



Petition to the NYC Board of Correction for
Rulemaking Pursuant to City Administrative Procedure Act
Concerning Sexual Abuse and Sexual Harassment in New York City Jails

Introduction

The Office of Public Advocate is a citywide elected position in New York City that serves as a direct link between the electorate and city government, effectively acting as an ombudsman, or "watchdog," for New Yorkers by providing oversight of city agencies, investigating citizens' complaints about city services, and making proposals to address perceived shortcomings or failures of those services.

As Public Advocate, I have introduced legislation to combat rape on college campuses and I have advocated on behalf of service providers and advocates to secure state and city funding for rape prevention and sexual assault victim services.

For too long, the problems of sexual harassment, coercion, and rape¹ on Rikers Island have not received necessary attention. The data is grim and it is time to act. The Prison Rape Elimination Act (PREA) requires the Department of Justice to conduct statistical review of prison rape, and the federal data shows that Rikers Island, and particularly the Rose M. Singer Center (RMSC) inmates, reported high rates of sexual victimization compared to jails nationwide. Although nationwide 3.2 % of jail inmates reported sexual victimization, at RMSC the rate was 8.6%.²

I am calling on the Board of Correction (BOC) to exercise its authority to regulate our jails in this area by commencing the City Administrative Procedure Act (CAPA) rulemaking process. These comprehensive changes to the BOC Minimum Standards will make our city rules consistent with the federal Prison Rape Elimination Act (PREA) and ensure that the safety and health needs of women inmates are addressed.

These revisions will amend the Minimum Standards of the Board of Correction (the Board) relating to correctional facilities, set forth in Chapters 1, 2, and 3 of Title 40 of the Rules of the City of New York. What follows is a summary of the proposed changes, the proposed rules, and our arguments for adopting the rules.

¹ Staff sexual relations with inmates are defined as a criminal offense under New York law. Penal Law 130.05(3)(f) states that the statutory rape provision covers any person "committed to the care and custody of a local correctional facility" and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such facility.

² *Sexual Victimization in Prisons and Jails Reported by Inmates*, 2011-2012, Allen J. Beck PhD., NCJ 241399, Office of Justice Programs, Bureau of Justice Statistics, published May 2013, Appendix Table 5, page 71.

Summary of the Proposed Changes

Defining terms concerning abuse

- Create definitions of terms that mirror PREA
- Create zero tolerance policy
- Create Coordinator role

Staffing plans and training

- Create employee training mandates on sexual abuse topics
- Create rules about hiring and promotion to exclude from jail employment anyone who has engaged in sex abuse or has convictions for sex abuse
- Create a rule for criminal background checks and prior employment checks for sexual abuse before hire, and regular review of current employee criminal records

Video Monitoring Requirements

- Create video monitoring requirements

Limiting Sight, Sound, and Physical Contact Between Adults and Young Inmates

- Youth shall not have oversight, sound, or physical contact with adult inmates in the housing areas (adult inmate workers (sanitation, food service, etc.) and adult inmate Observation Aides (for suicide prevention) should not be allowed in the youth's housing areas)
- Youth shall not have oversight or sound contact with adult inmates outside of the housing areas (e.g. medical areas and visit floors etc.) (direct supervision would suffice for visits between youth and adult inmates who are family, friends, or co-defendants wishing to jointly meet with a third person, etc.)

Limits on Cross-Gender Contact

- Limit cross gender viewing and searches, including strip searches

Assistance for Inmates Making Allegations

- Create evidence protocols for rape kits and handling of forensic evidence
- Provide rape crisis advocate-volunteers to assist people who have made allegations
- Create mandates for inmate education

Improvements to Inmate Intake and Screening

- Mandate screening for sexual abuse risk (and threat) during the inmate intake process

Protections for People who are Transgender

- Housing assignment cannot be based solely on anatomy
- Core principle: making housing areas safe, and ensuring individualized decisions are made

Improve Reporting and Monitoring

- Mandate reporting opportunities for inmates and staff
- Mandate staff reporting duties and confidentiality requirements
- Impose data collection and review
- Monitoring and Reporting by the Board of Correction

Measures to Protect Women and Adolescents

- Additional Programming for Women
- Sexual Assault and Violence Intervention Programs (SAVI) and rape crisis center resources

The Rule To Be Considered, With Proposed Language for Adoption

New material is underlined.

[Material inside brackets indicates deleted material.]

Chapter 1 of Title 40, of the Rules of the City of New York, Section 1-01, Non-discriminatory Treatment, should be amended by adding new section (e)- (k), to read as follows:

(e) The term "sexual abuse" includes

- (1) Sexual abuse of an inmate by another inmate; and
- (2) Sexual abuse of an inmate by a staff member, contractor, or volunteer.

(f) Sexual abuse of an inmate by another inmate includes any of the following acts, if the victim does not consent, is coerced into such an act by overt or implied threats of violence, or is unable to consent or refuse:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- (4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

(g) Sexual abuse of an inmate by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the inmate:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (4) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (5) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (6) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in this section;
- (7) Any display by a staff member, contractor, or volunteer of his or her

uncovered genitalia, buttocks, or breast in the presence of an inmate, and (8) Voyeurism by a staff member, contractor, or volunteer.

(h) Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

(i) Sexual harassment includes

(1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate directed toward another; and

(2) Repeated verbal comments or gestures of a sexual nature to an inmate by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

(j) Department of Correction shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the Department's approach to preventing, detecting, and responding to such conduct.

(k) Department of Correction shall employ or designate a facility-level PREA coordinator in each facility operated by the Department, with sufficient time and authority to develop, implement, and oversee Department efforts to comply with the PREA standards in all of its facilities.

Chapter 3 of Title 40, of the Rules of the City of New York, Section 3-03, Health Care Minimum Standards: Training and Continuing Education, should be amended by changing section 3-03 (c) (2)-(3), to read as follows, and adding section 3-03(c)(4):

(c)(2) Written policy and a training program for correctional staff shall be established and approved jointly by the [Health Authority] Department of Health and Mental Hygiene and the Department of Correction determining the type of training for [new] all staff and the type and frequency of training and continuing education for all correctional staff regarding, but not limited to, instruction in the following:

(i) how to recognize medical emergencies;

(ii) administration of first aid and certification in cardio-pulmonary resuscitation (CPR) for sufficient staff to meet the standard described in the Mental Health Minimum Standards;

(iii) how to obtain medical care for inmates in emergency and non-emergency situations;

(iv) rules and regulations regarding health services and the layout of each facility in which they work[.];

(v) how to detect signs of sexual abuse and sexual harassment;

(vi) how to preserve physical evidence of sexual abuse;

(vii) how to respond effectively and professionally to victims of sexual abuse and sexual harassment; and

(viii) how and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

(3) The Department of Correction shall train all employees who may have contact with inmates on:

(i) Its zero-tolerance policy for sexual abuse and sexual harassment;

(ii) How to fulfill their responsibilities under Department sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;

(iii) Inmates' right to be free from sexual abuse and sexual harassment;

(iv) The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment;

(v) The dynamics of sexual abuse and sexual harassment in confinement;

(vi) The common reactions of sexual abuse and sexual harassment victims;

(vii) How to detect and respond to signs of threatened and actual sexual abuse;

(viii) How to avoid inappropriate relationships with inmates;

(ix) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and

(x) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

(4) Such training shall be tailored to the gender of the inmates at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male inmates to a facility that houses only female inmates, or vice versa.

(5) The Department of Correction shall document, through employee signature or electronic verification that employees understand the training they have received in the areas described in (c)(2)-(4). Annual certifications shall be transmitted to the Board of Correction attesting to the fact that all employees have been trained.

Chapter 1 of Title 40, of the Rules of the City of New York, Section 1-02, Classification of Prisoners, should be amended by adding new sections 1-02 (e) and (f) to read as follows, and re-numbering the current section 1-02 (e) as section (g):

1-02 (e) The Department will ensure that any inmate under the age of 18 shall not be placed in a housing unit in which the inmate under the age of 18 will have sight, sound, or physical contact with any inmate 18 years old or more through use of a shared dayroom or other common space, shower area, or sleeping quarters.

(f) In areas outside of housing units, the Department shall either maintain sight and sound separation between any inmate under the age of 18 and any inmate 18 years old or more, or provide direct staff supervision when any inmate under the age of 18 and any inmate 18 years old or more have sight, sound, or physical contact.

[(e)] (g) Security classification...

Chapter 2 of Title 40, of the Rules of the City of New York, Section 2-02(d), Observation Aides, should be amended as follows:

2-02(d)(1) There is to be an organized program of observation aides trained to monitor [those] all inmates identified as potential suicide risks as well as to recognize in those inmates not previously identified the warning signals of suicidal behavior. Inmates, including those housed in mental observation areas, may be employed as observation aides and shall be paid for their services. Observation Aides who are 18 years of age and older shall not have sight, sound, or physical contact with inmates who under the age of 18. Observation Aides who are under the age of 18 shall be assigned only to housing areas which house inmates under the age of 18, and shall not have sight, sound, or physical contact with inmates 18 years of age and older.

Chapter 1 of Title 40, of the Rules of the City of New York, should be amended by adding new section 1-18 to read as follows:

§1-18 Sexual Abuse Prevention Planning.

(a) Policy

The City of New York has zero tolerance for the sexual abuse of any inmate. Prevention of abuse can be achieved through consistent supervision, oversight, and staff accountability.

(b) Background Checks: Hiring and Promotion

(1) The Department of Correction and Department of Health and Mental Hygiene shall not hire or promote anyone who may have contact with inmates, and shall not enlist the services of any contractor who may have contact with inmates, who

(i) has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution;

(ii) has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or

(iii) has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (i) or (ii) of this section.

(2) The Department of Correction and Department of Health and Mental Hygiene shall consider any incidents of sexual harassment in determining whether to hire

or promote anyone, or to enlist the services of any contractor, who may have contact with inmates.

(3) Before hiring new employees who may have contact with inmates, the Department of Correction and Department of Health and Mental Hygiene shall: Perform a criminal background records check; and consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.

(4) The Department of Correction and Department of Health and Mental Hygiene shall also perform a criminal background records check before enlisting the services of any contractor who may have contact with inmates.

(5) The Department of Correction and Department of Health and Mental Hygiene shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates or have in place a system for otherwise capturing such information for current employees.

(6) The Department of Correction and Department of Health and Mental Hygiene shall ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraphs (b)(1) and (2) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The Department shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.

(7) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.

(8) Unless otherwise prohibited by law, the Department shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

(c) Supervision and Video Camera Coverage

(1) The Department of Correction and Department of Health and Mental Hygiene shall ensure that each facility it operates shall develop, document, and make its best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing, and the Department of Correction shall provide video monitoring to protect inmates against sexual abuse.

(2) In calculating adequate staffing levels and determining the need for video monitoring in all locations, facilities shall take into consideration:

(i) Generally accepted detention and correctional practices;

(ii) Any judicial findings of inadequacy;

- (iii) Any findings of inadequacy from Federal or State investigative agencies;
- (iv) Any findings of inadequacy from internal or external oversight bodies;
- (v) All components of the facility's physical plant (including blind-spots or areas where staff or inmates may be isolated)
- (vi) The composition of the inmate population;
- (vii) The number and placement of supervisory staff;
- (viii) Institution programs occurring on a particular shift;
- (ix) Any applicable State or local laws, regulations, or standards;
- (x) The prevalence of substantiated and unsubstantiated incidents of sexual abuse;
- and
- (xi) Any other relevant factors.

(d) Limits to Cross-gender Viewing and Searches.

- (1) The Department shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.
- (2) The Department shall not permit cross-gender pat-down searches of female inmates, absent exigent circumstances. The Department shall not restrict female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision.
- (3) The Department shall document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female inmates.
- (4) The Department shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit.
- (5) The Department shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. If the inmate's genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.
- (6) The Department shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

(e) Assistance for Inmates Making Allegations of Sexual Harassment or Abuse

- (1) Evidence protocol and forensic medical examinations. The Department of Correction shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.

(i) The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011.

(ii) The Department shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The Department shall document its efforts to provide SAFEs or SANEs.

(iii) The Department shall attempt to make available to the victim a victim advocate from a rape crisis center at a hospital. If a rape crisis center is not available to provide victim advocate services, the Department shall make available to provide these services a qualified staff member from a community-based organization, or a qualified Department staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The Department may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.

(2) Victim assistance. As requested by the victim, the victim advocate, a qualified Department staff member, or a qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.

(3) Inmate Education.

(i) During the intake process, inmates shall receive information explaining the Department's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.

(ii) Within 30 days of intake, the Department shall provide comprehensive education to inmates either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding Department policies and procedures for responding to such incidents.

(iii) Current inmates who have not received such education shall be educated within one year of the effective date of the PREA standards.

(iv) The Department shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually

impaired, or otherwise disabled, as well as to inmates who have limited reading skills.

(v) The Department shall maintain documentation of inmate participation in these education sessions.

(vi) In addition to providing such education, the Department shall ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats, and inmate council meetings.

(f) Screening for Sexual Abuse and Threat During the Intake Process

(1) All inmates shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates. Such assessments shall be conducted using an objective screening instrument. The intake screening shall consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization:

(i) Whether the inmate has a mental, physical, or developmental disability;

(ii) The age of the inmate;

(iii) The physical build of the inmate;

(iv) Whether the inmate has previously been incarcerated;

(v) Whether the inmate's criminal history is exclusively nonviolent;

(vi) Whether the inmate has prior convictions for sex offenses against an adult or child;

(vii) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;

(viii) Whether the inmate has previously experienced sexual victimization;

(ix) The inmate's own perception of vulnerability.

(2) The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the Department, in assessing inmates for risk of being sexually abusive.

(3) Within a set time period, not to exceed 30 days from the inmate's arrival at the facility, the facility will reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.

(4) An inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness.

(5) The Department shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates.

(6) The Department shall use information from the risk screening to inform housing, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.

(7) The Department shall make individualized determinations about how to ensure

the safety of each inmate.

(g) Housing Transgender and Intersex Inmates. In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the Department shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.

(1) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.

(2) A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration.

(3) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.

Chapter 1 of Title 40, of the Rules of the City of New York, should be amended by adding new section 1-19 to read as follows:

§1-19 Sexual Abuse Response and Investigation.

(a) Reporting Sexual Harassment and Abuse

(1) Inmate reporting. The Department shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

(i) The Department shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the Department, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to Department officials, allowing the inmate to remain anonymous upon request.

(ii) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.

(iii) The Department shall provide a method for staff to privately report sexual abuse and sexual harassment of inmates.

(2) Staff and Department reporting duties. The Department of Correction and Department of Health and Mental Hygiene shall require all staff to report immediately and according to Department policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the Department; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

(3) Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in Department policy, to make treatment, investigation, and other security and management decisions.

(4) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the Department shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

(5) The facility shall report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators.

(6) Third-party reporting. The Department shall establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of an inmate.

(b) Protection duties. When the Department of Correction learns that an inmate is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the inmate. This information shall travel with the inmate to any facilities where he or she is housed during the duration of their incarceration.

(c) Staff first responder duties. Upon learning of an allegation that an inmate was sexually abused, the Department of Correction staff member to respond to the report shall be required to:

(1) Separate the alleged victim and abuser;

(2) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;

(3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and

(4) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

(b) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.

(d) Coordinated response. The Department of Correction and Department of Health and Mental Hygiene shall develop a written institutional plan to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

(e) Department of Correction protection against retaliation. The Department shall establish a policy to protect all inmates and staff who report sexual abuse or sexual

harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff, and shall designate which staff members or departments are charged with monitoring retaliation.

(1) The Department shall employ multiple protection measures, such as housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

(2) For at least 90 days following a report of sexual abuse, the Department shall monitor the conduct and treatment of inmates or staff who reported the sexual abuse and of inmates who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff, and shall act promptly to remedy any such retaliation. Items the Department should monitor include video, any inmate disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The Department shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

(3) In the case of inmates, such monitoring shall also include periodic status checks.

(4) If any other individual who cooperates with an investigation expresses a fear of retaliation, the Department shall take appropriate measures to protect that individual against retaliation.

(5) The Department's obligation to monitor shall terminate if the Department determines that the allegation is unfounded.

(f) Investigations. When the Department conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.

(1) Where sexual abuse is alleged, the Department shall use investigators who have received special training in sexual abuse investigations.

(2) Investigators shall gather and preserve direct and circumstantial evidence, including a rape kit if applicable, any available physical and DNA evidence, and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

(3) When the quality of evidence appears to support criminal prosecution, the Department shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

(4) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff. No Department shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

(5) Investigations shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning

behind credibility assessments, and investigative facts and findings.

(6) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.

(7) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution. The Department shall retain all written reports pursuant to this section for as long as the alleged abuser is incarcerated or employed by the Department, plus five years.

(8) The departure of the alleged abuser or victim from the employment or control of the facility or Department shall not provide a basis for terminating an investigation.

(9) When outside agencies investigate sexual abuse, the Department shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

(g) Reporting to inmates.

(1) Following an inmate's allegation that he or she suffered sexual abuse in an Department facility, the Department shall inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. If the Department did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the inmate.

(2) Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, the Department shall subsequently inform the inmate (unless the Department has determined that the allegation is unfounded) whenever:

(i) The staff member is no longer posted within the inmate's unit;

(ii) The staff member is no longer employed at the facility;

(iii) The Department learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or

(iv) The Department learns that the staff member has been convicted on a charge related to sexual abuse within the facility.

(3) Following an inmate's allegation that he or she has been sexually abused by another inmate, the Department shall subsequently inform the alleged victim whenever:

(i) The Department learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or

(ii) The Department learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.

(4) All such notifications or attempted notifications shall be documented.

(5) The Department's obligation to report under this standard shall terminate if the inmate is released from the Department's custody.

(h) Discipline for staff.

(1) Staff shall be subject to disciplinary sanctions up to and including termination for violating Department sexual abuse or sexual harassment policies.

(2) Termination shall be the presumptive disciplinary sanction for staff who have

engaged in sexual abuse.

(3) Disciplinary sanctions for violations of Department policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

(4) All terminations for violations of Department sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

(i) Data Collection and Review

(1) The Department shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.

(2) The Department shall aggregate the incident-based sexual abuse data at least annually.

(3) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.

(4) The Department shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.

(5) The Department also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates.

(6) The Department shall review data collected and aggregated in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by:

(i) Identifying problem areas;

(ii) Taking corrective action on an ongoing basis; and

(iii) Preparing an annual report of its findings and corrective actions for each facility, as well as the Department as a whole, and delivering the report to the Board of Correction by June 30 of each year.

(iv) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the Department's progress in addressing sexual abuse.

(v) The Department's report shall be approved by the Department Commissioner and made readily available to the public through its website.

(vi) The Department may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.

(7) The annual reports will be available on the websites of the Board of Correction and Department of Correction within 10 business days of delivery to the Board of Correction.

Chapter 1 of Title 40, of the Rules of the City of New York, should be amended by adding new section 1-20 to read as follows:

§1-20 Programming for Women Inmates

(a) Policy

The City of New York recognizes the special factors, concerns, and needs involved in the supervision of women and adolescent female inmates in jail, which include lower risk for violence; familial and parental stressors and responsibilities; and high rates of trauma, drug, and alcohol histories. Specialized programs and services should be provided to meet these needs and enhance health and safety.

- (b) Sexual Assault and Violence Intervention Programs (SAVI) programs. The Department of Correction shall provide victim services for people reporting rape and sexual abuse allegations that are comparable to those provided at Health and Hospitals Corporation (HHC) hospitals, such as Bellevue Hospital.
- (c) Preventative Programs. To the extent funding and community resources are available, the Department of Correction should work to enhance programming for women inmates. The following types of programs and services should be considered:
1. Expansion of the Nursery Program
 2. Expansion of the Children's Visiting Area and Visiting Programs
 3. Improved Clothes Box for women in need of clothing
 4. Drug and alcohol prevention groups
 5. Alcoholics Anonymous
 6. Narcotics Anonymous
 7. In-depth relapse prevention groups
 8. Cognitive and behavioral groups
 9. Groups targeting violence prevention, personal control, and problem solving skills
 10. Women's groups on anger management
 11. Women's groups on domestic violence prevention
 12. Family-focused programming
 13. Trauma-informed groups
 14. Skills classes: parenting, computer skills, finding and keeping employment
 15. Basic adult education classes
 16. Individual tutoring
 17. Credit recovery classes
 18. Gardening Programs and outdoor activities
 19. Opportunities for volunteer work (training seeing-eye dogs, working with faith groups, etc.)
 20. English-as-a-second-language (ESL) classes
 21. Intensive cognitive restructuring and skill-building programs
 22. Programming which creates linkages to social services groups after discharge

**Argument: The Board of Correction Has the Authority and Duty
Under the City Charter to Promulgate the Proposed Rules**

*The Board of Correction Has the Authority and Duty to Promulgate Rules to Protect
Against Harassment and Abuse*

The New York City Charter vests the New York City Board of Correction (BOC or the Board) with the obligation to promulgate rules: “[t]he board shall establish minimum standards for the care, custody, correction, treatment, supervision, and discipline of all persons held or confined under the jurisdiction of the department” City Charter Chapter 25 § 626 (e). The rules we propose would regulate the care, custody, and treatment of inmates by protecting them from sexual harassment and abuse.

The Board has previously regulated in areas related to (or analogous to) these proposed rules. For instance, BOC rules prohibit sexual discrimination, Section 1-01(a); mandate that inmates are afforded equal protection, Section 1-01(b); require certain training for correction officers in special units, Sections 1-16 and 1-17; require twenty-four hour access to mental health services personnel for emergency psychiatric care assessments when sexual assault is alleged, Section 2-03(b)(2); require mental health training for staff, Section 3-03; and mandate particular topics to be covered in initial medical screenings, Section 3-04(b)(2).

State law does not preempt or otherwise prevent the Board from promulgating the rules proposed in this petition. The proposed rules would merely exercise the broad discretion that the State Commission of Correction (SCOC) has bestowed on local municipalities to develop their own rules by electing not to preempt the field. *See*, N.Y. Comp. Codes R. & Regs. Title 9 § 7000, *et seq.*

Additionally, federal law has already moved to protect inmates in this area, though it has left implementation to the localities. BOC should adopt the standards recommended by the National Prison Rape Elimination Commission for the prevention, detection and monitoring of, and response to, sexual abuse in jails, which were accepted and promulgated as United States Department of Justice (DOJ) Final Rules. 28 C.F.R. Part 115. Sections of the BOC Minimum Standards that are inconsistent with federal rules should be eliminated or modified. This will create enforceable law at the city level to ensure that our inmates are safe.³

Additionally, the Board should study, through the CAPA rule-making process and

³ The plain language of the PREA standards covers local jails, however when the states certify to the federal government that they are in “compliance” with PREA in order to retain federal funding, they do not need to include information about local jail compliance. The standards say the governor’s certification applies only to “facilities under the operational control of the State’s executive branch.” 28 C.F.R. § 115.501(b). This includes “facilities operated by private entities on behalf of the State’s executive branch,” *id.*, but it does not include local government entities that house state inmates. The DOJ summary explains that the governor “certification, by its terms, does not encompass facilities under the operational control of counties, cities, or other municipalities.” 77 Fed. Reg. 37106, 37115.

with opportunity for fact gathering and robust public input, what additional programming should be obtained to improve outcomes and safety for pre-trial detainees and sentenced inmates. Many of the inmates held at Rikers Island and City jails have histories of trauma, child abuse, sexual abuse, exposure to violence, and drug and alcohol problems.⁴ Specialized programming, particularly trauma-informed practices, could mitigate the harms and disruptions caused by detention.

The PREA Standards Are an Important Benchmark for New York City Jails to Meet

The BOC has not yet undertaken a full review of its rules with an eye toward becoming consistent with the important goals of the Prison Rape Elimination Act (PREA), nor has it engaged in systematic rule-making to address the issues of sexual abuse and harassment. New York City should be a leader in this area.

In 2003, PREA became law, Pub. L. No. 108-79, 117 Stat. 972 (2003), and federal regulations were promulgated by the Attorney General on June 20, 2012, which took effect August 20, 2012. 28 C.F.R. pt. 115. PREA clearly applies to local jails.⁵ However, the enforcement “teeth” of the law, i.e., the withdrawal of federal funding, has a weak impact on local jails. This is because New York State annual reports to the federal government about compliance with PREA are not required to include information about local jails.⁶ We are therefore in a situation where laudable and important rules have been articulated, but no government entity can hold the New York City Department of Correction (DOC) to follow them. Creating a local rule, which has the enforceability of law, would solve this problem.

New York State lawmakers changed one aspect of state-wide law to come into alignment with PREA so that federal funding would not be lost for New York State by modifying the age cut-off for separation of young people from the adult population to 18 years old (it had been 19 years old). NY Correction Law § 500-b. Following this, the SCOC also changed its regulations with regard to the separation of adolescents to become consistent with PREA. N.Y. Comp. Codes R. & Regs Section 7013.4. BOC also changed the segregation age.⁷ It is time for the Board to do more to protect inmates from

⁴ Much scholarly and scientific study has been devoted to examining differences between male and female offenders. *See generally*, Dowden, C., and D. A. Andrews. “What Works for Female Offenders: A Meta-Analytic Review.” *Crime & Delinquency* 45, no. 4 (October 1, 1999): 438-652, and studies cited therein; Messina, Nena, Stacy Calhoun, and Jeremy Braithwaite. “Trauma-Informed Treatment Decreases Posttraumatic Stress Disorder Among Women Offenders.” *Journal of Trauma & Dissociation* 15, no. 1 (January 2014): 66-73, and studies cited therein. We urge the Board to engage the academic community in the CAPA process, and elicit expertise from community-based providers, to explore this area and determine how best to serve the population.

⁵ PREA defines “prison” to include “any confinement facility of a Federal, State, or local government.” 42 U.S.C. § 15609(7).

⁶ The standards explicitly say that the governor’s certification of PREA compliance applies only to “facilities under the operational control of the State’s executive branch.” 28 C.F.R. § 115.501(b).

⁷ BOC commenced a rule-making process concerned with solitary confinement reform in 2013, and expanded the scope of that rule-making to include creation of Enhanced Security Housing (ESH) areas in 2014, and when the new rules became final in 2015, they included a modification to the age of separation, ensuring that 18-year-olds would not be housed with 16 and 17-year-olds.

harassment and rape, by engaging in a CAPA rule-making process to consider and adopt the type of rules that were promulgated under PREA.

Sexual Abuse and Harassment Is a Significant Problem in New York City Jails, Particularly for Women

The issue of sexual harassment, abuse and coercion in jails remains a problem nationwide. New York City is no exception; in fact our jails are outliers with high rates of victimization. Many allegations of rape and abuse are never reported, so the number of people who have been abused is likely to be much higher than the number of people who actually report abuse. The most recent DOJ survey data⁸ suggests that the Rose M. Singer Center (RMSC) (the jail on Rikers Island that houses female inmates) has a higher than usual number of rape and sexual abuse allegations. Nationwide survey results for jails showed that RMSC was one of only nine jails in the country that DOJ labeled as "facilities with high rates of inmate-on-inmate sexual victimization."⁹ RMSC and Otis Bantum Correctional Center (OBCC) (a male facility also on Rikers Island) both make the list of the twelve jail facilities with "high rates of staff sexual misconduct" nationwide.¹⁰

While nationwide an average of 3.2% of jail inmates responding to this survey reported experiencing one or more incidents of recent sexual victimization (by any person) in jail, the survey results for women in RMSC are higher. In the year covered by the survey:

- 5% of inmates at RMSC were subjected to inmate-on-inmate sexual abuse;
- 5.9% of inmates at RMSC were subjected to sexual abuse by staff;
- 5.6% of inmates at RMSC were pressured by staff to engage in sexual activity.

According to the federal survey, sexual victimization¹¹ rates were also higher at RMSC than at other surveyed¹² buildings on Rikers Island:

- | | |
|--|-------|
| • New York City Anna M. Kross Ctr. (AMKC) | 5.6 % |
| • New York City George Motchan Det. Ctr. (GMDC) | 5.3 % |
| • New York City Otis Bantum Corr. Ctr. (OBCC) | 6.2 % |
| • New York City Robert N Davoren Complex (RNDC)
(split juvenile and adult population) | 3.4 % |
| • New York City Rose M. Singer Ctr.
(women) | 8.6 % |

⁸ Date covers the year 2011-2012. *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-2012*, Allen J. Beck PhD., May 2013, NCJ 241399, Office of Justice Programs, Bureau of Justice Statistics, page 8. Not every jail facility in the country was surveyed, a sampling technique was used.

⁹ *Id.* at page 12.

¹⁰ *Id.* at page 13.

¹¹ Includes "all types of sexual victimization, including 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."

¹² Only the five facilities on Rikers that are listed here were part of the survey.

The New York City Department of Health and Mental Hygiene (DOHMH) reported to our office that numerous sexual abuse allegations had been made to medical providers in the preceding three years. The following system-wide allegations were made in City jails:

Allegations of Sexual Abuse*			
Year	Sexual Harassment	Sexual Assault	Total
2012	14	90	104
2013	17	131	148
2014	9	107	116

*All sexual abuse, harassment and sexual assault data represent alleged incidents that are communicated to health staff by patients. Correctional Health Service does not collect information on whether these incidents are confirmed or substantiated by DOC.

Definitions for the table above are as follows:

- Sexual abuse = Sexual assault and sexual harassment;
- Sexual harassment = Does not involve any form of touching;
- Sexual assault = Involves any form of touching or penetration (i.e., vaginal, rectal, oral penetration with penis, finger or foreign objects).

We note that the DOJ raised a number of concerns in their letter to Mayor de Blasio dated August 4, 2014. DOJ was concerned about how adolescent rape allegations were handled and particularly the under-reporting by adolescents:

Our investigation did not focus on incidents involving alleged sexual assault. However, the limited information we obtained raises a concern that DOC may be under-reporting sexual assault allegations. In calendar years 2011 and 2012, DOC reported a total of only seven incidents of alleged sexual assault where the alleged victim was an adolescent. (Five of these incidents were determined to be unfounded or unsubstantiated and the other two investigations were pending at the time DOC provided the data.) This number seems extremely small given the size of the adolescent inmate population, the frequency of inmate-on-inmate violence, and the high rate of negative interactions between staff and inmates. Our consultant expressed concern as to whether allegations of sexual assault are being consistently reported and investigated in compliance with the Prison Rape Elimination Act, 42 U.S.C. §15601 *et seq.*, and the relevant DOJ implementing regulations.

CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island, letter to Mayor DeBlasio from U.S. Attorney Preet Bharara, page 10, footnote 14.

An inmate stated that when he asked staff for medical attention after being raped by an officer, he was told not to say anything about the incident. He reported it anyway, and told our consultant that after doing so, staff continually harassed him. In fact, the inmate reported to our consultant that he was warned by two officers not to say anything about the incident as he was being taken to speak with our consultant while our investigative team was at Rikers.

Id., Page 24.

Sexual abuse and harassment are significant issues in our city jails. Even if the statistics were much lower, we would still have cause for concern because in the controlled environment of a jail, sexual harassment, abuse, and rape should never be tolerated.

The Board May Promulgate Rules that Affect Hiring and Promotion Practices

The proposals concerning hiring and promotion that are proposed in this petition would not prevent DOC's compliance with any existing regulations or rules. It is well-established that the City possesses broad home rule power to enact laws and rules, N.Y. Const. art. IX, § 2(c) and Municipal Home Rule Law § 10. Where the State has not intended to preempt the field, the City may regulate and may do so differently than the state. *New York State Club Assn. v City of New York*, 69 N.Y.2d 211 (1987) (state had not preempted the field of antidiscrimination legislation by enacting human rights legislation; city could have a narrower definition of what constitutes a "private club" and bring more clubs under regulation than the state law). The City may enact local laws that protect its citizenry from abuse to a greater degree than state or federal laws, and not every difference between a set of laws amounts to an invalid inconsistency. *Zakrzewska v. New School*, 14 N.Y.3d 469, 480-481 (2010) (City anti-discrimination law imposed strict liability on supervisors, despite such liability not attaching under federal anti-discrimination statutes; city had validly exercised home rule powers.)

The core value that these rules seek to promote is the safety and well-being of inmates, and protection from sexual abuse. This is wholly consistent with PREA, and is not inconsistent with existing State labor laws. Where the State has preempted the field of such as with labor statutes of the city may not make a law which is impermissibly inconsistent. *Wholesale Laundry Bd. of Trade v City of New York*, 12 N.Y.2d 998 (1st Dept. 1962) *aff'd*, 12 N.Y.2d 998 (1963)(city may not create minimum wage law which is inconsistent with state minimum wage law because state has preempted the field and set forth precisely how minimum wage will be determined in cities). *Wholesale Laundry* teaches that if it is impossible to comply with both sets of laws at once, then they are impermissibly inconsistent. *See also, People v Cook*, 34 N.Y.2d 100, 109 (1974) (rejecting the simplistic argument that "a locality may not enact a local law which prohibits conduct which is permitted by State law" This statement of the law is much too

broad. If this were the rule, the power of local governments to regulate would be illusory. Any time that the State law is silent on a subject, the likelihood is that a local law regulating that subject will prohibit something permitted elsewhere in the State. That is the essence of home rule.ö); *see also, DJL Rest. Corp. v City of New York*, 96 N.Y.2d 91 (2001) (City's zoning regulation regarding "adult entertainment" establishments was not preempted by a state law despite the city would prohibit what the state would allow, because primary goal of state law was regulating liquor and primary purpose of city law was regulating land use).

The fact that the city can regulate in the area of correction officer hiring and promotion is illustrated by the fact that it already has. The City Council has enacted many local laws regarding hiring, scope of work, and discipline of City corrections officers. New York City already has a local law which requires that "where a member of the uniformed force shall be charged with the commission of a crime, he or she may be suspended without pay for the duration of the time that said criminal charges are pending final disposition." New York City Administrative Code § 9-112. The City made law that says absence without leave or explanation for five consecutive work days shall be a resignation and the employee will be dismissed. NYC Admin. Code § 9-113. The City made law mandating who can perform inmate supervision: "the duty of maintaining the custody and supervision of persons detained or confined by the department of correction shall be performed solely by members of the uniformed force and shall not be delegated, transferred or assigned in whole or in part to private persons or entities." NYC Admin. Code § 9-117(2). The City made law which governs the "three platoon" system, otherwise known as the "wheel" which sets forth rotating schedules to assure 24 hour coverage of the jails. NYC Admin. Code § 9-116.

In addition to the local laws of our City Council related to hiring, DOC is also bound to follow the rules promulgated by the New York City Department of Citywide Administrative Services (DCAS). DCAS is charged with the responsibility of ensuring that all City agencies observe the civil service rules, Article V, Section 6 of the New York State Constitution, and DCAS has promulgated detailed rules. R.C.N.Y. Title 55, App. A, Personnel Rules and Regulations of the City of New York.

Most importantly, nothing proposed in this petition violates or contravenes any existing regulations or rules with regard to hiring and promoting officers. Attached as Exhibit 1 is a copy of the current "Notice of Examination" posted by DCAS for the job of Correction Officer with the DOC. It states in pertinent parts:

Character and Background: Proof of good character and satisfactory background will be absolute prerequisites to appointment. The following are among the factors which would ordinarily be cause for disqualification: (a) conviction of a felony; (b) conviction of any offense, the nature of which indicates lack of good moral character or disposition towards violence or disorder; (c) repeated convictions for an offense, where such convictions indicate a disrespect for the law; (d) discharge from employment, where such discharge indicates poor behavior or inability to adjust to discipline; (e) dishonorable

discharge from the Armed Forces; (f) conviction for petit larceny and (g) conviction for domestic violence. 1 Any willful misstatement will be cause for disqualification

The hiring and promotion rules proposed here would fall within the existing character and background rules. The proposed rules are specific to sexual abuse and harassment, and bring important emphasis to the issue. They are a necessary corrective after years of apparent inattention to the screening of Corrections Officer applicants. After releasing a critical report on personnel decisions at DOC, NYC Department of Investigation (DOI) Commissioner Mark Peters recently said:

DOI's latest investigation on Rikers Island exposes a shockingly inadequate screening system, which has led to the hiring of many officers that are underqualified and unfit for duty. Applicants with a history of violence or gang affiliations should not be patrolling our jails. Positions as law enforcement officers demand better.¹³

It Is Critical to Bring More Programs and Services to Women in the Jails

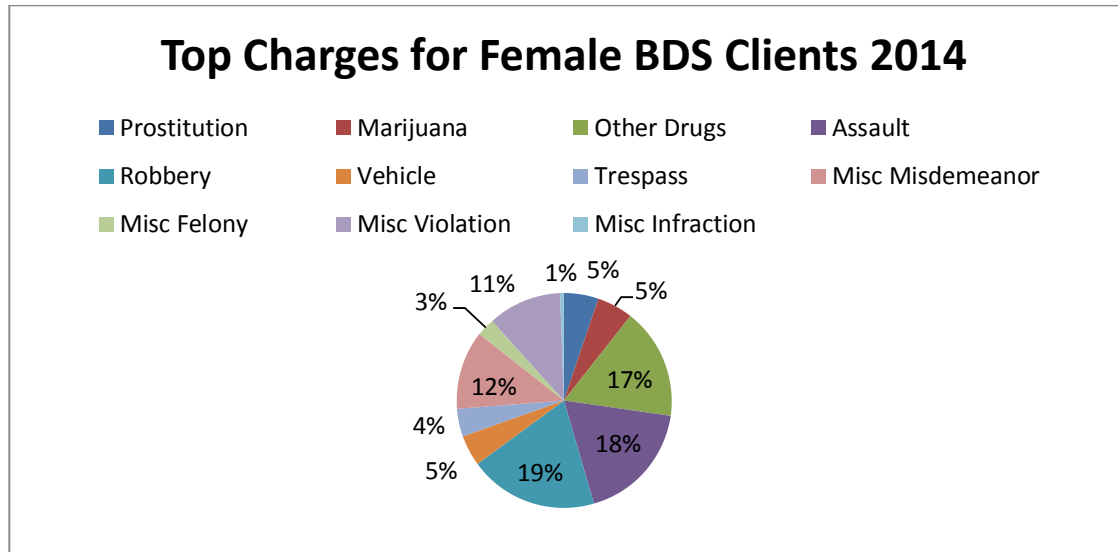
We urge the Board to mandate Sexual Assault and Violence Intervention programs (SAVI) at Rikers Island clinics where rape allegations are high. Rikers Island treats more people each year than any hospital in the City, and it should have rape crisis programs similar to large hospitals. When a woman walks into Bellevue Hospital for treatment after a rape, she encounters social workers, specially trained counsellors who deal with sexual assault, and medical providers trained in how to conduct a rape exam, complete a rape kit, and ensure that evidence is preserved. There are special SAVI advocates present who help the woman navigate her choices with regard to reporting the crime, interacting with detectives, accepting prophylactic HIV and STD treatments, deciding which parts of the rape kit to consent to, and the like. This is a stressful time, during which the presence of highly trained and sensitive professionals truly helps the survivor. On the other hand, when a woman complains to a health provider on Rikers Island about a sexual assault, she is generally seen by the Corizon staff at the clinic. If sexual assault victims are going to be treated on Rikers rather than a hospital, they deserve the same standard of professional care and advocacy that they would get at an HHC hospital. We urge the Board to consider mandating the presence of SAVI programs on Rikers Island.

We also strongly urge the Board to review the programs and services available to women in order to fill the gaps in programs and services. Women who are detained face unique circumstances and have needs that are different than the male prisoners. The non-profit Hour Children, an organization which conducts weekly visits to Rikers Island women, reports that the majority of women detained at Rikers are mothers who need contact visits with their children and are in dire need of support and social services. More than half of the women at Rikers are members of the *Brad H.* class action, which

¹³ Press Release dated January 15, 2015, available at www.nyc.gov/doi.

means that they have mental health issues which require treatment. *Brad H. v. City of New York*, 712 N.Y.S.2d 336 (N.Y. Cty. 2000); *aff'd*, 716 N.Y.S.2d 852 (1st Dept. 2000).

Women often enter the criminal justice system due to offenses that may be related to histories of trauma or drug or alcohol dependency. We analyzed data provided by the Brooklyn Defenders Services (BDS) concerning all of the female clients BDS represented in criminal court in the calendar year 2014. The data shows that many women are arrested for such offenses. There were 1,366 prostitution-related arrests. Many women were arrested for nonviolent crimes that were drug or property-related.



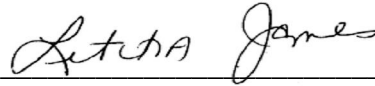
Women detained at Rikers Island are uniquely vulnerable, and sexual abuse as well as the disruption inherent in being detained, can further exacerbate a complicated set of problems they face in their lives. We urge the Board to undertake a broader look at what programs and services, including mental health services such as group therapy, could be brought to Rikers Island to benefit the health and well-being of women. Programs that might be considered could include:

- Expansion of the nursery program
- Expansion of the children's visiting areas and visiting programs
- Improved clothes box for women in need of clothing
- Drug and alcohol prevention groups
- Alcoholics Anonymous
- Narcotics Anonymous
- In-depth relapse prevention groups
- Cognitive and behavioral groups
- Groups targeting violence prevention, personal control, and problem solving skills
- Women's groups on anger management
- Women's groups on domestic violence prevention
- Family-focused programming

- Trauma-informed groups
- Skills classes on parenting, computer skills, and finding and keeping employment
- Basic adult education classes
- Individual tutoring
- Credit recovery classes
- Gardening programs and outdoor activities
- Opportunities for volunteer work (training seeing-eye dogs, working with faith groups, etc.)
- English-as-a-second-language (ESL) classes
- Intensive cognitive restructuring and skill-building programs
- Programming which creates linkages to social services groups after discharge

Conclusion

For all of the reasons articulated above, we believe that the rule should have indefinite duration. Our office looks forward to open dialogue with the Board as this proposal moves forward.



Letitia James
New York City Public Advocate
1 Centre Street, 15th Floor
New York, New York 10007

Authorized Representative:
Email: Amanda Masters,
amasters@pubadvocate.nyc.gov
Phone: Amanda Masters, at 212-669-4253