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**THE COUNCIL  
 OF  
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 COUNCIL MEMBER, 25<sup>TH</sup> DISTRICT, QUEENS**

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July 26, 2016

Martha King, Executive Director  
 Chair and Members  
 New York City Board of Correction  
 1 Centre Street, Room 2213  
 New York, NY 10007

Re: Comments on Proposed Rules on Sexual Abuse and Harassment

Dear Board Members:

I am writing to recognize the significant step the Board of Correction (Board) has taken to initiate the rulemaking process around sexual abuse and harassment in Department of Correction (DOC) facilities. I also want to ask the Board to take significant steps to craft rules that will continue in the spirit of reform that the Board has been pursuing.

Individuals held at Rikers and other facilities deserve our best efforts to ensure that they are safe from rape and other forms of sexual abuse and harassment. However, the Proposed Rules (Rules) lack the specificity that is needed to direct the DOC to address the culture of violence, including sexual violence and intimidation.

The following comments are aimed at reflecting conditions at Rikers and other facilities while encouraging the use of best practices for sexual abuse and harassment prevention, detection, and response.

<b>GENERAL</b>	
Proposed Rule	Our Comment
Definitions – Changing the term “prisoner” to “detainee”	<ul style="list-style-type: none"> <li>The Rules should use “individual,” “incarcerated individual,” or “detainee” rather than “prisoner” or “inmate.”</li> </ul>

<b>PREVENTION PLANNING</b>	
Proposed Rule	Our Comment
§ 5-03(a)-(c) – Zero Tolerance of	<ul style="list-style-type: none"> <li>(a) The zero-tolerance policy should be posted on the</li> </ul>

Sexual Abuse and Sexual Harassment	DOC website.
§ 5-03(b), (c) – PREA Coordinator	<ul style="list-style-type: none"> <li>• (b) The upper-level PREA coordinator to be employed or designated by the DOC should be a full-time position dedicated exclusively to PREA coordination.</li> <li>• (c) The PREA compliance manager to be employed or designated by the DOC should be a full-time position dedicated exclusively to managing PREA compliance.</li> </ul>
§ 5-04(b) – Supervision and Monitoring	<ul style="list-style-type: none"> <li>• (b) Deviations from the staffing plan should require a variance.</li> </ul>
§ 5-04(e)(2) – Deployment of Video Monitoring Systems and Other Monitoring Technologies	<ul style="list-style-type: none"> <li>• (e)(2) Targeted spot-checks and real-time monitoring should be used, especially as an additional form of supervision for staff against whom there have been allegations of abuse.</li> </ul>
§ 5-05 – Youthful Detainees	<ul style="list-style-type: none"> <li>• Counseling and activity programming should be used to help youth who experienced sexual abuse or harassment before or during their time in DOC facilities, and the DOC should report to the Board on such resources.</li> <li>• This section should be extended to individuals 21 years and under.</li> </ul>
§ 5-06(a)-(b) – Limits to Cross-Gender Viewing and Searches	<ul style="list-style-type: none"> <li>• (a) There should be no individual of the opposite sex within viewing range when a search is being conducted.</li> <li>• (b) There should not be any cross-gender pat-down searches of any gender except in exigent circumstances.</li> </ul>
§ 5-06(d) – Policies and Procedures on Incarcerated Individuals to Perform Bodily Functions Without Non-Medical Staff Viewing	<ul style="list-style-type: none"> <li>• (d) Policies and procedures should be clearly communicated to incarcerated individuals.</li> </ul>
§ 5-07 – Detainees with Disabilities and Detainees Who Are Limited English Proficient	<ul style="list-style-type: none"> <li>• Facilities should prominently post notices in the top six languages on how to report incidents of sexual abuse and sexual harassment.</li> </ul>
§ 5-09 – Upgrades to Facilities and Technologies	<ul style="list-style-type: none"> <li>• The DOC should report to the Board on how new facilities will protect individuals.</li> </ul>

### **RESPONSIVE PLANNING**

§ 5-10(a) – Evidence Protocol	<ul style="list-style-type: none"> <li>• (a) The DOC should model its evidence protocol according to evidence-based data and input from outside experts. The protocol should be provided to the Board.</li> </ul>
§ 5-10(c) – Forensic Medical Examinations	<ul style="list-style-type: none"> <li>• (c) The examinations should be taken off-site in a hospital. The individual should be able to remain off-site until they have recovered from their injuries.</li> </ul>
§ 5-10(e) – Qualified Victim	<ul style="list-style-type: none"> <li>• (e) As much as possible, communications should take</li> </ul>

Advocates	place in areas where no staff other than the counselor and the qualified victim advocate will be present with the incarcerated individual.
§ 5-11 – Policies to Ensure Referrals of Allegations for Investigations	<ul style="list-style-type: none"> <li>• The DOC should report to the Board on the conduct and outcome of the investigation of each allegation.</li> </ul>

<b>TRAINING AND EDUCATION</b>	
§ 5-12(a) – Employee Training	<ul style="list-style-type: none"> <li>• (a) Outside expert organizations should provide training for staff on preventing, detecting, and addressing sexual abuse and sexual harassment.</li> </ul>
§ 5-12(c) – Refresher Training	<ul style="list-style-type: none"> <li>• (c) Training should include annual interactive workshops developed in conjunction with outside experts.</li> </ul>
§ 5-13(b) – Volunteer and Contractor Training	<ul style="list-style-type: none"> <li>• (b) All volunteers and contractors who have contact with incarcerated individuals should receive comprehensive training.</li> </ul>
§ 5-14(b), (c), (e) – Detainee Education	<ul style="list-style-type: none"> <li>• (b) The DOC should consult with outside organizations that specifically work on these issues.</li> <li>• (c) The DOC should have translated material for the top six languages spoken in its facilities.</li> <li>• (e) Key information should include, at the least, information on how to report incidents and resources for survivors.</li> </ul>
§ 5-14(d) – Documentation of Detainee Education Conducted	<ul style="list-style-type: none"> <li>• (d) The documentation of incarcerated individuals’ participation should be provided to the Board on a periodic basis.</li> </ul>
§ 5-15 – Specialized Training: Investigations	<ul style="list-style-type: none"> <li>• Specialized training should be developed in conjunction with outside experts.</li> </ul>
§ 5-16 – Specialized Training: Medical and Mental Health Care	<ul style="list-style-type: none"> <li>• Specialized training should be developed in conjunction with outside experts.</li> </ul>

<b>SCREENING FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS</b>	
§ 5-17 – Appeal Process	<ul style="list-style-type: none"> <li>• An appeal process should be created for individuals who believe they are in greater danger than the initial screening concludes.</li> </ul>
§ 5-17(b)-(c) – Screening for Risk of Victimization and Abusiveness	<ul style="list-style-type: none"> <li>• (b) Intake screening should be done within 24 hours of the arrival of the incarcerated individual.</li> <li>• (c) The objective screening instrument should be developed in conjunction with outside experts.</li> <li>• Intake screening should be done in a private room where only the incarcerated individual and the counselor conducting the screening are present. There should not</li> </ul>

	be any other employee or incarcerated individual within view.
§ 5-17(d) – Criteria to Assess Incarcerated Individuals for Risk of Sexual Victimization	<ul style="list-style-type: none"> <li>• (d) The DOC should specify who is conducting the risk assessment and who is reviewing such determinations. Such individuals should be professionally qualified in detecting sexual abuse and harassment.</li> </ul>
§ 5-17(i) – Controls on Dissemination of Information	<ul style="list-style-type: none"> <li>• (i) The DOC should specify who has control over the information that is being disseminated within the facility.</li> </ul>
§ 5-18(b) – Use of Screening Information	<ul style="list-style-type: none"> <li>• (b) The DOC should specify who will be making these determinations and what process this individual will use.</li> </ul>
§ 5-18(e) – Appeal Process on Determination of the Safety of Transgender or Intersex Incarcerated Individuals	<ul style="list-style-type: none"> <li>• (e) An appeal process should be created.</li> </ul>
§ 5-19(b) – Access to Opportunities While in Segregated Housing	<ul style="list-style-type: none"> <li>• (b) The DOC should provide to the Board a list of specific programs, privileges, education, and work opportunities and information about when the DOC would restrict access to such activities.</li> </ul>
§ 5-19(c) – Assignment to Involuntary Segregated Housing	<ul style="list-style-type: none"> <li>• (c) Such an assignment should not exceed 15 days.</li> </ul>
§ 5-19(e) – Review of Continued Involuntary Segregated Housing	<ul style="list-style-type: none"> <li>• (e) This section should be deleted in accordance with the above comment restricting involuntary segregated housing to 15 days.</li> </ul>
§ 5-19(g)(2) – Quarterly Reports	<ul style="list-style-type: none"> <li>• (g)(2) The number of such individuals who remain in involuntary segregated housing for more than 15 days.</li> </ul>

#### **DETAINEE REPORTING**

§ 5-20(a) – Internal Detainee Reporting	<ul style="list-style-type: none"> <li>• (a) The DOC should specify the internal avenues for reporting by incarcerated individuals and how confidentiality will be maintained. The DOC should also specify consequences for breaches in confidentiality.</li> </ul>
§ 5-21(a) – Detainee Access to Outside Confidential Support Services	<ul style="list-style-type: none"> <li>• (a) The DOC should report to the Board on how it ensures incarcerated individuals receive needed support in a safe and confidential way.</li> </ul>
§ 5-22 – Third Party Reporting	<ul style="list-style-type: none"> <li>• (a) The DOC should develop a process by which third-party reports are addressed within a particular time frame. The DOC should disseminate to all third parties with contact with incarcerated individuals the procedures on how to report sexual abuse and sexual harassment on behalf of an incarcerated individual.</li> </ul>

**OFFICIAL RESPONSE FOLLOWING AN DETAINEE REPORT**

§ 5-23 (a) – Staff and Agency Reporting Duties	<ul style="list-style-type: none"> <li>• (a) Staff should report to both the individual directly above them and to one of the two PREA-specific staff.</li> </ul>
§ 5-25(b) – Reporting to Other Confinement Facilities	<ul style="list-style-type: none"> <li>• (b) Notification should occur within 24 hours.</li> </ul>
§5-27 – Coordinated Response	<ul style="list-style-type: none"> <li>• The DOC should provide the Board with each facility’s written institutional plan that specifies the response protocol.</li> </ul>
§ 5-28(d) – Monitor Conduct and Treatment of Incarcerated Individuals and Staff Who Report Sexual Abuse	<ul style="list-style-type: none"> <li>• (d) The DOC should specify what is included in periodic status checks.</li> </ul>
§ 5-28(e) – Agency Protection Against Retaliation	<ul style="list-style-type: none"> <li>• (e) The DOC should report to the Board on the measures taken to prevent retaliation against cooperating individuals.</li> </ul>

**INVESTIGATIONS**

§ 5-30(a)-(c) – Criminal and Administrative Agency Investigations	<ul style="list-style-type: none"> <li>• (a)-(c) An outside investigator should be involved in all investigations.</li> </ul>
§ 5-30(f) – Conducting Investigations	<ul style="list-style-type: none"> <li>• (f) Investigations should address factors such as bystander action or inaction.</li> </ul>
§ 5-30(p) – Investigation Interviews	<ul style="list-style-type: none"> <li>• (p) Interviews of staff should occur within seven days after an allegation is made.</li> </ul>
§ 5-32(a) – Reporting to Detainees	<ul style="list-style-type: none"> <li>• (a) The DOC should explain to each individual making an allegation what substantiated, unsubstantiated, or unfounded means.</li> </ul>

**DISCIPLINE**

§ 5-33 – Disciplinary Sanctions for Staff	<ul style="list-style-type: none"> <li>• Employees should be forbidden from any sexual or romantic relationships, seemingly consensual or otherwise, with incarcerated individuals.</li> </ul>
§ 5-34 – Corrective Action for Contractors and Volunteers	<ul style="list-style-type: none"> <li>• Contractors and volunteers should be forbidden from any sexual or romantic relationships, seemingly consensual or otherwise, with incarcerated individuals.</li> </ul>
§ 5-35 – Disciplinary Sanctions for Detainees	<ul style="list-style-type: none"> <li>• An appeal process independent of the initial sanctioning entity should be created.</li> <li>• (a) The DOC should report to the Board on the disciplinary sanctions for incarcerated individuals.</li> </ul>

**MEDICAL AND MENTAL CARE**

§ 5-36 – Medical and Mental Health Screenings

- The DOC should ensure incarcerated individuals who have disabilities or are limited English proficient are fully informed of their rights under this section.

§ 5-36(a) – History of Sexual Abuse

- (a) The follow-up meeting with a medical or mental health practitioner should be done within seven days of the intake screening.

§ 5-37 – Access to Emergency Medical and Mental Health Services

- The DOC should inform individuals that treatment and services remain confidential, to the extent allowed by the law.

§ 5-38(d) – Pregnancy Tests

- (d) Individuals should be offered pregnancy tests when the rape kit is done. This process should occur in a hospital outside of DOC facilities.

§ 5-38(f) – Sexually Transmitted Infections Tests

- (f) Individual should be given STI tests and prophylaxes when the rape kit is done. This process should occur in a hospital outside of DOC facilities.

**DATA COLLECTION AND REVIEW; AUDITS**

§ 5-39(d) – Sexual Abuse Incident Review Team

- (d) When the sexual abuse incident review team assesses whether monitoring technology should be deployed or augmented, it should also assess if audio would be beneficial to supplement supervision by staff.

§ 5-40(a)-(b) – Semiannual Report

- (a) The DOC should post on its website the semiannual written report that presents data regarding allegations of sexual abuse.
- (b) In consultation with victim advocacy organizations and other outside entities, the Board should collect input from individuals about how the DOC handled their allegations.
- (b) The DOC should include other categories related to alleged victims, including age, sexual orientation, gender identity, limited English proficiency, disability, and so on. The report should also include data on the offering and use of services such as counseling.
- (b)(14) The DOC should also report on the number of times immunity was offered and granted.

**LGBT INCARCERATED INDIVIDUALS**

§ 5-42 – Proposed Additional Section

- The DOC should, in consultation with outside experts, develop a plan to address sexual abuse and harassment of lesbian, gay, bisexual and transgender (LGBT) individuals. This plan should also address individuals

	<p>who do not identify as LGBT but are perceived to be so, including gender-nonconforming individuals.</p> <ul style="list-style-type: none"><li>• All employees, volunteers, and contractors, regardless of what facility they work in, should receive training on transgender issues, including, but not limited to, using the correct name and preferred pronoun. Such training should be developed in consultation with outside experts.</li><li>• The DOC should ensure resources specific to LGBT concerns are made available with other resources.</li><li>• The DOC should ensure that the units dedicated to housing transgender individuals include resources specific to the needs of these individuals.</li></ul>
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Thank you for your careful consideration of these comments.

Sincerely,



Daniel Dromm  
New York City Council Member, 25<sup>th</sup> District