



April 16, 2019

Members of the Board of the Correction
1 Centre Street
Room 2213
New York, N.Y. 10007

Dear members of the Board of Correction:

We applaud the decision of the Board to hold a hearing on April 23rd, 2019 dedicated solely to the topic of the Department of Corrections' (DOC) compliance or lack thereof with the standards laid out in the federal Prison Rape Elimination Act (PREA). On behalf of the survivors of sexual violence who we serve, both those incarcerated and those residing in the community, we thank the Board for their continued attention to this topic, and to ensuring that the needs of incarcerated survivors for safety, justice, and healing are not forgotten.

Our colleagues at the Legal Aid Society have submitted urgent and important testimony on questions related to the DOC's handling of investigations into incidents of sexual assault and sexual harassment, as well as the need for preventive protective measures within DOC facilities to prevent such incidents. In our testimony we therefore wish to speak about a related but distinct topic; the importance of access to confidential, trauma-informed victim services by survivors incarcerated in DOC facilities. The right to such access, including the presence of a victim advocate during investigative interviews and forensic examinations, is protected under the federal PREA standards (115.21 and 115.53).

We at the Crime Victims Treatment Center hold a unique position from which to speak on this issue. As one of the oldest rape crisis centers in New York State, we have since 1977 led the state in the provision of trauma-informed healing services to survivors of violence, including pioneering the use of victim advocates during forensic examinations. We are keenly aware of the important role played by victim advocates in enabling survivors in crisis to regain a sense of control and safety in the immediate aftermath of an assault, thus allowing them to make informed decisions about participation in criminal investigations and medical services.

Moreover, we possess specialized knowledge regarding the needs of incarcerated survivors of sexual violence, and the unique barriers encountered by both

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correctional facilities and victim services professionals in providing confidential services. Since 2013, our PREA Program has provided crisis intervention, advocacy, and short-term trauma-focused therapy to survivors incarcerated at sixteen New York State Department of Corrections (NYS DOCCS) Facilities and two federal detention centers. Our PREA Program is part of a statewide collaboration between NYS DOCCS, six victim services agencies, and the New York State Coalition Against Sexual Assault, funded with the support of the New York State Office of Victim Services. Collectively, our coalition has made confidential victim services available to survivors incarcerated in each of New York State's 52 correctional facilities.

The Case of Mr. O

In our work, we sometimes receive requests for our services from individuals who experienced sexual assault or sexual harassment while incarcerated in DOC facilities, and who continue to struggle with the trauma of these incidents after their transfer upstate into NYS DOCCS. We are glad to be able to provide therapeutic services to these survivors. However, in our attempts to advocate for our clients within the DOC and help them obtain the results of the investigations into their assaults, we have in all cases been unsuccessful. I wish to share here some of the story of a survivor who has granted us permission to speak about his experiences before this audience.

Mr. O. was sexually assaulted by a fellow inmate in a DOC facility approximately six months ago. Upon his arrival at DOC, Mr. O. was screened as vulnerable to victimization due to his identity as a gay man, and was appropriately placed in a protective custody unit. However, the level of surveillance provided to him on this unit fell far short of what was needed to ensure his safety. Another inmate, who was known to have gang affiliations, was able to arrange to be alone with him in an unmonitored location, and sexually assaulted him there.

Mr. O. states that one of the most painful memories of this sexual assault was not the assault itself but its aftermath. He recalls weeping and crying out for help to anyone who might be able to hear him, but obtaining no response from staff. In fact, he recalls that no staff within the facility responded to him until he called 311 to report the assault. In the days and weeks after his assault, Mr. O. struggled with overwhelming symptoms of Acute Stress Disorder, and repeatedly requested victim services support, but he was not given the support he needed in order to feel safe and understand the reporting process. He recalls a single meeting with a staff member about whose role he remains uncertain, who never met with him again. He was given a phone number to call to request victim services, but left repeated voice messages at this number with no response.

At this time, Mr. O. is making significant strides in his healing with the support of our program, but the sexual assault and its aftermath remain devastating to him. He has still not been told the results of the investigation, and was never informed whether or not his case was referred to law enforcement. When I (Rachel Herzog), as his therapist, asked him if there was anything he wished to have conveyed to the Board, he told me, “I want them to know that something like this can really break somebody. It’s important that they take care, because this has a real impact.”

Mr. O. is only one of many. While he has been waiting nearly six months for an answer in his investigation, another survivor with whom we work, Mr. C, has been waiting over a year. An assiduous and resilient self-advocate, Mr. C has repeatedly reached out to every conceivable person who could have some knowledge of his case, and has independently submitted testimony regarding his experiences to the members of this Board. None of this has led to the clarity he deserves.

Furthermore, we wish to note that both Mr. O. and Mr. C. are highly resilient and determined individuals, who had the internal resources to continue repeatedly reaching out for support even when their previous efforts were unsuccessful, and who have made incredible use of the services we offer as soon as they were available to them. But they shouldn’t need to be. The process of reporting a PREA incident and obtaining victim services support within the DOC should be straightforward and trauma-informed. As much as we are concerned that these two survivors’ needs are not being met, we are even more concerned about those who may experience even more substantial barriers to reporting and obtaining assistance, including survivors with pre-existing mental health conditions or disabilities, who also may be more vulnerable to victimization.

Providing Victim Services to Incarcerated Survivors

We wish to share with the board some of the challenges and successes we have encountered in providing services to incarcerated survivors, and the elements we have found essential in ensuring the confidentiality and accessibility of these services to our clients. We hope that this example can further illuminate the importance of such services, and the kind of meaningful partnerships and provision of trauma-informed care that we hope can be possible within DOC facilities. We then follow with a list of questions for the DOC on their current provision of victim services to survivors under their care, a list informed by our own work.

The element we have found most essential to the development of our PREA Program

has been building strong, open, and collaborative relationships with staff at the correctional facilities we serve. As victim services professionals, we have different theoretical frameworks, language, and sometimes priorities from those held by correctional staff, and these differences can lead to miscommunications on both sides which may get in the way of survivors receiving the care they need. It has been vital that our staff and our partners within NYS DOCCS approach our work together from a stance of collaboration, transparency, and willingness to learn from one another. This has allowed us to build an understanding of our shared goals, which include increasing the safety of all those held in custody, and to appreciate the ways that our roles can complement one another to reach these goals.

We are proud to say that, through substantial trial and error, we have developed strong relationships of mutual respect with our partners in the NYS DOCCS. We meet regularly with key staff both in the NYS DOCCS Sexual Abuse Prevention and Education Office (SAPEO), as well as with staff who work directly within partner facilities on PREA compliance issues.

At such meetings, we regularly provide cross-training to one another, and have been able to engage in open dialogue about the differences between our models of working, and ways that we can strengthen our collaboration. NYS DOCCS have been open to learning from us and to incorporating elements of our trauma-informed practice into our work. We are particularly delighted to report that, in 2018, several investigative staff from NYS DOCCS' Office of Special Investigations' Sex Crimes Unit (equivalent to the NYC DOC Department of Investigation) attended our 40-hour Rape Crisis and Domestic Violence Advocate training, completing the requirements to become New York State-certified Rape Crisis Advocates. We believe that such instances of collaboration, open dialogue, and cross-training have allowed for tremendous growth in our program, and deep improvements in NYS DOCCS' response to disclosures of victimization.

We have also become attuned to the complex meaning of confidentiality within the correctional setting, and the vital importance of making sure that confidential victim services are *meaningfully* confidential, such that incarcerated survivors may access them without fear of retaliation. While we continue at times to struggle with the challenges of maintaining the confidentiality of our services within a correctional setting and have not by any means resolved this issue, below are some of the methods we have found most successful in increasing confidentiality and accessibility.

First, we have found that it is deeply important for the survivors that we work with to understand that we function as an independent entity from DOCCS and that, while

we have a collaborative partnership with the department, DOCCS staff do not have authority over our services and cannot make decisions about who does or does not receive them. Many survivors fear that receiving trauma-focused counseling may be contingent upon making a report, even when they believe this to be unsafe for them, or that a report being found unsubstantiated may lead to termination of services. The independence of our organization allows us to alleviate these concerns and prioritize a survivor's healing.

Second, we have established a variety of channels through which an incarcerated survivor may connect with us and request services, including channels which do not require disclosure to a DOCCS staff member. Although a portion of our clients request our services through DOCCS staff (most frequently an Assistant Deputy Superintendent for PREA Compliance (ADS PREA) or an Offender Rehabilitation Coordinator (ORC)), the majority self-refer, which they may do by writing directly to our organization, or by calling the Statewide PREA Hotline, which is accessible from any inmate phone throughout the state. This hotline is answered by victim advocates at the Crisis Services of Buffalo County who have received specialized training from our organization, among others, in meeting the needs of incarcerated survivors. The Statewide PREA Hotline also functions as a third-party reporting mechanism, allowing incarcerated survivors to have incidents of sexual assault or sexual harassment reported directly to staff at the Office of Special Investigations' sex crimes unit without the need for disclosure to staff within their facility.

We have also over the years established structures to limit the number of facility staff who are aware that a survivor is receiving services with our program. Visits, calls, and correspondence exchanged with our program are treated according to the same procedures as contact with an attorney. This means the majority of facility staff need only know that an incarcerated individual is receiving a "legal call", rather than a counseling call with a rape crisis provider, and allows us to utilize the strict confidentiality measures already in place for attorney contact to safeguard our clients' privacy. Counseling (or "legal") calls with our organization take place on administrative lines which cannot be recorded or monitored by facility staff, and directives have also been issued to ensure that calls to the Statewide PREA Hotline are not monitored. In cases where we believe that a survivor's confidentiality has been breached, we are able, with a survivor's consent, to report this to our OSI and SAPEO contacts, who take these reports seriously.

Finally, we have found that expanding our criteria for which incarcerated individuals are eligible for our services helps maintain confidentiality and safety. With the support of our DOCCS partners, we offer trauma-focused counseling to incarcerated

individuals who have experienced sexual violence at any point in their lives, including before their incarceration. Publicizing this fact both to incarcerated individuals and correctional staff at once allows us to serve and be in contact with a group of the potentially most vulnerable incarcerated individuals, as we know that prior victimization is a major risk factor for further victimization in prison, and also allows plausible deniability for survivors who have experienced sexual assault or harassment in their current facility but wish to keep this fact as private as possible. By undoing correctional staff's association between our services and the assumption that we are facilitating our clients' reports on their colleagues, we both reduce hostility to our presence within the facility, and create increased confidentiality for survivors.

We do not wish to present the model of service we have developed as a perfect one, or one that will be applicable to every correctional setting; it is one that we have developed with a great deal of trial and error, and we remain in the process of refining our protocols and strengthening our partnerships. However, our service model is one we have found effective in providing services to hundreds of incarcerated survivors across many different facilities, including facilities of various sizes and security levels. We wish to share this information with the Board to communicate our belief that meaningful and collaborative partnerships between correctional facilities and victim services organizations are possible, and that we hold every hope for such partnerships being built within the DOC system as well. We hope that survivors currently housed at DOC facilities, and those who may experience victimization there in the future, will have access to the support they need to begin their healing, and communicate our dedication, as an organization and as members of the broader victim services community, to supporting that mission however possible.

Questions Regarding Victim Services Access Within DOC

We were pleased to hear that Correctional Health Services has established a Sexual Abuse Advocacy Program (SAA) to serve survivors within DOC facilities, and that the DOC had earlier created a partnership with Safe Horizon to offer their services to incarcerated survivors. We also have seen outreach contacts by SAA documented in the statistics released to the Board by the DOC.

Based on the accounts that we have received from survivors, and our own experience running a PREA Program, we have the following questions for the DOC regarding these partnerships.

- What is the scope of the victim services offered to incarcerated survivors at DOC? Are there any limitations on the length or frequency of counseling sessions?
- How do survivors at DOC facilities gain access to victim services? Must they speak with a staff member to request access, or are there avenues for self-referral?
- Must a survivor make a report of a PREA incident in order to be eligible for victim services? Are such services contingent in any way on the results of an investigation?
- How many DOC staff are made aware of a survivor's receipt of confidential victim services? Are any measures taken to limit the number or identity of staff who have access to this information?
- Where in the facilities do victim services counseling sessions take place? What protocols have been put in place to ensure the privacy of these locations?
- Are victim advocates permitted to remain with survivors during investigative interviews and medical exams when requested by survivors? If so, in what way is this option communicated to survivors prior to the start of an interview?
- Do victim advocates have any channels through which to communicate third-party reports from survivors to DOI staff? What authority is given to victim advocates to advocate for the safety of survivors and their freedom from retaliation?
- Are any cross-training or group case review meetings conducted collaboratively with victim advocates and DOC staff? What steps have been taken to ensure collaborative, mutually respectful partnerships between these professionals?
- We see a significant drop-off in the statistics reported by CHS in the difference between initial and follow-up sessions provided by SAA. We find this concerning, as in our work we have found that a single counseling session is rarely sufficient to meet the needs of incarcerated survivors for immediate safety planning, let alone steps towards more long-term healing. By whom and how is it determined when follow-up services beyond an initial session will be offered to an incarcerated survivor? If survivors are choosing not to continue to engage with SAA providers, have supervisory reviews been conducted to ensure that survivors are not experiencing retaliation or other risks related to accessing victim services? Are there any other reasons for this drop-off between initial and follow-up sessions that can be identified?
- The DOC advertises Safe Horizon's Rape and Sexual Assault Hotline as an approved provider to whom incarcerated survivors may reach out. However, survivors we work with have shared that, upon calling this hotline, they were informed that they were not able to provide services to incarcerated survivors.

Has PREA-specific training been providing to Safe Horizon's advocates? In what ways has DOC worked collaboratively with Safe Horizon to ensure the success of this partnership?

- In our work with NYS DOCCS facilities, we have found that incarcerated survivors are often hesitant to disclose victimization to Office of Mental Health (OMH) staff, as they are mandated reporters and are seen as closely affiliated with the facility. What measures have been taken to identify SAA staff as distinct from other Correctional Health Services staff, and to clarify the high confidentiality privilege afford to Rape Crisis Counselors in New York State?

Thank you very much for your time and attention in considering the information shared in this letter. We hope that this information will help support the Board of Corrections' work in holding the Department of Corrections accountable to meeting the expectations of the PREA Standards, and ensuring that incarcerated survivors have the support they need to regain safety and begin their healing.

Sincerely,

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Crime Victims Treatment Center