

NYC Department of Correction – February 2019 PREA Investigations Corrective Action Plan

In September 2018, the Board of Correction (“the Board”) conducted an audit of Department of Correction (“the Department”) closing memoranda for PREA investigations. Pursuant to the analysis of 42 investigative closing reports, the Board made eight recommendations for the Department of Correction to implement in an effort to improve the quality of PREA investigations. Subsequently, in October 2018, the Board passed a Resolution requiring the Department to produce a Corrective Action Plan that addresses a commitment and timeline for implementation of: (1) the audit’s eight recommendations, (2) any other steps necessary for the Department to achieve compliance with Minimum Standards §5-30 and §5-40, and (3) a computerized case management system for sexual assault and sexual harassment allegations.

Audit Recommendations

Although no timeline or target dates were mandated by the Board for the implementation of the eight recommendations in the audit, the Department committed to executing said recommendations as soon as feasible. Below is a breakdown of the recommendations and the status of each of the eight recommendations. **The Department has already implemented all eight (8) recommendations;** to the extent that any of the recommendations require ongoing implementation, the Department is committed to continued compliance.

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.”*

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.

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.”*

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.

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

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.

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.”*

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

GOAL	Target Date	Status
PREA TEAM STAFFING		
Increase Investigator Staff from 19 to 30	January 2019	On Track
Increase Supervisory Staff from 2 to 6	September 2018	Complete
Increase Director/Deputy Director Staff from 1 to 2	September 2018	Complete
PREA CASELOAD		
Create & Implement Short Form Closing Report	April 2018	Complete
Assign Supervisors to Review and Close Cases	April 2018 (phase 1); September 2018 (phase 2)	Complete / Ongoing
Close 1,216 Backlogged Cases	February 2019	On Track

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

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.

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.”*

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.

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.”*

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

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

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.

Additional Steps Towards Compliance

The Department has gone beyond the Board's recommendations in its pursuit of compliance with the Board's Minimum Standards.

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.

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.

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.

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.