



Legislation Text

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Proposed Int. No. 735-A

By Council Members Stevens and De La Rosa, the Public Advocate (Mr. Williams), and Council Members Nurse, Riley, Gutiérrez, Narcisse, Louis, Farías, Salaam, Restler and Won

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 physical violence against and sexual harassment of correctional staff and ensure that staff have access to mental health treatment resources

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 9 of the administrative code of the city of New York is amended by adding new sections 9-156.1 and 9-156.2 to read as follows:

§ 9-156.1 Reporting on physical violence against staff and sexual harassment of staff. a. Definitions. For purposes of this section, the following terms have the following meanings:

Commissioner. The term “commissioner” means the commissioner of correction.

Correctional health services. The term “correctional health services” means any health care entity designated by the city as the agency or agencies responsible for health services for incarcerated individuals in the care and custody of the department. When the responsibility is contractually shared with an outside provider, this term also applies.

Department. The term “department” means the department of correction.

Facility investigation. The term “facility investigation” means an investigation conducted by the department within a facility of the department but does not include an investigation conducted by the investigation division.

Investigation division. The term “investigation division” means any unit of the department responsible for investigating allegations of misconduct by staff.

Sexual assault of staff. The term “sexual assault of staff” means a type of physical violence against staff and includes any of the following acts if the victim is staff and the perpetrator is an incarcerated individual or other staff, and if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse: (i) contact between the penis and the vulva or the penis and the anus, including penetration, however slight; (ii) contact between the mouth and the penis, vulva, or anus; (iii) penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and (iv) any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Sexual harassment of staff. The term “sexual harassment of staff” includes any of the following acts if the victim is staff and the perpetrator is an incarcerated individual or other staff: (i) any unwelcome sexual advances or requests for sexual favors; and (ii) any verbal comments, gestures, or actions of a sexual nature, including but not limited to demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures. The term “sexual harassment of staff” does not include sexual assault of staff.

Staff. The term “staff” means an individual, other than an incarcerated individual, who works directly for the department or correctional health services.

b. Incident report. No later than 1 year after the effective date of the local law that added this section, and annually thereafter, the commissioner shall submit to the mayor, speaker of the council, and board of correction a report on physical violence against staff and sexual harassment of staff. All data in such report shall be reported in a machine-readable format. Such report shall include a table in which each row references an alleged incident of physical violence against staff, including any alleged attempt of physical violence against staff, or an alleged incident of sexual harassment of staff that occurred during the immediately preceding 12 months, indicated by a unique identification number. Each such row shall include the following information, as well as any other information the commissioner deems appropriate, set forth in separate columns:

1. The unique identification number required under this subdivision;
2. If the incident involved physical violence against staff, the specific type of physical violence against staff involved in such incident, including but not limited to whether such incident involved sexual assault of staff;
3. If the incident involved sexual assault of staff, the specific type of sexual assault of staff, as defined in subdivision a of this section, involved in such incident;
4. Whether such incident involved sexual harassment of staff;
5. If the incident involved sexual harassment of staff, the specific type of sexual harassment of staff, as defined in subdivision a of this section, involved in such incident;
6. The date on which such incident occurred;
7. Whether the staff who was the alleged victim of such incident was working for the department or correctional health services at the time of such incident;
8. Whether the staff who was the alleged victim of such incident was civilian or uniformed staff at the time of such incident;
9. Whether such incident took place between the times of 7:00 a.m. and 3:00 p.m., 3:00 p.m. and 11:00 p.m., or 11:00 p.m. and 7:00 a.m.;
10. The gender identity of the staff who was the alleged victim of such incident;
11. The race of the staff who was the alleged victim of such incident;
12. The ethnic origin of the staff who was the alleged victim of such incident;
13. Whether the alleged perpetrator of such incident was an incarcerated individual or other staff;
14. If the alleged perpetrator of such incident was other staff, whether such perpetrator was working for the department or correctional health services at the time of such incident;
15. If the alleged perpetrator of such incident was other staff, whether such perpetrator was civilian or uniformed staff;

16. If the alleged perpetrator of such incident was staff, the number of any previous allegations against such perpetrator that were substantiated by the department;

17. If the alleged perpetrator of such incident was staff, the number of any previous allegations against such perpetrator that the department determined to be unsubstantiated;

18. If the alleged perpetrator was staff, the number of any previous allegations against such perpetrator for which investigations by the department are still pending at the time of submission of such report;

19. The gender identity of the alleged perpetrator of such incident;

20. The race of the alleged perpetrator of such incident;

21. The ethnic origin of the alleged perpetrator of such incident;

22. The facility of the department in which such incident occurred;

23. Whether such incident occurred in a service area or housing area of such facility;

24. If such incident occurred in a housing area of such facility, the type of housing area;

25. Whether the department's video camera surveillance recorded such incident;

26. Whether the department obtained DNA or any other physical evidence in connection with such incident;

27. Whether a rape kit was administered, declined, or not applicable in connection with such incident;

28. If a rape kit was administered in connection with such incident, whether a sexual assault nurse examiner or sexual assault response team was present during such administration;

29. If a rape kit was deemed not applicable in connection with such incident, whether such determination was due to a delay in reporting of such incident to the department, the type of sexual assault of staff alleged to have occurred, if any, or any other reason;

30. The date on which such incident was reported to the department;

31. Whether the department opened an investigation of such incident, and, if so, the date the department opened such investigation;

32. Whether the department referred such incident to the department of investigation, and, if so, the date of such referral; and

33. If the department referred the incident to the department of investigation, whether the department of investigation referred it back to the department to investigate.

c. Report on investigations. No later than 1 year after the effective date of the local law that added this section, and annually thereafter, the commissioner shall submit to the mayor, speaker of the council, and board of correction a report of investigations by the department of physical violence against staff and sexual harassment of staff. All data in such report shall be reported in a machine-readable format. Such report shall include a table in which each row references an alleged incident of physical violence against staff, including any alleged attempt of physical violence against staff, or an alleged incident of sexual harassment of staff that occurred during the immediately preceding 12 months for which the department opened an investigation, indicated by the unique identification number required under subdivision b of this section. Each such row shall include the following information, as well as any other information the commissioner deems appropriate, set forth in separate columns:

1. The unique identification number required under subdivision b of this section;
2. The date the department opened an investigation of such incident;
3. Whether such investigation is pending or has been closed at the time of submission of such report, including the date the department closed such investigation, if applicable;
4. Whether such investigation is a facility investigation or an investigation conducted by the investigation division;
5. If such investigation was referred to the investigation division by the department facility in which such incident occurred, the reason for such referral;
6. Whether such investigation was referred back from the investigation division to the department facility in which the incident occurred and the reason for any such referral;

7. Whether the alleged perpetrator of such incident and the staff who was the alleged victim of such incident were separated from physical contact during the pendency of such investigation;

8. Whether the department determined that the allegation of such incident was substantiated, unsubstantiated, or unfounded;

9. For a substantiated allegation, whether such incident was referred for disciplinary action by the department, including whether the department declined to file disciplinary charges, or if disciplinary charges were filed, the outcome of the related disciplinary proceeding;

10. For a substantiated allegation, if the perpetrator was staff, whether during the pendency of such investigation such perpetrator resigned, was suspended, was placed on modified duty, was placed on administrative leave, or was administered any other form of discipline by the department;

11. For a substantiated allegation, if the perpetrator was staff and such incident was referred for disciplinary action by the department, whether such perpetrator resigned or retired in lieu of any charges or as part of a negotiated plea;

12. Whether the staff who was the alleged victim of such incident was notified regarding the outcome of such investigation; and

13. Whether such incident was referred to a district attorney's office, and if so, whether such district attorney's office decided to prosecute the alleged perpetrator and the status or outcome of any prosecution.

d. Review of reported information. The commissioner shall review the information collected through the reports required under subdivisions b and c of this section in order to assess and improve the effectiveness of the department's prevention, detection, and response policies concerning physical violence against staff, including but not limited to sexual assault of staff, and sexual harassment of staff. No later than 1 year after the effective date of the local law that added this section, and annually thereafter, the commissioner shall submit to the mayor, speaker of the council, and board of correction a report including the following information:

1. The commissioner's findings through such review; and

2. Any updates to such policies for each facility of the department and for the department as a whole made by the commissioner in response to such review.

e. Website posting. The commissioner shall post the reports required under this section on the department's website and store such reports on such website for at least 10 years.

f. Role of correctional health services. Unless otherwise prohibited by law, correctional health services shall assist the department in collecting the information required to be reported under subdivisions b and c of this section.

g. Retention of information. The commissioner shall ensure that all information collected pursuant to this section is securely retained. Unless otherwise required or prohibited by federal or state law, the commissioner shall retain such information indefinitely after the date of initial collection of such information.

h. Limitations. The commissioner shall report the information required under this section in accordance with applicable federal and state law but notwithstanding any other provision of local law. Before making information collected pursuant to this section available to the mayor, speaker of the council, and board of correction and publicly online, the commissioner shall remove all personal information as defined in subdivision a of section 10-501 and any other information the disclosure of which would violate federal or state law.

§ 9-156.2 Mental health treatment resources for correctional staff. a. Definitions. For purposes of this section, the following terms have the following meanings:

Commissioner. The term "commissioner" means the commissioner of correction.

Sexual assault of staff. The term "sexual assault of staff" includes any of the following acts if the victim is staff and the perpetrator is an incarcerated individual or other staff, and if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse: (i) contact between the penis and the vulva or the penis and the anus, including penetration, however slight; (ii) contact between the mouth and the penis, vulva, or anus; (iii) penetration of the anal or genital opening of another

person, however slight, by a hand, finger, object, or other instrument; and (iv) any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Sexual harassment of staff. The term “sexual harassment of staff” includes any of the following acts if the victim is staff and the perpetrator is an incarcerated individual or other staff: (i) any unwelcome sexual advances or requests for sexual favors; and (ii) any verbal comments, gestures, or actions of a sexual nature, including but not limited to demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures. The term “sexual harassment of staff” does not include sexual assault of staff.

Staff. The term “staff” means an individual, other than an incarcerated individual, who works directly for the department or correctional health services.

b. The commissioner shall ensure that staff have access to mental health treatment resources to reduce organizational trauma and stress. In ensuring such access, the commissioner shall follow any best practices relating to the provision of mental health treatment resources for staff established by the national institute of corrections. Such resources shall include but are not limited to confidential mental health counseling with a focus on addressing sexual assault of staff and sexual harassment of staff.

c. The commissioner shall publicize the availability of such resources to staff, including but not limited through the department’s website, by electronically communicating notices and advertisements to staff, and by physically posting such notices and advertisements in conspicuous locations in facilities of the department.

§ 2. This local law takes effect 120 days after it becomes law.

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