

NEW YORK CITY
BOARD OF CORRECTIONS

BOARD MEETING
SPECIAL HEARING

125 Worth Street
New York, NY 10013
April 23, 2019
9:00 a.m. - 1:50 p.m.

April 23, 2019

MEMBERS PRESENT:

Derrick D. Cephas, Esq., Chair

Stanley Richards, Vice-Chair

Robert L. Cohen, M.D.

Honorable Bryanne Hamill

James Perrino

Michael J. Regan

Jacqueline Sherman, Esq.

Martha W. King, Executive Director

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2 (The public board meeting commenced at 9:00
3 a.m.)

4 MR. DERRICK D. CEPHAS: Good morning,
5 everyone. We are here today for the Special
6 Board of Correction Hearing on PREA. Jennifer
7 Jones Austin, one of -- everyone hear me, no?
8 Jennifer Jones Austin, one of the board members
9 will be coming today, but coming late because of
10 a family medical issue. Is that any better?
11 Yeah? Thanks. Before we get started, I would
12 like to thank the Administration for Children's
13 Services for allowing us to hold today's hearing
14 in this great Auditorium here at the ACS
15 Children's Center. I would also like to thank
16 the Board's monitoring and research staff for
17 doing a wonderful job preparing the Board for
18 this hearing and conducting and issuing many new
19 and important studies and reports.

20 The focus of today's meeting is on
21 the implementation of and the compliance with the
22 Board's minimum standards regarding elimination
23 of sexual abuse and sexual harassment in
24 correctional facilities. The Board standards are

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2 designed to detect, prevent and respond to sexual
3 abuse and sexual harassment of people
4 incarcerated in jails and other facilities in New
5 York City that are operated by the Board of
6 Correction.

7 Today, we will hear from the Department
8 of Correction and New York City Health +
9 Hospitals Correctional Health on their efforts to
10 ensure compliance with the minimum standards. We
11 also are joined by the Bronx District Attorney,
12 Darcel Clark, and members of her team and also
13 Vanessa Puzio and Joan Vollero from the Manhattan
14 District Attorney's Office, both of which offices
15 play a critical role in pursuing criminal charges
16 related to allegations of sexual abuse in the
17 city's jails.

18 Council Member Helen Rosenthal and the
19 Department of Investigation have also provided
20 written testimony to the Board, which will be on
21 our website. We also welcome the Westchester
22 County Department of Correction and thank each of
23 you for being here for this critical discussion.
24 Finally, we welcome and thank the public for your

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2 critical engagement on this issue and we look
3 forward to your comments as well.

4 One additional housekeeping note before
5 we start. We understand and appreciate that the
6 schedules of many people here do, do not allow
7 them to stay for the entire length of the
8 hearing. As always, we are live streaming the
9 hearing now. There will be a recording of the
10 hearing posted immediately following our
11 conclusion and we will post draft hearing minutes
12 in the coming weeks. Additionally, DOC and CHS
13 staff will be present here throughout the
14 hearing.

15 As background, we note that in 2015, the
16 then Board, the then New York City Public
17 Advocate Latitia James petitioned the Board to
18 adopt rules consistent with national PREA
19 standards enacted by the Department of Justice in
20 response to the epidemic of sexual violence in
21 the nation's prisons and jails. After several
22 months of fact finding, a public hearing and
23 written comments from over 60 organizations and
24 60 individuals, this Board, the Board of

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2 Correction, adopted a new minimum standard in
3 2016. The rules incorporated into local law the
4 federal PREA standards in whole or in part, thus
5 securing local oversight and enforcement of PREA.
6 The Board's minimum standards also include New
7 York City specific requirements, such as race
8 cripis [sic], rape crisis counseling and
9 extensive public reporting.

10 It has now been just over two years
11 since the minimum standards went into effect and
12 today's hearing is an important opportunity for
13 us to review the work that has been done while
14 identifying areas of continued concern and plans
15 to address those areas of concern [sic], of
16 concern.

17 Today's hearing is part of the Board's
18 continuing commitment to ongoing oversight with
19 respect to the minimum standards. As will be
20 discussed at length over the next few hours, the
21 Board has seen the Department make some significant-
22 significant progress in implementing the minimum
23 standards. Progress includes increased staffing,
24 significant training and new procedures for the

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2 Investigations Division's PREA team, leading to
3 increased case closure.

4 Over the last two years, the Board has
5 also documented and worked with the Department to
6 address serious compliance issues. Additionally,
7 we continue to receive significant and
8 problematic reports on the continued threat of
9 sexual violence in the city's jails. While
10 progress has certainly been made, much additional
11 work remains to be done before we reach an
12 acceptable level of compliance with PREA. I will
13 now ask our executive director, Martha King to
14 review the history and where we are today.

15 MS. MARTHA W. KING: Thanks, Derrick.
16 I'm brief, I will briefly just go through some
17 history and then focus more on the reports that
18 we released yesterday in conjunction with this
19 hearing. So since the standards were
20 implemented, every six months, the Board staff
21 have published compliance dashboards and reported
22 at public meetings on the progress and challenges
23 in DOC's and CHS's implementation of the Board's
24 Chapter 5 standards. The Board has focused its

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2 attention on screening for risk of victimization,
3 the use of that screening, the safe housing of
4 transgender people in custody and investigations.

5 In June, 2018, the Board found the
6 Department noncompliant in completing PREA
7 investigations within 90 days, as required. At
8 the time, there was a backlog of 1,295 cases. In
9 response, the Board and the Department discussed
10 corrective action and DOC submitted a timeline
11 for completing its backlog of investigations and
12 improving its management of cases moving forward.

13 In October 2018, the Board published an
14 audit, assessing DOC's investigations of sexual
15 abuse and harassment allegations made by people
16 in custody. The audit uncovered significant
17 deficiencies, including missing supervisory
18 approval of investigations, key interviews that
19 were not completed and insufficient explanations
20 as to why crime scenes were not established. The
21 audit found that investigations took 510 days to
22 complete on average.

23 In response, the Board unanimously
24 passed a resolution identifying actions for DOC

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2 to cure these violations, including the adoption
3 of the board's audit recommendations and
4 submission of a corrective action plan by
5 November 2018. However, in November, the
6 Department had not submitted a plan, raising
7 concerns and contributing to the Board's decision
8 to schedule this special hearing today.

9 After further discussion, the Department
10 submitted a corrective action plan for improving
11 its PREA investigations. As of March 2019, DOC
12 reports it has closed over 1,000 cases in its
13 backlog, improved its investigations closing
14 report form, and increased the number of
15 investigators and supervisory staff assigned to
16 these cases.

17 In preparation for this hearing, Board
18 staff created and shared several new public
19 reports. As is our quarterly practice, we
20 released updated dashboards documenting the
21 required reports and submissions from DOC and
22 CHS. We also released a series of data tables
23 summarizing the data reported to the Board by
24 DOC. DOC's PREA investigations team received a

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2 total of 1,141 allegations in 2017 and 1,326 in
3 2018, representing a 16 percent increase in the
4 ID team's, in the PREA ID team's case load. The
5 number of PREA reportable allegations decreased
6 19 percent from 643 allegations in 2017 to 524 in
7 2018. This corresponds to an 11 percent decrease
8 in the rate of allegations. The number of non-
9 PREA reportable allegations increased 61 percent.

10 In 2017 and 2018 combined, 65 percent of
11 PREA allegations were designated as staff on
12 persons in custody complaints, while 35 percent
13 involved person in custody on person in custody
14 complaints. Thirty-two percent of PREA
15 investigations started in 2017 and 78 percent of
16 PREA investigations started in 2018 still were
17 pending investigations as of March 12th, when we
18 received the, the data from DOC.

19 Among all closed PREA cases initiated in
20 2017 or 2018, only eight cases were
21 substantiated. For all cases closed by the PREA
22 investigations team, we see a significant
23 improvement in time to closure, from a mean of
24 464 days to 146 days and from a median of 512 to

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2 77 days in 2018. In another sign of encouraging
3 progress, 27 percent of ca-, of cases closed, of
4 closed 2108 PREA reportable cases were closed in
5 90 days as required, compared to only two percent
6 of closed 2017 PREA reportable cases.

7 I just want to speak a little bit about
8 the, the 540 Report, which is of great importance
9 to the Board. As the board noted, in October
10 2018 in its resolution, the Department is not yet
11 in full compliance with minimum standard 540,
12 which requires the Department to collect
13 accurate, uniform data for each alleged incident
14 of sexual abuse at its facilities using a
15 standardized instrument and standardized
16 definitions.

17 Most of the challenges associated with
18 providing the required elements are due to the
19 fact that the Department does not have an
20 adequate case management system in place. And
21 instead, is doing much of the 540 data tracking
22 manually on various spreadsheets, making the data
23 difficult to update throughout the course of
24 investigations. The Department reports that it

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2 hopes to update its electronic case management
3 system to track PREA investigations by the summer
4 of 2020. In the meantime, the Department has
5 committed to the Board that it will report all
6 required 540 data elements for all allegations
7 made in 2019 and all cases closed in 2019 by its
8 next 540 reporting deadline in August. And the
9 Board and Department staff are committed to
10 working together to improve the quality of future
11 540 data submissions.

12 We also released a report regarding
13 standard 514, which requires educating people in
14 custody about the Department's zero tolerance
15 policy and informing people of their right to be
16 free from sexual abuse and harassment and how to
17 report.

18 The findings summarize a week long
19 period of observations in March 2019. Between
20 March 1st and March 8th, BOC staff toured a total
21 of 194 jail areas across 11 facilities and one
22 hospital ward, monitoring compliance with 514.
23 Staff observed that new admission materials were
24 available at every intake in each of the seven

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2 new admissions facilities. All new admissions
3 materials included information on DOC's zero
4 tolerance policy. In the vast majority of areas
5 we visited, or 82 percent, all of those areas had
6 PREA posters up with information describing ways
7 to report sexual abuse or harassment and how to
8 make confidential allegations. All posters were
9 available in English and 95 percent of the areas
10 with PREA posters also had the information
11 available in Spanish.

12 We also checked compliance with minimum
13 standard 5-04(k) which requires the Department
14 implement a policy of having supervisors conduct
15 and document unannounced rounds to identify and
16 deter sexual abuse and harassment. The standards
17 require that rounds be conducted during night
18 shifts as well as day shifts and at unpredictable
19 and varied times. To monitor compliance with
20 this standard, board staff audited 12 housing
21 areas across six facilities. We also reviewed
22 video footage for a sample of corresponding
23 times. BOC staff found that the logbooks do
24 indicate that unannounced PREA rounds are being

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2 conducted by DOC supervisory staff and they are
3 taking place during night and day shifts as
4 required by the standards.

5 Seventy-one percent of the 226
6 unannounced PREA rounds that we found in logbooks
7 occurred at unpredictable times as required.
8 However, upon review of a, a sample of those
9 cases, we found, and it was 37 times that we
10 checked on video, so 38 percent of those cases we
11 reviewed the video and found that the, the tours
12 were not occurring as required. So in these
13 cases, Board staff observed officers signing the
14 -- or captains, deputy wardens, the supervisors
15 signing the logbook and then leaving the unit
16 without rounding or completing appropriate
17 checks. We've made recommendations in that
18 report about that issue.

19 The last report we issued was a
20 supplementary audit of DOC's PREA investigations.
21 This continues and is a supplement from our
22 September 2018 audit. We reviewed a sample of 20
23 investigation closing reports. And these were
24 selected because they were closed in the first

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2 two weeks of February 2019, and thus represented
3 the most recently closed cases that we had
4 received.

5 The, the supplement finds some areas of
6 continuing concern and others of progress.
7 First, there continues to be considerable delays
8 in the Department's investigation, the mean time
9 to case closure for the 20 cases reviewed was 350
10 calendar days. Only two cases were closed within
11 the 90 day period as required by the standards.
12 Second, the board remains concerned that
13 interviews are not always carried out with
14 alleged victims and alleged perpetrators.
15 Alleged perpetrators were interviewed in nine of
16 17 cases where it was reasonable to expect an
17 interview to have taken place. Witnesses were
18 interviewed in 70 percent of cases. These
19 interviews are crucial to understanding the
20 details of the allegation and in allowing the
21 investigator to test and weigh the available
22 evidence. In some of the cases reviewed, there
23 appears to have been too much reliance on Genetec
24 video or existing statements rather than

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2 conducting interviews.

3 DOC has improved their recording of
4 where interviews occurred, but when interviews
5 are conducted, they are not always in private and
6 confidential locations as required. There have
7 been considerable improvements in the inclusion
8 of historical information about alleged victims
9 and alleged perpetrators such as prior
10 allegations of abuse or harassment. There has
11 also been considerable improvement in the
12 inclusion of an analysis of the testimonial and
13 physical evidence in the closing reports. We
14 found that 80 percent of the cases included
15 review of physical evidence like video, bedding
16 or clothing and in 85 percent of the cases, the
17 investigators demonstrated they had reviewed
18 testimonial evidence.

19 The Board remains concerned about the
20 inclusion of any credibility assessments and the
21 reasoning for what is found to be substantiated
22 or unsubstantiated and the quality of those
23 assessments. In 55 percent of cases, the report
24 included a clear indication of how the

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2 investigator decided on the credibility of the
3 various people involved. In a third of cases,
4 the investigator adequately explained how they
5 reached their conclusions on what was or was not
6 substantiated. It is crucial that closing
7 reports include this information. Without it, it
8 is impossible to understand the determinations
9 made by investigators.

10 There continue to be a number of
11 documentation problems in the closing reports.
12 While there has been some improvement on how
13 investigators record the location of victim
14 interviews, the recording of the location of
15 witnesses and alleged perpetrator interviews
16 persists as a problem. The board also remains
17 concerned that decisions regarding the
18 establishment of crime scenes are not recorded
19 adequately. The closing report showed that crime
20 scenes were not established in any of the 20
21 cases and while that might be entirely
22 reasonable, the investigator in only 44 percent
23 of the sexual abuse cases sufficiently explained
24 that decision.

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2 The last point I'll make about
3 documentation problems were that there are
4 different closing report formats used by
5 investigators leading to discrepancies and
6 inconsistencies in what information is collected
7 and recorded. We observed five different formats
8 in this sample of 20 cases.

9 These findings suggest additional work
10 is necessary to implement the existing DOC reform
11 commitments and ultimately to evaluate whether
12 the reforms have led to each and every
13 investigation meeting the minimum standards for
14 timely, robust and comprehensive investigations
15 and thus meaningful outcomes for complainants.

16 Each report provides a crucial window
17 into the robustness of the investigation and
18 should be viewed as the primary way to formally
19 document and integrate the evidence, steps and
20 decisions in each investigation, thereby also
21 demonstrating that the minimum standards have
22 been met. It is the only memo in the
23 investigation file able to integrate the various
24 parts of the file. In addition, the closing

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2 reports can and should provide the Department
3 with an important tool for their own quality
4 assurance mechanisms.

5 The Board advises some caution in
6 generalizing from these findings because of the
7 recentness of the Department's reforms and of
8 course our limited sample here. However, the 20
9 closing reports reviewed do provide some insight
10 into the quality and timeliness of the
11 Department's recent investigations and the
12 findings of this report can assist in their
13 continued efforts towards improvement.

14 We've appreciated the Department's
15 collaborative, thoughtful and very proactive
16 engagement with the Board through this process
17 and thank them again for their ongoing work that
18 they have put into this and to reforming the PREA
19 investigation process overall. Our annual audit
20 will be published in the fall of 2019. That's it
21 for me.

22 MR. CEPHAS: Thank you, Martha, very
23 useful background. So now we'll hear from the
24 Department as the first speaker. Thank you,

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2 Commissioner.

3 MS. CYNTHIA BRANN: Good morning. I'm
4 Cynthia Brann.

5 MS. KING: Turn the mic up.

6 MS. BRANN: Good morning. I'm Cynthia
7 Brann, commissioner of the New York City
8 Department of Correction. And I'd like start by
9 saying that we believe DOC and BOC share the same
10 overall goals, to run a system that is safe,
11 humane and produces positive outcomes. We are
12 working every day on how to do that well. I'm
13 pleased to provide opening remarks today
14 regarding the strides we've made at the
15 Department in our efforts to become PREA
16 compliant in our ongoing commitment to sexual
17 safety and our efforts to adhere to best
18 practices in investigative procedures and
19 documentation, as they relate to sexual abuse
20 complaints.

21 The safety and security of those in the
22 Department's custody and of those who work in the
23 Department facilities are DOC's primary concern.
24 And I take sexual safety personally and

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2 seriously. And before I go further into today's
3 testimony, I'd like to clear up any confusion
4 about the applicability of PREA in correctional
5 facilities. The federal standards and the BOC
6 rule apply to staff on inmate and inmate on
7 inmate sexual abuse and sexual harassment.

8 Any incidents involving inmate on staff
9 or staff on staff sexual abuse or sexual
10 harassment are taken equally seriously. However,
11 they are not classified as PREA matters. Let me
12 be clear. To the extent that there is any
13 indication of potential criminality identified at
14 any time during an investigation in these
15 matters, they are immediately referred to the
16 district attorney's office. Any suggestion that
17 we present a barrier to staff reporting or having
18 direct access to an external law enforcement
19 agency is categorically false. We have zero
20 tolerance for any sexual abuse or sexual
21 harassment against any person.

22 In late 2014, the Department voluntarily
23 began the process of becoming PREA certified and
24 began working with the Moss Group, a highly

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2 respected national leader in PREA compliance
3 consulting in order to improve sexual safety
4 across DOC facilities. The partnership between
5 the Moss Group and DOC has rested on an alignment
6 of leadership values and comprehensive and well
7 planned implementation of strengthening policy
8 and practice, leadership and supervisory
9 development and transformative and skill-based
10 training.

11 To begin, the Moss Group conducted
12 sexual safety assessment at seven of our
13 facilities, with a focus on key standards to
14 support system wide enhancement of compliance
15 with PREA standards. Within 60 days of receiving
16 the Moss Group sexual safety assessment in the
17 Department, we began a system wide effort to
18 institutionalize policies and practices that
19 support and sustain PREA compliance and the
20 prevention of inmate sexual abuse and harassment.

21 Over the past four years, the Department
22 has moved to create and fully staff a PREA
23 investigation and compliance team within the
24 investigations division, implement a

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2 comprehensive PREA policy that focuses on inmate
3 safety, deliver initial and refresher PREA
4 training courses to all uniform and non-uniform
5 DOC staff, as well as all volunteers and
6 contractors and provide all individuals in our
7 custody with internal and external confidential
8 methods of reporting sexual abuse allegations.

9 The Department remains committed to
10 preventing sexual abuse through proper risk
11 assessment and the provision of safe housing.
12 Every individual who comes into our custody goes
13 through an intake process that includes a safety
14 risk assessment. This assessment considers a
15 number of factors that may make an individual
16 vulnerable, including previous sexual abuse,
17 nature of the crime of which they are accused,
18 sexual orientation, whether the individual is
19 small in stature, or appears gender nonconforming
20 and it advises on the need for special housing.

21 In accordance with Executive Order 16,
22 the Department is committed to housing
23 individuals by gender identity and created a
24 first of its kind, in fact first in the nation

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2 transgender housing model. If at any point in
3 the intake process, and individual identifies
4 themselves as transgender female, the individual
5 is transported to the Rose M. Singer Center to
6 complete the intake process and be housed in a
7 transgender new admission housing. Following
8 intake, transgender individuals have the
9 opportunity to be housed either in the
10 Transgender Housing Unit, commonly known as the
11 THU, or in a general population housing facility
12 with cis female individuals.

13 Regardless of where they are housed
14 within RMSC, transgender inmates have the same
15 access to programs, education and healthcare as
16 all the other women in, in Rose's. Transgender
17 female individuals can also elect to be housed in
18 male facilities so long as it does not present a
19 security risks.

20 To date, all transgender men in the
21 Department's custody have been housed at Rose M.
22 Singer, and should a transgender male request to
23 be housed at a male facility, the Department
24 would make the necessary accommodations after

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2 evaluating any potential risk.

3 Over the past year, the Department has
4 worked to further enhance its PREA processes by
5 implementing all eight of the Board's recent
6 audit recommendations, as well as implemented and
7 executed a corrective action plan to address an
8 outstanding administrative case backlog.

9 I want to emphasize that all PREA cases,
10 all allegations, are investigated within 72
11 hours, but due to staffing shortages, finalizing
12 paperwork to administratively close cases had
13 fallen behind. As a result, the Department
14 implemented an aggressive corrective action plan
15 that required the closure of 1,216 sexual assault
16 cases, raising the staff of PREA investigators to
17 30, and hiring of additional PREA team managers
18 by the end of February 2019.

19 The Department successfully met this
20 goal and I am incredibly proud of the hard work
21 of everyone who contributed that, to that effort,
22 especially the PREA team. The Department has
23 worked collaboratively with the Department of
24 Investigation, the city's district attorneys to

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2 appropriately handle sexual abuse and sexual
3 harassment complaints. Every sexual abuse case
4 that comes to the PREA investigation team is
5 immediately referred to DOI via e-mail. The PREA
6 team awaits notification from DOI that DOC is
7 authorized to proceed before commencing its
8 investigation. This process does not measurably
9 delay our investigation because DOI is prompt in
10 giving us their reply. If, during the
11 Department's investigation, investigators uncover
12 evidence that supports criminality, the
13 Department then refers the matter back again to
14 DOI and/or to the DA's office.

15 In the coming months, the Department
16 will undergo a federal audit to assess its PREA
17 compliance. The preliminary results of a mock
18 audit at the Rose M. Singer Center performed by
19 the Moss Group have yielded promising results,
20 which I am happy to share a copy of with the
21 Board later today. The mock audit indicated
22 ratings of compliance with 74 percent of the
23 standards and 92 percent of the sub-standards.

24 In comparison, a mock audit in 2016

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2 indicated ratings of compliance with 17 percent
3 of the standards and 31 percent of the sub-
4 standards. The auditor was impressed by how
5 knowledgeable the corrections officers and other
6 staff members were about PREA, their first
7 responding duties and evidence collection. Also
8 impressive was the testing for recruits,
9 measuring the level of understanding staff had
10 retained following PREA training.

11 I am further encouraged by the Nunez
12 Monitor's Report, which showed that the
13 Department has continued to improve in its PREA
14 compliance, and in the timeliness of its case
15 closure rate. In order to evaluate the quality
16 of the Department's investigations, the
17 monitoring team evaluated investigation files for
18 half of the investigations closed during the
19 recent monitoring period.

20 Although the report noted areas wherein
21 the Department could improve, overall, the
22 monitors found, and I quote, improvements over
23 cases reviewed in the past, particularly in
24 timely response to the scene, interviews with

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2 youth witnesses where investigators are asking
3 key questions and relevant follow-up questions
4 and detailed synopsis of what was viewed on
5 Genetec or handheld footage.

6 The monitoring team monitor's report
7 concluded that the PREA investigators' findings
8 were reasonable based on evidence and that
9 overall, significant improvement in the
10 timeliness and quality of investigations of
11 sexual abuse is evident and the monitoring team
12 is encouraged by the Department's progress.

13 I credit this improvement to the hard
14 work of Assistant Commissioner Faye Yelardy,
15 Senior Correctional Administrator Prechelle
16 Shannon, Deputy Commissioner Sarena Townsend, and
17 the entire PREA Team, the hard work of the
18 Department's leadership team, and our officers'
19 dedicated commitment to sexual safety.

20 At this time I will invite Deputy
21 Commissioner Sarena Townsend to the podium to
22 provide testimony on behalf of the Department
23 regarding PREA. Thank you.

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2 MS. SARENA TOWNSEND: Thank you,
3 Commissioner. Good Morning. My name is Sarena
4 Townsend. I'm the Deputy Commissioner of
5 Investigation and Trials for the Department of
6 Correction. I am pleased to speak with you today
7 to provide information and updates to the
8 Department's efforts to become PREA certified,
9 the strides we have taken to address concerns
10 previously raised by the Board and the City
11 Council, and our collective efforts to increase
12 sexual safety across the Department.

13 As an update from last year, since April
14 of 2018, the Department closed over 1,300 PREA
15 reportable cases, which includes the 1,216 cases
16 previously identified as the PREA backlog. There
17 are currently 400 open, PREA reportable cases
18 that comprise the secondary backlog, which again
19 was an expected outcome of focusing on older
20 cases, and all of which we anticipate having
21 closed by August 2019. As of last week, the
22 Department did not have any PREA reportable
23 adolescent cases open older than 90 days.

24 When the Department last discussed its

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2 PREA operations, we reported that our case
3 substantiation rate was similar to the national
4 average. While we have reason to believe this
5 will continue to be true of current cases, the
6 closing out of lower priority cases from 2015 and
7 2016 has resulted in a lowered substantiation
8 rate for this review period. The PREA backlog
9 was created as a result of deprioritizing closing
10 paperwork on cases that had been identified by
11 investigators as unlikely to be substantiated.
12 It should not be surprising then, that focusing
13 on these cases led to a lower substantiation
14 rate.

15 Finally, I would like to note that the
16 current national substantiation rate was produced
17 in 201- 2017 using data from 2015. We anticipate
18 the Bureau of Justice Statistics will announce an
19 updated PREA case substantiation rate in 2020
20 using data from 2018. We believe that upcoming
21 figure will ultimately be more relevant in
22 comparison for evaluating the Department's
23 substantiation rate today than one based on 2015
24 numbers.

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2 As the Commissioner described in her
3 remarks, the Department has greatly expanded its
4 PREA Investigations Team. In the last year, the
5 unit has nearly doubled in size, comprised of an
6 investigations director, a trials director, a
7 deputy director, six supervising investigators,
8 one agency attorney, 30 investigators, and two
9 data analysts. Expanding the PREA unit has
10 allowed the Department to have the resources to
11 investigate, review, and close cases in a timely
12 manner.

13 Although every case is investigated
14 within 72 hours, we know that the additional, the
15 additional effort necessary to administratively
16 close cases is a critical and meaningful aspect
17 of delivering justice for victims of sexual
18 violence and building institutional trust in the
19 Department's commitment to sexual safety.

20 Beginning in September 2019, we
21 anticipate that all PREA cases will be fully
22 closed within 90 days of an allegation unless
23 there is an open external investigation that bars
24 the Department from doing so.

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2 In advance of this hearing, the Board
3 audited the Department's unannounced PREA rounds
4 and the PREA investigation team's closing memos.
5 PREA unannounced rounds are a critical component
6 of institutional sexual safety and we are pleased
7 that the Board's audit found that in compliance
8 with minimum standards, these rounds are
9 happening and happening at unpredictable hours.
10 While I will leave additional details and
11 questions regarding the unannounced rounding
12 practice to my colleague, Assistant Commissioner
13 for PREA, Faye Yelardy, I do want to share that
14 we have reviewed the Board's three
15 recommendations from this report and I'm proud to
16 say that all three are either already enacted or
17 underway.

18 In the weeks leading up to this hearing,
19 I was pleased to have the opportunity to speak
20 with the Board's staff several times about the
21 closing memo audit. I thank you for reviewing
22 the 18 pages of notes we sent over after your
23 initial draft. I was glad to see some of the
24 Department's notes incorporated into the final

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2 draft. I appreciate the spirit of the
3 collaboration with which the Board approaches
4 these reports and the Department shares your
5 collective goal of accurate and transparent
6 reporting.

7 Before we move to the questions phase of
8 this hearing, I would like to take a minute to
9 discuss several key findings from the Board's
10 audit and offer additional explanation about the
11 Department's practices.

12 The Department takes its responsibility
13 to separate incarcerated individuals from their
14 alleged abuser seriously and acts expeditiously
15 whenever possible. While we recognize that this
16 may not always be noted in the closing memo,
17 separation between victim, or alleged victim and
18 alleged abuser through an order of separation, is
19 standard Departmental practice. While an
20 investigator may not note the order of separation
21 in the closing memo, it is included in the full
22 investigation file.

23 In previous audits, the Board raised
24 concerns about confidential interview settings.

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2 While investigators have always strived to
3 conduct interviews confidentially, due to
4 constraints of the jail environment, it had not
5 been standard practice. The Department took the
6 concerns the Board raised in April 2018
7 seriously, and has since set up a system for
8 confidential interviews. Every DOC facility now
9 has a location set up for these interviews.
10 While we can certainly continue to improve our
11 operational processes, I do want to take a moment
12 to acknowledge that where we are today, in
13 comparison with where we've been, is a milestone
14 achievement.

15 Finally, I want to stress that this
16 closing memo audit should only be consider just
17 that, an audit of closing memos. It should not
18 be confused with an audit of the quality of
19 investigations into PREA complaints. We
20 recognize that it is important for closing memos
21 to be robust in their description of the
22 investigations, but ultimately they are an
23 administrative tool that can't replace the
24 entirety of the evidence and information within

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2 the full investigative file.

3 Moving forward, we would welcome the
4 opportunity to discuss the methodology of the
5 Board's audit with the Board and make
6 recommendations as to what additional information
7 within the full investigation file should be
8 considered during future audits. Additionally,
9 we don't believe auditing 20 of more than 1,300
10 cases is an appropriate sample size for this
11 audit type. In future audits, we do urge the
12 Board widen its scope and evaluate a
13 statistically significant number of cases in
14 order to draw its conclusions.

15 The Department continues to work hard at
16 improving the quality of its PREA investigations.
17 The unit has thrived under a team of leaders and
18 supervisors who have sexual assault investigative
19 backgrounds, both on the criminal and
20 administrative level. Moving forward, we will
21 continue to refine our PREA investigative
22 practices and look forward to the integration of
23 PREA cases into the case management system, which
24 we anticipate will be ready for use next year.

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2 I am proud to be joined this morning by
3 Assistant Commissioner Faye Yelardy and we are
4 prepared to discuss any questions you may have
5 regarding the Department's continued compliance
6 with PREA Investigations at this time.

7 MR. CEPHAS: Thanks very much. Anybody?

8 MS. TOWNSEND: Thank you.

9 MR. ROBERT L. COHEN: Can you hear me?
10 No. Can you hear me now? Yes. First, I, I
11 would like to, to, to acknowledge and appreciate
12 the -- no?

13 MS. KING: You need to get it closer.

14 MR. COHEN: Hello. Yeah, I would like
15 to, Bobby Cohen, Board of Correction, to
16 acknowledge and appreciate the tremendous work
17 the Department has done. This is, this is an
18 issue which we can't spend enough, we can't spend
19 enough time on. It is something that's
20 characteristic of prisons and jails. It's part
21 of the legend, the, the, the, the, the social
22 notion of jails are places where rape takes
23 place. And it is, it is very important that we
24 address it and I, and I think the Department, you

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2 know, the improvement that's been demonstrated by
3 our audits, and by, and by the Nunez audits is
4 accurate and well-deserved. So --

5 MS. TOWNSEND: Thank you.

6 MR. COHEN: -- it's very nice to be able
7 to, to say that. I have some questions about,
8 about the, the DOI, DOI is not here today, which
9 I think is, is too bad. We, we asked them to
10 come, invited them and they chose not to. They
11 have given us testimony, but I don't think that's
12 adequate because we can't ask them questions, so
13 I have to ask you.

14 MS. TOWNSEND: I'll do my best.

15 MR. COHEN: Well, it's very important.
16 So, you know, I think the Commissioner stated
17 that DOI does not delay the, the processing. In,
18 in the Nunez report that just issued, DOI was
19 identified as, as, as delaying processing of, of
20 reports. So do you have numbers of cases you
21 refer versus cases -- they said there were only
22 23 cases that they investigated over the past
23 several years, since the beginning of, of 2017,
24 when the rule went into, to effect. Does that

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2 mean that there are only 23 cases that they could
3 hold up for you? Do, do you, how long does it
4 take for you to get the response back to them
5 that they're not investigating? Because Nunez
6 said that that often went very long.

7 MS. TOWNSEND: So with respect to their
8 clearing a case to us for investigation, that
9 does happen pretty promptly. We advise them of
10 what we have immediately, as soon as we get a
11 sexual abuse allegation. We advise them via e-
12 mail, you know, this is what we have, this is the
13 allegation, are we clear to investigate or will
14 you be keeping it. And for the most part, they
15 do have a quick turnaround when they reject it
16 and send it back to us. We do get that rel-,
17 very quickly. And it has not impacted our
18 ability to investigate within the first 72 hours.

19 Where they choose to take the case and
20 investigate, you know, I can't comment on that
21 because I'm not part of DOI, but obviously, each
22 case has its own intricacies and it may take
23 them, you know, a certain amount of time to
24 conduct a criminal investigation.

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2 MR. COHEN: The Nunez Report, Report no-
3 noted that there were regular meetings held
4 between the Department and other agencies
5 regarding cases that were being investigated by
6 others. Do you have meetings like that with DOI?

7 MS. TOWNSEND: We do. They are, we, we
8 have meetings that are frequent with respect to
9 cases that they are investigating. Not only DOI,
10 but if external district attorneys are
11 investigating, so that we can be apprised of the
12 status.

13 MR. COHEN: In the DOI response to the
14 Board, they gave four reasons why they would or
15 would not take a case, among others. They said
16 because the names of the per-, of the, of the
17 perpetrator and the complainant were not given.
18 That was a reason they would not take the case,
19 and I believe that's an issue, that, you know,
20 they just didn't have the names. That there was
21 no physical interaction, which made a lot of
22 sense to, to me, that the person, that the
23 perpetrator, in this case, it was, it was a
24 security staff had a record of prior complaints

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2 which -- and the fourth was that they did not
3 have adequate investigators to take on the case.
4 That's what DOI said to the Board of Correction
5 as to why they would or would not take a case.
6 The -- I'm, I'm, I'm concerned about that, which
7 you, you can't answer for, although we'll, we'll,
8 we'll inquire later. But, but let me just give
9 that back to you. I'm con-, you know, I
10 appreciate how much work has been done, but could
11 you give us some back of the envelope calculation
12 of why you think 30 investigators and the number
13 of supervisors you have are going to get up to
14 date?

15 I, I have my, I would imagine that
16 closing cases from three years ago would take
17 less time than closing a case tomorrow. So, so
18 what, what is the basis for, and this, I'm, you
19 know, we want to make sure that you have adequate
20 staff for this, for this --

21 MS. TOWNSEND: Yes.

22 MR. COHEN: -- for this project. So
23 what is the basis of you saying 30 investigators
24 and then supervisors you have is, is, is enough?

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2 DOI has told us it's not enough in their letter,
3 that they don't have enough.

4 MS. TOWNSEND: Well, we have 30
5 investigators just handling PREA cases alone.
6 I'm not sure if DOI was reporting the number of
7 investigators they have overall to handle all
8 cases, or just PREA related cases, so I'm not
9 sure --

10 MR. COHEN: They reported 40
11 investigators for all PREA and Nunez cases in
12 their letter to us.

13 MS. TOWNSEND: We have 30 investigators
14 for PREA cases alone. So any sexual abuse and
15 sexual harassment cases that come through,
16 whether they're PREA reportable or non-PREA
17 reportable, plus we have additional supervisory
18 staff, six supervising investigators, a deputy
19 director and a director. I believe that it's not
20 just quantity, it's quality. I believe in my
21 team we have very talented individuals who have
22 been very well trained and continue to be trained
23 and I think that with the appropriate structure
24 and with the appropriate leadership and with a

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2 strategy, we have been able to formulate the
3 ability to close all of these cases in a, in an
4 ongoing timely fashion coming in the future, with
5 the number of investigators and supervisors that
6 we have.

7 We have a, a, a very specific strategy
8 with respect to closing the secondary small
9 backlog by August. We have a team set up to
10 handle, nine of them are handling the, those 400
11 cases while the rest of the team continues to
12 handle the cases that are coming through. So we
13 took a very analytical, strategic approach to
14 this and that is why we feel comfortable that our
15 staff right now is able to maintain, will be able
16 to maintain the 90 day requirement after August
17 of this year.

18 MR. COHEN: Well, I hope that's the
19 case. I think we're going to, I'm going to ask
20 sort of for the calculation that you have in
21 terms of the number of, amount of number of days
22 that you think you can get something done in and
23 how many staff you have to, to, to do it. We're
24 going to say it with the numbers. I really,

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2 obviously, you've done a tremendous, you know,
3 work on the, on the backlog, but I just want to
4 make sure you have enough. I have other
5 questions, but I'd like to give others a chance.

6 MS. TOWNSEND: Sure. And I have answers
7 to your questions from last time.

8 MR. COHEN: Oh, thank you.

9 JUDGE BRYANNE HAMILL: Alright. I also
10 want to echo the comments of Dr. Cohen. I've
11 seen some really significant progress, and as
12 Commissioner Brann indicated, your work started
13 in 2014. I was included in some of those
14 meetings, and I saw exactly what DOC was done
15 before BOC became involved and rulemaking in this
16 area. So thank you for the progress that's been
17 made. We obviously know there's more progress
18 to, to be done. I'm delighted to hear that
19 investigations are occurring within 72 hours, but
20 I want to focus a couple of questions on your
21 investigations, and then we'll pass this around
22 and I'll, we'll come back to some more questions.
23 I'll ask you a couple and then you can just
24 answer them.

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2 Why, you know, why are there are so few
3 allegations that are being substantiated? And
4 how do your investigators evaluate credibility?
5 As a former sex abuse prosecutor I know that this
6 is really critical to be able to evaluate the
7 credibility. And apart from, has DOC
8 substantiated any allegation of staff sexual
9 abuse or abuse by a person in custody without
10 either a video or a DNA corroboration? What
11 other kind of physical evidence are you actually
12 gathering within those 72 hours?

13 MS. TOWNSEND: Thank you, yes, I'll
14 answer all of those questions. The
15 substantiation rate is at this time, it is low,
16 however, it is not surprising, for a few reasons.
17 First, of all --

18 MR. CEPHAS: Can you just tell us what
19 the rate is?

20 MS. TOWNSEND: Well, and I would like to
21 address that actually. I do think that it is not
22 necessarily possible to calculate a rate before
23 all of the cases are closed from that year. So,
24 for example, the rate that board has mentioned,

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2 or the, the number of cases I think the board had
3 mentioned that between 2107 and 2018, there had
4 been eight, eight cases substantiated. That,
5 that might be true for the time period that
6 you've received that information, however,
7 because we still have 2017 and 2018 cases open,
8 it's really not a realistic way to look at the
9 data.

10 For example, just in, just since April
11 of 2018, we have substantiated 26 PREA reportable
12 cases. And those 26 aren't even just from 2018.
13 They go back to 2016 and 2017 at times. And so
14 when we talk about our substantiation rate, say
15 from 2016 or 2017, before we're able to even
16 close all of those cases, it's not necessarily
17 accurate. Which is why I think, going forward
18 when we are able to keep up with the caseloads,
19 post August of this year, and we're able to close
20 cases within 90 days, it would be a much more
21 accurate measure to look at our substantiation
22 rate at that time, because we'll be closing cases
23 in real time by then and we won't have this
24 partial data for you. And so --

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2 JUDGE HAMILL: Well, let me just
3 ask about that though, in terms of
4 substantiation, aren't you more likely to
5 substantiate within a relatively short time of
6 conducting the investigation versus ones that
7 have been pending for months?

8 MS. TOWNSEND: Yes.

9 JUDGE HAMILL: Without, without closure?
10 Because I would think you're not likely to
11 substantiate those or you would have done, pretty
12 early on.

13 MS. TOWNSEND: Yes.

14 JUDGE HAMILL: You're not likely to find
15 evidence months later.

16 MS. TOWNSEND: You are correct. And I
17 think that it's a symptom of the large backlog
18 that had and the amount of cases that we had and
19 I can say that as of now, with the smaller
20 caseloads that we have and the ability to
21 investigate them and close them more timely, we
22 are going to see more of that kind of pattern
23 where we're going to be able to close those
24 cases, especially the substantiated ones, much

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2 earlier. And so the rate is not necessarily
3 accurate when reported, because the cases weren't
4 all closed yet. However, going forward, I think
5 we'll have a better rate.

6 That being said, in working with the
7 Moss Group and in looking at national averages
8 and in looking at the patterns of reported cases
9 after PREA is implemented, we do see that it is
10 not uncommon for the number of allegations to
11 rise, but the substantiation rate not to rise in
12 kind. That is not uncommon and it's not just
13 happening here, it's happening nationally. And I
14 am curious to see what the reports will be like
15 in 2020, when they evaluate the 2018 cases, the
16 more recent cases. I think at that time, it
17 would be a better time period to, to really
18 calculate where we're at with respect to the
19 substantiation rate.

20 I also share your concern as a former
21 sex, sex crimes prosecutor myself, and I take
22 these issues extraordinarily seriously, to make
23 sure that our investigators are evaluating
24 credibility in the appropriate fashion and not

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2 only relying on physical evidence. I've tried
3 many a case, you know, and been able to prove
4 cases beyond a reasonable doubt without DNA
5 evidence and without video. And our standard is
6 preponderance of evidence. So I completely agree
7 with you. We will use everything in our power to
8 evaluate credibility, you know, consistency,
9 corroborating evidence, whether it's testimonial,
10 physical, or forensic. We take all of that into
11 consideration.

12 I will say though that because of the
13 fact that the facilities do have a lot of video
14 coverage, it oftentimes is rare to have a case
15 where we don't have some video, even if it's not
16 video of the act itself, there is oftentimes
17 corroborating video that could support
18 substantiation, such as, you know, maybe we don't
19 see the act itself, but we do see that the staff
20 member, and the incarcerated individual were
21 standing together immediately prior to the
22 incident and that is captured on video. So we do
23 try to take everything that we can, including
24 physical evidence into account when we consider

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2 substantiating, unsubstantiating or unbounding
3 cases.

4 JUDGE HAMILL: Okay. And what about the
5 develop-, the establishment of crime scenes? We
6 understand that that's been an issue. What,
7 what's been the problem with that?

8 MS. TOWNSEND: So, I think the issue
9 that the board has mentioned is not about the
10 establishment of the crime scene, but just about
11 the documentation in our closing memos regarding
12 why a crime scene would or would not be set up.
13 The cases that were reviewed, the 20 cases that
14 were reviewed, there wasn't a crime scene
15 necessary to set up on those kinds of cases. And
16 I don't think the Board necessarily disagreed
17 with that, but the Board's concern is we just
18 have to get better at documenting why we're not
19 setting up the crime scene. And, ad that message
20 has been duly noted, and we will be improving our
21 closing memos with respect to documenting why.
22 For the most part, the reason why is there
23 wouldn't be evidence to collect.

24 JUDGE HAMILL: Okay. And just can you

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2 kind of itemize some of the other corroborating
3 evidence that, that you all actually do look for
4 and find when these are timely reported?

5 MS. TOWNSEND: Yes, sure.

6 JUDGE HAMILL: The sex abuse in
7 particular.

8 MS. TOWNSEND: Absolutely. So
9 obviously, Genetec video is very important. But
10 also we review phone calls that are, that are
11 made that are incarcerated individual, the
12 alleged victim as well as other potential
13 witnesses. We also conduct interviews of the
14 incarcerated individual, as well as if there is
15 any possibility that there were witnesses to the
16 event, we will interview those witnesses as well,
17 as long as they are willing to cooperate with us.

18 We conduct interviews of staff members
19 as well, whether it's the alleged perpetrator or
20 other staff members who may have been a witness
21 to, to this situation. So we do collect
22 testimonial evidence, and of course, if there's
23 ever any allegation of, of any, anything that
24 would develop any forensic evidence, we would

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2 absolutely collect forensic evidence, whether it
3 be swabs or collecting physical evidence, such as
4 clothing or sheets, bedding, things of that
5 nature, to be analyzed by OCME for, for DNA. So
6 --

7 JUDGE HAMILL: And one last question
8 before I pass this along.

9 MS. TOWNSEND: Sure.

10 JUDGE HAMILL: Thank you so much for
11 answering the questions.

12 MS. TOWNSEND: You're welcome.

13 JUDGE HAMILL: Is the interviewing
14 that's, that's being conducted, is this trauma
15 informed interviewing and are the victims given
16 an opportunity to have a victim advocate present
17 with them during the interview?

18 MS. TOWNSEND: The trauma int-, I'm glad
19 you, you raised that. We had sent four of our
20 investigators for that ver-, for the FEDI
21 training, the Forensic Experiential Trauma
22 Interview training, and we were incredibly
23 impressed by that training. I think anybody who
24 knows anything about interviewing potential

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2 victims who've been through trauma knows that
3 this training is, is very highly regarded.

4 And so our department is working to get
5 all of our PREA investigators trained in, in FEDI
6 training. And also potentially even get trained
7 to become FEDI trainers so that we can continue
8 to do that in-house. That being said, we, every
9 single one of our PREA investigators are already
10 exposed to and have already been trained in, in
11 taking interviews for victims of, who've been
12 involved in trauma. But we do believe in, in
13 giving as much training as possible, especially
14 of the high quality that FEDI provides. And so
15 that is something we are very involved in.

16 JUDGE HAMILL: And in terms of
17 opportunity and access to a victim advocate?

18 MS. TOWNSEND: I don't, I don't know if
19 that's something -- I'm sorry, go ahead, Faye.
20 I'm going to give that to my colleague.

21 MS. FAYE YELARDY: So, hi, good morning.
22 My name is Faye Yelardy, Assistant Commissioner
23 for PREA. We do have a MOU, memoran- memorandum
24 of understanding, with Safe Horizons and we make

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2 sure that they have that information. It's, it's
3 on the posters that we have inside the
4 facilities. And also, CHS has their sexual abuse
5 advocacy program.

6 MR. STANLEY RICHARDS: Could you --
7 thank you. First I want to also acknowledge the
8 commitment and the progress that the Department
9 has been making on this issue. There's no
10 question that the way the Department has been
11 pursuing working on this issue, it's clear that
12 it is a commitment there and we're going to see
13 some light at the end of this tunnel.

14 MS. TOWNSEND: Thank you.

15 MR. RICHARDS: So, thank you for your
16 work. But I want to understand sort of the
17 relationship between the Department of
18 Corrections and DOI. Do all complaints go to
19 DOI? Right, so that's one question. The second
20 part is once DOI decides to keep a complaint and
21 do the investigation, are you informed of their
22 progress? Are you in, in, in the loop on the
23 investigation? And the third one is what are you
24 doing when those allegations come up, being that

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2 70 percent of the allegations are staff on
3 detainee, what are you doing to ensure the safety
4 of the person leveraging the complaint and staff?

5 MS. TOWNSEND: Thank you. So every
6 single sexual abuse allegation that comes to us
7 immediately gets referred to the Department of
8 Investigation to see if they want to take that
9 case or if they want to clear it back to us to
10 investigate. Even if they do clear it back to us
11 for investigation, if during our investigation,
12 we uncover criminality, we will refer it either
13 to the DA's office or also to the Department of
14 Investigation, refer it back to them, to let them
15 know. So that, yes, we do refer every single
16 one, every single sex abuse case.

17 And are we informed of progress? We do
18 try to maintain a good relationship with DOI and
19 make sure that we are informed of the progress.
20 Now, in the interim, when a case is being
21 investigated criminally, we stand down. We are
22 told to stand down from our investigation. It
23 makes sense, we don't want to step on any toes,
24 we don't want to impede on a criminal

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2 investigation certainly. And so we stand down.

3 But in the interim, we will take safety
4 precautions. The individual will be modified
5 with no inmate contact during that process, so
6 that we can make sure that there is no potential
7 risk to anybody if they are going to substantiate
8 criminality with that individual. And so, and,
9 and after the investigation takes place by DOI,
10 they will make a decision whether they want to
11 refer the case criminally to the district
12 attorney's office or if they, if they want to
13 give it back to us for administrative charges or
14 both.

15 We have a zero tolerance policy. Sexual
16 abuse cases that come to us substantiated from
17 DOI, we don't negotiate. That person either has
18 to resign or we will take them to trial and seek
19 termination. So that's, that's how we manage
20 that.

21 JUDGE HAMILL: Can I just ask a follow-
22 up, how many staff have been terminated as a
23 result of substantiated sexual abuse?

24 MS. TOWNSEND: So --

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2 JUDGE HAMILL: You said that's your
3 policy.

4 MS. TOWNSEND: Yes.

5 JUDGE HAMILL: So how many have
6 [unintelligible] [00:57:46]?

7 MS. TOWNSEND: Every single individual,
8 every single case that has come to us, sexual
9 assault that has been substantiated from DOI, the
10 individual either has resigned, which is what --
11 essentially they have, we have an opportunity to
12 say listen, you can agree to just go or we're
13 going to seek your termination. We cannot
14 terminate without going through the, a judicial
15 process. So they have that option. They can
16 resign. Or they've been terminated after, after
17 an OATH trial, or at times, they will leave with
18 charges pended. We can't necessarily prevent
19 that, but they will leave the Department if they
20 know that we are going to seek their termination.
21 It's possible that they will leave. What happens
22 there is we defer prosecution, so that if they
23 ever try to come back, we reopen the case and we
24 will seek their termination.

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2 JUDGE HAMILL: How many though?

3 MS. TOWNSEND: All, all of them. All of
4 them have resulted --

5 MR. CEPHAS: But what's the number,
6 that's what she looking for.

7 MS. TOWNSEND: Oh, I'm sorry. I'll give
8 you that number. Just one second. So we've had
9 five individuals resign during the criminal
10 investigation, which means they resigned while
11 DOI and/or the district attorney were
12 investigating them. We had four individuals who
13 resigned who had charges pending with us, DOC,
14 and we have had two people terminated after
15 trial.

16 Now, I, I actually think that -- I would
17 like to give an example of our zero tolerance
18 policy with respect to this. We had a case last
19 year where there was an individual who was
20 charged with grabbing the testicles of an
21 incarcerated inmate and using homophobic slurs to
22 that inmate. The individual refused to resign
23 and we took the case to trial at OATH and we
24 sought termination. We were successful in

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2 proving the individual's guilt, the OATH judge
3 stated that in all respects, the individual was
4 found guilty. However, the OATH judge is allowed
5 to have a recommendation at the end of that with
6 respect to appropriate discipline. And the OATH
7 judge did not terminate, the OATH judge stated
8 that there should be a certain number of
9 compensatory days docked from this individual and
10 that that would be the appropriate discipline.

11 Our Commissioner terminated that
12 individual over the, that OATH decision, and the
13 individual appealed the termination. And we were
14 successful at the appeal and were able to keep
15 the individual terminated. And I think that that
16 is a great example of our commitment to zero
17 tolerance for these kinds of cases.

18 JUDGE HAMILL: Thank you.

19 MR. CEPHAS: Thank you. Any other
20 questions?

21 MR. RICHARDS: I'll go again?

22 MR. CEPHAS: Yeah, I -- Jackie, go.

23 MS. JACQUELINE SHERMAN: I got this one,
24 thank you. I'd like to join my colleagues in

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2 acknowledging the progress and commitment of the
3 Department to making further progress on full
4 implementation. And I'd like to hear more about
5 the Department's reaction to, response to the
6 audit on unannounced supervisory rounds.

7 MS. TOWNSEND: Yes, I'll defer to my
8 colleague.

9 MS. SHERMAN: Thank you.

10 MR. CEPHAS: One -- just, on that same
11 question, I had a similar question and that is, I
12 think it was reported somewhere that the logbook
13 that is, records those rounds sometimes contains
14 false information in that a certain number of the
15 logs that are recorded, the actual related round
16 never took place. In other words, the logbook
17 would record a round, but did that, that the,
18 the, that the round, round itself actually never
19 occurred and so in terms, in following up with
20 Jackie's question, I would just be curious to
21 know what the Department's response to that
22 particular problem might be.

23 MS. YELARDY: Okay. So, so, thank you,
24 thank you for bringing that up. And we also

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2 would like to thank the Board for bringing that

3 to our attention. So we received 20, I believe

4 from the Board, indicating that the rounds were

5 indicated in the logbook, but had not taken

6 place. And so out of the, the 20, we gave

7 corrective interviews, we had to give verbal

8 because the allegation was over 30 days. We also

9 realized that out of the 20, four of the -- when

10 we looked at the Genetec, four of the rounds had

11 actually been done. And we can discuss that with

12 the Board at a, at a later time. But also we put

13 out, the chief made sure to put out another

14 teletype emphasizing the importance of the

15 unannounced rounds, right. We also took the

16 Board's recommendations and we're going to

17 implement those recommendations. And I'm glad to

18 say that one of those recommendations, we were

19 already in the process of doing, which was

20 revising the PREA directive to include the

21 unannounced rounds in there, to give staff

22 additional direction on how important the

23 unannounced rounds are and what they consist of.

24 And so, in the teletype, we reiterated

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2 and it just went out last week, that the tours
3 have to be done and they have to be conducted at
4 least once every shift, and the tours need to
5 indicate or ensure that all the doors and all the
6 windows of the cells are not covered. We need to
7 make sure that if there's any area that's not
8 seen by the officer or on camera, which we don't
9 have many of, I'm, I'm glad to also announce that
10 staff needs to go into those areas to make sure
11 there's no inappropriate activity going on in
12 those areas, continue with the tours being
13 unannounced, and also, we're implementing our own
14 internal audit process that every two weeks,
15 somebody needs to go around, our PCMs, our PREA
16 compliance managers, and our PREA ambassadors
17 already do an audit of the logbook, but in
18 addition to the log book, we are also working
19 with the chief to have access, some of those
20 individuals to have access to Genetec to do what
21 the Board did, look at the logbook and also check
22 Genetec. And we plan on doing that every two
23 weeks to ensure compliance with the unannounced
24 rounds because they are very important.

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2 MR. CEPHAS: You know, for me, there's,
3 there's two issues here. For me, there's,
4 there's two issues here. One is whether or not
5 the rounds are actually conducted. But the
6 second is falsifying logbook records. So
7 frankly, I think that may be even more serious
8 problem for me, that the records are deli-, -- it
9 seems to me the records are deliberately
10 falsified. So I just would suggest that's an
11 area where there's some additional concern.

12 MS. YELARDY: We are looking into that,
13 and like I said, there were some command
14 disciplines given to staff, and also, the
15 teletype also warns and lets them know that if
16 warranted, disciplinary action will be given to
17 staff members who, who do that. I believe the,
18 the chief wants to add to that.

19 CHIEF HAZEL JENNINGS: Yes, hi, good
20 morning, Hazel Jennings, Chief of the Department.
21 So, in conjunction to looking at video, we will
22 doing our own internal monitoring. We're also
23 going to be doing a robust training in reference
24 to the unannounced rounds, with our supervisors

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2 that we meet with bi-weekly. And we're going to
3 be tasking our video monitoring unit, which we
4 established 2018 with looking at video just
5 specifically in reference to PREA. So staff will
6 be reminded that if they fail to do the
7 unannounced round and they're just making logbook
8 entries, there will be discipline associated with
9 that. Okay?

10 MS. SHERMAN: Can I just follow up with
11 a question on how the Department uses the
12 findings from rounds that have been conducted and
13 whether there are plans to enhance any process
14 that is currently in existence to use findings
15 from rounds to drive further safety improvements?

16 MS. YELARDY: So like we said, what
17 we're going to do is on top of looking at the
18 logbooks, we are going to also look at Genetec,
19 the PREA unit, our additional unit who have, who
20 has the Genetec, I'm sorry, you're shaking your
21 head, am I not answering? I'm sorry.

22 MS. SHERMAN: Well, my question is more
23 focused on the findings from rounds. I
24 understand the improvements to the internal audit

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2 process. But based on what is found, what has
3 been found in rounds to date and anticipated
4 future information how will the Department and
5 how does the Department use the information that
6 is generated from the rounds to drive practice
7 improvements.

8 MS. YELARDY: My apologies. I didn't
9 understand the question. So what we've found in
10 our unannounced rounds was a lot of times, the
11 incarcerated individuals would have the cell
12 doors or the cell windows blocked, right, because
13 they want additional privacy. We have to
14 emphasize to staff and we have been and are going
15 to continue to emphasize to staff that that
16 cannot happen. And so we use the unannounced
17 rounds and the findings of the unannounced rounds
18 to tell staff listen, make sure we tell the
19 incarcerated individuals to remove those items
20 that might be blocking cell doors, that might be
21 blocking windows, to give us a clear view inside
22 of the cell area to make sure that there's
23 nothing inappropriate going on.

24 MR. CEPHAS: We're going to have to just

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2 interrupt the schedule here for a bit. We need
3 to call up the Bronx DA now, and, and we'll come
4 back to the Department when we --

5 MR. MICHAEL J. REGAN: Can I just ask
6 one question before we do that? Hi. Good
7 morning. Welcome back.

8 MS. TOWNSEND: Thank you.

9 MR. REGAN: I just had a question for
10 the Bronx DA about the Bronx DA. You talked and,
11 and you're doing a terrific job, you know, Bitz
12 [phonetic] reported to me at the Fire Department
13 and I know the size of the crowd that they have,
14 and I know to have the headcount that you've
15 secured is incredible bureaucratic success,
16 right. It's just unbelievable. What, what I'd
17 like to understand is DOI, if you see, if you
18 see, if you see evidence of criminality, can you
19 go right to the DA? Do you, if, if, if DOI takes
20 a pass, and says, particularly given their
21 comments here, where they say they took a pass
22 because there was no name attached, right. That
23 to me is ridiculous. So, so do you have the
24 wherewithal, under the protocols you have, to

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2 just go right to the DA and just talk to the DA
3 about it?

4 MS. TOWNSEND: Yes.

5 MR. REGAN: Okay. Thank you. I wanted
6 that question before the DA came and talked to
7 us.

8 MS. DARCEL CLARK: No pressure.

9 MR. REGAN: Thank you.

10 MR. CEPHAS: Good morning, DA Clark.

11 MS. CLARK: Good morning. Thank you for
12 changing the schedule and allowing me to speak
13 first. I have another engagement that I have to
14 go to that I was committed to before I knew about
15 this hearing, so again, I apologize for that, and
16 thank you for giving me this opportunity to
17 appear before you, especially during this month
18 of April, which is Sexual Assault Awareness
19 Month, to discuss the successes, the challenges
20 and the recommendations in the area of preventing
21 and responding to sexual abuse and sexual
22 harassment in New York City jails.

23 Since I became DA, with jurisdiction
24 over Rikers Island jails, I have said time and

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2 time again that I will not tolerate any type of
3 violence or sexual abuse by detainees or inmates
4 against each other, by staff against inmates, or
5 by inmates on staff. I have vowed to prosecute
6 anyone who perpetrates such crimes in the jails,
7 and I carry out that pledge by committing the
8 resources to investigate and bring charges for
9 crimes that we can prove in a court of law. In
10 March of 2016, I formed the Rikers Island
11 Prosecution Bureau, as you well know, for
12 detainee crime and I also established the Public
13 Integrity Bureau for crimes by staff at Rikers.

14 Now, prior to the establishment of these
15 bureaus, various sex crimes prosecutors handled
16 the allegations in the jails. With the
17 establishment of the Rikers and the Public
18 Integrity bureaus, the handling, the handling of
19 these cases is now centralized. And the ADAs
20 that are doing these cases now have more
21 experience prosecuting crimes that are committed
22 in a correctional facility. And I want to
23 highlight of some of the prosecutions of some of
24 the successful ones that we've had since I've

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2 been in office the last three years.

3 We did bring brought a, a 100-count
4 indictment against an inmate by the name of
5 Alexandria James, who sexual abused a woman while
6 using a makeshift phallic device in a segregated
7 cell in the Rose M. Singer Center, and she also
8 physically assaulted two other women in the
9 facility. We received a letter from one of the
10 assaulted women after she was released from jail.
11 And it was, and the letter was addressed directly
12 to me, so I received it. And I immediately
13 turned it over to my team. We acted immediately
14 to initiate an investigation.

15 But the investigation took months,
16 because it required of course, reviewing
17 extensive video evidence as well as interviewing
18 other detainees in a way that pro-, had to
19 provide security so that we could earn their
20 trust in order to get the information that we
21 needed. Ms., Ms. James did plead guilty in 2018
22 to aggravated sexual abuse and other charges and
23 is serving 6-and-a-half to eight years in prison
24 for that.

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2 We also had a case of now a former
3 Correction Officer, Jose Cosme [phonetic], was
4 charged with engaging in sexual conduct with a
5 female detainee in 2015. He pleaded guilty to
6 criminal sex act in the third degree, a Class E
7 felony and was sentenced to ten years' probation
8 and he has now been required to register as a sex
9 offender.

10 A trial is set this coming June for a
11 case of Sidney Wilson, who is a physi-
12 cian's assistant who worked at DOC for the
13 former contractor Corizon [phonetic] in the, in
14 the clinic. And our office is ready to present
15 evidence that Wilson engaged in 38 counts
16 including third-degree rape, sex abuse and sex
17 act, criminal sex act allegedly committed against
18 four female patients span- spanning over 18
19 months.

20 Again, it was an intensive investigation
21 that took more than a year. Three of the
22 detainees were incarcerated in Albion Prison,
23 which is in New York State, up near the Canadian
24 border. And the case has required a lot of

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2 resources for us to, to get it ready for trial.
3 We interviewed the, the victims upstate during
4 their incarceration. A crime victim advocate
5 works with them now that they have all been
6 released and is helping us to prepare them for
7 the trial.

8 Now I know, I also understand that the
9 Legal Aid Society has brought a case to your
10 attention, questioning my Office's handling of,
11 of a particular case, of that case. So while I
12 can't specifically address current
13 investigations, I can tell you that the Public
14 Integrity Bureau has a very active investigation
15 ongoing of that matter that Legal Aid referred to
16 you. It started in August 2016, when we were
17 referred to the case by DOI. It involves
18 allegations against a DOC officer of misconduct
19 of a sexual nature.

20 We take all allegations of sex abuse
21 seriously and are acutely aware of the sensitive
22 nature of these allegations, especially in a jail
23 setting. Detainees fear retaliation. And an
24 incarcerated victim suffers another layer of

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2 trauma, because he or she cannot leave the place
3 where the assault occurred. And other detainees
4 live in fear if the sexual abuse seemingly goes
5 unchecked. But these cases are complicated and
6 sometimes very difficult to make, but difficulty
7 doesn't mean impossible. And just because it's
8 hard doesn't mean that we don't do it. But we
9 have to be deliberate and make sure that we
10 investigate well, not to just bring a case, but
11 to make sure that we can bring a case that's
12 really going to bring justice for the victims and
13 fairness for the person who is accused.

14 The burden of proof is lower for DOC's
15 internal investigations, of course. They deal
16 with the preponderance of the evidence. But we
17 have to prove a case beyond a reasonable doubt, a
18 much higher standard. So since 2016, the Rikers
19 Bureau handled 30 arrests involving sexual
20 criminal conduct. Two were felonies, including
21 the James case that I mentioned earlier and a
22 conviction for another defendant who pleaded
23 guilty to persistent sex abuse, resulting in a
24 three year prison term. The other 28 cases were

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2 for forcible touching of staff and public
3 lewdness. Public Integrity has prosecuted eight
4 cases of sexual abuse involving staff against
5 detainees.

6 We have many challenges in these
7 prosecutions as well. The detainee victims again
8 are reluctant to come forward while they're
9 incarceration, while they're incarcerated. And
10 of course, there are some credibility issues with
11 the victims as well as the witness. A detainee
12 can accuse an officer and then through, and we've
13 found this, that the allegations have been made
14 and then as we continue with the investigation,
15 we find evidence that, you know, the act was done
16 so that the person could bring a lawsuit or
17 something like that, or, you know, that some of
18 the facts are exaggerated in order to seek out a
19 settlement.

20 Now this is not to, to victim blame.
21 This is just a reality of what we find when we do
22 investigated the cases. But that doesn't mean
23 that we're not going to go forward as well. A
24 lot of times, the detainees' attorneys will tell

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2 the media that we did nothing, or that my office
3 was unwilling to do anything. And in reality,
4 what happens is that they choose not to cooperate
5 with the criminal investigation. They choose to
6 deal with the civil litigation that comes along
7 with it and it doesn't help me, because I, as you
8 know, I need victims come forward. And we have
9 to have the victims co- come forward, especially
10 in cases where there no video or this is no
11 physical evidence or we have reluctant witnesses
12 that want to come, come forward to cooperate.

13 So even though there are numerous
14 cameras in the jail of course, the sex abuse of
15 course, usually happens in places where there are
16 no cameras, and for obvious reasons so that it
17 cannot be captured, sometimes in bathrooms,
18 pantry areas, closets, kitchen areas, et cetera.
19 But again, it doesn't mean that there is not some
20 evidence of it. It may not show the act, but
21 there may be video in other ways, so we can try
22 to put things together, but usually you don't get
23 the act on, on, on video. But I'm going to
24 return to this later in my testimony about that.

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2 But if a detainee has been raped, or
3 sexual violence against them, the opportunity for
4 the evidence is stalled or lost because a sexual
5 assault forensic exam is not performed
6 immediately. What it comes down to is this. I
7 know that as a board, you are focused on the
8 slashings and the serious physical assaults. We
9 have taken, made priorities of that and I've
10 testi- testified before you before as to those
11 issues. What we now need to do is prioritize
12 these sexual assaults. I'm glad I was here to be
13 able to hear some of the testimony of the
14 Department to see what progress there is done.
15 You know, we, we can't do these things in silos
16 and vacuums. We have to communicate with each
17 other to really know what's going on. So I'm
18 glad that I was able to hear that.

19 So in prioritizing those things, or
20 having more open lines of communications, I have
21 some other recommendations I think that will help
22 improve investigations so we could move forward
23 with the cases that I do receive the
24 recommendations about. First of all, it has to

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2 start with a safe space for a detainee to report
3 abuse. There needs to be an atmosphere of
4 confidentiality, discretion, with privacy from
5 other inmates and staff.

6 There also needs to be immediate
7 forensic exams. Sexual assault evidence
8 collection experts should be doing the exam on
9 site to speed up the investigation pro- process
10 and preserve vital corroboration. It should be a
11 required procedural step. I don't know if it is
12 or not, but I know plenty of times, we, we get
13 the cases and it wasn't done auto-, early. We
14 need a consistent, fixed protocol to handle
15 allegations. Now I'm glad I was here to hear the
16 Department testify and I know about the minimum
17 standards. We need to be more in tune with that.
18 There need to be some more collaboration as to
19 how these interviews happen, the exchanging of
20 the reports and things like that, so we know
21 ahead of time. When, by the time the DA's office
22 get it, it's like you said, the Department goes
23 through an investigation, DOI goes through an
24 investigation and then DOI gives it to us, which

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2 means that we have to look at everything and
3 sometimes start all over because so much time has
4 passed by. So we do have to deal with a more
5 consistent protocol that's going to, that's going
6 to be able to, thoroughly be able to handle these
7 allegations in the right way.

8 And we need of course, faster
9 notification to us. There's been instances where
10 we didn't know of a, a rape in Rikers for weeks
11 or even months afterwards, only finding out
12 because the staff member in our office
13 responsible for lab results was notified about a
14 positive DNA finding from a rape kit generated at
15 Rikers, some, some, you know, months earlier. So
16 we don't know.

17 Of course, we need more surveillance
18 cameras, everywhere. And I know there's a lot of
19 cameras there now, but this is for the protection
20 of the accuser, as well as the accused.
21 Sensitive cameras, cameras with limited access
22 can be in areas of the jail. Our burden of proof
23 is beyond a reasonable doubt and if an inmate is
24 fabricating allegations, we can quickly determine

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2 that if we have the video, so more -- and when we
3 say more sensitive video, meaning that it's not
4 going to be for everyone to see. There's just
5 certain sensitive areas now that they have video
6 and we need more in certain places so that we can
7 be able to monitor, or the Department can monitor
8 to make sure that these sexual acts are not
9 happening.

10 DOC intelligence gatherers focus on
11 contraband and violence. Perhaps more training,
12 they need to obtain more information about sexual
13 abuse in the jails during their monitoring of the
14 detain- detainees, so again, more training for,
15 for DOC staff. That's key in anything that they
16 have to do, especially the investigators, so the
17 more training, the better.

18 And then lastly, I want to encourage
19 these attorneys that representing victims of
20 sexual abuse in the jail, that they need to
21 cooperate with us in these criminal cases. I'm
22 tired of being accused of not doing my job when I
23 can't do it if they don't allow their clients to
24 come and speak to me. I don't know if they think

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2 that it's going to hurt the civil case if there
3 is one, because I find out a lot of them
4 sometimes when the civil suit is in paper. So I
5 immediately go to my team and say wait a minute,
6 did we look at this, and of course, when we look,
7 and say yes, we did, but come to find out, that
8 the lawyers wouldn't allow the, the witnesses or
9 the victims to come forward to speak to us to
10 corroborate so that we could bring charges.

11 Again, it's not easy to make the cases
12 but just because it's not easy and it's hard,
13 don't mean that I won't do it. You know, just
14 because it's difficult doesn't mean I'm not going
15 to do it. I know I have a job to do, and it,
16 it's a tough job. But this is serious. This is
17 very serious. So I want to continue to be a
18 force in those jails to make sure that these
19 crimes don't happen just like all the other
20 crimes that I have concentrated on to make sure
21 that they don't happen in the jails. And I stand
22 ready to work with all those who have a stake in
23 improving the safety in our jails.

24 Please be assured that we believe no one

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2 should be subjected to sexual violence. A person
3 behind bars is a human being, they should be
4 treated humanely. They deserve the same dignity,
5 compassion and vigorous effort from my office as
6 anyone else in the community. I believe I've
7 answered some of your concerns, but I welcome any
8 questions that you have.

9 MR. CEPHAS: Thank you very much. Any,
10 any questions, comments from the board? Thanks
11 so much, appreciate it. Judge Hamill.

12 JUDGE HAMILL: Thank you so much for
13 coming to speak to us. I know firsthand about
14 the work of the Bronx DAs because that's where I
15 worked. And I, I know the standard, you know,
16 for a criminal investigation for a criminal
17 prosecution beyond a reasonable doubt. First of
18 all, you, you've answered a lot of the questions
19 that I had, but I just want to go into a little
20 bit of depth on some of the recommendations you
21 made, and, and thank you so much.

22 I also want to thank your office. When
23 this board was in the midst of PREA rulemaking,
24 we met with your team, executive staff and some

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2 of your investigators and prosecutors. It was
3 very helpful to our rulemaking.

4 MS. CLARK: Thank you.

5 MS. HAMMILL: You, you gave a lot of
6 recommendations for improvement here and
7 obviously the level at which you prosecute is
8 much higher than the administrative matters at
9 DOC. Can you be specific in terms of your
10 recommendation that they need more training
11 investigations? Can you tell us where, and this
12 is in the spirit of collaboration, not criticism,
13 we all have the exact same shared goal here.
14 Where in particular you're seeing some weaknesses
15 and challenges in their investigations?

16 MS. CLARK: Well, I think the evidence
17 gathering is a big part. I think that the
18 interviewing techniques and these are some of the
19 things that they've already talked about, in
20 training them how to interview witnesses better.
21 I think that they un-, they're understanding the
22 burdens of proof, that there's a difference
23 between one and ano-, and the other is important.
24 I just think overall that, you know, when I first

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2 took this job and we began doing the, the, the
3 violence cases and stuff, one of the most glaring
4 things that I saw is one, they didn't have enough
5 staff doing the work doing the work that needed
6 to be done, to investigate it. And then two,
7 that the training they received was not the kind
8 of training that they understood how to build a
9 case so that it could be prosecuted.

10 So there's one thing for the
11 administrative process, and there's another for
12 the criminal process, as you well know, Judge
13 Hamill, so again, I think it's just reinforcing
14 and, and educating the investigators on what is,
15 what is going to be admissible, what, you know,
16 what type of evidence are they, are we looking
17 for in order to bring a successful prosecution.
18 So, you know, it, it's little things like that.
19 And the technical part of it as well, but I just
20 think the more training the better, whether it's
21 my office helping to do that, which we're always
22 willing to do, or the, the FEDI training, you
23 know, the people in my office have received that.
24 But they've had a lot of trauma, you know,

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2 interviewing training besides the FEDI one. So I
3 mean we do this. So the better that we can
4 collaborate I think the, the better the cases
5 we'll be able to bring.

6 JUDGE HAMILL: Well, and thank you for
7 offering to do the training, because if they're
8 doing the investigations, and this is in your
9 jurisdiction in the Bronx, to the extent you can
10 help train their staff, you'll get cases better
11 presented for your prosecution. I did just want
12 to, I've forgotten some of my criminal law, but,
13 but if I recall, the statements that are made to
14 the DOC investigators or statements to law
15 enforcement, so that's Rosario material that has
16 to be turned over, and if they're not well
17 trained on interviewing, then they may obtain
18 statements that may appear to be a little bit
19 misleading and may appear to be inconsistent with
20 statements you may ultimately get. And that's
21 why it's so critical that the investigators
22 really truly know how to interview for a proper
23 criminal investigation and prosecution.

24 MS. CLARK: And it also depends on who

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2 the investigator is interviewing, because there
3 are different rules for DOC staff being
4 interviewed by DOI. Some -- DOI is, is, is the
5 oversight agency for DOC, so therefore, when they
6 take interviews from them, it's compulsory, they
7 have to answer. And we're not allowed, in
8 criminal trials sometimes, to use that type of
9 evidence. So you have to separate then, so
10 there's a lot involved in that. So we want to
11 really, you know, make sure that, that, that they
12 understand that in, in bringing, you know, in
13 doing the interviews and, and bringing the, the,
14 you know, building the cases that we need.

15 JUDGE HAMILL: Thank you.

16 MR. RICHARDS: Thank you, District
17 Attorney, for your work, 30 arrests, clearly your
18 zero tolerance is effect, you have a bureau out
19 there on Rikers so you can respond swiftly and
20 you're taking these cases seriously. But have
21 you worked with the Department of Correction, 30
22 arrests could be a way of sharing that
23 information during training for officers coming
24 on about what, what will happen if officers

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2 engage in inappropriate sexual contact with
3 people detained. Have, have you and the
4 Department worked together to put together a sort
5 of a, a media, public campaign for some of the
6 officers so that they know how your office is
7 going to approach these kinds of issues?

8 MS. CLARK: I don't know if we've per se
9 done some actual training. That's something that
10 we can always do. But I think that I, I set an
11 example by, unfortunately having to indict some
12 of those and going through it, that the message
13 is, is related there. But I also have to say I
14 do work with the unions for DOC and, and we talk
15 a lot about some of the things that I have to do.
16 And I know that, you know, it's been a real
17 progress, but one that has been positive in my
18 opinion, because when we first started, it's
19 just, you know, things weren't working well.

20 And it's not until you begin to work
21 with people and they work with you, that they can
22 understand that we all share the same goal. So
23 therefore, and, and a lot of it was mis-
24 education, like I just assumed they knew things,

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2 and they just assumed I was doing things. But
3 once you got to talk and, and understand, we're
4 able to educate each other on the work that we
5 do. So, so the relationship is a lot better.

6 And I know that the unions don't want,
7 you know, officers or staff that are going to
8 disgrace the badge. You know, they don't want
9 them there that it's going, they're going to
10 cause harm in the jails that's going to hurt
11 other officers because they are doing illegal
12 things. So we continue to do that. But that is
13 something that I think that can easily be done,
14 just as we've done with you know, report taking,
15 that, you know, that was, you know, it was, it
16 was outrageous, some of the reports we were
17 getting, and it was like falsifying documents and
18 things like that. And I don't want to have to
19 prosecute somebody to teach them how to do that.
20 But after I did a couple of them, it's like you
21 know what, I'm not going to be able to prosecute
22 my way out of this particular problem. We need
23 to just talk and discuss. And once we did, I
24 know they started training their staff, look,

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2 don't do this. This is wrong. If you do this,
3 this is what's going to happen. So this is the
4 very type of thing that we can also do with these
5 sexual cases.

6 MR. CEPHAS: Dr. Cohen.

7 MR. COHEN: Thank you very much,
8 District Attorney. I have two questions. I, I
9 don't think you've answered them yet, although
10 your testimony was very, very helpful. One is
11 numbers. Numbers of cases since you've been
12 district attorney, or since the Board's standards
13 began January '17, who have been referred from
14 DOI to you for investigation or because of, or
15 from DOC for investigation, both for staff and,
16 and persons living in prison as the, as the
17 perpetrators. And my second question has to do
18 with coordination. You, you, you mentioned your
19 concern that you hear about things too late.
20 And, you know, the process is well, it's sort of
21 defined, but not, it sounds like there may be
22 improvements in terms of collaboration. So is
23 there a process where you and DOI and DOC and
24 perhaps even the other district attorneys, meet

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2 regularly on possible investigations, so that
3 you, so that there's a list of people who have
4 made complaints, which have been judged good
5 enough to go to DOI or there et cetera, so those
6 two questions, one on, one on quantity and one on
7 collaboration.

8 MS. CLARK: Okay. I'll answer the
9 second one first. I, I do speak regularly with
10 DOI, with Commissioner Peters before he left and
11 now with Commissioner Garnett. And we, as the
12 head of both agencies, speak once a month with
13 the list of the cases, the force cases, the PREA
14 cases, you know, certain cases that have to do
15 with DOI and their investigation. So for the
16 purpose of corrections, it would be the PREA and
17 the use of force cases.

18 And we go through the current
19 investigations that are happening, we talk about
20 those that have been lingering, you know, what is
21 the, you know, what is the goal in the particular
22 case. So we do speak regularly about that. But
23 of course, it's after we've received a referral
24 from them. And part of some of those

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2 conversations were like you're saying that I'm
3 long time doing it, but remember you didn't give
4 it to me until very late. So we keep that, we
5 have that monthly call just so that we can stay
6 on top of those things. Our teams also meet,
7 speak weekly, and they also meet in order to make
8 sure we try to stay on top of those things. I
9 think that's how we got through some of the
10 improvements that we have been able to make is
11 because we've had that dialogue.

12 As far as with these particular type
13 cases, again, I'm happy that I was here to hear
14 the testimony of DOC, because I do see some
15 places where we can collaborate, you know, to
16 get, collaborate in order to get some of the
17 information to help us speed up some of the
18 investigations as well, sharing some of the
19 things I've heard them talk about, and asking my
20 team, do we get that, when do we get it, how do
21 we get it, things like that, so. So, you know,
22 being in the room hearing this is helpful for us
23 to understand how we can do it better. So I
24 think that, you know, we will actually be able to

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2 do that.

3 As far as how many cases we've received
4 since 2017, I have 19 cases that, that are all
5 sexual assaults by detainees. And this includes
6 detainees on staff that are not necessarily PREA
7 cases. And then we have four cases of staff on
8 detainees or inmates. And we have six pending
9 investigations with some of those defendants. So
10 those are some of the --

11 MR. COHEN: And those came from DOI or
12 from DOC?

13 MS. CLARK: Usually, they come, they
14 come from both, they come from both, some from
15 DOI, some from DOC.

16 MR. COHEN: Thank you.

17 MS. CLARK: That's it? Alright.
18 Anything else? No? Thank you for the
19 opportunity.

20 MR. CEPHAS: Thank you very much. We're
21 going to now hear from the Manhattan DA's Office.
22 Thank you, District Attorney Clark.

23 MS. VANESSA PUZIO: Good morning
24 chairman, and members of the Board. My name is

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2 Vanessa Puzio and I'm a supervising attorney in
3 the Sex Crimes Unit at the Manhattan District
4 Attorney's office and attorney in charge of the
5 Work-Related Sexual Violence Initiatives. Thank
6 you for the opportunity to have us speak here
7 today about DA Vance's strategies to combat
8 sexual violence in the workplace, specifically
9 within New York City Department of Corrections.

10 Recently, our office received a letter
11 from an anonymous group of female corrections
12 officers. The letter detailed sexual harassment
13 and sexual abuse within the Department of
14 Corrections. Specifically, the letter detailed
15 sexual misconduct committed by supervisors
16 against female staff. It was anonymous, but the
17 writer made it clear that she and other female
18 officers needed help.

19 After reading the letter, I reached out
20 to the Corrections Officer Benevolent Association
21 Union and was subsequently invited to Manhattan
22 Detention Complex to give a training on sex
23 crimes in the workplace. The overwhelming
24 majority of officers that I spoke to that day

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2 stated that inmates routinely groped and touched
3 both male and female officers. The sentiment
4 amongst the corrections officers I spoke to at
5 Man- Manhattan Detention Complex was that being
6 touched in a sexual way had become quote, part of
7 the job, and reporting it in-house was quote, not
8 worth it. I urged the officers not simply to
9 consider reporting in-house, but to also report
10 directly to us, to law enforcement. I spoke to
11 them also about potential sex offender
12 registration.

13 Clearly, there are significant
14 challenges for Corrections that are not
15 necessarily reflected in the number of sexual
16 assault cases that are reported by or against
17 corrections officer at the Manhattan Detention
18 Complex. For example, in 2018, there were 597
19 post-arrest sex crimes cases handled by our
20 office. Out of those, zero were from Manhattan
21 Detention Complex. In 2017, we again had zero
22 sex crimes cases originating, originating out of
23 MDC. Not one sexual assault committed against a
24 corrections officer, not one sexual assault

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2 committed by a corrections officer.

3 There is also a dearth of complaints
4 that come to our office concerning sexual
5 assaults where inmates are the victim and the
6 perpetrator is also an inmate. As stated in your
7 audit, these cases are occurring and being
8 reported to in-house investigators, they are --
9 but they are not making their way to our office.
10 And I'm here to ask the question, why is that?

11 Under the current system, when an
12 individual reports a sexual assault involving a
13 corrections officer, the case is done and
14 investigated, as we heard today, by in-house
15 investigators. As seen in the New York City
16 Department of Corrections Audit Report, these
17 investigators, these investigations are not
18 always being done in a thorough manner and cases
19 are forwarded to DOI, but if the initial
20 investigation is not being done thoroughly, the
21 victim in that case is never given an opportunity
22 to have law enforcement appropriately investigate
23 his or her case.

24 To us, the current system at Corrections

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2 for PREA cases is reminiscent of the now reformed
3 system at colleges and universities where
4 victims' complaints were dealt with simply in-
5 house and where victims of sexual assault were
6 not given options immediately on reporting
7 directly to the DA's office and to law
8 enforcement. Victims of a sex crime should not
9 only be given access to medical care as mandated
10 in your rules, but information and swift access
11 to law enforcement.

12 Sexual violence is a devastating crime
13 that leaves a lasting impact on the survivor.
14 The impact can be acutely felt when the sexual
15 abuse is suffered at the workplace. The
16 Manhattan District Attorney's Office is committed
17 to investigating and prosecuting these crimes and
18 to achieve justice.

19 In the wake of #MeToo, our office saw
20 not only a spike in reporting of sex crimes
21 cases, but countless media reports detailing
22 sexual abuse. In an effort to encourage further
23 reporting and engage survivors, the Manhattan DA
24 created the first-of-its-kind Work-Related Sexual

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2 Violence Unit. The Unit recognizes the inherent
3 power imbalance and fear of reprisal that
4 survivors face in reporting. But when an act of
5 work-related sexual misconduct constitutes a
6 crime, it is not enough that the abuser loses his
7 or her job. Justice demands and survivors
8 deserve that criminal abusers be held accountable
9 in court.

10 DA Vance asked me to lead this Work-
11 Related Sexual Violence Unit with our main goal
12 being to encourage further reporting. As a
13 prosecutor, I conti-, I continue to work directly
14 with victims of violence, but I also go out into
15 the community to speak about our office and
16 encourage further reporting. We contact
17 businesses and organizations directly and ask
18 them to circulate our materials to members and
19 employees. We also offer trainings to employees,
20 to members of associations, to let them know who
21 we are and what we can do to help in terms of
22 referrals or in-house counseling.

23 We consider this a more holistic
24 approach in dealing with sexual violence. When I

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2 went to Manhattan Detention Complex, I gave out
3 our hotline number, and our materials and I
4 stressed that we're not just a faceless telephone
5 number at a government agency. We are there to
6 answer questions and provide support for victims
7 of sexual violence.

8 I would suggest that going forward, our
9 office, as DA Clark said, be brought to the
10 table, and that there be further collaboration to
11 assist officers, to assist survivors at Manhattan
12 Detention Complex with information so that they
13 can make informed decisions about reporting acts
14 of sexual misconduct to law enforcement, to
15 follow through on those complaints and to see
16 some real change.

17 Furthermore, anyone reporting a crime
18 that falls within PREA within a correctional
19 facility should be also given the information and
20 resources to have their case investigated
21 directly by us immediately and not be left to the
22 discretion of in-house investigators. Thank you.

23 MR. CEPHAS: Thanks very much.

24 Questions or comments from?

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2 JUDGE HAMILL: Thank you so much for
3 coming to speak to us and thank you so much for
4 your comments. Much of this in terms of what's
5 going on in Manhattan, it's certainly new to me
6 and certainly before you leave, I think we need
7 to ask DOC why is it that no cases are being
8 referred to you.

9 But I want to ask about a separate issue
10 that you haven't mentioned. We hear from a
11 number of lawyers and we hear from a number of
12 advocates that there is an issue with respect to
13 searching of visitors when they come to visit
14 incarcerated persons, primarily out at Rikers but
15 I don't know if it's an issue in Manhattan or
16 not. Have, has that come to your attention at
17 all? Any allegations that visitors feeling that
18 they were inappropriately touched or searched
19 when they were trying to visit a detainee in
20 Manhattan House?

21 MS. PUZIO: No, it has not. We have not
22 received any of those complaints.

23 JUDGE HAMILL: Okay. And I'm going to
24 ask you the same question that I asked DA, DA

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2 Clark. Can you tell us from your perspective
3 what could be improved in terms of the DOC's
4 investigations? And if I understand you
5 correctly, what you're saying is you'd rather
6 these cases be referred immediately so that you
7 could investigate them yourselves without having
8 to wait because time is of the essence of these
9 cases. But to the extent that they do
10 investigate, if you can share what you believe
11 some of the challenges have been and what could
12 be improved.

13 MS. PUZIO: Of course. So that would be
14 our goal. That would be our preferred method
15 would be that it would be immediately brought to
16 our attention at the DA's office. If that
17 doesn't happen, I think we want to be brought to
18 the table. The numbers speak for themselves. We
19 are not being brought into this conversation at
20 all. And so we could like further coll-
21 collaboration in terms of being kept apprised of
22 what investigations are pending. We would also
23 like to be involved more in trainings, we are
24 more than happy to speak with other DA's offices

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2 or go to Manhattan Detention Complex regularly to
3 help with training so that we can better build,
4 just as DA Clark said, build cases rather than
5 look to close cases.

6 MR. COHEN: When the Board -- thank you
7 very much for coming today, we really appreciate
8 it. When the board developed its PREA rule, we
9 had an internal debate about who should do
10 investigations. There was a question, which
11 still is a question to me, based on -- and it's
12 not changed based upon what we've heard right
13 now, which is that it's very difficult for
14 someone to investigate themselves and that, that
15 I wish the Department did not have the
16 responsibility to do, to do investigations,
17 because I think it's almost impossible, you know,
18 it's very, very difficult to find internal fault.
19 City law requires every, the, the city charter
20 requires every criminal act to be, that happens
21 on Rikers Island or in Manhattan Housing
22 Detention to be reported to DOI. Are you, are
23 you suggesting, and I would support it, I think,
24 that, that at the same time that a DOI report is

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2 made that the, that the, that the Bronx, that the
3 Manhattan DA be reported on anything which is a
4 possible criminal, which is thought to be a
5 possible criminal activity?

6 MS. PUZIO: Yes, we're suggesting a
7 simultaneous reporting system so that we are
8 reported to, along with DOI.

9 MR. COHEN: Do you think the other -- we
10 didn't get a chance to ask DA Clark about it. Do
11 you think that the other DAs would want that kind
12 of reporting?

13 MS. PUZIO: I don't want to speak for
14 other DA's offices, but, you know, we are at an
15 advantage in terms of our proximity also to
16 Manhattan Detention Complex, and that it is not
17 extremely large. So we would be able to have the
18 resources to be able to have the resources to do
19 that.

20 MR. COHEN: Well, the Bronx DAs have
21 staff on, on Rikers Island right now. I think
22 one of the things that this raises just for the
23 Board to consider is the need for, for a process
24 that has all the state agencies, perhaps even,

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2 even the Southern, Southern District, as well as
3 the Bronx and Manhattan, Brooklyn and Queens DAs
4 working together on these, on these, on these
5 issues.

6 MR. RICHARDS: And I don't know if you -
7 - thank you for coming and presenting. I don't
8 know if you can talk about an open investigation
9 but it sounds, sounds like you talked about
10 receiving a letter that was about sexual
11 harassment of supervisors and then it was a
12 contact with the union and training for staff.
13 Has, has the Department been made aware of that
14 allegation, is that a pending investigation?

15 MS. PUZIO: My understanding is that
16 it's not a pending investigation because the
17 people in the letter would not name themselves,
18 and so it was sort of brought to us and then
19 there was the question of well what do we do,
20 what can we do. So that's when we contacted the
21 union and said we received this letter, what can
22 we do to help in any way. And their idea was to
23 bring us to MDC to give a training.

24 MR. RICHARDS: And maybe the Department

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2 might want to hear about it.

3 JUDGE HAMILL: Well while you're here, I
4 think we need to ask, I don't know, Commissioner
5 Brann, if you want to answer the questions or
6 someone else. We, we all want to work together,
7 we all have this shared goal here, right. And I
8 think what you're recommending sounds to be very
9 reasonable. So Commissioner Brann or whoever
10 staff you want to delegate to, what do you think
11 about this idea of any type of alleged criminal
12 activity that occurs at Manhattan House?

13 Obviously, it's a much smaller jail than Rikers
14 and I can see where maybe DA Clark wouldn't want
15 everything referred to her office. She has
16 limited resources too, but with Manhattan being
17 so small, I can see why you would want that.
18 And, and being involved at the beginning, is
19 critical to making a good case. So Commissioner
20 Brann?

21 MS. BRANN: Thank you for the
22 opportunity to respond. We were not made aware
23 of that anonymous complaint anonymous complaint
24 at MDC and would have appreciated knowing about

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2 that. And neither the union nor the DA's office
3 let us know that they had been there, or had
4 conducted any training. So, I will, I will
5 address that.

6 With regard to notifying the district
7 attorney's office, there is, we are under charter
8 responsibility to report to DOI. And then if
9 they give us back something, we can afterwards,
10 go to the DA's office if DOI declines the case.
11 However, there's -- each district attorney's
12 office gets the cases from their own
13 jurisdiction. So we would not sit with all the
14 district attorneys and discuss all the cases
15 originating in different jurisdictions.

16 JUDGE HAMILL: But maybe I'm mistaken
17 but I thought someone said that even with the
18 Bronx cases, the cases that occur out at Riker's
19 that sometimes, they're of such an allegation
20 that they do get referred to the district
21 attorney's office right away. I, I might have
22 misunderstood that. I thought somebody reported
23 that. That's not always just a DOI, but that
24 they in the Bronx, go sometimes directly to the

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2 Bronx DA. Am I correct about that?

3 MS. TOWNSEND: Yes. So I will clarify
4 that. It sounded like the prosecutor from the
5 Manhattan DA's office wants us to immediately
6 refer cases to the Manhattan DA's office. The
7 protocol is such that we immediately refer cases
8 to DOI. If DOI rejects it and sends it back to
9 us and then we conduct our own investigation. If
10 then during our investigation, we then uncover
11 criminal activity, we can refer it to DOI and the
12 DA's office. That's where the difference is. We
13 do not do immediate referrals to district
14 attorneys' offices. We do immediate referrals to
15 DOI. It is DOI's responsibility to conduct
16 criminal investigations. It is our
17 responsibility to conduct administrative
18 investigations.

19 JUDGE HAMILL: Alright. So I would
20 just, you know, I don't know the politics of this
21 enough. I understand what you're saying the
22 protocol is. But you were a prosecutor, I was a
23 prosecutor. I know I want those referral as
24 quickly as possible, so I would suggest that

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2 maybe you can all get in a room together and talk
3 about it to see if there's some way to do what
4 Manhattan DA's office is asking it, which is a
5 simultaneous referral because you have limited
6 resources, DOI has limited resource. If
7 Manhattan is saying they haven't had one case
8 referred, and they've got the resources to handle
9 what would be their criminal prosecutions, it
10 sounds to be reasonable, so I would just suggest
11 that.

12 MS. BRANN: I would be happy to have
13 that conversation with Commissioner Garnett.

14 JUDGE HAMILL: Thank you.

15 MR. RICHARDS: Thank you. Chair Cephas
16 had to step away for a few. We're going to
17 continue with DOC, and then we're going to ask
18 Health + Hospitals to come up and do their
19 presentation. Could you speak to, it was DA
20 Clark mentioned surveillance cameras. Could you
21 speak to the status of cameras on the vehicles,
22 and the percentage of facilities that have
23 coverage spots and blind spots and that sort of
24 thing?

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2 MS. TOWNSEND: Yes. I'm going to defer
3 to the First Deputy Commissioner.

4 MR. RICHARDS: Thank you.

5 MR. ANGEL VILLALONA: Good morning. We
6 currently have 15 inmate transport buses which
7 have video surveillance on them, 14 are equipped
8 with body worn cameras and one is, contains a,
9 the Genetec solution similar to what is in our
10 facilities.

11 MR. RICHARDS: Out of, out of how many
12 trans-, how many buses do you have?

13 MR. VILLALONA: I don't have the exact
14 number of total buses that we have. But we have
15 vehicles that are for other purposes than
16 transporting inmates. So we focused the, our
17 pilot on those inmate transport buses that would
18 either go to court or are used for state
19 transport, so on and so forth.

20 MR. RICHARDS: It would be helpful if we
21 can get what buses, what are they used for,
22 whether they're used for Manhattan transport,
23 Bronx transport, how long has the, how long has
24 the camera pilot program been in play on the

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2 buses?

3 MR. VILLALONA: So the pilot began in
4 June of 2017. We initially outfitted five buses
5 with body worn cameras. Then it was in May of
6 2018, it was expanded to, a purchase order was
7 issued to outfit the one bus with the Genetec
8 solution. And then in December of 2018, we
9 expanded the pilot with the body worn cameras to
10 include, the, we have compartments in the front
11 of the buses for special category or vulnerable
12 inmates, and so we expanded the coverage of the
13 buses to not only include the back of the bus,
14 which is the general seating area, but also the
15 special compartments in the front.

16 MR. RICHARDS: And do you know, has
17 there been any complaints of sexual assault or
18 abuse on those buses with cameras?

19 MR. VILLALONA: So, so of the, so, the
20 pilot was both, there was a comparative period
21 and our broader time period, which included the
22 pilot in general. So, as I stated, the general,
23 the total pilot period was June of 2017 to March
24 1st of 2019. So during our comparative period,

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2 which was a six month period of September to
3 March, there were six, there were 810 total
4 allegations reported to the Investigation
5 Division of either a sexual harassment or a
6 sexual abuse nature. And six of those happened
7 either on or around the general area of an inmate
8 transport bus.

9 And then, if we account for the entire
10 period, which was a 21-month period of the
11 overall pilot period, which encompasses June of
12 '17 again through the end of February of 2019,
13 there were a total of 11 of the 2,235 alleged
14 sexual harassment or sexual abuse incidents that
15 occurred around or on an inmate transport bus.

16 MR. RICHARDS: And it was on those buses
17 with that surveillance capacity?

18 MR. VILLALONA: Well not, not all of
19 them, but of the total universe of buses that
20 could have, of incidences that could have been
21 captured by our pilot, 11 of them were during the
22 period of the entire pilot and six of them during
23 the comparative period. It doesn't necessarily
24 mean that they occurred on the buses that had the

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2 video.

3 MR. RICHARDS: Got it. Perhaps, you
4 know, offline, we can have a conversation,
5 because part of the pilot, right is to put
6 cameras on the buses to deter assaults from
7 occurring, but also to be able to use that image
8 to help in the prosecution of anybody who commits
9 that. So perhaps offline, we can talk more about
10 --

11 MR. VILLALONA: There was, there was one
12 case that was where video footage, although the
13 video did not capture the actual act on a bus,
14 the, the footage outside of the bus was used in
15 the investigation. So I'd, we'd be happy to
16 share that with you.

17 MR. RICHARDS: Okay. Thank you.

18 MR. REGAN: Just to follow that for one
19 second, is there anybody here that knows how many
20 buses you have?

21 MR. VILLALONA: Total inmate transport
22 buses?

23 MR. REGAN: Yeah.

24 MR. RICHARDS: Yeah.

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2 MR. VILLALONA: I can get that number
3 for you.

4 MR. REGAN: Okay. I've said this
5 before, 15 buses to have cameras, the New York
6 City yellow school buses have cameras. The
7 buses, many buses in the transit system have
8 cameras. This is about the safety of the
9 employees and, and the detainees, like you've got
10 to get these cameras on the buses. It is a place
11 of hazard and danger and it's in everybody's best
12 interest. If we could figure out how to get it
13 for the kids, we can figure out how to get it on
14 correction office buses.

15 MR. VILLALONA: No one is disagreeing
16 with you or the Board. This was --

17 MR. REGAN: But you guys were here a
18 year ago talking about buses and the experiment
19 and the, and the -- not you, but some of your
20 colleagues. It's --

21 MR. VILLALONA: This is a pilot. We --

22 MR. REGAN: How can the Board of Ed
23 figure out how to do it and you guys can't do it?

24 MR. VILLALONA: No one is saying that we

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2 can't.

3 MR. RICHARDS: So we would like perhaps
4 a plan and chief if you want to add.

5 MR. VILLALONA: So currently, the plan
6 is, now that we have the comparative period, and
7 we've been able to compare both body worn cameras
8 which are, have to be placed on the bus in a
9 holding bracket, looking at the pros and cons of
10 both technologies, both the Genetec solution and
11 the body worn cameras, our plan is moving forward
12 to outfit new buses, which we currently have a
13 purchase order out for, with the Genetec solution
14 going forward.

15 So that is our plan. Obviously, there,
16 it doesn't make much sense to install a Genetec
17 solution, which is more costly, although it is a
18 better solution, than the body worn cameras, it
19 doesn't make much sense to install the Genetec
20 solution on a bus which may be at the end of its
21 useful life. And so that's why our plan is to
22 put the Genetec solution on new buses as they
23 come in. It allows for the opportunity to wire
24 the buses appropriately, there will be more

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2 cameras installed on the buses. The cam-, the
3 cameras pick up both video inside of the cabin at
4 different locations inside of the bus as well as
5 outside. So it does provide other advantages.

6 MR. RICHARDS: So we would, I don't want
7 to continue to take up time here, but perhaps we
8 could discuss like what that plan looks like,
9 because I think what, what Michael is saying if
10 you have 300 buses and only 15 are wired, or if
11 you have 100 buses coming in, it's going to be,
12 you know, ten percent of the vehicles. We
13 should, we should talk in detail. I think we
14 want the same thing.

15 MR. VILLALONA: Absolutely. We do want
16 the same thing, and that's why when, as I stated
17 earlier, we started out with five buses, and then
18 we added buses because we wanted to not only
19 include, we wanted to have sufficient buses to
20 cover all of our boroughs that we go to the court
21 parts, as well as buses that make state runs and
22 so on and so forth. In December of 2018, given
23 what we had learned, we also then began to
24 outfitted the smaller, front compartment which is

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2 where we place inmates that are either a special
3 security category or a, a vulnerable population
4 which falls under PREA.

5 MR. RICHARDS: Got you. Thank you. We
6 have a question on, a couple of questions
7 regarding transgender.

8 JUDGE HAMILL: I'll start that off.
9 That's just a topic we haven't gotten to yet. So
10 I don't know, Commissioner, you'd like to answer
11 the questions about housing according to gender.
12 So I just want to shift the topic. I know
13 there's a number of topics to get to today. This
14 one's about housing by gender identification and
15 housing of transgender people. I'd like to know
16 from DOC, I know you've made some progress,
17 you've trans- transferred the transgender housing
18 unit over to Rosie's from a male facility. Can
19 you tell us what policies and practice changes
20 DOC has made in order to house people according
21 to their gender? And then I'd like to know a
22 little bit about I understand there's six
23 transgender males currently being housed at
24 Rosie's if I understood the commissioner

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2 correctly. And I'm wondering why they haven't
3 been transferred to a male facility.

4 MS. YELARDY: So, to, just to start,
5 just to give a little background on what we've
6 been doing. The Transgender Housing Unit, THU
7 was transferred or moved from Manhattan Detention
8 Center to our female facility, RMSC. That was in
9 July. And then starting in October, we started
10 housing by gender identity. And so what we did
11 was, if an individual comes in and identifies or
12 has been identified as transgender female, that
13 individual will complete their process at the
14 female facility.

15 So, if you remember before, if they did
16 that, they would stay at the facility where they
17 came in at. If they came in in the male
18 facility, they would stay at that male facility
19 and then the assessment would be done at the
20 facility they were currently being housed. Now,
21 what we do is we transfer those individuals to
22 the female facility so they can complete their
23 new admission process at the female facility, as
24 well as their assessment at the female facility.

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2 And once they, they identify for us
3 whether they want to go to the female facility
4 or, and/or go to THU. If they don't want to go
5 to THU, they are assessed to stay at the female
6 facility and housed in general population. If
7 they are not approved at the assessment, we feel
8 due to safety concerns, they cannot stay at the
9 female facility, then another facility will be
10 assigned to them to be housed. But if now, then
11 we would place them either in the THU or we would
12 place them in our general population at the
13 female facility.

14 JUDGE HAMILL: So just to follow up with
15 my question, so what, what other policy and
16 practice changes have you all implemented to
17 house according to gender identity and
18 specifically, if you can talk about transgender
19 males.

20 MS. YELARDY: Okay. So, as I mentioned,
21 that is a big difference for us. Like I, like I
22 mentioned, we would normally keep the individual
23 at the facility that they're at, if they started
24 out at the male facility and do the assessment

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2 there. But now, once they identify as
3 transgender female, they are moved to the female
4 facility to complete the process, and also our
5 transgender male population, which according to
6 my information, we now have three transgender
7 males in our custody. They are currently at the
8 female facility because they opted to stay at the
9 female facility. And like the commissioner said
10 earlier, if an individual is requesting the male
11 facility, we would do a case by case assessment
12 of that individual at the time.

13 JUDGE HAMILL: Okay. So I think you're
14 saying there's three transgender males at Rosie's
15 right now?

16 MS. YELARDY: Yes.

17 JUDGE HAMILL: In which unit?

18 MS. YELARDY: I'm not sure. They're not
19 in the --

20 JUDGE HAMILL: Well, I mean is it in
21 general population? Is there a special unit for
22 transgendered --

23 MS. YELARDY: Yes.

24 JUDGE HAMILL: -- males? In Rose's?

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2 MS. YELARDY: No.

3 JUDGE HAMILL: So are they in general --

4 MS. YELARDY: There is -- our
5 transgender, our transgender --

6 JUDGE HAMILL: -- are they in general
7 population?

8 MS. YELARDY: Our transgender housing
9 unit right now is for transgender females.

10 JUDGE HAMILL: Right. So that's why I'm
11 asking about the males.

12 MS. YELARDY: I'm not sure if they're in
13 a general population or a special housing area,
14 but they are not in the THU.

15 JUDGE HAMILL: So if one did elect to be
16 housed according to his gender identity, into a
17 male housing and it was determined to be safe and
18 secure for him to be transferred, is there a
19 particular facility right now that you are using
20 for trans men?

21 MS. YELARDY: No.

22 JUDGE HAMILL: Have you had any trans
23 men yet placed into a male facility since you've
24 started housing according to gender

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2 identification?

3 MS. YELARDY: No, we have not. We have
4 not gotten that request.

5 MR. COHEN: How many persons does the
6 Department now have who are transgender or who
7 have requested transgender housing and how do you
8 maintain that information? I have a series of
9 questions. That's the first one.

10 MS. YELARDY: You said how are they, I'm
11 sorry, I didn't understand the first part of your
12 question.

13 MR. COHEN: How many persons do the,
14 does the department understand within its custody
15 who are transgender or who have applied for THU
16 housing and how do you track that? Is there, is
17 there a system for tracking people who have
18 applied for, for, for THU housing and for your
19 categorization process?

20 MS. YELARDY: So since we've been
21 housing by gender identity, we have received
22 approximately 96 ap-, forms, we don't call them
23 applications anymore because they include the THU
24 as well as the female facility in general. So

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2 we've had 96 individuals make the request, and we
3 keep this information -- we're working on
4 developing a database, but right now, we have a
5 unit within the PREA unit that is geared to
6 making sure to track our individuals who identify
7 as transgender and/or intersex.

8 MS. KING: We need the numbers.

9 MR. COHEN: So, so where -- excuse me?

10 MS. KING: We need the [unintelligible]
11 [02:06:48]

12 MR. COHEN: Yeah. What, what -- how
13 many trans women are there right now? And where
14 are they housed? Are they housed in the THU,
15 protective custody, or general population?

16 MS. YELARDY: So right now, we have a
17 population of 16 in THU. We have six in our
18 general population. We have one in a new
19 admission, and of course, this is not as of right
20 now, this is as of yesterday's statistics, and
21 like I said before, we have three transgender
22 individuals at Rosie's and we have 24 who are not
23 housed in the female facility.

24 MR. COHEN: Four are not housed in --

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2 MS. YELARDY: Twenty-four.

3 MR. COHEN: Twenty-four who are not, who
4 are not, not housed there?

5 MS. YELARDY: Yes.

6 MR. COHEN: And do you know how many of
7 them are in protective custody?

8 MS. YELARDY: I'm not sure. I would
9 have to get that number to you.

10 MR. COHEN: How about how many of them
11 are in intake? We, we, we've heard concerns that
12 transgender persons are maintained for extended
13 periods of time in intake facilities. Is that a
14 practice that you're aware of?

15 MS. YELARDY: No, not at all. They,
16 they go to intake and -- I'm sorry. I don't
17 understand. They're housed in intake?

18 MR. COHEN: Yes.

19 MS. YELARDY: No.

20 MS. KING: So your numbers reflect more
21 transgender women in male facilities than at
22 Rosie's. Is that right?

23 MS. YELARDY: That's correct.

24 MR. COHEN: And no transgender --

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2 MS. YELARDY: Actually, I'm sorry, I'm
3 sorry. So we have 24 who are not in the female
4 facility and we have 26 who are at the female
5 fact.

6 MR. COHEN: And are the criteria for
7 accepting someone in THU in writing?

8 MS. YELARDY: We are in the process of
9 developing a directive geared to our LGBTI and
10 GNC population. However, staff is aware of what
11 we're doing, that we're housing by gender
12 identity. Some information went out to them, but
13 we are in the process right now of working on an
14 actual directive.

15 MR. COHEN: So if someone says I'm
16 transgender, what do you say okay, or do question
17 it?

18 MS. YELARDY: No, we do not. If a
19 person is identified, whether they say they're
20 transgender to the intake staff, the intake staff
21 knows that they need a form to be filled out
22 where they're asked whether they want to go to a
23 female facility, if they're not already at the
24 female facility. If they're at the male

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2 facility, then they're asked if they want to go
3 to the female facility. On the form, it asks
4 whether you want to stay at the male facility,
5 whether you want to go to the female facility, be
6 housed in general population or be housed in the
7 THU.

8 MR. COHEN: And again, just on
9 protective custody, we've heard concerns about,
10 about the use of protective custody for persons,
11 for transgender persons. Is that, is that a
12 practice of the department?

13 MS. YELARDY: We would place somebody in
14 protective custody. They are interviewed for
15 protective custody. If we feel like there's a
16 safety concern, if they're requesting it, then we
17 would place them in protect- protective custody.
18 But we don't involuntarily place anybody in
19 protective custody.

20 MR. COHEN: Do you have the staffing in
21 protective custody, is that the same, is that the
22 same as in general population or do you have
23 higher levels of staff to protect people in
24 protective custody status?

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2 MS. YELARDY: So the staffing in
3 protective custody depends on the need at the
4 facility. So it just, it just depends on how
5 many individuals --

6 MR. COHEN: So it could be the same
7 level of staffing as --

8 MS. YELARDY: It depends on the need of
9 the housing area.

10 MR. COHEN: -- for protective custody.

11 MS. SHERMAN: Thank you. I just wanted
12 to sort of follow-up on Dr. Cohen's questioning
13 and understand under what circumstances, if any,
14 would an individual who was housed in the
15 transgender housing unit be transferred to a, a,
16 a different facility.

17 MS. YELARDY: So another assessment
18 would have to be done, it, it depends. I can't
19 say specifically oh if this happened or if that
20 happened, but another assessment would have to be
21 done of the individual if the individual is not
22 requesting to be removed from THU. They might
23 have to be removed from THU due to safety
24 concerns, whatever that safety concern is, and

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2 then we would probably, depending on what the
3 concern is, place them in our general population
4 at the female facility. So it just depends. And
5 we have to assess it on a case by case basis.

6 MS. SHERMAN: And if they were moved,
7 they were be transferred to the general
8 population in the female facility?

9 MS. YELARDY: If safety allowed, yes.
10 Like I said, it would have to be a case by case
11 assessment. We don't just remove somebody from
12 THU and then put them in a totally different
13 facility. We make an assessment of what's going
14 on, and then we, we make the, the movement.

15 MS. SHERMAN: And who is responsible for
16 making that assessment?

17 MS. YELARDY: We have a unit in the PREA
18 unit that tracks and keeps information on our
19 transgender population, because as you know, the
20 Board receives our bi-weekly report. And so in
21 order to give the Board that information, we have
22 to make sure that we have individuals that are
23 keeping track of everybody in our custody who i-,
24 who has identified as transgender and/or

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2 intersex, and so that information is gained, is
3 gained by them. And in conjunction with, if we
4 need to talk to medical, if we need to talk to
5 the facility for other security concerns. So it
6 just depends on why the person has to be accessed
7 or reassessed.

8 MS. KING: How many of the transgender
9 women who are in men's facilities were in Rose's
10 general population before going to a men's
11 facility?

12 MS. YELARDY: Okay. So currently three
13 individuals were removed from the female fa-
14 facility. Either they requested to be removed,
15 or due to some security concerns, they had to be
16 removed out of the population. Yes, three, I'm
17 sorry, three.

18 MS. SHERMAN: Three requested to be
19 moved to a men's facility?

20 MS. YELARDY: They requested to be, they
21 either requested or due to security concerns they
22 had to be removed.

23 MS. KING: When I was in the transgender
24 housing unit recently and I think Jackie was with

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2 me, the understanding there was that women felt
3 if they were in the transgender housing unit,
4 that was the only option, that if they were going
5 to be moved out of the transgender housing unit,
6 they were going to be moved to a men's facility.

7 MS. YELARDY: I'm not really sure who
8 you spoke to, but --

9 MS. KING: Well, how would they have
10 different information? How is it communicated to
11 them where they could possibly be housed when, so
12 that the whole idea of gen-, housing by gender
13 identity, how is that communicated to someone in
14 writing?

15 MS. YELARDY: Oh, in writing. Like I
16 said, we are developing the directive as well as
17 additional information to hand out to, to people
18 who come into our custody or who are already in
19 custody, so in writing, we might not have it.
20 However, our PREA unit is in that facility and in
21 those housing areas on a regular basis. We also
22 have our PCM and our PREA ambassadors who
23 frequent those housing areas, those three housing
24 areas on a regular basis. And they communicate

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2 to them that if they are removed from the THU or
3 want to be removed from the THU, they have
4 another option, other than going to the male
5 facility.

6 MS. KING: At Rose's, they have another
7 option?

8 MR. COHEN: Since they're assuming --

9 MS. YELARDY: Yes. I'm sorry. Can I
10 just make a correction? Thank you. We do have
11 the form, right. So if somebody communicates
12 that they're having, it's a transgender intersex
13 housing unit form. I believe we shared it with
14 the Board. If we have not, we'll make sure to
15 share it with the Board, and they indicate on
16 there if they're going to be removed, or they're
17 requesting to be removed, or we think it's a
18 security concern, we would have them fill out
19 another form to indicate where they would like to
20 go.

21 MS. KING: Are those forms located in
22 the Transgender Housing Unit?

23 MS. YELARDY: No. They, the staff in
24 that, in those units will communicate that to

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2 someone in the PREA unit. They would start first
3 with the PCM who is located in the facility, and/
4 or the two PREA ambassadors who are located in
5 the facility. If not, then somebody from the
6 PREA unit would speak to them and make sure a
7 form is filled out, another form.

8 MR. COHEN: Is there -- the majority of,
9 of, the majority of transgender women are not
10 housed in Rose's. But it's policy that you will
11 house people according to their gender.
12 Shouldn't -- does the Department have any --

13 MS. YELARDY: I'm not sure, let me --
14 I'm not sure why you're saying the majority.

15 MS. KING: It's 50, 50 percent.

16 MR. CEPHAS: I think it was 50/50, yeah.

17 MR. COHEN: Oh, 50 percent or not. Well,
18 that, okay, that, that doesn't seem like
19 [unintelligible] [02:16:27].

20 MS. YELARDY: And out of, out of that,
21 15 did not want to go to the female facility, so
22 I just want the Board to keep that in mind as
23 well.

24 MR. COHEN: Do you think there's a need

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2 for an additional THU unit in, in Rose's
3 particularly? It seems like, I mean from what,
4 what, what we've been informed, there are issues
5 of, of, of conflict, conflict between
6 individuals, or classification issues in terms of
7 the Department, which make you say someone is not
8 eligible to be assigned or remain in a T-, a THU.
9 Wouldn't it be appropriate to create additional
10 capacity? And also, the Board did recommend in
11 its THU report in the past that you
12 electronically track. When do you think that
13 system will be available? Those are two separate
14 questions.

15 MS. YELARDY: So, let me do the second
16 one first, because I remember that one. We do
17 have the information in our IIS system. Anybody
18 who indicates that, on the screening tool, that
19 information is capture from the screening tool
20 into IIS and therefore into the hub. So we do
21 that information and not everybody has access to
22 that information, due to confidentiality reasons.
23 I'm sorry, what was the first?

24 MR. COHEN: Yeah, I, I mean it's our

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2 understanding, so I guess we'll have to clarify
3 with you what that, what that report is. We
4 thought there's a -- that we had requested a
5 specific tracking system, which is, which is not
6 just that you can look it up in IIS. But I, but
7 I'll have to get back to you, or we'll get back
8 to you on that.

9 MS. YELARDY: Okay.

10 MR. COHEN: It was actually tracing
11 application, sorry, tracing THU applications and
12 decisions. That was the -- have you created a
13 system to, to track THU applications and
14 decisions?

15 MS. YELARDY: If you're asking do we
16 have an electronic database --

17 MR. COHEN: Yes.

18 MS. YELARDY: -- we don't have an elect-
19 electronic database yet. We are in the process
20 of working on that.

21 MR. COHEN: And when do you think that
22 will available?

23 MS. YELARDY: I think we testified about
24 our CMS before, so I'm not, I'm not really sure.

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2 We'll have to get back to you.

3 MR. COHEN: That was about PREA, that
4 was about PREA reports, not about THU
5 applications.

6 MS. HEIDI GROSSMAN: Right. Well, the
7 case management system.

8 MR. COHEN: Yes.

9 MS. GROSSMAN: Is something that we're
10 working on and we intend to include this tracking
11 in the case management system.

12 MR. COHEN: So, so THU applications will
13 be part of the case management system.

14 MS. GROSSMAN: Yes.

15 MR. COHEN: The PREA case management
16 system?

17 MS. YELARDY: If we can develop that,
18 we're looking into it. We are looking into
19 electronically, other than the IIS and other than
20 the, the hub.

21 MR. COHEN: And the other question was
22 about the need for an additional THU unit for
23 persons who because of the, of the, of the number
24 of people, the number of transgender persons in

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2 the system.

3 MS. YELARDY: So right now, we have 16
4 individuals in the THU for a housing area that
5 can house, it probably has maybe 45, 50 beds. We
6 probably would never go that high for, for
7 obvious reasons, but we only have 16 in, in the
8 THU right now. So when you're talking about real
9 estate and also additional staff we'll have to
10 have to a housing unit, it becomes a difficult
11 conversation. But we have 16 in the THU and we
12 have enough space that we can add if anybody
13 would like to go to THU, or requests to go to
14 THU.

15 MR. COHEN: Thank you.

16 MS. YELARDY: You're welcome.

17 JUDGE HAMILL: I just wanted to ask a, a
18 couple of questions in regards to your screening
19 information.

20 MS. YELARDY: Yes.

21 JUDGE HAMILL: Can you tell us how many
22 people in the Department's custody, this time
23 about how many have been assessed to be at risk
24 of sexual victimization, as well as those who are

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2 at risk of being sexually abusive. And then once
3 you attain that information, what systems and
4 strategies do you have to use that information to
5 try to keep them and those who are more likely to
6 be abusive from abusing anyone else?

7 MS. YELARDY: Okay. Right now, again,
8 these are stats from, from, from yesterday, we
9 have 177 individuals who are designated as
10 potential sexual abusers, we have 490 who are
11 designated potential sexual victim and 53 who are
12 both designated an SA and an SV and we have 6,720
13 who have a non-designation. And any, any
14 individual who is an SA, we have SV houses
15 located in every facility except for, I'm sorry,
16 potential sexual victim houses, I'm calling it
17 SV, sorry. We have those houses located in every
18 facility, except for the, the West and, and NIC.
19 And so anybody designated as an SA would not go
20 into a house or a housing area that's designated
21 for our potential sexual victims.

22 JUDGE HAMILL: Right, but a sexual
23 abuser can abuse people who are not necessarily
24 determined to be at risk of being sexual victims.

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2 So how do you protect the other inmates from
3 those who have, what's been determined to have,
4 be a propensity for sexual abuse. What do you do
5 with that information?

6 MS. YELARDY: The -- if somebody is
7 designated a potential sexual abuser?

8 JUDGE HAMILL: Yes. Other than not put
9 them with those that are deemed likely to be
10 sexually victimized or at risk of.

11 MS. YELARDY: Sure. So our staff, in
12 the facility, either our PREA compliance managers
13 or our PREA ambassadors, they have this
14 information, and they know to go to certain
15 housing areas to, to monitor the activity in
16 those housing areas. And also with the Genetec
17 solution that we're going to expand to some of
18 the individuals in the PREA unit who ask that
19 they also monitor certain housing areas. But
20 staff is well aware. Most of the staff has had
21 the, has received the PREA training and they know
22 what to, to look out for. We don't tell staff
23 everyone who is potential sexual abuser, for of
24 course, obvious reasons. But the PREA unit staff

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2 is aware.

3 CHIEF JENNINGS: So again, any time that
4 those inmates are identified, they're housed in
5 the cells closest to where the officer's station
6 is for extreme monitoring.

7 JUDGE HAMILL: Thank you.

8 MS. GROSSMAN: I would also add that
9 it's used to assist with program placement and
10 different housing placement, and as the Chief
11 said, cell placement.

12 MR. RICHARDS: No other questions and
13 Chair Cephas is back at the table.

14 MR. CEPHAS: Anything else from, from
15 the Board on the? Thank you.

16 MS. YELARDY: Thank you.

17 MR. CEPHAS: Next, we'll hear from
18 Health + Hospitals Correctional Health. Good
19 morning.

20 MR. ROSS MACDONALD: Good morning. Ross
21 MacDonald, Chief Medical Officer for CHS. So we
22 have not prepared extensive comments, but I will
23 just mention how important this work is to us.
24 It's a core function of CHS and critical to our

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2 mission to engage in this work, to be for our
3 patients, that safe space that DA Clark
4 mentioned. And we have built, in partnership
5 with the Department, very clear systems of
6 reporting and cross reporting. Our core
7 responsibility is evaluating patients immediately
8 after an allegation and that involves an
9 evaluation on the medical side as well as on the
10 mental health side. And that is offered to 100
11 percent of allegations that are made in the, in
12 the, in the system today.

13 We also have our key role of evaluating
14 the need for forensic examination. So as health
15 care providers, we don't do forensic examinations
16 on Rikers Island, but we partner with our
17 colleagues in Health + Hospitals, at both
18 Elmhurst Hospital and Bellevue Hospital where
19 there are expert teams who are trained
20 specifically to perform those evaluations. Our
21 role is one of triage in those cases and we have
22 board certified emergency physicians who work for
23 CHS who help our primary doctors and, and
24 physician assistants and nurse practitioners

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2 decide when a referral to the emergency
3 department is appropriate for that evaluation.

4 A few things within the last year or so,
5 in 2018, as the Board knows, we implemented the
6 sexual abuse advocacy program to provide
7 additional supportive services for those who
8 experience an episode of sexual abuse while
9 incarcerated. And that program has been able to
10 connect with 82 percent of those patients who
11 have made allegations during, since its
12 inception. So we're very pleased to have been
13 able to offer that additional service.

14 And as well, in 2018, we implemented our
15 own training for our staff that meets the
16 criteria for, for PREA training, but it's
17 specifically tailored to the role of clinical
18 staff. And we're very pleased to have additional
19 clarity about issues specific to, to our staff,
20 including our work flows, and particular
21 sensitivity towards transgender patients who we
22 know are at particular risk. So with that, I'd
23 be happy to answer any questions.

24 JUDGE HAMILL: Thank you so much. I

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2 just have a couple of questions about the
3 forensic medical examinations. So since our
4 standards when into effect in January, 2017, how
5 many people have actually been referred for
6 forensic medical examinations by [unintelligible]
7 [02:26:57] and of those referred how many
8 actually obtained the forensic medical
9 examination?

10 MR. MACDONALD: Sure. Sure. So it was,
11 hold on let me just find the right number, 66
12 cases, and that's inclusive of calendar year '17
13 and '18 were referred. We at CHS, again, as the
14 care providers will make that referral, but we
15 hand off the remainder of that process to our
16 colleagues at Health + Hospitals and it is a
17 forensic process, so there is a little separation
18 from clinical care. So we don't have numbers on
19 the outcomes of those. Those would be
20 transferred through chain of custody to the
21 appropriate authorities once they're completed.

22 We will collaborate though on clinical
23 aspects of care as often post exposure
24 prophylaxis is indicated in these cases. So we

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2 would, we may initiate that before we refer or
3 pick it up from the emergency room evaluation.

4 JUDGE HAMILL: And can you just talk a
5 little bit about what the factors are that cause
6 a referral to be made for the forensic medical?

7 MR. MACDONALD: Sure. So our ED
8 physicians who triage all referrals to the
9 hospital, by virtue of being board certified in
10 emergency medicine, are trained in the criteria,
11 which, which warrant forensic evaluation. And
12 those are factors such as, you know, the time
13 from the allegation, the nature of the
14 allegation, exactly what is alleged and we try to
15 be broad and err on the side of, of referral.

16 JUDGE HAMILL: And when there is a
17 referral for a forensic medical examination, are
18 you aware of whether the necessary protocol
19 includes taking the clothing or, and/or bedding
20 of the alleged victim in those cases?

21 MR. MACDONALD: So, part of our training
22 for our staff is to acknowledge that our patients
23 should be advised to preserve their clothing when
24 they're in front of us. The, the initial stage,

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2 stages of that would be in the housing area and
3 it would be correctional staff.

4 JUDGE HAMILL: And is there a
5 coordination with correctional staff in terms of
6 these allegations, if they're to be made to the
7 healthcare provider and not to DOC or not called
8 in on a hotline?

9 MR. MACDONALD: Yes, absolutely. So the
10 key function of our staff cross reporting, and
11 that goes through our central operations desk,
12 which is active 24/7, and tracks each case
13 through its completion, being offered all the
14 required services.

15 JUDGE HAMILL: Okay. Thank you.

16 MR. RICHARDS: Thank you for speaking to
17 us. Can you talk about your collaboration with
18 the Department of Correction when there's an
19 allegation that involves one of Health +
20 Hospitals staff? What, what protocol is in place
21 to protect the accuser and how do you sort of
22 separate your staff?

23 MR. MACDONALD: So we take all
24 allegations very seriously. There have been no

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2 substantiated sexual abuse cases against Health +
3 Hospital staff since our transition to Health +
4 Hospitals, but as you heard DA Clark mention, we
5 know that there is a power dynamic at play and a
6 possibility. So we take any allegation extremely
7 seriously.

8 The, the immediate response is related
9 to patient safety, so a collaboration and a
10 decision ultimately by our clinical service in
11 collaboration with our senior director of risk
12 management about what the immediate response
13 should be. That may be a prohibition of contact
14 between the clinician and that individual patient
15 up to removal from care immediately. So that
16 would be the, the spectrum of interventions that
17 we would take in the moment.

18 MR. CEPHAS: So, quick question. In
19 view, we, we heard earlier, in view of the large
20 number of unsubstantiated cases, does that fact
21 itself give rise to any need for additional
22 mental health assistance, mental health
23 intervention? Do you get a lot of people,
24 inmates seeking mental health assistance because

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2 they've had a claim that's been un-
3 unsubstantiated and they think they have not been
4 fairly, the case has not been fairly or
5 accurately or appropriately investigated. Do you
6 see that at all?

7 MR. MACDONALD: I, I don't think we see
8 that as a source of seeking out mental health
9 care, or a particular distress that's come to my
10 attention. I think the Department has made great
11 strides and, and our patients seem to feel that.

12 MR. CEPHAS: Well, good. Okay. Dr.
13 Cohen.

14 MR. COHEN: There was -- DA Clark raised
15 an issue regarding lack of forensic evaluation.
16 Could you respond to her concern, or in her
17 statement?

18 MR. MACDONALD: So yeah. I think I
19 would like some more specificity about the case
20 or cases that she's referring to. I know in some
21 cases, there can be complexity around the ca-,
22 the way a case is initially reported, and it may
23 initially be reported to clinical staff as a
24 consensual act, which would not typically take it

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2 down a forensic evaluation path. And that's
3 important to preserve because of our
4 confidentiality relationship with our patients.
5 So, so there have been some cases where the
6 indication for a forensic examination was
7 unclear, or shifted over time, depending on the
8 clinical history that was given to us. But I'm
9 not sure what the specific concern that she was
10 raising.

11 I will mention that there was a time
12 when our emergency physicians on Rikers Island
13 performed the forensic examinations, and it was a
14 collaboration with the Department as well as the
15 Moss Group to change that practice to remain true
16 to our mission of providing care rather than
17 performing forensic evaluation, as well as to
18 make sure that that evaluation, when it does
19 happen, is in a location outside the jail with
20 staff who are expert at that and do it as their
21 primary job.

22 MR. COHEN: Just following up on that,
23 two things, I understand why you'd do that, and
24 it makes sense to me. On the other hand, I would

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2 imagine, for some people, being, waiting to get
3 transported to Elmhurst or Bellevue in that
4 situation is going to be after the trauma of
5 their, of their situation. And, or do people
6 refuse who you think should get forensic
7 evaluations for that reason?

8 MR. MACDONALD: I, I don't have a lot of
9 cases that are coming to mind where we're sort of
10 concerned, based on the nature of the allegation
11 that a forensic examination really would be
12 valuable and the person's refusing.

13 MR. COHEN: Where would -- thank you.
14 Where would the result come. Say, say that if
15 sperm was found in a vaginal specimen for
16 example, where would, where would that go?

17 MR. MACDONALD: So it would not come to
18 CHS. It goes through the chain of custody
19 process that's in place at the hospital.

20 MR. COHEN: To whom? Who would it go
21 to?

22 MR. MACDONALD: I'm not sure exactly.

23 MR. COHEN: I was wondering whether the
24 DA's concern reflected information also just not

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2 getting to her or to DOI in a timely manner. Do
3 you, do you --

4 MR. MACDONALD: That's possible.

5 MR. COHEN: Does the Department know?

6 MS. TOWNSEND: The question was about
7 where do the results of the forensics exam go?
8 We do get results from the Office of the Chief
9 Medical Examiner. I belie-, I can't speak to the
10 DA's office. I think they may send it to the
11 DA's office as well, but I don't want to speak
12 for them.

13 MR. COHEN: Do you know how long it
14 takes for you to get those results?

15 MS. TOWNSEND: It varies.

16 MR. COHEN: Can you give me some range?

17 MS. TOWNSEND: It's, it does take some
18 time.

19 MR. COHEN: Like weeks, months?

20 MS. TOWNSEND: Months.

21 MR. COHEN: And then -- thank you very
22 much.

23 MS. TOWNSEND: You're welcome.

24 MR. COHEN: And then the process that

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2 you have for, that you either contract with a
3 provider for support persons post sexual abuse,
4 there was a question earlier about having an
5 advocate or someone present at an, at a, at an
6 interrogations or investigations. Does that
7 person, can they provide that, that kind of
8 support during investigations by ID or DOI staff,
9 or DA staff?

10 MR. MACDONALD: So our SSA program, as
11 it's designed does not have that capacity. I do
12 believe that the, there are separate advocacy
13 services available in the context of the hospital
14 evaluation.

15 MR. COHEN: Yes. But not on, not on,
16 not in the jail itself?

17 MR. MACDONALD: Not in the jail itself.
18 The, the program seeks to follow up within 24 to
19 48 hours.

20 JUDGE HAMILL: I just wanted to, I
21 assume I know the answer, but I just want to make
22 sure. So when you say when the allegations or
23 when an alleged victim comes to you, to your
24 staff and says that it's consensual, you don't

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2 then send that for forensic. I assume that's
3 only when you're talking about an incarcerated
4 person with an incarcerated person.

5 MR. MACDONALD: Absolutely.

6 JUDGE HAMILL: Not with a staff.

7 MR. MACDONALD: Absolutely.

8 JUDGE HAMILL: Because with a staff,
9 they can't consent.

10 MR. MACDONALD: Absolutely.

11 JUDGE HAMILL: So a forensic would be
12 done in those cases, if it's appropriate.

13 MR. MACDONALD: Yes, and thank you --

14 JUDGE HAMILL: Based on the
15 circumstances.

16 MR. MACDONALD: -- thank you for making
17 that critical clarification. That's a key element
18 of our training for our staff.

19 JUDGE HAMILL: Yes, thank you.

20 MR. RICHARDS: And could you talk about
21 your vetting process when it comes to staff and
22 experiences as a sexual abuser or abusers.

23 MR. JONATHAN WANGEL: Good morning.

24 Still good morning. Jonathan Wangel, Team

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2 Director for Correctional Health, so, you know,
3 every candidate for employment, whether it's
4 Health + Hospital staff, affiliate staff, vendor
5 staff, contractors, volunteers, interns, they all
6 go through the same HR, full background
7 clearance, full vetting, state registry checks,
8 everybody is checked, you know, to the full
9 extent possible. And anybody who comes back with
10 a hit of course is excluded.

11 MR. RICHARDS: And, I'm, I'm assuming
12 you do training before they start in terms of
13 reporting, to be able to identify and then
14 protocol.

15 MR. WANGEL: Correct. PREA training is
16 part of all new-hire orientation. It happens
17 twice a month. Every staff member completes it
18 before starting.

19 MR. RICHARDS: And that's a question for
20 DOC too. I don't think we got a chance to ask,
21 ask about in the academy, what is the level of
22 training that candidates get with respect to
23 PREA?

24 MS. YELARDY: So, thank you for, for

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2 letting us explain this. So we do, the four-
3 hour, really in the academy, the five-hour
4 training with the recruits. And so they already
5 come into a facility having the PREA training.

6 MR. RICHARDS: Thank you. Thank you.

7 MR. CEPHAS: Any other questions?

8 Thanks very much. So now we'll hear from the
9 Westchester Department of Correction.

10 MR. LEANDRO DIAZ: Good morning. My
11 name is Leandro Diaz and I am the Deputy
12 Commissioner of Operations for the Westchester
13 County Department of Correction. And given the
14 importance of PREA, I also serve as the
15 Department's PREA coordinator. Thank you for
16 allowing us an opportunity to speak briefly on
17 the steps we took to operationalize and achieve
18 PREA compliance. We have had policies in place
19 prior to 2003 that addressed sexual assault and
20 that were in line with the 2003 Prison Rape
21 Elimination Act. In 2012, the Department of
22 Justice promulgated a set of regulations, also
23 known as the DOJ PREA Standards. At this time,
24 the Westchester County DOC began the process to

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2 become PREA compliant to ensure that we operated
3 under the best practices to prevent, detect and
4 respond to sexual abuse and sexual assault of our
5 custodial clients.

6 How did we do this? First, we made a
7 decision that given the importance of the work
8 that this process required, we knew that it
9 needed to be led by an executive or senior
10 uniform member of the Department in the rank of
11 warden or higher, so that the person could be
12 fully empowered to make operational decisions on
13 implementation, and more importantly ensure
14 accountability. Ultimately, the decision was
15 made that this work would be led by the deputy
16 commissioner of operations.

17 In preparation for the audit and to
18 ensure that we would have comprehensive policies
19 and practices, we attended numerous trainings
20 offered by the National PREA Resource Center, and
21 used various reference guides issued by the
22 National Center for Transgender Equality, the
23 ACLU, the National Institute of Corrections, and
24 Just Detention International, to name a few. We

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2 also participated in a week-long DOJ auditor
3 training, so the Department would have staff that
4 knew how to internally ensure that the Department
5 was performing to the intent of the standards.
6 This engagement with outside parties also ensured
7 that LGBTI, the most at-risk group as it relates
8 to PREA, were included in how we operationalized
9 our processes.

10 While the PREA standards included
11 several protections for LGBTI, our department
12 felt that we should go beyond what was required
13 within the jail standards. By using guides much
14 like the ACLU advocacy guide, we were able to
15 establish meaningful changes like ensuring that
16 we used preferred pronouns, preferred name,
17 housing preferences, and strip-search gender
18 preference. We also created a stand along LBGTI
19 policy that covered guidelines for safe
20 confinement, employee conduct, communications,
21 searches and other areas. Also, recognizing that
22 transgender and intersex inmates face many
23 challenges while in custody, we took the
24 additional step of having the client meet with

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2 the PREA coordinator upon admission, thereby
3 ensuring that they were aware of PREA, the
4 methods of reporting abuse, provide a point of
5 contact, and so we can assess how they were
6 adjusting to the, to the environment. The
7 Department found that most often, clients' fears
8 were reduced as a result of this encounter with
9 high level staff. This engagement, like all PREA
10 interviews, is conducted in a private,
11 confidential setting outside of the jail housing
12 units.

13 Lastly, the Department's mental health
14 provider was tasked with having monthly contact
15 with identified transgender and intersex inmates,
16 whether or not they had a mental illness, in
17 order to conduct follow-up safety and welfare
18 inquiries.

19 It is vital that our custodial clients
20 and our workforce have confidence in our PREA
21 process, so through academy and in-service
22 training, along with the supervisory
23 accountability, we have an institutional culture
24 that feels they can make a complaint,

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2 confidentially if need be, and all allegations
3 are fully investigated. Part of this process is
4 having a documented, coordinated response plan
5 which includes the Westchester County Department
6 of Public Safety, the Westchester County District
7 Attorney's Office, our Department of Correction
8 Special Investigations Unit, and community
9 support agencies. At a minimum, every allegation
10 is reviewed by the DOC, by DOC's SIU with
11 consultation as needed with the on-site detective
12 from Westchester County Department of Public
13 Safety.

14 On a monthly basis, the Department's
15 Sexual Assault Incident Review Board, consisting
16 of the Department's medical director, the
17 director of Mental Health, director of Nursing,
18 and Health Services administrator, PREA
19 coordinator and SIU commander review all
20 investigative findings to make sure all
21 allegations were investigated according to
22 policy, identified if additional issues need to
23 be addressed, example, staff training, or camera
24 sightlines, and also to determine whether race,

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2 gender, or gang were driving factors in the
3 allegations.

4 All of this level of accountability
5 collectively ensures that victims and reporters
6 can feel confident there will be no reprisals for
7 their allegations, but more importantly we make
8 every assurance to protect victims and reporters.
9 All interviews are conducted in private
10 confidential settings. We do not conduct
11 ourselves in a way that would further victimize
12 the victim. We approach the interview as an
13 information gathering process and do not use
14 interr- interrogation tactics when interviewing
15 victims and/or reporters. All victims are
16 provided with immediate medical and mental health
17 services and when deemed appropriate by our
18 medical director, are taken to our local hospital
19 for follow-up with forensic acute care team.

20 The final outcome of this, is in 2017,
21 the Department was issued a final PREA report
22 which noted that we were 100 percent compliant
23 with the 43 PREA standards and exceeded 13 of the
24 43 standards. Thank you.

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2 MR. LOUIS MOLINA: So good morning. My
3 name is Louis Molina. I serve as the first
4 deputy commissioner for Westchester County
5 Department of Corrections. My colleague briefly
6 walked you through how we as a department
7 successfully implemented and ensured that we had
8 a PREA process that achieved DOJ PREA Jail
9 Standards and created a robust atmosphere that
10 presents, detects, and responds to sexual abuse
11 and sexual assault of our vulnerable population.

12 In closing, I just wanted to take two
13 minutes to touch on why we are successful as to
14 be PREA certified. We were able to achieve this
15 because we have created an evidence-based
16 ecosystem that ensures that our most vital asset,
17 our workforce, has support via training. There
18 is regular, direct supervision from first line
19 supervisors all the way up the chain of command,
20 coupled with our strategic nonprofit vendor
21 partnerships that work daily with our staff, so
22 that our staff understands the impact of adverse
23 childhood experiences and secondary trauma and
24 the importance of why our custodial clients need

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2 to be encouraged to stay connected with their
3 loved ones. And so the way we do this to foster
4 positive visits between their family and friends,
5 we do not conduct strip searches before visits of
6 persons in our custody or their visitors. This
7 ensures that we have a secure and safe
8 rehabilitative environment that maintain a
9 person's dignity.

10 PREA compliance is one of our many
11 accomplishments. We are also certified by the
12 American Correctional Association and the
13 National Commission on Correctional Health Care,
14 that also have PREA components to them, which
15 means that we voluntarily operate at the highest
16 standards and best practices in corrections.

17 I share this with the Board, because
18 while the topic today is PREA, PREA compliance is
19 but one of but many vital standards along with
20 our other programmatic best practices that allow
21 the staff, our custodial clients and partners to
22 work and reside in a safe and secure
23 rehabilitative environment.

24 On behalf of our commissioner, Joseph

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2 Spano, I want to thank you for your time and for
3 allowing us an opportunity to add our voice to
4 this important conversation.

5 MR. COHEN: Thank you for -- I just want
6 to thank you, first and then if you could, I
7 guess sort of related questions, I mean really
8 the, the fact, the, the, the way you approach
9 visitors is very interesting. I mean certainly
10 we've, we've received many concerns from
11 visitors, you know about that. And also, where
12 there some incidentals, were there some incidents
13 that led to the Department's commitment to this.
14 You said you've gone back for, for 15 years on
15 it, but in the past five years, have, have, is
16 there reason why you're taking such an interest
17 and come down to see us and thirdly, does it work
18 in terms of prevention of, of sexual abuse, in
19 your experience?

20 MR. MOLINA: Sure, so my colleague has
21 been with the Department for 30 years and I've
22 been there for about a little over a year now.
23 But what I think and our ideology is we took over
24 the new administration of Westchester County, we

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2 felt that the commissioner, the leadership of
3 the, of the jail had to also be the advocate for
4 the vulnerable population that's in the jail.
5 That's why we take this very serious and we make
6 sure that we educate our workforce and work very
7 closely with our strategic partners in making
8 sure that we can deliver information that the
9 population needs in order to seek assistance if
10 they feel they need it. Any particular thing
11 that might have triggered this, during your time?

12 MR. DIAZ: No. I mean one of the, one of
13 the main factors also is while we wanted to have
14 best practices, we also house federal inmates.
15 And part of PREA is that you contract with a
16 facility that has, you know, federal inmates you
17 need to be PREA compliant. So that was one of
18 the factors, but there was no spike in assaults
19 or claims or allegations. We just wanted to have
20 like NCCHC and PR-, and ACA since 2010, we wanted
21 to make sure we, we followed the best standards
22 and the PREA as well.

23 MR. RICHARDS: Can you talk about -- you
24 said y'all have monthly meetings where y'all

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2 review every allegation and whether or not the
3 investigation was thorough. Does that include
4 the Westchester County prosecutor?

5 MR. DIAZ: It, it, it doesn't. We with
6 the DA's office, initial stages and throughout
7 investigation where we feel it's warranted for it
8 to go to the DA's office. But it includes the
9 Department structure, and we just review, based
10 on PREA standards, to make sure that, that
11 everything was covered, if there was an
12 investigation, was there any sightline issues of
13 cameras, we add additional cameras. We, we do a
14 lot to, to deal with the prevention part of it,
15 right, with assessment tools when they come into
16 the jail, upon intake. We moved away from dorm
17 housing, it's single cell occupancy that we go
18 to. We have over 1,200 cameras. And whenever we
19 do an investigation, we look at, even if it's a
20 use of force investigation, was there an angle
21 that wasn't captured, that, that may, you know,
22 probably allowed this to occur. And then we add
23 that camera. So we do a lot to, to manage the
24 preventative part of it.

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2 MR. COHEN: What's the population of
3 your jail?

4 MR. DIAZ: We, we've been up at -- we
5 can hold up to 1,800 inmates. We've been at
6 1,500, about five years ago, and now, like every
7 other county, we're, we're seeing a downslide, so
8 we're at 1,000. And we've raised the age, we're
9 losing minors. But we have about five or six
10 male and female minors.

11 MR. RICHARDS: And what about your
12 protocol for collecting forensic evidence?

13 MR. DIAZ: So we were one of the first
14 jails actually that we offered a training, we,
15 through the National PREA Resource Center. We did
16 sexual assault training in a confinement setting,
17 which was specific training to be done. We ran
18 it through the Sheriff's Association for the
19 state of New York and we, we actually hosted that
20 training at, at Westchester County.

21 But when we have a serious allegation,
22 we, we cont-, we work -- we have detectives from
23 the county police assigned to the jail. We pay
24 their salary. They're assigned to the jail to

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2 help us in those cases. They use their crime
3 scene unit, they use their sexual abuse
4 investigators and in concert with our own
5 investigators. So serious allegations where it
6 requires a crime scene, or forensic evidence
7 gathering, we call in county police right away.

8 MR. RICHARDS: Thank you.

9 MR. CEPHAS: Thank you very much.

10 MR. DIAZ: Thank you.

11 MR. CEPHAS: So, now we are going to, I
12 think that completes the part of the hearing for
13 the institutional people, the institutions
14 testifying. We now move to the speaker's list
15 from the public. And the first speaker is Scott
16 Moffat. I understand you have, there's five
17 minutes per, per speaker --

18 MR. SCOTT MOFFAT: I heard six --

19 MR. CEPHAS: -- six minutes per speaker.
20 Alright.

21 MR. MOFFAT: Oh, thank God. Good
22 morning. Good afternoon now, I think. My name
23 is Scott Moffat. I'm a police officer for the
24 Allegheny County Police in Pittsburgh,

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2 Pennsylvania. I have been a police officer for
3 17 years. For eight of those 17 years, I was a
4 detective assigned to the General, General
5 Investigations unit, which included
6 investigations of all sexual assault crimes. I
7 drove six hours to be here today on behalf of my
8 brother, Jonas Caballero. Jonas is many things.
9 He is a brother, a son, he's a Fulbright scholar,
10 he obtained a Masters of Philosophy in Middle
11 Eastern Studies from the University of Cambridge
12 in the U.K. He has worked as a human rights
13 activist in Israel and Palestine and he was once
14 a man on his death bed.

15 He became extremely sick four years ago
16 and slipped into a coma. I received messages
17 from around the globe in several different
18 languages, all people saying my brother changed
19 their life in one way or another and they were
20 praying for his. Currently he is a prisoner at
21 Greene Correctional Facility serving a three-year
22 sentence for a first time, nonviol- nonviolent
23 felony drug offense.

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2 On March 6, 2018 Jonas was sexually
3 assaulted by a correctional officer when he was a
4 detainee at the Brooklyn Detention Complex.
5 Jonas reported the assault to a captain and the
6 captain called him a liar. Not knowing the
7 proper procedure for reporting sexual assault in
8 prison, he told a female officer who laughed,
9 pointed to his crotch and said that the officer
10 probably thought that his genitals was
11 contraband. He reported the assault to a second
12 female officer. She told him that he shouldn't
13 have minded the assault since he's gay and quote,
14 you people do that kind of stuff all the time.

15 He then contacted 311 and again reported
16 the incident. An investigative team visited him
17 that very day. They informed him that his
18 allegations would be investigated and that he
19 would receive word in a timely manner of the
20 results. He did not hear back. Jonas began
21 filing grievances. He still did not hear back.
22 He had no choice but to file a prisoner right's
23 lawsuit in Federal Court and still, he has not
24 heard back.

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2 It should be noted that on the same day
3 as my brother's incident, another incident
4 occurred under very similar circumstances on
5 another inmate from that same officer. My
6 brother was surprised and shocked to see that an
7 off-, that officer on his unit for several days
8 even after he reported the incident. He decided
9 to rather stay in his cell than to participate in
10 optional activities such as visiting the medical
11 clinic or go to the barber shop to avoid further
12 retaliation and/or contact.

13 It is now 413 days since the incident,
14 since the assault. According to the, the PREA
15 and Board of Correction guidelines, the case
16 should have been closed at least 323 days ago.
17 Although I find this unjust and contrary to New
18 York City human rights laws and Congressional
19 legislation, it is not entirely surprising after
20 examining the outcome of the Board of
21 Corrections' audit of the Department of
22 Corrections handling of PREA investigations.

23 PREA makes it clear that sexual assault
24 in prison is a crime, whether committed by

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2 correctional staff or other inmates. It also
3 ensures that prisoners who are victims of sexual
4 assault will have a safe and fair mechanism to
5 bring forth allegations of their sexual assault
6 in their quest to heal and find resolve.

7 My brother has told me he feels sad,
8 frustrated, angry, forgotten, marginalized, and
9 worthless. And this from a man who has a voice
10 and uses it. He feels, as a prisoner that
11 suffering through something like this just comes
12 with the territory, that it should just be
13 accepted and everyone move on like it didn't
14 happen. Sexual assault is not supposed to be
15 part of his punishment. Not for him, and not for
16 any prisoners, including the ones who are afraid
17 to speak up, who give up after filing the first
18 report, who give up after hearing about Jonas'
19 story because if he can't get a single response,
20 what chance do they have?

21 Luckily, my brother Jonas has found
22 allies through the Crime Victims Treatment
23 Center, Councilman Daniel Dromm's office,
24 journalists from the Gothamist, and from the New

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2 York Daily News, and through his family.

3 Throughout my law enforcement career, I
4 have seen firsthand the traumatic effects of
5 sexual assault on victims and how they can last
6 for years. One thing that can bring some type of
7 closure in many cases however, is the timely
8 investigation of these criminal acts and
9 prosecuting those individuals involved in
10 committing them. Criminal acts that occur inside
11 any type of detention or prison, prison facility
12 should be treated the same as those that occur
13 outside of them.

14 It is abundantly clear that the current
15 system is broken, providing no avenue to heal and
16 no measures to resolve. Sexual assault in prison
17 is a crime and recognized as torture under inter-
18 international law. In an era where the #MeToo
19 movement is helping to embolden and empower
20 victims of sexual assault, and at a time where
21 even the New York City Council and the watchdog
22 agency Board of Corrections, recognizes that the
23 system has flat lined, it is extremely
24 discouraging to stand here today and say that my

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2 brother still has not received an update about
3 the investigation into his sexual assault. My
4 brother spent years of his life being a voice for
5 the voiceless, fighting for basic human rights
6 for those who couldn't fight for themselves.
7 Even today, from his jail cell, he knows I'm
8 speaking out on his behalf and he hopes my words
9 just don't help his case, but the countless other
10 victims who are being ignored by the system, and
11 those who are afraid to speak up. Thank you for
12 your time.

13 JUDGE HAMILL: Excuse me, I just wanted
14 to say something before you leave. I wanted to
15 thank you so much for coming, driving six hours
16 to be here with us to tell us about your
17 brother's story. We will, make sure you give
18 staff your brother's name. We know he's in
19 Greene County, and you're saying that this
20 occurred in Brooklyn, is that where you said it
21 occurred?

22 MR. MOFFAT: Brooklyn Detention, Yes,
23 ma'am.

24 JUDGE HAMILL: Okay. So --

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2 MR. RICHARDS: In 2018 I believe?

3 MR. MOFFAT: Yes, yes, sir.

4 JUDGE HAMILL: In 2018, you said 14, 413
5 days ago. We can look into this.

6 MR. MOFFAT: Okay. I appreciate that.

7 JUDGE HAMILL: Just make sure that you
8 leave your name and your phone number, so that we
9 can follow up with you and your brother.

10 MR. MOFFAT: Okay. I'm going to stick
11 around. Thank you.

12 JUDGE HAMILL: Thank you.

13 MR. RICHARDS: We're going to call up
14 Ariel Fox and Jessa Degroote.

15 MS. JESSA DEGROOTE: First, we want to
16 start by saying thank you very much for having us
17 here today. Thank you for having this forum.
18 Unfortunately, our client story is very similar
19 to Jonas' story. And we think that his story
20 touches on a number of issues that have come up
21 today, the first of which is cooperating with the
22 Bronx district attorney.

23 Our client is the person who is
24 mentioned in Legal Aid's circulation before this

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2 meeting. Our client cooperated with the Bronx
3 DA. He met with the Bronx DA in October, 2016.
4 Since October 2016, the Bronx DA has not closed
5 the investigation, has not made a charging
6 decision, and until yesterday had not asked to
7 speak to our client for a second time. That's
8 been the status of the criminal investigation.

9 One thing that we think brings to light
10 why people may not be cooperating is while these
11 criminal investigations are happening, the city
12 of New York is asking federal judges to stay
13 civil cases, is telling these plaintiffs they
14 cannot proceed with civil cases, they cannot
15 proceed with ripe evidence while it exists until
16 the criminal investigation is closed.

17 After our client spoke with the Bronx DA
18 in October 2016, we agreed to stay our client's
19 civil case in order to permit that criminal
20 investigation to go forward. It was only when
21 nothing happened for over 16 months that we
22 finally said to the judge this is enough. The
23 evidence is getting old, we have to go forward.
24 The investigation has not gone anywhere.

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2 In our client's case, we believe that
3 the correctional officer, based on the DOI
4 investigation also atta-, harassed at least four
5 other people. That was all referred to the Bronx
6 DA and as we said, as far as we know, no charging
7 decision has gone forward.

8 The other thing we think this weighs on
9 is your question about people being held in
10 intake. After our client was sexually assaulted
11 and made a complaint, he was held in the intake
12 unit for a prolonged period of time where he was
13 physically assaulted by officers who retaliated
14 against him for reporting the sexual abuse and
15 told him next time, get some DNA. We think the
16 intake holding is happening and is a problem.

17 We also think that there are issues with
18 the unannounced rounds. To give some cli-,
19 context, our client is a gay man who was
20 particularly vulnerable when he arrived at Rikers
21 and therefore was held in the AMKC in Quad 4
22 Upper. At the time when he arrived, there were
23 no cameras, and there was a guard who immediately
24 took a liking to him, began buying him clothes,

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2 food, being extra kind to him, as long as he
3 could also come by our client's cell, block the
4 cell door, with the guard's 300 plus pound body
5 and then masturbate our client.

6 Unannounced rounds did not help. The
7 guard was able to block the entire cell door with
8 his body, and when rounds came by could simply
9 back away or hide what had been happening. We
10 think that there are serious concerns about
11 what's happening with these rounds, whether
12 they're even happening and think that should be
13 looked into further.

14 We also think there's an issue with
15 staffing and protective custody, which you
16 touched on. Mr. Cohen, you'd asked a question
17 about that earlier, who's being staffed in
18 protective custody. As we said, our client is a
19 gay man who was supposed to be staffed in AMKC
20 Quad 4 Upper because he's vulnerable, and that's
21 where he was sexually abused.

22 We also think it's come to light in the
23 court of the investigation that there were other
24 staff members in AMKC who are also sexually

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2 abusing inmates. We think this is a serious
3 problem. And when our client made a complaint,
4 the captain told him to withdraw it. And he did.
5 We think based on what we've heard from Jonas and
6 other clients, this is a common issue, that
7 they're told to withdraw the complaint. But
8 fortunately, our client's complaint nonetheless
9 led to a DOI investigation.

10 MS. ARIEL FOX: So as we mentioned, that
11 investigation actually resulted from a very
12 detailed and compelling closing memorandum, which
13 was dated in October 2016, and in that
14 memorandum, the DOI substantiated our client's
15 claims and found that the officer engaged in
16 unlawful sexual conduct with our client and at
17 least three other inmates. And this was a result
18 of a DOI investigation that involved interviews
19 of 22 incarcerated witnesses. The DOI
20 immediately inf-, referred this matter to the
21 Bronx District Attorney's Office, and as we
22 noted, there is not charging decision there as of
23 last week when we inquired.

24 And most notably, I want to address the

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2 zero-tolerance policy that Ms. Townsend
3 referenced. No administrative action, despite
4 the fact that the closing memorandum called for
5 it has been taken against this officer. As of at
6 least three weeks ago, he remains on modified,
7 modified duty at a full salary since January
8 2016.

9 As a result of the abuse, our client has
10 suffered significant PTSD and depression. And at
11 no point was he treated appropriately. He was
12 repeated placed in isolated confinement, given
13 medication but denied psychotherapy or counseling
14 and was told by mental health staff that they
15 could not provide him with more appropriate
16 treatment because, quote, jail was no place for
17 treatment of PTSD.

18 So, we want to note that even when these
19 types of investigations go forward, and even when
20 referred to the appropriate criminal authorities
21 for prosecutions, there's a breakdown in the
22 system. So if we are seeing a very limited
23 number of sub- substantiated complaints, the hope
24 is that we're successful in taking action in

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2 response to them.

3 And our clients and co-counsel from
4 Legal Aid will talk a little bit more about the
5 pervasive, pervasiveness of these trends. But we
6 note that for clients like ours, they're lucky
7 because they have pro bono representation and can
8 get some form of civil justice. But this doesn't
9 speak to the type of change that we need
10 systematically and the type of change that needs
11 to occur for people that don't have this type of
12 representation. So we thank you for your time
13 and we thank our colleagues, Morton Bast and
14 Hannah Belitz, who are also attorneys on our
15 client's case. Thank you.

16 MR. RICHARDS: Thank you.

17 JUDGE HAMILL: I'm sorry. I'm wondering
18 if we could just ask DOC not about this
19 particular case, you know, we can do that
20 offline. But this would tend to suggest that
21 disciplinary action is sort of stayed or held in
22 abeyance while the criminal matter is decided,
23 which of course, would, would seem
24 counterproductive to reducing sexual violence in

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2 the jails, even if the, this alleged officer with
3 the alleged incident. But if DOI in fact
4 substantiated it back in October of 2016, I don't
5 understand why that could not be a basis to go,
6 move forward with disciplinary action and not
7 stay it pending criminal investigations. If what
8 they're alleging is true, and I assume it is for
9 these purposes, that's a very, very long time to
10 hold everything or what appears to be everything
11 in abeyance.

12 MS. TOWNSEND: So a few comments to
13 that. We are mandated to stand down during a
14 criminal prosecution. That's number one. Number
15 two, we take immediate action in order to
16 separate and modify any individual who is accused
17 of such an act, so that we can keep other
18 individuals, including the alleged victim safe.
19 So that is what we can do in the immediate time
20 period while we await criminal investigation and
21 prosecution.

22 There is no way for us to force
23 disciplinary action onto a member of service when
24 they are being prosecuted criminally because

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2 their defense attorney, any defense attorney who
3 is worth any weight, is not going to recommend
4 that their client either A, sign a negotiated
5 plea agreement with us to resign because that's
6 an admission of guilt that can be used against
7 them in the criminal case, or B, not sign a
8 negotiated plea agreement and instead take the
9 case to trial at OATH, at which point they're
10 going to have to testify or they're going to have
11 to present their defense, which would really make
12 their criminal defense case suffer.

13 So we are unable to move forward in our
14 administrative prosecution while criminal
15 prosecutions are, are open. What we can --

16 JUDGE HAMILL: Do you have any sort of
17 arrangement with the district attorney's office?
18 Again, the DA is not here to respond to this, but
19 this is a very long time and we know the statute
20 of limitations is running, right. So when you
21 say criminal prosecution, if there's not a
22 charging decision, there is not a criminal
23 prosecution right now. There's a referral and
24 there's a criminal investigation. But if what

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2 the lawyers are saying is true, there's been no
3 charging, so therefore, it's not a prosecution
4 yet. It's just in the district attorney's
5 office.

6 MS. TOWNSEND: And if they, if they
7 admit guilt in a negotiated plea agreement, I
8 think it would make it pretty clear that there
9 will be a criminal prosecution because the
10 prosecutor will use that against them.

11 JUDGE HAMILL: You, you don't allow a
12 term-, a resignation without making any admission
13 of guilt?

14 MS. TOWNSEND: They have to sign an
15 admission. They'd have to sign the negotiated
16 plea agreement admitting to their, to their acts.
17 Now they can resign without charge --

18 JUDGE HAMILL: To accept a resignation?

19 MS. TOWNSEND: Well, they can resign
20 without signing, yes. But I can't force somebody
21 to resign.

22 JUDGE HAMILL: No, I understand that,
23 okay. But do you have any arrangement with the
24 district -- you know, there's so much talk now

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2 about criminal justice reform, getting cases to
3 trial speedily. I mean this would be thrown,
4 thrown out of a court of law if it pended for
5 this long a time unless it's a homicide. Do, do,
6 do you have an arrangement with the district
7 attorney's office where you're in touch with them
8 periodically, monthly, two months, wherever,
9 where are you on this investigation, what, what
10 are you doing with this because we need to decide
11 what to do with this officer who is sitting here
12 on full salary when DOI has substantiated it.

13 MS. TOWNSEND: We are in touch but we do
14 not tell a district attorney what to do. We
15 don't have the right to do that, so.

16 JUDGE HAMILL: No, I understand that.

17 MS. TOWNSEND: We have -- yeah. So we
18 are in touch.

19 JUDGE HAMILL: But they're putting,
20 they're putting you in a little bit of a
21 difficult position if all of this is true, by
22 holding, by being required, and I understand the
23 stand down policy --

24 MS. TOWNSEND: Yes.

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2 JUDGE HAMILL: -- while being required
3 to stand down pending an investigation that's
4 been going on close to three years.

5 MS. TOWNSEND: Yes, and so also another
6 thing that we will do if we see that our statute
7 of limitations is coming close, which is 18
8 months, is we will charge. We will su-, we will
9 draft and charge the individual in order to
10 preserve the statute of limitations so that if
11 and when the criminal prosecution concludes, and
12 we are allowed to then take over an
13 administrative prosecution, we wouldn't have lost
14 the ability to do so.

15 JUDGE HAMILL: Okay. So your statute of
16 limitations is 18 months.

17 MS. TOWNSEND: Yes.

18 JUDGE HAMILL: Most felonies are five
19 years. They can take up to five years, which is
20 a very, very long time. So you'll go ahead and
21 charge.

22 MS. TOWNSEND: We will charge to
23 preserve it.

24 JUDGE HAMILL: And they just stay that

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2 so that --

3 MS. TOWNSEND: Correct. Yes, we'll do
4 whatever we can.

5 MS. DEGROOTE: Ms. Hamill, may we add
6 one issue with our particular case?

7 JUDGE HAMILL: Sure.

8 MS. DEGROOTE: Because we were fortunate
9 enough to convince the federal judge to lift the
10 stay in our case, and let us proceed with
11 discovery, we do know that in our case, the city
12 swore in interrogatories that no disciplinary
13 charges had been brought against this officer.
14 In the course of discovery, it was confirmed
15 multiple times that there were no disciplinary
16 proceedings against the officer, that had been
17 stayed or otherwise. And of course, we're not
18 well past that 18-month period. So we'd just
19 like to, you know, make sure that all the facts
20 are on the record in terms of considering how
21 best to improve these miscommunications moving
22 forward.

23 JUDGE HAMILL: Thank you.

24 MR. RICHARDS: Thank you. Doris, Dori

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2 Lewis and Kayla Simpson.

3 MS. KAYLA SIMPSON: Hi. I'll take the
4 time just for Dori and myself. My name is Kayla
5 Simpson, I am a staff attorney at the Prisoners'
6 Rights Project at the Legal Aid Society. Thank
7 you so much to our colleagues from Cleary
8 Gottlieb for, for that helpful comment. I'll
9 refer to that client as J.G, as I think we did in
10 our letter, to preserve his anonymity. And the
11 reason that we have chosen to ground our comments
12 and our contributions in this forum with his
13 experiences and with the experience of people
14 like Jonas, is because in a conversation about
15 systems, what we are concerned with is how it
16 actually affects people. Those are the people we
17 hear from every day.

18 And in many ways, J.G.'s experiences are
19 what too many of those people in DOC go through.
20 Ironically, though, in a couple of ways, of
21 course, he had it better. He had it better
22 because he had able representation. We were able
23 to place his case with Cleary when he reported it
24 to us a few months after. He also had it better

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2 so to speak, because his allegations were
3 actually credited by DOI.

4 We all know that the rates of
5 substantiation are less than one percent, so
6 that's pretty extraordinary too. But the fact of
7 the matter is it hasn't mattered. We've heard
8 many justifications here today about why. But
9 let's talk about his reality. Nothing has
10 happened to the officer, and I know that we just
11 heard these comments, so I won't go into that
12 again. But it's been years since the
13 substantiation by DO- DOI and it's extremely
14 unlikely with every passing month that anything
15 will ever happen.

16 He is still being paid \$62,247 taxpayer
17 dollars every year. The officer subjected a
18 gender nonconforming gay man to more than 15
19 incidents of sexual touching in one month while
20 he was in PC. The officer didn't just harm him,
21 he also abused other vulnerable persons housed on
22 this unit while other staff and supervisors
23 either willfully allowed it to happen or were
24 just oblivious to the fact that it was going on.

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2 I, I don't know that.

3 But when something like this can happen,
4 I think we have to ask if anyone really believes
5 that these systems that are set in place are
6 adequate systems of supervision and
7 accountability to protect people from abuse.
8 That's why I'm up here today, that's why we've
9 been requesting this hearing. And of course, we
10 are genuinely glad to hear of improvements in
11 staffing levels, in backlogs, and reporting. All
12 of those things are positive. We are happy to
13 hear them.

14 But we can't lose sight that the goal of
15 Chapter 5 of the Board's Minimum Standards is
16 what its title is, which is Elimination of Sexual
17 Abuse and Sexual Harassment in Correctional
18 Facilities. And of course, the requirements in
19 these standards are important metrics to try and
20 capture whether there is a system in place to
21 work towards that goal. But those standards are
22 part of a means to an end. They're not the end
23 in themselves. And we need to acknowledge I
24 think that there is still a problem with sexual

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2 abuse and harassment in our jails. And advocate
3 after advocate in this room can get up here and
4 tell you the stories that we hear from our
5 clients and their families.

6 And yet we only have, and I'll use the
7 Board's number, just because I'm not sure about
8 the recent substantiations that Deputy
9 Commissioner Townsend referenced, but we have
10 eight substantiations reported from 2017 and
11 2018. Does anyone really believe that there were
12 only eight instances of sexual abuse or
13 harassment in the city jails in that two year
14 period? Whatever the national rate of sexual
15 assault or harassment is, that is too low.

16 Does anyone really believe that officers
17 don't know when their supervisors will come to do
18 rounds? From what we read in the Board report
19 from yesterday, captains aren't even necessarily
20 touring once an eight-hour shift. And the
21 Board's audit of the rounding logbooks indicated,
22 I'll repeat it, that 38 percent of those audited
23 cases, the supervisor walked in, signed the
24 logbook, and walked out, didn't walk around the

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2 housing area, didn't engage with the incarcerated
3 people, didn't actually round.

4 And that's so significant. That
5 suggested that that is not an anomaly. It
6 suggests a cultural problem. And if a captain
7 has just come by, an officer who wants to abuse
8 someone in custody knows that they're not coming
9 back for a good long while and that is a perfect
10 window to do it. Does that seem like supervision
11 that deters sexual abuse or harassment?

12 And the Board's audit shows us again the
13 same concerning problems with investigations.
14 Are they interviewing people in designated PREA
15 areas, where it's obvious to everyone that a PREA
16 interview is taking place? That's problematic.
17 Are investigators adequately attempting to
18 preserve crime scenes and physical evidence? I
19 guess we'll look forward to the next audit to see
20 whether that information is included in the
21 closing memos.

22 How are investigators weighing who's
23 credible when they are weighing the word of their
24 coworkers against the word of our clients? And

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2 not surprisingly, in 70 percent of the cases, BOC
3 had no idea how decisions about whether to
4 substantiate were made. Although it certainly
5 sounds from our reading of that audit that DOC
6 was quick to jump to a conclusion that a case was
7 unfounded, not just unsubstantiated, but
8 unfounded, in a case where there was no reason to
9 think that it didn't happen.

10 We keep talking about substantiation
11 rates because there is a fundamental problem in
12 the culture at DOC. There is not meaningful
13 accountability and staff know it. People do not
14 believe they'll get caught, and if they're
15 caught, they don't believe investigators will
16 substantiate, and if they don't substantiate,
17 they don't believe DOC will remove them from
18 employment and they don't believe DAs' offices
19 will prosecute.

20 And if what happened to our client, J.G.
21 is any indication, they're right. So how can we
22 blame our clients when they tell us over and over
23 and over again that they don't want to report
24 because there's no point?

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2 We need to not just be interested in
3 checking boxes. Talked to the incarcerated
4 person? Check. Reviewed video? Check. One
5 round per shift conducted? Check. Signed a
6 logbook? Check. We don't need checkboxes. We
7 need to eliminate sexual abuse and harassment, or
8 at the very least, we must deter and discipline
9 it.

10 And I just want to say one more quick
11 word about the recommendations that DOI made to
12 DOC in 2017 that DOC has rejected, due to
13 administrative convenience and to cost. I think
14 that's in the letter that's published.

15 These recommendations make sense. Video
16 footage should have to be kept for a year,
17 incarcerated women should have to be escorted by
18 a male and female officer, exit interviews should
19 be conducted of incarcerated people by trained
20 professionals so that DOC can find out what's
21 actually happening in their jail when they're no
22 longer so afraid of retaliation. And DOC said
23 they're not going to do those things. That's
24 unacceptable. With all of the well documented

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2 problems that DOC has had in implementing the
3 PREA standards, administrative convenience and
4 cost are not acceptable reasons to ignore
5 recommendations from DOI.

6 Respectfully, we suggest that the Board
7 should not be satisfied with those results. We
8 thank you very much for all of your work in this
9 area, both the Board and the staff. We ask for
10 even more vigilant oversight, oversight that must
11 continue well beyond this hearing, important
12 though it is, because the issues with complete
13 PREA compliance are not going away. Thank you so
14 much.

15 MR. RICHARDS: Thank you.

16 MR. CEPHAS: A quick factual thing. The,
17 the, your client, the abuse that your client
18 reported, when was that?

19 MS. SIMPSON: It was December of 2015 --
20 no.

21 UNIDENTIFIED FEMALE: It was October,
22 September and October of 2015.

23 MR. CEPHAS: Thank you.

24 MS. SIMPSON: Thanks.

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2 MR. RICHARDS: Thank you. Rachel
3 Herzog.

4 MS. RACHEL HERZOG: Hello. And good
5 afternoon. My name is Rachel Herzog. I'm here
6 from the Crime Victims Treatment Center, where I
7 am the program coordinator of the Crime Victims
8 Treatment Center's PREA program. And I'm here to
9 speak about the importance of access to
10 confidential victim services. A little bit of
11 context about our program. We have existed since,
12 the Crime Victims Treatment Center has existed
13 since 1977. We're one of the oldest rape crisis
14 centers in New York State. And we've been
15 running a PREA program since 2013.

16 We provide services to incarcerated
17 survivors across 16 New York State prisons and
18 two federal detention centers. So we are very
19 acutely aware of the importance of victim
20 services specifically in the correctional setting
21 and also of some of the unique challenges that
22 come with providing these kind of services in a
23 correctional setting.

24 We, obviously, not everything we do is

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2 applicable to the city setting, but a lot of it
3 is. And one of the things that we know is that
4 to build, to make access to victims' services
5 meaningful confidential, meaning that
6 incarcerated survivors are comfortable accessing
7 it, they feel safe accessing it, they feel like
8 they're not going to receive further retaliation
9 takes a lot of work. It's not as simple as just
10 making a memorandum of understanding with a
11 victim services provider or establishing a
12 program in part of correctional health services,
13 that we're very, very glad to hear that both of
14 those things have been done.

15 We have had to build a very
16 collaborative, complicated relationship with the
17 Department of, the New York State Department of
18 Corrections and Community Supervision that has
19 had to really be characterized by collaboration,
20 transparency and willingness to learn from one
21 another. We believe that kind of relationship is
22 possible in DOC, and we really hope that that can
23 evolve. But we have a lot of questions for the
24 Department about how victim services are being

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2 provided.

3 We do, in our work, sometimes we receive
4 outreach from survivors who experience sexual
5 violence while incarcerated in DOC facilities,
6 and now are seeking our services now that they're
7 in the state system. I'm proud that Jonas
8 Caballero, whose brother came to speak today is
9 one of my clients, and I am very honored to have
10 worked with him.

11 I'd like to speak briefly about one
12 other client that I've worked with who gave me
13 permission to share some of his story anonymously
14 today. He was assaulted about six months ago, in
15 a DOC facility. This survivor had been
16 identified as high risk, he had been placed in
17 protective custody due to his sexual orientation.
18 But somehow the staffing level wasn't sufficient
19 to ensure his safety and I don't know the reasons
20 for that. I don't know what the staffing was.

21 But he was in a position where he was
22 alone with another inmate, an incarcerated man
23 who had a history of gang affiliation and who
24 sexually assaulted my client. My client says

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2 that one of the most traumatizing parts of this
3 experience wasn't the assault itself, but the
4 aftermath, when he was left crying and weeping
5 and reaching out for help and no one in the
6 vicinity listened to him and somehow he was
7 unable to get staff response. He was only able
8 to make a report by calling 311. I don't know
9 why there was no, there were no staff there, but
10 from his perspective, he was left alone in a
11 hugely traumatizing moment.

12 His case may have been closed, but he
13 received no notification of it, just like Jonas.
14 He's in the state system, wondering what
15 happened, wondering if anyone took him seriously
16 or cared. He said, I asked him if there were any
17 words that he wished me to share with this Board,
18 and he said, I want them to know that something
19 like this can really break somebody and it's
20 important that they take care, because this has a
21 real impact.

22 This survivor is a resilient, amazing
23 individual who I am very grateful to work with
24 and he's made huge strides in his healing. But

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2 he wasn't offered an opportunity to begin that
3 healing during his incarceration in DOC. He
4 requested victim services, he was given a phone
5 number where he left a voicemail and no one ever
6 got back to him. Someone came to meet with him,
7 but he didn't know who they were and they didn't
8 identify themselves as confidential. So he
9 wasn't able to start that process right in the
10 immediate aftermath when he could have really
11 used that support.

12 It wasn't explained to him what the
13 process would look like, what each, which each
14 step would ta-, would be for him. He wasn't
15 offered a victim advocate to sit in the
16 investigative interview with him so he could feel
17 safe and comfortable. These are all things that
18 can not only make a huge difference to someone's
19 healing, but to the reliability of an
20 investigation.

21 We know that when survivors have the
22 chance to speak with someone who they know is on
23 their side with no other agenda than to be there
24 for them, they're going to feel more comfortable

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2 coming forward, they're going to be able to more
3 fully give information about the assault and
4 they're maybe going to agree to some of those
5 interviews that both, we've heard from both the
6 DA's office and the Department themselves,
7 sometimes survivors aren't willing to agree to.
8 And I think access to victims' services can be a
9 huge piece in making that investigation possible
10 and successful.

11 I also want to note that this survivor,
12 as well as Jonas, who we heard about earlier, are
13 really strong self advocates. They've reached
14 out, they've managed to get in touch with me,
15 even though we weren't connected with the DOC.
16 They've sent letters to elected officials. But
17 that kind of burden shouldn't be on a survivor.

18 We heard this about J.G. also, who was
19 very lucky, who was able to get connected with
20 pro bono legal representation. The process
21 should be transparent, the most vulnerable
22 survivors are now going to be the ones who have
23 the least difficulty coming forward without
24 appropriate support. People with co-existing

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2 mental illness, with previous histories of
3 victimization are all going to have much more
4 difficulty accessing support and making reports
5 if that process isn't clear to them.

6 I submitted a letter to this Board with
7 some information about what we've found
8 successful in our partnership within the state
9 system and the measures that we've found to help
10 to ensure confidentiality. I'm not going to go
11 through all of them here, but I did want to note
12 that part of that has really collaboration
13 between the victims' services and the
14 correctional communities. That we come with
15 different perspectives, that we bring different
16 things of value, and being able to work together
17 and acknowledge that each of us have things to
18 learn has allowed us to provide services in a way
19 that is meaningful and that helps survivors to
20 feel comfortable accessing them.

21 We have a lot of questions about the way
22 that the sexual abuse advocacy program at CHS
23 works. I've also included a list of those
24 questions. It is unclear to me how survivors

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2 access that program, whether they have an ability
3 to self-refer or whether that only happens after
4 they've made an allegation. So are survivors
5 aren't clear whether or not they feel safe making
6 a report, able to access that support that might
7 help them to make a determination? But -- I
8 haven't been able to figure that out.

9 Other questions again, I'm not going to
10 go through all of them now, but what kind of
11 steps are being taken to ensure that access to
12 that, those services is confidential, that other
13 staff within the facility don't know that
14 incarcerated individuals are working with a
15 sexual abuse advocacy program. Is there a way to
16 make advocates available during investigative
17 interviews, and are staff of that program given
18 the authority to advocate for the safety of their
19 clients? Can they communicate with the
20 department, can they communicate with DOI to let
21 them know when someone is experiencing
22 retaliation or further risk? These are roles
23 that victim advocates play in many settings and
24 there's no reason why they can't play them in

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2 this setting as well.

3 We also are very concerned and confused
4 about the role of the memorandum with Safe
5 Horizon. A survivor that I worked with called
6 the Safe Horizon hotline after being informed
7 that that was an avenue, avenue for sexual
8 assault advocacy and was told that they don't
9 provide services to incarcerated survivors. So
10 if a mam-, memorandum of understanding exists,
11 it's necessary that that partnership be given a
12 chance to succeed, which means cross training,
13 which means collaboration, none of which we're
14 seeing happen here.

15 We're hopeful that all these, these
16 kinds of changes may be possible, and as a
17 representative of the victims' services
18 community, I also want to communicate our
19 commitment to working with the department and
20 making ourselves available for support in any way
21 possible. Thank you.

22 MR. RICHARDS: Thank you. Sara, Sara
23 Zaidi, Zaidi.

24 MR. CEPHAS: I just want to remind

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2 everyone there's a six-minute limit here.

3 MR. RICHARDS: And DOC I hope -- and I
4 would encourage DOC that if you could stay to
5 stay, because I would call upon the Department to
6 really engage some of the folks that came up and
7 spoke. It really is an opportunity not to finger
8 point, but to have some lessons learned that we
9 can improve the process, so thank you.

10 MR. CEPHAS: Good point.

11 MS. SARA ZAIDI: Alright. Members of the
12 Board of Corrections, good afternoon. My name is
13 Sara Zaidi and I am the Assist Director of
14 Programs at the New York City Alliance Against
15 Sexual Assault. Thank you for providing us this
16 opportunity to bring our concerns around sexual
17 abuse in, in correction facilities to you. I'd
18 like to take, to use this forum to discuss the
19 need to refine and supplement the training of
20 Department of Correction employees according to
21 PREA standards.

22 Founded in 2000, the Alliance's mission
23 is to prevent sexual violence and reduce the harm
24 it causes through education, research and

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2 advocacy. Based on our extensive experience in
3 providing trainings pertaining to sexual assault,
4 we feel we're well positioned to offer some
5 recommendations around the current training
6 protocols at DOC. In order to address the
7 implications of the sexual assault in terms of
8 the stigma around sexual abuse, the incredibly
9 high risks of reporting an inmate or an officer,
10 the effects of trauma and its long-term sequelae,
11 would first like to consider how these trainings
12 are implemented.

13 While we've heard some clarification on
14 current trainings today, it would be helpful if
15 the Board could consider asking the following
16 questions of the DOC. First, who is providing
17 the trainings? Ideally, the trainer would be an
18 independent entity so that there can be an open
19 and honest conversation. Who is receiving the
20 trainings? All levels of staff should be
21 receiving the trainings and their attendance
22 tracked so that it's clear who is receiving which
23 training. Is the supervisor training separate
24 from staff? How frequently are these trainings

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2 updated? At what point along the onboarding of
3 new staff are the new trainings provided? How
4 frequently are the trainings offered? What is
5 the mode of delivery? Are trainings completed in
6 one session or are they multi-dose? Are there
7 follow-up options? Is there counseling support
8 available for participants in the event that they
9 feel triggered during a training? How is the
10 impact of these trainings evaluated? Has the
11 Board been made aware of any reporting from staff
12 of recognition of warning signs of sexual abuse
13 that they have witnessed? How do you get
14 participants' buy-in other than it being a
15 mandatory training?

16 For any training to be successful it's
17 important for the participants to recognize its
18 importance. And considering incentives or ways
19 in which staff would appreciate the need for such
20 training would be helpful. What languages are
21 the trainings provided in?

22 While in the process of revising the
23 training curriculum, it would be beneficial to
24 keep the following recommendations in mind. All

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2 trainings need to be updated with current
3 vernacular and procedures. Trainings should be
4 provided in person in the form of interactive
5 sessions, not just a video being watched. Staff
6 eligible for trainings should be identified and
7 their participation in training sessions should
8 be documented. After each training, action steps
9 with timelines should be discussed in terms of
10 how to follow through with the information gained
11 and the skills learned. Concrete measures should
12 be place, should be put in place for
13 accountability to check pros-, progress.

14 Sexual violence training needs to take a
15 trauma-informed approach because it provides a
16 lens that helps another person gain a better
17 understanding of the survivors' behaviors. A
18 trauma-informed training would allow individuals
19 to be seen as a whole, recognizing how one's life
20 experiences may result in specific behaviors, or
21 how, how one's past experiences may trigger
22 potential reactions.

23 In correctional facilities particularly,
24 it would allow law enforcement officers to be

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2 better prepared. Given the power dynamics
3 between inmates and officials, it's also
4 important to recognize how that might play into
5 the abuse and/or reporting in the case of abuse
6 perpetrated by an officer on an inmate.
7 Similarly, the consequences of telling on another
8 inmate, or worse, an officer, could possibly
9 result in ongoing abuse or other consequences.

10 Vulnerable populations, often being
11 easier targets, need higher vigilance. A
12 comprehensive trauma-informed training can help
13 correctional infor-, officers feel more capable
14 of identifying red flags for sexual abuse,
15 understanding its impact on behavior, and
16 improving the chances of reporting, ultimately
17 with a goal of reducing abuse within the system.

18 MR. RICHARDS: I'm going to ask if
19 there's more recommendations, you could mail
20 those, you could --

21 MS. ZAIDI: I have submitted the letter.

22 MR. RICHARDS: You submitted them?

23 MS. ZAIDI: Yes.

24 MR. RICHARDS: Okay.

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2 MS. ZAIDI: I'm just going to read over
3 the list of trainings that we're recommending and
4 that's it. Okay?

5 MR. RICHARDS: Okay.

6 MS. ZAIDI: This is the list that we are
7 recommending to complement what's already
8 provided. Acknowledging biases and re-thinking
9 stereotypes, power and control dynamics within
10 systems, providing increased vigilance for
11 vulnerable populations, understanding behaviors
12 that may stem from trauma, creating a safe
13 environment/space for inmates to disclose abuse,
14 steps that can be taken to minimize retriggering
15 assault survivors, bystander training, legal
16 procedure and ramifications of reporting, effects
17 of non-reporting on a victim, being mindful when
18 working with survivors, supervisor training to
19 support staff while holding individuals
20 accountable and vicarious trauma.

21 If correction officers were given
22 appropriate information about sexual abuse
23 through comprehensive training, they would feel
24 more equipped to provide adequate support to

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2 incarcerated survivors, and we may eventually be
3 able to stop the cycle of abuse within the
4 system. Thank you.

5 MR. RICHARDS: Thank you.

6 JUDGE HAMILL: Excuse me, before DOC
7 leaves, I'm just wondering if you or someone can
8 respond to the issues that Rachel Herzog had
9 raised about victims' services. I meant to ask
10 there and there's just been so many areas that I
11 wanted to question on, I didn't. And I noticed
12 that it looks like Health has left and they
13 slightly, they briefly mentioned it, but didn't
14 go into any detail.

15 So it'd be, it would be helpful to
16 really know right now and this is something we
17 really looked at in PREA rule making, what
18 victims' services are offered, when are they
19 offered, what about the issue of Safe Horizons.
20 Is Safe Horizons actually available? Are they
21 actually providing victims' services to the
22 incarcerated persons?

23 MS. YELARDY: So --

24 MR. RICHARDS: And are those requests

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2 and services delivered, tracked in DOC?

3 MS. YELARDY: So I can't speak for CHS
4 and I, I really don't want to.

5 JUDGE HAMILL: I understand.

6 MS. YELARDY: I will speak to Safe
7 Horizon. The Safe Horizon info is located on all
8 the inmate education information, that they can
9 get in contact with them. And we do receive
10 reports from Safe Horizon about allegations.
11 They track it on their end when we ask for
12 information for purposes of confidentiality on a,
13 on a written document, they don't provide that to
14 us. But recently, I asked for aggregate numbers
15 and I believe, I don't have the book in front of
16 me, I believe it was 33 allegations and I think I
17 asked them for this year that was reported to
18 them.

19 JUDGE HAMILL: Well, my question is
20 whether, I believe you had said that a client had
21 called and they said they don't, they don't do
22 the counseling. So my question is are they in
23 fact delivering victims' services and counseling?

24 MS. YELARDY: Part of the memorandum of

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2 understanding, an agency would not get into a
3 memorandum of understanding with another agency
4 unless they were going to fulfill what is said in
5 that MOU.

6 JUDGE HAMILL: So that's a memo of
7 understanding is an anticipation. Now the
8 question is are they delivering the services?

9 MS. YELARDY: According to the 33
10 reports that they said that they've received at
11 the beginning of this year, yes, they are.

12 JUDGE HAMILL: And do they tell you how
13 many times they meet with the victim and what
14 their services consist of?

15 MS. YELARDY: They do not give us
16 information about what they provide to those
17 individuals, however, I believe they receive
18 permission from the individuals to report the
19 allegations to us, and then we report that to ID
20 for it to be investigated.

21 JUDGE HAMILL: So your, your
22 representation today is that they have actively
23 counseled, provided victims services to
24 incarcerated persons while they're incarcerated

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2 through Safe Horizons? Is that correct?

3 MS. YELARDY: My test-, my testimony is
4 we are in an MOU with them to provide whatever
5 the MOU indicates they will provide. That is my
6 testimony. I can't speak to exactly what they're
7 doing because I don't work for Safe Horizon,
8 right. Whatever the MOU says that they're going
9 to do, we, we believe that they are doing it.

10 MR. RICHARDS: So, do they get referrals
11 from you or do people just know to reach out to
12 them and say I need services? How does the MOU
13 get implemented?

14 MS. YELARDY: So there, like I said, the
15 information for Safe Horizon is on the inmate
16 education information that they can get in
17 contact with them. I believe, I forget the name
18 of the agency. There is another pamphlet and/or
19 card that is given to an individual from ID, but
20 I cannot remember. We don't have an MOU with
21 them, so I don't know what they're supposed to
22 provide to them. But that is another advocacy
23 avenue for anybody who is reporting an
24 allegation.

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2 MR. RICHARDS: So let me just understand
3 this right. So when an allegation comes before
4 you and you start the investigation and you go
5 and you talk to the person, at that moment, DOC
6 does not say here is a victim services
7 organization that you can reach out to that we
8 have --

9 MS. YELARDY: Yes, they do.

10 MR. RICHARDS: -- an MOU with to receive
11 services. That does not happen. They -- that
12 does not happen, right?

13 MS. YELARDY: That, that, that does
14 happen. Because it also -- thank you for
15 reminding me. It is part of the coordinated
16 response plan as well, that they get in contact
17 with someone, a victim advocacy group. So it's
18 medical, mental health, we did not take away --
19 the standard doesn't require ministerial
20 services, but we didn't want to take that away
21 from them and we added on an advocacy group that
22 can speak to the, the, the victim or potential
23 victim, okay.

24 MR. RICHARDS: So we'll have some

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2 follow-up questions that we'll, we'll send to
3 you.

4 MS. YELARDY: Okay. And, and Ms.
5 Herzog, Ms. Herzog and I did speak and I gave her
6 my information as well as my colleague's
7 information for her to e-mail us and hopefully,
8 we can have some really, really good dialogue in
9 the very near future.

10 MR. CEPHAS: Does the MOU require the
11 Department to monitor or, the services provided?
12 I mean I know you said that you know, you know
13 the MOU existed and you assume that the services
14 are being provided, but --

15 MS. YELARDY: I don't assume.

16 MR. CEPHAS: -- so do you know they are,
17 or do you know they're not?

18 MS. YELARDY: I would, I would like to
19 think --

20 MR. CEPHAS: You would like to think?

21 MS. YELARDY: -- that Safe Horizon --
22 that's right.

23 MR. CEPHAS: Okay.

24 MS. YELARDY: I would like to think that

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2 Safe Horizon --

3 MR. CEPHAS: Similar to assuming.

4 MS. YELARDY: No, we don't want to
5 assume. I would like to think that Safe Horizon
6 is definitely providing the information that we
7 contracted with them for.

8 MR. CEPHAS: Right. But I'm saying does
9 the MOU require you to monitor that or to
10 substantiate that or to, to confirm it at some
11 point?

12 MS. YELARDY: No, it does not.

13 MR. CEPHAS: Right.

14 MS. YELARDY: But however, I get in
15 contact with them and I ask them have they
16 received reports and they have told me that they
17 have received reports. And I know that they've
18 received reports, because when that allegation
19 comes in and they're reporting, we also hear it
20 from our, hear it on our confidential hotline.
21 They've called the confidential hotline to say
22 this is Safe Horizon, we had an allegation that
23 someone reported to us, so we can start the
24 investigation. So I know that they're advocately

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2 working with, with potential victims.

3 JUDGE HAMILL: Okay. But not to beat a
4 dead horse, I mean you said you have a contract
5 with them. Whatever you had, the contract --

6 MS. YELARDY: The agreement, the MOU.

7 JUDGE HAMILL: I want to make sure that
8 what you've contracted for is being delivered.

9 MS. YELARDY: Yes.

10 JUDGE HAMILL: So you'd, you'd like to
11 think it's being delivered, but it doesn't sound
12 like you know for sure.

13 MS. YELARDY: I know that they're
14 receiving complaints.

15 JUDGE HAMILL: Right.

16 MS. YELARDY: What they are --

17 JUDGE HAMILL: It's the counseling I
18 want to know, whether they're actually counseling
19 and available to counsel ongoing, not just --

20 MS. YELARDY: I can -- without getting
21 into details about what they're providing for
22 individuals for obvious reasons, I can ask them
23 is there actual counseling going on for those
24 individuals.

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2 JUDGE HAMILL: Yeah, yeah. That would
3 be a basic question.

4 MS. YELARDY: But that is what Safe
5 Horizon, that's what they do, and that's what
6 they, you know, as a former prosecutor, I know
7 Safe Horizon --

8 JUDGE HAMILL: But she's saying her
9 client called and they said they don't do it.

10 MS. YELARDY: I understand that, but
11 also as a former prosecutor, and, and you know,
12 Judge, Safe Horizon, when you give it to them,
13 when they have an allegation, when they're
14 speaking to someone, that is part of what they
15 do. Part of the MOU with us is that they --

16 JUDGE HAMILL: I know, I know too, but I
17 --

18 MS. YELARDY: -- they give us a report.

19 JUDGE HAMILL: -- don't want to assume
20 that that's what they're doing for our Rikers'
21 population.

22 MS. YELARDY: Then I will ask.

23 JUDGE HAMILL: That's what they do
24 outside. Do they actually come onto the island

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2 and visit in person, or is this all by telephone?

3 MS. YELARDY: They don't come on the
4 island, and that's why the Board was asking for
5 CHS to have another advocacy who can come onto
6 the island.

7 JUDGE HAMILL: Right. And so is there a
8 confidential line for this engagement that you
9 think is occurring?

10 MS. YELARDY: Yes.

11 JUDGE HAMILL: Okay.

12 MR. CEPHAS: Thank you.

13 MS. YELARDY: You're welcome.

14 MR. RICHARDS: Okay. We have a few more
15 people. Brittany Cooper.

16 MS. BRITTANY COOPER: Hi.

17 MR. RICHARDS: Hello, Brittany.

18 MS. COOPER: My name is Brittany Cooper
19 and I am a social work intern at Brooklyn
20 Defender Services in the Jail Services Unit. For
21 the past seven months, I have visited clients in
22 New York City jails, to respond to various
23 safety, medical, and mental health concerns.
24 Recently, one of the pressing issues that our

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2 clients face was related to PREA standards,
3 specifically regarding housing based on one,
4 one's gender identity. As a result of this
5 issue, our clients have endured various forms of
6 mistreatment in the jails.

7 BDS client, who I will, will, I will
8 refer to as Ms. T., was placed in a male facility
9 despite identifying as a transgender woman. She
10 was never informed of the THU at the time of
11 intake. When she did learn about the unit
12 through word-of-mouth, she immediately inquired
13 about it with DOC staff, only to be told it would
14 be worse. Ms. T. used that information, trusting
15 the officer's judgment, and decided to stay in
16 the male facility. The following is her
17 testimony, describing her experiences sleeping in
18 a male facility as a transgender woman.

19 Other housing areas should have been
20 mentioned. I would like for my pronouns to be
21 honored no matter what facility I'm in. When a
22 person comes to COs with concerns of harm, I
23 should be taken seriously, not laughed at, not
24 sent to protective custody. Defusing the

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2 situation should come first. We should get the
3 same respect as an, as any other woman. When it
4 comes to clothing, we should be able to get
5 correct sized undergarments, like every other
6 female. We should also get feminine hygiene
7 products such as shampoo, conditioner,
8 suppositories, preparation H, enemas, and cream
9 for rashes. Also, my medical needs should be
10 taken seriously. I would like to talk to doctors
11 that understand my concerns in regards to body
12 changes and hormone therapy. There should be a
13 hormone specialist and they should be accessible
14 no matter where a transgendered person is housed.

15 The requirements to work should not be
16 straight male. I am a human being, willing to
17 work the same as the next man. I should not hear
18 remarks like, you are not on the corner, or it's
19 a privilege to work don't take it for granted,
20 just because I would like to work. And when I do
21 work, I should not be harassed by others and
22 forced to quit. I know I am here because I did
23 something bad. I know my rights and wrongs, but
24 these are the basics of treatment for someone

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2 like me.

3 Based on Ms. T.'s testimony, one can see
4 that housing consistent with an individual's
5 gender identity is important to the safety of our
6 transgender and non-gender conforming clients.
7 BDS asks that the Board take into consideration
8 the consequences of not properly housing an
9 incarcerated person by their gender identity. We
10 encourage the Board to visit and speak with
11 people detained and sentenced in our city jails,
12 those with direct personal experiences in order
13 to improve the housing placement process for
14 transgender and gender nonconforming people.
15 Thank you.

16 MR. RICHARDS: Brittany, is, is, is she
17 still in a male facility now?

18 MS. COOPER: To my knowledge, yes.

19 MR. RICHARDS: Do you know what -- if
20 you could give us the facility and if she doesn't
21 mind, the name. So we could look into it.

22 MS. COOPER: I would have to consult
23 with my supervisor, since I am an intern. But if
24 I'm able to, I will.

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2 MR. RICHARDS: Okay.

3 JUDGE HAMILL: Thank you.

4 MS. COOPER: You're welcome.

5 MR. RICHARDS: Simone Spirig.

6 MS. SIMONE SPIRIG: Good afternoon. My
7 name is Simone Spirig and I am a jail services
8 social worker at Brooklyn Defender Services. I
9 want to thank you for the opportunity to speak
10 today at today's hearing, and share with you some
11 of the experiences of clients at BDS, clients
12 whose voices are often marginalized and unable to
13 be heard. I also want to thank DA Clark for
14 raising awareness earlier around the need for
15 more video surveillance and cameras. My
16 testimony will go into more detail around that
17 issue.

18 Our office is deeply troubled by the
19 Department's lack of accountability within the
20 Department to end sexual abuse. Thousands of
21 people report sexual abuse each year in our city
22 jails and many more incidents go unreported. I
23 would like to share with you a story about a
24 woman our office has discussed with the

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2 Department and the Board many times over the
3 years.

4 We repeat it with you today because her
5 story represents potentially thousands of other
6 people incarcerated in our city jails. Earlier
7 on the day that Ms. A. was raped, she had
8 appeared in court with her lawyer. After her
9 appearance, she returned on an early afternoon
10 bus back to Rikers Island. Ms. A. was raped by a
11 male officer at the back of the bus in a parking
12 lot on Rikers Island, all while the dr-, the
13 driver of that bus sat and watched. When she
14 reported the incident, the bruises on her wrists
15 and thighs were clearly visible. The two
16 officers on the bus held Ms. A. against her will
17 and tortured her without anyone questioning the
18 missing bus, the missing officers, the missing
19 woman, or why it took more than ten hours for Ms.
20 A. to travel from court to her housing unit.

21 Her story propelled our office to demand
22 the installation of cameras on buses during the
23 2016 rule making. It became a tiny victory when
24 the Board approved the condition and required the

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2 Department to institute a one-year pilot program
3 to install video cameras on all Department
4 transportation vehicles and then report back to
5 the Board.

6 Unfortunately, as far as the public is
7 aware, the Department has yet to comply with the
8 Board's standards and the deadline imposed by the
9 Board was nearly two years ago. And when
10 questioned by the Board or the public, as we saw
11 today, the Department merely cites unspecified
12 delays.

13 Though we appreciate that the Department
14 faces, faces significant pulls on its resources,
15 delaying the effort to end sexual assault is
16 simply unacceptable. Further, while the Board's
17 efforts to hold the Department accountable are
18 warranted and appropriate, we urge the Board to
19 go further. The fact that the Board has issued
20 the Department a notice of violation, one of only
21 two ever issued, for failing to comply with the
22 video camera requirement is an important first
23 step.

24 The fact that the Board took such a

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2 significant step indicates the troublesome nature
3 of the problem. Nonetheless, we urge the Board
4 to take additional steps, including conducting
5 further investigations and demanding regular
6 progress reports from the Department. This is
7 one example that highlights the importance of
8 transparency on behalf of the, of the Department
9 and the Board.

10 Additionally, we have grave concerns
11 over whether the Department is capable of
12 competently investigating sexual abuse in DOC
13 facilities or vehicles. Through reporting, the
14 Board has already established that the
15 Department's investigation practices are deeply
16 flawed. Even more troubling, the Department has
17 so far been incapable of installing cameras, a
18 step that would deter abuse and provide a layer
19 of safety for incarcerated individuals.

20 We urge the Board to hold the Department
21 accountable for its inaction. The lack of
22 willingness by the Department to abide by the
23 minimum standards is detrimental for the city,
24 and puts the incarcerated population at great

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2 risk. We have serious, unanswered questions
3 about training, the competency of investigative
4 staff, and the Department's ability to keep
5 people in its custody safe.

6 These crucial failures by the Department
7 only underscore the city's lack of concern to
8 keep people in its custody safe, and disregard
9 the need for voices from those incarcerated to be
10 heard. Thank you for your time.

11 MR. RICHARDS: Quick question, was that
12 crime reported and are you following up? Has
13 anybody followed up with your client?

14 MS. SPIRIG: So I wasn't currently
15 working for BDS then. The incident happened in
16 March 2015, but I can have my supervisor follow
17 up with you about that, who is more aware of the
18 situation.

19 MR. RICHARDS: Thank you.

20 MS. SPIRIG: Yes.

21 MR. RICHARDS: Deborah Lolai.

22 MS. DEBORAH LOLAI: Good afternoon. I
23 have to say I'm disappointed that the majority,
24 if not all of DOC is gone, as much of my

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2 testimony is very much conflicting with the
3 testimo-, the testimony that Assistant
4 Commissioner Yelardy provided. And I imagine
5 that the Board would have some clarifying
6 questions for them. My name is Deborah Lolai and
7 I am the LGBTQ client specialist at The Bronx
8 Defenders. In my work, well The Bronx Defenders
9 provides holistic public defense in the Bronx and
10 I work in the special project called the LGBTQ
11 Defense Project.

12 As part of my work, I represent all of
13 the transgender incarcerated clients that my
14 office represents. Much of our time and
15 resources are spent advocating for our
16 transgender incarcerated clients who are
17 currently continuing to experience a lot of
18 harassment and abuse while they are in the
19 custody of the Department of Corrections.

20 First, I would like to thank you for
21 your continued attention to this important topic,
22 about which I have testified before the Board in
23 the past. I would also like to acknowledge that
24 since this past summer, when the THU was

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2 transferred to Rose M. Singer Center, the
3 conditions at the THU have improved
4 significantly. But those improvements are only
5 impacting our clients who are in the THU. The
6 overall consensus from women who are housed in
7 the THU is that it is much safer now and more
8 affirming than when the THU was housed in a men's
9 jail.

10 However, because of the limitations on
11 THU eligibility, many transgender women, as, as
12 you have heard, continue to be housed in men's
13 jails. Whether it is in protective custody,
14 general population, or solitary confinement, they
15 all face the same mistreatment, they are
16 misgendered, harassed, and are often the victims
17 of sexual violence and assault. I personally
18 have several transgender women clients that are
19 currently in men's jails in general population,
20 in protective custody and in solitary
21 confinement.

22 Today I would like to discuss the ways
23 in which the THU should continue to improve, but
24 I'd also like to highlight the experiences of

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2 incarcerated transgender women who are not in the
3 THU.

4 Despite the improvements in the THU,
5 there are still many unresolved concerns. One of
6 the issues that we have observed is the way DOC
7 handles reports of sexual harassment or abuse
8 within the THU. When a woman in the THU reports
9 being sexually harassed, she is removed from the
10 THU and transferred to a men's jail. The policy
11 of removing a victim of violence from the
12 environment where they experienced that violence
13 makes sense in other contexts. But it does not
14 make sense in this context. It is extremely
15 harmful when enforced in this context, because
16 when a transgender woman reports being a victim
17 of violence in the THU, they are removed from the
18 unit and placed in a men's jail, where their
19 safety is at risk.

20 Essentially, women are being punished
21 for reporting sexual harassment and abuse in the
22 THU. This practice has already had a chilling
23 effect on the women housed in the THU, as many of
24 them are now afraid to report sexual harassment

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2 and abuse within the unit, because they've seen
3 what happened to other women who have made
4 reports.

5 The THU is also not equipped to house
6 women who require a higher level of care such as
7 serious medical treatment, detox or drug
8 treatment, or mental health treatment. For
9 transgender women who require this level of care,
10 the THU is not an option. Transgender women who
11 do require this level of care are always housed
12 in men's jails, because they cannot access the
13 care that they need in a woman's jail, despite,
14 despite the assertion that was made earlier, that
15 transgender women are housed at Rose M. Singer,
16 in our experience, that is not happening.

17 While the THU is an incredibly important
18 unit, the main reason I am here today is to
19 address the safety risks to our clients who are
20 not in the THU. The reality is that when a
21 transgender woman is not in the THU, she is in a
22 men's jail. Some of those women are in
23 protective custody, some are in general
24 population, some are in solitary confinement, but

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2 they are all in men's jails. Most of the women
3 who are in men's jails are not there by choice.
4 They are there because the Department of
5 Corrections did not accept them into the
6 Transgender Housing Unit, they did not know that
7 the Transgender Housing Unit was an option, and
8 even worse, they were discouraged by officers to
9 apply for the Transgender Housing Unit.

10 The Department testified earlier that
11 PREA officers fill out, I believe they called it
12 a transgender and intersex form. My experience
13 from my clients, who were brought that form to
14 fill out and sign by PREA officers is that PREA
15 officers are telling them that it's less safe for
16 them to be at Rose M. Singer and so they
17 shouldn't request to be at Rose M. Singer.

18 When transgender women enter into DOC
19 custody, they are supposed to be given the option
20 of applying to be housed in the THU. However,
21 most of the transgender women we represent who
22 apply to be housed in the THU are not accepted
23 into the unit. There continues to be a lack of
24 transparency about the process that determines

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2 who is accepted into the THU and who is not. And
3 I know that the report that the Board published
4 highlights some of this lack of transparency.

5 The two most common explanations that
6 the Department has provided for not accepting my
7 clients in the, into the THU are one, a history
8 of violence, and two, the DOC's assertion that
9 they are not actually transgender. The
10 Department has often cited to the criminal record
11 or disciplinary record of women who they reject
12 from the THU as a justification for their
13 rejection.

14 It is important to acknowledge the fact
15 that because of the disproportionate attacks and
16 violence against transgender women, they are
17 often placed in a position where they need to
18 defend themselves from violence. And as a result
19 of that, they are often the ones who are
20 criminalized for their own self defense.

21 Another extremely common way DOC
22 attempts to justify rejecting transgender women
23 from the THU is by asserting that they are
24 pretending to be transgender. Excuse me. The

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2 Department often expects us, as advocates and
3 attorneys to prove to them that our clients are
4 transgender by digging into their medical records
5 to find evidence of transgender related medical
6 treatment and sharing our client's personal
7 information and medical history with DOC.

8 What the Department fails to recognize
9 in requiring this type of proof is that not all
10 transgender people transition in the same way,
11 and that does not make them any less transgender.

12 MR. RICHARDS: Deborah, can I ask you
13 to, to just get to the high points.

14 MS. LOLAI: Yes.

15 MR. RICHARDS: And I want to make a
16 statement for everybody because I think part of
17 this, we have to work together, and so if you
18 could just give us the high points, and then I
19 want to make a recommendation specifically to
20 you, but to everybody else.

21 MS. LOLAI: Absolutely. In conclusion,
22 many of these issues that I've already addressed
23 would be resolved if the Department housed
24 transgender women with other cisgender women,

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2 outside of the THU. When a transgender woman is
3 not accepted into the THU, she should have the
4 option of being housed with other women at Rose
5 M. Singer Center, but our clients are never given
6 this option.

7 Until the Department starts to treat
8 transgender women as women, and until it actually
9 makes general population, protective custody, and
10 other housing units other than the THU at Rose M.
11 Singer accessible to transgender women,
12 transgender women will not be safe in DOC custody
13 and they will continue to experience the extreme
14 levels of harassment and violence.

15 Thank you for allowing me the time and
16 opportunity to testify about this important issue
17 on behalf of all my clients who have survived
18 such violence in the custody of the Department of
19 Corrections.

20 MR. RICHARDS: Thank you, Deborah. So
21 here's my -- yeah, here's my recommendation, is
22 if anybody -- you heard the Department testify
23 today about their new protocol and processes. If
24 you have a client who is experiencing something

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2 different than what they said, please let us know
3 because that's something even though it's one
4 case, that's something that we can look into with
5 the Department and I think the more we push up
6 against if there are examples that are happening
7 in real time where it's not, people are not being
8 treated according to their own policies, we need
9 to be able to hold the Department accountable and
10 we can push forward one case at a time. So if
11 you have specific cases that are right now,
12 please let our staff know and we can follow up
13 with that.

14 MS. LOLAI: I believe the Board is
15 already familiar with, with some of my clients'
16 cases, but I will definitely inform you of the
17 ones that I've not yet shared.

18 MR. RICHARDS: Thank you. Thank you,
19 Deborah. Marlen Bodden. Thank you.

20 MS. MARLEN BODDEN: Hi. My name is
21 Marlen Bodden. I'm an attorney at the Legal Aid
22 Society's -- I apologize for my cough drop --
23 Legal Aid Society's Special Litigation Unit.
24 First, I want to thank whoever was responsible,

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2 responsible for bringing the Westchester County
3 team here to speak today because they
4 specifically spoke about an issue that was not
5 really picked up by anybody and is the reason why
6 I'm here to speak today. That has to do with
7 strip searches of detainees before contact
8 visits, before visits, and also the routine use
9 of strip searches.

10 Now, as we all know, the purpose the
11 Board's standards is to stop an environment of
12 sexual abuse and harassment, yet unnecessary
13 strip searches -- and there is no question that
14 strip searches before visits are unnecessary --
15 because as the man from Westchester county said,
16 even the New York State Department of Correction
17 and the entire state system does not perform
18 strip searches before visits. These unnecessary
19 strip searches create a degrading atmosphere
20 where sexual harassment is rampant.

21 Many of our clients are frequently
22 sexually harassed during strip searches and tell
23 us that strip searches are humiliating,
24 embarrassing, and dehumanizing. Our clients

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2 report that correction officers often laugh and
3 to make sexual comments about their naked bodies,
4 usually about the size of their breasts or
5 genitals.

6 And I have just a few examples, since
7 2016, when we received over 100 complaints from
8 women who had been jailed at Rikers but were then
9 comfortable enough to write us from Albion State
10 Prison, we have now interviewed to date
11 approximately 30 more. So we have 130 complains
12 about women and men regarding being strip
13 searched routinely in their housing areas, but
14 also before visits.

15 And the most common complaint, as I, I
16 said before, and I'll give you some examples now,
17 have to do with sexual harassment. John Doe
18 number one was sexual abused as, abused as a
19 small child, so he relives the abuse every time
20 he is strip searched. He always obeys a
21 correction officer's orders to strip naked,
22 squat, twice, facing the CO and facing the wall,
23 lift his scrotum and penis, and cough. COs have
24 beaten him when he complained about being strip

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2 searched. COs, in the presence of other inmates
3 and officers, have laughed at him after saying he
4 has a small penis.

5 He is strip searched before each visit
6 but he still has to go through a metal detector
7 after being strip searched before each visit.
8 And this applies to all of the people with whom
9 we spoke. And John Doe number one has limited
10 his visits to only one family member just to
11 avoid being strip searched as often.

12 Jane Doe number one is a sexual abuse
13 and domestic violence survivor. There's, she
14 says there is no privacy where the strip searches
15 take place and other detainees, including and my
16 colleague, Dorie Lewis wrote to you about this,
17 I've had two women at Rose M. Singer complain
18 that there's another detainee who works in the
19 strip search room and can see all of the other
20 detainees stripping and naked. So that must be
21 stopped.

22 So Jane Doe number one told me, and this
23 is another really important complaint by women
24 who are menstruating, apparently menstruation is

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2 a time when COs think that this is a, a good way
3 to humiliate women for being on their periods.
4 And we've had multiple reports about women
5 menstruating during strip searches.

6 Once, when Jane Doe number one was
7 menstruating, she was strip searched before her
8 visit. The CO told her to take off her menstrual
9 pad and when she did so, some blood spilled on
10 the floor. Now this is almost verbatim three
11 years apart. We had an almost verbatim complaint
12 from a woman who, who was at Albion at the time.
13 The CO, when the blood got on the floor, the CO
14 said, you'd better clean that shit up. Go to the
15 bathroom and get some paper towels. Jane Doe one
16 obeyed, got paper towels from the bathroom and
17 knelt on the floor and cleaned the blood.

18 But after that incident, she told her
19 family and friends to stop visiting her. She
20 only asked for visits about four months later
21 because she had become clinically depressed.

22 Jane Doe number two also is a sexual
23 abuse and domestic violence survivor. She
24 reports that cameras in the strip search area are

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2 focused directly on the women when they are
3 naked. So, in other words, I understand the need
4 for a camera that should be focused on what's
5 happening where the woman, the naked woman is
6 behind some sort of partition, but the CO is
7 visible in the camera. That we understand. But
8 I don't understand why you need a camera to
9 record a naked woman's body. That is -- has to
10 be investigated and that has to stop. Because my
11 concern, as well as my client's concerns, are
12 that these are being used for voyeurism.

13 So Jane Doe number two said that
14 interestingly, she's not always ordered to take
15 off all her clothes. Some COs tell her, oh, you
16 don't have to take off, take off your blouse,
17 your top. Just pull up your bra and shake your
18 breasts. Now, there's, in terms of the men,
19 almost all of them said there's some comment
20 about the size of their penis.

21 Jane, John Doe number seven told me that
22 corrections officers often make comments about
23 the size of his penis, such as he's got a big
24 one, and he's got a wide one, accompanied by

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2 laughter.

3 And John Doe number 12 said that during
4 a strip search, when other detainees were
5 present, a correction officer pointed at John Doe
6 12's penis, then said to another correction
7 officer, he's not circumcised. Both correction
8 officers laughed.

9 One of our clients reported that when he
10 was being strip searched and there was another
11 detainee also being strip, strip searched, a
12 correction officer ordered the detain-, the other
13 detainee to pull back the foreskin of his
14 uncircumcised penis to see if he was hiding
15 contraband.

16 It is clear that strip searches before
17 visits serve no legitimate security interest.
18 The Legal Aid Society is therefore calling on
19 you, the Board of Correction, to issue a standard
20 ending strip searches before contact visits. And
21 we want that standard to be issued immediately.
22 People are hurting right now. As you know, many
23 det- detainees are domestic violence or child
24 abuse and adult abuse survivors. So every time

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2 they go through these strip searches, they are
3 re-traumatized. So we're asking you to, to issue
4 this standard immediately. And of course, the, I
5 guess there's nobody here from DOC, but we will
6 be writing DOC as well demanding that they end
7 these strip searches before contact visits.

8 And you have the testimony of the, of
9 the gentleman from Westchester County, but if you
10 check with State DOCCS, they will confirm that in
11 the state prison system, there are no strip
12 searches before visits.

13 MR. RICHARDS: That's right. Thank you,
14 Marlen.

15 MS. BODDEN: Thank you.

16 MR. RICHARDS: We have three -- oh,
17 okay. I was just informed that there is DOC
18 staff here, so they are aware of your comments.

19 MS. KING: And, and we will discuss it
20 with them.

21 MR. RICHARDS: And we will discuss it
22 with them as well.

23 MS. BODDEN: Thank you very much.

24 MR. RICHARDS: Thank you. So I'm going

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2 to ask to speed it, speed it up, but I do want to
3 hear from everybody. We have three people from
4 the Sylvia Rivera Project, Myra, Mik and Savanna
5 to come up and Hannah, yes.

6 MR. MIK KINKEAD: I just want to say so
7 we are here in part because we have seven
8 testimonies from people inside the Transgender
9 Housing Unit to read. So it would be really
10 great if we could actually have the six minutes
11 each so that we can have their voices here.

12 MR. RICHARDS: Yes, that -- we would
13 love to hear their testimony yes.

14 MR. KINKEAD: Thank you.

15 MR. RICHARDS: And did you send that
16 testimony in?

17 MR. KINKEAD: I will send it this
18 morning.

19 MR. RICHARDS: Okay. If you can send
20 that in, that would be great.

21 MR. KINKEAD: So my name is Mik Kinkead.
22 I'm the director of the Prisoner Justice Project
23 at the Sylvia Rivera Law Project. Since
24 September, I have been visiting the Transgender

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2 Housing Unit twice a month. And since March, I
3 have been given access to what I have been
4 called, what I have been told is called a
5 Transgender Housing Unit Integrated twice a
6 month. So I am at Rose M. Singer every single
7 week, often for four to five hours.

8 The numbers that were given by the
9 Department of Correction don't align with what I
10 have seen myself. The last time I was in the
11 Transgender Housing Unit, there were ten women
12 there, and two women out on court, so 12 women in
13 total. There were three women in the Transgender
14 Housing Unit Integrated and the rest of the women
15 in that unit are 50 and older. So it's still a
16 vulnerable populations' unit. It's not a general
17 population unit.

18 I don't have any access to the new
19 admissions intake and in fact, I only know of one
20 person who has been through the new admissions
21 intake and she's standing next to me. And so
22 that, even though they say that that's been there
23 since October, none of the women in the
24 Transgender Housing Unit or the Transgender

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2 Housing Unit Integrated have come through that
3 unit.

4 And then I just want to point out an
5 ongoing concern, which is that transgender men
6 continually are counted as transgender women.
7 And it's a particularly --

8 MR. CEPHAS: I'm sorry, say that again.

9 MR. KINKEAD: Transgender men are
10 continually counted as transgender women. When
11 Commissioner Yelardy gave her testimony earlier,
12 she said there were 26 women at RMSC. What she
13 meant is that there are 23 women and three men,
14 and there's more men than that. And so it's very
15 personally upsetting as a transgender man, to
16 continually see that the Department of Corr-, the
17 Department of Corrections doesn't seem to
18 understand these identities or take them
19 seriously, and I would also add intersex to that
20 category. There was an intersex man I worked
21 with extensively in 2017 and I testified to the
22 Board about that. He was housed in a men's jail,
23 and against his wished, moved to the female jail.
24 So I, I feel like there's a lack of understanding

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2 and a lack of knowledge.

3 MS. SAVANNA CASH: They don't care.

4 MR. KINKEAD: Alright. So I'm going to
5 just briefly read the highlights of my testimony.
6 So similar to the assessment of the THU, I think
7 that there should be, there should be considered
8 an assessment of the intake unit at RMSC,
9 including the numbers and the identity, identity
10 of the TGNCI people there. Commissioner Yelardy
11 said that anyone who is female identified would
12 go there. I don't know whether or not
13 transgender men are being considered for that
14 unit, or gender nonconforming or intersex people.
15 So I think that a study of that unit would be
16 very helpful.

17 The, the lack of transparency that Deb
18 mentioned is a theme. The directive 4498, the
19 Transgender Housing Unit is Distribution A,
20 meaning it is not available to incarcerated
21 people or to the general public. It was last
22 updated in December 2014. In 2015, I and other
23 advocates were told that they would create a
24 publicly facing document that would just have

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2 security protocol redacted. That hasn't
3 happened, and I've had no updates about whether
4 that would be happening.

5 But even if it did happen, it's unclear
6 whether the directive would actually accomplish
7 anything if it became public facing, because it's
8 incredibly out of date. It's a good thing that
9 it's out of date. It's out of date because the
10 THU moved to Rose M. Singer. So that's, that's
11 fantastic, but it also means that there's no
12 governing document. And that means that when
13 people, you know, apply to the THU, or I guess
14 fill out a form now, it's no longer an
15 application, it's a form and they signed that
16 they're going to abide by all the rules and
17 regulations, they don't know what they're
18 signing. And the Transgender Housing Unit right
19 now as it's currently conceived house transgender
20 women, and in my experience also trans-feminine
21 gender nonconforming people. And it isn't open
22 to transgender men or trans-masculine people.
23 And all the transgender men I know at Rose M.
24 Singer are in solita-, are in protective custody.

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2 None of them are in general population that I
3 know of.

4 So Directive 4498 should be updated and
5 made public. These updates should include the
6 option for transgender men to be housed within
7 the THU or the THU/I and should remove protective
8 custody R-, at RMSC as a default placement for
9 transgender men.

10 I also think that DOC should work with
11 advocates to create a know your rights material
12 that all TGNCI people should be, should receive
13 at intake and should be available in the law
14 libraries of every single facility.

15 To build off of another comment about
16 the Safe Horizon thing, I, so I go to the THU and
17 the THU/I every single week. I've never seen
18 anything about Safe Horizon. I've also never
19 seen anything about the Board. So there's no
20 information -- there is a possibility that it's
21 in the bathrooms. I don't go to bathrooms, but
22 it's not in any of the area. It would be very
23 simple to put up a poster and say that the Board
24 and Safe Horizon exists as resources.

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2 I also want to echo what Deb said that
3 it appears to me that the housing placement of
4 transgender women seems to be intake at a men's
5 facility, then possibly moved to THU and if they
6 have a difficulty at THU, they move down to the
7 THU/I and if they have a difficulty there, they
8 go to a men's jail. There doesn't seem to be
9 anything where they go to protective custody at
10 RMSC or they go to general population at RMSC or
11 they go to a drug treatment unit, unit at RMSC.
12 It appears to be the THU, the THU/I or a men's
13 jail.

14 And so I'll also say that part of this
15 is the issue that I think a lot of DOC staff have
16 varying knowledge about the THU and about housing
17 of transgender people in general. I've had
18 employees tell me that the THU actually exists at
19 Brooklyn House, when in fact that's a PC unit
20 that just happens to have a lot of transgender
21 people in it. I also had folks tell me,
22 employees tell me that the THU is only by a
23 judge's order. So there seems to be a lot of --

24 MR. CEPHAS: I'm sorry. By what?

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2 MR. KINKEAD: A judge's order. I don't
3 think it's done out of ill intent. I think it's
4 being done because people aren't educated about
5 it. One of the testimonies, by Ms. Madea Sidney,
6 which is attached here, speaks to this. She
7 mentions that she thinks that the officers
8 weren't informed that transgendered women were
9 going to be moved to Rose and so have had just
10 varying reactions to it.

11 So I think DOC should work with local
12 advocates and experts to create guidance for
13 housing of TGNCI people from the point of intake
14 until release and this guidance must follow the
15 minimum standards and lay out the reality that
16 TGNCI people have the same rights to access
17 programming as their cisgender counterparts and
18 that the THU is one option among many. And this
19 guidance must be publicly available, otherwise,
20 it won't be helpful.

21 And then finally, I want to follow up on
22 what was said by so many people which is the lack
23 of faith in investigations. When I, I've been
24 interviewing the women in the THU over the past

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2 two months to prepare for this and everyone I
3 spoke to said that it's not worth filing a PREA
4 complaint. And there were two reasons mentioned
5 for that. One is the investigation simply
6 wouldn't be taken seriously, DOC already sees
7 transgender women as suspicious, and as
8 troublemakers and so reports filed by transgender
9 women are simply not investigated or not taken
10 seriously.

11 I will mention that all these women have
12 talked to me about how someone, either a PREA
13 staff member or a DOI member have come and
14 interviewed them, but that that was the end of
15 it. And that the interview was usually between
16 five to ten minutes long.

17 So last April, I testified about a
18 friend of mine and a transgender woman who was at
19 AMKC, raped, she advocated for her move to
20 Bellevue, she was returned to AMKC and she was
21 raped a second time. Her story is well known
22 within the THU. And I, this is the kind of
23 experience that the DOC has to get over in order
24 for them to actually have people believe that

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2 it's worth reporting. Because right now, the
3 general idea within the trans population that I
4 know and I work with is that if you advocate for
5 yourself, you will be punished, that she was
6 moved back to AMKC because she advocated for
7 herself. And that that second rape was
8 purposeful.

9 Likewise, and Deb said this as well,
10 that I have had at least three clients since
11 September moved out of the THU after they
12 reported feeling sexually harassed by cisgender
13 women. These three were all transferred out of
14 the THU and to men's jails. And so, in addition
15 to the first piece, which is trans, reports by
16 transgender women not being taken seriously, the
17 second piece is if you report, you will be
18 transferred out of safe housing.

19 So clear and public housing standards
20 for TGNCI people should assist in assuring TGNCI
21 individuals to not fear being transferred out of
22 a gender affirming unit due to reporting sexual
23 harassment or violence.

24 In addition, however, DOC must take

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2 concrete steps towards hiring more investigators
3 and creating clear guidelines concerning
4 protections for any individual reporting
5 violence. During investigations, DOC must record
6 contact information for individuals should their
7 cases carry on after their release.

8 I just want to close by saying that I
9 really appreciate the seven women whose
10 testimonies are going to be heard. Even the
11 shortest one of them happened only after hours of
12 discussion and crying and talking things out and
13 connecting to resources and it's incredibly brave
14 of all them to have shared their stories. And
15 everyone who is in the audience today who is a
16 survivor, who loves a survivor, I thank you for
17 being here because it's very, very hard to relive
18 all this. Thank you.

19 MR. CEPHAS: Thank you. Questions?

20 MS. HANNAH WALKER: Hi, my name is
21 Hannah Walker. I'm the director of the Survival
22 and Self-Determination Project and a staff
23 attorney at the Sylvia Rivera Law Project. I'm
24 going to be reading two testimonies from women

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2 inside city jails as they could not be here. The
3 first is from Naomi Peterson.

4 My name is Naomi Peterson. I am a young,
5 black transgender woman. The following is my
6 testimony for the Board. I filled out five to
7 ten forms saying that I was transgender. Maybe
8 some of them were for, maybe some of them were
9 THU applications, maybe some were medical. I
10 don't remember, there were so many and I said it
11 over and over. I was at MDC and then another
12 men's jail. I don't remember the name. It was
13 on Rikers.

14 When I was on Rikers, I was transferred
15 to a house with gang members, Crips. Someone
16 called 311, I don't know who, and I got
17 transferred to RMSC. At the men's jails, they
18 kept saying he, he, he and I said, excuse me, I'm
19 a woman. And they say we aren't used to you. I
20 know that's B.S. We've been inside before. It's
21 not like they never locked us up before. I know
22 I'm easily manipulated. I'm 25, I have ADHD, I'm
23 so scared of the men and how they manipulate me.

24 The THU is a lot better. But even here,

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2 escort officers use the wrong names and pronouns.
3 They say he/she, they call me by my boy name.
4 When you need something from them, they ignore
5 you, or they'll laugh and carry on with the
6 officers and ignore you. They threaten to mace
7 you all the time. If we argue and disagree, they
8 say I'll press the red button and get the turtles
9 on you. I don't understand a lot of things,
10 reading is hard. I wish they would just slow
11 down and be nicer.

12 And then the second testimony is from a
13 young woman named Brooke who was housed at the
14 THU in October 2017, and wrote a really fantastic
15 essay that we've published. And she gave
16 permission for us to use it here.

17 As the officer unlocked my cuffs, I was
18 dazed by the bright blooming pastels of Rosie's
19 Intake unit. I'm sorry about that earlier, she
20 told me, I've had my days with racism too. She
21 was black and a lesbian and one of the very few
22 friendly faces I had seen in the last week. We
23 had spent the last two hours together on a
24 rickety steel DOC bus. We had just stepped off a

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2 two hour bus ride with a man in the back seat who
3 called me all the usual, usual slurs, tranny,
4 cocksucker, faggot. I'd become numb to this
5 language from daily beatings in the Brooklyn
6 men's prison.

7 A man in the back seat had reached the
8 end of his rope. I'll snap your neck. I'll snap
9 your neck. I'll snap your neck. He was
10 attacking whomever he could, which often meant
11 the tranny in the front seat.

12 The officers in intake were laughing
13 around the central dock, step through here, miss.
14 I passed through the sen-, the metal detector
15 with a dull sense of relief. I knew I was
16 finally safe. The women here treated me so
17 gently. A nervous nurse actually apologized to
18 me when she found me on the toilet trying to
19 bring me dinner.

20 I'd spent the last week in the Brooklyn
21 men's prison. For the first few days, I hid in
22 my 6' x 9' cell, sleeping or feigning sleep to
23 avoid the men held there. I had regular visitors
24 harassing me through my cell bars. We don't want

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2 any gays on our floor was a phrase accompanying
3 every interaction. I pretty quickly stopped
4 talking to people. I tried answering questions
5 about being a transi- transitioning woman and was
6 universally met with laughter and listeners
7 telling each other how crazy I was.

8 People asked me if my tits were real,
9 what my genitals were like, how I liked to have
10 sex, even after I stopped responding from behind
11 my bars. I remained a sideshow, sideshow
12 attraction. Men continued to shout through the
13 bars, wake me up by slapping my feet with a
14 towel, take things off my table, and one incident
15 where someone tried to rip my property document
16 from my hand. I waited awake in the night for
17 hours for an officer to pass so I could request
18 transfer to protective custody or a trans unit.
19 Most officers shrugged me off and continued
20 making the night rounds. Some told me to wait
21 for a captain and left. I spoke with a handful
22 of captains with concerns about my safety, one or
23 two later sent a transfer request document. I
24 think most wouldn't do anything because the jail

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2 was too full. During the 24-hour intake, I had
3 been in my own cell for a few hours but mostly
4 held in larger units with men. It was easier to
5 blend with a brown bag, baggy brown shirt
6 enveloping my chest.

7 Rosie's is friendly. It's the exception
8 that an officer misgenders me. I only get, I
9 only got gendered correctly three to four times
10 in the men's prison, mostly by nursing staff and
11 almost every officer has listened to my concerns,
12 again, the inverse of Brooklyn house. I have
13 easy access to social programs and medical
14 treatment. I did not have phone use for the
15 first five to six days in Brooklyn meaning all
16 these pleas for better treatment fell on the deaf
17 ears of staff. Thank you.

18 MS. MIRA DE JONG: Hello. My name is
19 Mira De Jong. I'm a legal intern with Sylvia
20 Rivera and I'm going to be reading testimony from
21 three individuals who are in city jails and could
22 not be here today. Okay, the first testimony.

23 I would like to withhold my name. I am a
24 26-year-old biracial transgender woman. The

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2 following is my testimony for the Board. Many
3 people address transwomen about their sexuality.
4 That's none of their business and it's very sad
5 that the law does nothing to protect transwomen
6 from transphobic behavior. What should be done
7 differently is to simply respect us as people and
8 not what they have assumed us to be.

9 Many NYC jail employees and volunteers
10 have abused their power to include their own
11 religious and personal opinions when dealing with
12 any LGBTQ persons, especially transgender women
13 and men. People are paid to do their jobs
14 without phobic behaviors and they should truly
15 focus on their job and not their sexual
16 preferences or religious upbringings.

17 I have never been raped, but I hope that
18 the persons that apply for jobs associated with
19 health, healthcare will treat sexual violence
20 victims of all creeds and sexuality fairly and
21 justly without judgment of said cases and/or
22 persons.

23 When a pat frisk or a strip search
24 happens, only some people will ask you if you

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2 have a preference of officer for the search.
3 This is a very tragic situation. They are
4 insanely disrespectful. Some of the men will
5 feel on the shape of your body and completely
6 disregard the pat and frisk actions and laws.

7 Employees, contractors and volunteers
8 with the New York City jails should simply treat
9 everyone with respect and kindness. Poli-
10 policies that should be used are the gender
11 affirming policy. People who may have their
12 loved ones working with them are highly dangerous
13 persons. Persons who work in law enforce-
14 enforcement should have a mandatory training
15 class on all phobic subjects including sexual,
16 racial, religious and gender.

17 Here is the second testimony. My name
18 is Jeannie Din [phonetic]. I am a 60-year-old
19 Asian transwoman. The following is my testimony
20 for the Board.

21 I am in the female facility now and the
22 officers call me Jeannie and female officers pat
23 frisk me. But I am very scared because I will
24 go to prison Upstate. There I will be pat frisked

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2 and strip frisked by male officers. I would like
3 to be pat frisked or strip frisked by female
4 officers only. When I have been inside before,
5 like at Upstate, some officers would call me Mr.
6 Din. I wish they would call me Ms. Din, or just
7 Din, if they can't say Miss to me.

8 And this is the third testimony. My
9 name is Ms. Kitty Jane Ritolo [phonetic]. I am a
10 55-year-old white transwoman. I identify as
11 straight and as an advocate. The following is my
12 testimony.

13 I will honestly say that the treatment
14 of all transgender people has gotten better since
15 the PREA law has gone into effect. The facility
16 should always practice being fair and impartial
17 as opposed to prejudging us all. The powers that
18 be have become extremely conscious that any and
19 everything that constitutes sexual misconduct is
20 a touchy situation. And now they are threatening
21 to lock us up and write a ticket for something as
22 silly as patting someone on the back.

23 If they're really enforcing this with
24 jail time, then the COs will absolutely think

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2 twice about practicing unprofessional behavior.
3 I have experienced pat frisks in both male and
4 female prisons and jails and by both male and
5 female staff.

6 The state of unprofessionalism goes
7 individually. I tend to experience more
8 professional behavior with male officers. The
9 pat frisk in itself seems to have improved over
10 the last three decades. It curr-, it currently
11 seems to be very professional, courteous, yet
12 thorough. They use the back of their hands to
13 actually touch you and it leaves less room for
14 abuse, so that is good. They literally used to
15 squeeze our breasts and now they aren't as severe
16 anymore.

17 I attempted to access healthcare when I
18 first came through corrections, simply concerning
19 my own lifestyle and asking for an HIV test. I
20 had a hard enough time trying to rid the medical
21 staff of ridicule and shame. Medical staff is
22 related to security staff, mostly through
23 marriage. So the confidentiality clause almost
24 always gets violated, mostly through nurses

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2 disclosing our status to their officer spouses.
3 This in itself is a violation of the worst kind.
4 And more times than not, the officers share our
5 status with the inmates.

6 After suffering injuries pertaining to
7 sexual violence, in both Upstate prisons and
8 jails, I was just told to go F off. When I would
9 report an incident of sexual abuse, it frightened
10 me immensely. One time, it was after I was
11 literally raped by a gang of prisoners. They
12 would respond with such unsupportive behavior.

13 The institution should practice equality
14 and be aware that every human live is of equal
15 importance. The institution practices
16 prejudiced, biased behavior which is not legal,
17 nor should it still be in place. Thank you.

18 MS. CASH: Hello. I was incarcerated
19 from March 22nd to approximately 17 days after.
20 And for the life of me, I couldn't understand why
21 this happened to me, because I did not do this
22 crime. And now I know why, because I was meant
23 to, I did not get indicted, thank god, and I'm
24 able to really understand and grasp the level of

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2 chaos that's going on in Rikers Island.

3 They did in fact take me to Rosie M.
4 Singers facility from the moment that I --
5 obviously, because all of my identification, all
6 of my legal documents say female. There was no
7 reason for them to oppose, or, you know, there
8 was no reason for them to even suspect that I was
9 trans.

10 First of all I would like to lead with
11 the fact that they are falsifying PREA intake
12 documents because they're not using the protocol
13 which is self-identification. When they asked me
14 if I identify as transgender, nonconforming or
15 intersex, I told them no. I identify as female.
16 They checked transgender woman, prior to even
17 have strip searched me. So there is a witch hunt
18 going on at these facilities with transgender
19 people being, it's self identification. If you
20 don't identify as transgender, because I
21 personally did not want to be housed at a
22 transgender housing unit.

23 I don't feel any need to be around -- I
24 don't agree with segregation. I think that

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2 segregation at any level is, it reeks of I think
3 George Wallace in my mind, you know, like we
4 cannot make progress and make real progress if we
5 continue to learn nothing from the '60s Civil
6 Rights Movement. We cannot continue to segregate
7 people, we cannot continue to target people, we
8 cannot continue to claim that we, we stand for
9 equality and stand for integration, because
10 integration is not segregation. Any kind of
11 segregation is wrong.

12 Now, if people want to be housed in the
13 Transgender Housing Unit or they need protective
14 custody, it should be based on a case by case
15 basis and based on their gender identity, or the
16 lack thereof, because we do have the gender
17 nonconformist movement.

18 But this jail is not conforming to the
19 PREA standards. They deprived me of my HIV meds
20 for five days and I told them from the time that
21 I was arrested that I was positive, that I was
22 undetectable and that I needed my HIV medication.
23 And there's proof, because when I entered the
24 jail at Rose M. Singer, they tested me for HIV

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2 through the rapid test. It was negative. When
3 they drew my blood five days later, without my
4 HIV meds, my viral load had risen to 141. So I
5 was then now HIV positive again. And the risk
6 associated with that type of medical negligence
7 is great, because when you don't take your
8 medications, you can form a mutation, you can
9 form a resistance. This put me at a great risk.

10 Not only that, they did not give me the
11 medications that were prescribed by my doctors
12 for my gender identity and the hormones and stuff
13 like that. It's a bit difficult for me to talk
14 about these things because I don't really like to
15 think about it, because I really do identify as a
16 female. And so, you know, these are things that
17 I just do in my daily routine that I don't like
18 to talk about because it's, it's a bit hard.

19 But you know, like this, they separate
20 you from the moment you come in the door. You're
21 not kept with other female inmates. And one of
22 the first days, I can remember the girls, the cis
23 women in the cell, I didn't even like that
24 separation. We're, we're women. The other women

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2 in the cells that were held together would say
3 why do you guys have her by herself. They're
4 like hey are you okay, do you -- and I'm like I
5 don't know, oh, it must be a tranny. And it's
6 like, you know, these people are subjecting us to
7 such violence and such ridicule and such sexual
8 harassment because it's not what they're supposed
9 to be doing.

10 What is the point of even putting us at
11 a female facility to then be housed by ourselves?
12 So you're telling me if there's only two people
13 or one person that are identifying as trans in
14 the facility that you're going to be housed in an
15 entire unit by yourself? That's solitary
16 confinement. You're still in solitary
17 confinement. It's no way around it. Like
18 integration is the only option. We have to stop
19 policing people and their gender and their sexual
20 identity or sexual orientation.

21 And can I make a point of it to say that
22 gender identity and sexual orientation are
23 different. You have transgender women or people
24 who identify as female or male who don't like sex

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2 at all, you have people who identify as female
3 who are pansexual, which means they're open to
4 whatever. You have people who are identify as
5 heterosexual, bisexual. We have to stop policing
6 sex in jails as well because at the end of the
7 day, I feel like the policies and the procedures
8 that are being developed are solely based around
9 them trying to prevent sex happening in a jail,
10 which we all know, you can't stop people from
11 doing things together at the end of the day, like
12 you know, they, they'll find a way around it.

13 Police, we're policing the wrong issues.
14 At the end of the day, I think what's most
15 important is preserving people's integrity,
16 because for someone like me who went through this
17 experience going I have no clue why I'm in here
18 for this, I had nothing to do with this, because
19 I was the victim of a police department who had,
20 you know, I was guilty by way of being
21 transgender. They just assumed that I was guilty
22 because I was there. And thank God, I was able
23 to make it out of the situation, to speak for my
24 community and I just cannot say enough how yes

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2 they are making progress, there is progress, we
3 are making progress, we are making steps in the
4 right direction, but it's not integration. And I
5 think that anyone who turns the other way or
6 anyone who doesn't make a change immediately is
7 complicit.

8 MR. RICHARDS: So I would, if you agree,
9 if you can give your name to our staff, because I
10 think, as I said earlier, any time we can use an
11 upfront and close case, something recent, where
12 we could look at okay, here's the policy that you
13 said you have, here's somebody who was just
14 released three weeks ago and this is what they
15 went through. And so we could test the reality
16 of their policies and to make changes. And, you
17 know, we can talk, but when you have someone's
18 real life experience about what it was like to go
19 through there and how --

20 MS. CASH: They told me I looked like a
21 science project.

22 MR. RICHARDS: So, so, if you don't
23 mind, I think this is a great opportunity to be
24 able to talk to DOC about that. And I just want

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2 to thank the Sylvia Project for, you're always
3 bringing examples of real-life experiences of
4 people who are impacted by the policies so thank
5 you.

6 MS. CASH: I cannot stop thinking about
7 this. I don't think that I will ever be the same
8 after this, this experience because the reality
9 is that these people are saying one thing and
10 doing another. And it's really, really
11 disturbing because these people are thrown away
12 already by society, a lot of them by their
13 families, a lot of them by, you know, they're
14 vulnerable, they're weak, they're not heard and
15 they're just being thrown away and they feel like
16 no one cares.

17 MR. CEPHAS: How long were you in
18 Rikers? I'm sorry.

19 MS. CASH: Seventeen days.

20 MR. RICHARDS: Yeah, well, you're going
21 to be part of the solution. So thank you. Thank
22 you all.

23 MS. CASH: You're welcome.

24 MR. RICHARDS: We have two speakers

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2 left, Alice, no three speakers. Alice, Savanna
3 and Kelly Grace. Is Alice here? Okay. Savanna?

4 MS. CASH: That's me.

5 MS. KING: She just spoke.

6 MR. RICHARDS: Oh, she just spoke.

7 Okay. Perfect. Kelly, you're up.

8 MS. KELLY GRACE PRICE: Thank you. Hi.
9 I'm just going to make a few -- I'm Kelly Grace
10 Price, from Close Rosies and I'm sorry, but he's
11 a service dog, so he's not supposed to do that.
12 I apologize. He's only nine and a half months
13 and this hearing is testing his patience.

14 I, so I, I want to start off by letting
15 you know that I produced my own PREA audit report
16 for the Board and I'll turn it in this afternoon.
17 And I really want to ask the Board to focus on
18 producing a comprehensive PREA audit report. I
19 know you guys are trying. And I know that you
20 had really great staffers working on it. I
21 thought Cassandra was really great. I thought
22 that the information that she supplied in her
23 October reporting audit was fantastic. I heard
24 from people in the DOC that she had amazing

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2 rapport with them and that they loved working
3 with her and she was fair and they got things
4 done, which by itself is sort of the job
5 qualification, right, for the BOC PREA audit-
6 auditor to be able to get along with the DOC.

7 I have real serious misgivings about why
8 she was let go by the Board. I don't want to
9 hound on this too much, but I just want to start
10 off by saying there should have been redundancy
11 in her position. We should have a comprehensive
12 document in front of all of right now for this
13 hearing produced by the Board that's just a
14 compendium, an aggregate of all the information
15 about compliance, evidence of noncompliance,
16 comments, suggestions like Marlen's for real
17 change proposals, all this stuff. I mean we're
18 so far along. I'm thinking of the first time
19 that I appeared in front of the BOC back in
20 December of 2014.

21 And so much in my life, you've seen that
22 I have changed and I have gotten better, but this
23 issue just is persistently not getting better.
24 So instead of going through the PREA audit

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2 report, I'll send it to you and hopefully we can
3 have a conversation about this, and hopefully
4 this document can be a starting place. I do want
5 to thank the Board for the information you guys
6 provided this morning. I was so grateful to
7 finally see a data chart on page four that began
8 to chart the history or the history of
9 complaints, what's been closed, what hasn't been
10 closed. You know there are a lot of problems
11 with trying to understand as an advocate, as an
12 outsider exactly where our closing rates are,
13 where our substantiation rates are.

14 We're having, I'm having an extreme
15 amount of trouble still trying to understand why
16 complaints are being disappeared. For instance,
17 in the report that you provided yesterday, you
18 took pains to break out PREA versus non-PREA
19 complaints. But I felt like you were kind of
20 doing the Department's work for them. It's --
21 I'll skip over that, but there's a lot more to be
22 said, that particular PREA, non-PREA bucket.
23 There's so much work to unpack what's going on
24 there. I know you guys know this.

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2 Some quick observations. You know, the
3 population of the island has dropped
4 dramatically, the population of, of Rosie's is
5 down 60 percent in the last five years, but the
6 complaints aren't. You know, these are huge
7 problems. I have some suggestions.

8 I want to focus in on just a, a few of
9 the PREA standards, where I feel like, you know,
10 there's some, some, some, some really easy
11 remedies for trying to rip back the veil of
12 opacity on this information. For instance, a lot
13 of people talked today about video surveillance,
14 surveillance, it's Board standard 504-G on buses.
15 The report that the Department provided earlier
16 this year analyzing their two choices, the body
17 worn cameras or the Genetec, Genetec cameras that
18 -- everyone knows this, you're providing two
19 false choices. Neither choice is good. There's
20 more than just those two choices. Why do we
21 keep accepting that there are only these two
22 choices, the expensive Genetec solution that's
23 cost prohibitive, what is it, \$150,000 per bus or
24 something, it might be more than that. Anyway,

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2 or the stupid body worn cameras that are not
3 efficacious and they can be switched off. There
4 has to be some other choice here. Why are we
5 going to let them get away with just presenting
6 these two choices? It's ridiculous. Someone
7 needs to be holding their feet to the fire.

8 You know, regarding prevention, let's
9 just talk about the staffing plans. They keep
10 saying oh we've provided the staffing plans. But
11 there's so much detail level that's missing from
12 all those. And it's just not one staffing plan.
13 There's two or three different staffing plans
14 that we still need a lot of detail level about.

15 You know, the, the PREA coordinators in
16 the facility. Why are we, in September Ms.
17 Townsend said, oh, we, we had five we just hired
18 two more, we're going to have seven. And they
19 keep saying back in 2017, the Department was only
20 budgeted for eight. Well, what about 2018, 2019,
21 what about the subsequent years. Is the
22 Department repeating the same mistake only
23 budgeting for eight? Why aren't these things --
24 why aren't they changing? Why are we accepting

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2 the same status quo excuses for lack of
3 implementation at hearing after hearing after
4 hearing?

5 We heard Cassandra say in October that
6 we were back down to five comp- compliance
7 managers for the individual jails because of
8 attrition, we'd lost two. So why aren't, why
9 isn't someone insisting that the DOC staffing
10 plan includes redundancy in these positions?
11 They're integral. We have to have redundancy.
12 We heard the Westchester say that their manager
13 in every facility is the point person. What a
14 great idea. So maybe a little encouragement for
15 staffing because again, I know a number of people
16 that have applied for these jobs, Barbara McLean
17 [phonetic] is a, a SART [phonetic] expert who's
18 testified in front of the board back in June
19 2016, July 2016 and November 2016. She's applied
20 several times for a number of different open PO-,
21 DOC positions, never even been given an, an
22 interview. So, I'm, I'm trying to figure, oh, is
23 this the timer right here?

24 JUDGE HAMILL: Derrick has the timer.

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2 MR. CEPHAS: Yeah, you have, let me
3 just, you're over your six minutes.

4 MS. PRICE: Okay. So then I will, I
5 will send in my report and my dashboard today and
6 I would like to continue this conversation. But
7 let's just talk about my own anecdotal experience
8 of merely being raped on Rikers. You know my
9 story. Dr. Handsey [phonetic], who is going to
10 trial finally in June, tried his little role of
11 conscription by overprescribing medications to
12 me.

13 But who is, to Ms. Herzog's and Sara, to
14 their points, who is really doing the training
15 and seeing if the training is efficacious on
16 little things, like warning signs. When I was
17 overprescribed those prescriptions by Dr.
18 Handsey, there should have been a report that I
19 showed up at my housing unit with 300
20 individually wrapped Tylenol pills. Somebody
21 should have been asking questions. Why does Ms.
22 Price have a whole tube of bacitracin and 30
23 guanfacine tablets? That's a warning sign that
24 doctor was trying -- so, and this is in, in my

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2 report, a question that needs to be asked the
3 DOC, have they ever documented any report from
4 any staff or consultant of a warning sign? Has
5 that ever, ever come across, because that's,
6 that's proof of efficacy of the training, right,
7 if these things are being documented? But we've
8 never heard of anything like this.

9 And the same goes for we heard CHS and
10 DOC say that they do screenings for staff and
11 consultants when they hire them, but we haven't
12 heard exactly how many people have had
13 dispositive results from those screenings. So
14 again, thank you for having this hearing. I'm
15 exhausted, Frank's exhausted. I've, I've done my
16 best to talk you into all of these things and I
17 really hope to work with the Board to improve
18 these conditions.

19 But we can't do anything if we keep
20 having this staffing problem. It comes down to
21 the number one thing I think the Board should be
22 doing right now is interviewing for not one, not
23 two, but three PREA compliance managers, because
24 you, you really need those people. I'm not go to

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2 be putting in my application, but as always, I
3 would love to work with them. Thank you so much.

4 MR. RICHARDS: Thank you, yeah, thank
5 you very much.

6 MR. CEPHAS: Is that everybody Stan?

7 MR. RICHARDS: That's it.

8 MR. CEPHAS: Well, I think we've, we've
9 heard from every- everyone from the public that
10 wants to testify, so I think now the meeting is
11 adjourned. Thanks very much everyone.

12 MR. RICHARDS: Yes. And I would, I would
13 recommend one change. When we have a special
14 hearing like this, I think the stories of, of
15 people telling their experiences when they were
16 in or they are delivering messages from their
17 clients, having that at the beginning of the
18 hearing, when everyone is here, not the whole
19 public comment, but those stories are really
20 important for DOC to hear. We don't have to do
21 the whole public comment, but the stories are
22 really powerful and they need to hear them
23 because it gives them an opportunity. It's not a
24 right or wrong thing, but it does give them an

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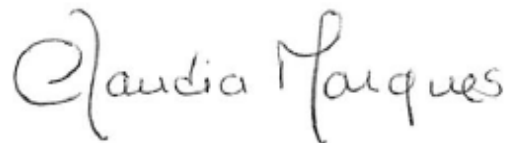
opportunity to look into their process and see where they could have improvements so we can get better over time. Thank you.

(The public board meeting concluded at 1:50 p.m.)

CERTIFICATE OF ACCURACY

I, Claudia Marques, certify that the foregoing transcript of NYC Board of Corrections Special Hearing on April 23, 2019 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: May 21, 2019

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