



**NEW YORK CITY COUNCIL
COMMITTEE ON CRIMINAL JUSTICE**

**TESTIMONY OF JOCELYN E. STRAUBER
COMMISSIONER, NEW YORK CITY DEPARTMENT OF INVESTIGATION**

**CONCERNING PREVENTING AND ADDRESSING SEXUAL ASSAULT
AND HARASSMENT IN CITY JAILS**

THURSDAY, OCTOBER 31, 2024

Good morning. My name is Jocelyn Strauber and I serve as the Commissioner of the Department of Investigation (DOI). Thank you, Chair Nurse and members of the Committee on Criminal Justice for the opportunity to discuss with you DOI's oversight role with respect to sexual abuse and sexual harassment in New York City Department of Correction (DOC) facilities.

The allegations of sexual abuse of women in the custody of DOC's facilities, by DOC Correction Officers, set forth in over 700 lawsuits filed earlier this year, are horrifying. The City has a responsibility to keep safe all persons within DOC custody, and decades-long abuse alleged, if true even in part, reflects that the City has failed to meet that responsibility.

DOI plays an active role in responding to and investigating allegations that DOC or Correctional Health Services (CHS) staff have sexually abused persons in custody. DOI receives and reviews all complaints of such abuse, conducts investigations, and, where there is sufficient evidence of criminality, makes referrals to prosecuting agencies. For reasons that I will describe in a moment, these types of cases can be challenging to investigate, but DOI is committed to assisting DOC in its mission to eradicate sexual abuse in the City's jails. Where DOC or CHS seeks to discipline or terminate an employee as a result of a sexual abuse or misconduct investigation, DOI provides the relevant agency with information from our investigative file and assists their efforts as needed. DOI also has made over thirty recommendations to DOC in the past decade to improve DOC policies and procedures that are designed to prevent abuse.

The Prison Rape Elimination Act of 2003

The Prison Rape Elimination Act of 2003, or PREA, established federal mandates to define and eliminate rape in correctional facilities across the United States. In 2012, the Department of Justice adopted national standards to prevent, detect, and respond to prison rape under PREA. In 2016, the Board of Correction (BOC) implemented sexual abuse and harassment minimum standards, which mirror the PREA standards and outline the responsibility of the DOC to prevent, detect, and respond to prison sexual abuse and harassment. In 2016, DOC promulgated Directive 5011, which was subsequently updated in 2019, to establish specific policies and procedures to comply with the PREA mandate of zero tolerance toward all forms of sexual abuse and sexual harassment in its facilities. Directive 5011 also lays out the coordinated response to allegations of sexual assault and sexual harassment by DOC and DOI and sets forth DOI's investigative role.

DOI's Investigative Role

Broadly, DOI's mandate includes investigating and referring for criminal prosecution cases of fraud, waste, abuse, corruption, and other illegal activities by City employees, contractors, and others who do business with the City. DOI also identifies systemic corruption vulnerabilities and recommends improvements to reduce the City's exposure to risk of fraud, waste, abuse, and corruption, and to improve the functioning of City agencies. With respect to DOC specifically, DOI's investigations focus on identifying, investigating, and eliminating destabilizing forces in the City's jail facilities, including contraband smuggling by officers as well as bribery of officers by PICs, use of excessive force, and sexual abuse and sexual harassment cases involving staff.

Directive 5011 establishes DOI's role and involvement in PREA investigations. In the procedure, DOI is clearly defined as the "New York City agency responsible for investigating staff-on-persons in custody sexual abuse or sexual harassment." Both persons in custody and staff are encouraged to report alleged sexual abuse or sexual harassment of persons in custody through DOI's 24-hour hotline or DOC's internal PREA hotline. Complaints received by DOC must be with DOI. Section 6(b) of Directive 5011 states that "DOI shall conduct investigations for sexual misconduct that involve staff-on-[persons in custody] allegations or allegations that involve alleged rape cases. After a preliminary review of the facts, DOI may elect to have the investigation conducted by" SIU, DOC's internal Special Investigation Unit (SIU)."

Within 24 hours of receiving a complaint of sexual abuse of a person in custody by a DOC staff member, DOI will conduct an initial assessment. On the basis of that initial assessment, DOI will determine whether it will open an investigation or whether it will "clear" DOC to conduct a preliminary investigation. DOC is instructed not to take any investigatory steps until DOI has made such an assessment. The level of review that DOI undertakes as part of that initial assessment depends on a number of factors, including the level of detail and information provided in the complaint.

When determining whether to commence a investigation itself or whether to "clear" DOC to conduct a preliminary investigation, DOI's considerations include: 1) whether the complaint provides sufficient factual information, such as the names of the persons involved and time and place of the incident,; 2) whether the alleged abuser has been the subject of similar allegations in the past; 3) whether physical contact, if any, is described or detailed in the complaint. Of course, as with all investigations, DOI considers available resources in determining which investigations to commence. Moreover, because of the proximity of SIU to DOC facilities and its dedicated team of PREA investigators, SIU is often better equipped to immediately respond when a PREA allegation is reported. If DOI clears the complaint for SIU to investigate, DOI explicitly instructs SIU to immediately notify DOI if SIU if its investigation uncovers evidence of potentially criminal behavior. If so, DOI will take over the investigation.

Currently, approximately 23 investigators are assigned to DOI's Squad 1, the unit responsible for overseeing DOC. Twelve members of the staff are Correction Officers and Captains detailed to DOI from DOC. Of those 23 investigators, 17 have received PREA investigations training and may be assigned to investigate allegations of sexual abuse by DOC staff. A number of investigators have also attended various additional trainings relating to the investigation of sex crimes.

In total, for calendar years 2022, 2023, and 2024 as of October 24, DOI has received 3,022 complaints of sexual misconduct at DOC facilities. These complaints include all allegations of sexual misconduct, regardless of the alleged perpetrator or victim and therefore include not only allegations of abuse of persons in custody by staff, but abuse of staff by staff, and abuse of persons in custody by other persons in custody. These complaints come from sources including DOC referrals, calls to the City's 311 hotline, and DOI's complaint line, email and website. Since 2022 to the present, DOI has opened 28 investigations, 20 of which involve allegations of abuse of persons in custody by staff.

Investigations of sexual misconduct in City jail facilities present unique challenges, which can limit the effectiveness of our investigations. As with other incidents of sexual violence, victims may be hesitant to come forward or cooperate with an investigation out of shame or fear. These concerns are particularly acute in a custodial setting where the victims may be in daily contact with the alleged perpetrator and their co-workers. Victims in custody – as well as witnesses who are in custody – may be suspicious or afraid of law enforcement and reluctant to cooperate for that reason. And because areas of these facilities where assaults might occur lack video cameras, corroborating or additional evidence can be difficult to obtain.

Since the BOC standards went into effect in 2017, DOI has investigated approximately 58 complaints of staff-on-PIC sexual abuse or sexual harassment and made three arrests. In addition, DOI also made two arrests for staff-on-staff sexual misconduct.

Criminal Referrals and Coordination with DOC and CHS Regarding Employee Discipline

When DOI has conducted an investigation of sexual abuse by DOC or CHS staff and obtains sufficient evidence of criminal sexual conduct, DOI refers the matter to a prosecutor's office, State or federal. DOI works closely with that office to investigate further and to prosecute the case. If there is not sufficient evidence of criminal conduct, DOI refers the matter to DOC or CHS for whatever action the respective agency deems appropriate based on the facts developed by DOI's investigation, which can include disciplinary action, and collaborates with DOC or CHS on any further investigative steps and provides support in any administrative proceeding, as needed. Since 2022, DOI has made 31 referrals to

Testimony of DOI Commissioner Jocelyn E. Strauber
October 31, 2024

DOC and CHS for discipline of staff as a result of substantiated allegations of sexual misconduct for both staff-on-person in custody and staff-on-staff conduct.

Policy and Procedure Recommendations

Policy and procedure recommendations – known as PPRs – are a critical part of DOI's responsibility to reduce the risk of fraud and corruption by strengthening internal controls and oversight within the City. Therefore, when investigating complaints of sexual abuse within DOC facilities, DOI considers whether improvements to DOC policies and procedures could reduce the risk of this misconduct or make it easier to detect and prevent.

Since 2014, DOI has issued 35 PPRs related to sexual abuse or sexual harassment in the City's jails including recommendations such as expanding the use of video cameras in DOC facilities and measures to ensure that DOC holds officers accountable when sexual misconduct does take place.

Of these total 35 PPRs, 22 have been accepted, one has been partially accepted, eight have been rejected, and four are awaiting DOC's initial response. Of the 23 that have been fully or partially accepted, DOC reports that 19 have been implemented.

The recent filing of hundreds of lawsuits alleging sexual assault in the City's jails, as well as DOI's ongoing work on a number of sexual abuse investigations, calls for continuing active efforts to identify areas of vulnerability in DOC's policies and procedures and to consider whether additional improvements can be made, as well as continued engagement with DOC on outstanding PPRs.

Conclusion

DOI shares DOC's commitment to eradicate sexual abuse and harassment of persons in custody by DOC staff. We will continue to deploy our investigative and policy and procedural expertise in service of this critical mission.

I am happy to take any questions you may have.

Testimony before the
New York City Council
Committee on Criminal Justice
Chair Sandy Nurse

By
Lynelle Maginley-Liddie, Commissioner
NYC Department of Correction

October 31, 2024

Good morning, Chair Nurse and members of the Committee on Criminal Justice. I am Lynelle Maginley-Liddie, Commissioner of the New York City Department of Correction (“Department” or “DOC”). My colleagues and I are here to discuss a very sensitive and important topic: the prevention of and response to sexual assault and harassment within our jails. I want to be clear at the outset: sexual assault and harassment are not tolerated within our jails. People working in and visiting the jails, as well as those in our care, must remain safe and free from harm.

The Prison Rape Elimination Act

As you undoubtedly know, the Prison Rape Elimination Act (“PREA”) is a federal statute that outlines the essential elements required to prevent the sexual abuse of individuals in correctional facilities. Finalized in 2012, the Act provides standards in the areas of prevention, training and education, screening for risk of sexual victimization and abusiveness, ways for people in custody to report sexual abuse and harassment, agency response following a report, investigations, discipline, medical and mental health care, data collection and review, and audits and appropriate corrective action. The Department began working towards compliance with

these standards in 2015. Board of Correction Minimum Standards for the Elimination of Sexual Abuse and Sexual Harassment outline many of the same standards as PREA and went into effect in January 2017. Our goal is not only to comply with PREA standards but to adopt more comprehensive best practices that ensures everyone who enters our jails, whether staff, people in custody, or visitors, remain safe.

Policies and procedures related to the prevention of and response to sexual abuse and harassment of people in custody are managed by the Department's PREA Compliance Unit and PREA Investigation Unit. PREA Compliance staff work to create a culture and environment within the jails that promotes the detection and reporting of sexual misconduct, prevents retaliation against anyone who reports sexual abuse and provides ongoing support and resources to individuals who are the victim of sexual abuse. PREA Investigation staff respond to allegations of sexual abuse and harassment and ensure that victims are separated from alleged perpetrators and receive prompt medical care and mental health support and conduct any resulting investigations. As of October 2024, the PREA Investigation Unit is comprised of 19 investigators, with each investigator handling on average 25 cases at any given time.

Prevention & Detection of Sexual Abuse of Individuals in Custody

All DOC staff, as well as contractors and volunteers who work in our jails, are required to take an in-person training designed to identify and eliminate sexual abuse and harassment. The training instructs that all reports must be taken seriously and forwarded immediately to the Department's PREA Investigation Unit. A refresher training is required every two years.

Upon entering custody, every individual is screened for their risk of sexual victimization and abusiveness. This screening is used to determine the most appropriate housing options for

each individual. PREA Compliance staff conduct an in-person orientation with all new admissions. This allows individuals to ask questions during the orientation or privately at its conclusion. During the orientation, staff inform new admissions of the many ways to report an allegation.

Reporting an incident of sexual assault can be incredibly difficult, and therefore the Department provides many different pathways for individuals to make a report, including calls to various hotlines, to the Board of Correction, and the Department of Investigation (“DOI”). Reports may also be submitted by a third party and will be forwarded to the PREA Investigation Unit. Importantly, DOC staff are mandated reporters. If they suspect or witness sexual misconduct, they must report the incident to PREA. Reports can be submitted anonymously, and there is no time limit on when an individual can report an allegation of sexual abuse or harassment.

PREA Investigations

A cornerstone of eliminating sexual abuse within the jails is a fair and thorough investigative process. As a first step, any time an individual alleges that they were sexually abused by staff, DOC sends that information to DOI for clearance to conduct an internal investigation. DOI will either allow DOC to investigate, or ask DOC to stand down, and they will investigate itself. If the matter is cleared for investigation, PREA investigators will move forward. They will respond to the facility of the alleged incident, often within 24 hours, to speak with the victim and any potential witnesses. They will review Genetec video and phone calls, and the backgrounds of those involved in the allegation, and collect any other evidence. Critically, PREA investigators also ensure that the victim is immediately separated from the alleged perpetrator and receives

supportive services, including medical services and a referral to mental health services. Following a report, PREA Compliance staff will tour the facility regularly and check on victims and monitor for any signs of retaliation.

The Department completes a preliminary review of all sexual abuse and harassment allegations within 72 hours of the allegation being reported. Following this, allegations are assigned as PREA-reportable or not PREA-reportable, as defined in the PREA standards. Allegations that are PREA-reportable include any allegation that involves sexual abuse by staff, repeated reports of sexual harassment by staff, and non-consensual sex acts, abusive sexual contact, and sexual harassment between individuals in custody. Non-PREA allegations include, for example, a one-time allegation of sexual harassment, and consensual sex acts between individuals in custody. I would emphasize that, although an allegation might not be PREA-reportable, it is still taken seriously and investigated thoroughly.

PREA standards require that all cases must be closed within 90 days of the allegation being made. If an investigation reveals criminality, the case will be referred back to DOI. Those cases will remain as pending until they are closed out by those parties. While some recent cases have exceeded the 90-day closing requirement, the majority of cases are closed within 90 days.

Once an investigation is completed, it is classified as substantiated, unsubstantiated, or unfounded. Allegations are substantiated if determined to have occurred based on a preponderance of evidence. Unsubstantiated allegations are ones in which the evidence is insufficient. Unfounded allegations are those proven false. Staff who are found to have violated Departmental policies that contributed to a sexual assault are disciplined and may be terminated.

Staff found guilty of a crime are terminated. Individuals in custody are also subject to discipline and possibly rearrest if an allegation against them is substantiated.

Prevention & Response to Workplace Violence

The safety and wellbeing of DOC staff and anyone else who works in our jails is of paramount importance. They deserve a workplace free from violence and harassment. Everyone who works in the jails is required to complete situational awareness training prior to entering the facilities. DOC supervisory staff are expected to tour jails regularly to assess and abate conditions that may lead to violence or harassment. In addition, staff in leadership positions throughout the agency continue to tour the jails on a regular basis to observe conditions, speak with staff and individuals in custody, and address any issues they observe while on their tour.

Unfortunately, despite these efforts, staff, external providers, and volunteers have experienced sexual assault and harassment from individuals in custody. Such instances are not within the purview of PREA guidelines, and a separate investigation process is managed by the Department's Correction Intelligence Bureau ("CIB"). Following a report, CIB interviews the victim as soon as possible and collects witness statements and other potential evidence to make a charge and arrest. If an arrest is made, all pertinent documents are forwarded to the Bronx District Attorney.

Assaults on staff are traumatic experiences, and our approach centers on immediate intervention, ongoing support, and fostering resilience. Supervisors meet staff to check on their well-being and offer support immediately following an assault, and throughout their recovery. By addressing the emotional, physical, and psychological needs of staff, we aim to provide a safe, supportive work environment for all employees. In addition, the Department's Correction

Assistance Response for Employees ("C.A.R.E.") Unit provides a holistic range of support and resources including counseling, spiritual guidance, and referrals to professional providers. The C.A.R.E. Unit is comprised of veteran officers who can share in the staff's experience and offer compassionate, peer-based support. They tour the facilities regularly to check-in on staff and encourage them to access the supportive resources available to them. If a victim would like to seek services external to the agency, we also refer them to the Employee Assistance Program for support.

Proposed Legislation

Let me now turn to the proposed legislation. Intro. 792 would require DOC to establish and maintain an electronic case management system to record all data related to reports of sexual abuse and harassment of individuals in custody. During the last year, the Department has been procuring and implementing a new electronic case management system. The system is designed to document and track cases, investigations, and disciplinary actions Department-wide. The PREA Investigation Unit was selected as the first unit to go live with the application. Once fully operational, this system will greatly improve the Department's ability to document and track sexual abuse and harassment complaints, adhere to the deadlines associated with the cases, and report in compliance with oversight requirements. The Department supports this legislation but would request adjustments to the effective date to allow for a reasonable time ensure the application meets the requirements outlined in the bill, following this pilot phase.

Intro. 830 would require the Department to develop a comprehensive training program for investigations of sexual assault and harassment and to report on training. In addition to the foundational PREA training that all staff are required to complete, PREA and CIB investigators

received additional in-service training on investigation procedures, as well as cross-training with the NYPD and other subject matter experts. Although we would propose minor amendments to ensure that training requirements are in line with best practices, we support formalizing the requirement for staff who undertake this sensitive work. We look forward to working with the Council to address our concerns.

Conclusion

Finally, let me restate that the Department has a zero-tolerance policy for anyone engaging in sexual misconduct in our facilities. We take this issue extremely seriously. We are committed to making improvements to ensure that we are not only in compliance with PREA standards, but more importantly that all people who live, work in, or visit our facilities are safe. I am personally committed to continuing this work. Thank you for the opportunity to testify today, and we are happy to answer any questions you may have.

Testimony to the New York City Council Committee on Criminal Justice:

“Preventing and Addressing Sexual Assault and Harassment in City Jails”

NYC Health + Hospitals/Correctional Health Services

October 31, 2024

Good morning Chair Nurse and members of the Committee on Criminal Justice. I am Jeanette Merrill, Senior Assistant Vice President of Communications and External Affairs for NYC Health + Hospitals/Correctional Health Services, also known as “CHS.” I appreciate the opportunity to testify at today’s hearing on “Preventing and Addressing Sexual Assault and Harassment in City Jails.” My testimony will focus on CHS’ efforts to help address sexual assault, abuse, and harassment against both our staff and our patients, as well as the care we provide to patients who have experienced sexual abuse.

Workplace safety for CHS staff

The safety of our staff – particularly those who provide patient care in the jails – remains a top priority for CHS. In recent years, CHS has expanded the size and scope of the team that manages its safety operations and has worked to build stronger partnerships and workflows with the NYC Department of Correction (DOC). Together, CHS and DOC have developed and implemented situational awareness training, which includes addressing workplace sexual abuse and harassment, as a part of the CHS new employee orientation. The CHS safety team also regularly conducts rounds in the jail facilities and risk assessment walkthroughs with our healthcare unions – 1199, 1180, DC 37, Doctors Council, and the New York State Nurses Association.

Last calendar year, CHS staff reported 311 workplace violence incidents, which included 56 sexual offenses. Following a workplace violence incident against our staff, CHS works with DOC to implement plans to support staff and mitigate future risk. These may include employee or patient transfers or separation orders.

In addition to documenting the incident, the CHS safety team meets with the employee to check on their well-being, to offer resources and support, and to assist the employee in completing an incident form and in receiving a medical evaluation, if necessary. This is in addition to the real-time support provided by direct supervisors. If the employee would like to file criminal charges against a patient involved in a workplace violence incident, CHS will connect the individual with the DOC Correction Intelligence Bureau.

We will continue to work with DOC and our unions to ensure we maximize our staff’s safety in the workplace, not only because it is their right as employees but also because a safe environment is necessary for the provision of quality health care.

CHS staff hiring, training, and reporting requirements

Beginning in January 2016, CHS became the city's direct provider of carceral health care as a new division of NYC Health + Hospitals, ending a decades-long practice of contracts, most recently with Corizon, a private, for-profit correctional health care company that the NYC Department of Investigation (DOI) determined had "significant breakdowns" and "acute failures" in its employee screening and hiring practices. CHS immediately implemented new, robust processes for conducting employee background checks and security screenings.

CHS established as policy that it will not hire, continue the employment, or retain the services of any person who may have contact with patients who has engaged in sexual abuse in a prison, jail, or other institution, or who has been convicted of or civilly or administratively adjudicated for committing sexual abuse in the community.

All CHS staff are required to complete Prison Rape Elimination Act (PREA) training and to report any allegations, knowledge, or reasonable belief concerning any incident of sexual abuse or harassment towards a patient – regardless of whether the alleged perpetrator is another patient or a staff member. CHS staff report such cases to CHS Operations, which documents the incident, generates a reporting form, and notifies key CHS and DOC staff, which includes the DOC Special Investigations Unit. Allegations involving CHS staff are also reported to DOI.

CHS staff involved in an allegation will be immediately removed from contact with the patient who has experienced the alleged abuse. Based on the investigation findings of DOC and DOI, appropriate disciplinary action is taken and may result in work location reassignment, removal from all direct patient care, or termination of employment and may include reporting to professional licensing authorities.

Patient care following sexual abuse and harassment

We recognize the profound responsibility we have as health care providers to ensure the health and well-being of our patients, many of whom enter our care with previous exposure to trauma and abuse and all of whom have limited agency by virtue of being in a carceral setting. All patients are screened at intake for a history of trauma, including sexual abuse, and those who screen affirmatively are offered follow-up care with a medical and/or mental health practitioner. We work to provide individualized, trauma-informed care to all of our patients, 56 percent of whom are enrolled in our Mental Health Service.

All patients who are housed at the Rose M. Singer Center are further screened for a history of Intimate Partner Violence (IPV) during the new admissions process, and CHS' Gender-Related Services meets with all patients who screen affirmatively to offer additional services, such as IPV-focused counseling. Last calendar year, 5.2 percent of the 19,453 patients who responded to the questions reported a history of IPV. However, we understand that many patients choose not to disclose their history of sexual abuse or IPV during intake, and mental health clinicians and

psychiatric providers consider and assess for trauma symptoms during all clinical encounters. Patients can be referred to Mental Health Services or Gender-Related Services at any point during their incarceration.

CHS has also established multiple pathways for patients to report jail-based sexual assault, abuse, and harassment. In addition to initiating a report with any DOC staff, a patient can disclose abuse to any CHS staff person during any encounter, including another clinic appointment, or can call the CHS Health Triage Line to speak directly with a nurse. Patients' family members and other external parties can also share their concerns by contacting CHS' Patient Relations department or by calling the 24/7 CHS Operations phoneline. Following an allegation, the patient is seen in the clinic for a medical evaluation.

During the medical evaluation, the clinician will perform an examination to identify any physical indication of bodily trauma or injuries, will document these findings in the patient's medical record, and will follow up as is clinically appropriate. The clinician will also offer post-exposure prophylaxis when applicable. CHS refers all patients who report sexual abuse to the Mental Health Service for follow-up care and to CHS' Sexual Assault Advocacy team for additional support, which includes the sharing of jail-based and community-based resources.

When a forensic examination or evidence collection is indicated, the patient is transferred to the hospital emergency department. All 11 NYC Health + Hospitals acute care facilities – including Elmhurst Hospital, where CHS' female patients primarily receive acute care, and Bellevue Hospital, where CHS' male patients receive acute care – are designated as SAFE Centers of Excellence by the New York State Department of Health, meaning they have specially trained Sexual Assault Response Teams in each emergency room. On their return from the hospital, patients are brought to the clinic to ensure hospital recommendations are incorporated into CHS treatment plans.

Conclusion

Establishing a relationship of trust between provider and patient is paramount to our ability to provide the best possible care, and part of building that trust is ensuring zero tolerance of sexual assault, abuse, and harassment. This work involves every department and clinical service within CHS, and we remain committed to working with all of our stakeholders to prevent and address sexual abuse in the jails – against both patients and staff.



DARCEL D. CLARK

THE DISTRICT ATTORNEY
BRONX COUNTY

New York City Council Committee on Criminal Justice "Preventing and Addressing Sexual Assault and

Harassment in City Jails" Hearing on October 31, 2024

Introduction

Good morning, Council Members, and thank you for the opportunity to testify on behalf of the Bronx County District Attorney's Office on efforts to prevent and address sexual assault and harassment at Rikers Island Correctional Facility. My name is Jevet Johnson, and I am Director of the Bronx District Attorney's Office Sex Crimes Prosecution Initiative.

Vision & Mission

As you know, Rikers Island is comprised of several jails and is located within Bronx County. As such, the Bronx County District Attorney's Office investigates and prosecutes offenses that occur on Island. In 2016 when District Attorney Darcel D. Clark took office, she created the Rikers Island Prosecution Bureau as well as the Public Integrity Bureau to address violence and corruption with the goal of making the Rikers Island safer for staff, detainees and visitors.

In order to address sex crimes on Rikers Island, District Attorney Clark established the Rikers Island Sex Crimes Prosecution Initiative in early 2022 to investigate and prosecute sex-related offenses occurring on Rikers Island, such as rape, sexual abuse, forcible touching, and harassment.

Staff & Work

The Bronx District Attorney's Office Rikers Island Sex Crimes Prosecution Initiative is led by a Director, who is full-time Assistant District Attorney with over 23 years of legal experience and who works directly with the Chief and Deputy Chief of the Investigations Division. The Initiative is also staffed by Trial Preparation Assistants or Paralegals, who assist with the preparation of the cases for prosecutions. The Initiative and the Investigations Division report directly to the District Attorney, who oversees the work.

The Bronx District Attorney's Office works collaboratively with the different units within the New York City Department of Correction (DOC) and the New York City Department of Investigation (DOI) who are responsible for investigating allegations of sexual assault occurring on Rikers Island. Our office works with three different groups depending upon whether the complainant is a detainee or whether the complainant or perpetrator is a DOC employee.

If the allegation is made by a detainee, it falls within the purview of the Prison Rape Elimination Act (PREA). Those allegations are investigated by DOC's Special Investigation Unit – PREA. Federal law dictates that DOC PREA Investigators have ninety days (90) to complete their investigations. Therefore, there is a period of at least ninety (90) days between when the incident is reported to PREA and when the incident, if substantiated, is referred to the District Attorney's Office. That lag in time generally delays our ability to interview the complainant and to pursue other avenues of investigation with respect to the allegation, and ultimately move forward with a prosecution.

If the alleged perpetrator is an employee of DOC, DOI is charged with investigating the allegations. In cases where DOC/DOI investigators have substantiated an allegation, they will contact our office to discuss the case and plan next steps. Like the PREA investigations discussed above, there

is a time delay in when these investigations are referred to our office because DOI investigates the matter first.

If the allegation is made by an employee, it falls within the purview of DOC's Correction Intelligence Bureau (CIB). Generally, we receive referrals of these allegations closer in time to the incident, and we can interview the witnesses and obtain relevant evidence in fairly short order. This enables our office to commence these prosecutions in a more expedited fashion.

To thoroughly investigate and combat sexual violence on Rikers Island, our office contacts PREA and/or CIB to discuss sex-related allegations from the 24-hour report. The 24-hour report is a document that is generated each day that denotes any acts of violence or assault that occurred the previous day. To increase our office's awareness of what occurs on Island, the Department of Correction shares this daily report with us so that we can follow up on incidents of particular interest. We track the allegations by complainant and date because it is the most efficient way to share information within our office as well as with other agencies.

There have been several challenges to proceeding with prosecutions, such as uncooperative complainants, false allegations being made, and allegations with insufficient evidence to proceed. In 2022, 25% of sexual assault allegations fell within the above categories. The following year, in 2023, the percentage rose to 40%. So far in 2024, only 20% of the allegations received have fallen with the above categories. Regardless of these percentages, the District Attorney's Office takes every allegation seriously and makes every effort to prosecute perpetrators when the evidence supports the claim.

In cases in which the allegations have been substantiated by DOC and/or DOI, Assistant District Attorneys work with investigators from DOC and/or DOI. Based on these investigations, the Bronx District Attorney's Office has prosecuted several cases since the initiative began. Below,

are the number of complaints that have been referred to the District Attorney's Office and the number of prosecutions that we have moved forward with:

Year	# of Complaints	# of Prosecutions
2022	22	17
2023	32*	20
2024	27*	21

*In 2023, two (2) of the complaints referred to were non-Rikers related and in 2024, one (1) of the complaints was non-Rikers related. Whether or not the complaint leads to a prosecution, every complaint is reviewed. In evaluating these complaints, I review reports from PREA, COIB, and DOI in addition to arrest paperwork. I also review any Genetec video that exists, and I conduct interviews of witnesses.

Most prosecutions that were initiated include charges of Forcible Touching and Harassment, however in some instances, Aggravated Harassment of an Employee by an Incarcerated Individual, Assault, Sex Abuse, Attempted Rape, and/or Criminal Sexual Act have been charged.

Some of the most notable matters that have been prosecuted include:

1. Michael Cleaver- a detainee who attempted to rape a psychiatric nurse inside the clinic. He pleaded guilty to Attempted Rape in the First Degree and was sentenced to six (6) years in prison and ten (10) years post-release supervision.
2. Christopher Cano- a detainee who attempted to rape a detainee in the shower. He pleaded guilty to Attempted Rape in the First Degree and was sentenced to 3 ½ years of incarceration and five (5) years post-release supervision. On a different date, he also attempted to force a detainee to engage in oral and anal sex. The defendant pleaded guilty to Attempted Criminal

Sexual Act in the First Degree and was sentenced to 3 ½ years of incarceration and five (5) years post-release supervision.

3. Kelvin Williams- a detainee who is alleged to have forced another detainee to engage in oral and anal sex. This case is still pending, but the defendant was indicted on charges of Predatory Sexual Assault, Criminal Sexual Assault in the First Degree, Sex Abuse in the First Degree, Criminal Sexual Assault in the Third Degree, Forcible Touching, and related charges.

Conclusion

These are just a few examples show that our office is making strides to stem sexual assaults committed on Rikers Island so that detainees and staff alike, will be safe. We are dedicated to ensuring that all people on Rikers Island receive justice in a swift and fair fashion, and we are receptive to interagency collaborations that achieve this end. We thank the committee for an opportunity to share the important work that we continue to perform on this issue.



Testimony of

Lyndsay Lewis

LMSW – Forensic Social Worker

New York County Defender Services

Before the

City Council Committee on Criminal Justice

Oversight Hearing on Preventing and Addressing Sexual Abuse and Harassment in City Jails

Intros. 792-2024 & 830-2024

October 31, 2024

My name is Lyndsay Lewis and I am a forensic social worker at New York County Defender Services (NYCDS). We are a public defense office that represents New Yorkers in thousands of cases in Manhattan’s Criminal Court and Supreme Court every year. As a forensic social worker, I advocate for lesser incarcerative sentences or alternatives to incarceration for our clients pre-plea and pre-sentencing in the criminal court system. Additionally, I provide case management for the client and their family to ensure they are connected to alternative to incarceration programs, mental health services, substance abuse services, and any other support services that they may need.

Thank you to Chair Nurse for holding today’s hearing to discuss the widespread issue of sexual assault and harassment in city jails and legislation aimed at improved reporting of and responses to these issues. These are longstanding and pernicious issues that must be urgently addressed. Today’s hearing plays an important role in increasing transparency and identifying solutions. I testified in favor of both of these bills back in 2021 and urge their passage again today.

With every new story that comes out of Rikers, it becomes increasingly obvious that federal receivership is the only path forward to address the epidemic of violence and torture that continues behind bars in our city jails. Our jails reached a crisis point years ago. The dysfunction is now so entrenched that only a federal receiver can take the significant steps necessary to address these longstanding problems. We thus urge the Council to urgently support receivership.

New York County Defender Services

100 William St, 20th Floor, New York, New York 10038 | t: 212.803.1500 | f: 212.571.6035 | nycds.org

I. Background

Earlier this year, Gothamist released an investigative series on sexual abuse at Rikers, outlining the harrowing experiences of incarcerated people.¹ Reporters analyzed more than 700 civil lawsuits against NYC and the Department of Correction. We applaud the people who bravely came forward to share the abuse that they suffered at the hands of corrections officers and to seek redress for these harms.

My colleagues and I are frequently confronted with horrifying information about our clients' experiences in city jails. But it can take weeks or months for our clients to disclose to us about abuse they or other detainees may have suffered while incarcerated. When we meet with our clients in person, at the jail, or on videoconferencing, which Department of Corrections frequently continue to not produce clients to or bring extremely late to shorten your allotted time, the conversations are never fully confidential. Yet despite the challenges, clients will sometimes share with us, often in whispers, about what happened to them and then ask us not to act for fear of retaliation or not being believed, having to remain incarcerated if we are unsuccessful in a bail application or alternative to detention. Our defense team will then jump into action and try to do everything we can for a release plan, to make them safe, and to help them report the crime against them. But the reality is that they are not safe as long as they are incarcerated in our city jails.

Jail officials have shown themselves time and time again to be incapable of ending the practice of harassment and abuse in our jails. There are countless stories from clients detailing their cells being raided and belongings, including evidence from their attorney, being thrown out or destroyed directly after a 311 complaint. We cannot allow this to endure.

II. Women are Especially at Risk

We must pay particular attention to the risk that incarcerated women play at the hands of, in particular, male corrections officers. Indeed, most incarcerated women are already survivors of abuse. A staggering 86% of women in jail have experienced sexual violence,² and between 77% and 98% of incarcerated women have been exposed to interpersonal violence. According to a DOJ report, staff sexually victimized at least 50 of the 800 women housed at the Rose M. Singer Center (referred to herein as 'Rosie's'), at any given time—although as many as 98 percent of all sexual assault incidents go unreported.³ The importance of actively protecting incarcerated women from sexual violence is compounded by findings that nearly two-thirds of sexual assault survivors are

¹ Jessy Edwards & Samantha Max, "Late-night sex assaults. Invasive searches. The 700+ women alleging abuse at Rikers." Gothamist, March 26, 2024, available at <https://gothamist.com/news/late-night-sex-assaults-invasive-searches-the-700-women-alleging-abuse-at-rikers>.

² Elizabeth Swavola, Kristine Riley, & Ram Subramanian, "Overlooked: Women and Jails in an Era of Reform," Vera Institute of Justice, available at <https://www.vera.org/downloads/publications/overlooked-women-and-jails-report-updated.pdf>

³ Deanna Hoskins & Marilyn Reyes-Scales, "Women Are Not Safe on Rikers Island," *Ms. Magazine*, Oct. 10, 2018, available at <https://msmagazine.com/2018/10/10/women-not-safe-rikers-island/>

revictimized in their lifetime.⁴ Furthermore, incarcerated women experience higher rates of serious mental illness than both the general population and incarcerated men.⁵

Yet at Rosie's, there are too few staff to meet the medical and mental health needs of all the incarcerated women. This often results in long delays in obtaining medical attention; disrupted and poor-quality treatment causing physical deterioration of prisoners with chronic and degenerative diseases; overmedication of prisoners with psychotropic drugs; and lack of mental health treatment. The use of non-medical staff to screen requests for treatment is also common. Rates of women suffering from post-traumatic stress disorder (PTSD) are very high and very little counseling is provided. Medication without psychotherapeutic treatment will not solve the problem.⁶

Most studies of incarcerated women have observed high rates of victimization that link violence in women's lives to their entry into the criminal justice system as defendants. We need more advocates and services in jails that are accessible, culturally appropriate, respectful, and useful to the specific context of women's lives.⁷ We also need to put in place legal mechanisms to divert as many women as possible from jails and prisons altogether.

Relatedly, while the theory of having a comprehensive training program for the investigation of sexual crimes is well intentioned, without consistent follow up trauma-informed care and therapeutic services, the good intentions fall to the wayside. Traumatized individuals need to be taught and supported to learn new ways of effectively managing their emotions and impulses.⁸ Knowing that abuse and incarceration are both meant to isolate and diminish the person, we call for more restorative resources and options for survivors.⁹

III. LGBTQIA+ Individuals in Custody Face Particular Harm

LGBTQI/GNC people are also severely impacted by harassment and abuse by corrections officers while incarcerated. Due to racism, homelessness and law enforcement bias, LGBTQI/GNC people of color are already over-represented in the carceral system and likelier to endure harsher conditions while incarcerated, such as being subjected to solitary confinement. Perceived or actual sexual orientation is one of four categories that make a female-identifying incarcerated person a more likely target for sexual abuse, as well as a target for retaliation when she reports that abuse. Trans women have been severely mistreated on Rikers; nationwide, 34 percent of incarcerated trans people will experience at least one incident of sexual violence—more than eight times the

⁴ https://www.law.georgetown.edu/gender-journal/wp-content/uploads/sites/20/2020/11/Final-Draft_Jessica-Mitten_Dignity-Incarcerated-Women.pdf

⁵ Shannon Lynch, et al., Looking Beneath the Surface: The Nature of Incarcerated Women's Experiences of Interpersonal Violence, Treatment Needs, and Mental Health, 381 FEMINIST CRIMINOLOGY 382 (2012)

⁶ Amnesty International, "Women in Prison: A Fact Sheet," available at https://www.prisonpolicy.org/scans/women_prison.pdf.

⁷ Mary E. Gilfus, "Women's Experiences of Abuse as a Risk Factor for Incarceration, VAWNET, Dec. 2002, available at https://vawnet.org/sites/default/files/assets/files/2017-08/AR_Incarceration.pdf.

⁸ See Howard Bath, "The Three Pillars of Trauma-Informed Care," *Reclaiming Children & Youth*, Fall 2008, available at <https://elevhalsan.uppsala.se/globalassets/elevhalsan/dokument/psykologhandlingar/trauma-informed-care.pdf>

⁹ See Survived & Punished, "Analysis & Vision," available at <https://survivedandpunished.org/analysis/>.

rate for detainees overall.¹⁰ The case of Robin Lucas depicts how sexual identity may subject a woman to further abuse or torture by a guard. Ms. Lucas was placed in a men’s prison where male guards allowed male inmates to rape her. The male guards taunted her about her same sex relationship, saying to her “maybe we can change your mind.”¹¹ For all of these reasons, we call on City Council to take extra efforts to ensure that LGBTQI/GNC people are treated fairly and humanely by DOC staff and that active efforts are taken to prevent abuse.

One thing you can do is to pass a resolution in favor of statewide legislation to protect TGNCNB (Transgender; Non-conforming; non-binary) people who are incarcerated. New York’s criminal legal system often refuses basic rights to TGNCNB individuals who are incarcerated. TGNCNB people face much higher rates of discrimination, violence, lost opportunity, and the lack of access to basic needs. The Gender Identity Respect, Dignity and Safety Act ([A.709A - Rozić/S.2860 – Salazar](#)) would ensure that TGNCNB individuals are housed consistent with their gender identity, referred to by their name and pronouns even if they do not have legal paperwork, and given access to gender affirming items.¹² NYCDS calls on the City Council to support this legislation at the state level.

IV. Our Grievance Process is Broken

NYCDS Corrections Specialists Natalie Fiorenzo and Rachel Sznajderman testified before this committee on April 24, 2024 at a hearing about the convoluted, dysfunctional grievance process for people in custody. They noted in their written testimony:

...[A]ssaults and/or threats of violence at the hands of corrections staff or other people in custody - fall outside of the scope of the grievance procedure. While the protocol for grievable offenses is at least outlined - even if not actually followed - the process for non-grievable offenses is exasperatingly opaque. Our efforts to remediate these violations are far more convoluted, highly case-specific, and, by all accounts, maddening.¹³

They also testified about their experience assisting clients in reporting instances of sexual violence and abuse:

If our clients’ complaints include instances of sexual violence or abuse, we also make sure to include the DOC Prison and Rape Elimination Act (PREA) Team on all correspondence. Clients have shared that PREA will sometimes conduct a follow-up interview, but they rarely hear the outcome of the investigation.

¹⁰ Deanna Hoskins & Marilyn Reyes-Scales, “Women Are Not Safe on Rikers Island,” *Ms. Magazine*, Oct. 10, 2018, available at <https://msmagazine.com/2018/10/10/women-not-safe-rikers-island/>

¹¹ Amnesty International, “Women in Prison: A Fact Sheet,” available at https://www.prisonpolicy.org/scans/women_prison.pdf.

¹² New York Civil Liberties Union, 2023-24 Legislative Memorandum: Gender Identity Respect Dignity and Safety Act, available at <https://www.nyclu.org/uploads/2023/05/230504-a709-arozic-s2860salazargenderidentityrespectdignitysafetyact-suppmemo.pdf>.

¹³ Natalie Fiorenzo and Rachel Sznajderman, Written Testimony: Oversight Hearing on Complaint and Grievance Procedures for People in Custody, April 24, 2024 available at www.nycds.org.

In recent memory, our unit has only been provided with one investigation response for a PREA-related claim, out of the dozens filed. The correspondence from DOC simply stated that the sexual assault did not occur. Our client in that instance was never contacted or interviewed by PREA or any other DOC investigator. We were not provided with any details about how the Department reached this conclusion, or with any mechanism to appeal this outcome.

This case is notable, however, because we actually received a communication – however barebones - from the Department. Once again, we never are updated throughout an investigation, or provided its outcome. Typically all of our outreach attempts are met with radio silence.

I urge the Council to revisit the NYCDS testimony on the topic of grievances from earlier this year in its entirety, including our recommendations for remedying the system.¹⁴ If incarcerated people are forced to jump through complicated and confusing hoops to report violence and abuse, only to never hear back about the status of those reports, then it is no surprise that they choose not to report it. We cannot begin to fully unravel the true numbers of these incidents until we fix the grievance process issues identified in April.

V. The Proposed Legislation

a. Int. 792 (Rivera) - A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of correction to use an electronic case management system to track investigations of sexual abuse

NYCDS endorses Int. 792 with no specific comments.

b. Int. 830 (Louis) - A Local Law to amend the administrative code of the city of New York, in relation to requiring the commissioner of correction to develop a comprehensive training program for investigation of sexual crimes

NYCDS supports passage of Intro. 830. As noted above, when working with incarcerated women, a trauma-informed approach is always preferred. However, this bill falls short in failing to address the real issue that all people who experience sexual violence on Rikers face.

If a person reports a sexual crime, urgent and more frequent mental health/traditional therapy visits should be provided. That is not the case now. Psychotherapy, with confidentiality, when available in a correctional setting, seems more related to resolving immediate crises that interfere with smooth management of the corrections environment rather than dealing with underlying problems such as past sexual abuse.¹⁵ While more robust investigation of sexual assault is certainly overdue, the real issue is providing any person who has been assaulted access to meaningful mental health support. That can never occur in a jail or prison setting and thus we must be focusing all our efforts

¹⁴ *Id.*

¹⁵ Kimberly L. Cole, Pamela Sarlung-Heinrich, & Laura S. Brown, “Developing and Assessing Effectiveness of a Time-Limited Therapy Group for Incarcerated Women Survivors of Childhood Sexual Abuse,” 8 *Journal of Trauma & Dissociation* (2007), available at https://www.tandfonline.com/doi/abs/10.1300/J229v08n02_07.

on diverting as many people as possible from city jails in the first place, so that they are never exposed to sexual or physical violence or the myriad other harms of incarceration.

VI. Conclusion

We must do more to end the endemic culture of sexual abuse and harassment of incarcerated people on Rikers. NYCDS supports the bills on today's agenda with amendments. They are a small but useful step in ensuring our jails become a safer and more reformative environment for people in custody. Ultimately, the Council's power to regulate the Department of Correction is relatively limited. This is why we urge you to support receivership to finally overhaul the DOC and end human rights violations once and for all.

If you have any questions about my testimony, please contact me at policy@nycds.org.



TESTIMONY OF:

Michael Klinger, Attorney, Jail Services

BROOKLYN DEFENDER SERVICES

Presented before

The New York City Council

Committee on Criminal Justice

October 31, 2024

My name is Michael Klinger and I am the jail services attorney at Brooklyn Defender Services (“BDS”). BDS is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms by the government. For more than 25 years, BDS has worked, in and out of court, to protect and uphold the rights of people and to change laws and systems that perpetuate injustice and inequality. We want to thank the Committee on Criminal Justice and Chair Nurse for inviting us to testify on the critical need to prevent and address sexual assault and harassment in city jails, which directly impacts the thousands of people held in the custody of the New York City Department of Correction, including many represented by BDS.

BDS represents approximately 22,000 people each year who are accused of a crime, facing the removal of their children to the foster system, or challenging deportation. Our staff consists of specialized attorneys, social workers, investigators, paralegals, and administrative staff who are experts in their individual fields. BDS also provides a wide range of additional services for our clients, including civil legal advocacy, assistance with educational needs of our clients or their children, housing, and benefits advocacy, as well as immigration advice and representation.

I. The New York City Department of Correction Has a Chronic Problem with Sexual Assault and Harassment and Oversight Has Failed

Department of Correction (“the Department” or “DOC”) policies assume a jail environment in which abuses are rare and are addressed by staff training, oversight, and discipline when necessary.¹ But the reality in Department facilities on Rikers Island is a system of street-level bureaucracy, vigilante justice, and rampant abuse, ultimately maintaining an environment of

¹ See, e.g., Directive 5011R-A, “Elimination of Sexual Abuse and Sexual Harassment,” Eff. May 31, 2019. Available at <https://www.nyc.gov/site/doc/directives/directives.page>.

persistent violence or fear of violence that undermines the very directives designed to protect the people in the Department’s custody from sexual assault and harassment.

Nearly 60 percent of the 2,000 New York City complaints filed under the Adult Survivors Act in the past year came from the Rose M. Singer Center (RMSC).² The claims arise from allegations of abuse dating from the 1970s through 2023, and together seek nearly \$15 billion in damages from the city.³ Neither the high number of claims nor the amount sought in damages is surprising.

As recently as 2013, a U.S. Department of Justice national survey covering 2011-12 found RMSC to have one of the highest rates of reported sexual victimization by staff in the nation.⁴ A 2015 lawsuit brought by two women who had been detained at RMSC and alleged that they were raped by the same officer resulted in a \$1.2 million settlement in 2017, after the city’s own investigators found that the city had failed to follow critical processes for reporting and investigating claims of sexual abuse required under the Prison Rape Elimination Act (PREA).⁵

Despite its very public history of failures to prevent or punish sexual abuse by Department staff, the Department has faced no meaningful sanctions. The city routinely pays nearly \$40 million annually to settle claims brought against the Department, but those funds come from the city’s general fund rather than the Department’s own budget.⁶ And ordinary oversight mechanisms have failed.⁷

² Jessy Edwards and Samantha Max, “Late-night sex assaults. Invasive searches. The 700+ women alleging abuse at Rikers.”, Gothamist, Mar. 26, 2024, <https://gothamist.com/news/late-night-sex-assaults-invasive-searches-the-700-women-alleging-abuse-at-rikers>. See also, Jessy Edwards, “What Will New York Do to Answer Decades of Rape Claims?”, Vital City, Sept. 24, 2024, <https://www.vitalcitynyc.org/articles/what-will-new-york-do-to-answer-decades-of-rape-claims-rikers-rosies>.

³ Edwards and Max, *supra* n. 2

⁴ Allen J. Beck, Ph.D., Marcus Berzofsky, Dr.P.H., Rachel Caspar, Christopher Krebs, “Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12, U.S. Department of Justice, Bureau of Justice Statistics (NCJ 241399), May 2013. Available at <https://bjs.ojp.gov/content/pub/pdf/svpjri1112.pdf>. See also, Jessy Edwards, “He was Officer ‘Champagne’ at Rikers. 24 Women accuse him of sexual assault in jail.”, Gothamist, Aug. 6, 2024, <https://gothamist.com/news/he-was-officer-champagne-at-rikers-24-women-accuse-him-of-sexual-assault-in-jail>; Reuven Blau and Kri Blakinger, “A Rikers Officer Had Sex With a Detainee. It Took 7 Years to Fire Him,” The Marshall Project, Nov. 28, 2022, <https://www.themarshallproject.org/2022/11/28/new-york-rikers-officer-sex-fired-detainee-assault-prea>; John H. Tucker, “Rape at Rosie’s: When the bad guys at Rikers are the guards,” New York Intelligencer, June 25, 2018, <https://nymag.com/intelligencer/2018/06/rape-at-rikers.html>.

⁵ See Tucker, *supra* n. 4.

⁶ See Edwards, *supra* n. 2. But see Samantha Max, “Mayor Adams ‘can’t’ say if Rikers has a culture of sexual abuse, despite 700+ lawsuits,” Gothamist, Aug. 7, 2024, <https://gothamist.com/news/mayor-adams-cant-say-if-rikers-has-a-culture-of-sexual-abuse-despite-700-lawsuits> (“Comptroller Brad Lander, who is running against Adams in the upcoming mayoral primary, said the money spent to pay out lawsuits against city agencies should come out of their budgets.”).

⁷ *Id.* (“Mayor Adams has declined to order an independent investigation into the 700 claims. ... The City’s Board of Correction has not held a hearing on federal Prison Rape Elimination Act compliance since 2019, citing a lack of resources. The Department of Investigation could launch a probe into the 700 complaints of sexual assault, but has not announced one. The State Commission of Correction has the authority to issue directives and even close jails,

II. The Department Fails to Protect People in its Custody from Assault and Harassment by Staff

The Department’s Directive 5011R-A, “Elimination of Sexual Abuse and Sexual Harassment,” lays out its “zero-tolerance policy toward all forms of sexual abuse and sexual harassment against any person who works, visits, or is confined in any of its facilities.”⁸ The Directive prohibits Department staff from “engaging in any undue familiarity with inmates or permitting undue familiarity on the part of the inmate toward themselves,” and codifies a “duty to report any sexual abuse or sexual harassment or any information regarding inappropriate relationships between an employee and inmate,” with that duty to report extending to “any allegations, knowledge, or reasonable belief regarding such conduct.”⁹ Any staff person who fails to report such abuse or harassment “is subject to disciplinary action.”¹⁰

But the experiences of so many of the people we represent reveal a wide gap between the promise of the Directive and the impermissible practices of Department staff.¹¹ People in custody report that they are subjected to both sexual harassment and sexual assault by Department staff and that these acts are often well known by multiple Department staff. Yet, staff ignore both abusive behavior as well as their own affirmative duty to report it.

III. The Department’s Failure to Adequately Address Staff Misconduct and its Culture of Brutality Impedes People in Custody from Reporting Abuse

As recently as April of this year, the Federal Monitor appointed as part of the ongoing *Nunez* litigation criticized the Department’s failure to impose formal discipline for misconduct, which contributes to a “toxic culture” and an environment where inadequate jail practices are normalized.¹²

but has been inactive on the issue of Rikers Island since labeling it one of the worst correctional facilities in the state in 2018, specifically calling out its disproportionate rate of sexual abuse.”).

⁸ *Supra*, n.1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ BDS is generally aware of allegations of current and ongoing sexual assault and harassment by Department staff, and for reasons that are examined below (and which are also attributable to the actions of a Department that is incapable of policing itself or enforcing its own policies and procedures), we encourage the Council to review the more than 700 claims referred to above, in Notes 2, 3, 6, and 7, for detailed examples of the types of harassing or assaultive behaviors that characterize the sorts of allegations of which BDS, despite being aware, is unable to discuss in any detail.

¹² See Monitor’s Seventeenth Status Rep. at 1, Apr. 18, 2024, ECF No. 706 (“The jails remain dangerous and unsafe, characterized by a pervasive, imminent risk of harm to both people in custody and staff. This risk of harm is caused by pervasive dysfunction in the jails’ management resulting from polycentric and interdependent issues including, but not limited to, a broad failure to utilize sound correctional security practices for even the most basic tasks, limited staff supervision and poor-quality guidance, and a persistent failure to identify misconduct and to apply appropriate accountability.”).

When the people we represent report – in the confidence of their private conversations with counsel – that they have been the victim of sexual harassment or assault by Department staff, they consistently indicate that they are scared to report their allegations. Their experience, as relayed to BDS attorneys, is that any report will trigger a dangerously unprofessional investigation that will fail, in the first instance, to lead to their own safe relocation, away from their abuser. But it will also fail to result in any disciplinary action against that abuser. Our clients expect not to be believed, and instead expect that they would be mocked and subjected to retaliation from the alleged perpetrator or other staff members because of a lack of regard for the confidential nature of their complaint and an apparent belief on the part of staff that they can act with impunity.¹³

The well-known lack of meaningful disciplinary sanctions for Department staff is a marker of the lawless culture maintained by the Department and is indicative of the routine and abject lack of safety, dignity, and order that characterizes life in the jails. It also demonstrates the Department's failure to take seriously the enforcement of federally mandated standards.¹⁴

IV. The Department's Investigations into Alleged Sexual Assaults and Harassment Fail to Meet PREA Standards

The Prison Rape Elimination Act (PREA) establishes national standards to prevent, detect, and respond to sexual assault in prisons and jails, establishes mandatory reporting and data collection on incidents of sexual abuse, requires training for staff on prevention and response, and generally requires a zero-tolerance policy toward sexual violence.¹⁵

PREA only works when jails and prisons function in a professional manner that adheres to best practices. It requires that staff know to a certainty that engaging in sexual harassment or assault of people in their custody will lead to disciplinary action. Once the threat of such discipline becomes merely hypothetical, the chain is broken; staff are less constrained in their actions, and immediately people in custody recognize their loss of agency through any reporting mechanism. Now those people recognize that reporting is more likely to bring them harm than any remedy.

This is the reality on Rikers Island. Not only do our clients confidentially share that they are subjected to sexual harassment and assault, but they also describe acts of anticipatory retaliation by their perpetrators and other staff. They describe being taunted and teased by staff members who know about their abuse, even if they were not directly involved. Notably, these staff members are not escalating these incidents of abuse as required by PREA, but rather punching down on the people in custody. The people we represent also articulate a fear of staff investigators as just another part of a racket designed to threaten and intimidate them into silence.

The reports from the people in custody indicate that, far from implementing PREA and reliable reporting mechanisms, the Department currently operates in a broken feedback loop where rampant sexual harassment and assault exist alongside low numbers of reports. Whatever number

¹³ *See id.*

¹⁴ *See generally*, U.S. Department of Justice, National Standards to Prevent, Detect, and Respond to Prison Rape, 28 C.F.R. § 115 (2012).

¹⁵ *Id.*

of reported incidents of sexual assault or harassment by staff the Department acknowledges receiving, we urge the Council to view that number as an extreme undercount.

V. Conclusion: Council Intervention Is Necessary but Not Sufficient

Today's Council oversight hearing provides an opportunity to understand the layered, systemic failures of the Department, and to contemplate policies to address the Department's culture of brutality and impunity. As a general matter, we do not believe the responsibility for training staff, investigating allegations of abuse, or disciplining staff for abuse can rest with the Department. After nearly 10 years of Monitor reports in *Nunez*, it strains credulity that this Department would be capable of policing itself in any meaningful way.¹⁶

BDS looks forward to continued cooperation with this Committee, with the Council, and with other advocates to address the concerns raised in today's hearing. If you have any questions for us, please feel free to contact us. I can be reached at mklinger@bds.org.

¹⁶ The Department of Investigation (DOI) has an obligation under Directive 5011R-A to determine whether to clear DOC to conduct its own preliminary investigations in cases of alleged sexual abuse and harassment. However, the DOI does not function as an independent agency in such situations; the DOI continues to staff its investigatory teams for investigations of sexual abuse and harassment by Department of Correction staff with Department of Correction officers, presenting an implicit appearance of a conflict of interest.

October 31, 2024

New York City Council

Committee on Criminal Justice
Hon. Sandy Nurse, Chair

**Testimony of Michael Polenberg, Vice President, Government Affairs
Safe Horizon**

Preventing and Addressing Sexual Assault and Harassment in City Jails

Good afternoon and thank you for the opportunity to provide testimony to the Committee on Criminal Justice. My name is Michael Polenberg, and I am the Vice President of Government Affairs at Safe Horizon, the nation's largest non-profit victim services organization. Safe Horizon offers a client-centered, trauma-informed response to 250,000 New Yorkers each year who have experienced violence or abuse. We use a lens of racial equity and justice to guide our work with clients, with each other, and in developing the positions we hold.

We are grateful for today's hearing because it's critical that we shed a light on the prevalence of sexual assault and harassment that takes place each in city jails. Safe Horizon believes that no one should ever be subjected to sexual violence or harassment – in the home, in the workplace, on the streets, in city jails, anywhere. The Adams Administration should have the same “zero tolerance” for this behavior in jails as they do in other city-run entities, such as hospitals, schools, and governmental agencies.

This core belief led us to play a leadership role in passing the historic **Adult Survivors Act (ASA)** in 2022, which created a one-year “lookback window” to create a path to civil justice for individuals who were sexually assaulted as adults but who were unable to file a civil lawsuit before the statute of limitations expired. Approximately 2,500 civil lawsuits have been filed across New York State as a result of the ASA, with many filed on behalf of individuals who were incarcerated at Rikers Island, state prisons, or both. One lawsuit, filed by the famed civil rights attorney Benjamin Crump and the law firm of Slater Slater and Schulman, represents no less than 750 women who experienced sexual abuse while incarcerated.

The ASA is giving survivors who had no realistic opportunity to file a civil lawsuit within the existing statute of limitations a broader path to justice. Safe Horizon is hopeful that the abundance of civil litigation through the ASA and the Gender Motivated Violence Act will not only provide a measure of justice for survivors but will finally force local and state officials to end the scourge of sexual assault in correctional facilities from Brooklyn to Buffalo.

Among the many programs that Safe Horizon operates are our 24-hour hotlines for victims and survivors of domestic violence, sexual assault, and all other crimes. We receive calls from individuals in distress in the immediate aftermath of an incident, and from victims and survivors who are calling perhaps days later to be connected to services and shelter. For many years, we have answered phone calls from survivors of sexual violence that took place in city jails. The subject matter of these calls is beyond disturbing. Safe Horizon passes along information about sexual assault cases in jails to the Department of Correction (DOC), as per the Prison Rape Elimination Act, or PREA. Again, we urge DOC to take every available measure to address the prevalence of sexual violence in city jails.

Finally, Safe Horizon was invited to join the Independent Rikers Commission last year, and we stand with this powerful coalition of advocates, attorneys, and formerly incarcerated individuals to demand that the city move with great urgency to close the Rikers Island jails. The facilities are deeply unsafe for those who work at Rikers and those who are incarcerated at Rikers. In fact, a recent survey of crime victims and survivors in New York City found broad support for treatment and services for offenders rather than jail, and that smaller community-based jails were preferable to the existing facility at Rikers Island.

We are grateful for the City Council's strong support for closing the Rikers Island jails, and for holding this important hearing. If you need more information, please feel free to contact me at michael.polenberg@safehorizon.org or 212-577-7735.

Thank you.



**The New York City Council
Committee On Criminal Justice**

Chair: Council Member Sandy Nurse

**New York City Council Oversight Hearing on Preventing and Addressing
Sexual Assault and Harassment in City Jails; Intro 830-2024**

Testimony of
The Legal Aid Society

October 31st, 2024

Submitted by:

Prisoners' Rights Project,
Incarcerated Clients Services Unit
LGBTQ+ Law and Policy Unit

The Legal Aid Society
Criminal Defense Practice
49 Thomas Street
New York, NY 10013

This testimony is submitted on behalf of The Legal Aid Society, New York City’s oldest and largest public defender organization.

The Legal Aid Society is built on one simple but powerful belief: that no New Yorker should be denied the right to equal justice. We seek to be a beacon of hope for New Yorkers who feel neglected—regardless of who they are, where they come from, or how they identify. From our start over 140 years ago, our growth has mirrored that of the city we serve. Today, we are proud to be the largest, most influential social justice law firm in New York City. Our staff and attorneys deliver justice in every borough, working tirelessly to defend our clients and dismantle the hidden, systemic barriers that can prevent them from thriving. As passionate advocates for individuals and families, The Legal Aid Society is an indispensable component of the legal, social, and economic fabric of our city.

Since its founding in 1971 the Prisoners’ Rights Project of the Legal Aid Society has been at the forefront of litigation and advocacy to improve the conditions and treatment of people incarcerated in New York City jails and New York State prisons and reform the laws governing the treatment of people during incarceration. PRP, together with Legal Aid’s LGBTQ+ Unit and other advocates convinced the New York State Department of Corrections and Community Supervision (“DOCCS”) to allow transgender people in their custody to obtain gender-affirming surgeries. We also have been a leading advocate in the creation of national and local Standards to Prevent Prison Rape. Alongside our Incarcerated Client Services Unit, we maintain a vigorous program of non-litigation advocacy for individuals in both City and State custody, helping them obtain necessary medical or mental health care, ensuring their placement in protective custody, and in many cases providing them with the information they need to protect their own rights. The Incarcerated Client Services Unit is a strategic initiative that provides legal representation to almost all people held in City jails who are appealing disciplinary infractions and classification decisions. These appeals include challenges to a person’s segregation from the general population, loss of their good time credit, their placement in restraints, loss of their visitation rights, and false classifications like “gang member” or “contraband recipient.” Legal Aid staff also serve on and have authored reports for The Task Force on Issues Facing Transgender, Gender Non-Conforming, Non-Binary, and Intersex (TGNCNBI) New Yorkers in the NYC Jails. Together, these three units have unparalleled

expertise in the multitude of issues confronting New Yorkers detained at Rikers island, including the physical and sexual abuse too often inflicted upon people in detention.

Preventing and Addressing Sexual Assault and Harassment in City Jails

There is a deep-rooted culture at Rikers Island where correction officers and other Department of Correction (DOC) staff exploit the authority of their position to sexually assault, abuse, and harass people in custody. Despite repeated warnings, the City of New York and DOC have continuously failed to remedy this abuse; a failure which enables a culture of impunity to continue and thrive.

Legal Aid has interviewed many people who were raped, sexually abused, or sexually harassed while in custody. This abuse includes forced sexual intercourse, oral sexual acts, sexual touching, public masturbation, voyeurism, demeaning sexual comments often combined with physical and verbal intimidation to deter people in custody from reporting the abuse.

Due to the coercive power that correctional staff have over people in carceral settings, New York State criminalized all sexual activity between incarcerated individuals and correctional staff in New York Penal Law § 130.05(3)(f), New York Penal Law § 130.25(1), and New York Penal Law § 130.40(1). Yet, despite this prohibition, few DOC staff are disciplined and even fewer have been prosecuted for the rape and sexual abuse of incarcerated New Yorkers.

The abject failure of the City and DOC to hold staff accountable creates a system where people in custody view sexual abuse as an inevitable condition of detention within the City jails – something that they simply must survive – and an inherent part of the system. Most people are afraid to report this abuse out of fear of not being believed and of the very tangible consequence of retaliation at the hands of DOC staff who almost always evade the consequences of perpetrating this abuse. Without physical proof, which is hard to attain, the reality is that the word of a correction officer will almost always be credited over that of an incarcerated person.

And as a matter of course, sexual abuse in jails is largely unreported.¹ A report by the United States Attorney's Office for the Southern District of New York detailing the results of a Rikers

¹ U.S. Dep't of Justice, Regulatory Impact Assessment for PREA Final Rule, at 17-18 (May 17, 2012), available at http://www.ojp.usdoj.gov/programs/pdfs/prea_ria.pdf (concluding, based upon the DOJ Survey, that

investigation conducted pursuant to the Civil Rights of Institutionalized Persons Act in 2015 expressed “concern that DOC may be under-reporting sexual assault allegations.”² Sexual assault is also rarely reported due to the trauma and stigma associated with it. This reporting also fails to differentiate survivors who are TGNCNBI. While DOC now reports housing configurations for self-identified TGNCNBI people the sexual violence, grievance, and other reporting does not differentiate along gender identity leaving advocacy agencies such as Legal Aid to rely on numerous anecdotes and self-reports from survivors. There simply are no numbers on TGNCNBI people and sexual violence in the NYC jails differentiated by housing arrangement or identity.

The under-reporting of staff sexual assault suggests that the very limited cases where DOC staff are investigated for sexual misconduct against people in custody represents only a small fraction of the actionable abuse that occurs at Rikers. The violent and unhygienic conditions of the New York City jails create perfect conditions for relationships where incarcerated individuals rely on DOC employees to provide them with survival items such as soap or shampoo, access to tablets or phones, and other basic items. Individuals in incarceration are less likely to report such abusive relationships given the dangers they may face.

Instead of treating people like victims when they have the fortitude to report being raped or sexually abused while in custody, the City and DOC fail to conduct meaningful and timely investigations into the abuse and fail to protect people in custody from retaliation. These abject failures give correction officers an actual and perceived free hand to retaliate for reporting, creating a code of silence amongst the incarcerated and DOC staff. This retaliation includes threats, revocation of privileges, verbal abuse, physical abuse, placement into enhanced shackling, degrading strip-searches, denial of services, deprivation of food and necessities, placement into isolated confinement based upon false disciplinary charges, and further sexual harassment, abuse, and intimidation.

This is especially true for the all-women’s jail, the Rose M. Singer Center (RMSC). The City and DOC have been on notice of the severity and pervasiveness of sexual harassment, assault, and

between 69 percent and 82 percent of inmates who reported sexual abuse in response to the survey stated that they had never reported an incident to corrections staff).

² The U.S. Attorney’s Office for the S.D.N.Y., CRIPA Investigation of the New York Department of Correction Jails on Rikers Island (2014), available at <http://genius.com/Preet-bharara-rikers-report-i-chaos-at-rikers> annotated.

abuse at RMSC for over a decade. In 2012, a U.S. Department of Justice report found that RMSC was one of the “12 worst jails in the country” with respect to staff sexual misconduct.³ In 2014, the City retained the Moss Group, a consulting firm, with funds provided by the U.S. Department of Justice, to review the sexual safety of certain jails at Rikers, including RMSC. The report concluded that Rikers “has entrenched problems dealing with sexual abuse, including emergency hotlines that don’t work, confidential complaints read by fellow inmates and investigations that don’t interview alleged attackers.”⁴

In 2015, The Legal Aid Society along with co-counsel Cleary Gottlieb Steen & Hamilton, brought a class action against the City of New York, *Jane Doe 1, and Jane Doe 2 v. The City of New York and Benny Santiago*, 1:15-cv-03849-AKH, (S.D.N.Y. 2015), to redress a culture of systemic rape and other sexual abuse of women by correction officers at RMSC. The case settled for 1.2 million dollars before the question of class certification was entirely resolved.

An independent report conducted by an expert on behalf of plaintiffs in *Jane Doe* also found a culture of sexual abuse at RMSC. The 2016 expert report from Timothy Ryan, a long-time correctional professional, concluded that the City’s practices showed “a callous disregard” and “deliberate indifference by the City to the sexual safety and well-being of the female detainees” at RMSC. Ryan also found that there is a “strong and culturally ingrained code of silence” at the facility and concluded that the City “does not take appropriate measures to protect [women in custody] from retaliation for reporting sexual misconduct” and does not “take appropriate measures to investigate claims of retaliation.”⁵ And because of the “City’s inadequate practices, RMSC has a culture of impunity where female detainees are sexually abused and raped at significantly higher levels than at other jails in America, and where the staff sexual abusers can be nearly assured of a mismanaged investigation.”⁶ In 2022, the Task Force on Issues Facing TGNCNBI People in NYC Jails published a Report of recommendations for keeping TGNCNBI

³ See U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY INMATES, 2011–12, apps. 2, 3, 6 (2013) <https://bjs.ojp.gov/content/pub/pdf/svpjri1112.pdf>.

⁴ Michelle Mark, Report: New York’s Biggest Jail Has a Huge Problem with Sexual Abuse, BUSINESS INSIDER (Jun. 21, 2016), https://www.businessinsider.com/ap-apnewsbreak-report-assails-nyc-jails-sex-abuse-response-2016-6?utm_source=copy-link&utm_medium=referral&utm_content=topbar.

⁵ See Dtk. 371, Ex. 1., *Jane Doe 1 and Jane Doe 2 v. The City of New York and Benny Santiago*, 1:15-cv-03849-AKH, (S.D.N.Y. 2016).

⁶ *Id.* at p 3.

people safe and affirmed. This Report highlighted an ongoing practice of threatening transgender women with moves back to men’s jails whenever they reported sexual harassment or assaults from staff or other incarcerated people. The Task Force strongly recommended that gender mis-aligned transfers *never* be approved in such circumstances as it acts as a deterrent to reporting abuse. Despite this, this practice is still very much operable in 2024. It is extremely telling of the horrors faced by transgender women when housed as men that – in general – our transgender female clients would rather be at RMSC despite the high rates of sexual violence at that facility. Threatening this vulnerable population with transfers back to men’s jails is an incredibly effective way to silence an entire population.⁷

Congress passed the Prison Rape Elimination Act (PREA) in 2003. The City and DOC simply ignored the law and failed to make any attempt to implement PREA until at least 2016 when the BOC engaged in rulemaking to address systemic issues of sexual abuse and harassment at Rikers Island⁸ highlighted in *Jane Doe 1 and Jane Doe 2 v. The City of New York and Benny Santiago*, 1:15-cv-03849-AKH, (S.D.N.Y. 2015).

Despite the implementation of PREA, allegations of sexual abuse made under PREA at RMSC increased in 2019.⁹ According to data from DOC, RMSC experienced a 60% increase in PREA allegations from June 2020 to December 2020 compared with statistics from January to June that same year.¹⁰ Throughout early 2021, there was a 25% increase in PREA allegations at RMSC

⁷ This hearing is, as is right and proper, focused on issues facing people held at RMSC and women in DOC custody. These populations have long been overlooked and under-resourced and this focus is correct. However, the Legal Aid Society hears overwhelmingly from cisgender gay and bisexual men that they are perpetually in unsafe situations where they survive verbal and physical harassment, threats of sexual violence, coercive sexual situations and general disrespect they receive from both DOC employees and other people in custody. The Task Force on Issues Facing TGNCNBI People in NYC Jails has recommended specialized trainings for COs and voluntary housing for this population.

⁸ New York City Board of Correction Press Release, <https://www.nyc.gov/site/boc/news/prea-press-release.page>.

⁹ While DOC reported a decrease in PREA allegations at RSMC from 2017, there was a rise in allegations. See generally NYC DOC, NYC BOARD OF CORRECTION SEXUAL ABUSE AND SEXUAL HARASSMENT MINIMUM STANDARDS 5-40 ASSESSMENT REPORT – FEBRUARY 15, 2019 (2019); NYC DOC, NYC BOARD OF CORRECTION SEXUAL ABUSE AND SEXUAL HARASSMENT MINIMUM STANDARDS 5-40 ASSESSMENT REPORT – FEBRUARY 15, 2020 (2020)

¹⁰ NYC DOC, NYC BOARD OF CORRECTION SEXUAL ABUSE AND SEXUAL HARASSMENT MINIMUM STANDARDS 5-40 ASSESSMENT REPORT – FEBRUARY 2021

from January 2021 to June 2021 compared to figures reported in December 2020.¹¹ From July 2021 to June 2022, PREA allegations at RMSC increased by 86.6%¹² compared to the prior reporting period. From July 2022 to December 2022, allegations at RMSC further increased by 21.4%.¹³

Although the City's data showed that in 2023 there was finally a decrease in PREA allegations at RMSC, which were down from 34 to 27 reports for January to June of 2023 for a decrease of 20.58%¹⁴ and from July 2023 to December 2023, reports were down from 23 to 13 reports for a further decrease of 51.8%¹⁵ predictably that trend has not continued. The most recent data from the City exhibits allegations under PREA at RMSC are again on the rise, with reports increasing 53.84% for January 2024 through June 2024.¹⁶

Further underscoring the systemic failures which have jeopardized the sexual safety and security of those incarcerated in City custody, under the Adult Survivor's Act about seven hundred women filed lawsuits against the City alleging sexual abuse while held in City custody for a period that spans from the 1970s to the 2020s¹⁷. Forty allegations are alleged to have happened within the past six years¹⁸. Five of the corrections officers named in the suits are still employed by DOC and three of them are still at RMSC on the City's payroll.¹⁹ These legal complaints are emblematic of the conditions at RMSC.

¹¹ NYC DOC, NYC BOARD OF CORRECTION SEXUAL ABUSE AND SEXUAL HARASSMENT MINIMUM STANDARDS 5-40 ASSESSMENT REPORT – AUGUST 2021, tbl. 1 (2021)

¹² NYC DOC, NYC BOARD OF CORRECTION SEXUAL ABUSE AND SEXUAL HARASSMENT MINIMUM STANDARDS 5-40 ASSESSMENT REPORT – AUGUST 2022, tbl. 1 (2022)

¹³ NYC DOC, NYC BOARD OF CORRECTION SEXUAL ABUSE AND SEXUAL HARASSMENT MINIMUM STANDARDS 5-40 ASSESSMENT REPORT – FEBRUARY 2023, tbl. 14 (2023).

¹⁴ NYC DOC, NYC BOARD OF CORRECTION SEXUAL ABUSE AND SEXUAL HARASSMENT MINIMUM STANDARDS 5-40 ASSESSMENT REPORT – August 2023, tbl. 1 (2023).

¹⁵ NYC DOC, NYC BOARD OF CORRECTION SEXUAL ABUSE AND SEXUAL HARASSMENT MINIMUM STANDARDS 5-40 ASSESSMENT REPORT – February 2024, tbl. 1 (2024)

¹⁶ NYC DOC, NYC BOARD OF CORRECTION SEXUAL ABUSE AND SEXUAL HARASSMENT MINIMUM STANDARDS 5-40 ASSESSMENT REPORT – August 2024, tbl. 1 (2024).

¹⁷ Jessie Edwards and Samantha Max, Late-night sex assaults. Invasive searches. The 700+ women alleging abuse at Rikers, *The Gothamist* (March 26, 2024), <https://gothamist.com/news/late-night-sex-assaults-invasive-searches-the-700-women-alleging-abuse-at-rikers>.

¹⁸ Matt Katz, Sexual abuse investigations at Rikers languish under Adams (September 24, 2024), <https://gothamist.com/news/sexual-abuse-investigations-at-rikers-languish-under-adams>.

¹⁹ *Id.*

The practices promulgated by the City and DOC fail to demonstrate any intent to electively change the status quo. The Mayor’s administration has failed to conduct a wider investigation into the seven hundred suits.²⁰ There is a backlog of PREA investigations, and many are not conducted within the mandatory 90-day period.²¹ Since 2015, 1,500 sexual abuse allegations were reported by people in custody against DOC staff, however, only seven cases, amounting to a half of percent were substantiated.²² DOC wide, the substantiation rates for all PREA allegations have fallen from 4.5% in 2022 to 3.4% in 2023. Which is below the national average of 6% for substantiated claims in correctional facilities, per the Department of Justice.²³

Going forward, not only should the City be consistently required to meet the expected national standards for the operation of DOC under PREA, but there should also be periodic independent audits and surveys to ensure that people in custody are protected from sexual assault, abuse, and harassment.

PREA audits can fail to identify widespread sexual abuse given the longstanding culture of retaliation against those who report. For example, the Albion Correctional Facility received a “glowing” PREA audit in 2020, with the auditor finding that the “facility met or exceeded all standards, including, in the latter category, ‘zero tolerance for sexual abuse and sexual harassment’ and ‘agency protection against retaliation. “When representatives from the Correctional Association of New York (CANY), an independent organization that monitors and provides oversight of state prisons visited Albion in 2022, incarcerated individuals informed them that guards had “created a culture of widespread sexual abuse and retaliation” despite the positive PREA report.²⁴

When CANY visited Bedford Hills in 2022, they documented seventy complaints of “unfair and nontransparent discipline and grievance processes,” including arbitrary and unfair punishments and inadequate access to grievance protocols. CANY further documented eighty-six complaints

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Molly Hagan, New York’s Imprisoned Women Brave Risks to Sue Sexual Abusers Under New Law, THE APPEAL (Apr. 18, 2023), <https://theappeal.org/new-york-adult-survivors-act-women-prisons/>.

regarding staff behavior and exposure to violence, including issues with shower privacy, violence and abuse from staff, and sexual abuse.²⁵

The City and DOC must enact hiring practices that screen prospective correction officers for characteristics that are recognized to substantially increase the likelihood of sexual assault in jail.

The City and DOC must adequately train its correction officers, supervisors, medical personnel, and investigators to detect, report, and investigate sexual abuse, which has fostered a culture of impunity where correction officers can sexually abuse people in custody without fear of punishment.

The City and DOC must consistently provide reporting mechanisms that are functional and confidential for instances of sexual abuse.

The City and DOC must implement policies to protect people in custody who report sexual abuse from retaliation, which further chills the ability of sexual abuse victims to come forward and connect them with appropriate services including rape counselors and advocates.

The City and DOC must conduct meaningful and timely investigations into allegations of sexual abuse where best practices and national standards are followed for the collection of evidence, crime scene preservation and, investigations and where people in custody are treated with dignity and as victims.

The City and DOC must hold staff accountable for sexual assault, abuse, and harassment in a meaningful and timely manner through the internal disciplinary process as well as referrals for criminal prosecutions.

The City and DOC must stop the practice of retaliation against TGNCNBI people who report abuse by making it unlawful to transfer people to gender mis-aligned housing due to reporting and should implement all recommendations made in the Task Force's First Report on Issues Facing TGNCNBI People in the NYC Jails.²⁶

²⁵ See CORRECTIONAL ASSOCIATION OF NEW YORK, MONITORING VISIT TO BEDFORD HILLS CORRECTIONAL FACILITY 15 (2021), https://static1.squarespace.com/static/62f1552c1dd65741c53bbcf8/t/63f29d2e341b0b52494678c3/1676844336588/2022_PVB-04-BedfordHills.pdf.

²⁶ Full Report available at: <https://www.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/FINAL-REPORT-of-the-TASK-FORCE-081522.pdf>

Only by implementing enforceable protocols, investigations and consequences for staff who have sexually assaulted or abused people who are detained can we begin to eradicate the deep-rooted culture at Rikers Island where correction officers and other DOC staff exploit the authority of their position to sexually assault, abuse, and harass people in custody.

Intro 830-2524

We support Intro 830-2024 and efforts to improve training of investigators tasked with investigating sexual abuse. However, we suggest that it's reach is expanded to provide clear guidance on how to conduct thorough, timely and responsible sexual abuse investigations

Training alone can only improve outcomes where the training is followed and enforced. We have all heard from DOC administration that Rikers is a zero-tolerance space when it comes to sexual abuse. But we know from our clients and those nearly 700 claims filed under the Adult Survivors Act, that sexual abuse continues in the jails. There is no mention in Int 830 of how investigators will be held accountable if they fail to show competence in the new training subjects. The inclusion of proficiency exams is a good step in ensuring that the substance of the training is put into practice. But one proficiency exam should not be enough. For those investigators that investigate sexual abuse, assessment of their investigations should be ongoing.

For instance, a huge percentage of sexual abuse allegations by persons in custody are still being found unsubstantiated and unfounded in large numbers. Where investigators are routinely finding all or most of the allegations unsubstantiated, further scrutiny of their methods should occur.

One aspect of this scrutiny should be – are they applying the right standard of proof? We know that sexual abuse occurs in the shadows. The existence of willing witnesses or probative physical evidence is rare. When DOC holds control over every aspect of a survivor's life – from ability to meet with family, mail to Investigators, to whether or not cameras are on and recording correctly. Thus, most allegations are going to be one person's word against another. And the imbalance of power between an incarcerated victim and a staff perpetrator often results in an assumption of credibility from the staff person only. The word of the victim is dismissed, and the allegations are found unsubstantiated. We see this in meetings with DOC where the voices of survivors are often dismissed or diminished. In meetings of the TGNCNBI Task Force, Legal Aid employees have

heard DOC representatives state that TGNCNBI people are “over reporting” abuse and that TGNCNBI people “don’t have a problem with speaking up”. This dismissive attitude from DOC representatives permeates the entire culture and trainings, while important, will not on their own alter this persuasive top-down attitude of dismissal. Seeing those who *do* report having their reports found unsubstantiated, while they have exposed themselves to a risk of retaliation by reporting, only reinforces the perception of futility in reporting and contributes to many incarcerated persons deciding not to report.

Unfortunately, the bill gives very little guidance on how to conduct a good investigation. It does not set forth an appropriate standard of proof and how to determine whether it has been met. In fact, in using the penal law definition of sexual crime, instead of the PREA definition, the administrative investigation into whether a staff perpetrator has engaged in actions that merit discipline is being conflated with whether they have committed a crime. This is important for instance where staff has failed to report knowledge or suspicion of abusive behavior by other staff. The training does not discuss in any detail the appropriate assessment of victim credibility, and whether an allegation can ever be substantiated on the victim’s word without physical evidence. Trainings must address cultural differences and communication needs such as interpretation, disability, myths around sexuality and gender identity, and alleviating issues of isolation. Trainings must also instruct investigators to look into previous allegations against staff perpetrators and assign evidentiary weight to similarities in those prior allegations.

Ultimately, better trained investigators can result in better investigations. Int 830 is a good start, but could go further in demanding more from investigators.

Conclusion

As always, we commend Chair Nurse and the Committee for taking up the issues that affect vulnerable New Yorkers and for seeking out solutions for systemic and deeply rooted problems with DOC. We thank you for your consideration of our positions and remain open and available for further explanation and collaboration.



Freedom
Agenda

Testimony to the City Council Committee on Criminal Justice

Submitted by Sarita Daftary, Co-Director, Freedom Agenda

October 31, 2024

Thank you, Chair Nurse and Council members, for holding this hearing.

The reports of sexual assault at Rikers that have been uncovered through Gothamist's reporting on Adult Survivors Act claims are simply horrific. The reports give an indication of the extreme exploitation of people in DOC custody, and still do not capture the full scope. Rikers Island is and has long been a place where officers are able to abuse people in their custody without any consequences or accountability, and where people who have already carried out abuse are able to continue victimizing people.

It is hard to overstate how vulnerable people in jails are, and the power that correction officers have over their lives. Correction officers control their access to food, medical care, recreation, visits and more. So not only is the opportunity for abuse of power incredibly vast, but so is the potential for retaliation. Correction officers can and have been known to retaliate against incarcerated people who report abuse in many ways – from [beatings](#), to [deputizing people in custody](#) to attack others, to falsely accusing detained people of infractions, including [planting false evidence](#).

Every entity that has a responsibility to investigate this abuse and hold officers accountable should be doing so – from the Department of Correction, to the mayor's administration, to the Bronx District Attorney. We also appreciate the Council's efforts to add reporting and training requirements through Intros 792 and 830.

But we also need to shrink the number of people in DOC custody, and by doing so, shrink the number of people who are vulnerable to this abuse. Of course, New York City needs to reduce the jail population in order to close Rikers in 2027, but we also need decarceration now. Decarceration could keep people out of harm's way more quickly than any investigation that might take place.

The Department of Correction Commissioner could act today, with the Mayor's support, to offer community work release to approximately 400 people who are serving a City sentence. The number of City sentenced people at Rikers has grown more than four-fold since Eric Adams took office.

For the more than 5,000 people being held at Rikers pre-trial, judges could act today to stop assigning unaffordable bail to people who appear before them in arraignments, and District Attorneys could stop requesting excessive bail, stop preventing cases from moving to treatment courts, and support the use of supervised release and alternatives to incarceration more quickly and broadly.

When we have a legal system that supposedly operates on the presumption of innocence, the use of pre-trial detention should be extremely limited. We have many examples of people who have been able

to stay in the community while their cases, even serious cases, are resolved – including two DOC employees recently charged with crimes. [Dion Middleton](#), a correction officer who shot and killed a teenager playing with a fake gun in the Bronx, was at liberty while his case proceeded. [Anthony Martin Jr.](#), also a correction officer, has been released to the community while he faces charges of rape in Queens. We've heard no outcry from Mayor Adams in these cases about judges releasing "violent" or "bad" people. In contrast, Freedom Agenda has members whose loved ones have sat on Rikers for years facing similar charges, because their bail was set too high for their families to afford.

Let's drop the illusion – pretrial detention is not a tool to protect us from the most dangerous people, it's a tool to exile people with the least wealth and privilege. And to make matters worse, people detained at Rikers don't just lose their liberty – they are also subjected to sickening levels of deprivation and abuse, including sexual assault.

It is also feels important to note that these abuses are largely about power, and not just about gender. While women and gender expansive people are especially vulnerable, the thousands of men in DOC custody are also routinely subjected to sexual harassment and assault. Stephen Risi provides one horrifying example in his written testimony, which he shared with us ahead of this hearing.

This does not need to keep happening. **We urge all Council Members to continue pressing the administration to fully fund the proven solutions that can keep people safe and well in their communities, and far away from police and jails. And when people are accused, I urge every Council Member to press the District Attorney in your borough on what they are doing to divert people from Rikers.** In September 2024 compared to September 2021, every borough in NYC [sent more people to Rikers](#), even with the knowledge that everyone there is at grave risk of harm.

Finally, I urge Council Members to take a few minutes to listen to [this compilation of interviews](#) collected by the Rikers Public Memory Project that reference sexual assault. Importantly, interviewers in this project did not directly ask narrators about experiences of sexual assault – rather, the experience is so pervasive, for people of all genders, that it came up repeatedly. Kandra Clark's statement is particularly chilling *"I had to worry every night when I went to bed, that if I were to be raped, I would just have to suck it up, that there would be nothing I could do. I was not gonna go and report that because most likely I'd be dead the next day if I did, and that's coming from 10 years of knowing this is how the system is."*

Our City can't keep sending people somewhere where we know they aren't safe.

Thank you,

Sarita Daftary

Co-Director, Freedom Agenda

Sdaftary@urbanjustice.org



**The New York City Council Committee on Criminal Justice Oversight Hearing on
Preventing and Addressing Sexual Assault and Harassment in City Jails
Testimony by Konstantin Yelisavetskiy, Slater Slater Schulman LLP
October 31, 2024**

Chair Nurse and members of the Committee on Criminal Justice, thank you for the opportunity to testify on behalf of the approximately 1,800 Slater Slater Schulman clients who are survivors of jail and prison sexual assault in New York. My name is Konstantin Yelisavetskiy and I am the Managing Attorney of our New York City office and directly oversee the Adult Survivors Acts cases our firm has filed on behalf of survivors, including 479 filed cases relating assaults at Rikers Island. We are honored to represent Ms. Karen Klines and Ms. Tasha Carter Beasley, two courageous survivors who bravely testified before this panel earlier.

We are grateful that the Council is paying attention to this problem, even though it extends far beyond the borders of New York City. The pervasiveness of rampant and unchecked sexual assaults of inmates by jail employees has been recognized and thoroughly documented throughout U.S. correctional systems. In 1985, The Correctional Association of New York released a report titled *A Neglected Population: Women Prisoners at Bayview*, discussing the experience of incarcerated women at the facility. In 1996, Human Rights Watch reported more broadly on sexual abuse of women in U.S. state prisons, including detailed recommendations and issues to consider for federal and state governments. The U.S. Department of Justice (DOJ) released a 2005 study on sexual victimization in prisons and jails reported by detainees. In addition to these reports, there have been countless lawsuits filed against the State alleging sexual abuse of incarcerated women by male corrections officers during the past four decades, yet the State and City have repeatedly failed to address the matter with tangible preventative action.

In 2003, U.S. Congress enacted the Prison Rape Elimination Act ("PREA") to establish national standards for preventing and responding to the sexual abuse of federal inmates. PREA requires a strict "written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment outlining an approach to preventing, detecting, and responding to such conduct." The New York City Department of Correction failed this mandate, and failed the women that they were supposed to protect.

These brave survivors of sexual assault were in jail serving sentences decided by our justice system, or, alternatively, awaiting a judicial hearing that would determine their fate. What they were given instead were life sentences of trauma.

In addition to the typical evidence in these kind of cases, including witnesses, we have clients who had to be treated for STDs, including HIV, which were contracted during their incarceration. We have others who were impregnated and had abortions, or delivered the child and the officer's name

is on the birth certificate. Multiple unrelated clients, incarcerated at different times, including Ms. Klines and Ms. Carter Beasley, have reported assaults by the same guard, indicating a pattern of repeated offenses and neglect. Eighteen of our Rikers clients independently implicated a notorious former DOC employee who went by the nickname “Champagne.”

Both state and city prison systems have failed to implement adequate measures to prevent the widespread sexual abuse of inmates by correctional staff. A culture of silence pervades the correctional system, extending from guards to higher-ranking officials.

The Adult Survivors Act sponsored by Senator Hoylman and Assembly Member Rosenthal gave my firm the tool it needed to file cases, but our work is not done. There are many factors that deter individuals from filing lawsuits for sex crimes within the existing statutes of limitation, and incarcerated people face added barriers to justice, including retaliation by correctional staff. We need to reform and overhaul the practices and procedures that allow New York City jails to hire abusers and turn a blind eye when sexual assaults are reported. Thank you for your time and consideration.

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2024.10.31

Stephen Risi (Detainee 2008 - 2012, MHAUII Box, Mental Observation, Enhanced Restraint Status; GRVC, AMKC).

Testimony to the NYC City Council on Sexual Abuse at Rikers Island

My name is Stephen Risi, and I am here to shed light on the sexual abuse I endured at Rikers Island and the failures of a system that inflicted profound harm on detainees. From 2008 to 2012, I was incarcerated there following an incident at Jacobi Hospital's inpatient psychiatry unit, where a medication cocktail had adverse effects, leading to an altercation that resulted in false attempted murder charges. I was innocent, as proven when I beat the case in 2012, but those years in Rikers left lasting scars, costing me my family, my home, and a decade of homelessness.

I am a post-9/11 veteran who trained for Iraq during Operation Iraqi Freedom and a survivor who was at Ground Zero in the aftermath of the attacks, aiding victims and workers. My background, however, did not protect me from a system that mistreated veterans. The Bronx DA's office disregarded my case, acting with clear discrimination based on my veteran status. This testimony addresses not just the hardship I faced but the severe sexual abuse and systemic failures within Rikers that compounded my trauma.

Vulnerability and Systemic Neglect in Punitive Segregation

During my time at Rikers, as a white, quiet detainee, I was targeted by others, with no reliable system in place to report threats safely. When I reported that I was being threatened with violence, correctional officers only made my situation worse by labeling me a "snitch" in front of others. The lack of protection led to frequent physical confrontations, which eventually landed me in Punitive Segregation, also known as "The Box."

In "The Box," the isolation and lack of safeguards worsened my vulnerability. Here, I was not only forced into confinement but was also subjected to sexual abuse and extreme humiliation. My Enhanced Restraint classification, implemented due to the fights I had to engage in to protect myself, meant that every movement outside my cell required restraints: leg cuffs, waist chains, and mittens chained to my waist. Yet even these intense measures did not protect me from the abuses of power that went unchecked. The correctional officers—some of whom operated with an almost complete disregard for our dignity—exploited the situation, using strip searches and physical checks as opportunities for dehumanizing treatment.

Sexual Abuse Under the Guise of Security

In the highest security classifications, strip searches were routine and often conducted in dehumanizing ways. Each time I entered or exited the area, officers required me to strip entirely. Though strip searches are standard procedure, the officers went beyond professional conduct, subjecting me to degrading actions and words that were explicitly sexual in nature. Some officers would mockingly demand I “dance” or perform other degrading actions, turning what should have been a routine search into a form of public humiliation. These actions, coupled with phrases like “Make it Clap,” aimed to break down my spirit and erode my sense of self-worth. Despite being a veteran who served this city and country, I was made to feel worthless, my dignity repeatedly stripped away.

This treatment happened not once but dozens of times over the course of my confinement. Every strip search was an exercise in survival, as I had to endure not only the physical exposure but the accompanying verbal abuse. Even while I was restrained, officers exploited their authority, forcing me into positions and actions reminiscent of club dancers—actions that were painful, humiliating, and deeply traumatizing.

Solitary Confinement as a Breeding Ground for Abuse

My time in solitary confinement, or “The Box,” was a nightmare that went beyond just isolation. Deprived of a clock, I could not tell time except by estimating based on the sun’s position and shadows outside my cell. This disorientation was intensified by the forced exposure to sexual abuse under the pretense of security protocols. Every interaction with officers became a potential opportunity for them to humiliate me. Forced strip searches went from being uncomfortable to traumatic, and yet they were inescapable.

In The Box, I was denied access to congregated religious services and was restricted from turning the pages of my Bible as my hands were often restrained. The few religious services I could access were conducted through a crack in my cell door, with my pastor on the other side. As a man of faith, being barred from my religious community compounded my suffering, making the abuses I faced even more isolating. My faith and my military training became the only constants that held me together during this time of constant degradation.

Threats of Violence and Psychological Abuse

The Mental Health Observation Unit, where I was placed as part of my Enhanced Restraint classification, became yet another setting for humiliation and abuse. Some correctional officers would approach my cell with explicit threats to my life. Already trapped and defenseless, these words amplified my anxiety and heightened the feeling of helplessness. These threats were often followed by forced strip searches under degrading conditions. I was taunted, made to “perform” humiliating actions, and belittled to the point where it was difficult to maintain any sense of self-worth.

The abuse I endured was not just physical but deeply psychological. These officers treated me as if I were less than human, exploiting my vulnerability, and this treatment has left a permanent impact on my mental health. The repeated exposure to sexual humiliation and abuse shattered any remaining trust I had in the system and instilled a profound sense of despair.

Proposed Solutions: Closing Rikers Island and Establishing Dignity

I share these experiences not only to bring awareness to the sexual abuses I endured but also to propose a solution. Rikers Island is a place where unchecked abuse has flourished, harming countless individuals. I strongly urge the NYC City Council to close Rikers Island. Let this site, steeped in suffering, be transformed into a memorial park honoring those who endured its harsh conditions. The existing infrastructure could support affordable housing or public transportation, creating a functional, compassionate use for this space.

Transforming Rikers from a prison into a site of remembrance and renewal would be a step towards acknowledging the human dignity of those affected by its history. Let’s turn a place that has caused so much pain into a place of healing for the city of New York.

Thank you for hearing my testimony.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Valeria Greenek, Assistant CMR

Address: _____

I represent: Dept. of Correction

Address: _____

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Name: Jeremiah Johnson, Assistant CMR

Address: _____

I represent: Dept. of Correction

Address: _____

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Name: Neil McCormick, Associate CMR

Address: _____

I represent: Dept. of Correction

Address: _____

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Name: Ingris Martinez

Address: _____

I represent: Dept. of Correction

Address: _____

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Date: _____

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Name: Lynelle Maginley-Walker, Commissioner

Address: _____

I represent: Dept of Correction

Address: _____

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(PLEASE PRINT)

Name: James Conroy, General Council

Address: _____

I represent: Dept. of Correction

Address: _____

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Appearance Card

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Date: 10/31/2024

(PLEASE PRINT)

Name: Michael Klinger

Address: _____

I represent: Brooklyn Defender Services

Address: _____

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Appearance Card

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I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 10/31/24

(PLEASE PRINT)

Name: Yonah Zeitz

Address: _____

I represent: Katal Center for Equity, Health, & Justice

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

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in favor in opposition

Date: 10/31/2024

(PLEASE PRINT)

Name: Leah Faria

Address: _____

I represent: Women's Community Justice Association

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Leanne He Merrill

Address: _____

I represent: NYC Health + Hospitals / Correctional

Address: Health Services

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Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Chaplain Dr. Victoria A. Phillips - Dr. V

Address: 99 Wall St, Ste 813, NY, NY 10005

I represent: SAI's Action Coalition / Visionary Ministries

Address: BEYOND rosies & Justice 4 Women Taskforce

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Appearance Card

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Commissioner Jocelyn Strauber

Address: D01- 180 Maiden Lane

I represent: NY, NY 10038

Address: _____

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 in favor in opposition

Date: _____

Name: BARBARA HAMILTON (PLEASE PRINT)

Address: _____

I represent: COSAI AID

Address: _____

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THE CITY OF NEW YORK**

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I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: _____

Name: DONNA HYGTON (PLEASE PRINT)

Address: _____ BKLYN NY

I represent: A Little Piece of LIGHT

Address: _____

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Date: 10/31/24

Name: CHRISTOPHER HEON JOHNSON (PLEASE PRINT)

Address: _____

I represent: SELF

Address: _____

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Date: _____

Name: Tasha Carter Beasley (PLEASE PRINT)

Address: [Redacted] Bx 910452

I represent: _____

Address: _____

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Date: _____

Name: Konstantin Yelisyayetskiy (PLEASE PRINT)

Address: [Redacted] NYC, NY 11570

I represent: Slater Shter Schulman

Address: 488 Madison Ave.

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Date: _____

(PLEASE PRINT)

Name: Karen L. Klunes

Address: [REDACTED]

I represent: Sexual Abuse Survivors

Address: _____

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Appearance Card

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in favor in opposition

Date: 10/31/24

(PLEASE PRINT)

Name: Anna Kull, Esq.

Address: Levy Konigsberg, LLP [REDACTED] Third Ave
NY, NY 10158

I represent: Survivors of Sexual Abuse

Address: _____

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