



NEW YORK CITY  
BOARD OF CORRECTION

Statement before the New York City Council

Committee on Criminal Justice  
Keith Powers, Chair  
Committee on the Justice System  
Rory I. Lancman, Chair  
Committee on Women  
Helen Rosenthal, Chair

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Good morning, Chairs Lancman, Powers, and Rosenthal and Members of the Committees on Criminal Justice, Women, and the Justice System. My name is Martha King, and I am the Executive Director of the New York City Board of Correction, the independent oversight agency for the City's correctional facilities. The Board promulgates Minimum Standards which regulate jail conditions, monitors compliance with these Standards, and provides general oversight for the Department of Correction and Health + Hospitals' Correctional Health Services. Today, I am joined by a Board member who was appointed by the City Council, Dr. Robert Cohen, and the Board's Deputy Executive Director of Research, Emily Turner.

In November 2016, the Board passed 42 Minimum Standards that are designed to detect, prevent and respond to sexual abuse and harassment of people who are incarcerated in the NYC jails. The Board's Standards build from the federal Prison Rape Elimination Act regulations and have additional requirements, like more details regarding investigations, the provision of rape crisis counseling and advocacy services to victims, and the release of bi-annual assessments and corrective actions. These Standards are groundbreaking because they secure local oversight and enforcement, including Board monitoring and a private right of action for individuals in custody to pursue if the Department or Correctional Health fails to comply with their obligations.

Since September 2017, Board staff have reported every six months at the Board's public meetings on the progress and challenges in DOC's and Correctional Health's implementation of these Standards. DOC has made progress in a few areas: creating new policies which reflect the Board's requirements; training staff; creating ways for people to report abuse; and providing education on zero tolerance and reporting. The Board's primary concerns have been the high number of allegations of sexual abuse and harassment, and DOC's investigations into these allegations. These

investigations take too long to complete and often lack all required components. It is, therefore, not surprising that substantiation rates of these complaints are lower than national averages and that we still have a great deal of work to do to build the accountability necessary to prevent abuse in NYC's jails.

Rates of sexual victimization in NYC jails have been higher than national averages since at least 2011.<sup>1</sup> The Bureau of Justice Statistics identified a nationwide rate of 8.03 allegations per 1,000 people incarcerated in jails in 2015, the most recent data available. This is lower than the NYC jail rates of 12.6 in the last half of 2017 and 9.91 for the first half of 2018.<sup>2</sup>

Today I will provide updates in three areas of the Standards where the Board has focused:

- Investigations;
- Screening of people in custody for risk; and,
- Housing and safety of transgender people in custody.

### **Investigations**

Since the new Standards on sexual abuse, there is little evidence that the investigations process has improved or become more effective. Timely and comprehensive investigations are central to compliance with Board Standards. Without effective investigations, DOC's efforts at prevention, accountability, and discipline will also be unsuccessful. Investigations into sexual abuse and harassment allegations are not being completed within 90 days as required. Approximately, ninety-four percent of 2016 and 2017 investigations are still open and pending. Substantiation rates in NYC are also lower than national averages. This unfortunately is a long-standing trend. In 2016, the Board found that the Department's investigations were significantly deficient in terms of timeliness, thoroughness, and objectivity.

Following a discussion of violations of the Board's investigation Standards at its April 2018 public meeting, DOC developed and presented a corrective action plan at the June public meeting. The plan aims to close the backlog of cases older than 90 days by February 2019 and to increase staffing and reduce caseloads. The Board is monitoring and hopeful about potential progress under this plan. The Board will release an audit of 42 DOC investigation files on September 14<sup>th</sup> and will conduct such an audit annually to assess the adequacy of these investigations.

### **Screening of people in custody and use of risk screenings**

At the foundation of DOC's ability to protect people in their custody from sexual abuse is their ability to accurately assess people for risk of victimization and to use this information to inform housing decisions. The Board's Standards and PREA require that the Department's intake screening process assess people in custody for their risk of being sexually abused or sexually abusive toward others. The screening must consider many things, such as: disability status; criminal history; whether the person is or is perceived as gay, lesbian, bisexual, transgender, intersex, or gender non-conforming; previous experience of sexual victimization; and a person's own perception of vulnerability.

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<sup>1</sup> The BJS Survey defines "sexual victimization" as the "oral, anal, or vaginal penetration, hand jobs, touching of the inmate's butt, thighs, penis, breasts, or vagina in a sexual way, and other sexual acts occurring in the past 12 months or since admission to the facility, if shorter."

<sup>2</sup> Although time periods for rates differ, the trend remains that NYC rates are consistently higher than nationwide rates.

The Board's September 2017 report noted deficiencies with the Department's method of screening for risk and found that DOC was not meeting these Standards because of obstacles to tracking and using information gleaned from a paper-based intake screening. Therefore, the Board unanimously passed a resolution in October 2017 requiring corrective action to quickly implement an electronic method of screening. As a result, in January 2018 DOC implemented an electronic screening process. This electronic screening allows DOC to track people at risk of sexual victimization, re-assess everyone at 30 days, and use this information to inform housing, work, education, and program assignments. This is important progress that should increase safety, and we continue to monitor the impact.

### **Housing and safety of transgender people in custody**

The Board has also focused its work on increasing the safe housing options for transgender people in custody. National data and the Board's own data show transgender people in custody are at higher risk of victimization in jail. When the Department announced it would close the Transgender Housing Unit, the Board was vocal in its opposition. The Board believes the Unit to be an important option for people who voluntarily apply to be housed there.

We also published a study of the Transgender Housing Unit in February 2018. The report led to an improved management and application system for the Unit and, in turn, an uptick in the number of people placed there. The THU has been further improved because DOC moved it from a men's jail to the women's jail where transgender women face less harassment and abuse and are better integrated into services. There are several recommendations from the Board's report that DOC should still pursue, including a planning taskforce with community members and additional staff training.

The Standards prohibit the housing placement of a transgender or intersex person based solely on the person's external genital anatomy, and they require DOC to make housing determinations on a case-by-case basis that considers gender identity. Today, NYC jails still rely on a determination of gender based on a person's anatomical appearance, and there is no evidence that DOC is currently considering gender identity or using a case-by-case approach. The City's recent announcement that DOC will begin housing by gender identity and the involvement of the Commission on Human Rights should yield significant progress. The Board will monitor implementation once this begins and will publish an updated analysis of DOC's approach to housing transgender people in 2019.

In the coming months, BOC will be focused on three oversight goals. First, we will continue to drive data transparency and accountability on implementation of the Standards. Next week, we will release a public compliance dashboard of DOC's and Correctional Health's PREA-related reports and requirements. The Board will continue working closely with the Department to develop, use and share the data needed to drive practice and policy improvements that will increase safety in the jails. Second, we will closely monitor the Department's corrective action plan to close the backlog of investigations. We will monitor the quality of investigations closely by conducting annual audits. Lastly, we will continue to call on DOC to create an effective post-incident review process for cases of sexual abuse. These sexual abuse incident reviews, required by BOC's and federal PREA Standards, should involve facility staff and leadership in reviewing conditions that contributed to a substantiated or unsubstantiated complaint of sexual abuse. The reviews are

intended to identify the steps needed to reduce further risk and incidents. To date, the Board has only received reports on five Sexual Abuse Incident Reviews, but the Standards require them for all closed investigations unless a complaint is unfounded.

In closing, the Board supports the Council's efforts to increase transparency and reduce sexual abuse and harassment in the jails through the legislation proposed today and looks forward to working with Council Members on this legislation and other efforts. Thank you for the opportunity to testify today.