan.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/PREA_SCREENINGTOOL/2017-10-25-Corrective-Action-Plan.pdf). To those of us observing, it is impossible to understand how this categorization works, or how it fits with the Department's classification system, which according to public reports the Department spent millions of taxpayer dollars on hiring McKinsey, a private consulting firm. See e.g., <https://nypost.com/2017/02/27/rikers-anti-violence-consultants-bill-balloons-despite-spike-in-assaults/>

programming would be offered.<sup>35</sup> Most critically, the Department was suggesting that they would mix various “vulnerable” populations with no thought behind whether the comingling made any sense.<sup>36</sup> For example, DOC proposed housing transgender women with men who were small in stature or of limited English proficiency with no other criteria articulated. In other words, a Spanish-speaking transphobic gang member charged with repeated sexual assaults could be housed with a transgender woman, simply because he did not speak English well. That plan was patently inadequate and dangerous. But a properly conceived and implemented plan is essential. The need to for these units is obvious and urgent: it is time for all vulnerable persons in need of protection from sexual abuse to finally be housed safely while in DOC custody.

### **Sufficient Oversight and Public Accountability Needs To Be Provided**

The Board of Correction has repeatedly publicly acknowledged that the Department is not in compliance with the Standards to eliminate sexual abuse. But to date, the Board has issued only one Notice of Violation.<sup>37</sup> The Board has not issued any detailed or comprehensive report about the state of the Department’s compliance.

We appreciate the extraordinary dedication, skill and hard work of the Board and its staff. We understand that further information is likely forthcoming. While this is welcome, we remain concerned that the Board lacks the institutional resources and expertise to conduct all of the oversight work that is required, in the timeframe that is needed.

The fact is that meaningful monitoring and enforcement of the Board’s Standards have been absent. For example, one of the core Standards requires DOC to supervise its staff. *See* 40 RCNY§ 5-04(k). Incarcerated persons tell us that high-ranking supervisors rarely are on the units, at most conducting perfunctory twice-per-shift rounds which, despite the Board’s requirements to the contrary, do not take place at “varied and unpredictable” times. The public has no ability to confirm this by reviewing logbooks in order to assess DOC’s supervision efforts; we are dependent on the Board to do so. But such monitoring has not taken place. This kind of monitoring is labor intensive; it requires much more than glancing at a log book to see if a “PREA round” is noted twice per shift or even if rounds are conducted at slightly different times each day. Rather, it requires calculating whether there are windows of time when rounds never take place, so that staff can be confident that no higher-ranking supervisor will come and find them in a compromising position. In our experience, the lack of these rounds plays a central role in allowing abuse to take place: staff know when there is a period when no round is likely to

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<sup>35</sup> The Department announced this plan at a meeting of the Board of Correction on March 30, 2017. NYC Bd. Of Corr., *2017 03 30 NYC Board of Correction meeting*, YouTube, March 30, 2017, 11:15-28:42, <https://youtu.be/jmaHN4aL Wrl> (statement of Faye Yelardy, Assistant Commissioner for Sexual Abuse and Sexual Harassment Prevention.).

<sup>36</sup> *Id.*

<sup>37</sup> On August 17, 2018 the Department requested a variance from the requirement that it implement a pilot project of cameras in transport vehicles, something it was obligated to begin and report on over a year ago. *See* Letter from DOC to BOC requesting a limited variance from Standard § 5-04(g), available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/September-14-2018/NYC%20Department%20of%20Correction-BOC%20Sexual%20Abuse%20and%20Sexual%20Harassment%20Minimum%20Standards%20-%205-04%20-%20Transport%20Vehicle%20Camera%20Pilot%20and%20Report.pdf>. None of our clients had reported ever seeing a camera in a transport vehicle. BOC had never issued a public report on the state of this pilot project so until this variance request was submitted the public had no way of knowing if the pilot ever really started; if it did, if it consisted of more than one cameras in one bus; or what the Board would require a genuine “pilot” to consist of.

be conducted. The Standard also prohibits staff from calling ahead to inform other staff that rounds are being conducted. These “trip calls” were routine in the City jails. We have no idea if the practice continues. To monitor compliance the Board needs to talk to staff and to incarcerated persons, and it needs to review housing unit phone logs.

Meaningful oversight of compliance with sexual abuse standards requires not just sufficient resources, but also certain expertise. Investigations of sexual harassment and abuse are one of the most crucial areas requiring oversight. The Board has played an important role in clarifying that investigations languish and that almost no allegations are ever substantiated.<sup>38</sup> But further monitoring of the Standards is required, *see* 40 RCNY §§ 5-5-15, 5-30(a)-(e), 5-31. A compliance assessment would consider, among other things:

- Are all investigators trained?
- Are they properly trained?
- Is all video and physical evidence that could be obtained timely obtained?
- Are the victim and alleged perpetrator talked to, and are all witnesses questioned? Within what timeframe? In what sequence?
- And most crucially, when they are interviewed, what questions are asked—are they designed to get at the truth?
- Are credibility assessments made, and on what basis?
- If a person’s status as incarcerated or as staff is not forming the basis for credibility assessments, then what is?
- Are prior allegations involving the alleged perpetrator being reviewed? If so, to what purpose?
- Do all investigators know the standard of proof required to substantiate an allegation (the preponderance of the evidence)?
- If so, are they appropriately and reasonably applying this standard?

Monitoring these Standards requires reviewing actual investigations by someone expert in professional investigations. It is concerning that such an evaluation has not been completed in the two years since the Board standards were promulgated.

As written, the Board Standards do not contemplate the Board conducting external compliance audits. Indeed, the Department had retained the services of the Moss Group, purportedly to help them prepare for external PREA audits as required by the National Standards. *See* 28 C.F.R. §§

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<sup>38</sup> See BOC “Background on PREA Investigations” (June, 2017), available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/June-13-2017/2017.06.13%20-%20PREA%20data%20to%20share.pdf>.

114.401-.405 To our knowledge, however, these audits have not occurred and the Moss Group is gone. We have no idea if the Department intends to be so audited, or when.

Nor can the Department be counted on to monitor itself: its Assessments Reports routinely have been inadequate. Its first Report describing data from 2016-2017 was extremely limited in scope, did not discuss all of the relevant trends (e.g., if transgender persons were most at risk), focused primarily on investigations, and was internally inconsistent, making its data entirely suspect.<sup>39</sup> The Department's August 2018 Report is not much better; it continues to minimize the severity of the problems. It does not discuss the core substantive failings in how investigations are conducted.<sup>40</sup> It does not describe meaningfully how safe housing is provided for vulnerable persons; instead it simply describes that people are labelled either as sexually aggressive or sexually vulnerable<sup>41</sup> and then utterly fails to discuss how housing and program decisions are made. It goes on to say that there are housing areas for persons who are labelled as vulnerable where they can be housed with persons without a label, and that sexually vulnerable and sexually aggressive persons are housed separately unless they are housed on specialized units in which case efforts will be made not to house them in close proximity and to watch them more closely.<sup>42</sup> But no information is provided as to what units are being referred to, where they are, if they are any different from regular protective custody units, if all vulnerable persons are housed on them, or perhaps most significantly how persons who present as both vulnerable and potentially aggressive are to be kept safe. The only reference to supervision is a statement that blind spots are searched several times a day in addition to standard welfare security checks.<sup>43</sup> That does not provide comfort that there are any additional staff assigned, that any additional supervisors are present or that these units are any different from regular housing or even protective custody units.

We believe that either the Board needs to be provided with the resources required, or an independent review board needs to be created to monitor sexual abuse in our jails. As part of this process, greater public transparency needs to be provided. The public is entitled to know what is going on in its jails.

In addition, all of the data that is to be provided by the Department to the Board, *see* § 5-40(d), needs to be made public. This is not confidential or personally identifiable information. It simply describes each victim's demographics (e.g., the person's gender, LGBTI status, whether the incident was captured on video, or whether DOI or ID conducted the investigation). We understand that the Board is working towards making at least some of this information public, but there is no reason that the Department should not be required to make all of this information public immediately. We therefore believe Local Law 33-2016 (NYC Admin. Code § 9-130) should be expanded to require DOC to post this information publicly on at least an annual basis. We suggest that this data should not only be provided cumulatively about all reports received but

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<sup>39</sup> A comparison of Tables 3 and 3A illustrate the unreliability of the data: Table 3 says that in 2016 there were 3 substantiated allegations; while Table 3A says there were 8. *See* DOC 2016-2017 5-40 Assessment Report, available at, [https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/2018.03.15%20-%20Annual%20Sexual%20Abuse%20and%20Sexual%20Harassment%20Assessment%20Report%20\(PREA\).pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/2018.03.15%20-%20Annual%20Sexual%20Abuse%20and%20Sexual%20Harassment%20Assessment%20Report%20(PREA).pdf)

<sup>40</sup> *See* DOC August 2018 Report at 12-13, available at [https://www1.nyc.gov/assets/doc/downloads/pdf/Bi-Annual\\_August\\_2018.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/Bi-Annual_August_2018.pdf)

<sup>41</sup> *Id.* at 14.

<sup>42</sup> *Id.* at 14.

<sup>43</sup> *Id.* at 14.



should also be provided so that it is possible to track the results for each investigation. In other words, the Department should be required to post information not only that there were XX number of reports of sexual misconduct received from transgender incarcerated persons, but the public should be able to know whether each of those reports involved a staff person or another person in custody, the nature of the allegation, whether it was videotaped, who conducted the investigation and its results. Both sets of data points are critical for the public to have any understanding of what is taking place.

Given the deep-seated failures in DOC's Investigation Division's impartiality and performance, we believe DOC should also be required to make public each year a random sample of the staff sexual abuse investigations that it conducts. Right now, such investigations are shrouded in secrecy; the only information we know is the result of the *Nunez* litigation. To our knowledge, no staff is being disciplined for sexual misconduct, or even for related misconduct (failing to report, unauthorized relationships). Incarcerated persons and the public at large will continue to have no faith that the Department is adequately policing itself. Nor, given the evidence to date should they unless they can see for themselves what DOC is doing. We recognize that substantial redactions will be required, which is why we suggest that only a random sample be made public. As part of this sample, we believe the public should be able to see any prior allegations (and investigations) involving the staff person, since the Department's consideration of such prior allegations in determining whether to substantiate a current allegation is telling. Such prior allegations can be probative of a pattern of abuse as recognized in criminal proceedings in our State, *see People v. Molineux*, 168 N.Y. 264 (1901) or even to show propensity in civil and criminal proceedings in federal court, as recognized by the Federal Rules of Evidence, Rule 415.

Finally, one omission from any data that is currently even nominally being collected is information about the sexual harassment or abuse of visitors.<sup>44</sup> It is important that the true scope of the problem be ascertained so that appropriate action can be taken. We therefore urge the Council to enact Proposed Legislation Intr. No. 1090: In relation to requiring the Department of Correction to report on the sexual abuse of visitors.

Respectfully submitted,

The Prisoners' Rights Project  
The Legal Aid Society  
199 Water Street, 6<sup>th</sup> floor  
New York, N.Y. 10038

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<sup>44</sup> See "It Makes Me Want to Cry: A Report on Visiting by the Jails Action Coalition, January 8, 2018, available at <http://nycjac.org/wp-content/uploads/2018/01/VISITING-RIKERS-ISLAND-JAILS-ACTION-COALITION-1.9.18.pdf>.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**JANE DOE,**

**Plaintiff,**

**-against-**

**THE CITY OF NEW YORK, JOSE COSME,  
and LEONARD McNEIL (individually and  
in his official capacity),**

**Defendants.**

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**COMPLAINT**

**CIVIL ACTION NO.: 1:18-cv-07889**

**Jury Trial Demanded**

Plaintiff Jane Doe, by her undersigned counsel, brings this action seeking relief and challenging the acts and omissions of the City of New York (“the City”), former City of New York Department of Correction Officer Jose Cosme (“Cosme”), and City of New York Department of Correction Officer Leonard McNeil (“McNeil”) (collectively, “Defendants”), and alleges as follows:

#### **NATURE OF THE ACTION**

1. Defendants violated Jane Doe’s constitutional rights to be protected from rape, sexual abuse, sexual harassment, and retaliation.
2. On or about November 30, 2015, while on duty, Cosme ordered Jane Doe to leave her work assignment and clean his office, located in an isolated area. After trapping her in his office, Cosme threatened, raped, sexually abused, and sexually harassed Jane Doe.
3. Jane Doe reported to New York City Department of Correction (“DOC”) officials that Cosme had raped, sexually abused, and sexually harassed her when she was a detainee at Rikers Island (“Rikers”), and she turned over incriminating evidence against Cosme. Cosme has since pled guilty to a felony charge of sexually abusing Jane Doe.
4. Jane Doe also reported that McNeil had raped, sexually abused, and sexually harassed her when she was a detainee at Rikers. Upon information and belief, McNeil remains employed as a Correction Officer (“CO”).
5. The City’s customs, policies, practices, acts, and omissions allowed Cosme and McNeil to rape, sexually abuse, and sexually harass Jane Doe.
6. The City’s customs, policies, practices, acts, and omissions allowed Cosme, McNeil, and other staff members to retaliate against Jane Doe because she reported the rape, sexual abuse, and sexual harassment.

7. The City has long been on notice that there is a significant risk that DOC staff sexually exploit women in its custody. The City, nevertheless, permits a culture of systemic rape, sexual abuse, and sexual harassment of women by staff to exist at the Rose M. Singer Center (“RMSC”), the women’s jail at Rikers.

8. Despite being on notice of the widespread rape, sexual abuse, and sexual harassment perpetrated by COs and other staff at RMSC, the City acted with deliberate indifference to the substantial risk of harm to Plaintiff and other women in its custody.

9. The City claims to recognize that Rikers is a “dehumanizing environment,” from which inmates are released “more broken than when they came in,” but, to date, neither policies and practices promulgated by the City nor the City’s approach to the women who brave retaliation from COs and other staff to complain of rape and other sexual abuse demonstrate any effort to change the status quo.

10. Since Jane Doe reported Cosme and McNeil for raping, sexually abusing, and sexually harassing her, the City has failed to protect Jane Doe from threats, intimidation, and retaliation from correctional staff. Jane Doe continues to suffer this abuse.

11. Jane Doe brings this civil rights action pursuant to 42 U.S.C. § 1983 against Defendants Cosme, McNeil, and the City to obtain a declaratory judgment and compensatory and punitive damages for deprivation of her constitutional rights.

### **JURISDICTION AND VENUE**

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

13. Venue is proper in the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1391(b).

### **THE PARTIES**

14. Plaintiff Jane Doe was held in pretrial detention at RMSC from July 2015 to February 2016.

15. At all times relevant to this Complaint, Cosme was a CO employed by DOC and the City, and assigned to work at RMSC. Jane Doe sues Cosme in his individual and official capacities. Upon information and belief, Cosme is a resident of the State of New York.

16. At all times relevant to this Complaint, McNeil was a CO employed by DOC and the City, and assigned to work at RMSC. Upon information and belief, McNeil continues to be employed by DOC and the City as a CO. Jane Doe sues McNeil in his individual and official capacities. Upon information and belief, McNeil is a resident of the State of New York.

17. Defendant the City is a municipal entity created and authorized under the laws of the State of New York. The City is authorized by law to maintain a correction department that is its agent in the corrections area and for which it is responsible. The City maintains DOC, a municipal entity created and authorized under the laws of the State of New York. DOC is authorized by law to carry out all correction functions for the City, and has responsibility for the care, custody, and control of persons held by the City in correctional facilities.

**STATEMENT OF FACTS**

**I. COSME AND MCNEIL ACTED IN CONCERT TO EACH RAPE, SEXUALLY ABUSE, AND SEXUALLY HARASS JANE DOE**

18. New York State has criminalized all sexual activity or sexual contact between incarcerated individuals and correctional staff. *See* N.Y. Penal Law §§ 130.05(3)(f), 130.25(1) and 130.40(1). These penal statutes recognize the inherently coercive power that correctional officers wield over incarcerated women by eliminating a correction officer's defense of "consent" to a criminal charge of rape or sexual abuse of an inmate. Upon information and belief, at all times, Cosme and McNeil were aware that Jane Doe, as a detainee in City custody, was unable to consent to sexual activity.

19. McNeil targeted Jane Doe and arranged to have undisturbed access to her so he could rape, sexually abuse, and sexually harass her.

20. Shortly after Jane Doe arrived at RMSC, she began working for McNeil's co-worker, CO Tabor. McNeil, who could pick any worker, told Tabor that he wanted Jane Doe to work for him as a sanitation worker. Upon information and belief, McNeil did not submit any work requests to have Jane Doe work for him, as required by DOC policy.

21. When Tabor realized that McNeil was taking Jane Doe to his work station to sexually abuse her, Tabor stopped asking Jane Doe to work for him.

22. About three weeks after Jane Doe began working for McNeil, McNeil stopped choosing other detainees to work for him and told Jane Doe it was so that they could be alone.

23. CO Bush, another of McNeil's co-workers on the midnight sanitation shift, knew that McNeil was taking Jane Doe to be alone with her in his station and that McNeil was not filing the necessary paperwork.

24. McNeil typically waited to see Jane Doe until after the second garbage pick-up so everyone else would be gone and he could be alone with Jane Doe in his office.

25. In or about September 2015, when Jane Doe was working at the loading dock, McNeil told Jane Doe to stop working for CO Bush because McNeil was jealous of her working for anyone else. She refused to do so and McNeil became angry. McNeil then grabbed her and kissed her.

26. In or about September 2015, when they were alone in his office, McNeil—for the first time of many—rubbed Jane Doe’s vagina and breasts and inserted his finger in her vagina.

27. McNeil’s office was located across from the RMSC Captains’ office.

28. In or about October 2015, as McNeil and Jane Doe were in his office and he was on the telephone with his child’s mother, McNeil pulled Jane Doe to his groin area and gestured for her to perform oral sex on him. That was the first of approximately six times that she performed oral sex on him, usually in McNeil’s office and once at the loading dock.

29. Once, when McNeil and Jane Doe were having vaginal intercourse in his office, Tabor walked in and saw them. Tabor did not report what he saw.

30. Jane Doe went to the health clinic after she had had vaginal intercourse with McNeil and asked for an Abbott pregnancy test (to be given within ten days of sexual intercourse). The clinic refused to give her an Abbott test, but instead performed another pregnancy test, because she had been in jail for two months and they saw no need for the ten-day test.

31. Jane Doe discussed with McNeil that she might be pregnant and he said he would “take care of his seed.” He showed her pictures of his ex-girlfriends and their children.

32. On numerous occasions McNeil gave Jane Doe contraband, including makeup and food and beverages from outside the jail, such as Kentucky Fried Chicken, Starbucks coffee, and candy.

33. McNeil picked out used clothing that detainees and inmates had left behind at the jail and gave them to Jane Doe, telling her, "I want to see you in them."

34. McNeil also allowed Jane Doe access to his cell phone and, at his request, Jane Doe taught McNeil how to play Sudoku on his cell phone.

35. Once, McNeil was on the telephone with his mother when he told his mother to speak with his friend. He handed the phone to Jane Doe, who chatted with McNeil's mother. McNeil's mother asked Jane Doe: "What are you doing there? I hear you're a nice girl."

36. McNeil also let Jane Doe use his cell phone to call a friend.

37. McNeil told Jane Doe that when she was released he wanted her to dye her hair blonde, wear blue contact lenses, and visit him at the club where he worked as a bouncer.

38. McNeil took commissary items from Jane Doe, including snacks such as Skinny Cow chocolate.

39. The attention that McNeil paid to Jane Doe did not go unnoticed. McNeil would visit Jane Doe in her housing area, just to see her.

40. Once, when McNeil, Jane Doe, and two other detainees were watching a football game on TV in McNeil's office, McNeil grabbed Jane Doe and kissed her in front of the other detainees.

41. Upon information and belief, McNeil continues to be employed by DOC at Rikers.



42. Upon information and belief, by November 2015, Cosme had become aware that McNeil was regularly sexually abusing and sexually harassing Jane Doe.

43. On several occasions, Cosme made sexual advances to Jane Doe and directed vulgar comments to her. In the presence of McNeil, for example, Cosme took out cash from his wallet and offered it to Jane Doe for a “lap dance.”

44. In or about late November 2015 (about a week before Cosme raped Jane Doe), Cosme passed Jane Doe a note in which he threatened to reveal to his superiors that McNeil was having sexual intercourse with Jane Doe so that McNeil would lose his job, and Cosme could replace him.

45. Upon receiving the threat, Jane Doe became nervous and destroyed the note. When she told McNeil what it said, he became so angry that he flipped over a cart.

46. Upon information and belief, McNeil facilitated Cosme’s rape, sexual abuse, and sexual harassment of Jane Doe so that Cosme would not file a report revealing McNeil’s sexual misconduct.

47. On or about November 30, 2015, in the evening, Cosme was at his post in the COs’ station, an enclosed office known as the “bubble,” where he was assigned to modified duty. Upon information and belief, he was assigned to such duty because of misconduct in the adolescent facility at Rikers. The area where Cosme was stationed was well-known at RMSC as an isolated part of the annex, which was a condemned area at RMSC. Around that area, Jane Doe was performing sanitation duties, one of her three jobs at RMSC, in an isolated area closed off from RMSC, under McNeil’s supervision.

48. Around 9:00 p.m., as Jane Doe was finishing up her task, McNeil left his assigned station and walked down the hallway and around the corner, purportedly to make a personal

telephone call. Although on other occasions McNeil had made personal telephone calls in Jane Doe's presence, including while she was performing oral sex on him, on this occasion McNeil left Jane Doe alone in the hall.

49. Cosme, upon seeing Jane Doe alone, went to the hallway outside the bubble and called out for her to come over, purportedly to clean his office.

50. At the time, there was a camera by the bubble, but, upon information and belief, because that part of the building was closed off, the camera was not connected to the monitors at the control room and the camera did not record or save footage. Upon information and belief, it was common knowledge among staff and detainees that this camera was not in operation.

51. Jane Doe grabbed her cleaning supplies and complied with Cosme's order. Once she arrived near the bubble, however, Cosme locked a gate to the hallway, trapping her inside with him. Jane Doe was afraid, but remained hopeful that he really did just want her to clean the office, so she went inside the office.

52. As Jane Doe, who at that time weighed only about 100 pounds, entered Cosme's office—which was about the size of a storage closet and surrounded by Plexiglas—Cosme, a man who is at least six feet tall and at the time weighed over 310 pounds, blocked her way out and locked the door shut.

53. Cosme threatened Jane Doe with violence. Trying to intimidate Jane Doe, he bit off a callus on his finger and said to her: "If I can do this to myself, imagine what I'll do to you."

54. Jane Doe's heart beat fast and she froze in fear.

55. Jane Doe screamed, “No, stop!” and put her hands in front of her body. Even though she begged Cosme to stop and repeatedly whimpered, “No,” he ripped open her institutional jumpsuit and ordered her to strip off her pants and underwear.

56. Jane Doe went into shock as she realized that Cosme was about to rape her. Her body shook as Cosme turned her around to face the Plexiglas wall. Jane Doe cried.

57. Jane Doe did not fight back because she was afraid that if she did Cosme would accuse her of assaulting an officer and put her in solitary confinement. She also realized that fighting back would likely be futile given that Cosme was much taller and three times her weight.

58. After Jane Doe had obeyed, Cosme slammed her face and body into the Plexiglas. Smothering her with his body weight, Cosme jabbed his then erect penis about five times at Jane Doe’s vagina, but could not fully penetrate her because her vagina was dry. Jane Doe yelled that he was hurting her and begged Cosme to stop, as she banged loudly on the Plexiglas.

59. Instead of stopping, Cosme licked his palm, rubbed saliva on his penis, and jabbed Jane Doe’s vagina again as she continued to scream and bang on the Plexiglas.

60. Cosme then pulled Jane Doe and bent her over a table and, slamming into her, forced his erect penis in her dry vagina from behind, causing her excruciating pain.

61. Cosme covered Jane Doe’s body with his and smothered her. Jane Doe repeatedly screamed: “It hurts, it hurts,” and “You’re hurting me, you’re hurting me!”

62. As Cosme was raping Jane Doe, she felt as if something had burst inside of her and then a lot of liquid came out of her vagina. Jane Doe begged Cosme not to ejaculate inside of her.

63. Cosme then sat down and slammed Jane Doe on top of him with his erect penis still inside her vagina. Jane Doe begged and cried out for him to stop and not to ejaculate inside of her.

64. As he was raping Jane Doe, Cosme's phone rang and he answered it. Cosme conversed with someone for about forty seconds, while his erect penis was still inside Jane Doe. While on the phone, Cosme sat back onto a chair and forcefully gripped Jane Doe's right hip to keep her in place.

65. The call ended, and Cosme continued penetrating Jane Doe as she again begged him not to ejaculate inside of her. Cosme slammed a sobbing Jane Doe up and down on top of him.

66. Cosme then abruptly stood up and Jane Doe fell to her knees. She was sobbing and shaking and her chest began to feel tight.

67. Cosme pulled Jane Doe's hair, ripping out a section of her hair.

68. Cosme forced Jane Doe's face to his penis. Cosme continued to pull Jane Doe's hair with one hand while he masturbated with the other.

69. During this time, Cosme's phone rang again (about five to seven minutes after the first call), but he ignored it.

70. Cosme ordered Jane Doe to lift up her shirt and expose her bare breasts to him.

71. Jane Doe complied, and, as he masturbated, Cosme said: "Tell me you had that black dick! Tell me you had that black dick! Tell me you had that black dick!"

72. Cosme ejaculated onto Jane Doe's breasts.

73. Immediately after, Cosme wiped himself with paper towels and told Jane Doe to get dressed.

74. Jane Doe remained in shock, still kneeling on the floor, but got up to comply with Cosme's order. Her uniform lay crumpled up in the corner.

75. Jane Doe was in pain all over her body, including her vagina, and her head hurt from where Cosme had pulled out her hair.

76. Cosme then escorted Jane Doe back to her housing area in Building 14. Cosme walked ahead, while Jane Doe followed a few steps behind. Jane Doe could hardly breathe. As they were walking, Cosme laughed and said to Jane Doe: "At least my wife can have a break tonight."

77. Sometime past 9:30 p.m., Jane Doe and Cosme arrived at Building 14. McNeil was there and asked Jane Doe if she was okay.

78. The CO assigned to Building 14 that night, Springer, stated that she had just asked McNeil where Jane Doe was because Jane Doe had missed the mandatory 9 p.m. cell lock-in.

79. When she was back in her cell, Jane Doe used a white T-shirt to wipe off Cosme's ejaculate from the gray T-shirt she was wearing when Cosme raped her.

80. As she sat in her cell, Jane Doe began having trouble breathing and her chest felt tight, so she told a CO in her housing area how she felt and was escorted to the RMSC medical clinic.

81. When she arrived, Jane Doe told a nurse: "He hurt me. I can't breathe," but the nurse and other staff members did not ask what had happened and were rude and curt.

82. Without actually examining her, the physician told the nurse: "She's having a panic attack. Put ice on her."

83. No one at the clinic examined Jane Doe and, after she had been in the clinic a mere ten minutes, the medical staff discharged her.

84. Jane Doe returned to her cell, where she ripped into pieces the white T-shirt which she had used to clean the ejaculate off the gray T-shirt that she had been wearing during the rape.

85. Later that night, from an office where she worked on the midnight shift, Jane Doe mailed one piece of the semen-soaked white T-shirt to her sister and another to a family friend.

86. Upon information and belief, this evidence, along with Jane Doe's underwear and bra from the day of Cosme's rape, was turned over to the Bronx District Attorney's office. The ejaculate on the T-shirt would test positive for Cosme's DNA.

87. After mailing the DNA evidence and finishing her shift around 2:00 a.m., Jane Doe returned to her cell, but was unable to sleep the rest of that night because she was traumatized. Jane Doe was in physical pain throughout her body and head and she had bruises on her legs and thighs.

88. Soon after, Jane Doe reported Cosme's rape to McNeil and showed him the bruises which Cosme had caused when he raped and abused her.

89. McNeil ordered Jane Doe not to report Cosme's rape until after McNeil had gone on vacation.

90. Jane Doe obeyed McNeil; she did not report that Cosme had raped her until mid-December 2015, after McNeil had gone on vacation.

91. Later, when a family friend (the same one to whom she had mailed a piece of the white T-shirt) visited her at the jail, Jane Doe gave him the gray T-shirt she had been wearing when Cosme raped her.

92. Jane Doe saved Cosme's DNA evidence and mailed it out because of a prior sexual abuse complaint she had made against a CO. Jane Doe believed that DOC had not taken

the prior sexual abuse seriously because she was never informed as to whether there was any investigation or of the outcome of her complaint. Jane Doe therefore believed that DOC would not believe her report that Cosme raped her if she did not have physical evidence.

93. In the prior sexual abuse complaint, Jane Doe had reported to DOC that CO Nicholas Terrano (“Terrano”) was giving cigarettes to multiple women at RMSC, including herself, if they performed oral sex on him.

94. In or about 2011, Jane Doe performed oral sex on Terrano about five times. After she had performed oral sex on Terrano, he usually threw three or four cigarettes at her.

95. Investigators from the Inspector General’s office interviewed Jane Doe after she had made the complaint against Terrano, but no one contacted her after that initial interview.

96. Jane Doe also knew that simply giving physical evidence directly to DOC staff was not enough because she had witnessed how COs had mistreated another detainee at RMSC, Jennifer Roe.

97. In that situation, Jennifer Roe had accused a male CO of raping her. Jennifer Roe tried to file a complaint and gave DOC staff her underwear, which contained evidence of the rape. Upon information and belief, the DOC staff member took and then discarded the underwear. Upon information and belief, DOC never did anything about Jennifer Roe’s complaint that she had been brutally abused and raped.

98. A few days after Cosme had raped and sexually abused Jane Doe, Cosme handed her contraband, a plastic bag with about twenty Newport cigarettes. Jane Doe gave most of the cigarettes to other female detainees and she smoked one while McNeil watched.

99. On or around December 16, 2015, when McNeil was on vacation, two weeks after Cosme had raped Jane Doe, Jane Doe reported Cosme’s rape to CO McDaniel (a female CO) for

whom Jane Doe worked. CO McDaniel called Captain White and two other supervisors, who then contacted the Inspector General's office.

100. Investigators Captain Taylor and Corsica arrived and interviewed Jane Doe.

101. Taylor and Corsica videotaped Jane Doe at the crime scene where Cosme had raped and sexually abused her. Jane Doe demonstrated to them how Cosme had pushed her face and body against the Plexiglas in the office, as she had screamed for him to let her go.

102. Jane Doe told Taylor and Corsica about the DNA samples which she had given to her sister and family friend.

103. Afterwards, Jane Doe was taken to the medical clinic where her blood was drawn. The doctor did not perform a rape kit because of the length of time that had passed since Cosme had raped her.

104. DOC's response to Jane Doe's report was to offer protective custody, which she declined because she had claustrophobia and she did not want to be isolated and locked in a cell for the majority of the day.

105. Jane Doe spoke with a clinician from the Office of Mental Health and told her that Cosme had raped her. The clinician, however, questioned Jane Doe about whether she had "imagined" it.

106. Jane Doe also told M. G., another inmate who was a friend of hers, that Cosme had raped her.

107. Because of Jane Doe's reporting and preservation of DNA evidence, the District Attorney of Bronx County prosecuted Cosme. Cosme pled guilty to a Criminal Sex Act in the Third Degree, a class E felony, which carried a ten-year probationary sentence and required Cosme to register as a sex offender.



108. After the rape, Jane Doe was the victim of harassment, hateful comments, and other retaliation by Cosme, McNeil, other correctional staff, and inmates at RMSC, Bedford Hills Correctional Facility, and Albion Correctional Facility.

109. At RMSC, the CO in charge of assignments fired Jane Doe from her three work assignments, one of which paid her \$15 a week. Jane Doe was not told why she was being fired or whether there was any cause for her termination.

110. Only later did Jane Doe find out that there was a sign in the bubble, where COs were stationed, that said not to take Jane Doe out of her cell. This included not taking her out to perform her jobs, to church, group programs, mental health counseling or any other places.

111. Jane Doe told Captain Taylor that DOC had fired her from all three work assignments and that she wished she could still work, because it was a way to keep herself busy and not to have to think about Cosme's rape all the time. A little while later, Jane Doe was told that she could resume her job for CO McDaniel (the female CO to whom Jane Doe had first reported her rape), but she was never able to resume the other two jobs.

112. Other forms of retaliation continued, including that COs at RMSC refused to escort Jane Doe to religious services. When church services were called, Jane Doe would get in the line to attend church. The COs ordered Jane Doe to get out of line. When she asked why, they either ignored her or made comments like "You run your mouth too much," or "Shit runs downhill."

113. In another form of retaliation, on at least one occasion, the COs at RMSC refused to escort Jane Doe to the medical clinic.

114. In a further form of retaliation, the COs at RMSC refused to give Jane Doe basic toiletries, including soap.

115. In a further form of retaliation, the COs at RMSC refused to escort Jane Doe back from court appearances outside the facility. On several occasions, COs left Jane Doe in the bullpens at court because everyone refused to escort her. On some occasions COs took other women from her unit back to RMSC from the courthouse and left her behind.

116. The retaliation included verbal harassment from DOC staff. One day, Jane Doe was standing in line to obtain her medication when McNeil pointed at her as he said to another CO: "What you do with someone like her is two to the chest, one to the head, I can shoot." The other CO replied: "Maybe two to the head and one to the chest." McNeil and the other CO laughed.

117. On another day, McNeil told Jane Doe that she was a "fucking snitch," "a hoe," and a "bitch."

118. A female CO at RMSC threatened Jane Doe, telling her that she had her home address and that Jane Doe could be "touched anywhere."

119. A female CO at RMSC said about Jane Doe: "What do you expect from a cracker?" as Jane Doe walked past on her way to work. Jane Doe asked a second female CO why the other CO had called her a "cracker." The second CO replied: "Because you're a weak bitch and you're gonna crumble."

120. Deputy Warden Johnson, a facility supervisor, said to another CO in Jane Doe's presence: "She's just out for a pay day!"

121. The retaliation continued once Jane Doe was transferred to Bedford Hills prison. There, someone put a large piece of onion in her pocket and then a CO said: "That bitch stinks."

122. A CO at Bedford Hills prison also referred to Jane Doe as a "White bitch."

123. As a result of this harassment, Jane Doe isolated herself as much as possible in an effort to avoid such verbal abuse and harassment.

**II. THE CITY IS DELIBERATELY INDIFFERENT TO THE RAPE, SEXUAL ABUSE, AND SEXUAL HARASSMENT BY CORRECTIONAL STAFF OF WOMEN IN DOC'S CUSTODY**

124. The City, through DOC, is responsible for the care, custody, and control of detainees and City-sentenced inmates. Through its acts and omissions, the City has facilitated the rape, sexual abuse, and sexual harassment of the women committed to its custody and demonstrated a deliberate indifference to the safety of these women.

125. The City operates eight jail facilities on Rikers, holding an average of approximately 9,500 individuals on a daily basis. RMSC, where Jane Doe was held when Cosme and McNeil raped, sexually abused, and sexually harassed her, is the women's jail at Rikers, holding on average 800 women at any given time.

126. The City's practices show a callous disregard for legal requirements and correctional professionalism.

127. New York State has recognized the coercive power that COs wield over incarcerated women, and the related risk of rape and other sexual abuse, by criminalizing all sexual activity between incarcerated individuals and correctional staff in New York Penal Law § 130.05(3)(f), New York Penal Law § 130.25(1), and New York Penal Law § 130.40(1).

128. Recently, in a report issued in March 2018, comparing allegations of sexual abuse and sexual harassment for the calendar years 2016 and 2017, DOC stated that there were 374 staff sexual misconduct allegations reported in 2017 and 322 in 2016 (including a "wide-range of

behaviors” such as sexual acts, touching for sexual gratification, voyeurism and indecent exposure).<sup>1</sup>

129. According to a WNYC article from May 2016, medical staff at Rikers reported 118 incidents of alleged sexual abuse or harassment against inmates from January to May 2016—a number of reports one doctor described as “alarming.”<sup>2</sup> The article further cites health officials’ statements that out of fifty-six sexual abuse reports made in the first quarter of the year, forty of the incidents involved reports of COs abusing inmates.

130. Additional examples include, but are not limited to the following:

- In 2010, *The Village Voice* reported that an inmate at RMSC became pregnant after she was raped by a CO. The article reported that when the pregnancy was discovered, five COs were transferred to other facilities.<sup>3</sup>
- In May 2015, two women filed a putative class action lawsuit alleging that seven COs at RMSC had repeatedly raped and sexually abused inmates.<sup>4</sup> The inmates further alleged that one CO, Officer Santiago, punished a woman by anally raping her for resisting his abuses and that he threatened another woman that he would “charge her with false disciplinary infractions and [ ] cause other inmates to attack her” if she reported him.<sup>5</sup> In addition, the inmates contended that other COs had knowledge of the abuse but allowed it to continue and even facilitated in protecting Officer Santiago by threatening the two inmates and retaliating against them by, among other things, locking the women in their cells and “deny[ing]

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<sup>1</sup> Dept. of Correction Reports, NYC Board of Correction [https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/2018.03.15%20-%20Annual%20Sexual%20Abuse%20and%20Sexual%20Harassment%20Assessment%20Report%20\(PREA\).pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/2018.03.15%20-%20Annual%20Sexual%20Abuse%20and%20Sexual%20Harassment%20Assessment%20Report%20(PREA).pdf) (last accessed August 28, 2018).

<sup>2</sup> Cindy Rodriguez, *Reports of Sexual Abuse Against Rikers Inmates Rise*, WNYC News (May 26, 2016) <http://www.wnyc.org/story/reports-sexual-abuse-rikers-concern-medical-staff/>.

<sup>3</sup> Elizabeth Dwoskin, *Inmate Gets Pregnant in Rikers, Sparking Investigation*, *The Village Voice* (Apr. 29, 2010) <https://www.villagevoice.com/2010/04/29/inmate-gets-pregnant-in-rikers-sparking-investigation/>.

<sup>4</sup> Complaint, *Jane Doe 1 v. Santiago*, No. 1:15-cv-03849 (S.D.N.Y. May 19, 2015) (ECF No. 1).

<sup>5</sup> *Id.* ¶¶ 41, 47.

[them] food and the opportunity to shower.”<sup>6</sup> Although one of the inmates finally reported the abuse, by the time the complaint was filed, two years later, she still had not received a written determination of her complaint from the Department of Investigations (“DOI”). The City agreed to settle the lawsuit for \$1.2 million.

- In November 2015, a woman filed a federal lawsuit against the DOC asserting that a CO had raped her, after he pushed her down on a bus transporting her and five male inmates to Rikers, while a second correctional officer watched.<sup>7</sup>
- In February 2016, The New York Times reported that a female CO at Rikers was charged with rape after having sexual intercourse with a male inmate.<sup>8</sup>
- In April 2017, the *Daily News* reported on the indictment of a Rikers physician’s assistant on forty-three counts of rape, sexual abuse and related crimes committed against four female Rikers inmates.<sup>9</sup>

131. In 2013, the United States Department of Justice (“DOJ”) issued a report, which documented that DOC’s RMSC had one of the highest rates among jails of staff-on-inmate sexual misconduct.<sup>10</sup> Specifically, the DOJ’s report found that 5.9% of the inmates were subject to staff-on-inmate sexual misconduct.<sup>11</sup> In addition, 2.3% of inmates stated that they were

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<sup>6</sup> *Id.* ¶ 77.

<sup>7</sup> Victoria Bekiempis, *Rikers Island correction officer raped female inmate on bus, invited fellow guard to watch: lawsuit*, Daily News (Nov. 20, 2015) <http://www.nydailynews.com/new-york/nyc-crime/rikers-guard-accused-raping-female-inmate-bus-article-1.2442320>.

<sup>8</sup> *Charges Against Correction Officer*, NYTimes (Feb. 7, 2016) <https://www.nytimes.com/interactive/2016/02/07/nyregion/document-Charges-Against-Correction-Officer.html>; Kelly Weill, *Rikers Island Guard Nicole Bartley Busted for Rape, Smuggling Drugs*, Daily Beast (Feb. 8, 2016) <http://www.thedailybeast.com/rikers-island-guard-nicole-bartley-busted-for-rape-smuggling-drugs>.

<sup>9</sup> Reuven Blau, *Physician’s assistant indicted on charges of raping four Rikers Island inmates*, Daily News (Apr. 24, 2017) <http://www.nydailynews.com/new-york/nyc-crime/doctor-assistant-charged-raping-rikers-island-inmates-article-1.3095975>.

<sup>10</sup> Allen J. Beck, Marcus Berzofsky, Rachel Caspar & Christopher Krebs, *Sexual Victimization in Prisons and Jails Reported by Inmates (2011-2012)*, U.S. DOJ Bureau of Justice Statistics (May 2013) available at <https://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.

<sup>11</sup> *Id.* at 13.

“physically forced” to engage in sexual activity with a CO, and 5.6% reported that they felt pressured into sexual activity.<sup>12</sup> These numbers far exceed the nationwide averages.

132. In August 2014, the United States Attorney for the Southern District issued a letter captioned, “CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island.”<sup>13</sup> Although not the main focus of the investigation, the City’s handling of sexual abuse cases continued to be a cause of great concern for the DOJ.

“Our investigation did not focus on incidents involving alleged sexual assault. However, the limited information we obtained raises a concern that DOC may be under-reporting sexual assault allegations. In calendar years 2011 and 2012, DOC reported a total of only seven incidents of alleged sexual assault where the alleged victim was an adolescent. (Five of these incidents were determined to be unfounded or unsubstantiated and the other two investigations were pending at the time DOC provided the data.) This number seems extremely small given the size of the adolescent inmate population, the frequency of inmate-on-inmate violence, and the high rate of negative interactions between staff and inmates. Our consultant expressed concern as to whether allegations of sexual assault are being consistently reported and investigated in compliance with the Prison Rape Elimination Act, 42 U.S.C. § 15601 *et seq.*, and the relevant DOJ implementing regulations. We encourage the Department to examine these issues.”

133. Disturbingly, the City views sexual abuse of incarcerated persons by staff as inevitable. At a NYC Board of Correction meeting on June 14, 2016, one of the board members, Gerard Bryant, stated that “[a]s long as we are going to have prisons we are going to have sexual

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<sup>12</sup> *Id.* at 87.

<sup>13</sup> The U.S. Attorney’s Office for the S.D.N.Y., CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island, 10 n.14 (Aug. 4, 2014) *available at* <https://www.justice.gov/sites/default/files/usao-sdny/legacy/2015/03/25/SDNY%20Rikers%20Report.pdf> (last accessed on Aug. 28, 2018).

abuse in prisons. That's the reality. That's what happens."<sup>14</sup> He went on to state, "You can tell staff until you're blue in the face, 'Don't have sex with inmates,' and it's still going to happen. OK?"<sup>15</sup>

134. In September 2014, the City retained the Moss Group, a consulting firm, with funds provided by the U.S. Department of Justice, to review the sexual safety of certain jails at Rikers, including RMSC. The Moss Group produced a document called the Sexual Safety Assessment Report (the "Moss Report"), which the City did not publicly release, but that was later disclosed to the press.<sup>16</sup>

135. The Moss Report concluded that fundamental problems existed in the City's handling of sex abuse at Rikers.<sup>17</sup> According to the Associated Press: "New York City's Rikers Island jail has entrenched problems dealing with sexual abuse, including emergency hotlines that don't work, confidential complaints read by fellow inmates and investigations that don't interview alleged attackers."<sup>18</sup>

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<sup>14</sup> Nick Malinowski, *NYC Official Says Rape is Inevitable at Rikers Island: If true, we cannot send anyone there*, HuffPost (June 26, 2016) [http://www.huffingtonpost.com/nick-malinowski/nyc-official-says-rape-is\\_b\\_10600320.html](http://www.huffingtonpost.com/nick-malinowski/nyc-official-says-rape-is_b_10600320.html).

<sup>15</sup> Ezra Kaplan, *New York City Board of Correction proposes rule designed to reduce rape and sexual assault in jails*, AP News (June 15, 2016) <https://apnews.com/ba37a82372ee40989d8f63d4dca0f8b2/nyc-board-approves-standards-set-reduce-rape-jails>.

<sup>16</sup> Michelle Mark & Associated Press, *Report: New York's biggest jail has a huge problem with sexual abuse*, Business Insider (Jun. 21, 2016) <http://www.businessinsider.com/ap-apnewsbreak-report-assails-nyc-jails-sex-abuse-response-2016-6?r=UK&IR=T>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

136. The City claimed it took the Moss Report seriously. DOC spokesperson Eve Kessler said that the June 2016 report was a “wake-up call, and we heard it loud and clear.”<sup>19</sup> Despite the “wake-up call,” the City remains asleep, as correctional staff members continue to rape, sexually abuse, harass, and retaliate against detainees and inmates.

137. Activists, reformers, and politicians have called for the permanent closing of Rikers. Governor Andrew Cuomo said: “This is human, it is real, it is graphic, and it is ugly. The confluence of these evil currents come together in New York City in the East River, in a place called Rikers Island.”<sup>20</sup> Former U.S. Attorney Preet Bharara, who investigated Rikers,<sup>21</sup> said it is a “place where brute force is the first impulse.”<sup>22</sup>

138. On March 31, 2017, Mayor De Blasio said the City plans to close Rikers, but not until at least 2027, even though he has said in the past that Rikers is a “dehumanizing environment,” from which inmates are released “more broken than when they came in.”<sup>23</sup>

139. Days after the Mayor’s announcement, the Independent Commission on New York City Criminal Justice and Incarceration Reform released a report recommending the closure of Rikers.<sup>24</sup>

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<sup>19</sup> *Id.*

<sup>20</sup> Will Bredderman, *Cuomo: Lack of ‘Political Will’ the Only Thing Stopping de Blasio From Closing Rikers Island*, Observer (Mar. 13, 2017) <http://observer.com/2017/03/andrew-cuomo-bill-de-blasio-close-rikers-island/>.

<sup>21</sup> See *CRIPA Investigation*, *supra* note 13.

<sup>22</sup> Nick Pinto, *It’s Put Up or Shut Up Time for Politicians Who Say They Want to Close Rikers*, The Village Voice (Apr. 4, 2017) <http://www.villagevoice.com/2017/04/04/its-put-up-or-shut-up-time-for-politicians-who-say-they-want-to-close-rikers/>.

<sup>23</sup> Wendy Joan Biddlecombe, *De Blasio Talks Rikers Island Changes*, Metro (Nov. 20, 2014) <http://www.metro.us/new-york/de-blasio-talks-rikers-island-changes/zsJnlb---GjdthK0XSJWMg>.



140. The Chair of the Commission, former Chief Judge of the New York Court of Appeals Jonathan Lippman, said, in conjunction with the release of the report, that Rikers is “a place that is an affront to humanity and decency and is a stain on our city’s reputation.”<sup>25</sup>

141. The City’s failure to implement the Prison Rape Elimination Act (“PREA”), 42 U.S.C. § 15601 *et seq.*, demonstrates its deliberate indifference to the safety and well-being of women in its custody.

142. The City waited until 2016—thirteen years after the enactment of PREA—to update its sexual safety directive to purportedly implement PREA.<sup>26</sup>

143. The City, as its own aforementioned reports show, knows that COs and other correctional staff subject women at RMSC to recurrent and ongoing acts of rape, oral sexual acts, sexual touching, public masturbation, voyeurism, demeaning sexual comments, and physical and verbal intimidation to deter women in custody from reporting such sexual abuse.

144. The City, moreover, assigns male COs to guard women, often alone, without adequate safeguards to prevent rape and other sexual abuse. Male COs are assigned to posts in which they have unmonitored contact and complete discretion and control over incarcerated women. Upon information and belief, a single male CO, for example, is often assigned to dormitory areas during nighttime hours.

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<sup>24</sup> A More Just New York City, The Independent Commission on New York City Criminal Justice and Incarceration Reform, <http://www.morejustnyc.org/#home-1> (last accessed Aug. 28, 2018).

<sup>25</sup> Pinto, *supra* note 22.

<sup>26</sup> See Directive, DOC, Classification 5011 Elimination of Sexual Abuse and Sexual Harassment (effective May 2, 2016).

145. COs who rape, sexually abuse, and sexually harass incarcerated women routinely leave their assigned posts and take women into areas where prisoners are not permitted or at times when the women should be locked in their cells.

146. COs provide certain women with contraband items, including drugs (which COs smuggle into the jail).<sup>27</sup> The City has failed to take action despite knowledge of this misconduct and has not enforced policies intended to identify, address, and prohibit sexual abuse of inmates by COs.

147. The City permits COs virtually unfettered access to areas such as kitchen store rooms, storage closets, and pantries where they can rape, sexually abuse, and sexually harass women with minimal risk of detection.

148. The City has failed to employ obvious measures to reduce the risk of rape, sexual abuse, and sexual harassment of incarcerated women by COs, such as heightened monitoring of behavior indicative of ongoing sexual abuse, appropriately placed and functional surveillance cameras installed and maintained without staff knowledge, exit interviews of incarcerated women upon transfer or release, random interviews of staff, and more frequent, unannounced rounds by supervisory officials.

149. The City's system for the reporting and investigation of rape, sexual abuse, and sexual harassment is grossly inadequate, and the City fails to take appropriate action to protect those who do manage to come forward or to punish their abusers.

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<sup>27</sup> For example, DOI reported that Probationary CO Torray Riles was arrested on January 21, 2018, and charged with Promoting Prison Contraband in the Second Degree, a Class A misdemeanor; Riles had smuggled in about 26 grams of marijuana, which he had concealed in his underwear. See DOI Report, *DOI Investigation Leads to Arrest of City Correction Officer on Contraband Charges*, 14 (Jan. 23, 2018) available at [https://www1.nyc.gov/assets/doi/press-releases/2018/jan/03Riles\\_012318.pdf](https://www1.nyc.gov/assets/doi/press-releases/2018/jan/03Riles_012318.pdf).

**CAUSES OF ACTION**

**COUNT I (JANE DOE'S DUE PROCESS CLAIM AGAINST COSME)**

150. Jane Doe repeats and re-alleges each of the allegations contained in paragraphs 1 through 149 with the same force and effect as if fully set forth herein.

151. At all relevant times, Cosme was acting in his capacity as a CO employed by the City.

152. At all relevant times, Cosme was acting under color of state law.

153. Cosme raped, sexually abused, and sexually harassed Jane Doe by coercing, threatening, and using physical force to compel her to perform sexual acts, including intercourse, as detailed herein.

154. As a result of the rape, sexual abuse, and sexual harassment, Jane Doe suffered severe physical harm and suffered and continues to suffer psychological and emotional distress, including PTSD. Jane Doe continues to experience depression and anxiety, has difficulty sleeping, and has had flashbacks of Cosme's rape, sexual abuse, and sexual harassment.

155. By virtue of Cosme's rape, sexual abuse, and sexual harassment of Jane Doe, Cosme deprived her of her due process rights under the Fourteenth Amendment to the United States Constitution.

**COUNT II (JANE DOE'S CLAIM AGAINST COSME FOR RETALIATION)**

156. Jane Doe repeats and re-alleges each of the allegations contained in paragraphs 1 through 149 with the same force and effect as if fully set forth herein.

157. Cosme retaliated against Jane Doe for reporting his rape, sexual abuse, and sexual harassment.

158. As a result of Cosme's retaliation, Jane Doe suffered severe physical, psychological and emotional distress, including PTSD. She continues to experience depression and anxiety, has difficulty sleeping and has had flashbacks of the rapes and sexual abuse.

159. By virtue of his retaliation against Jane Doe for her reports of his sexual abuse, Cosme deprived her of her right to the freedom of speech in violation of her rights under the First and Fourteenth Amendments to the United States Constitution.

**COUNT III (JANE DOE'S DUE PROCESS CLAIM AGAINST McNEIL)**

160. Jane Doe repeats and re-alleges each of the allegations contained in paragraphs 1 through 149 with the same force and effect as if fully set forth herein.

161. At all relevant times, McNeil was acting in his capacity as a CO employed by the City.

162. At all relevant times, McNeil was acting under color of state law.

163. McNeil raped, sexually abused, and sexually harassed Jane Doe by manipulating and coercing her to perform sexual acts, including oral sex and vaginal intercourse, as detailed herein, when, as a detainee at Rikers, she could not consent to sexual activity.

164. As a result of McNeil's rape, sexual abuse, and sexual harassment, Jane Doe suffered and continues to suffer psychological and emotional distress. Jane Doe continues to experience depression and anxiety and has difficulty sleeping.

165. By virtue of McNeil's rape, sexual abuse, and sexual harassment of Jane Doe, McNeil deprived her of her due process rights under the Fourteenth Amendment to the United States Constitution.

**COUNT IV (JANE DOE'S CLAIM AGAINST McNEIL FOR AIDING AND ABETTING RAPE)**

166. Jane Doe repeats and re-alleges each of the allegations contained in paragraphs 1 through 149 with the same force and effect as if fully set forth herein.

167. McNeil aided and abetted Cosme's rape, sexual assault, and sexual harassment of Jane Doe.

168. McNeil knew that Cosme intended to rape and sexually assault Jane Doe. McNeil provided substantial assistance to Cosme by bringing Jane Doe near Cosme's office in an abandoned area of RMSC and then leaving her unattended so that Cosme could order Jane Doe to go to his office alone.

169. If McNeil had not left Jane Doe alone, Cosme would not have been able to rape Jane Doe; thus, McNeil's actions were a significant factor in causing harm to Jane Doe.

170. While Cosme was raping Jane Doe, McNeil did nothing to stop the rape and instead returned to his office without Jane Doe, even though he knew that because she was a detainee, Jane Doe could not return to her cell without being escorted by a CO.

**COUNT V (JANE DOE'S CLAIM AGAINST McNEIL FOR RETALIATION)**

171. Jane Doe repeats and re-alleges each of the allegations contained in paragraphs 1 through 149 with the same force and effect as if fully set forth herein.

172. McNeil retaliated against Jane Doe after she reported that Cosme raped, sexually assaulted, and sexually harassed her.

173. As a result of the retaliation, Jane Doe suffered severe physical, psychological, and emotional distress, including PTSD. Jane Doe continues to experience depression and anxiety and has difficulty sleeping.

174. By virtue of McNeil's retaliation against Jane Doe, McNeil deprived her of her right to the freedom of speech in violation of her rights under the First and Fourteenth Amendments to the United States Constitution.

**COUNT VI (JANE DOE'S DUE PROCESS CLAIM AGAINST THE CITY)**

175. Jane Doe repeats and re-alleges each of the allegations contained in paragraphs 1 through 149 with the same force and effect as if fully set forth herein.

176. The foregoing actions and inactions of the City of New York constitute a policy, pattern, practice or custom which amounts to deliberate indifference to the constitutionally protected safety and liberty interests of Jane Doe.

177. As a result of The City's policies, practices, actions and inactions, the City has caused Jane Doe to be subjected to rape, sexual abuse, and sexual harassment, while she has been detained in the City's custody in violation of her due process rights under the Fourteenth Amendment to the United States Constitution.

**COUNT VII (JANE DOE'S CLAIM AGAINST THE CITY FOR RETALIATION)**

178. Jane Doe repeats and re-alleges each of the allegations contained in paragraphs 1 through 149 with the same force and effect as if fully set forth herein.

179. The foregoing actions and inactions of the City of New York constitute a policy, pattern, practice or custom which amounts to deliberate indifference to the constitutionally protected safety and liberty interests of Jane Doe.

180. The City, through its policies, practices, action and inaction, caused Jane Doe to be subjected to retaliation for reporting rape, sexual abuse, and sexual harassment, in violation of her rights under the First and Fourteenth Amendments to the United States Constitution.

**PRAYER FOR RELIEF**

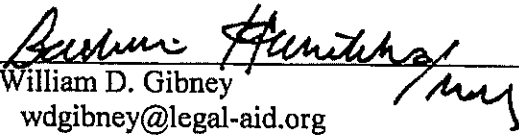
WHEREFORE, Plaintiff respectfully requests the following relief:

- A. An order entering judgment for her against Defendants on each of her claims for relief;
  - B. An award to her for compensatory damages against all Defendants, jointly and severally, for their violation of her First and Fourteenth Amendment rights, the amount to be determined at trial;
  - C. An award to her of punitive damages against Cosme on the basis of his conscious, criminal wrongdoing and callous indifference to her constitutional rights and welfare, the amount to be determined at trial;
  - D. An award to her of punitive damages against McNeil on the basis of his conscious, criminal wrongdoing and callous indifference to her constitutional rights and welfare, the amount to be determined at trial;
  - E. An award to her of the costs of this action, including reasonable attorneys' fees;
  - F. Preclusion of Cosme from serving in the capacity of correctional officer;
  - G. Preclusion of McNeil from serving in the capacity of correctional officer;
- and;
- H. Such other and further relief as may be just and proper.

August 29, 2018


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*Attorneys for Plaintiff Jane Doe*



My name is Kandra Clark. At 33 years old, I am survivor of domestic violence, sexual abuse, PTSD, substance use, prolonged incarceration, and neglected mental health needs. Born in a small town in Illinois, to a home plagued by the same issues, I had little opportunity to observe healthy lifestyle habits. At 10 years old, drugs and alcohol were the only coping mechanisms available to suppress the symptoms of the trauma I experienced. I was very angry about what happened to me, and didn't know how to respond. I lacked a support system to confide in. I didn't have anyone to coach me on how to overcome my anger, lack of self-worth, depression, and constant fear for my safety. As a result, it was only a matter of time before my path led to the criminal justice system. At the age of 15, I was arrested for a curfew violation, an offense based on my age known as a status offense. Status offenses impact people at a young age, but the trauma of the arrest and experience lasts a lifetime, driving people directly into our carceral system. I spent the next decade cycling in and out of the legal system, battling substance use, and experiencing homelessness, all while suffering from untreated trauma and mental health needs.

In 2010, I spent 4 months, including my 25<sup>th</sup> birthday, detained on Rikers Island before being sentenced and transferred to a NYS Correctional Facility. The incarceratory practices used on Rikers Island exacerbated my symptoms of trauma while inflicting additional harm. Each and every night I spent on Rikers I was fearful for my life and my body. It was not the other women I was incarcerated with that I feared. For me, it was the male correctional officers who would watch me go to the bathroom through the window in my cell door each night. Or the officers that would use their flashlights to watch me for several minutes while I tried to cover my body and lay underneath a sheet sweating in a nearly 100 degree cell the size of a closet. It was the feeling of being trapped, knowing that if I covered the window in my cell door with a piece of paper for even a second of privacy, I would receive a ticket and be sent to solitary confinement. It was the

paralyzing fear of going to solitary confinement at an officer's whim, an unimaginable torture that I knew I could NOT handle. It was the constant exposure to derogatory and sexist comments, harassing remarks, and abusive language that fueled the demeaning environment on a daily basis. It was the absolute power that correctional officers, particularly male officers, held over me, and the fact that there was no one for me to report abuse/neglect to.

Unfortunately, my story is not unique. I stand with millions of other women whose stories of violence, abuse, and trauma have common threads. Only 5% of the world's female population lives in the United States, yet the U.S. accounts for 33% of the world's incarcerated women. Over the past quarter century, the number of women in prison in the U.S. increased by 700%, rising from 26,378 in 1980 to over 200,000 today. While overall there are more men in prison, the number of women incarcerated has grown at a rapid rate, 50% higher than men.

The overwhelming majority of women in prison are survivors of domestic violence, and more than 60% of women in state prisons have a child under the age of 18. Three-quarters of women incarcerated have histories of severe physical abuse by an intimate partner during adulthood, and 85% have suffered serious physical or sexual abuse as children. Furthermore, many incarcerated women are charged with crimes that include defending themselves against intimate partner violence and sexual assault. According to the NYS Department of Corrections and Community Supervision, 67% of women sent to prison in 2005 for killing someone close to them were abused by the victim of their crime.

At the Rikers women's facility known as Rosie's, a DOJ report cited that staff sexually victimized at least 50 of the 800 women housed there at any given time, although as many as 98% of all sexual assault incidents go unreported. Like women, LGBTQAI and gender nonconforming people are also over-represented in our carceral systems. According to a

December 2017 article, trans-women, in particular, have experienced high rates of sexual assault and harassment while on Rikers. Overall, 34% of incarcerated trans-people experience at least one incident of sexual violence, more than eight times the average rate for detainees.

The abuse on Rikers also impacts community members, in particular those who visit their loved ones while incarcerated. In November 2017, the NYC Jails Action Coalition revealed that at least 45 women have filed lawsuits that accuse the Department of Correction of unlawful strip searches, most of them alleged at Rikers. Since that time, families of incarcerated loved ones continue to come forward and share their own experiences of sexual assault and harassment at Rikers.

The intersectionality between trauma, sexual assault and incarceration is clearly evident, and we have an opportunity to transform our carceral systems. Starting with reexamining the way in which we determine who gets arrested and the reasons for why we incarcerate people. The sexual assault-to-prison pipeline is real and encompasses the abuse women face BEFORE, DURING and AFTER incarceration. **Women impacted by the criminal justice system** know what truly needs to be changed in order to drastically and immediately reform the legal system and therefore **are the most compelling voices necessary at the table** to lend expertise during this process. Women affected by incarceration are our sisters, mothers, daughters, grandmothers, friends, neighbors, coworkers, and community members. We all deserve better than being locked away for extensive amounts of time, isolated without adequate supportive services and staffing to meet our needs. Truly revolutionizing the legal system for women begins with addressing the intersectionality between domestic violence, sexual assault, mental health, trauma, substance abuse and criminality. Our prior history of abuse should be taken into consideration, utilizing incarceration as an absolute last resort recognizing the further trauma and harm instilled by our

carceral system. Adequate community resources and opportunities created specifically for women in the community are the first sources of intervention. Effective diversion programs and Alternatives-to-Incarceration sentences should be considered first, before any further action is taken in court. **It is only by addressing the violence and trauma women face BEFORE, DURING and AFTER incarceration that we can aim to dismantle the sexual assault-to-prison pipeline and foster self-confident women to lead us into tomorrow.**

Today, I work at The Fortune Society as the Strategic Partnerships Liaison and Senior Grant Writer, as well as with several other organizations including: Just Leadership USA and the Women's Community Justice Project. Each of these organizations dedicate time, effort, and resources to decarcerating America, employing diverse approaches. Together, we expand opportunities for people with justice histories to overcome barriers, grow as successful role-models in their home and community, and harness the power of their experiences into compelling narratives for change. I am living testimony of the resilience and strength of women who have been impacted by the legal systems. I implore the City Council and all who are here today to engage with women leaders with lived experience to work together to overhaul our criminal justice system. There are several recommendations that I'd like to offer to protect women from further trauma and provide the services necessary to overcome the obstacles confronting them:

- (1) The design of the new borough-based facilities should be gender-responsive, in programming, space, staffing and oversight. Traditionally, women have lacked the appropriate support services needed while incarcerated and we have an opportunity to ensure that the new model will truly meet the needs of women, their children, and their families. This includes space, staffing and programming for visiting areas and nurseries.

- (2) At minimum, all DOC staff should be trained to engage women using Trauma-Informed Care and Intimate Partner Violence sensitive practices.
- (3) Diversion and Alternatives-to-Incarceration programs must be considered in lieu of incarceration, reducing the amount of time women are exposed to Rikers Island.
- (4) Collaboration between DOC and women-led nonprofit organizations to create an oversight committee to review all sexual assault/harassment allegations.
- (5) While I understand the City Council cannot reform the NYS bail statute, the Council can fund partner organizations to educate judges and district attorneys about the issues impacting violence survivors in an effort to expand the court's use of supportive services in the community rather than setting bail for this population. Over 70% of people incarcerated in NYS are detainees presumed innocent yet subjected to horrible conditions of confinement.

As a Fortune employee, member of JLUSA, and WCJP, I am eager to work alongside the City Council to dismantle Rikers Island in a thoughtful way, ensuring the culture of violence, harassment, sexual assault, and dehumanization comes to an end for everyone.



**New York City Anti-Violence Project**  
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New York, New York 10038  
212.714.1184 *voice* | 212.714.2627 *fax*  
212.714.1141 *24-hour hotline*

Good morning. My name is Kiara Montero-Reyes (she/her), and I am a clinician with the Still Survivors Program at the New York City Anti-Violence Project – a crisis organization that serves LGBTQ-identified survivors of violence through counseling, legal services, and advocacy. Still Survivors is a program in collaboration with STEPS to End Family Violence – an agency that has served criminalized survivors of Intimate Partner Violence for over 30 years. In this role, I work with survivors of intersecting forms of violence in the community and at Rikers. Thank you to the Committee on Criminal Justice, the Committee on the Justice System, and the Committee on Women for the opportunity to testify.

Though efforts to tackle sexual violence within carceral systems do exist, more progress must be made in order to acknowledge, report, and hold perpetrators accountable for sexual violence. Through my work with AVP and STEPS, I provide counseling and advocacy services to LGBTQ survivors of violence whose criminalization and incarceration is linked to their survival of violence. Sexual violence is overlooked when it involves folks whose perceived or disclosed sexual orientation as non-heterosexual, since they are held within facilities of the same gender. Through our work with community, we know that officers and other facilities staff have coerced incarcerated people to exchange sexual favors for protection. This particularly happens to Trans and Gender Non-Conforming folks detained within these systems. The National Institute of Corrections reported in its 2013 Policy Review and Development Guide on LGBTQI people that incarcerated trans people are 13 times more likely than their cisgender peers to experience sexual assault.

Considering the extension of policy to cover visitors, we must consider how the following shared experiences can be connected to what visitors may go through. Regarding reporting, the federal Prison Rape Elimination Act (PREA) process, implemented in 2003, is not clear to people entering facilities even though there are orientations. There is also no assurance of privacy as incarcerated folks have to be escorted everywhere, and their movements are logged according to overarching safety procedures. This means someone trying to be discreet about seeing a PREA officer could easily be intervened by a correctional officer.

Expectations for reporting, including protection from retaliation, that are reviewed during intake procedures are not reflected in real life. Survivors have shared experiences of feeling like they are being held responsible, specifically feeling like they are being investigated. Being in a city jail and associating with people in these facilities should not strip one from being afforded a survivor-centered, trauma-informed, and affirming response. It is recommended to provide space for feedback to evaluate the experience.

There are specific policies and procedures that have allowed for mistreatment when responding to reports of sexual violence. In many instances, gaslighting is a tactic that is used when trans people are placed in solitary confinement for what is perceived as a safety precaution. Within these incidents, trans people have been blamed for being sexualized, so the fault is on them for ending up in solitary. There is no assurance of zero retaliation when reporting officers of sexual violence. In some cases, folks who have reported their abuser have been placed in solitary confinement, experience physical violence, and further sexual violence. This practice can interfere with visits, and/or punishing those who they came to visit. Further, current protection from retaliation provided by city jails is understood and experienced by incarcerated people as just monitoring.

Additionally, basic protocols such as female-identified officers being allowed to search male-identified people (and not the other way around) disregard the understanding that this could still be an incident of sexual violence. It perpetuates the myth that male-identified people cannot be victims of sexual violence, and can be tied to further shame and not wanting to report. Within this, we must consider reports from TGNC folks of frequent groping by correctional officers.

When incarcerated people report or want to report sexual violence they've experienced in the jail system, they must be able to define what safety looks like for them. Survivors don't experience forced movement within the housing units as protection - instead, it feels like retaliation for being a survivor and trying to report.

Thank you again for giving me time to speak on what is still occurring within these systems to inform the steps to progress.

September 06, 2018

To:

Councilwoman Helen Rosenthal

Chair, Committee on Women

Councilman Keith Powers

Chair, Committee on Criminal Justice

Councilman Rori I. Lancman

Chair, Committee on the Justice System

Kelly Grace Price

Ft. George, Manhattan

#CloseRosies, Jails Action

Dear Chairs Lancman, Powers, Rosenthal and Committee Members,

**RE: Rape and Sexual Assault on Rikers and in our City jails/Oversight - of DOC PREA Implementation**

I thank you for holding this hearing and the other members of the committees for allowing me to appear today and speak. I am Kelly Grace Price of Close Rosies and of Jails Action and I ask you to consider my comments but first I would like to read to you the testimony of a young 18-year old female anti-war protestor detained by the NYC DOC during an action near the United Nations:

“I was arrested at an anti- War demonstration in New York City. I was imprisoned for four days before a judge released me on my own recognizance.

In the jail, all the orifices of my body, including mouth, vagina and rectum, were searched many times, by hand, by many persons. I was told the jailers were looking for heroin. My clothes were taken away because I was wearing pants and a men's sweat shirt.

I was given a flimsy robe that had no buttons or hooks--there was no way to close it. My bra, underpants and the sash to the robe were taken away so I wouldn't kill myself. For four days, I had nothing else to wear.



To see whether I had syphilis, I was examined by two male doctors. They never did the blood test for syphilis; instead, they drew blood from my vagina. The brutal internal examination they forced on me, my first, caused me to bleed for 15 days--when I finally decided it wasn't my period. My family doctor, a taciturn man whom I had never seen express emotion, even as he treated my mother's heart attacks, strokes and experimental heart surgery, said he had never seen a uterus so bruised or a vagina so ripped. He cried. I was 18.

I came out of jail unable to speak. This is a frequent response to sexual abuse--but in 1965 no one knew that. Sexual abuse wasn't on anyone's map of the everyday world until feminists redrew the map.”

These comments were read to the US Senate Page Commission by their author, Andrea Dworkin and spurred such outrage Mayor Lindsay denounced the Women’s House of Detention where we used to detain and imprison our mothers, daughters, sisters, grandmothers, aunts, and nieces and within two years of Dworkin’s detention ground was broken for the CIFW, Correctional Institute for Women on Rikers on April 11, 1967. When Dworkin passed in *The Guardian* obituary about her, the reporter stated, as one of Dworkin’s feminist accomplishments, the closing of the Women’s House of Detention in Greenwich Village. I hope her soul rests easy not-knowing the horrors awaiting our city’s women and girls on Rikers Island at the CIFW and eventually the Rose M. Singer Center.

1. Regarding the closing of Rosies and where our female detainees and incarcerates will be placed in the future: We see a future where very few women, girls, trans. Intersex and gender non-conforming people will need to be caged: we have a plan and would like to continue the conversation. In the meantime we would like to be safe when detained pre-trial and sentenced to less than a year in NYC. Our struggle to get information regarding PREA compliance and data on sexual violence in our City jails continues. We do see a moment where we could possibly have an impact and that is in the area of jail design. We keep repeating ourselves that we demand that our future interiors create program and investigative operation spaces that are interlaced with each other to create camouflage of sorts for complainants so that survivors are not singled-out and penalized for making reports because of the locations they visit within the jail. I’ve attended the “community input” meetings regarding jail design organized by MOCJ and Fortune and I am grateful for the sandwiches provided to us but frankly this suggestion was dismissed by the design team when I mentioned it:

Please if anyone on the City Council can continue this advocacy at a higher level I would be grateful.

2. **PREA and “Non-PREA” complaints:** The DOC has been notoriously difficult to work with regarding harm-reduction. For years we have been trying to work with the department and been met with hostility, roadblocks, misinformation, denied FOILs, excuses, delays, slight-of-hand, willful non-compliance to its own rules and ineptitude. As an example earlier this spring the department faced with a daunting caseload decided to remove all inmate-on-inmate complaints of rape, sexual assault, and sexual harassment from the ID caseload subsequently labeling them as “non-PREA” complaints. Supervisory officers of units are now tasked with these investigations. This is against the language of the PREA rule itself.<sup>1</sup>

Please stay on top of the department: often people will only make a “light” complaint of sexual harassment (ref: being called a derogatory name) in order to get ACCESS to someone outside of the CO’s and their supervisors to complain to so they are not retaliated against. As per the department’s April directive<sup>2</sup> these complaints are now in a bucket marked “non-PREA” that are investigated by the supervisors on the floor themselves: exactly the line of defense the victim may have been trying to avoid for various reasons; retaliation being one of them. Please don’t let the DOC sweep away these complaints and allow the squad being investigated to do the investigation.

--Are all Captains trained PREA investigators?

--Why hasn’t the BOC issued a rule violation for this and dozens of other non-compliances to the PREA rule? Who holds the BOC accountable? Why aren’t they here?

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<sup>1</sup> “Standard § 115.21(g), which states that to the extent an agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (e) of the federal PREA Standard. **This does not apply to DOC because DOC’s Investigation Division (“ID”) investigates all allegations of inmate-on-inmate sexual abuse.** While DOC refers allegations of staff-on-inmate sexual abuse to the NYC Department of Investigation (“DOI”), DOI has the discretion to refer back such allegations to ID for investigation.” NEW YORK CITY BOARD OF  
When an employee reasonably believes an inmate has violated an institutional or Departmental Rule and such violation is not informally resolved, that employee must prepare For 6500A, “Report and Notice of Infraction” ...concerning that incident and notify a supervising officer who shall conduct an investigation...The supervisor conducting the investigation must be of the rank of Captain or above and must not have reported, participated in, or witnessed the incident...” NYC DOC DIRECTIVE, 4/17/18, pp 2., III, B 1 & 2.

3. **WE NEED BETTER REPORTS!!!!** Ref: Councilmen Dromm and Holden’s Bill which propose amendments to Local Law 33 in regard to reporting on visiting including visitor sexual assault. I am in support of this bill and want to encourage deeper revisions of Local Law 33 to include greater mandatory reporting from the Department of Correction regarding rape, sexual assault and sexual harassment reporting. I’ve posted a document of all the available information we have from the DOC about stats from the DOC from the past decade. I would like to have a longer conversation with you about digging into Local Law 33 immediately to get greater reporting STAT.

REPORTING TO THE CITY COUNCIL ON RAPE, SEXUAL ASSAULT AND HARASSMENT RIKERS IS SCANT AND BEGS REVISION: Currently Local Law 33 only requires the department to report annually the number of rape and sexual assaults complaints filed on Rikers. We’ve had TWO years of reporting and I want to share with you literally all the department has provided annually.

*Local Law 33 of 2016*

<b>Sexual Abuse Allegations and Incidents</b>	
CY 2015	
(1) allegations of sexual abuse of an inmate by an inmate	57
(2) substantiated incidents of sexual abuse of an inmate by an inmate	0
(3) allegations of sexual abuse of an inmate by staff	131
(4) substantiated incidents of sexual abuse of an inmate by staff	1

*Local Law 33 of 2016*

<b>Sexual Abuse Allegations and Incidents</b>	
CY 2016	
(1) allegations of sexual abuse of an inmate by an inmate	155
(2) substantiated incidents of sexual abuse of an inmate by an inmate	1
(3) allegations of sexual abuse of an inmate by staff	321
(4) substantiated incidents of sexual abuse of an inmate by staff	0

This is all the information we had officially until March 14 when the Department decided to drop, out of the blue a report that was the beginning of a conversation.

FROM THE MARCH 14 2018 DOC REPORT ON SEXUAL VIOLENCE ON RIKERS:

**SUBSTANTIATED, UNSUBSTANTIATED & UNFOUNDED ALLEGATIONS**

Allegations of sexual abuse or sexual harassment are substantiated after an event is investigated and determined to have occurred based on a preponderance of evidence. This report reflects the number of determinations at the time of this report.

Of the 823 allegations of sexual abuse and sexual harassment reported in 2016, 3 incidents (0.36%) was substantiated, 42 incidents (5.10%) were determined to be unsubstantiated, 39 incidents (4.74%) were unfounded, and 739 are still pending. In 2017, 1 incident (0.09%) was deemed substantiated, 20 (1.74%) were deemed unsubstantiated, 18 (1.56%) were determined to be unfounded, and (1112) are pending out of the 1151 allegations (see Table 3). In each year, the number and rate of unfounded determinations exceeds the number and rate of substantiated determinations. For a full description of resulting determinations, see Section Three.

**TABLE 3**

**Substantiated, Unsubstantiated, Unfounded, and Pending allegations of sexual victimization Department-wide, 2016 - 2017**

	2016	2017
<b>Total Allegations</b>	823	1151
Substantiated	3	1
Unsubstantiated	42	20
Unfounded	39	18
Pending	739	1112

**Regarding what Local Law 33 reaps annually and the scant reporting output from DOC:**

- As you can see there is nary a requirement that the department separate these numbers in the language so one year they combined rape and sexual assault and then next they separated the numbers to make it impossible for comparisons. By suspiciously obfuscating the purity of the scant information they are required to provide the department reveals a little bit more than it wants to about the way they take this issue seriously. I will also note that in 2017 the department was at least five days late in posting these numbers.
- Closing Rates: We don't know if any of the cases from previous years (2013-2014-2015) that were still pending have been substantiated, unsubstantiated or unfounded. We need these

closing rates. **The currently council mandates NO requirement for closing rates be disclosed let alone numbers of cases substantiated, unsubstantiated or unfounded. We have no idea about number of days cases are open on average.**

- We now (thanks to the March 14<sup>th</sup> and August 2018 reports) have information broken down by facility on Rikers but **still not a public disclosure of numbers from our borough jails and lockups.** We also only have this data from this year but no idea about previous years.
- **There are other serious inefficiencies in the March 14 DOC Sexual Victimization report and the August 2018 report.**
- For starters: We don't know the breakdown of sexual assault vs. sexual harassment. --Or numbers of substantiations.
- The department has a 0% closing rate for 2017: the first year PREA was allegedly implemented by the department. The one person single-handedly responsible for overseeing PREA implementation was Commissioner Brann

4. **HISTORY OF DOC (non) COMPLIANCE with PREA:** During a December 14, 2015 City Council Hearing on Women's Issues on Rikers Island the Deputy Commissioner Cynthia Brann was questioned by Councilwoman Elizabeth Crowley and by Public Advocate Letitia James about the rape crisis on Rikers and the implementation of PREA or the Prison Rape Elimination Act standards into the DOC charter. At that time then Deputy Commish Brann said of PREA that was her specific responsibility:

*“We have received federal grant money to implement PREA standards within the agency. So becoming PREA compliant is a process. The act was passed in 2003. The original grant was received in 2012. We began earnestly this past year in securing the Moss Group and we have a plan over the next two years to be able to implement PREA across the agency and have our agency go through audits to become PREA compliant”*

Watch her testimony here:

<https://youtu.be/fCMEo4yOfYk>

Now watch Brann's testimony two years later during September 2017 BOC meeting where she says of her failure to protect our city's most vulnerable: "*Sometimes we get it right, and Sometimes We Don't*":

<https://youtu.be/ds1Fz9VZpOQ>

There has been to date no revised calendar for implementation offered or explanation for lack of responsibility by the department, the BOC or the mayor's office. Commissioner Cynthia Brann tried to explain the behemoth failing to implement PREA, which was her specific project before being named acting Commish, during the Sept 2017 BOC hearing when she literally said: "*sometimes we get things right and sometimes...we don't.*"

5. **"FABRICATORS"** The department has taken pains to break down numbers for what it calls "non-PREA" and "fabricated" complaints but has not applied this same reporting rigor to the most important data we need: closing rates, substantiation reports, broken down rape, sexual assault, harassment, facility, days investigation remains open, how many rape kits given? Tested and on and on. The department has broken down the number of complaints made by people the they deem to be incredulous and repeat-complainers:
  - 25% of caseload 542 made by same 53 inmates
    - 2015 14 inmates represented 22% of 2015 caseload
    - 2016 17 for 181 allegations
    - 2017 16 inmates for 269 allegation 23% of caseload
    - 2018 18 inmates of 123 allegation: 34% of 2018 caseload
  - This statement has been repeated again and again from DOC leadership: allegedly 'unstable' detainees are making false complaints is the party line from the DOC. Former Warden Michelle Clifford tried to make this same accusation in December 2015 RIGHT HERE IN A NYC Council hearing presided over by former CM Crowley and PA Tish James and we reminded her that people already deemed unreliable are the ones targeted by predators because they KNOW they can get away with it. I have personal experience with this. I urge this committee to first make sure that the DOC first implements its assessment

and review team (mandated by the PREA rule voted in in November of 2016) before doing-away wholesale with these 542 complaints made by the “same 53 inmates” (DOC’s words.)

6. **BACKLOG:** Finally, this backlog has caused a chilling effect on complainants. Initially we saw a swelling of complaints as word made it into Rosie’s and other jails on the island the department was being mandated to take complaints seriously: but literally Rikers is the worst place in America to be raped. **A 0% closing rate for investigations is a crisis of epic proportions for a department just handed a blank check to fix the problem eighteen months ago.**

- Don’t let the department boondoggle you into thinking there is some sort of paperwork juggernaut that accounts for the 0% closing rate: they were given plenty of money in the budget to hire people to implement PREA and to do the paperwork. The rule mandates staffing, reporting etc. which they are still very behind on, as well as referrals to outside care when they are released, the release of a fully-articulated plan and on and on.

7. **Closing Memos:** Earlier this year the department blamed one of the PREA subdivisions for its inability to implement the complete rule: 5-39 (“Sexual Abuse Incident Reviews”) which required that by January 1, 2017: “DOC shall conduct a sexual incident review at the conclusion of every sexual abuse investigation in accordance with subdivisions (a) through (e) of this section.” Etc. for the backlog in closings in rape and SA investigations. How difficult can the paperwork be? These people have been raped? What about that isn’t more difficult than paperwork? If the department wanted to change the language they should ask for a rule change request: not arbitrarily ignore the rules by creating a checkbox-closing memo to speed along the investigative process. Can we see the new closing memo? The department has ignored our requests.

Curbing sexual violence and setting up transparent and streamlined complaint and investigative processes that give survivors a sense that justice is being served is fundamental to creating stability in any population. The one thing we all share as humans of New York is our choice in how we express ourselves sexually. In cages this is mitigated. We are most vulnerable to sexual conscription when we are not in our comfort zone—when things aren't familiar—when basic services are not available to us—. If people can't be guaranteed that they won't be violated and touched and maimed and exploited than your population will be at constant unrest. We act differently when under stress and I don't understand why PREA keeps getting shelved and no one is holding the department accountable for missing its own self-imposed reporting deadlines by years—not months—years. You can perhaps send a strong message to the DOC by presenting a robust reporting bill to them with vast information reports. This is a good step towards responsible stewardship of the DOC. We need to start to try to give our detained population a chance to feel safe and that their voices matter.



YEAR	DOC TOTAL ANNUAL COMPLAINTS	SEXUAL HARASSMENT	SEXUAL ASSAULTS	COMBI NED # Sex Assault & Sex Harassment	# of Invest Comp leted	# OF COMP UNDE D	# of Pending Compl aints	# of Unsub stanti ated	# INVO LVED RAPE OR PENET RATIO	# INVO LVED MAS EN/GI N	# ON WOM EN/ BOYS	# ON TRA NS	# ON MEN/ BOYS	# STAFF ON DETAIL EE	# STAFF ON DETAIL NEE	# DETAIL ON DETAIL NEE	# DETAIL ON DETAIL NEE	# DETAIL ON DETAIL NEE	Totals BY DETAIL NEE	
																				SEXUAL HARASSMENT
2006																				
2007	38	16	22	0										18	10	28	4	6	10	
2008	52	22	22	0										28	11	39	2	11	13	
2009	45	11	22	0										33	5	38	1	6	7	
2010	54	17	22	3										27	8	35	10	9	19	
2011	111	13	22	3										83	4	87	15	9	24	
*2012	97	28	22	2										64	13	77	5	15	20	
*2013	105	17	22	3										74	14	88	13	18	31	
*2014	119	9	22	0					47	20	9	34	73			71			45	
**2015	188	0	22	1												131			57	
2016	828	347	22	8		31	792	8						325	227	552	155	120	275	
2017	1151	652	22	466	0		1151							374	432	806	143	202	345	
<b>TOTALS*</b>	<b>2788</b>	<b>1232</b>	<b>242</b>	<b>666</b>										<b>1026</b>	<b>724</b>	<b>1952</b>	<b>348</b>	<b>396</b>	<b>846</b>	
BLUE =DOC #S																				
BLACK = DOMHH #S																				
*Years that DOC numbers vary from DOMHH #s																				
due to the variety of data reported from Y2Y in some cases we only have numbers for sexual assaults & rape & not harassment as opposed to other years where data sets have been combined.																				
**years wo harrassment numbers included																				



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: 9/6/18

(PLEASE PRINT)

Name: Zachary Rosner

Address: 55 Water St. 18th Floor

I represent: Correctional Health Services, NYC H+H

Address: 55 Water St 18th Floor

THE COUNCIL  
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1090<sup>+</sup> Res. No. 933-A

in favor  in opposition

Date: 9/6/18

(PLEASE PRINT)

Name: Emily Turner

Address: ~~205~~ Centre St 205 W 84th St

I represent: Board of Correction

Address: 1 Centre 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: \_\_\_\_\_

(PLEASE PRINT)

Name: Paul Prestia, Esq.

Address: \_\_\_\_\_

I represent: Liakas Law

Address: 65 Broadway

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: 9/6/18

(PLEASE PRINT)

Name: MARTHA KING

Address: 149 Skillman Ave Brooklyn, NY 11211

I represent: BOARD OF CORRECTION

Address: 1 Centre Street, NY NY 10007

**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: 9/6/2018

(PLEASE PRINT)

Name: JULIA DAVIS

Address: \_\_\_\_\_

I represent: CHILDRENS DEFENSE FUND - NY

Address: 815 2nd Ave. NY NY

**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: 9/6/18

(PLEASE PRINT)

Name: Cynthia Brann, Commissioner

Address: \_\_\_\_\_

I represent: \_\_\_\_\_

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: 9/6/18

(PLEASE PRINT)

Name: Yolanda Canty, Bureau Chief of Security

Address: \_\_\_\_\_

I represent: \_\_\_\_\_

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: 9/6/18

(PLEASE PRINT)

Name: Sarena Townsend, Deputy Commissioner

Address: \_\_\_\_\_

I represent: \_\_\_\_\_

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: 9/6/18

(PLEASE PRINT)

Name: Faye Yelardy, Assistant Commissioner

Address: \_\_\_\_\_

I represent: \_\_\_\_\_

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: 9/6/18

(PLEASE PRINT)

Name: Robert Cohen

Address: 130 Barron St NY 10014

I represent: Board of Correction

Address: 1 Centre

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 0933 Res. No. 1090

in favor  in opposition

Date: Sept. 6, 2018

(PLEASE PRINT)

Name: Ashley C. Sample, Esq.

Address: 25 Chapel St Brooklyn, NY

I represent: girls/IGNY youth

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. A116412 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 9/6/18

(PLEASE PRINT)

Name: Deborah Lolai

Address: 360 East 161<sup>st</sup> Street, Bronx NY

I represent: The Bronx Defenders

Address: 360 East 161<sup>st</sup> Street, Bronx NY

**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: Kiara Montero-Reyes

Address: 53 26 61<sup>ST</sup> Street, BSMNT, Maspeth, NY 11378

I represent: New York City Anti-Violence Project

Address: 116 Nassau Street, 3<sup>rd</sup> Fl, New York, NY 10038

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. 1000 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 8/6/18

Name: BARBARA HAMILTON

Address: 199 Water St, Lx, Lx

I represent: CEOL DIV

Address: 199 Water St

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: Sep. 6, 2018

Name: Kandra Clark (PLEASE PRINT)

Address: 1109 76th Rd., Apt E10, Forest Hills, NY 11375

I represent: Fortune Society / formerly incarcerated women

Address: 29-76 Northern Blvd., Long Island City, NY 11101

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: 9/6/2018

Name: Kelsey De Avila (PLEASE PRINT)

Address: 175 Kingston

I represent: Brooklyn Defender Services

Address: \_\_\_\_\_

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