



**Corrections and
Community Supervision**

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Supervision (DOCCS)**

**Before the NYS Senate Standing
Committees on Crime Victims, Crime and
Corrections and
Ethics and Internal Governance**

**THE IMPACT OF SEXUAL ASSAULT
IN THE PRISON SYSTEM**

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Chairwoman Salazar, Chairwoman Biaggi, and other distinguished members of the Senate, thank you for the opportunity to testify before the Senate Standing Committees on Crime Victims, Crime and Corrections and Ethics and Internal Governance, on the very important topic of sexual assault in the prison system. I am Dan Martuscello, the Executive Deputy Commissioner of DOCCS. Joining me today are Deputy Commissioner and Chief of the Office of Special Investigations Darren Miller, Associate Commissioner Jason Effman in charge of the Sexual Abuse Prevention and Education Office, and Jacy Woodworth, Director of our office of PREA Compliance.

For many years, the Department has been keenly sensitive to the prevention of all forms of sexual victimization in prison. To begin with, more than thirty years ago, this Department first proposed legislation to criminalize any type of sexual relationship between staff and an incarcerated individual. Thereafter, in 1996, the Legislature amended Penal Law Article 130, which in pertinent part now provides that a person is deemed incapable of consent when they are committed to DOCCS and the actor is an employee who provides custody, medical or mental health services, counseling services, education programs, vocational training, institutional parole services or direct supervision of incarcerated individuals. Staff from the Office of Mental Health

who work in a facility or hospital are also covered by this provision. Thus, if any of these staff were to engage in any type of sexual act with an incarcerated person, regardless of the gender of either party or the belief that the act is consensual, the staff would be guilty of a crime such as the felony of rape in the third degree or criminal sexual act in the third degree, or the misdemeanor of sexual abuse in the third degree.

More recently, with the passage of the Prison Rape Elimination Act (PREA) in 2003, followed by the adoption in 2012 of the National PREA Standards to prevent, detect, and respond to prison rape, our laser-like focus on this critical issue has been guided by compliance with the PREA Standards, and implementation of evolving best practices, that is occurring nationally. Consequently, the Department has implemented a zero-tolerance policy with regard to sexual abuse, and has taken a number of proactive and aggressive steps that are designed to:

- 1) Fortify its ability to protect all incarcerated individuals from any type of sexual abuse;
- 2) Enhance its investigatory capabilities;
- 3) Strengthen its enforcement strategies; and
- 4) Prosecute transgressors to the maximum extent permitted by law.

DOCCS is fully compliant with the PREA Standards, as is consistently demonstrated by the PREA Audit Process. There are 45 PREA standards that are applicable to adult prisons, which are inclusive of just over 350 measures. Next month, a DOJ-Certified PREA Auditor will be at Mohawk Correctional Facility for our 112th PREA Audit.

New York first certified full compliance with the PREA standards in October of 2018. Notwithstanding the significant challenges and some auditing delays due to the COVID-19 pandemic, New York has completed the required audits and maintained full compliance with the PREA standards. In October of 2021, New York certified full PREA compliance for the fourth consecutive year.

To aggressively address all forms of sexual victimization in prison, the Department established the Sexual Abuse Prevention & Education Office (SAPEO) in 2013, with a dedicated Associate Commissioner for PREA compliance, who reports directly to the Commissioner. This office ensures ongoing PREA compliance activities, while continuing the development and implementation of programs and policies. It also delivers education about sexual abuse and harassment in prisons.

Late last year, the Department created a second executive level position, the Director of PREA compliance, who is responsible for PREA compliance activities, and for assisting in the development and implementation of programs and policies in areas relating to PREA compliance and reduction of sexual abuse and sexual harassment in correctional facilities. We have a team of sixteen executive level facility staff and the Central Office SAPEO staff, who are dedicated to implementing our zero-tolerance policy, facilitating efforts at prevention, delivering education, and ensuring a robust network of community-based victim support services.

Within our Office of Special Investigations or OSI, the Department has a dedicated Sex Crimes Division. The investigative staff within OSI are some of the most experienced and well-trained investigators in the nation regarding the investigation of sexual abuse and misconduct within a custodial setting. The investigators are trained in legal concepts and issues, evidence collection, and a myriad of other law enforcement techniques. Additionally, fifty investigative staff, along with facility based PREA Compliance Managers and Central Office staff, completed FETI training, which stands for Forensic Experiential Trauma Interview training.

FETI is a science and practice-based interviewing methodology informed by the latest research on the neurobiology of trauma and memory.

It is a participant-centered methodology that allows the interviewer to help a victim, witness or other involved person remember as many details as they are able, about a potentially traumatic event, in a sensitive, non-confrontational manner.

When the Sexual Assault Crime Victims Act was passed in December of 2018, the changes to the Executive Law only required that an agency designate at least one person who is trained in trauma and victim response through a program meeting minimum standards established by the Division of Criminal Justice Services. DOCCS has far exceeded this requirement by having fifty staff complete the FETI Training. DOCCS strives to ensure that its investigative staff and PREA compliance managers are well equipped and ideally suited to respond to reports of sexual victimization.

Also, as an additional measure to protect incarcerated women, the SAPEO staff, and OSI's Sex Crimes Division work collaboratively to discover and act upon staff or incarcerated individual on incarcerated individual misconduct before it reaches the point of sexual abuse. Significant work has been done to identify and respond to instances of staff engaging in unauthorized relationships before those staff commit an act of sexual abuse. Early intervention often results in the removal of such employees before an incarcerated individual or releasee is victimized. SAPEO and OSI are

conducting more frequent site visits and unannounced rounds of female facilities, holding listening sessions with incarcerated women and with staff, and developing training enhancements.

In addition, a number of measures are in place or being developed to reduce the potential for incarcerated individual on incarcerated individual sexual abuse. Beyond the risk screening process required under the PREA Standards, Offender Rehabilitation Coordinators (ORCs) ask incarcerated individuals about any concerns for their safety or sexual abuse during quarterly case plan meetings. We are currently implementing refined procedures to better utilize risk screening results to keep potentially sexual abusive incarcerated individuals separate from potentially victim prone incarcerated individuals. Further, the Department's PREA compliance managers are responsible for monitoring these individuals in their facilities with the goal of preventing sexual victimization.

OSI has established offices within the three female facilities: Bedford Hills, Taconic, and Albion. This enables OSI investigators to have a regular presence in these facilities. More recently, OSI has initiated a debriefing project at female facilities whereby incarcerated women who are nearing release are able to share their experiences through an interview, which then

allows us to gain valuable information to enhance our sexual abuse prevention and education efforts.

In addition, DOCCS has forged a strong, collaborative working relationship between OSI, the Bureau of Labor Relations, and Counsel's Office, so that the strongest possible evidentiary case, supported by compelling public policy arguments, can be presented in each administrative proceeding. In a similar fashion, the Department has strong working relationships with every district attorney's office with jurisdiction over a correctional facility, to ensure that a prosecution to the maximum extent permitted by law, is rigorously pursued. To enforce a zero-tolerance policy, it is crucial to send the strongest possible message of deterrence, and to illustrate such consequences through ongoing workforce training.

It is also essential for incarcerated victims to have confidence that their reports will be confidential, will be taken seriously, and that they will be supported. The Department has spent considerable time and effort to promote professional responses by staff to such reports, victim-centered investigations from our Sex Crimes Division investigators, and a robust emotional support and victim advocacy network for any incarcerated person.

What started as a small pilot project eight years ago, has grown into a model for the entire nation. In partnership with the Office of Victim Services and the Office for the Prevention of Domestic Violence, any incarcerated individual can access the statewide rape crisis hotline by dialing 777. Calls made to the direct dial 777 number are routed to Unity House in Troy, NY. Upon receiving a call from a state prison, Unity House staff can provide crisis counseling. If a caller wishes to receive more extensive emotional support and victim advocacy services, the hotline will complete a referral to one of ten community-based Rape Crisis Programs that we call PREA Centers. These PREA Centers are a network of rape crisis and victim assistance programs across the state that have staff specifically trained to assist incarcerated survivors of sexual violence. PREA Centers provide confidential support services through legal calls, legal visits and privileged correspondence, and can also provide individual advocacy services.

DOCCS coordinates all services on this project with our state and community partners. The Office of Victim Services and the Office for the Prevention of Domestic Violence support this program using funding through the federal Victims of Crime Act (VOCA), the source of which is fines, fees and surcharges paid by certain offenders convicted in federal court. It is not funded with taxpayer dollars.

To ensure that incarcerated individuals are made aware of the availability of these services, postings and brochures are widely distributed in the facilities. Postings are placed adjacent to facility telephones. Brochures are available in various locations throughout the facilities, including the general library, law library, transitional services area, medical, mental health and dental waiting areas, and any other areas deemed appropriate. The services are also referenced in facility Orientation Handbooks and are discussed during orientation following a transfer into a facility.

In addition to the wide distribution of materials describing the program, staff will also follow-up with an incarcerated individual following a report. Specifically, the Assistant Deputy Superintendent PREA Compliance Manager will ask if the individual would like assistance connecting with a PREA Center for services.

DOCCS has also implemented a 444-reporting line. This allows incarcerated individuals to make a complaint directly to OSI.

With respect to LGBTIQ+ individuals, and in particular transgender, gender nonconforming, nonbinary and intersex (TGNCNBI) individuals, national data shows that they are at heightened risk of sexual victimization

in custody, as they are in the community. In recent years, DOCCS has added a number of policy enhancements to accommodate the needs of TGNCNBI incarcerated individuals, including efforts to enhance their safety. This has included adopting procedures allowing for the placement of TGNCNBI individuals in facilities aligned with their gender identity. This work will be strengthened by Governor Hochul's Article VII proposal. In 2020, the Department implemented a training program for all staff entitled "Ensuring Professional Interactions with LGBTIQ+ People." We recognize that there is more work to do in this regard. Accordingly, we are in the process of creating a position dedicated to LGBTIQ+ Inclusivity.

DOCCS also recognizes that many incarcerated people suffer from the effects of previous trauma, and thus we offer a voluntary Trauma, Addiction, Mental Health, and Recovery (TAMAR) program at nine facilities, including our three primary female facilities Albion, Bedford Hills, and Taconic. TAMAR is a 15-week program that delivers trauma-related topics and exercises in a group setting. The National Association of State Mental Health Program Directors customized TAMAR to specifically address gender, people who identify as LGBTIQ+, and people who have been victimized sexually while incarcerated.

Justice-involved individuals often experience complex and repeated traumas over the course of their life span, the severity and rate of which far exceed the general population. Not only do individuals arrive at facilities with trauma histories, the experience of being in an institution can be highly traumatizing.

TAMAR modules de-stigmatize and de-pathologize the trauma response by explaining to participants how their brains and bodies respond to stress and trauma, helping them identify and understand their own unique ways of reacting under stressful or traumatic circumstances, and emphasizing the possibility of change through self-regulation strategies. With this approach, participants can understand why they responded as they did, while still accepting responsibility for their actions. They can begin to forgive themselves and can gain more of a sense of control and mastery over their emotional and physiological responses to stressful events and triggering stimuli. TAMAR plays an essential role in helping justice-involved individuals understand the impact of trauma on their lives, their families, and their communities. The recognition of trauma as a major factor in behavior can also help make the correctional facility safer, and programming more effective.

The Department can make available to the committee for their review, a TAMAR DVD entitled “Tamar: Healing from Inside Out”. It was produced by the National Association of State Mental Health Program Directors and features incarcerated individuals describing how the program has benefitted them immeasurably. This will also be used by other prison systems in the country.

We recently updated our key policies on Sexual Victimization Prevention and Response, and later this year we will be training all staff with a new PREA refresher training. The new training was developed with assistance from The Moss Group, Inc., a criminal justice and public safety consulting firm that specializes in the implementation of PREA. This new training will directly address issues around staff sexual misconduct and promote early intervention to stop sexual abuse before it occurs.

Furthermore, the Department was recently awarded a 30-month grant from the Bureau of Justice Assistance, which will support various new projects that are targeted toward sexual abuse prevention and response, place an emphasis on regional trainings for staff to strengthen responses to reports of sexual victimization, and provide additional training for investigative staff. In addition, the grant will be used to support a project to

develop training specifically for staff who work in our female correctional facilities.

DOCCS has also invested millions in deploying fixed and body worn cameras within our facilities. The use of video surveillance serves as an effective deterrent for incarcerated individuals, staff, and volunteers, who otherwise might engage in sexual misconduct.

It is critical that the Department is mindful of its obligation to ensure that all staff are free from sexual assault. A very disturbing attempted rape of a female staff member recently occurred at a maximum-security correctional facility. The incident was captured on the facility's fixed camera system. Fortunately, the attack failed since, in addition to the victim pulling her personal alarm, she was also able to scream for help, which led to several nearby incarcerated individuals immediately coming to her aid to thwart the attacker, followed quickly by responding staff.

Approximately one month after the attack, the Commissioner met with the victim. First, he wanted to let her know personally that if there was anything he, or any member of his executive team could do to be of any assistance to her, we would do it, and that we would be there to provide unconditional support for her in every way possible. Second, he wanted to

give her his undivided attention in listening to whatever information she felt comfortable sharing.

She described second by second, how the whole event unfolded for her, and what thoughts were racing through her mind during the struggle. She also had suggestions for how to make the physical environment where she was attacked, safer for all staff.

The Commissioner thanked her for the incredible bravery she displayed in coming to meet with him at a correctional facility not far from the one where the incident occurred, and in sharing details of the most traumatic experience of her life. He promised her that he would carefully review the video of the attack and make it a priority to take any and all appropriate corrective measures to ensure the safety of all staff, where the attack occurred.

In conclusion, we have dedicated significant resources to respond to the needs of our population, and staff and work tirelessly to improve policies that advance our zero tolerance policy within our facilities. Sexual victimization is a significant issue, and we are committed to a comprehensive response. Even one instance of sexual victimization, including the victimization of staff, is one too many.

Thank you for the opportunity to provide testimony on this vital topic and I will be happy to answer any questions.