The Public Advocate
for the City of New York

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Board of Correction Hearing
July 26, 2016

Public Hearing Concerning Petition by Letitia James
as the Public Advocate for the City of New York
for Promulgation of Rules to Eliminate Sexual Abuse in City Jails

The Public Advocate commends the Board of Correction (BOC) for holding this hearing. This is an important first step toward making our jails a place with *zero tolerance* of sexual abuse. In April of 2015, the Public Advocate formally petitioned the BOC to promulgate comprehensive rules to implement the federal Prison Rape Elimination Act (PREA) of 2003. She submitted complete draft regulatory language to the BOC in April of 2015, as is required by the City's Administrative Procedures Act (CAPA).

In September of 2015, our staff met with the BOC and Corporation Counsel to strongly urge the BOC to exercise its authority to make rules in *all* of the areas that PREA covers. This Spring our staff met with stakeholders and the BOC to give feedback on the rule, and we found the BOC open to comments from all interested parties during a robust fact-finding phase. We are pleased that these rules have finally come to a hearing today and will be voted into law soon, and we are very pleased to see that the rules are as comprehensive – and cover as many topics – as the Public Advocate originally suggested.

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None of the sections should be removed or weakened during the final round of this process.

Importantly, the BOC adopted parts of the Public Advocate's petition which called for recognizing the unique needs of inmates in New York City. The rules go beyond the minimum requirements outlined in PREA and require putting rape crisis centers, staffed with advocates, inside the facilities where people are housed. This is unprecedented and if implemented correctly and promptly, this will profoundly improve conditions in our jails, particularly for the women who are detained at Rose M. Singer Center (RMSC). It will be important for BOC to demand that DOC meet deadlines for benchmarks along the way to full implementation.

We raise four points today:

(1) Victims should be affirmatively offered the rape crisis counseling services

As currently written, section 5-10 (d) puts the onus on the victim to request a victim advocate to accompany and support them. The language should be revised so that the agency is mandated to offer a victim advocate. The presumptive default should be to provide the advocate, and if the victim does not want the support, they can turn it down.

(2) The health service should be responsible for the rape crisis centers

As currently written, the rule does not specify which agency will be responsible for establishing the rape crisis centers, which are referred to as the "Initiative" in section

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5-10(e). The responsible agency should be Health and Hospitals Corporation (H&H), not the Department of Correction (DOC).

H&H has deep and decades-long experience in this area. H&H already operates Sexual Assault Response Teams, which include rape crisis counselors in the following hospitals: Kings County, Woodhull, Coney Island, Bellevue, Harlem, Metropolitan, Queens, Elmhurst, Lincoln, North Central Bronx, and Jacobi Hospitals.

Inmates must have access to the same type of care in jail that they would receive walking into any of those city hospitals. Bear in mind civil rights laws such as (1) Title VI of the Civil Rights Act of 1964 ("Title VI"), 42 U.S.C. §2000d, and regulations promulgated thereunder; (2) the Public Health Service Act ("Hill-Burton Act"), 42 U.S.C. §291 *et seq.*, and regulations promulgated thereunder; (3) New York State Patients' Bill of Rights ("Patients' Bill of Rights"), N.Y. COMP. CODES R. & REGS. tit. 10, §405.7(b)(2); and (4) the New York City Human Rights Law ("NYCHRL"), N.Y. City Code, tit. 8, § 8-107(17). These laws protect against discrimination based on source of payment or race or ethnicity. Policies or practices that have a disparate impact on people of color are suspect under the law.

H&H provides rape crisis centers at all of its hospitals but not at the clinics in the jails. This may have a disparate impact on people of color, as the vast majority of H&H patients who are in city jails are people of color.

H&H has a moral and a legal duty to provide these services to patients who are incarcerated, and H&H has the experience. DOC has no experience, nor any expertise, in

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establishing rape crisis centers. The rule should clearly state that the health service, H&H, will be responsible for establishing and overseeing the rape crisis centers.

(3) Transportation must be covered by the rule

As currently drafted, this BOC rule mimics a flaw in the PREA rules that has been identified by the scholars involved in drafting the federal rules. The rules fail to clearly cover transportation. This mistake should be fixed.

The definition of "facilities" in section 5-01 does not include transportation in the vehicles that travel between jail buildings, to and from court, or to release. The definition should be broadened to explicitly include the DOC vehicles that transport inmates. Without this change, the compliance monitor, supervision, monitoring, video camera, agency reporting duties, investigations, and other sections of the rule which specifically refer to "facilities" will not be applied to transportation.

Likewise, section 5-08 states that the DOC shall not hire or promote anyone who has engaged in sex abuse "in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution" but does not yet include transportation. Finally, separation between the alleged abuser and victim should be ensured not just in housing, but also during transportation and all other programming.

(4) Future rule-making

We encourage the BOC to continue down this path -- continue an active rule-making agenda -- and exercise the authority to enforce the rules. When the Board finishes promulgating this rule, we recommend further study, through a CAPA rule-

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making process, of additional trauma-informed programming that should be provided in jails to improve outcomes and safety.

Many of the inmates held in our city jails have histories of experiencing trauma *before* they came to jail: rape, child abuse or neglect, sexual abuse as children or young adults, exposure to violence, and drug and alcohol problems. Rikers should have more specialized programming, particularly with trauma-informed practices, to mitigate the harm that is exacerbated by detention. Rape crisis centers are a very important first step in that direction. But we must remember that during the Giuliani era, overall resources for jail programming were decimated. Bringing rehabilitation back into the picture with increased programming is long overdue.

In conclusion, the Public Advocate is supportive of the new rules. She is also supportive of the constructive critiques offered by the advocacy community to strengthen the rule.