



Corrections and Community Supervision

Annual Report on Sexual Victimization

2015

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INTRODUCTION

Establishment of the Prison Rape Elimination Act

The Prison Rape Elimination Act of 2003 (PREA Public Law 108-79) established federal mandates to identify and prevent prison rape in correctional facilities within the jurisdictions of federal, state, local, and native territories across the United States. Public Law 108-79 was signed into law on September 4, 2003.

The United States Department of Justice adopted the National Standards to Prevent, Detect, and Respond to Prison Rape (the PREA Standards) effective August 20, 2012. In addition to establishing mandatory standards for prevention, detection and response to prison sexual abuse and sexual harassment, the PREA Standards require all correctional facilities to conduct sexual abuse incident reviews and collect uniform data using standardized definitions. Agencies must ensure that data collection includes allegations of sexual abuse and sexual harassment at facilities under its direct control. This incident-based sexual abuse information must be aggregated and made readily available to the public at least annually.

The New York State Department of Corrections and Community Supervision (DOCCS) publishes this report in compliance with PREA Standards §115.87 Data Collection and § 115.88 Data Review for Corrective Action (see Appendix A).

This report provides a comparison of allegations of sexual abuse and sexual harassment as reported to the Bureau of Justice Statistics (BJS) for calendar years 2013 - 2015 as well as corrective actions taken at facilities and the agency as a whole. This annual report includes allegations of sexual abuse of inmates and incarcerated parolees within correctional facilities under the jurisdiction of DOCCS. Allegations of sexual abuse and sexual harassment are preliminary and subject to change as these cases develop. The allegation categories are not final for cases that are ongoing or pending resolution. Data used in this report reflects the most current information available at the time of publication.

Allegations of sexual abuse and sexual harassment are based on the most recent definitions provided by BJS and reporting requirements as specified in the National Standards to Prevent, Detect, and Respond to Prison Rape, under 28 CFR part 115 (see Appendix B). While only limited trend data are currently available, future reports will continue to include comparisons of previous years' data where appropriate.

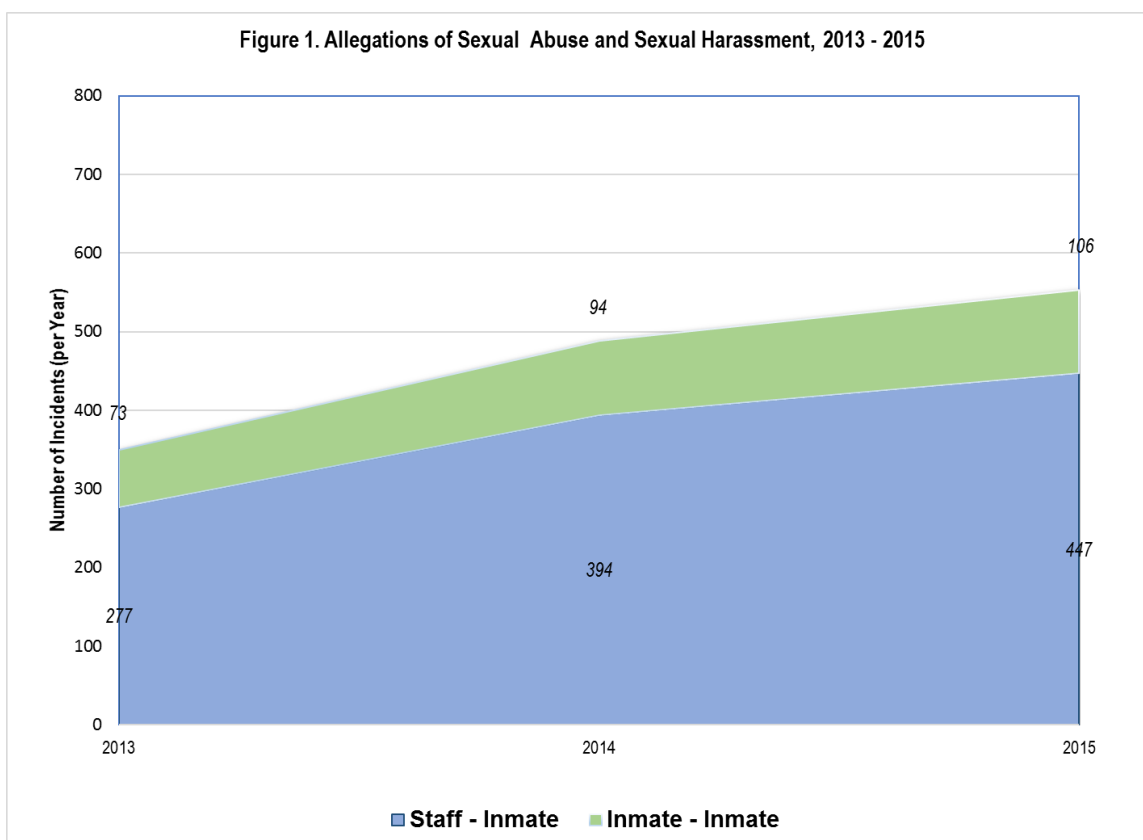
Section One

ALLEGATIONS OF SEXUAL ABUSE AND SEXUAL HARASSMENT

The following section contains data on sexual abuse and sexual harassment allegations reported over a three-year period. These allegations represent complaints which became investigative cases from January 2013 through December 2015. This section is intended to provide an informed overview of these allegations statewide. In accordance with the National PREA Standards, DOCCS reviews the data collected and aggregated pursuant to §115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training in an effort to understand and eliminate sexual abuse and sexual harassment within New York State Correctional Facilities.

Type of Allegation

Uniform definitions provided by the Bureau of Justice Statistics (BJS) and the Prison Rape Elimination Act of 2003 are used in order to categorize allegations of sexual abuse and sexual harassment within DOCCS correctional facilities. These categories separate allegations by perpetrator type (staff or inmate) as shown in Figure 1.



Overview

The total number of sexual abuse and sexual harassment allegations increased by 13% from 2014 to 2015 (488 and 553 respectively) (see Table 1). Increased reporting was expected in light of the implementation of a number of new PREA-based initiatives in 2015. In 2015, DOCCS implemented the new comprehensive inmate education program based upon the short gender-specific films *Ending Sexual Abuse Behind the Walls: An Orientation*. In addition, DOCCS began to use a new staff training curriculum (*Sexual Abuse Prevention and Response*) and expanded the number of Assistant Deputy Superintendent/PREA Compliance Managers.

Staff Sexual Misconduct

Staff Sexual Misconduct includes a wide-range of behaviors such as attempted or requested sexual acts, indecent exposure, invasion of privacy and staff voyeurism, as well as completed sexual acts and unwanted touching for sexual gratification. This category represents about half of all allegations reported annually. There were 258 staff sexual misconduct allegations reported in 2015, up from 228 in 2014 (see Table 1).

Staff Sexual Harassment

Staff sexual harassment includes repeated verbal statements, and comments or gestures of a sexual nature to an inmate by a staff member. Staff sexual harassment allegations represent approximately one-third of all allegations reported each year. Total allegations of staff sexual harassment increased by 14% between 2014 (166 allegations) and 2015 (189 allegations) (see Table 1).

Inmate Nonconsensual Acts

Nonconsensual acts include inmate-on-inmate sexual penetration without consent or of an inmate who is unable to consent or refuse. This category represents approximately half of all inmate-on inmate allegations reported in both 2014 and 2015 (see Table 1).

Inmate Abusive Acts

Inmate abusive acts are defined as unwanted intentional touching of an inmate without his or her consent, or of an inmate who is unable to consent or refuse, by another inmate. Inmate abusive acts represent approximately three percent of total allegations reported to DOCCS annually. The number of allegations of inmate abusive sexual contact remained relatively stable from 2014 to 2015 (17 and 18, respectively) (see Table 1).

Inmate Sexual Harassment

In 2013, the Bureau of Justice Statistics added *Inmate Sexual Harassment* to the definitions of sexual victimization. This new definition was included in the data collection and is therefore reflected in this report. Inmate sexual harassment is defined as repeated and unwanted sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate directed toward another. The number of allegations increased from 29 in 2014 to 35 in 2015 (see Table 1).

TABLE 1

Allegations of sexual victimization, by type of incident, 2013 - 2015

Category Type	2013	2014	2015	2013	2014	2015
Total	350	488	553	100.0%	100.0%	100.0%
Staff sexual misconduct	176	228	258	50.3%	46.8%	46.7%
Staff sexual harassment	101	166	189	28.9%	33.9%	34.2%
Inmate-on-inmate nonconsensual act	52	48	53	14.9%	9.8%	9.6%
Inmate-on-inmate abusive sexual contacts	10	17	18	2.9%	3.5%	3.3%
Inmate-on-inmate sexual harassment	11	29	35	3.1%	5.9%	6.3%

The rate of reported allegations of sexual victimization increased from 9.1 per 1,000 inmates in 2014 to 10.5 per 1,000 inmates in 2015. The rate of staff allegations increased from 7.3 per 1,000 inmates in 2014 to 8.5 per 1,000 inmates in 2015. The rate of inmate-on-inmate allegations increased slightly from 1.7 per 1,000 in 2014 to 2.0 per 1,000 in 2015 (see Table 2).

TABLE 2

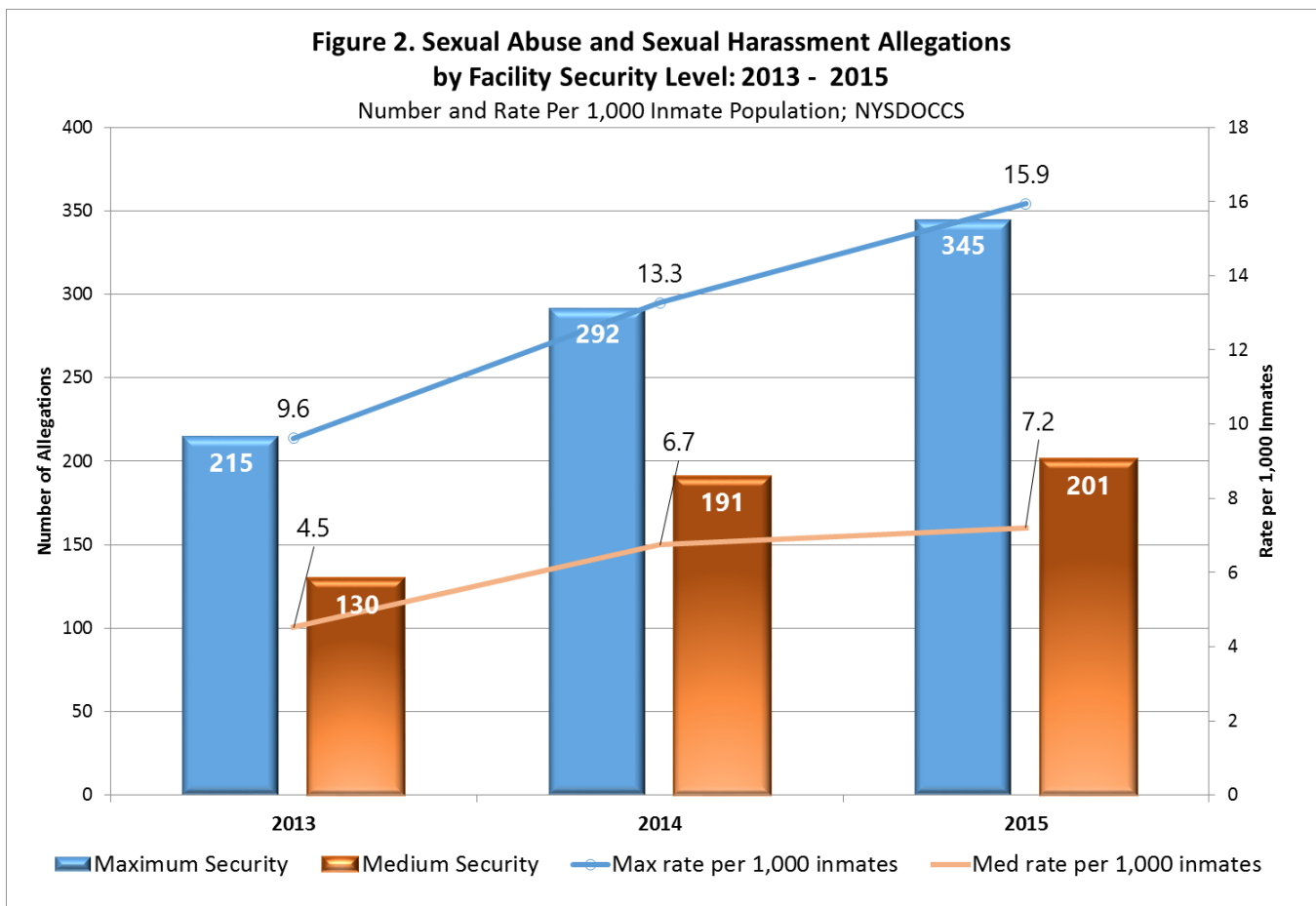
Total allegations of sexual victimization, by type of incident, 2013 - 2015; rate per 1,000 inmate population

Category Type	2013	2014	2015	2013	2014	2015
Total	350	488	553	6.4	9.1	10.5
Staff Type						
Staff sexual misconduct	176	228	258	3.2	4.2	4.9
Staff sexual harassment	101	166	189	1.8	3.1	3.6
Subtotal	277	394	447	5.1	7.3	8.5
Inmate Type						
Inmate-on-inmate nonconsensual act	52	48	53	1.0	0.9	1.0
Inmate-on-inmate abusive sexual contacts	10	17	18	0.2	0.3	0.3
Inmate-on-inmate sexual harassment	11	29	35	0.2	0.5	0.7
Subtotal	73	94	106	1.3	1.7	2.0

Allegations by Security Level

Allegations reported by correctional facilities include reports from inmates, staff, family members, anonymous letters, outside agencies and the DOCCS rape crisis hotline. Allegations in this report are aggregated based upon the Correctional Facility where the alleged incident occurred. Facilities are classified into one of three security levels: maximum, medium, or minimum security. Specialized facility subdivisions may have higher or lower security designations. For the purpose of this report, the security level of the facility is represented by the primary designation.

The rate of allegations of sexual abuse and sexual harassment reported at maximum security facilities increased between 2014 and 2015 (13.3 per 1,000 inmates and 15.9 per 1,000 inmates, respectively) as exhibited in Figure 2. The increase in allegations may be attributed to heightened awareness resulting from implementation of PREA standards and equalization of protocols throughout the DOCCS system. The number and rate of allegations reported at medium security facilities remained stable between 2014 and 2015 ¹.



¹ Medium security level facilities may include specialized housing units designated with higher security levels. Facility security level is represented by the primary designation.

Section Two

SUBSTANTIATED ALLEGATIONS

Allegations of sexual abuse or sexual harassment are substantiated after an event is investigated and determined to have occurred based on a preponderance of evidence. This report reflects the number of determinations at the time of this report.

Of the 488 allegations of sexual abuse and sexual harassment reported to DOCCS in 2014, 21 incidents (4.3%) were determined to be substantiated. In 2015, 13 incidents (2.4%) of the 553 allegations were deemed substantiated (see Table 3). In each year, the number and rate of unfounded determinations exceeds the number and rate of substantiated determinations. For a full description of resulting determinations, see Section Three.

TABLE 3

Substantiated and Unfounded allegations of sexual victimization state-wide, 2013 - 2015

	2013	2014	2015
Total Allegations	350	488	553
substantiated	12	21	13
percent	3.4%	4.3%	2.4%
rate per 1,000 inmates	0.22	0.39	0.25
unfounded	18	79	85
percent	5.1%	16.2%	15.4%
rate per 1,000 inmates	0.33	1.47	1.61

The rate of sexual victimization is the ratio of the number of incidents to the average number of inmates under DOCCS custody between January and December of the calendar year. The inmate population includes both inmates and incarcerated parolees. The rates used in this report represent the number of allegations or substantiated incidents per year per 1,000 inmates and it allows for comparison between facilities with different population levels during the same 12-month period. Although rate information is provided in statistical tables, there are too few substantiated incidents to provide reliable rate comparisons. Unfounded determinations are reports submitted by inmates that are proved to be false. All inmate allegations of sexual abuse and sexual harassment are taken seriously and investigated thoroughly. The number and rate of false reports have increased each year, as demonstrated in Table 3.

TABLE 3A

Substantiated and Unfounded allegations of sexual victimization, by facility, rate per 1,000 inmates

2013 - 2015

Facility name	2013					2014					2015				
	<i>total</i> <i>allegations</i>	substantiated		unfounded		<i>total</i> <i>allegations</i>	substantiated		unfounded		<i>total</i> <i>allegations</i>	substantiated		unfounded	
		number	rate	number	rate		number	rate	number	rate		number	rate	number	rate
Adirondack	1	0	0.0	0	0.0	1	0	0.0	0	0.0	4	0	0.0	0	0.0
<i>a</i> Albion	35	2	1.9	2	1.9	35	2	1.8	6	5.4	24	1	0.9	5	4.5
Altona	1	0	0.0	0	0.0	1	0	0.0	1	2.1	0	0	0.0	0	0.0
Attica	20	0	0.0	1	0.5	18	1	0.5	2	1.0	24	0	0.0	3	1.4
Auburn	18	0	0.0	1	0.6	15	0	0.0	4	2.4	18	0	0.0	8	4.8
Bare Hill	3	0	0.0	0	0.0	1	0	0.0	0	0.0	3	0	0.0	1	0.6
<i>a</i> Bayview	0	0	0.0	0	0.0	0	0	0.0	0	0.0	0	0	0.0	0	0.0
<i>a</i> Beacon	1	1	14.3	0	0.0	0	0	0.0	0	0.0	0	0	0.0	0	0.0
<i>a</i> Bedford Hills	22	3	3.7	1	1.2	40	3	3.9	2	2.6	40	2	2.6	4	5.2
Butler	0	0	0.0	0	0.0	0	0	0.0	0	0.0	0	0	0.0	0	0.0
Cape Vincent	4	0	0.0	0	0.0	2	0	0.0	0	0.0	2	0	0.0	0	0.0
<i>c</i> Cayuga	0	0	0.0	0	0.0	3	0	0.0	1	1.0	1	0	0.0	0	0.0
Chateaugay	0	0	0.0	0	0.0	0	0	0.0	0	0.0	0	0	0.0	0	0.0
Clinton	12	0	0.0	0	0.0	17	1	0.4	2	0.7	14	1	0.4	3	1.1
<i>c</i> Collins	7	0	0.0	0	0.0	8	0	0.0	0	0.0	5	0	0.0	0	0.0
Coxsackie	6	0	0.0	0	0.0	2	0	0.0	0	0.0	2	0	0.0	0	0.0
Downstate	3	1	0.8	0	0.0	14	0	0.0	2	1.7	20	0	0.0	3	2.5
Eastern	3	0	0.0	0	0.0	6	0	0.0	0	0.0	11	0	0.0	0	0.0
<i>b</i> Edgecombe	0	0	0.0	0	0.0	0	0	0.0	0	0.0	0	0	0.0	0	0.0
Elmira	17	1	0.6	1	0.6	10	0	0.0	3	1.8	13	1	0.6	2	1.2
<i>c</i> Fishkill	4	0	0.0	1	0.6	18	0	0.0	4	2.5	15	0	0.0	3	1.8
Five Points	18	0	0.0	0	0.0	38	1	0.7	14	10.4	16	0	0.0	5	3.7
Franklin	8	0	0.0	0	0.0	9	3	1.8	2	1.2	23	0	0.0	1	0.6
<i>c</i> Gouverneur	2	0	0.0	0	0.0	5	0	0.0	2	1.9	2	0	0.0	1	1.0

TABLE 3A (continued)

Substantiated and Unfounded allegations of sexual victimization, by facility, rate per 1,000 inmates

2013 - 2015

Facility name	2013					2014					2015				
	<i>total</i> <i>allegations</i>	substantiated		unfounded		<i>total</i> <i>allegations</i>	substantiated		unfounded		<i>total</i> <i>allegations</i>	substantiated		unfounded	
		number	rate	number	rate		number	rate	number	rate		number	rate	number	rate
Gowanda	5	1	0.7	0	0.0	9	1	0.7	0	0.0	5	0	0.0	1	0.7
Great Meadow	16	1	0.6	3	1.9	28	0	0.0	3	2.0	31	0	0.0	0	0.0
<i>c</i> Greene	0	0	0.0	0	0.0	5	1	0.6	1	0.6	4	0	0.0	0	0.0
Greenhaven	12	0	0.0	2	1.0	20	0	0.0	2	1.0	37	1	0.5	3	1.5
Groveland	5	0	0.0	0	0.0	4	0	0.0	0	0.0	2	0	0.0	0	0.0
Hale Creek	0	0	0.0	0	0.0	2	0	0.0	1	3.5	2	0	0.0	0	0.0
<i>b</i> Hudson	0	0	0.0	0	0.0	1	0	0.0	0	0.0	2	0	0.0	0	0.0
<i>b, c</i> Lakeview	4	0	0.0	0	0.0	3	0	0.0	1	1.1	6	0	0.0	1	1.1
Lincoln	0	0	0.0	0	0.0	0	0	0.0	0	0.0	0	0	0.0	0	0.0
Livingston	1	0	0.0	0	0.0	2	0	0.0	1	1.2	8	0	0.0	2	2.3
<i>c</i> Marcy	9	0	0.0	1	0.8	16	1	0.9	5	4.3	17	1	0.9	7	6.0
<i>c</i> Mid-State	11	0	0.0	0	0.0	9	0	0.0	4	2.5	16	0	0.0	6	3.8
<i>c</i> Mohawk	3	0	0.0	0	0.0	7	0	0.0	0	0.0	6	0	0.0	1	0.7
Monterey Shock	0	0	0.0	0	0.0	0	0	0.0	0	0.0	0	0	0.0	0	0.0
Moriah Shock	0	0	0.0	0	0.0	0	0	0.0	0	0.0	0	0	0.0	0	0.0
Mt. McGregor	1	0	0.0	0	0.0	0	0	0.0	0	0.0	0	0	0.0	0	0.0
Ogdensburg	0	0	0.0	0	0.0	2	1	2.5	0	0.0	0	0	0.0	0	0.0
<i>c</i> Orleans	2	0	0.0	0	0.0	2	0	0.0	0	0.0	5	0	0.0	1	1.0
Other	1	0	n/a	0	n/a	0	0	0.0	0	0.0	0	0	0.0	0	0.0
Otisville	3	0	0.0	0	0.0	4	0	0.0	0	0.0	2	0	0.0	0	0.0
Outside Hospital	0	0	n/a	0	n/a	1	0	0.0	0	0.0	0	0	0.0	0	0.0
Queensboro	0	0	0.0	0	0.0	1	0	0.0	0	0.0	1	0	0.0	0	0.0
Riverview	0	0	0.0	0	0.0	1	0	0.0	0	0.0	2	0	0.0	0	0.0
Rochester	0	0	0.0	0	0.0	0	0	0.0	0	0.0	0	0	0.0	0	0.0

TABLE 3A (continued)

Substantiated and Unfounded allegations of sexual victimization, by facility, rate per 1,000 inmates

2013 - 2015

Facility name	2013					2014					2015				
	<i>total</i> <i>allegations</i>	substantiated		unfounded		<i>total</i> <i>allegations</i>	substantiated		unfounded		<i>total</i> <i>allegations</i>	substantiated		unfounded	
		number	rate	number	rate		number	rate	number	rate		number	rate	number	rate
Shawangunk	5	0	0.0	0	0.0	9	0	0.0	0	0.0	10	0	0.0	1	2.0
Sing Sing	6	0	0.0	0	0.0	11	0	0.0	0	0.0	25	1	0.6	3	1.9
Southport	20	0	0.0	1	1.3	7	1	1.5	1	1.5	14	0	0.0	5	7.3
Sullivan	11	1	2.1	0	0.0	17	1	2.1	2	4.2	23	0	0.0	1	2.1
<i>a</i> Taconic	7	1	2.7	1	2.7	11	1	2.8	1	2.8	9	1	2.8	0	0.0
Ulster	4	0	0.0	2	2.5	2	0	0.0	0	0.0	6	0	0.0	0	0.0
Upstate	13	0	0.0	0	0.0	24	1	0.9	7	6.4	30	0	0.0	8	7.3
Walkill	0	0	0.0	0	0.0	5	0	0.0	0	0.0	2	1	1.8	0	0.0
Washington	1	0	0.0	0	0.0	6	1	1.2	0	0.0	8	0	0.0	0	0.0
Watertown	2	0	0.0	1	1.8	4	0	0.0	1	1.9	2	0	0.0	1	1.9
Wende	13	0	0.0	0	0.0	16	0	0.0	0	0.0	17	1	1.2	2	2.3
<i>b</i> Willard	2	0	0.0	0	0.0	3	1	1.5	2	2.9	3	0	0.0	0	0.0
Woodbourne	4	0	0.0	0	0.0	10	0	0.0	2	2.4	11	1	1.2	1	1.2
Wyoming	4	0	0.0	0	0.0	3	0	0.0	0	0.0	10	1	0.6	2	1.2

a Female Correctional Facility.

b Includes one or more female housing units.

c Medium security population includes specialized housing units designated with higher security levels.

Note: Rate of victimization equals the number of substantiated or unfounded incidents divided by the average population multiplied by 1,000. See appendix C for full description.

Butler, Chateaugay, Monterey Shock and Mount McGregor Correctional Facilities closed in October 2014. Bayview and Beacon Correctional Facilities closed on September 5, 2013.

Section Three

RESULTING DETERMINATIONS

Resulting determinations from completed investigations are classified as Substantiated, Unsubstantiated, or Unfounded as defined by the PREA Standards (28 C.F.R. § 115). Resulting determinations are fully defined in Appendix B (p. 15).

Of the 553 sexual abuse and sexual harassment allegations reported in 2015, 85 (15.4%) were determined to be *unfounded*. In these cases, the Office of Special Investigations determined that the event did not occur by, for example, the presence of evidence contradictory to the allegation or an inmate's self-admission to falsifying the allegation. There were 18 (5.1%) unfounded determinations in CY 2013 and 79 (16.2%) in CY 2014.

Among completed investigations between 2013 and 2015, most resulting determinations concluded that evidence was insufficient to determine whether or not the event occurred. These cases are referred to as *unsubstantiated*.

TABLE 4

Resulting determinations by year, 2013 - 2015

	2013		2014		2015	
Completed	349	99.7%	437	89.5%	382	69.1%
Unsubstantiated	319	91.1%	337	69.1%	284	51.4%
Substantiated	12	3.4%	21	4.3%	13	2.4%
Unfounded	18	5.1%	79	16.2%	85	15.4%
Ongoing	1	0.3%	51	10.5%	171	30.9%
Total	350	100.0%	488	100.0%	553	100.0%

Section Four

REVIEW FOR CORRECTIVE ACTION

In 2014, DOCCS implemented a number of enhancements to combat sexual abuse. DOCCS hired Assistant Deputy Superintendent PREA Compliance Managers at 10 facilities. Since that time, 6 additional Assistant Deputy Superintendent PREA Compliance Managers were retained for a total of 16 Compliance Managers.

These staff are responsible for PREA compliance matters at clusters of facilities. Thus, Assistant Deputy Superintendent PREA Compliance Managers coordinate efforts to comply with the PREA standards at 46 facilities. A Captain is designated as the PREA Point Person in each facility that does not have its own Assistant Deputy Superintendent PREA Compliance Manager.

DOCCS implemented an Enhanced Victim Services pilot project in March 2014. As of the end of 2015, this grant-funded project provided rape crisis hotline and emotional support services to inmates at 27 correctional facilities. DOCCS entered into a partnership with the New York State Coalition Against Sexual Assault (NYSCASA) in an effort to improve the program and expand it statewide.

DOCCS produced a pair of gender-specific Inmate Education Films leveraging another grant-funded program. These films use a peer education approach to provide valuable information to new and transferring inmates. These films were implemented in June 2015, and by August 14, 2015, the films were shown to almost all inmates. In a grant-funded partnership with Just Detention International (JDI), DOCCS started work on a project to expand the PREA peer education component into the Transitional Services Phase 1 program which was implemented in July 2016.

During the second and third quarters of 2015, the new “Sexual Abuse Prevention and Response Training” was implemented during monthly training days. This training was provided to a significant number of largely civilian DOCCS employees in anticipation of a state-wide roll out in the first quarter of 2016. In addition, in August 2015, DOCCS updated its various facility orientation programs for new and transferring staff. These updates ensured that new PREA Introduction/Refresher training was presented to new hires and transferring employees. This training was tailored to the gender of the inmate population housed at the facility. Enhancements were also made to training for security supervisors with an emphasis on improving the facility coordinated response to a report of sexual abuse.

As noted in this report, the number and rate of substantiated sexual victimization at Bedford Hills Correctional facility decreased between 2014 and 2015 (see Table 3A). Facility administrators worked cooperatively with the DOCCS Office of Special Investigations and the Westchester County District Attorney's Office to successfully prosecute three employees who engaged in sexual abuse during 2014. The three convicted former staff members were each sentenced to terms of local incarceration and 10 years of felony probation. In addition, another staff member received a felony conviction and was sentenced to 1 - 3 years of imprisonment. DOCCS believes that these cases reiterate the agency's Zero Tolerance stance on sexual abuse, and send a strong message to both staff and inmates that incidents of sexual abuse, sexual harassment, or retaliation will be thoroughly investigated and that any perpetrator will be dealt with severely through discipline or prosecution to the fullest extent permitted by law.

In addition to the referenced criminal prosecutions, the Assistant Deputy Superintendent PREA Compliance Manager increased training of staff and inmates at Bedford Hills Correctional Facility, and the facility administration conducted reviews of its staffing plans and deployed video monitoring. In 2015, adjustments were made to the staffing plan including the addition of a Tour 1 (midnight) Housing Sergeant and Tour 3 (afternoon) Correction Officer rover post specifically to address PREA-related concerns. Similar steps were taken at Taconic and Albion Correctional Facilities, medium security correctional facilities for female inmates. In addition, planning is under way to expand coverage of the fixed video surveillance system at Bedford Hills Correctional Facility and, in early 2017, a Body Worn Camera pilot project was implemented.

DOCCS continues to review cases and each facility will track recommendations specific to their incident reviews, and implementation of those recommendations. With respect to system-wide efforts to end sexual victimization, DOCCS created a Sexual Abuse Prevention & Education Office in May 2013. This Office supports the agency PREA Coordinator to develop, implement, and oversee agency efforts to comply with the PREA standards in all of the agency's facilities. Emphasis has been placed on prevention, education, and victim support initiatives. This Office is also working collaboratively with the agency's Office of Special Investigations and Research staff to improve DOCCS' understanding of the dynamics of sexual abuse within correctional facilities to better target its prevention strategies.

In October 2015, DOCCS began to conduct PREA Audits at its correctional facilities. The PREA Audits provide an independent evaluation of the policies and procedures that DOCCS implemented and an opportunity to identify areas for further improvement at the audited facilities and system-wide. Eighteen (18) PREA Audits were scheduled for completion during 2016. The final reports from each completed PREA Audit are published on the DOCCS website at http://www.doccs.ny.gov/PREA/PREA_Final_Audit_Reports.html.

APPENDIX A

Title 28 - Judicial Administration

Volume: 2

Date: 2012-07-01

Original Date: 2012-07-01

Title: Subpart A - Standards for Adult Prisons and Jails

Context: Title 28 - Judicial Administration.

CHAPTER I - DEPARTMENT OF JUSTICE (CONTINUED).

PART 115 - PRISON RAPE ELIMINATION ACT NATIONAL STANDARDS.

Subpart A—Standards for Adult Prisons and Jails

§ 115.87 Data collection.

- (a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.
- (b) The agency shall aggregate the incident-based sexual abuse data at least annually.
- (c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.
- (d) The agency shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.
- (e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates.
- (f) Upon request, the agency shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

§ 115.88 Data review for corrective action.

- (a) The agency shall review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by:
 - (1) Identifying problem areas;
 - (2) Taking corrective action on an ongoing basis; and
 - (3) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.
- (b) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.
- (c) The agency's report shall be approved by the agency head and made readily available to the public through its website or, if it does not have one, through other means.
- (d) The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.

APPENDIX B

DEFINITIONS OF SEXUAL VICTIMIZATION

The New York State Department of Corrections and Community Supervision (DOCCS) utilizes uniform definitions as provided by 28 C.F.R. §115.6 in the National Standards to Prevent, Detect, and Respond to Prison Rape (under the Prison Rape Elimination Act of 2003).

These definitions are used to categorize allegations of sexual abuse within New York State correctional facilities and to separate allegations by perpetrator type (staff or inmate) and type of abuse.

Similar to the Survey on Sexual Victimization (SSV), the following categories of sexual abuse have been disaggregated into five categories as indicated below.

Inmate Nonconsensual Act (I₁) - sexual contact of any person without his or her consent, or of a person who is unable to consent or refuse; and

- Contact between the penis and the vulva or the penis and the anus including penetration, however slight; or
- Contact between the mouth and the penis, vulva or anus; or
- Penetration of the anal or genital opening of another person, however slight by a hand, finger, object, or other instrument.

Inmate Abusive Act (I₂) - sexual contact with any person without his or her consent, or of a person who is unable to consent or refuse; and

- Intentional touching either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.

Inmate Sexual Harassment (I₃) – Repeated and unwanted sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate directed toward another.

Staff Sexual Misconduct (S₁) – any act or behavior of a sexual nature directed toward an inmate by an employee, volunteer, contractor or official visitor or other agency representative. Sexual relationships of a romantic nature between staff and inmates are included in this definition. Consensual and nonconsensual acts include:

- Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks that is unrelated to official duties or with the intent to abuse, arouse or gratify sexual desire; or
- Completed, attempted, threatened, or requested sexual acts; or
- Occurrences of indecent exposure, invasion of privacy, or staff voyeurism for reasons unrelated to official duties or for sexual gratification.

Staff Sexual Harassment (S₂) – Repeated verbal statements, comments or gestures of a sexual nature to an inmate by an employee, volunteer, contractor, official visitor, or other agency representative, including:

- Demeaning references to gender; or sexually suggestive or derogatory comments about body or clothing;
- Repeated profane or obscene language or gestures.

FEDERAL CODE OF REGULATIONS

Resulting determinations from completed investigations are classified as outlined verbatim in the Code of Federal Regulations Title 28, Chapter 1, subpart A, section 115.5, *General Definitions* (28 C.F.R. § 115.5) as Substantiated, Unsubstantiated, or Unfounded. This standard states that agencies shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

Substantiated – An allegation was investigated and determined to have occurred based on a preponderance of the evidence.

Unsubstantiated – An allegation was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

Unfounded – An allegation was investigated and determined not to have occurred.

DOCCS also recognizes that at the time of reporting, a final resolution may not yet have been determined. Under these circumstances, the matter will be identified as “Investigation Ongoing” indicating that evidence is still being gathered, processed or evaluated, and a final determination has not yet been made.

APPENDIX C

RATE CALCULATION METHOD

Annualized rates are calculated as the number of incidents of sexual abuse per 1,000 inmate population per year. Inmate population includes inmates, incarcerated parolees and those enrolled in parole diversion programs housed within New York State Correctional Facilities. For example, the 13 substantiated incidents which occurred in 2015 are divided by the average inmate population for 2015 (N=52,812), and multiplied by 1,000 to yield 0.25 sexual abuse incidents per thousand inmates. The same method is used to calculate the rate of sexual abuse at particular correctional facilities where the population base is the average inmate population at the facility (see Table 3A).

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