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

Dear Members of the Board of Correction:

I appear today to present testimony concerning lack of accurate data being disseminated by the DOC regarding PREA, rape, sexual assault and sexual harassment on Rikers and in our City jails. Today I will address two topics: and; I.) DOC PREA numbers and; II) the DOC responses to the BOC Resolution instituted in October of 2018.

I. DOC PREA REPORTING: I have been following the reporting and data for the better part of a decade and requesting that the BOC ask the DOC reconcile the simple spreadsheets I have emailed dozens of times to board staff and members as well as DOC officials with little or no result. I spend an enormous amount of time pouring over the testimony of DOC members and recording and capturing it. There is to date no response from the BOC or DOC as to how these numbers

Year	Sexual Abuse	Sexual Haras	Substantiate	Unsubstanti	Unfounded	Pending	Invstgts Completed	vs Staff	vs other Inca	Total DOC Complaints2
2007	16	22	0	0	0	38	0	28	10	38
2008	22	30	0	0	0	52	0	39	13	52
2009	11	43	0	0	0	45	0	38	7	45
2010	17	37	0	0	0	37	0	35	19	54
2011	13	98	0	0	0	111	0	87	24	111
2012	28	69	0	0	0	97	0	77	20	97
2013	17	131	0	0	0	105	0	88	31	105
2014	9	107	0	0	0	119	0	71	45	119
2015	70	118	14	0	0	188	0	131	57	188
2016	347	480	3	42	39	739	84	681	275	828
2017	510	641	1	20	18	1112	0	806	663	1151
Jan-June 2018	194	35	0	7	0	229	7	152	77	229
	1254	1811	18	69	57	2872	91	2233	1241	3017

will be codified or reconciled. There appear to be 3017 complaints of rape, sexual assault, sexual abuse and sexual harassment that have been made by detainees/incarcerates on Rikers over the past 12 years. To date only 114 have been documented publicly as closed. Only 18 have been substantiated, 69 unsubstantiated and 57 unfounded. This is a 3.7% closing rate: a .05 (ONE HALF OF ONE PERCENT) substantiation rate: far behind national averages which Ms. Townsend has repeatedly reminded us hover around 6%. I don't see any short of cooking the numbers and demarcating an huge flotilla of these complaints as "non-PREA" that the DOC will be able to bring these numbers into the range of national averages in the coming weeks as they are required to publish their next semi-annual report shortly.

II. Regarding the BOC's OWN PRE Audit Recommendations published in October of 2018: the DOC's responses are wholly inadequate and some may be even categorized as falsities:

"The Department asserts it has already implemented all eight (8) recommendations from the BOC's October resolution¹; to the extent that any of the recommendations require ongoing implementation, the Department is committed to continued compliance. "

¹ [Board of Correction Resolution re Sexual Abuse and Harassment](#)

1. **“The Department should re-train investigative staff to record complete and comprehensive information in relation to every stage of their investigation, including the reasons why apparently key interviews do not take place and the steps taken to determine the need to secure a crime scene.”**

DOC RESPONSE: *“The Department completed this goal. Training was conducted on October 3, 2018 and October 11, 2018. A section for crime scene details was added to the PREA Investigation Closing Report.”*

REALITY: *The “Training” for PREA investigative staff was no more than video instruction courses offered by the NIC² according to the BOC’s OWN tracking document posted on January 7, 2019³.*

-There is NO mention of how the DOC will track why key interviews are not taking place

-adding a place to elucidate crime scene details on the closing memo could be helpful but why are investigators filling out the closing memo during initial stages of the investigation? *Shouldn’t this level of detail be recorded earlier in the investigative process? There could be months even years between these processes and we could be losing valuable data.*

--*The Department has been given vast resources to train its staff and a major failing has been in the investigative unit as the past three years have indicated. Why hasn’t substantial, interactive training with experts been slated? Simply watching a video does not send the right message that the DOC is taking its training responsibilities seriously.*

--*the NIC training is not considered to be the most cutting edge. In 2016 NOW interns introduced other examples of investigative training and techniques posted –what has come of all these options provided to the DOC*

² According to the BOC’s own tracking document ((National Institute for Corrections PREA resource center: <https://nic.learn.com/learncenter.asp?id=178416&page=1#page-nav-courses>: “Investigating Sexual Abuse in a Confinement Setting”

³ DOC PREA REPORTING STATUS FOR 2018UPDATED 1/7/2019:

https://www1.nyc.gov/assets/boc/downloads/pdf/DOC-PREA-Reporting-Status_1_7_19.pdf

and BOC?

2. “The Department must ensure that supervisory investigative staff are adequately trained and resourced to appropriately oversee PREA investigations. This should include working with investigators to address omissions in Closing Reports before they are finalized.”

DOC RESPONSE: *“The Department **completed** this goal. Training was completed in October 2018 and the Department met its original target date of September 2018 (set forth in its June 2018 Corrective Action Plan) to increase the number of Supervising Investigators to six (6). The Department now has an adequate amount of supervisory staff to oversee PREA investigators. The Department acknowledges that this recommendation requires ongoing supervisory training and is committed to supplying said training.”*

REALITY: --again the training appears to only be NIC video-instruction⁴

--Is supervisory investigative staff in DOC DOI 100% working on PREA investigations or are their duties split?

--What about DOC Captains tasked as per the Directive issued that mandates unit captains conduct first-line investigations of detainee on detainee or incarcerate on incarcerate complaints b/f they are on passed to DOC DOI? Have ANY of them been trained?

--What is the plan for ongoing training? Have they only been trained via video???

3. “The Department should amend the Closing Report template to ensure that investigators can clearly follow the requirements and record the comprehensive information required by the Board’s Minimum Standards and the PREA Standards. The form should include sections and guidance for fully explaining the different sources of evidence the investigation has considered or decided not to consider. In addition, the report template

⁴ <https://nic.learn.com/learncenter.asp?id=178416&page=1#page-nav-courses>

should be electronic and require that all elements are populated before the report can be completed.”

DOC RESPONSE: *“The Department **completed** this goal. The Closing Report was amended twice, to accommodate the Board’s feedback (once on September 13, 2018 and again, to its current version on November 19, 2018) and the Department has been sending the newly revised memo every time a case is closed, within five business days of case closure, pursuant to the Board’s Minimum Standards.”*

Reality: *We have been asking to see the closing memo for over two years. Is it really so difficult to share it? This was one of the objections we raised in 2016 to the final PREA rule voted on by the BOC: we wanted to see details of forms and interrogatory tools used b/f the rule was voted on.*

What is the % of items on the closing memo that is “check –box” and to written fields?

4. **“The Department must take steps to address the extended delays in completing PREA investigations as a matter of urgency, including conducting an internal audit of the reason for delays in investigations being concluded. The Department should identify if (and how many) additional staff numbers (both investigative and supervisory) and training are required to complete all investigations thoroughly and within 90 days of allegation. . . In addition, the Department should use the internal audit to identify where revisions to the investigative process can improve the timeliness and quality of the investigations.”**

DOC Response: *The Department **completed** this goal. The Department has assessed, prior and subsequent to the Board’s audit, the reasons for delays in its investigations. As mentioned in the June 2018 Corrective Action Plan, inadequate staffing coupled with an increase in sexual abuse and harassment allegations created a backlog. Below is a recapitulation of the*

*June 2018 Corrective Action Plan, which the Department adopted to remedy those issues, along with a status update on each goal: **June 2018 Corrective Action Plan***

REALITY: The reasons for delays albeit assessed have not been adequately shared. For instance the BOC report on investigations notes that more than half of the investigations audited were not completed b/c CO's and staff had not been interviewed. While the final explanations for this lack of interviewing MAY have been shared with the BOARD they were NOT elucidated in the audit report—the reasons were buried in an endnote and not made clear.

5. **“The Board should conduct an annual audit of the Department’s PREA Closing Reports to monitor their quality and timeliness.”**

DOC Response: *“The Department committed to complying with the above in its written response to the Board’s audit back in September 2018. The Department’s position on this matter has not changed.”*

REALITY: There are still many holes in the 2018 Audit by the BOC: for example we still don’t know why interviews were not held although the audit alludes to these reasons being shared with the BOC.

6. **“The Department must ensure that investigative and supervisor staff are aware of, and comply with, the requirements of the Board’s Minimum Standard 5-30 (q), including only conducting interviews of people in custody outside of the housing area and in a private and confidential setting. All Closing Reports should include information about the location of interviews conducted as part of the investigation.”**

DOC RESPONSE: *“The Department **completed** this goal. On November 20, 2018, the Department instituted a policy for conducting PREA investigations in a confidential setting. This policy was codified in the Department’s Investigation Division Order 4/16, which was circulated to Investigation Division investigators. Additionally, the PREA Investigation Closing Report was amended to include this information.”*

REALITY: We have heard that without designated safe spaces for interviews that it is NOT the case that PREA interviews are being conducted in a confidential setting. I refer to the testimony of Kayla and Dori of PRP that document several instances of departure from the rule and the remediation recs regarding this. In January Kayla gave specifics and in Dec so did Dori. Please review their comments.

7. “The Department must ensure that PREA Closing Reports contain comprehensive information about the evidence analysis carried out as part of the investigation. Specifically, reports need to refer to: who is selected for interviews and why; how the investigator established the credibility of the information; and whether there was relevant historical information available about the alleged perpetrator.”

DOC RESPONSE: .” *The Department **completed** this goal November 19, 2018. The revised Closing Memo accounts for the above-mentioned categories.*

Reality: Again—let’s see the Closing Memo—why hasn’t this been shared in all its incarnations? The public would like to SEE this document. Do I really have to FOIL it? The closing memo may be filled out months—even years after the investigation—why isn’t this information being captured earlier in the investigative workflow?

8. Investigative staff should attempt to notify victims of the outcome of investigations, regardless of whether they are still in the Department’s custody.”

DOC RESPONSE: “*The Department **completed** this goal on October 7, 2018. On that date, the Department instituted a policy for notifying all complainants of the outcome of their PREA allegations, regardless of their incarceration status. This policy was also added to the aforementioned Investigation Division Order 4/16, and the Closing Report was amended to account for this information.*”

REALITY: How does this policy work?

Is a letter sent?

How is receipt confirmed?

Is further counseling also coordinated to accompany these notifications?

How do you track this?

Who is responsible for this at the DOC specifically?

What sorts of notifications are provided during the pendency of investigations? Survivors MUST see a path to justice. Kelsey testified last month that one of her clients who was raped on a DOC bus in 2015 STILL had not received feedback about the status of the investigations spurred by her complaint.

“Additional steps towards compliance”

(1) “External Training The Department sent PREA investigators to the New York City Police Department Special Victims Course, at the New York City Office of the Chief Medical Examiner, where they received specialized training in investigating sexually-based allegations. The Course was conducted from October 22, 2018 through October 26, 2018. The Department also sent PREA investigators to the certified science-based Forensic Experiential Trauma Interview (“FETI”) training at St. John’s University from October 16, 2018 through October 27, 2018.”

REALITY/RESPONSE:

-the NYPD is HARDLY the organization that the DOC should be looking to for training on sex assault investigations

--HOW MANY investigators were sent to each course?

(2) “Timed Supervisory Review On December 1, 2018, the Department instituted a policy whereby PREA investigators have to compose and submit, internally, a callout report within five (5) business days of their interview of

the alleged victim. Five (5) business days from then, a supervisor must review said report. This new procedure forces investigators and supervisors to conduct early analyses of the case, including viability of charges, necessary follow-up steps, credibility considerations, and other decisions before the investigation becomes stale. This amends already-existing Investigation Division policy that requires supervisory review within 30 days of the allegation. This new amended policy was added to the aforementioned Investigation Division Order 4/16.”

REALITY/RESPONSE: it is nice that this new “CALLOUT” review is happening within ten biz days but this EARLY ANALYSIS is just that—early analysis and cannot supersede the PREA standard that mandates supervisory review within 30 days of the allegation.

--The time period of “within 30 days of the allegation” MAY not align with “within five days of survivor interview.

--The DOC cannot ‘amend’ the PREA rule without a variance request: the DOC MUST submit a variance request if it wishes to change this workflow already codified into the local PREA rule approved by this board in November of 2016 and allegedly implemented in January of 2017.

1. (3) Restructure of the Investigation and Trials Division In January 2019, the Department’s Trials and Litigation Division (“Trials”) assigned a supervisory attorney as well as a Trials Director to manage all PREA disciplinary cases. Previously, any substantiated PREA allegation could be handled by any of the Trials attorneys who work in the unit; additionally, the attorneys had no input on any PREA investigation, nor did they have much knowledge of the PREA cases until the investigation was complete. The role of the PREA supervisory attorney is now not just to prosecute substantiated cases after the fact, rather, to enhance the quality of the investigation, guide the investigation where necessary, and answer any legal questions the investigator may have before the investigation concludes. This improves collaboration, consistency and timeliness of PREA investigations.

Are all allegations that are substantiated being hidden in the star-chamber of OATH trials? Why aren't they being on-passed to the Bronx DA for prosecution? What is the process for following up with the BXDA and on-passing investigative outcomes to survivors/complainants?

(4) Computerized Case Management System

The Board's resolution speaks about the Department implementing and using a computerized case management system for sexual abuse and harassment claims. The Department agrees with the Board that a computer-based system is of prime importance for the accurate and easy accounting of PREA cases. The Department has analyzed the feasibility of this plan; the Department expects to begin work on the Case Management System ("CMS") in 2019 and expects to implement CMS before the end of 2020.

Response/Reply: Computerized Case Management System Implementation: is the DOC aware that the Mayor's office for the prevention of Gender-based violence is in the process of creating a survivor portal that will allow us to track our complaints? Are there plans to collaborate with this office's efforts?

Thank you for taking the time to review my responses to the DOC's anemic answers to the Board's October 2018 PREA Audit Recommendations. There is much more to discuss regarding many of the individual elements of the PREA rule ASIDE FROM 5-30 & 5-40 that I will take up in future meetings.