



Testimony of

**Commissioner Cynthia Brann, Deputy Commissioner Townsend, and AC Yelardy
New York City Department of Correction**

before the

**New York City Council Committees on
Criminal Justice, the Justice System, and Women**

regarding

Sexual Abuse and Harassment in City Jails

September 6, 2018

Good morning Chair Powers, Chair Lancman, Chair Rosenthal and members of the Criminal Justice, Justice System, and Women Committees. I am Cynthia Brann, the Commissioner of the Department of Correction (DOC). I am joined by Bureau Chief of Security Chief Canty, Deputy Commissioner of Investigations and Trials Sarena Townsend, and Assistant Commissioner of PREA Faye Yelardy, as well as Dr. Zachary Rosner, Chief of Medicine for Health + Hospitals/Correctional Health Services (CHS).

In 2015, the Department put in place multiple top-to-bottom reform initiatives simultaneously. In order to address the overall safety and security of everyone in our facilities, these reforms included implementing both the Federal Nunez Consent Decree and PREA, as well as many other efforts. In our testimony today, we will focus on the current and planned efforts the Department has undertaken in order to address the issue of sexual abuse and sexual harassment in our facilities. When I first came to the Department three years ago, I took on the role of Deputy Commissioner of Quality Assurance, and by then, the Department had begun targeting this issue from multiple angles, including committing to bringing itself into compliance with the federal Prison Rape Elimination Act, or PREA. Since then, we have worked collaboratively with experts in the field, including advocates, and other City agencies to implement various operational elements, sweeping staff training initiatives, and innovative housing strategies to move toward not only compliance with PREA, but broader, more comprehensive best practices that ensure everyone who enters our facilities – staff and inmate alike – remain safe. It is critically important that the Department take every possible step in keeping people safe from abuse and harassment of any kind.

Today, we will focus on the major areas of effort toward reducing and eliminating sexual abuse and sexual harassment while in the Department's care. AC Yelardy, our Assistant Commissioner of PREA, will provide an overview of PREA and the Department's efforts toward compliance over the past several years, and DC Townsend will describe the many improvements the Department has put in place to meet its investigatory obligations.

Good morning Chair Powers, Chair Lancman, Chair Rosenthal and members of the Criminal Justice, Justice System, and Women Committees. I am Assistant Commissioner Faye Yelardy, the Assistant Commissioner for PREA. The Prison Rape Elimination Act (PREA) is a federal statute that outlines the essential elements required to prevent the sexual abuse of inmates in correctional facilities. Finalized in 2012, it functions as a baseline for correctional facilities to standardize their approach to improving safety in this regard. The statute provides standards for both prisons and jails, prevention planning, response planning, training and education, screening for risk of sexual victimization and abusiveness, reporting requirements and response protocol, investigations, discipline, medical and mental care, data collection and review, audits and appropriate corrective action, and state compliance.

In 2015, the Department of Correction announced it would voluntarily bring itself into compliance and work toward PREA certification for its facilities. Implementation began by working closely with The Moss Group, a nationally recognized expert in PREA, to outline a multi-year plan to bring the Department into compliance. The road to full implementation is long, but the standards are broad and multi-faceted, and we will achieve compliance in all of the Department's facilities, exclusive of the hospitals. One of the Department's tools as it works toward PREA certification is the use of The Moss Group's mock audits, which are structured similarly to a formal PREA audit and are used to informally assess audit readiness and expectations. Following a mock audit, The Moss Group provides a concise report, listing all of the standards with information about each standard's adequacy, and the report includes recommendations for improvements where needed. While The Moss Group's mock audit process mirrors an actual audit, certification of PREA compliance is conducted by a DOJ-certified auditor.

DOC's PREA efforts to date include implementing many reporting mechanisms, including free calls to 311, a fully monitored and anonymous hotline, and contracting with an external victim advocacy organization that provides emotional support to sexual abuse victims. An extensive information campaign to ensure inmates are well-informed of the many reporting avenues went into effect, including posters in all intake areas, housing units, and inmate common areas, and a PREA pamphlet is provided to any inmate entering custody. In the FY17 January Plan, the Department was funded for 8 PREA Compliance Managers (PCMs) and has since hired 7 individuals into these positions, who play roles in the intake screening process, staff training, daily inmate orientation for all new admissions, Sexual Abuse Incident Reviews, and housing decisions. Additionally, each facility has designated uniform staff as a PREA Ambassador to work on PREA initiatives, and whose primary responsibilities include assisting with the intake screening, staff training, and supporting the PCMs.

PREA Ambassadors function as PCMs in facilities where there are currently no PCMs. Together, these two roles function as the regular faces of PREA, providing inmates with all rules, policies, and procedures as it pertains to the Department's zero tolerance policy for sexual abuse and sexual harassment.

The Department has successfully trained over 7,300 DOC staff on PREA, with training provided to all incoming recruits, and there are monthly scheduled trainings for all DOC non-uniform staff, contractors, and volunteers. This 4-hour training is designed to be as concise as possible while including a meaningful discussion that covers key areas of the PREA Standards. The following topics are discussed: What is PREA and Zero Tolerance; PREA Implementation in the NYC DOC; Right to be Free from Sexual Abuse, Sexual Harassment, and Retaliation for Reporting; Prevention and Detection; Response and Reporting; Professional Boundaries; and Effective and Professional Communication on the Job. While Correctional Health Services (CHS) has been part of this training effort from the beginning, in February 2018, CHS began conducting a PREA training designed specifically for its health staff in addition to required online specialized training. To date, CHS has trained over 1000 staff members.

As part of the PREA standard on responsive services, the Department has posted Coordinated Response Plans, which are written plans coordinating the actions taken by facility, PREA Team, and medical staff in response to an incident of sexual abuse, in every facility. If an allegation of sexual misconduct is made against a DOC staff member, the staff member is immediately separated from the housing unit, and CHS confidentially evaluates the patient to provide appropriate medical treatment and mental health services and a referral for forensic evaluation as warranted.

As of February 2018, the Department began a new screening process, which uses a questionnaire provided at intake to determine an inmate's risk of sexual victimization, as part of the Electronic Screening Tool. The Department uses the responses to the questionnaire to determine the most appropriate housing options for that individual, with the goal of that person's safety, as well as the safety of those around him or her, at the forefront. During medical intake, CHS identifies patients with a history of abuse, and connects them to sexual abuse advocates to provide appropriate counseling and connection to care and victim services through the Sexual Abuse Advocacy (SAA) program. Patients are offered follow-up appointments with CHS within 14 days, and to date, CHS has conducted 312 initial counseling sessions with patients and 275 follow-up sessions. The SAA program is completely voluntary and patient-driven, and patients can request, accept, or decline services. When patients are discharged from DOC custody, CHS offers referrals to community-based programs upon request.

PREA compliance is measured at the individual facility level rather than at the Department level. While DOC has been implementing the PREA standards across the Department, the audits will be conducted on a facility-by-facility basis. The first facility, Rose M. Singer, will be audited by a DOJ-certified reviewer in the spring of 2019. Pending the results of that audit, any corrective action will

be taken immediately, and lessons learned will be incorporated into the next facility's preparation for its audit, tentatively scheduled for fall 2019, until gradually all of the facilities are deemed PREA compliant.

The Department has engaged with multiple stakeholders, including its counterparts in CHS, who play a pivotal role in addressing any allegations of sexual abuse and harassment. All CHS employees are expected to immediately report any allegations, actual knowledge of, or reasonable belief concerning sexual abuse or harassment to CHS operations, who in turn are required to notify DOC for investigation. CHS works closely with DOC staff to ensure that all patients receive appropriate health and mental health care in cases of alleged or suspected sexual abuse or harassment, regardless of where such reports are made.

Additionally, the Department and CHS have worked closely with the Board of Correction, whose Minimum Standards related to the elimination of sexual abuse and sexual harassment in DOC facilities went into effect in January 2017. These standards have greatly improved the Department's reporting efforts and made the Department more transparent on this issue; many of the Department's reports are now publically available on the Board's website.

Finally, as announced in April 2018, the Department is committed to complying with its modified waiver to Executive Order 16, which ensures that individuals can use facilities consistent with their gender identity. The Department will house individuals according to their gender identity and maintain the Transgender Housing Unit (THU), a unit designed to address the unique needs of transgender individuals in DOC custody. As part of our ongoing efforts, the Department conducted a comprehensive review of the THU's processes and implemented changes to streamline the application process, improve deficiencies, and reduce processing time for housing in the THU. The Department will continue to work with the NYC Commission on Human Rights to align on principles of gender identity.

A cornerstone of PREA implementation is a fair and thorough investigative process, and DC Townsend will provide you with additional information on the Department's work there.

Thank you, AC Yelardy. Good morning Chair Powers, Chair Lancman, Chair Rosenthal and members of the Criminal Justice, Justice System, and Women Committees. I am Deputy Commissioner Sarena Townsend, Deputy Commissioner of the Investigation and Trials Division.

Upon receiving an allegation of sexual misconduct via one of the previously described reporting mechanisms, the Investigation Division (ID) begins the process of investigating the allegation. The Department investigates all sexual harassment and sexual abuse allegations thoroughly within 72 hours of the allegation being reported. In those first 72 hours, PREA investigators will respond to the facility of the alleged incident, and conduct their investigation. This will involve speaking with the inmate who made the allegation and any other potential witnesses, reviewing Genetec video and

phone calls, reviewing the inmate and staff backgrounds, collecting any other evidentiary paperwork, and then documenting all of these steps in a report. Critically, this also involves ensuring that the alleged victim is immediately separated from the alleged subject and that the alleged victim inmate receives mental health, victim services, and medical services.

Any time an inmate alleges that he or she was sexually abused, the Investigation Division sends that information to the Department of Investigation for clearance to investigate. The Department of Investigation will either clear the case and allow us to investigate, or they will ask the Department to stand down, and they will take the case themselves. If the matter is cleared for investigation, the Investigation Division assigns the investigation to one of the 24 investigators now assigned to the PREA team. If, during ID's investigation, criminality is found, we may re-refer the case back to the Department of Investigation or the District Attorney's Office.

All sexual abuse and sexual harassment allegations are thoroughly investigated within 72 hours of the allegation being reported; however, as of June 2018, the Department had a significant backlog of 1,216 PREA cases that had not yet been formally closed. A PREA-reportable allegation is one that meets the definitions as delineated in the PREA Standard. These reportable allegations include staff on inmate consensual and non-consensual acts, staff on inmate sexual harassment, inmate on inmate non-consensual sex acts, inmate on inmate abusive sexual contact and inmate on inmate sexual harassment. Because the Investigation Division is currently understaffed, and because all of the steps just described take time, it is not unusual for a PREA team investigator to get called out to another allegation before he or she is able to close an investigation. Therefore, despite having conducted the preliminary investigation, and ensuring that the alleged victim is interviewed, separated from the alleged subject, and given all appropriate services, these cases often remain open.

As of June 2018, the PREA team was composed of 19 investigators, with each investigator averaging 95 cases, and each case taking well beyond the Board standard requiring all cases be closed within 90 days of the allegation being made. Because the team is in the process of hiring additional staff, and because ID adheres so firmly to the 72-hour rule, PREA investigators have been unable to close their cases in a timely fashion. By implementing new strategies, ID has been able to make progress against the backlog.

The Department's main strategy is to add investigative and supervisory staff to the Investigation Division's PREA team and structure a workable timeline for the closure of backlogged cases. While the Department interviewed candidates, interim solutions were put into place. For example, in order to reduce the amount of time it takes to close out these already-investigated cases, the Department revised the PREA closing memorandum, making it more efficient and streamlined while still containing all relevant information. Streamlining the closing memo has helped reduce the amount of time each investigator must dedicate to the otherwise time-consuming paperwork involved in closing cases. Another interim strategy was to assign a PREA-certified supervisor from the Trials and Litigation Division to close PREA-related cases, which has compounded the time-saving of the new

expedited closing memorandum. Over 60 cases were closed in approximately 60 days using this interim strategy.

The substantiation rate for PREA-reportable cases at the Department of Correction in 2015 and 2016 was 6.5%, which is in line with national averages. According to a report by the Federal Bureau of Justice Statistics, substantiation rates for sexual abuse and sexual harassment allegations nationwide dropped from 10% substantiated in 2010 to 6% in 2015.

Most importantly, neither of the interim strategies affects the quality of the investigations into allegations of sexual misconduct, which the Department is committed to fully investigating and resolving. In fact, allegations involving 16, 17, and 18-year-old inmate victims are overseen by the Federal Nunez Monitor. The Federal Monitor thoroughly reviews not only all of the Department's Use of Force cases, but also these particular PREA cases for timeliness of closure and appropriateness of our evidentiary conclusions. The Department has prioritized investigating PREA matters involving young inmates, and, of this category of cases, only 7 PREA-reportable cases remain open. Also as part of the Federal Nunez Consent Decree, the Department has installed just under 13,000 cameras, with full coverage of all housing units and ancillary areas in which inmates may be. These cameras have proven to be highly effective investigatory tools and may even act as deterrents to engaging in harmful behavior.

In the FY2019 Executive Budget, the Department received additional positions for ID specifically to enable the expansion necessary to support the work needed for both the Nunez Use of Force and PREA investigations. We have recently hired six new investigators, with plans to hire five more by early 2019. Additional supervisory staff will be added to the unit, including four supervising investigators and one deputy director. By early 2019, the PREA team will be comprised of 30 investigators, 6 supervising investigators, a Deputy Director, and a Director. These staffing additions will greatly improve the speed with which the Department is able to close cases. In fact, since adding the six new PREA investigators to the Department in June 2018, the Investigation Division has been able to close 250 PREA cases. The Department is on target to meet its goal of clearing its backlog by early 2019. The Department anticipates that once the backlog is fully cleared, investigators will carry a caseload of approximately 30 cases, allowing the Department to achieve compliance with the Board standards requiring cases be closed within 90 days of an allegation being lodged. Furthermore, the Department remains committed to the regular reporting of investigations-related data, as required by the Board's Minimum Standards.

Regarding reporting, the Department would like to take this opportunity to mention two pieces of proposed legislation, Intro 1090 and Intro 933A. For Intro 1090, which proposes an annual report of the number of visitor complaints regarding sexual abuse, the Department supports the intent of this legislation, pending clarification of some of the terms used. For Intro 933A, the Department similarly supports the intent of this legislation; however, we request that the reporting terms more

closely align to other similar reporting requirements already in place, such as reporting on a bi-annual rather than quarterly basis.

Finally, I would like to restate that the Department has a zero tolerance policy for anyone – inmate, staff, or third-party – who commits sexual misconduct in its facilities, and that those found to have engaged in criminal behavior are subject to the fullest extent of the law in this regard.

The Department has undertaken major efforts over the past three years to address the issue of sexual assault and sexual harassment in its facilities, and significant progress can be noted. One assault or harassment is too many, but using the multi-faceted approach we have just described, the Department will continue its efforts to keep everyone who enters its facilities safe.

Thank you for the opportunity to testify today and we are happy to answer any questions that you have.