



## **New York City Jails Action Coalition**

c/o Urban Justice Center  
40 Rector Street, 9th Floor  
New York, NY 10006  
[www.nycjac.org](http://www.nycjac.org)

August 31, 2016

To the New York City Board of Correction:

We, the undersigned organizations and individuals, believe that the Department of Correction (DOC), Health + Hospitals (H+H), and the Board of Correction (Board) must take action to end sexual violence in New York City jails. Any incarcerated person who is subjected to sexual abuse or sexual harassment in NYC jails must receive best-practice, evidence-based care and must be treated with utmost concern and professionalism. The Board must adopt standards that will prevent sexual violence to the greatest extent possible. But when sexual violence occurs, the Board's standards must require readily-accessible methods of reporting; prompt, professional support for the survivor; complete and effective investigation; ongoing support for the survivor free from retaliation; and swift, transparent action to hold the perpetrator accountable. It is imperative that the survivor is assured that his or her voice will be heard as a credible, reputable source of information about the alleged incident. The healing process can only begin once the survivor feels that a pathway to justice is feasible.

The proposed rules include requirements which advance these goals. However, we believe that they must be strengthened in the following ways:

### Prevention

- Cameras must be installed in all areas in which sexual violence has been alleged to have occurred, including transportation vehicles, supply closets, and other areas where camera coverage is lacking. Increased supervisory rounds must be required in areas where camera coverage is not possible or practicable.
- Supervisors must be present in each and all housing and program areas to the extent possible, and rounds by direct supervisors must be conducted of every housing and program area a minimum of two times per shift.
- In order to keep supervisory rounds unannounced and prevent staff from covering up sexual misconduct, staff who alert other staff to supervisors' rounds must be disciplined.
- Staff who have been the subject of repeated allegations of sexual abuse must be monitored by supervisory members of staff.
- Individuals should be housed consistent with their gender identity unless the DOC can establish with clear and convincing evidence that such housing would present a substantial risk to the security of the individual or other incarcerated individuals. A women's unit in a male jail with programs and trained staff should be available to those who are not housed in a facility consistent with their gender identity.

## Reporting

- The Board standards should encourage reporting and therefore clarify the requirement for the reporting protocol. Reporting should be made safe, easy, and confidential with no DOC oversight. A 24-hour phone hotline should be created that will connect individuals who are making allegations from inside the jails to qualified rape crisis hotlines and thus allow the report to proceed in a similar manner as do sexual assault allegations in the outside community. The protocol for this hotline must be provided to the Board for approval and on an annual basis the Board should ensure that these methods of reporting are operational.
- Maintaining confidentiality of reported sexual violence must be paramount. The rules should include a clear statement that throughout the process information regarding complaints of sexual violence must be kept confidential. Sanctions should be imposed on staff who violate confidentiality requirements.
- The process through which third-parties' reports of sexual violence are investigated must be set forth. This process must include safeguards that prohibit individuals alleged to have been responsible for or involved in covering up the sexual abuse from being provided with identifying information regarding the third-party or the survivor, until they are removed from all contact with the third-party and the survivor.
- Disciplinary action for individuals who report sexual harassment or abuse must be prohibited. The Department has a history of disregarding allegations of sexual abuse; thus, survivors will be reluctant to report if they are subjected to discipline simply because they are not believed.
- Incarcerated persons who engage in consensual sexual conduct with each other must not be punished. Doing so hinders reporting of sexual violence when such sexual contact becomes violent, coerced, or is no longer consensual.

## Investigation

- All allegations of rape and sexual assault made within 96 hours of the incident must be immediately investigated with the survivor being taken to the nearest hospital where an appropriate forensic medical examination can be conducted.
- An initial fact-finding interview by a trained investigator should be conducted as soon as possible upon allegation. If the alleged incident occurred within the last 96 hours, to allow for optimal memory retrieval after the incident, a second follow-up interview should be conducted after an additional 96 hours that will provide a more comprehensive, detailed report of the rape or sexual abuse.
- The Board must approve of any specialized sexual abuse training received by DOC investigators. Training should be provided by an outside agency and should be given to every new investigator who investigates these allegations. This training should include topics such as effective victim interviewing, writing reports using the language of non-consensual sex, and the neurobiology of sexual assault. A refresher course shall be mandatory after every two years.

- Investigations must be unbiased. All allegations of sexual abuse must be referred to agencies outside the Department of Correction. When sexual abuse and sexual harassment investigations are conducted by the DOC Investigation Division, only investigators who are civilians and have received requisite training should respond to and investigate claims of sexual abuse.
- The standards should make clear that a survivor's statement alone can be sufficient evidence to substantiate an allegation of sexual violence. A negative response to a survivor in reference to their believability can significantly worsen the trauma and foster an environment where perpetrators face zero consequences for their crimes.
- When investigating an allegation of sexual abuse, investigators must review all prior complaints involving an accused perpetrator of sexual violence, even where those allegations were unsubstantiated, to determine whether there is a pattern of conduct which supports the current complaint. If a pattern is found, it should carry substantial weight to substantiate the allegation.
- Camera footage is of vital importance to detecting patterns of sexual abuse and must be preserved for as long as possible. Camera footage must be maintained for no less than six months as many survivors do not feel safe making complaints regarding sexual violence until they are out of DOC custody. The Board should endeavor to make a cost-benefit analysis to determine whether maintaining footage for a longer period is feasible.
- Survivors and their advocates must receive regular updates on the status of the investigation at least every 30 days. With the permission of the survivors, advocates' request for information regarding the investigation must be responded to fully within 72 hours of the request.
- Clear steps need to be in place to separate complainants from the alleged abuser throughout current and all potential future incarcerations.
- Redacted investigative summaries (omitting identification details) should be made available to the public so that community specialists in sexual assault and trauma care may review and contribute professionally informed analyses of how the Board's Rules regarding investigations are being implemented.
- Investigators should make all efforts not to disclose that survivors are being called for an investigative interview, and should endeavor to cloak themselves under the appearance of another jail service.
- The required staffing plan must include a plan to staff a sufficient number of civilian investigators to investigate allegations in a thorough and timely manner. This plan must be made with consideration to the number of allegations received per quarter, the number of current open investigations, and the average time it takes to conclude an investigation.

### Support for Survivors

- Survivors must have access to psychological and legal support. They must have reasonable access, at the discretion of the specialist, to in-person and confidential support (SART, SAVI, or SANE advocates) during the initial medical examination, through the remainder of their incarceration, and continued support in the community. Legal support should be made available

to survivors if they elect to receive such support, and survivors must be informed of their legal options after making an allegation.

- Survivors must be treated with respect and their complaints presumed true unless and until an investigation concludes otherwise.
- The standards should clearly state that phone conversations with providers that offer sexual violence support – even those who do not contract with DOC or H+H – must not be monitored or recorded.
- These providers must be independent of DOC and provided with access to the housing areas so that they can have informal contact with vulnerable individuals who might be subjected to sexual violence but are reluctant to report.
- Given that H+H has SAVI/SART or SANE specialists in community hospitals, the agency should be required to provide such support services in the jail clinics if possible, or in other locations or via other means. Providing support in this way would decrease the possibility that survivors become known to staff by virtue of their contact with SAVI specialists who are not ordinarily in the jails.
- The survivor must be protected from the perpetrator and from retaliation from other staff and incarcerated persons. The Board should include in-person status checks by providers with survivors.

#### Discipline/Termination of Staff

- Discipline of staff must be meaningful.
- When staff members are disciplined, evidence of previous patterns of behavior (even when allegations were unsubstantiated) and expert testimony regarding trauma should be offered during the disciplinary hearing.
- When staff members are considered for promotion or staff assignments, evidence of previous patterns of behavior (even when allegations were unsubstantiated) must be considered, with specific findings restricting promotions entirely.
- The Commissioner or his or her designee should be required to approve any decision not to pursue substantiated allegations and any decision to settle allegations related to sexual abuse.
- Supervisors who fail to take appropriate action when sexual abuse and/or harassment is alleged or fail to initiate disciplinary action should themselves be subject to severe disciplinary action.

We urge the Board to amend its rules to require appropriate protection of sexual violence survivors.

Sincerely,

*15th St MM (Quakers) Death Penalty Abolition & Prison Reform Committee*

*Association of Legal Aid Attorneys (AFL-CIO) - UAW Local*

*Barnard Center for Research on Women*

*Brite Leadership Coalition*

*Bronx Defenders*

*Brooklyn Defender Services*

*Coalition Against Trafficking in Women - International (CATW)*

*Center for Constitutional Rights*

*Church of Gethsemane*

*College and Community Fellowship*

*Connect NYC*

*Correctional Association of New York*

*CUNY School of Law, Criminal Defense Clinic*

*The De-Programming Freedom School*

*Drive Change NYC*

*Fordham Law Advocates for Sexual Health and Rights*

*Fordham Law Advocates for the Incarcerated*

*Fordham Law National Lawyers Guild Chapter*

*Fordham Law OUTLaws*

*Fordham Law Public Interest Resource Center*

*Fordham Law Stein Scholars*

*From Life to Life*

*Girls' Educational and Mentoring Services (GEMS)*

*Girls for Gender Equity (GGE)*

*Harlem Restoration Project*

*Hour Children*

*Incarcerated Nation Corp. (INC)*

*Innocence Project*

*JustLeadershipUSA*

*Katal Center for Health, Equity, and Justice*

*Latino Pastoral Action Center*

*The Legal Aid Society*

*MFY Legal Services, Inc.*

*NAMI-NYC Metro Criminal Justice Support Group*

*National Lawyers Guild – NYC Chapter*

*National Organization for Women*

*New York City Anti-Violence Project*

*New York Presbyterian Hospital DOVE: Domestic and Other Violent Emergencies Program*

*New York State Council of Churches*

*New York State Jails Justice Network*

*New York State Prisoner Justice Network*

*New Yorkers Against Bratton*

*NOW-NY State*

*NOW-NYC*

*The Osborne Association*

*Project on Addressing Prison Rape*

*Queer Detainee Empowerment Project*

*Sanctuary for Families*

*SANDS' House Inc.*

*Social Justice Committee, Unitarian Universalist Congregation at Shelter Rock*

*St. James' Church*

*Sylvia Rivera Law Project*

*T'ruah: The Rabbinic Call for Human Rights*

*Urban Justice Center*

*Uri L'Tzedek*

*USA Northeast Province of the Society of Jesus (Jesuits)*

*Witness to Mass Incarceration*

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