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WRITTEN TESTIMONY OF COMMISSIONER MARGARET GARNETT

SUBMITTED TO THE BOARD OF CORRECTION

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This written testimony is respectfully submitted to the Board of Correction in connection with its scheduled hearing on the handling of sexual abuse and sexual harassment within New York City Department of Correction facilities. I applaud the Board for its attention to these issues, which play an important role in ensuring the safety and dignity of DOC inmates, visitors, and staff.

Introduction

The Prison Rape Elimination Act of 2003 (PREA) established federal mandates to define and eliminate rape in correctional facilities across the United States. The Department of Justice adopted “National Standards to Prevent, Detect, and Respond to Prison Rape Under the Prison Rape Elimination Act” in 2012. In 2016, the New York City Board of Correction implemented sexual abuse and harassment minimum standards, which mirror the PREA standards and outline Department of Correction’s (DOC) responsibilities to prevent, detect, and respond to prison sexual abuse and harassment. In response, DOC promulgated Directive 5011, “Elimination of Sexual Abuse and Sexual Harassment,” to establish specific policies and procedures aimed at achieving compliance with the PREA mandate of zero tolerance toward all forms of sexual abuse and sexual harassment.

The Department of Investigation (DOI) and its Inspector General for the Department of Correction supports the goal of eliminating sexual abuse and harassment within the DOC, and plays an active role in eliminating DOC staff-on-inmate sexual abuse. DOI screens and actively investigates staff-on-inmate sexual abuse allegations (PREA allegations), makes criminal referrals to prosecuting agencies when potential criminality is identified, coordinates with the DOC on employee discipline as a result of the investigations, and issues policy and procedure

recommendations (PPRs) to the DOC where appropriate to correct deficiencies and prevent future instances of abuse.

DOI's Investigative Role

DOI's mandate includes investigating and referring for criminal prosecution cases of fraud, corruption, and other illegal activities by City employees, contractors and others who do business with the City. As part of its investigations, DOI identifies systemic corruption vulnerabilities and recommends improvements to reduce the City's exposure to corruption, fraud, waste and abuse, and to improve the function of City agencies. With respect to DOC specifically, DOI's investigations focus on identifying, investigating, and eradicating destabilizing forces in the City's jail facilities, including contraband smuggling, bribery of officers by inmates, the use of excessive force by correction staff, and sexual abuse and assault cases involving staff.

DOC's Directive 5011 establishes the DOC's policies and procedures for "preventing, detecting, reporting, and responding to incidents of sexual abuse and sexual harassment against inmates" in DOC custody. Directive 5011 establishes investigative procedures for the DOC and also provides direction for DOI's involvement in PREA investigations: § VI(I)(1)(b) states "DOI shall conduct investigations for sexual misconduct that involve staff-on-inmate allegations or allegations that involve alleged rape cases. After a preliminary review of the facts, DOI may elect to have the investigation conducted by [DOC's internal Investigation Division]."

Allegations involving staff-on-inmate sexual abuse or rape fall within DOI's mandate to investigate corruption and illegal activities by City employees. If there is a claim of physical sexual abuse or rape of an inmate by a DOC employee, DOI either will commence a preliminary investigation or refer the case back to DOC's Investigation Division (ID) to commence a preliminary investigation. If DOI refers the case to ID, DOI instructs ID to notify DOI immediately if ID uncovers evidence of potentially criminal behavior. Complaints that do not involve DOC staff, or involve allegations of verbal sexual harassment, are referred to DOC ID.

DOI considers a number of factors when deciding whether to commence a preliminary investigation of a sexual abuse or rape allegation, including, but not limited to: (1) whether information, including the alleged victim's or subject's identity and a time and place of occurrence, is provided; (2) whether the alleged abuser has been the subject of similar allegations previously; (3) whether physical contact is alleged; and (4) DOI's investigative resources at the time of the complaint.

Approximately 40 investigators are assigned to DOI's Office of the Inspector General for the DOC; some are DOC Correction Officers and Captains detailed to DOI. They are responsible for investigating all types of cases related to DOC operations, including contraband smuggling, bribery, use of force, and sexual abuse.¹ Because of ID's proximity to the DOC

¹ All DOI investigators who may be assigned to investigate allegations of staff-on-inmate sexual abuse have received PREA investigations training presented by the National Institute of Corrections. A number of investigators have also attended various additional trainings relating to sex crimes and interviewing techniques, including trainings hosted by the New York City Police Department.

facilities and its dedicated team of PREA investigators, ID is often better equipped to immediately respond when PREA allegations are reported. Within 24 hours of receiving a PREA allegation involving staff-on-inmate sexual abuse or rape, and often almost immediately, DOI either informs DOC that it will initiate an investigation, or “clears” ID to proceed with an investigation.

Since the BOC standards went into effect in 2017:

- DOI investigated approximately 23 cases alleging staff-on-inmate sexual abuse:
 - Thirteen of the cases were closed (some had been opened in 2016);
 - Two investigations remain in post-investigative status, either awaiting a determination by prosecutors as to whether a prosecution is warranted, or awaiting administrative action by DOC);
 - Eight are open and pending investigations.

DOI Criminal Referrals and Coordination with DOC Regarding Employee Discipline

DOC is required to inform DOI of all allegations of staff-on-inmate sexual abuse. DOC then awaits DOI’s response as to whether DOC ID is “cleared” to proceed with an investigation, or whether DOI will open an investigation. When DOI opens a case internally, DOI undertakes a full investigation and plays the primary role in the investigation.

DOI is mindful that a successful criminal prosecution requires proof beyond a reasonable doubt. Where DOI believes that it has amassed this level of evidence during the course of an investigation, DOI refers the matter to a prosecutor’s office. We work closely with the District Attorneys’ Offices and the U.S. Attorneys’ Offices in the City to assist in the goal of successful prosecution of these cases. Where we find evidence that staff more likely than not has committed sexual abuse against an inmate, or has engaged in undue familiarity with an inmate, DOI refers the matter to the DOC for whatever action the DOC deems appropriate, based on the facts developed in our investigation. In the 23 investigations of staff-on-inmate sexual abuse that DOI conducted since 2017, some of the investigations have resulted in criminal referrals to prosecutors’ offices and some have resulted only in administrative referrals to the DOC. DOI will not discuss or comment upon any specific investigations to preserve confidentiality. After making either criminal or administrative referrals, DOI investigators work with the prosecuting agencies and DOC to assist in further investigative steps or to appear as witnesses in criminal proceedings, administrative hearings, or both.

DOI Policy and Procedure Recommendations

DOI identifies systemic corruption vulnerabilities and suggests PPRs to reduce the City’s exposure to corruption, fraud, waste and abuse, and to enhance safety and security within DOC facilities. In investigations involving sexual abuse and harassment allegations, DOI investigators determine both whether the allegations of staff-on-inmate sexual abuse are substantiated, and whether DOC staff or DOC policies contributed to an environment where sexual abuse can occur undetected.

As a result of one large-scale investigation of a DOC facility in 2017, DOI issued seven PPRs aimed at dramatically reducing opportunities for sexual misconduct to occur, and increasing DOC's success in holding officers accountable when sexual misconduct does take place. DOC accepted three outright, and for various reasons, including excessive costs, staffing constraints and labor law issues, rejected four. These rejected PPRs included:

1. No single correction officer at the facility should occupy any particular post for more than two months and instead should be assigned to two or three posts which they rotate between in two to three month blocks;
2. Exit interviews of each inmate should take place and a PREA-trained ID investigator should be present for each;
3. DOC should retain video footage from each camera for a period of at least one year.
4. DOC should require that officers escort inmates in male/female pairs in order to reduce opportunities for sexual misconduct.

DOI will continue to identify areas of vulnerability during its PREA investigations and will make recommendations that are achievable and relevant to the shared mission of zero tolerance toward sexual abuse in DOC's facilities. DOI will also continue to work with DOC and prosecuting agencies to thoroughly and efficiently investigate and prosecute DOC staff who abuse their position of power to sexually abuse inmates in DOC custody.