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The New York City Board of Correction  
1 Centre Street  
Room 2213  
New York, N.Y. 10007

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Prisoners' Rights Project

Dear Members of the Board of Correction:

The Legal Aid Society Prisoners' Rights Project writes to urge the Board of Correction ("the Board") to hold the New York City Department of Correction ("the Department" or "DOC") accountable for continuing violations of the Board's Standards for the Elimination of Sexual Abuse and Sexual Harassment in Correctional Facilities.

First, based on the information already publicly available and the Board's own acknowledgements of material weaknesses in how investigations of sexual abuse are conducted,<sup>1</sup> we urge the Board to issue a Notice of Violation of Standard §5-30 (Criminal and Administrative Agency Investigations).

Second, we urge the Board to issue a Notice of Violation of Standard §5-40 (Data Collection and Review) unless the Department (1) provides the Board by February 14, 2018 with information and assessment reports covering the period January 1 to December 31, 2017<sup>2</sup> and (2) makes such assessment reports readily available on the Department's website by March 14, 2018<sup>3</sup>. As the Board noted last year, the Department's noncompliance with Standard §5-40 "effectively obstructs" the Board's monitoring efforts.<sup>4</sup> And without the transparency achieved by compliance with this Standard, the public and its elected officials cannot know the true scope of the problem or how to take effective steps to fix it.

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<sup>1</sup> See Report of Martha King, Executive Director of the Board, September 12, 2017, available at: <https://www.youtube.com/watch?v=ds1Fz9VZpOQ&t=1899s> (2:44 to 2:52).

<sup>2</sup> Standard §5-40(f) required the provision of the information on and assessment of alleged incidents of sexual abuse reported from January 1 to June 30, 2017 to the Board by August 1, 2017. As of September 12, 2017 this information had not yet been provided. See Report of Executive Director King, September 12, 2017, *supra* note 1. Standard §5-40(f) also requires the provision of data and an assessment report for alleged incidents of sexual abuse reported from July 1 to December 31, 2017 to the Board by February 14, 2018.

<sup>3</sup> A deadline of March 14, 2018 gives the Department an additional month to make any necessary redactions to the 2017 assessment reports before posting the reports on [www.nyc.gov/doc](http://www.nyc.gov/doc).

<sup>4</sup> See Report of Executive Director King, September 12, 2017, *supra* note 1.

### **Sexual Abuse in DOC Is Increasing.**

Reports of sexual abuse and harassment in our City's jails are on the rise, and there were too many before. In 2015 and 2016, DOC received 188 and 476 allegations of sexual abuse, respectively.<sup>5</sup> This more than doubling in reported incidents strongly suggests widespread sexual abuse of people in DOC custody, even accounting for improved reporting mechanisms. In just the first six months of 2017, 520 allegations of sexual abuse and harassment were reported.<sup>6</sup> At this rate, we are looking at more than 1,000 allegations for 2017.

### **Investigations of Sexual Abuse Allegations Rarely Conclude and Are Deeply Flawed.**

Standard §5-30(a) requires investigation of sexual abuse and harassment by the Department to be conducted "promptly, thoroughly, and objectively." This is clearly not taking place.

In 2015, only one out of 188 alleged incidents of sexual abuse was substantiated, or investigated and confirmed as having occurred.<sup>7</sup> The situation only worsened in 2016, with only one out of 476 allegations substantiated, and *none* substantiated of the 321 allegations of staff-on-inmate abuse<sup>8</sup>. Investigations of sexual abuse and harassment languish, with a tiny fraction of investigations completed. The most recent publicly available data shows that as of June 2017, 95% of DOC's investigations into alleged sexual abuse and sexual harassment for 2016 were still pending.<sup>9</sup>

Investigations are a critical step to stopping the abuse of people in our jails. Substantiation is required before any employee discipline can even be sought. Yet there has been a total breakdown in the investigative process. As the Board itself acknowledged, substantiation rates of less than 1% for each of 2015 and 2016, the high number of investigations for 2016 that remained outstanding more than six months after year end, and the Department's 286-day closing rate<sup>10</sup> for those investigations it does complete, all demonstrate that the Department's investigative process is utterly ineffective.<sup>11</sup>

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<sup>5</sup> DOC Report Regarding Sexual Abuse Allegations and Incidents for CY15, available at:

[http://www1.nyc.gov/assets/doc/downloads/pdf/Report\\_Regarding\\_Sexual\\_Abuse\\_Allegations\\_Incidents.pdf](http://www1.nyc.gov/assets/doc/downloads/pdf/Report_Regarding_Sexual_Abuse_Allegations_Incidents.pdf)

("2015 Incident Report"); DOC Report Regarding Sexual Abuse Allegations and Incidents for CY16, available at:

[http://www1.nyc.gov/assets/doc/downloads/pdf/Report\\_Regarding\\_Sexual\\_Abuse\\_Allegations\\_Incidents\\_CY16.pdf](http://www1.nyc.gov/assets/doc/downloads/pdf/Report_Regarding_Sexual_Abuse_Allegations_Incidents_CY16.pdf)

("2016 Incident Report").

<sup>6</sup> See Testimony of DOC staff, including Assistant Commissioner Faye Yelardy, to the Board, September 12, 2017, available at: <https://www.youtube.com/watch?v=ds1Fz9VZpOQ&t=1899s> (2:57 to 3:24).

<sup>7</sup> 2015 Incident Report, *supra* note 5.

<sup>8</sup> 2016 Incident Report, *supra* note 5.

<sup>9</sup> Board of Correction, "Background on PREA Investigations," June 2017, available at:

<http://www1.nyc.gov/site/boc/meetings/jun-13-2017.page> (showing 786 pending investigations for a total of 828 allegations for sexual abuse and harassment in 2016).

<sup>10</sup> See Testimony of DOC staff, September 12, 2017, *supra* note 6.

<sup>11</sup> See Report of Executive Director King, September 12, 2017, *supra* note 1.

## **DOC Must Finally Issue Public Reports and an Analysis of Sexual Abuse in Its Jails.**

Standard §5-40 requires the Department to track critical information about each alleged incident of sexual abuse, including the victim's age, gender, and whether or not they are known to be LGBTI, and where and when the incident occurred. The Department must also review this incident data to identify problem areas and trends and take corrective action for each facility as well as for the Department as a whole. These semiannual assessment reports must be made available on the Department's website, although the Department has some leeway to redact information that would present "a clear and specific threat to the safety and security of a facility" or would "present privacy or other legal considerations."

This information would shine a light on the problem and any successful interventions. For example, it would help tell us if women, transgender persons, persons with mental illness, or persons with cognitive or physical disabilities are particularly at risk. It would identify those commands that are especially dangerous and so require attention. It would tell us whether DOC is taking any steps to fix the problems it identifies, or is failing to do so.

Because of the information already publicly available we know now that a critical overhaul of the investigative process is needed. More information would give us a better handle on the precise breakdowns in investigations. For example, is the problem in closing an investigation a lack of clear evidence to support a person's allegation? Answers may be found in the data on whether or not there was video surveillance, DNA, or other physical evidence available. Is the victim left at extreme risk during the prolonged pendency of these investigations? The Standard requires that the Department tell us whether the victim and alleged perpetrator were separated—a crucial step in protecting individuals who report abuse. If staff was involved, is this allegation part of a pattern of alleged abuse? The Standard requires the Department to note whether there have been other reports of abuse lodged against the alleged perpetrator. And for each investigation of staff we can find out if discipline was sought or obtained. We can also begin to understand if the failings in investigations are due to actions by the Department of Investigation or by the Investigative Division of the Department itself, because we are to be informed if the case was referred to DOI and, if so, the status of the investigation. We also can learn if the District Attorney's office was involved.

Without facts, neither the Department, the Board, City government nor the public can gauge the true scope and nature of the problem or how to fix it.

### **Our Request to the Board of Correction**

To be effective, the Board's Standards must be enforced when appropriate with noncompliance findings and mandated remedial actions. The Legal Aid Society therefore asks the Board to require DOC to post the public data on its website no later than March 15, 2018. If it fails to do so, or if the information released about the current status of investigations fails to show marked improvement, we ask the Board to issue a Notice of Violation of the Board's Standards and to hold a public hearing where staff from the

Department, under oath, are required to explain why they have failed to meet this clear and essential obligation.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dori Lewis", written in a cursive style.

DORI LEWIS  
Supervising Attorney  
CLARA O'BRIEN  
Volunteer Attorney