

NYC Board of Correction  
Public Hearing and Opportunity to Comment on Proposed Rule  
July 26, 2016

**Prepared Testimony of Deputy Commissioner Cynthia Brann  
NYC Department of Correction**

Safe jails are our number one priority. The New York City Department of Correction has zero tolerance for sexual abuse and sexual harassment and is absolutely committed to implementing the federal standards and achieving PREA compliance. To this end, the Department has been moving forward with all of its reforms, which will result in a safe environment for both staff and inmates.

While we are generally supportive of a rule codifying federal PREA requirements and believe that documenting our commitment is a fine goal, the rule, as written, goes beyond the federal standards in the following areas:

**First, it contains aggressive and potentially unachievable timeframes:** There are twenty eight (28) sections of the Rule for which deadlines are conferred, that vary between 3 and 29 months of the effective date. These timelines are arbitrary, more restrictive than the federal standards, complicated to track and difficult to manage alongside implementation of all of the PREA standards. Imposing overarching deadlines that do not take into account the facility by facility process in which the department has agreed to become PREA compliant, is not conducive to embedding and sustaining the culture and practice change necessary within the agency.

Setting up reasonable, achievable and flexible deadlines are essential if the Department is expected to meet its goals. Arbitrary timelines only place the department in a position to create an unbalanced set of priorities. The Department should have the discretion and maximum flexibility to meet its obligations without the imposition of deadlines which are not balanced against all competing priorities and would interfere with the ability to achieve the goal of having safe jails.

Additionally, each segment of the rule, whether effective immediately or within an extended deadline, will be applicable agency-wide. We, however, are moving facilities through implementation and audits in groupings of three (3) at a time. Those who are in the second or third grouping will be held equally accountable without the benefit of training, support for leadership and staff and a thoughtful plan of implementation that the others were afforded.

**Secondly, there are overly prescriptive investigations requirements:** The Department wants to achieve timely reform. As the Nunez Monitor noted in his first report, *"this desire must be balanced with an understanding that implementing well-reasoned, enduring and sustainable reforms will take time, and that implementation must progress in a reasonable and responsible manner in order to ensure the acculturation and sustainability of such reforms."* (See Nunez Monitor's First Report, Page 2). As described in the first report, the Monitor recommended that the Department needed additional time to implement certain reforms. (See Nunez Monitor's First Report, Pages 25 and 74). For example, the Nunez Consent Judgment requires the Department to conduct a preliminary investigation of each use of force incident within two (2) business days of a use of force incident. As noted in the Monitor's First Report, the Monitor anticipates that he will be *"recommending an extension of the time permitted for conducting a Preliminary Review to ensure the preliminary reviewers have sufficient time to conduct a quality investigation"* without compromising the overall goals of the consent judgment.



**And finally, the rule creates burdensome reporting requirements:** There is a multitude of additional reporting mandates that are not only labor intensive but several require significant in-depth analysis in many focus areas. Our current ability to collect and retrieve information or run reports electronically for much of the data requested is extremely limited. Therefore, the compressed timelines contained within the rule simply do not provide the time necessary to gather data, conduct a thoughtful review and produce a report on findings, outcomes and/or conclusions and will result in our non-compliance.

Although the PREA act was signed into law by President Bush in 2003, the standards did not take effect until 2012. The Department, under a previous administration, applied for and received its first federal grant in 2012. The award of this grant eventually allowed the agency, under a new administration, to contract with the Moss Group in late 2014. In January 2015, the consultants began a comprehensive sexual safety readiness assessment in seven facilities and submitted their final report and recommendations to Commissioner Ponte in May 2015, just one month after Public Advocate Letitia James petitioned the Board to adopt rules consistent with national standards that the Department of Justice had promulgated pursuant to the Prison Rape Elimination Act.

Under the Commissioner's leadership, implementation began moving forward in earnest, even while the agency was undergoing broader and substantial reform efforts under the 14 Point Antiviolence Agenda as well as commitments agreed to under the Nunez consent decree. With few exceptions, DOC has been and continues to follow the timelines and strategies constructed by the Moss Group, all which are defined in both our federal grant awards and city contracts.

Within 60 days of receiving the Moss Group report, the Department began a multi-agency, system wide effort to institutionalize policies and practices that support and sustain PREA compliance and the prevention of inmate sexual abuse and harassment. In fact, DOC developed an internal schedule to safely and effectively implement PREA across its facilities. It is a thoughtful, balanced plan that takes into account the many aspects of our all encompassing reforms. As the Department continues to advance and effect real change, it must balance *all* competing obligations in a manner that is designed to achieve the overall goal of safety. The constraints of working within arbitrary and capricious timelines and the additional burdensome reporting requirements, places the department's progress at risk and could potentially cause regression.

DOC's PREA implementation progress can be divided into five major categories: staffing, training, policy and practice, investigations and inmate education. Detailed progress is as follows:

**Staffing:** Our PREA Coordinator was hired in late 2014. Ms. Faye Yelardy, who recently completed PREA auditor training, oversees the implementation of PREA standards across the agency and works collaboratively with other city agencies and justice stakeholders to ensure compliance. There are currently three full time PREA Compliance Managers assigned to facilities and an additional person will be onboard within a month. We continue to interview candidates to fill the remaining vacancies. For those facilities without a civilian Compliance Manager, the Deputy Wardens of Programs have been asked to temporarily fill that role. Additionally, we have a full time onsite project manager from the Moss Group who assists with the coordination of all PREA related activities.

**Training:** A PREA kick-off event was held in November 2015 for all uniform and non-uniform leadership to begin the process of transforming DOC to a PREA compliant agency. In January 2016, we began targeted leadership training with the executive teams in the first three facilities scheduled to undergo implementation and audits. We recognized the need to develop their individual and collective ability to lead change at the highest level and are providing the support necessary to do so. Staff training began in March and continues monthly. More than 1,200 uniform and civilian staff members have already been trained and we have the capacity to accommodate approximately 480 people each month. In August, we will deliver training to the newly promoted Captains class. Approximately 140 ID and DOI investigators have received the mandatory specialized Investigating Sexual Abuse



in Confinement Settings training. Health and Hospitals' medical and mental health staff have begun taking the required online specialized training that meets the Medical and Mental Care Standards. In September, H and H staff will be scheduled to attend the required DOC training. Finally, volunteer training is scheduled to begin in September.

**Policy and Practice:** DOC now has Directive 5011, a comprehensive PREA policy, which focuses on inmate safety and is in line with systems across the country who have been successful in PREA implementation. All uniformed staff have been made aware of their First Responder duties as they pertain to PREA and have been provided with memo book inserts to solidify their understanding. In addition to formal classroom training, roll calls provide opportunities to strengthen staff's understanding of PREA standards and practices. As required, unannounced rounds by supervisors are occurring in every facility. We developed the intake screening tool which is used to assess a person's risk of sexual victimization and/or sexual abusiveness. Training on the tool was conducted with intake staff at the Rose M. Singer Center, where a short pilot project is being conducted and will inform the use of the risk instrument as it rolls out across the agency. This assessment will soon be electronically available. It will provide the medical and classification staff with seamless, timely access to current and historical information which will assist them in making safe housing assignments and mental health services referrals. Additionally, data collected will eventually provide both DOC and Health and Hospitals with a more comprehensive understanding of our shared population demographics in order to inform not only sexual safety practices but also our resource needs moving forward. In addition, coordinated response plans and sexual abuse incident review procedures are operational across the agency.

There is a committed partnership between DOC, Health and Hospitals and the Department of Investigations. The multi-agency implementation team which was established in July 2015, continues to meet to monitor progress, discuss issues, resolve conflicts, share information and provide updates on policy revisions and practice change. Additionally, senior leadership of both DOC and Health and Hospitals also meet monthly to share information, review collected data and engage in proactive decision making in order to deal with potential problems that may lead to inconsistent practices in the facilities. In addition to the Memorandum of Understanding between DOC and Safe Horizons, (a community agency whose staff are able to provide support to victims who request services) DOC and the Department of Health and Hospitals is also engaged in a joint effort to bring victim advocate and rape crisis services to Rikers Island.

**Investigations:** A new unit has been established within the Investigations Division. It is staffed with a Deputy Director, two (2) supervisors and eight (8) investigators. All members of the PREA team have received PREA training as it pertains to investigations and responding to sexual allegations in a confinement setting. Some investigators have also attended the N.Y.P.D. Special Victims training. In addition, ID is currently working with New York State to obtain additional specialized training. This specialization ensures focused, quality and timely investigations. A Division Operations Order was also created and implemented which enhances operational practices and ensures sexual allegations investigations are conducted according to PREA standards and within prescribed timelines. Methods of data collection, comparison and evaluation are being enhanced. The Investigations Division and the Department of Investigations collaborate to institute new processes for sharing information and conducting timely investigations.

**Inmate Education and Information:** Information has been disseminated to all inmates regarding internal and external confidential methods of reporting sexual allegations. The PREA Hotline and third party reporting methods are operational. PREA staff conduct random calls to the Hotline number to ensure ongoing proper functioning. Zero tolerance information is provided to all inmates upon intake via inserts within the inmate handbook. The PREA Compliance Managers are being trained on the proper techniques needed to lead education groups and guide inmates through sensitive discussion topics during a PREA orientation session. In addition, the



Department has ensured that inmates with disabilities or who are limited English proficient, also have access to PREA information through several different options.

As illustrated by the aforementioned, it is clear that implementing PREA standards and attaining compliance certification by the federal government is an arduous process. It requires absolute commitment, adequate resources and sufficient time to change culture and practice. In order to *even be considered* for an audit, each facility must show a demonstrated record of sustained compliance or “proof of practice” for the 12 months preceding a scheduled audit.

We recognize the Board would like the Department to reach full PREA compliance as expeditiously as possible. We have been and continue to move forward and will use lessons learned from the facilities that go through audits first, to improve operational practices agency wide and increase the speed at which we move the remaining facilities through the process. We would like to remind the Board however, that we are currently stretching the capacity of each facility’s ability to release staff for training and still maintain safety and security given our high vacancy rates, the Nunez staff training and related obligations over the next fifteen (15) months as well as other ongoing and equally important reform initiatives.

Through our work with the Federal Court Monitors and their team of experts in *Nunez* over the past year, we learned the importance of balance and how the imposition of inflexible timelines can interfere with progress in setting up appropriate and sustainable systems. Having the flexibility to modify timelines is of critical importance as the Department develops these systems. Promulgating rules that include inflexible timelines would be detrimental to our efforts and progress in achieving PREA compliance.

The following assertion is contained within the Board’s *Statement of Basis and Purpose of Proposed Rules*, “*In recognition of the unique characteristics of individual correctional agencies, facilities and inmate populations nationwide, the PREA standards afford discretion and flexibility to agencies in combating sexual violence.*”

We ask the Board to follow the federal government’s lead in acknowledging the need for flexibility and discretion in achieving PREA compliance. As you contemplate the final form of the rule, please consider these legitimate concerns raised by the Department and amend the rule in a way that eliminates arbitrary or conflicting deadlines, requires the Department to provide the Board with scheduled, detailed reports on the progress with the Moss Group implementation plan and allows us to do this work and to do it well.

