

April 23, 2018

New York City Board of Correction
1 Centre Street, Room 2213
New York, NY 10007

Dear Members of the Board of Correction:

What follows is SRLP's testimony at the most recent Board hearing on April 20, 2018, where we urge the Board to issue a Notice of Violation to the Department of Correction in light of its continuous failure to comply with the Prison Rape Elimination Act (PREA).

The Sylvia Rivera Law Project would like to thank the Board of Correction (the Board) for releasing "An Assessment of the Transgender Housing Unit" (THU Assessment) in February 2018.¹ For the past three years, SRLP and other advocates have been informing the Board of the horrible mismanagement of the THU. We have testified to the unclear and unavailable application process which has resulted in unreasonable delays and denials into the unit and have shared the experiences of women in the unit being mis-gendered and mistreated. It is incredibly validating to see the Board take these issues so seriously by devoting time and resources into researching the THU and producing a report that provides concrete data that underpins the experiences we have anecdotally shared.

My name is Mik Kinkead and I am the Director of the Prisoner Justice Project at SRLP. Today I wish to change from the more formal comments I generally provide the Board and talk very personally about the Annual PREA Assessment Report (PREA Assessment) published in March 2018.² This report highlights the need for incredible reform and overhaul of sexual violence responses, trainings, and prevention measures in DOC.

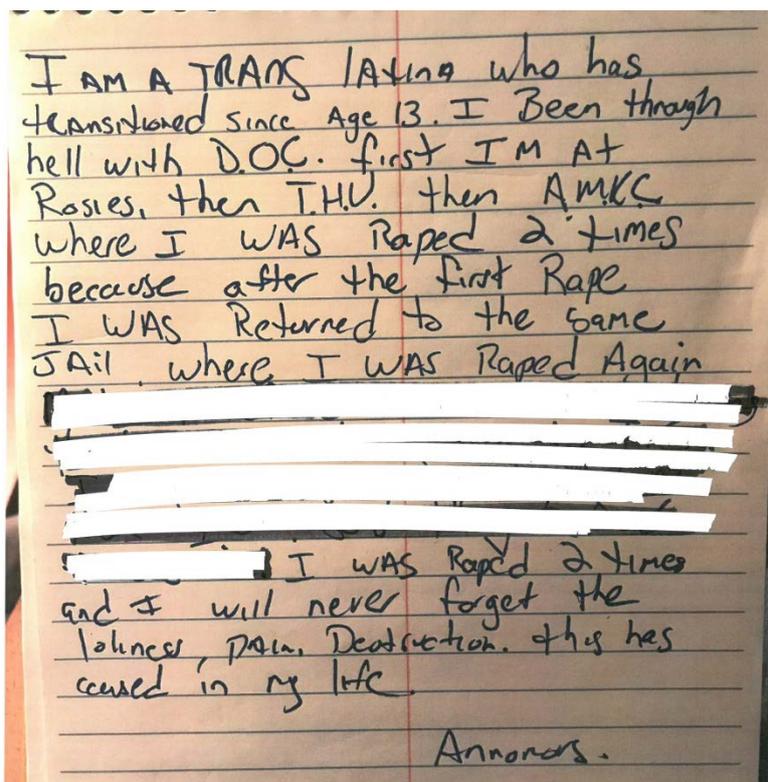
There is much to discuss from the PREA Assessment. What I would like to focus on are the 739 cases still pending from 2016 alone and the damaging effect such a number of pending cases has on the credibility of PREA reporting and investigation. Those individuals who reported the 739 incidents are not in DOC custody anymore. Two years of their lives have passed, and in that time, the message they received from the Department of Corrections (the Department) is that what happened to them does not matter. Maybe their cases will be investigated in another year, when three years have passed and there is no more video evidence, when the witnesses have all moved along, when the medical reports can't be found.

¹ SRLP submitted a more complete review of the Assessment to the Board in March, 2018. See Sylvia Rivera Law Project, Letter to the BOC re: Transgender Housing Unit Assessment (March 13, 2018) available at <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/March-13-2018/SRLP%20letter%20on%20THU%20Assessment.pdf>

² See N.Y.C. Department of Correction, Sexual Abuse and Sexual Harassment Minimum Standards 5-40 Assessment Report ("PREA Assessment") (March, 2018) available at <http://www1.nyc.gov/assets/doc/downloads/pdf/Annual-Sexual-Abuse-and-Sexual-Harassment-Assessment-Report.pdf>

News travels fast inside jails. Those 739 people still waiting for their investigations from 2016 will have shared the lack of resolution with others. They will have shared that in response to reporting an inappropriate pat frisk or sexual name-calling, a sexual proposition or threat, or even acts of physical sexual violence, they received no response or affirmative steps. Everyone they share this with will get the message clearly that there is no reason to report. Underreporting is already an enormous issue. Most people I work with wait days or months or years to share their experiences because they are so afraid, because the psychological impact is so damaging, and because they do not feel at all safe. Many people who live through sexual violence take extensive time to unlearn the lesson that they somehow invited or wanted or brought about the violence. That is never the case. No one ever does anything to warrant sexual violence. In order to counter this narrative, however, the Department must actually meaningfully address this issue of 1,181 incidents of sexual violence still pending investigation since 2016.³

The issue of sexual violence not being taken seriously by the Department is highlighted by what recently happened to my friend. She has asked me to read this statement on her behalf today. When she first shared this with me, she asked me to use her name. Now, she asks to be anonymous, because she is so terrified of what might happen to her.



The above image reads: “I am a trans Latina who has transitioned since age 13. I been through hell with D.O.C. First I’m at Rosie’s then T.H.U. then AMKC where I was raped 2 times because after the first rape I was returned to the same jail where I was raped again.

³ Id. at 6.

[...] I was raped 2 times and I will never forget the loneliness, pain, destruction. This has changed my life. Anonymous”

On Wednesday, as my friend and I sat in her hospital room at Bellevue, she reported to me what her interactions with PREA have been. She said, “PREA staff took me from Rosie to the THU to a dorm-style men’s facility. They told me I would be safe at AMKC. Then they want me to report to them when I am sexually harassed or worse. Why would I do that? Why would I think they would ever take me seriously? With my life? With my safety? They think I lie when I say I am a woman. Why would they believe me when I say anything else? Why would I trust them ever again?”

The THU Assessment reported that most people wait 88 days before even applying to the THU. If the Department was serious about gender-based violence, then trans women would not be waiting 88 days to be informed that there is an alternative unit. We would also be seeing trans women at Rosie for extended periods of time. As it is, any reports of trans women at Rose M. Singer are fleeting – a few days there at intake before swiftly moving them to a men’s unit.⁴

For every woman like my friend – who contacts her attorneys, her family, her friends, demands a rape kit, and refuses to be silenced – there is a person who is too terrified to share, who is threatened into silence, who thinks that there is no point in reporting because there are 1,181 incidents still pending investigation since 2016.⁵ What is the likelihood that reporting will make any difference? The statistics from the PREA Assessment make clear that the message being sent to people who report is that they are not taken seriously.

Ending sexual violence in the NYC jail system is not only about investigating and taking seriously acts of extreme sexual violence such as the two incidents of rape my friend survived. To end this widespread culture of disposability and abuse, we must also focus on those persistent actions that erode a person’s sense of self, dignity, or individuality away. Any specialist in sexual violence prevention can share that these behaviors are red flags for increasing sexual violence.

For trans women like my friend, some of these actions include not taking gender identity seriously. Why else would my friend have been placed in a dormitory-style men’s facility unless DOC wanted to communicate to her “You are disposable.” But she is not disposable. She is my friend, she is part of my community, she is all of our neighbor, and she will continue to share her story and be heard.

I am not confident that the current makeup of the Department’s PREA team is able to handle these kinds of changes. When the PREA Coordinator cannot bring herself to say

⁴See Sylvia Rivera Law Project, Letter to Board of Correct Re: DOC PREA Variance Request, pg. 4 (October 6, 2017) available at <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/Oct-10-2017/SRLP%20submission%2010.6.2017.pdf>; See also Legal Aid Society Letter to Board of Correction Re: DOC PREA Variance Request, pg. 2 (September 11, 2017) available at <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/Sep-12-2017/las-opposition-to-doc-prea-variance-request-9-11-17.pdf>

⁵ PREA Assessment at 6.

“what happened to you was not your fault” to a woman who survived rape while in her care and custody, I am not sure that the very core tenants of sexual violence prevention can be maintained.

In light of the THU Assessment and the PREA Assessment, I urge the Board to issue a Notice of Violation for the Department’s failure to comply with the Minimum Standards surrounding the Prison Rape Elimination Act.

Respectfully submitted,

Mik Kinkead, Esq.
Director, Prisoner Justice Project
The Sylvia Rivera Law Project
147 W 24th St., 5th Floor
New York, NY 10011
212-337-8550 x302
mik@srlp.org