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The New York City Board of Correction  
1 Centre Street  
Room 2213  
New York, N.Y. 10007

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Dear Members of the Board of Correction:

I appear today to present testimony concerning six main areas of concern that I wish to prioritize addressing regarding the lax implementation of the PREA standards:

1. **Closing Rates.**
  2. **Investigations Staffing**
  3. **FETI**
  4. **Referrals to the NYPD or Bronx DA's office are not being made in many of the rare cases where criminal activity is uncovered as the result of an investigation.**
  5. **Complaints of inmate-on-inmate or detainee-on-detainee sexual violence or harassment are being investigated NOT by PREA investigators but by the lead captains of the unit(s) where incidences are alleged to have transpired which is against both the Federal PREA standards and the City's own adopted rules.**
  6. **The Department has blown through dozens of deadlines they were meant to make regarding PREA implementation. Only two variance requests have been received to date. Who is keeping the DOC accountable for implementation?**
1. **Closing Rate:** According to the DOC's own data<sup>1</sup> there have been 2788 reported complaints of rape, sexual assault and/or sexual harassment the Rikers Island jails since 2007 and 36 of them have been substantiated. This is a 1% closure rate not a 6% closing rate as I keep hearing the department tout.
  2. **Staff:** A year ago during the September 2017 BOC meeting the DOC was lambasted for not having enough investigators to do the PREA investigative work. At the time there were twelve staff assigned to this task. In June of this year the DOC reported that 22 investigators is the total. Do we really on have ten more staff?

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<sup>1</sup> See Table 1 attached

3. **FETI:** in 2016 we had professional after professional testify about the importance of FETI here in front of the BOC during the July 2016 hearing on the (then) PREA rule. In our letter to the BOC with our community recommendations for the rule we emphasized the importance on writing FETI practices into the PREA rule itself. These recommendations were not incorporated into the rule. Why are we only hearing now that the DOC is training only four investigative staff on the practices? Survivors are in a traumatic state up to 72 hours after the event and brain chemistry doesn't return to normal levels until at least two or three days post-trauma. If survivors are all being interviewed within the first 72 hours post-trauma as the DOC keeps testifying its practice requires it is very possible that it is discrediting survivors complaints because they are being interviewed before they are able to recall events correctly. Memory is inhibited if brain chemistry levels are elevated, as they are in the first 72 hours post-trauma. FETI practices need to be employed which include waiting until survivors' brain chemistry has returned too normal to perform a comprehensive interview.
4. **. Referrals to the NYPD or Bronx DA's office are not being made in many of the rare cases where criminal activity is uncovered as the result of an investigation.**

Earlier this spring the department, faced with a daunting caseload, decided to remove all inmate-on-inmate complaints of rape, sexual assault, and sexual harassment from the ID caseload subsequently labeling them as "non-PREA" complaints. Supervisory officers of units are now tasked with these investigations. This is against the language of the PREA rule itself.<sup>2</sup> As per the department's April directive<sup>3</sup> these complaints are now in a bucket marked "non-PREA" that are investigated by the supervisors on the floor themselves: exactly the line of defense the victim may have been trying to avoid for various reasons; retaliation being one of them. PREA standards are clear: all investigators must be trained PREA specialists: unit Captains are NOT trained on how to complete PREA investigations and standards mandate outside investigators be utilized in all cases.<sup>4</sup>--Why hasn't the BOC issued a rule violation for this and dozens of other non-compliances to the PREA rule?

5. **Complaints of inmate-on-inmate or detainee-on-detainee sexual violence or harassment are being investigated NOT by PREA investigators but by the lead captains of the unit(s) where incidences are alleged to have transpired which is against both the Federal PREA standards and the City's own adopted rules.**

Recently at a September 5, 2018 City Council Committee hearing on Rape and Sexual assault in our City Jails Chair of the Criminal Justice Committee Keith Powers asked repeatedly of DOC Leadership and specifically Selena Townsend, Chief of Trials and Investigations for the DOC, if

<sup>2</sup> "Standard § 115.21(g), which states that to the extent an agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (e) of the federal PREA Standard. **This does not apply to DOC because DOC's Investigation Division ("ID") investigates all allegations of inmate-on-inmate sexual abuse.** While DOC refers allegations of staff-on-inmate sexual abuse to the NYC Department of Investigation ("DOI"), DOI has the discretion to refer back such allegations to ID for investigation." NEW YORK CITY BOARD OF CORRECTION Notice of Adoption of Rules, November 15, 2016, pp 8.

<sup>3</sup> "When an employee reasonably believes an inmate has violated an institutional or Departmental rule and such violation is not informally resolved, that employee must prepare For 6500A, "Report and Notice of Infraction"...concerning that incident and notify a supervising officer who shall conduct an investigation...The supervisor conducting the investigation must be of the rank of Captain or above and must not have reported, participated in, or witnessed the incident..." NYC DOC DIRECTIVE, 4/17/18, pp 2., III, B 1 & 2.

<sup>4</sup> Ibid.

every investigation that turns up criminal activity is referred to the NYPD/DA's office for prosecution. Townsend answered, "Yes." We know this to not me the case as evidence of the DOC's own April, 2018 Directive<sup>5</sup> that instructs all criminal activity uncovered by unit captains while investigating inmate-on-inmate complaints to be referred to the OATH unit for trial.<sup>6</sup>

Earlier this spring the department, faced with a daunting caseload, decided to remove all inmate-on-inmate complaints of rape, sexual assault, and sexual harassment from the ID caseload subsequently labeling them as "non-PREA" complaints. Supervisory officers of units are now tasked with these investigations. This is against the language of the PREA rule itself.<sup>7</sup> As per the department's April directive<sup>8</sup> these complaints are now in a bucket marked "non-PREA" that are investigated by the supervisors on the floor themselves: exactly the line of defense the victim may have been trying to avoid for various reasons; retaliation being one of them. PREA standards are clear: all investigators must be trained PREA specialists: unit Captains are NOT trained on how to complete PREA investigations and standards mandate outside investigators be utilized in all cases.<sup>9</sup>--Why hasn't the BOC issued a rule violation for this and dozens of other non-compliances to the PREA rule?

## **6. The Department has blown through dozens of deadlines they were meant to make regarding PREA implementation. Only two variance requests have been received to date. Who is keeping the DOC accountable for implementation?**

I believe the first step is for the Board to issue a Notice of Violation for all standards not complied with. There are over fifty standards that fall into this category according to the Board's own compliance report issued in September of this year. There has been a lack of streamlined reporting and accountability from the DOC regarding the numbers of sexual abuse and harassment complaints, investigation times, substantiation rates and the department's obligations under the PREA standards voted into the Agency's Charter in November of 2016. We need accountability. The deadline to implement a pilot program for installing cameras on DOC buses was July 2017: why was a variance request only input in August of 2018 to extend the deadline for implementing this standard?

## **Our Request to the Board of Correction**

1. #CloseRosies asks the Board to demand that DOC post the public data on its

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<sup>5</sup> Ibid

<sup>6</sup> Ibid, pps 3-8.

<sup>7</sup> "Standard § 115.21(g), which states that to the extent an agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (e) of the federal PREA Standard. ***This does not apply to DOC because DOC's Investigation Division ("ID") investigates all allegations of inmate-on-inmate sexual abuse.*** While DOC refers allegations of staff-on-inmate sexual abuse to the NYC Department of Investigation ("DOI"), DOI has the discretion to refer back such allegations to ID for investigation." NEW YORK CITY BOARD OF CORRECTION Notice of Adoption of Rules, November 15, 2016, pp 8.

<sup>8</sup> "When an employee reasonably believes an inmate has violated an institutional or Departmental rule and such violation is not informally resolved, that employee must prepare For 6500A, "Report and Notice of Infraction"...concerning that incident and notify a supervising officer who shall conduct an investigation...The supervisor conducting the investigation must be of the rank of Captain or above and must not have reported, participated in, or witnessed the incident..." NYC DOC DIRECTIVE, 4/17/18, pp 2., III, B 1 & 2.

<sup>9</sup> Ibid.

website on time and completely. It must also provide the necessary closing memos to the Board for inspection. If it fails to do so, we ask the Board to issue a Notice of Violation of the Board's Standards and to hold a public hearing where staff from the Department, under oath, are required to explain why they have failed to meet this clear and essential obligation. Demand violations immediately for all PREA standards not complied with 100% to date. The BOC's own report issued on September 12, 2018 reveals dozens standards have not yet been met.

2. Require FETI training for ALL investigators
3. The DOC must cease the practice of allowing unit captains to investigate complaints of detainee on detainee or inmate on inmate rape, sexual assault or harassment.
4. The DOC must report all criminal acts to the Bronx DA for prosecution. It is not sufficient for a departmental OATH hearing to be held.

Thank you for your attention to this matter. As always I look forward to meeting with members of the BOC and DOC and collaborating with you to work on these issues.

TABLE I

YEAR	DOC TOTAL ANNUAL COMPLAIN TS	SEXUAL HARAS SMENT	L ASSAU LT	COMBI NED # Sex Assaul & Sex Harras sment SUBST	# of Inves tigati ons Com plete d	# OF COMP S UNFO UNDE D	# Pendi ng Compl aints	# of Comp laints Unsu bstan tiated
2006								
2007	38	16	22	0				
2008	52	22	30	0				
2009	45	11	44	0				
2010	54	17	37	3				
2011	111	13	98	3				
*2012	97	28	69	2				
*2013	105	17	88	3				
*2014	119	9	110	0				1
**2015	188	0	188	1	15	4	173	10
2016	828	347	481	19	109	43	739	112
2017	1151	652	499	2	39	18	1112	20
thru 6/31/2018	236	34	202	3	236	2	0	231
<b>TOTALS*</b>	<b>2788</b>	<b>1232</b>	<b>1868</b>	<b>36</b>	<b>399</b>	<b>67</b>	<b>2024</b>	<b>373</b>