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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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Dear Members of the Board of Correction:

The Legal Aid Society Prisoners' Rights Project urges the Board of Correction ("the Board" or "BOC") 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 ("the Standards"). Specifically, we ask the Board to issue Notices of Violation of Standard §5-30 (Criminal and Administrative Agency Investigations) and Standard §5-40 (Data Collection and Review). We also urge the Board to hold a public hearing about the Department's failure to comply with the Board's Standards, and to do so as soon as possible, including by scheduling a meeting in December 2018 when no regular meeting is currently scheduled.

### **Deficiencies in DOC's Investigations**

In September, 2018, the Board issued a Report documenting the abysmal manner in which the Department conducts its investigations, issuing its "Audit Report on the NYC DOC's Sexual Assault and Sexual Harassment (PREA) Closing Reports (September 2018).<sup>1</sup>

The Board's analysis of DOC's closing reports of investigations made clear that the Department's investigations are effectively shams. For years DOC has failed even to complete investigations in a timely manner.<sup>2</sup> As BOC members have pointed out, delays in investigations

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<sup>1</sup> Available at [https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/PREA\\_ClosingReports\\_FINAL\\_09.24.18\\_update.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/PREA_ClosingReports_FINAL_09.24.18_update.pdf)

<sup>2</sup> See e.g., BOC Report "Background on PREA Investigations" (June 2017) showing that virtually all investigations into sexual abuse and harassment remained "pending." Available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2017/June-13-2017/2017.06.13%20-%20PREA%20data%20to%20share.pdf>. See also DOC Sexual Abuse and Sexual Harassment Minimum Standards § 5-40 Assessment Report at Table 3 (same), available at [https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/2018.03.15%20-%20Annual%20Sexual%20Abuse%20and%20Sexual%20Harassment%20Assessment%20Report%20\(PREA\).pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/DOC-Reports/2018.03.15%20-%20Annual%20Sexual%20Abuse%20and%20Sexual%20Harassment%20Assessment%20Report%20(PREA).pdf) (

can render them useless: witnesses disappear, evidence cannot be located, memories fade and justice delayed becomes justice denied. Even apart from delays, investigations are not conducted in a thorough, unbiased and professional manner. BOC found an appalling percentage of cases where the closing report did not contain any indication that all evidence had been reviewed; that all witnesses, including the victim and alleged perpetrator, were interviewed; that videotapes were pulled and watched; that victims were interviewed in a confidential manner and discreet location (as opposed to the interview taking place in the person's housing area in plain sight of the alleged perpetrator), that credibility assessments were properly made; how or why the investigator decided to find a lack of substantiation; or that anyone in DOC was holding investigators accountable to conduct appropriate investigations or that supervisors were even reviewing the work of their investigative staff. These failures to conduct professional investigations result in a total dearth of accountability for rapists and abusers, with substantiation rates so low<sup>3</sup> that it is stunning that any incarcerated person complains of abuse given the futility of making such a report.

### **Deficiencies in DOC Data Collection**

The Board also recently documented the Department's failure to provide information as required by Standard § 5-40 (Data Collection and Review).<sup>4</sup> Even when the Department provides such information, it is often extremely limited in scope and, to our understanding, is provided in such a manner that it is essentially unusable and thus "effectively obstructs" the Board's ability to function in its oversight role.<sup>5</sup> This lack of transparency and makes it impossible for any of us to know the full extent of the Department's lack of PREA compliance. For example, the public (and perhaps even the Board) had no idea that DOC had utterly failed to comply with the Board's requirement that cameras be placed in transport vehicles as a pilot project until a year after this requirement was supposed to be implemented. Without the transparency required 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.

All of the Standards are critical to ensure safety and healing, yet the public has no idea of the scope of the Department's failings. All we know are the powerful and horrific stories we hear from people in custody and the dismal number of substantiated allegations of sexual assault, reflecting the Department's abject failure to hold its staff accountable for committing sexual violence.

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<sup>3</sup> Indeed in the Department's most recent Assessment Report 224 out of 229 allegations of sexual abuse lodged from January – June 2018 were "preliminarily" determined to be unsubstantiated. Available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2016-PREA/Jan-June%202018%20Semi-Annual%20Report%20Received%2008-14-2018.pdf> (at Table 12).

<sup>4</sup> Available at, [https://www1.nyc.gov/assets/boc/downloads/pdf/doc\\_prea\\_reporting\\_status\\_for\\_2017\\_and\\_2018\\_updated\\_9\\_11\\_18.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/doc_prea_reporting_status_for_2017_and_2018_updated_9_11_18.pdf)

<sup>5</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).

## The Board Needs to Ensure Compliance with Its Standards

After the Board issued their Reports about the Department's flagrant non-compliance with its Standards regarding Investigations and Data Collection, the Department issued a defensive and insufficient response.<sup>6</sup> In reaction, at its October meeting the Board issued a Resolution targeted at addressing the Department's most egregious non-compliance, calling for the Department finally to issue a more detailed and meaningful Corrective Action Plan and to take certain actions by the Board's November meeting.<sup>7</sup>

Shockingly, the Department wholly ignored the Board's Resolution. At the November Board meeting, Board Chair Derrick D. Cephas reported that DOC provided neither a Corrective Action Plan nor "any additional information about their efforts to come into compliance with [sections] 5-30 or 5-40."<sup>8</sup> The Department did not even bother to send someone to the Board's November meeting to report on the status of its efforts to respond to the Board's Resolution. No explanation was given to the public at the November meeting for this flagrant disregard of the Board's authority, other than a perfunctory comment that Commissioner Brann was away. These actions by the Department confirm what we have known for too long: that even if the Department were capable of finally submitting a plausible plan to address these issues, there is no reason to believe that the Department will be able to credibly implement it. Indeed, it is precisely because of the Department's indifferent attitude to this issue and its persistent failure to hold persons accountable for engaging in custodial sexual abuse that we have called for sexual abuse investigations to be removed from the Department's purview.<sup>9</sup>

We urge the Board to immediately issue Notices of Violation of Standards § 5-30 (Investigations) and §5-40 (Data Collection and Review). This is not the first time we have asked the Board to take these actions, nor the second, nor the third.<sup>10</sup> It is also not the first time the Board has recognized the Department's non-compliance with these Standards; the Board has documented problems since the Standards were implemented.<sup>11</sup> But given the Board's recent Reports documenting widespread non-compliance and the Department's failure to meet its

<sup>6</sup> Available at, <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/NYC%20Department%20of%20Correction%20-%20Response%20to%20BOC%20Audit%20of%20PREA%20Investigations%20%209.12.18.pdf>

<sup>7</sup> Available at [https://www1.nyc.gov/assets/boc/downloads/pdf/october\\_2018\\_resolution\\_investigations\\_10\\_8\\_18.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/october_2018_resolution_investigations_10_8_18.pdf)

<sup>8</sup> Available at <https://www1.nyc.gov/site/boc/meetings/nov-13-2018.page> (relevant quote at 10:56).

<sup>9</sup> See e.g., PRP-LAS letter to BOC dated October 5, 2018, available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/October-9-2018/LAS%20Letter%20to%20BOC%20-%20PREA%20Audit%2c%20Oct.%202018.pdf>

<sup>10</sup> See PRP-LAS letters to BOC dated January 31, 2018, available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2016-PREA/Letter-to-BOC-re-investigations-and-public-data.pdf>; PRP-LAS letter to BOC dated April 20, 2018, available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/April-20-2018/Letter%20to%20BOC%204.18%20re%20DOC%20PREA%20Report.pdf>; PRP-LAS letter to BOC dated October 5, 2018, available at <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/October-9-2018/LAS%20Letter%20to%20BOC%20-%20PREA%20Audit%2c%20Oct.%202018.pdf>

<sup>11</sup> <sup>11</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)

obligations under the Resolution issued by BOC at its October meeting, the time has come for the Board to make a clear statement that such behavior will no longer be tolerated.

We also reiterate our demand for a public hearing.<sup>12</sup> No BOC meeting is scheduled for December. An emergency meeting should be scheduled. If scheduling does not permit such a meeting to take place, then the Board should schedule a separate hearing devoted solely to the state of the Department's compliance with the Board's Standards. It is simply not enough for the Board to allocate a few minutes at its monthly meetings to this important issue. Rather, a full hearing about the status of compliance with each and every one of the Board's Standards needs to take place. The Department should have to explain, under oath, the current situation with respect to all of the Standards, from training to supervision to victim support.

In addition, unlike the National PREA Standards, the Board's Standards contain no separate auditing and oversight mechanism. Instead the Board is expected to function in this role. See 28 C.F.R. §§ 115.401-405. For years, DOC staff touted their relationship with the Moss Group, and their plans for pre-audits and audits consistent with the mandates of the National PREA Standards, but this is something we have not heard about for a very long time. At a public hearing, the Department should have to explain what happened with the Moss Group and their current intentions, if any, to have independent PREA oversight apart from that provided by the Board.

Finally, we understand that the Board has recently lost its PREA point-person. This is extremely worrisome, particularly in light of the Board's crucial role in ensuring compliance with the Standards. We hope that the Board will not let this staffing loss interfere with its obligation to require DOC to comply with the PREA Standards it promulgated more than two years ago—and to stop the scourge of sexual abuse and harassment in our jails.

Thank you for your attention to this matter.

Very truly yours,

/s/

DORI LEWIS  
Supervising Attorney  
KAYLA SIMPSON  
Staff Attorney

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<sup>12</sup> See fn. 10, PRP-LAS letters to BOC.