

## Prison Rape Elimination Act (PREA) Audit Report Adult Prisons & Jails

Interim       Final

Date of Report    June 7, 2019

### Auditor Information

Name: Amy Fairbanks	Email: fairbaa@comcast.net
Company Name: American Correctional Association	
Mailing Address: 3105 S. Martin Luther King Jr. Blvd #236	City, State, Zip: Lansing, MI 48910
Telephone: (517) 303-4081	Date of Facility Visit: April 15-17, 2019

### Agency Information

Name of Agency: New York State Department of Corrections and Community Supervision	Governing Authority or Parent Agency (If Applicable): State of New York
Physical Address: 1220 Washington Avenue	City, State, Zip: Albany, NY 12226-2050
Mailing Address:	City, State, Zip:
Telephone: (518) 457-8126	Is Agency accredited by any organization? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
The Agency Is:	<input type="checkbox"/> Military <input type="checkbox"/> Private for Profit <input type="checkbox"/> Private not for Profit <input type="checkbox"/> Municipal <input type="checkbox"/> County <input checked="" type="checkbox"/> State <input type="checkbox"/> Federal

**Agency mission:** To improve public safety by providing a continuity of appropriate treatment services in safe and secure facilities where all inmates' needs are addressed and they are prepared for release, followed by supportive services for all parolees under community supervision to facilitate a successful completion of their sentence.

**Agency Website with PREA Information:** <http://www.doccs.ny.gov/PREA/PREAinfo.html>

### Agency Chief Executive Officer

Name: Anthony J. Annucci	Title: Acting Commissioner
Email: commissioner@doccs.ny.gov	Telephone: (518) 457-8134

### Agency-Wide PREA Coordinator

<b>Name:</b> Jason D. Effman	<b>Title:</b> Associate Commissioner
<b>Email:</b> jason.effman@doccs.ny.gov	<b>Telephone:</b> (518) 457-3955
<b>PREA Coordinator Reports to:</b> Acting Commissioner	<b>Number of Compliance Managers who report to the PREA Coordinator</b> 14

**Facility Information**

<b>Name of Facility:</b> Fishkill Correctional Facility			
<b>Physical Address:</b> 18 Strack Dr. Beacon, NY 12508			
<b>Mailing Address (if different than above):</b>			
<b>Telephone Number:</b> (845) 831-4800			
<b>The Facility Is:</b>	<input type="checkbox"/> Military	<input type="checkbox"/> Private for profit	<input type="checkbox"/> Private not for profit
<input type="checkbox"/> Municipal	<input type="checkbox"/> County	<input checked="" type="checkbox"/> State	<input type="checkbox"/> Federal
<b>Facility Type:</b>	<input type="checkbox"/> Jail	<input checked="" type="checkbox"/> Prison	
<b>Facility Mission:</b> To improve public safety by providing a continuity of appropriate treatment services in safe and secure facilities where all inmates' needs are addressed and they are prepared for release, followed by supportive services for all parolees under community supervision to facilitate a successful completion of their sentence.			
<b>Facility Website with PREA Information:</b> <a href="http://www.doccs.ny.gov/PREA/PREAinfo.html">http://www.doccs.ny.gov/PREA/PREAinfo.html</a>			

**Warden/Superintendent**

<b>Name:</b> Leroy Fields	<b>Title:</b> Superintendent
<b>Email:</b> Leroy.Fields@doccs.ny.gov	<b>Telephone:</b> (845) 831-4800 ext. 2000

**Facility PREA Compliance Manager**

<b>Name:</b> Lucy Buther	<b>Title:</b> Assistant Deputy Superintendent/PREA
<b>Email:</b> Lucy.Buther@doccs.ny.gov	<b>Telephone:</b> (845) 831-4800 ext. 2045

**Facility Health Service Administrator**

<b>Name:</b> Akinola Akinyombo	<b>Title:</b> Deputy Superintendent of Health Services
<b>Email:</b> Akinola.Akinyombo @doccs.ny.gov	<b>Telephone:</b> (845) 831-4800 ext. 6030

**Facility Characteristics**

Designated Facility Capacity: 1857		Current Population of Facility: 1616	
Number of inmates admitted to facility during the past 12 months			3402
Number of inmates admitted to facility during the past 12 months whose length of stay in the facility was for 30 days or more:			2366
Number of inmates admitted to facility during the past 12 months whose length of stay in the facility was for 72 hours or more:			2898
Number of inmates on date of audit who were admitted to facility prior to August 20, 2012:			30
Age Range of Population: 18-88	Youthful Inmates Under 18: 0	Adults: 1616	
Are youthful inmates housed separately from the adult population?		<input type="checkbox"/> Yes	<input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Number of youthful inmates housed at this facility during the past 12 months:			0
Average length of stay or time under supervision:			14 months, 9 days
Facility security level/inmate custody levels:			Medium, maximum (SHU), minimum work release
Number of staff currently employed by the facility who may have contact with inmates:			1068
Number of staff hired by the facility during the past 12 months who may have contact with inmates:			29
Number of contracts in the past 12 months for services with contractors who may have contact with inmates:			128
<b>Physical Plant</b>			
Number of Buildings: 103		Number of Single Cell Housing Units: 0	
Number of Multiple Occupancy Cell Housing Units:		100	
Number of Open Bay/Dorm Housing Units:		54	
Number of Segregation Cells (Administrative and Disciplinary):		175	
Description of any video or electronic monitoring technology (including any relevant information about where cameras are placed, where the control room is, retention of video, etc.): The facility utilizes limited video surveillance; a new body camera program has been implemented one week before the audit.			
Type of Medical Facility:		DOCCS Regional Medical Unit	
Forensic sexual assault medical exams are conducted at:		St. Luke's Hospital	
<b>Other</b>			
Number of volunteers and individual contractors, who may have contact with inmates, currently authorized to enter the facility:			208 volunteers128

	Medical contractor
Number of investigators the agency currently employs to investigate allegations of sexual abuse:	29

## Audit Narrative

On April 15-17, 2019, an audit was conducted at the Fishkill Correctional Facility by Amy Fairbanks and Danielle Boomhower-Frane to determine compliance with the Prison Rape Elimination Act standards finalized August 2012. The auditors were present at the facility from 8:00am to 6:00pm Monday, 8:00am to 6:00pm Tuesday and 8:00am to 1:00pm Wednesday. The facility was previously audited in 2016 and found to be in compliance with all standards. There were no barriers to completing the audit. The auditors were selected to complete the audit by responding to the request for auditors posted by the American Correctional Association.

### Audit Methodology:

The Online Audit Process was not used for this audit. Documentation was copied to a thumb drive and mailed to the auditors; it was accessed by the auditors March 21, 2019.

The facility reported that posters announcing the audit with the auditor's name and address were placed throughout the facility on March 5, 2019 announcing the audit, and again on March 12, 2019 identifying the auditors address in English and Spanish. They were observed by the facility throughout the audit during the tour(s). They stated the correspondence would be confidential and not disclosed unless required by law. The exceptions in the law were noted. They were located next to blue posters announcing the ACA audit (which had occurred two weeks prior to the PREA audit) and were salient.

Three confidential correspondence letters were received in response to the posters announcing the audit. For one, the inmate was no longer residing at the facility during the audit and could not be interviewed. For the other two, they were received post-marked after the on-site visit. One inmate wrote to personally testify that he has had no issues with sexual abuse while incarcerated at this facility.

The Pre-Audit Questionnaire was reviewed on March 21, 2019 and found to be complete with the exception of information about video monitoring and number of notifications sent to other facilities. This information was provided by facility staff and observed during the tour(s).

The audit team researched the internet and found no evidence of Department of Justice involvement. One new article was reviewed regarding a staff assault; it was discussed with the Superintendent. The auditors determined it had no bearing on whether the facility is complaint with the PREA standards. The Agency website was reviewed. Prior PREA Audit reports were located, how to make a third-party allegation were available a well as the mission statement. The auditors reviewed the mandatory reporting laws located on the PREA Resource Center website, laws regarding where and how juveniles are housed and laws regarding vulnerable adults.

Contact was made with Just Detention International, Inc. No specific information was provided as they had not received any concerns regarding this facility.

A tentative schedule was sent to the facility five days prior to the audit. A brief formal meeting was held with the Executive Team (eighteen staff total) and the auditors the morning of the first day of the audit. The following items were discussed:

- Purpose of audit

- Goals and expectations

- Tentative schedule

Tentative schedules were developed regarding the tour, interviews and review of additional documentation. It was discussed that interviews need to be in a private setting. Rosters of staff and inmates were provided; a list of random interviews was developed.

Documents reviewed for this audit include the Pre-audit questionnaire (PAQ), policies, contracts, accreditation reports, relevant laws (regarding juveniles and Vulnerable adults) training curriculums, staff training records, contractor/volunteer training records, logbooks, meeting minutes, population reports, sexual abuse incident review meeting minutes, and sexual abuse and harassment data. While on-site, additional random documents were requested or reviewed and are noted throughout the report. This included a log of investigations from February 2018 to February 2019 and a review of the summary of critical incidents from February 2018 to present. Camera monitoring operations were also examined.

A complete tour of the facility was conducted on April 15 and 16, 2019. The following areas and operations were visited and observed: inmate living areas, medical operations, intake operations, special housing units (restrictive housing, long term protective custody, infirmary, long term medical care housing), laundry services, industry operations library/education areas, chapel, programming areas, visiting room, maintenance and food service operations. All areas of the facility were visited that have inmate access. Supervision practices, blind spots, bathroom facilities, and placement and number of telephones were observed. Cross gender announcements were made prior to the opposite gender auditors entering the living units.

Formal interviews were conducted with the following: Superintendent, PREA Coordinator, PREA Compliance Manager, PREA Point Person (Captain), medical staff (Health Services Administrator, Chief Medical Officer, Director of Nursing, Office of Mental Health Unit Chief), Human Resources supervisor, 13 corrections officers from all areas of the facility and each shift (6:30am-2:30pm, 2:30pm to 10:30pm, and 10:30pm to 6:30am to include one from the confinement unit) six shift supervisors (including two from special housing units), two investigators, two counselors (Offender Rehabilitation Counselor, who complete 30 days follow up assessments), the intake sergeant (who completes a portion of the intake risk screening) the back-up training coordinator, the Volunteer Coordinator, one volunteer who was present during the audit, a librarian, a chaplain, two industry staff, the grievance coordinator, and informally one officer with five months experience and one industry staff during the tour.

A total of 54 inmates were selected to be interviewed. No youthful offenders are housed at this facility.

Targeted inmate interviews included the following:

one with limited English (auditor able to interview with limited Spanish skills)

one self-admitted as homosexual

one self-identified as transgender

two who initiated a sexual harassment complaint

three who self-reported as having prior victimization

one inmate who required assistive devices for mobility (wheelchair)

three inmates who are on the mental health caseload

one cognitively impaired inmate (interview was attempted)

two inmates who were in confinement

three inmates who were in long term protective custody

Inmate interviews were held in the private interview rooms. Inmates were interviewed from each housing unit.

Investigations are conducted by the Office of Special Investigations who report to the Deputy Commissioner/Chief of Investigations. A list of investigations from 2/1/2018 to 2/1/2019 was provided. Twenty two (22) investigations were reviewed. Sixteen (16) were closed, six (6) remained open at the time of the review.

Fourteen (14) Staff on inmate sexual abuse

Three (3) Inmate on inmate sexual abuse

Three (3) Staff on inmate sexual harassment

Two (2) Inmate on inmate sexual harassment

Zero (0) Retaliation allegations

Thirteen were deemed unsubstantiated, three were deemed to be unfounded.

The auditors were allowed free access to all areas of the facility, access to interview inmates and staff selected randomly and intentionally, and to see any documentation requested.

An Exit meeting was held with the Superintendent and his Executive staff (eighteen total attendees) to discuss audit experiences, observations and preliminary findings. It was noted that a final report should be expected within 45 days.

Documentation gathered was reviewed for compliance with the standards. A final report was written. No corrective action was required for this facility.

## Facility Characteristics

The Fishkill Correctional Facility is located in the Hudson Valley Region of New York, Dutchess County. The facility consists of 102 buildings and is located on 738 acres of land. It was originally built in the 1800's to serve as an institution who houses insane persons. Gradually as the philosophy of treatment of mentally ill changed the mission changed until in 1975 when the mission again changed and it was renamed Fishkill Correctional Facility. The facility has gradually had buildings added to expand the population and individual needs. It is a medium custody facility with many additional specialized populations. This includes a Special Housing Unit (200 beds), mental health treatment programs provided to approximately 600 inmates (Crisis Treatment Program, Intermediate Care, Transitional Intermediate Care), a Regional Medical Unit (cognitively impaired, long term care, dialysis, infirmary care, and specialty clinics), and work release.

There facility is well staffed; the executive team has significant seniority (many with 30 plus years of experience). Many staff are represented by a union.

There are vast programming opportunities at this facility which consists vocational programming, therapeutic programming, religious services, volunteers services, education (pre-GED, GED, ESL and college up to a bachelor's degree), industry program, and Puppies behind bars.

## Summary of Audit Findings

**Number of Standards Exceeded: 8**

§115.11 - Zero tolerance of sexual abuse and sexual harassment; PREA coordinator, §115.16 – Inmates with Disabilities and Inmates who are Limited English Proficient, §115.22 – Policies to Ensure Referrals of Allegations for Investigations, §115.34 – Specialized Training: Investigations, §115.41 – Screening for Risk of Victimization and Abusiveness, §115.42 – Use of Screening Information, §115.53 – Inmate Access to Outside Confidential Support Services, §115.67 – Agency protection against retaliation.

**Number of Standards Met: 37**

§115.12 - Contracting with other entities for the confinement of inmates §115.13 – Supervision and Monitoring §115.14 – Youthful Inmates §115.15 – Limits to Cross-Gender Viewing and Searches §115.17 – Hiring and Promotion Decisions §115.18 – Upgrades to Facilities and Technology §115.21 – Evidence Protocol and Forensic Medical Examinations §115.31 – Employee Training §115.32– Volunteer and Contractor Training §115.33 – Inmate Education §115.34 – Specialized Training: Investigations §115.35 – Specialized training: Medical and mental health care §115.43 – Protective Custody §115.51 – Inmate Reporting §115.52 – Exhaustion of Administrative Remedies §115.54 – Third-Party Reporting §115.61 –

Staff and Agency Reporting Duties §115.62 – Agency Protection Duties §115.63 – Reporting to Other Confinement Facilities §115.64 – Staff First Responder Duties §115.65 – Coordinated Response §115.66 – Preservation of ability to protect inmates from contact with abusers §115.68 – Post-Allegation Protective Custody §115.71 – Criminal and Administrative Agency Investigations §115.72 – Evidentiary Standard for Administrative Investigations §115.73 – Reporting to Inmate §115.76 – Disciplinary sanctions for staff §115.77 – Corrective action for contractors and volunteers §115.78 – Disciplinary sanctions for inmates §115.81 – Medical and mental health screenings; history of sexual abuse §115.82 – Access to emergency medical and mental health services §115.83 – Ongoing medical and mental health care for sexual abuse victims and abusers §115.86 – Sexual abuse incident reviews §115.87 – Data Collection §115.88 – Data Review for Corrective Action §115.89 – Data Storage, Publication, and Destruction §115.401 – Frequency & Scope of Audits §115.403 – Audit Contents & Findings  
Number of Standards Not Met: 0

### Summary of Corrective Action (if any)

After a thorough review of documents prior to the audit, the tour and interviews and document reviews conducted during the audit and the review of randomly requested documentation after the facility visit, the auditor found no areas requiring corrective action.

## PREVENTION PLANNING

### Standard 115.11: Zero tolerance of sexual abuse and sexual harassment; PREA coordinator

#### 115.11 (a)

- Does the agency have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment?  Yes  No
- Does the written policy outline the agency's approach to preventing, detecting, and responding to sexual abuse and sexual harassment?  Yes  No

#### 115.11 (b)

- Has the agency employed or designated an agency-wide PREA Coordinator?  Yes  No
- Is the PREA Coordinator position in the upper-level of the agency hierarchy?  Yes  No
- Does the PREA Coordinator have sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities?  
 Yes  No

#### 115.11 (c)

- If this agency operates more than one facility, has each facility designated a PREA compliance manager? (N/A if agency operates only one facility.)  Yes  No  NA
- Does the PREA compliance manager have sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards? (N/A if agency operates only one facility.)

Yes  No  NA

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a) The auditor reviewed excerpts from the following policies:

Directive #4027A, Sexual Abuse Prevention & Intervention-11/29/17 (Inmate-on-Inmate)

Inmate – on Inmate – II,III, IV D 1 which states that the agency has a zero tolerance for sexual abuse and sexual harassment. It further emphasizes that inmates and parolees have a right to be free from sexual abuse and sexual harassment. It supports that all matters of sexual abuse, sexual harassment and retaliation will be investigated and disciplinary action will occur up to prosecution. Definitions are provided for all aspects regarding inmate on inmate sexual abuse and harassment.

Directive #4028A, Sexual Abuse Prevention & Intervention-11/29/17

Staff – on Inmate/Staff-on-Parolee – II, III, V C. This policy states that the agency has a zero tolerance for sexual abuse and sexual harassment. It emphasizes that inmates and parolees have a right to be free from sexual abuse and sexual harassment. It supports that all matters of sexual abuse, sexual harassment and retaliation will be investigated and disciplinary action will occur up to prosecution. Definitions are provided regarding staff on inmate sexual abuse and harassment.

The policy further supports efforts in prevention, detection, response and investigation of sexual abuse, sexual harassment, protection from retaliation, investigation while ensuring the safety and treatment needs of a victim.

(b) The following documents support that the Agency has an agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities:

Memo from the Commissioner 3/14/2012 appointing the Agency wide PREA Coordinator who currently holds the position today.

Email announcement dated April 25, 2013 announcing that Jason Effman holds the rank of Associate Commissioner.

DOCCS Organizational Chart which indicates that the PREA Coordinator reports directly to the Commissioner.

Duties Description Associate Commissioner (PREA) Item #00901 Correctional Facility Operations Specialist  
The PREA Coordinator and his Correctional Facility Operations Specialist were on site for the complete first day of the audit. Questions were addressed at that time as well as the interviews conducted. The interview supports that he has sufficient time and authority to ensure all activities required by the PREA standards can be addressed.

(c) At this facility, an Assistant Deputy Superintendent (ADS) serves at the PREA Compliance Manager. In addition to the PREA Manager, each facility has a PREA Point person who works with the PREA Compliance Manager along with the Central Office Sexual Abuse Prevention & Education Office (SAPEO) who is the rank of Captain.

Duties Description for Assistant Deputy Superintendent SG-25(PREA) specifies the duties of the PREA compliance manager.

Facility Organization chart shows that the ADS reports to the First Deputy Superintendent who reports to the Superintendent.

Email from the Superintendent dated August 25, 2017 appointing the Captain as the PREA Point Person

After review of the policies, memos, organizational charts and interviews with the Superintendent, PREA Compliance Manager, PREA Point Person and the PREA Coordinator the auditor concluded that the agency and the facility are committed to the prevention, detection and response to sexual abuse and harassment. This state and this facility exceed the standards based on the detailed commitment to the standards that will be noted throughout this report.

## Standard 115.12: Contracting with other entities for the confinement of inmates

### 115.12 (a)

- If this agency is public and it contracts for the confinement of its inmates with private agencies or other entities including other government agencies, has the agency included the entity's obligation to comply with the PREA standards in any new contract or contract renewal signed on or after August 20, 2012? (N/A if the agency does not contract with private agencies or other entities for the confinement of inmates.)  Yes  No  NA

### 115.12 (b)

- Does any new contract or contract renewal signed on or after August 20, 2012 provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards? (N/A if the agency does not contract with private agencies or other entities for the confinement of inmates OR the response to 115.12(a)-1 is "NO".)  Yes  No  NA

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a) The Agency contracts for Community Based Residential Programs; the programs are required to adopt and comply with the PREA standards.

(b) Contracts do include the monitoring and requirement to maintain PREA compliance.

Finding of compliance based on the following: The facility does not oversee the contracted community confinement. However, the agency has provided contracts for the following: Bridges of Greater NY, Catholic Charities, Hillcrest House, Hope of Buffalo, Save Grace Ministries, Volunteers of America, Catholic Family Center, Fitzgerald House and Society of St. Vincent De Paul to support a finding of compliance as well as a memo from the Agency PREA coordinator supporting compliance. In addition, the Request for Application

for Community Based Residential Programs (CBRP) includes a requirement for compliance with the PREA standards.

## Standard 115.13: Supervision and monitoring

### 115.13 (a)

- Does the agency ensure that each facility has developed a staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring, to protect inmates against sexual abuse?  Yes  No
- Does the agency ensure that each facility has documented a staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring, to protect inmates against sexual abuse?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration the generally accepted detention and correctional practices in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration any judicial findings of inadequacy in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration any findings of inadequacy from Federal investigative agencies in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration any findings of inadequacy from internal or external oversight bodies in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration all components of the facility's physical plant (including "blind-spots" or areas where staff or inmates may be isolated) in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration the composition of the inmate population in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration the number and placement of supervisory staff in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration the institution programs occurring on a particular shift in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No  NA

- Does the agency ensure that each facility's staffing plan takes into consideration any applicable State or local laws, regulations, or standards in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration the prevalence of substantiated and unsubstantiated incidents of sexual abuse in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration any other relevant factors in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No

#### 115.13 (b)

- In circumstances where the staffing plan is not complied with, does the facility document and justify all deviations from the plan? (N/A if no deviations from staffing plan.)  
 Yes  No  NA

#### 115.13 (c)

- In the past 12 months, has the facility, in consultation with the agency PREA Coordinator, assessed, determined, and documented whether adjustments are needed to: The staffing plan established pursuant to paragraph (a) of this section?  Yes  No
- In the past 12 months, has the facility, in consultation with the agency PREA Coordinator, assessed, determined, and documented whether adjustments are needed to: The facility's deployment of video monitoring systems and other monitoring technologies?  Yes  No
- In the past 12 months, has the facility, in consultation with the agency PREA Coordinator, assessed, determined, and documented whether adjustments are needed to: The resources the facility has available to commit to ensure adherence to the staffing plan?  Yes  No

#### 115.13 (d)

- Has the facility/agency implemented a policy and practice of having intermediate-level or higher-level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment?  Yes  No
- Is this policy and practice implemented for night shifts as well as day shifts?  Yes  No
- Does the facility/agency have a policy prohibiting staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility?  Yes  No

#### Auditor Overall Compliance Determination

**Exceeds Standard** (*Substantially exceeds requirement of standards*)

**Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)

**Does Not Meet Standard** (*Requires Corrective Action*)

(a) (c) An annual staffing review dated June 12, 2018 entitled Annual Supervision and Monitoring Plan Review provides a detailed assessment of each of the categories required by the standard. The Review is sent to the Deputy Commissioner for Correctional Facilities and Agency PREA Coordinator for review and input as well as the Director of Security Staffing.

(b) Post Closure Reports are completed when a post is closed, explaining the reason.

(d) The Employee Manual indicates that employees are prohibited from alerting other employees that supervisory rounds are occurring, unless the announcement is related to legitimate operational functions. DIR #4001 8/26/2015 (rev. 2/07/2017) Facility Administrative Coverage & Supervisory rounds requires Security supervisors to conduct daily rounds and complete the Daily Security Supervisor Report which specifically addressed rounds being unannounced.

The policy and document excerpts noted above support a finding of compliance. The auditor requested and received copies of shift rosters for the 6th of each month for the past six months. Upon review, they support that officer assignments regarding inmate supervision are not closed; overtime is utilized to ensure the proper number of staff are present. In addition, random review of documentation of unannounced rounds during the tour demonstrated compliance with conducting supervisor unannounced rounds. Interviews with supervisors indicate that a strategy is used to make rounds at irregular intervals. The interview with the Superintendent, PREA Compliance Manager and PREA Point person also supported that the staffing roster is reviewed every two weeks to determine if adjustments are needed. A lieutenant is assigned to coordinate staff assignments on a full-time basis. Staffs were visible in each area of the facility if inmates were present. The physical plant is challenging; however, the auditors concluded that the inmates are safe; staff are active and present and found no concerns with staffing. Finally, this state has a strong union presence which leads the auditor to conclude that staffing levels will be maintained as agreed otherwise, they would intervene.

## Standard 115.14: Youthful inmates

### 115.14 (a)

- Does the facility place all youthful inmates in housing units that separate them from sight, sound, and physical contact with any adult inmates through use of a shared dayroom or other common space, shower area, or sleeping quarters? (N/A if facility does not have youthful inmates [inmates <18 years old].)  Yes  No  NA

### 115.14 (b)

- In areas outside of housing units does the agency maintain sight and sound separation between youthful inmates and adult inmates? (N/A if facility does not have youthful inmates [inmates <18 years old].)  Yes  No  NA
- In areas outside of housing units does the agency provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact? (N/A if facility does not have youthful inmates [inmates <18 years old].)  Yes  No  NA

### 115.14 (c)

- Does the agency make its best efforts to avoid placing youthful inmates in isolation to comply with this provision? (N/A if facility does not have youthful inmates [inmates <18 years old].)  
 Yes  No  NA
- Does the agency, while complying with this provision, allow youthful inmates daily large-muscle exercise and legally required special education services, except in exigent circumstances? (N/A if facility does not have youthful inmates [inmates <18 years old].)  Yes  No  NA
- Do youthful inmates have access to other programs and work opportunities to the extent possible? (N/A if facility does not have youthful inmates [inmates <18 years old].)  
 Yes  No  NA

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Fishkill Correctional Facility DIR #0023 11/7/2017 states, "This facility is used for the general confinement of males 18 years of age or older." Inmates under the age of 18 are housed at the Hudson Correctional Facility and Adirondack Adolescent Facility. The State of New York recently passed a "Raise the Age Law". "Based on these documents and the law, as well as observations made during the tour, the auditor finds this standard does not apply to this facility and therefore is deemed to be compliant.

### Standard 115.15: Limits to cross-gender viewing and searches

#### 115.15 (a)

- Does the facility always refrain from conducting any cross-gender strip or cross-gender visual body cavity searches, except in exigent circumstances or by medical practitioners?  
 Yes  No

#### 115.15 (b)

- Does the facility always refrain from conducting cross-gender pat-down searches of female inmates in non-exigent circumstances? (N/A here for facilities with less than 50 inmates before August 20, 2017.)  Yes  No  NA
- Does the facility always refrain from restricting female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision? (N/A here for facilities with less than 50 inmates before August 20, 2017.)  Yes  No  NA

### 115.15 (c)

- Does the facility document all cross-gender strip searches and cross-gender visual body cavity searches?  Yes  No
- Does the facility document all cross-gender pat-down searches of female inmates?  Yes  No

### 115.15 (d)

- Does the facility implement a policy and practice that enables inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks?  Yes  No
- Does the facility require staff of the opposite gender to announce their presence when entering an inmate housing unit?  Yes  No

### 115.15 (e)

- Does the facility always refrain from searching or physically examining transgender or intersex inmates for the sole purpose of determining the inmate's genital status?  Yes  No
- If an inmate's genital status is unknown, does the facility determine genital status during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner?  Yes  No

### 115.15 (f)

- Does the facility/agency train security staff in how to conduct cross-gender pat down searches in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs?  Yes  No
- Does the facility/agency train security staff in how to conduct searches of transgender and intersex inmates in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

The following policies and documents support a finding of compliance:

(a) Directive #2230 Guidelines for Assignment of Male and Female Correction Officers 9/14/2017 addresses which duties cannot be performed by opposite gender staff which includes strip searches, viewing showers, videos of strip searches, special watch, monitoring of inmate bathrooms via Closed-Circuit television (CCTV). Directive #4910 Control and Search for Contraband 11/7/2017 supports that strip searches shall be conducted by an Officer or employee of the same sex as the inmate being searched.

HSPM 1.37 Body Cavity Search 12/26/2016 states that this type of search is only authorized by the Superintendent, Acting Superintendent or Facility Officer of the Day upon approval form the Deputy Commissioner/Chief Medical Officer, or designee when there is imminent danger to an inmate's health or facility safety. A correction officer of the same sex as the inmate will be present during the exam.

(b) This facility does not house female inmates.

(c) Directive #4910 Control and Search for Contraband 11/7/2017 A strip search form (Form #1140) is completed for all inmates who are strip searched for probably cause.

(d) Directive #4001 Facility Administrative Coverage & Supervisory Rounds 2/7/2017 states that staff of the opposite gender shall verbally announce their arrival on a housing unit to avoid unnecessarily invading the privacy of inmate of the opposite gender. Directive #2230 Guidelines for Assignment of Male and Female Correction Officers 9/14/2017 states that staff of the opposite gender shall verbally announce their arrival on a housing unit to avoid unnecessary invasion of privacy.

(e) HSPM 1.19 Health Appraisal 5/21/2018 supports that a facility shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. If an inmate's genital status is unknown, the facility will determine genital status during conversations with the inmate, by reviewing medical records. It further states that a medical practitioner may conduct a full physical examination of an inmate when relevant to the treatment; such an exam will be conducted in private and with the patient's consent.

(f) Directive #4910 Control and Search for Contraband 11/7/2017 and excerpts from the training curriculum supports that staff are provided specific training which emphasizes professionalism and respect when searching inmates and when searching transgender inmates.

Review of the policies noted as well as all interviews with staff support a finding of compliance with this standard. Staffs were randomly asked if female staff were involved in conducting strip searches and all responses were an emphatic "no". Staff interviews support that all are aware that transgender inmates are not to be searched for the sole purpose of determining genital status. All staff and inmate interviews support that inmates are allowed to change clothes, shower and use the toilet without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Staff responses indicate that they are trained to how to conduct pat frisks of transgender and intersex inmates in a professional and respectful manner, and how to conduct searches of transgender and intersex inmates and in the least intrusive manner possible, consistent with security needs. Training emphasizes that staff be professional when conducting personal searches. Based on the policies noted, responses by staff and inmates when interviewed and observations, this standard is found to be complaint.

## **Standard 115.16: Inmates with disabilities and inmates who are limited English proficient**

### **115.16 (a)**

- Does the agency take appropriate steps to ensure that inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: inmates who are deaf or hard of hearing?  Yes  No
- Does the agency take appropriate steps to ensure that inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: inmates who are blind or have low vision?  Yes  No
- Does the agency take appropriate steps to ensure that inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: inmates who have intellectual disabilities?  Yes  No
- Does the agency take appropriate steps to ensure that inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: inmates who have psychiatric disabilities?  Yes  No
- Does the agency take appropriate steps to ensure that inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: inmates who have speech disabilities?  Yes  No
- Does the agency take appropriate steps to ensure that inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: Other (if "other," please explain in overall determination notes)?  Yes  No
- Do such steps include, when necessary, ensuring effective communication with inmates who are deaf or hard of hearing?  Yes  No
- Do such steps include, when necessary, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary?  Yes  No
- Does the agency ensure that written materials are provided in formats or through methods that ensure effective communication with inmates with disabilities including inmates who: Have intellectual disabilities?  Yes  No
- Does the agency ensure that written materials are provided in formats or through methods that ensure effective communication with inmates with disabilities including inmates who: Have limited reading skills?  Yes  No
- Does the agency ensure that written materials are provided in formats or through methods that ensure effective communication with inmates with disabilities including inmates who: Are blind or have low vision?  Yes  No

### 115.16 (b)

- Does the agency take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment to inmates who are limited English proficient?  Yes  No
- Do these steps include providing interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary?  Yes  No

### 115.16 (c)

- Does the agency always refrain from relying on inmate interpreters, inmate readers, or other types of inmate assistance except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first-response duties under §115.64, or the investigation of the inmate's allegations?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

The following policies and documents support a finding of compliance:

(a) Directive #2612 Inmates with Sensorial Disabilities states, references the Americans with Disabilities Act, noting that programs and services provided cannot discriminate against individuals with a disability who are qualified to receive them. Directive #2612 states that programs and services must ensure accessibility and usability by qualified inmates. Qualified sign language interpreters, Directive #4490 Cultural and Language Access Services 1/15/2016 and Language Line Contract also ensure accessibility.

"Ending Sexual Abuse Behind the Walls: An Orientation" is available with audio tracks and closed captioning in English, Spanish, Mandarin Chinese, Haitian Creole, Italian, Korean, Polish and Russian.

(b) Directive #4490 Cultural and Language Access Services 1/15/2016 ensures inmates with limited English skills will have meaningful access to programs, services and benefits. Pamphlet translations – The Prevention of Sexual Abuse in Prison What Inmates Need to Know is available in Spanish, Haitian-Creole, Russian, Polish, Italian, Chinese and Korean.

(c) Directive #2612 Inmates with Sensorial Disabilities 4/30/2015 supports that generally an inmate will not be used to interpret for another inmate for confidential/sensitive matters unless there are exigent circumstances. Directive #4490 Cultural and Language Access Services 1/15/2016 states, generally staff shall not rely on an inmate, family member or friend to interpret for communications that involve sensitive confidential or privileged information.

Review of the policies and other documents noted above support that the facility has gone above and beyond by providing information and the video caption in six additional languages. There are several staff who are bi-lingual (speak Spanish), including a counselor who has the caseload of all limited English inmates. Inmates are mandated to attend English As a Second Language (ESL) in this state. Each facility

has an American's with Disabilities Act Coordinator. This facility does not house blind or hard of hearing inmates; they are housed at other facilities equipped to address their needs. Due to the nature of the physical plant (steps and hills) and the age of the facility, inmates with disabilities are not housed at this facility in general population. This was supported by the auditor(s) observations during the tours. The Regional Medical Unit houses inmates needing long term medical care, inmates cognitively impaired and inmates who require short term infirmary care. Observations of the operations conclude that the inmates are housed safely with appropriate medical, nursing and security staff presence to meet their needs. The PREA Manager was the department's ADA Coordinator prior to her position which helps ensure the needs of those with disabilities will be addressed. For all these reasons, the auditor found sufficient evidence to support a finding of compliance.

## Standard 115.17: Hiring and promotion decisions

### 115.17 (a)

- Does the agency prohibit the hiring or promotion of anyone who may have contact with inmates who has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997)?  Yes  No
- Does the agency prohibit the hiring or promotion of anyone who may have contact with inmates who has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse?  Yes  No
- Does the agency prohibit the hiring or promotion of anyone who may have contact with inmates who has been civilly or administratively adjudicated to have engaged in the activity described in the question immediately above?  Yes  No
- Does the agency prohibit the enlistment of services of any contractor who may have contact with inmates who has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997)?  Yes  No
- Does the agency prohibit the enlistment of services of any contractor who may have contact with inmates who has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse?  Yes  No
- Does the agency prohibit the enlistment of services of any contractor who may have contact with inmates who has been civilly or administratively adjudicated to have engaged in the activity described in the question immediately above?  Yes  No

### 115.17 (b)

- Does the agency consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with inmates?  Yes  No

### 115.17 (c)

- Before hiring new employees, who may have contact with inmates, does the agency: perform a criminal background records check?  Yes  No
- Before hiring new employees, who may have contact with inmates, does the agency: consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse?  Yes  No

#### 115.17 (d)

- Does the agency perform a criminal background records check before enlisting the services of any contractor who may have contact with inmates?  Yes  No

#### 115.17 (e)

- Does the agency either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates or have in place a system for otherwise capturing such information for current employees?  Yes  No

#### 115.17 (f)

- Does the agency ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions?  Yes  No
- Does the agency ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph (a) of this section in any interviews or written self-evaluations conducted as part of reviews of current employees?  Yes  No
- Does the agency impose upon employees a continuing affirmative duty to disclose any such misconduct?  Yes  No

#### 115.17 (g)

- Does the agency consider material omissions regarding such misconduct, or the provision of materially false information, grounds for termination?  Yes  No

#### 115.17 (h)

- Does the agency provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work? (N/A if providing information on substantiated allegations of sexual abuse or sexual harassment involving a former employee is prohibited by law.)  Yes  No  NA

## Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a) The following documents support compliance:

- NYS Department of Correctional Services Personnel Procedure Manual #406A Recruitment Process – 4/8/16 – Forms: PPM 406A1, Recruitment Process Checklist, PPM 406A.2 Employment Telephone Verification
- Memo: from Director of Personnel, 4/30/14, RE: Personnel Procedure #407 – Civilian Promotions, Personal Procedure Manual #407A – Security Promotions, 4/29/14 indicates that prior to employment, every candidate will be reviewed for prior incidents of sexual abuse (criminal conviction or civil administrative finding). In addition, it states that the Department is prohibited from hiring anyone who has engaged in sexual abuse in a confinement setting, convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse or has been civilly or administratively adjudicated to have engaged in this type of activity.

(b) Memo: from Director of Personnel, 4/30/14, states a review will be conducted that identify any incidents of sexual harassment. In addition, RE: Personnel Procedure #407 – Civilian Promotions, Personal Procedure Manual #407A – Security Promotions, 4/29/14 states that the Department is required to consider any incidents of sexual harassment in determining whether to promote anyone who may have contact with inmates.

(c) (d) The following documents support a finding of compliance:

- Directive #2216, Fingerprinting/Criminal History Inquiry - New Employees and Contractors – 8/15/17 requires the background check for all employees and contractors as well as verification of information on the employment application. Attachment A identifies the process for fingerprinting potential employees, employees, contractors and interns.
- NYS Department of Correctional Services Personnel Procedure Manual #406A Recruitment Process – 4/8/16 specifically requires that previous employers shall be contacted for candidates previously employed by a prison, jail, lock up community confinement or juvenile facility. The contact is documented on the form PPM 406A.2 Employment Telephone Verification.
- This requirement is included on the Forms: PPM 406A1, Recruitment Process Checklist.

(e) Memo: from Deputy Commissioner and Counsel, 8/18/15, RE: Prison Rape Elimination Act (PREA) – Background Checks – Appendix and Directive #2112, Report of Criminal Charges – 4/10/18. All staff and contractors are fingerprinted prior to employment. The EIU is notified if an arrest is made corresponding to the employee/contractor fingerprint.

(f) The following documents support a finding of compliance:

- Electronic Mail Memo: from Director of Personnel, 7/15/15, RE: Fair Chance Hiring Application Revisions and Statewide Employment Application
- Form 1253 - Personal History and Interview Record - 4/13, Availability Inquiry Correction Sergeant, Availability Inquiry Correction Lieutenant. Form EIU23 - Personal History Questionnaire – (Rev. 6/15) specifically asks all candidates if they have been convicted of a crime involving sexual activity

by overt or implied threats of force, or coercion or if the victim did not consent; or if the victim was unable to consent as well as if the candidate has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution.

(g) Form EIU23 - Personal History Questionnaire – (Rev. 6/15) The beginning of the questionnaire specifically informs all candidates that all questions must be answered truthfully as the state law and civil service commission rules have the force and effect of law and provide penalties for making a false statement of material fact in any application.

(h) Directive #2012, Release of Employee Personnel and Payroll Information - 8/7/15 states information about a former employee will be provided to State agencies without authorization and provided to parties other than State agencies with authorization.

Review of policy directives, Employee Manual, and the application process support compliance. The Agency has an Employee Investigative Unit (EIU) designated to conduct background checks which does conduct a national search for criminal records. The Agency uses a system which notifies them when a current employee has been arrested so that the circumstances can be investigated. The Employee Manual, which each staffs signs an acknowledgment of receipt, notifies employees of a continuing duty to report. Reference checks are conducted by central office; information provided to other states would be provided by central office with a signed release. The following additional documents were reviewed: randomly requested documentation for newly hired staff, staff who have promoted and contractual staff with the last name beginning with D, M and T. Review of the files demonstrated documentation of applicants (new hires and those promoting) asked the questions required, staff having been fingerprinted, staff having signed for receipt of the Employee Manual (continuing duty to report) and back ground checks completed. The Interview with the Human Resources Manager confirms that this information is gathered and maintained as required by the standards. The interview with the investigator further noted that a letter is initiated for staff who resign pending investigation for placement in the personnel file should a reference check be requested from another potential employer.

## Standard 115.18: Upgrades to facilities and technologies

### 115.18 (a)

- If the agency designed or acquired any new facility or planned any substantial expansion or modification of existing facilities, did the agency consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect inmates from sexual abuse? (N/A if agency/facility has not acquired a new facility or made a substantial expansion to existing facilities since August 20, 2012, or since the last PREA audit, whichever is later.)  
 Yes    No    NA

### 115.18 (b)

- If the agency installed or updated a video monitoring system, electronic surveillance system, or other monitoring technology, did the agency consider how such technology may enhance the agency's ability to protect inmates from sexual abuse? (N/A if agency/facility has not installed or updated a video monitoring system, electronic surveillance system, or other monitoring technology since August 20, 2012, or since the last PREA audit, whichever is later.)  
 Yes    No    NA

## Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a)(b) Directive #3053, Alterations and Construction Request 6/25/18 specifically notes that prior to submitting a request to alter or construct a building, the ability to protect inmates from sexual abuse must be reviewed. In addition it states, when designing or acquiring any new facility or planned any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect inmates from sexual abuse. When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect inmates from sexual abuse. Form 1612 Part IV addresses these requirements, specifically requiring that the ability to enhance safety and protect the inmate from sexual abuse is addressed prior to approval of the plans.

Policy noted above supports that sexual abuse and sexual harassment prevention will be considered when making changes to the physical plant or upgrading the camera system. The interview with the Superintendent supports this as well. As noted, the facility has implemented a new body-worn camera system one week ago. PREA situations are addressed with staff regarding when to turn the audio/visual camera on in addition to other circumstances. The food service area is in the process of being remodeled. The Superintendent indicates that when he meets with the contractors, inmate safety, including PREA concerns are discussed. Based on this, the auditor finds that standard to be compliant.

## RESPONSIVE PLANNING

### Standard 115.21: Evidence protocol and forensic medical examinations

#### 115.21 (a)

- If the agency is responsible for investigating allegations of sexual abuse, does the agency follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions? (N/A if the agency/facility is not responsible for conducting any form of criminal OR administrative sexual abuse investigations.)  
 Yes    No    NA

#### 115.21 (b)

- Is this protocol developmentally appropriate for youth where applicable? (N/A if the agency/facility is not responsible for conducting any form of criminal OR administrative sexual abuse investigations.)  Yes    No    NA
- Is this protocol, as appropriate, adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011? (N/A if the agency/facility is

not responsible for conducting any form of criminal OR administrative sexual abuse investigations.)  Yes  No  NA

#### 115.21 (c)

- Does the agency offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiary or medically appropriate?  Yes  No
- Are such examinations performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible?  Yes  No
- If SAFEs or SANEs cannot be made available, is the examination performed by other qualified medical practitioners (they must have been specifically trained to conduct sexual assault forensic exams)?  Yes  No
- Has the agency documented its efforts to provide SAFEs or SANEs?  Yes  No

#### 115.21 (d)

- Does the agency attempt to make available to the victim a victim advocate from a rape crisis center?  Yes  No
- If a rape crisis center is not available to provide victim advocate services, does the agency make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member?  Yes  No
- Has the agency documented its efforts to secure services from rape crisis centers?  Yes  No

#### 115.21 (e)

- As requested by the victim, does the victim advocate, qualified agency staff member, or qualified community-based organization staff member accompany and support the victim through the forensic medical examination process and investigatory interviews?  Yes  No
- As requested by the victim, does this person provide emotional support, crisis intervention, information, and referrals?  Yes  No

#### 115.21 (f)

- If the agency itself is not responsible for investigating allegations of sexual abuse, has the agency requested that the investigating entity follow the requirements of paragraphs (a) through (e) of this section? (N/A if the agency/facility is responsible for conducting criminal AND administrative sexual abuse investigations.)  Yes  No  NA

#### 115.21 (g)

- Auditor is not required to audit this provision.

### 115.21 (h)

- If the agency uses a qualified agency staff member or a qualified community-based staff member for the purposes of this section, has the individual been screened for appropriateness to serve in this role and received education concerning sexual assault and forensic examination issues in general? [N/A if agency attempts to make a victim advocate from a rape crisis center available to victims per 115.21(d) above.]  Yes  No  NA

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a) Directive #4027B Sexual Abuse Prevention & Intervention-11/29/17 outlines in detail the requirements for the collection of evidence regarding inmate on inmate abuse for use under the rare situation when evidence must be collected at the facility level. The Office of Special Investigations (OSI) Sex Crimes Division (SCD) conducts investigations involving sexual misconduct involving staff.

(b) A National Protocol for Sexual Assault Medical Forensic Examinations is used.

(c)(d)(e) HSPM1.60 Sexual Assault states the following:

All treatment will be provided without financial liability regardless of whether the victim cooperates in the investigation. Inmates victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services expeditiously to a hospital staffed with a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) and a victim advocate available to provide services.

(f) The New York Department of Corrections and Community Supervision (DOCCS), Office of the Inspector General (IG), Sex Crimes Unit (SCU) and the New York State Police (NYSP), Bureau of Criminal Investigation (BCI) work cooperatively in the investigation of inmates' sexual abuse that may rise to criminal conduct.

(g) Auditor not required to audit this provision.

(h) Not applicable to this facility

Finding of compliance based on the following: Interviews with the supervisor and one investigator involved in investigations at this facility support a finding of compliance in addition to the policies and documents noted above. The current investigator has become certified for evidence collection and photographing of evidence, above and beyond the specialized training required of investigators. For this reason, and due to the specialized nature of the investigators from the Sex Crimes Unit, the auditor finds that the facility exceeds the standard.

## Standard 115.22: Policies to ensure referrals of allegations for investigations

### 115.22 (a)

- Does the agency ensure an administrative or criminal investigation is completed for all allegations of sexual abuse?  Yes  No
- Does the agency ensure an administrative or criminal investigation is completed for all allegations of sexual harassment?  Yes  No

### 115.22 (b)

- Does the agency have a policy and practice in place to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior?  Yes  No
- Has the agency published such policy on its website or, if it does not have one, made the policy available through other means?  Yes  No
- Does the agency document all such referrals?  Yes  No

### 115.22 (c)

- If a separate entity is responsible for conducting criminal investigations, does such publication describe the responsibilities of both the agency and the investigating entity? [N/A if the agency/facility is responsible for criminal investigations. See 115.21(a).]  Yes  No  NA

### 115.22 (d)

- Auditor is not required to audit this provision.

### 115.22 (e)

- Auditor is not required to audit this provision.

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a)(b) Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee -Both require that all allegations of sexual abuse and sexual harassment or retaliation for reporting such an incident be thoroughly investigated. It further states it will be promptly initiated; the OSI will determine the appropriate investigative response. Directive #0700 Office of Special Investigations 3/9/2018 supports that this will occur as well.

(c) Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee are available of the department website for review.

Policies noted above, interviews with the investigators and review of twenty-two investigations from the 12-month audit time frame support that investigations are all appropriately addressed by the OSI involving sexual abuse and sexual harassment, or retaliation and staff neglect that led to sexual abuse or sexual harassment. These investigations are initiated promptly with investigators being contacted immediately in accordance with the facility's coordinated response. The OSI has legal investigative authority within the State of New York and also collaborates with the State Police on any matters that may appear to be criminal.

## TRAINING AND EDUCATION

### Standard 115.31: Employee training

#### 115.31 (a)

- Does the agency train all employees who may have contact with inmates on its zero-tolerance policy for sexual abuse and sexual harassment?  Yes  No
- Does the agency train all employees who may have contact with inmates on how to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures?  Yes  No
- Does the agency train all employees who may have contact with inmates on inmates' right to be free from sexual abuse and sexual harassment  Yes  No
- Does the agency train all employees who may have contact with inmates on the right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment?  Yes  No
- Does the agency train all employees who may have contact with inmates on the dynamics of sexual abuse and sexual harassment in confinement?  Yes  No
- Does the agency train all employees who may have contact with inmates on the common reactions of sexual abuse and sexual harassment victims?  Yes  No
- Does the agency train all employees who may have contact with inmates on how to detect and respond to signs of threatened and actual sexual abuse?  Yes  No
- Does the agency train all employees who may have contact with inmates on how to avoid inappropriate relationships with inmates?  Yes  No

- Does the agency train all employees who may have contact with inmates on how to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates?  Yes  No
- Does the agency train all employees who may have contact with inmates on how to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities?  Yes  No

#### 115.31 (b)

- Is such training tailored to the gender of the inmates at the employee's facility?  Yes  No
- Have employees received additional training if reassigned from a facility that houses only male inmates to a facility that houses only female inmates, or vice versa?  Yes  No

#### 115.31 (c)

- Have all current employees who may have contact with inmates received such training?  Yes  No
- Does the agency provide each employee with refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures?  Yes  No
- In years in which an employee does not receive refresher training, does the agency provide refresher information on current sexual abuse and sexual harassment policies?  Yes  No

#### 115.31 (d)

- Does the agency document, through employee signature or electronic verification, that employees understand the training they have received?  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

The following documents show compliance with this standard:

(a) Training Manual Subject: 0.100 - Frequency Training Chart and Training Bulletins - 7/12/18 - confirms that PREA Training is provided every two years, and a module on Professional Boundaries provided annually. Sexual Abuse Prevention and Response Lesson Plan - March 2015 demonstrates that training covers the following topics: Definitions, Zero Tolerance Policy, Inmate/Parolee right to be free from sexual abuse and sexual harassment, inmates have the right to be free from retaliation for reporting sexual abuse

or harassment, dynamics of sexual abuse and sexual harassment in confinement for males inmates and female inmates, common reactions of victims, communicating effectively with lesbian, gay, bisexual, transgender and intersex, or gender nonconforming inmates, how to avoid inappropriate relationships, employee responsibilities of prevention, detection, reporting and response and mandatory reporting. Subject 7.000 40 Hour Orientation/Initial Employee Training confirms that PREA training is provided to all new employees, a 3 hour course.

(b) In-Service Training Program specifies that all transfer staff receive familiarization on compliance with PREA and the Department's Sexual Abuse Prevention and Response procedures. It further states that the training will be tailored to the gender of the inmates at the facility, including gender dynamics, for staff who are transferring from a facility that houses opposite gender staff that they on they worked.

(c) Training Manual Subject: 0.100 - Frequency Training Chart and Training Bulletins - 7/12/18 - confirms that PREA Training is provided every two years, and a module on Professional Boundaries provided annually.

(d) The training form signed by staff after completion of training states, "by signing below you confirm that you participated in the Prevention of Sexual Abuse – PREA training program and that you understand the training that you have received."

The auditor requested and received documentation showing that all direct care staff have been trained regarding PREA. The training curriculum supports that all ten topics required by the standard are thoughtfully and thoroughly addressed in the curriculum. The training provides information specific to both male and female inmates therefore all staff have received training tailored to the gender of the inmate. Training occurs every two years with a refresher training annually. All staff interviews support that staff have received the training and staff were knowledgeable regarding the various aspects required by the standard.

## Standard 115.32: Volunteer and contractor training

### 115.32 (a)

- Has the agency ensured that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection, and response policies and procedures?  Yes  No

### 115.32 (b)

- Have all volunteers and contractors who have contact with inmates been notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents (the level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with inmates)?  Yes  No

### 115.32 (c)

- Does the agency maintain documentation confirming that volunteers and contractors understand the training they have received?  Yes  No

## Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a)(b) Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee , 11/29/17, Directive 4750 Volunteer Services Program, and Directive #4071 Guidelines for Construction Projects require that contractors, contract employees, volunteers and interns shall receive orientation and periodic in-service training consistent with their level of inmate contact relating to the prevention, detection, and response to sexual abuse and sexual harassment. Standards for Conduct for Volunteers within the New York State Department of Corrections and Community Supervision Form #4750 Guidelines for Construction Projects provide written information for contract workers which also require a signed acknowledgment form.

(c) Standards for Conduct for Volunteers within the New York State Department of Corrections and Community Supervision Form #4750 Guidelines for Construction Projects provide written information for contract workers which also require a signed acknowledgment form.

The auditor was given access to all volunteer records. Five records randomly selected demonstrated that volunteers receive background checks and sign acknowledgements noting the volunteer/contractor understands the policy on prevention of sexual abuse and sexual harassment in a confinement setting were included in the documentation. These files were very organized. The process to ensure this occurs was verified with the volunteer coordinator. Typically, contractual nurses are used in the Regional Medical /Unit and the Mental Health Unit. Staff who conduct orientation for non-custody employees discussed how these staff are identified and receive orientation in which PREA is discussed. Contractual staff sign acknowledgements noting that understood the training they receive. Four examples were provided demonstrating that construction staff are asked to review and sign acknowledgments noting they understand the policies regarding PREA compliance and agree to abide by them.

## Standard 115.33: Inmate education

### 115.33 (a)

- During intake, do inmates receive information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment?  Yes  No
- During intake, do inmates receive information explaining how to report incidents or suspicions of sexual abuse or sexual harassment?  Yes  No

### 115.33 (b)

- Within 30 days of intake, does the agency provide comprehensive education to inmates either in person or through video regarding: Their rights to be free from sexual abuse and sexual harassment?  Yes  No

- Within 30 days of intake, does the agency provide comprehensive education to inmates either in person or through video regarding: Their rights to be free from retaliation for reporting such incidents?  Yes  No
- Within 30 days of intake, does the agency provide comprehensive education to inmates either in person or through video regarding: Agency policies and procedures for responding to such incidents?  Yes  No

#### 115.33 (c)

- Have all inmates received such education?  Yes  No
- Do inmates receive education upon transfer to a different facility to the extent that the policies and procedures of the inmate's new facility differ from those of the previous facility?  Yes  No

#### 115.33 (d)

- Does the agency provide inmate education in formats accessible to all inmates including those who are limited English proficient?  Yes  No
- Does the agency provide inmate education in formats accessible to all inmates including those who are deaf?  Yes  No
- Does the agency provide inmate education in formats accessible to all inmates including those who are visually impaired?  Yes  No
- Does the agency provide inmate education in formats accessible to all inmates including those who are otherwise disabled?  Yes  No
- Does the agency provide inmate education in formats accessible to all inmates including those who have limited reading skills?  Yes  No

#### 115.33 (e)

- Does the agency maintain documentation of inmate participation in these education sessions?  Yes  No

#### 115.33 (f)

- In addition to providing such education, does the agency ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats?  Yes  No

#### Auditor Overall Compliance Determination

**Exceeds Standard** (*Substantially exceeds requirement of standards*)

**Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)

**Does Not Meet Standard** (*Requires Corrective Action*)

(a) Directive #4021 Offender Reception/Classification states PREA pamphlets are distributed to each offender upon arrival.

(b) PREA – Sexual Abuse Prevention Inmate Orientation Outline indicates presenters are available at orientation with a guideline of all information that should be presented.

(c) The inmate handbook, received upon arrival provides detailed information regarding PREA as well as a pamphlet entitled, The Prevention of Sexual Abuse in Prison, What Inmates Need to Know. This pamphlet highlights the inmates' right to be free from sexual abuse and sexual harassment, their right to be free from retaliation, and how to make a complaint should they believe they are subjected to this behavior from staff or inmates. As noted, this can provided to the inmate in English plus seven different languages.

(d) See comments in 115.16. The facility has Compact Discs (CD's) and Tape Cassettes that provides visually impaired inmates with PREA information.

(e) Form 115.33 Report of Inmate Training Participation Prevention of Sexual Abuse PREA requires the inmate to sign that he has seen the video "Ending the Sexual Abuse Behind the Walls: An Orientation". A portion of the video shown to the inmates was filmed at this facility.

(f) Numerous posters addressing this information were observed throughout the facility. Inmates housed in general population watch a video and discuss contents. Inmates interviewed verified that they were informed about their right to be free from abuse and harassment, which includes retaliation, and various methods available to them to initiate an investigation, including third party complaints, and how to file a complaint. The auditor randomly requested and received signature sheets for orientation for inmates in general population for the month of March 2019.

Review of the policy, inmate interviews regarding their knowledge of PREA and verification of the process in place, in addition to formal and informal interviews with staff all support that the facility is meeting the requirements of this standard.

## **Standard 115.34: Specialized training: Investigations**

### **115.34 (a)**

- In addition to the general training provided to all employees pursuant to §115.31, does the agency ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings? (N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.21(a).)  Yes  No  NA

### **115.34 (b)**

- Does this specialized training include techniques for interviewing sexual abuse victims? [N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.21(a).]  Yes  No  NA
- Does this specialized training include proper use of Miranda and Garrity warnings? [N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.21(a).]  Yes  No  NA
- Does this specialized training include sexual abuse evidence collection in confinement settings? [N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.21(a).]  Yes  No  NA
- Does this specialized training include the criteria and evidence required to substantiate a case for administrative action or prosecution referral? [N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.21(a).]  Yes  No  NA

#### 115.34 (c)

- Does the agency maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations? [N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.21(a).]  Yes  No  NA

#### 115.34 (d)

- Auditor is not required to audit this provision.

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a)(b) Office of Special Investigations, Sex Crimes Division training curriculum for PREA includes an overview of the PREA law, state law, staff and inmate sexual abuse definitions, duty to report, evidence protocols, effective communication with special populations, privacy for interviews, techniques for interviewing victims, credibility assessment, criteria to determine substantiated, unfounded and unsubstantiated investigations, Miranda and Garrity warnings. Investigators also received the standard PREA training, as confirmed by interviews with the investigators and documentation.

(c) Documentation was provided showing that investigators signed the Report of Training Form for "Investigating Physical and Sexual Abuse in Institutional Settings."

Policy noted above and additional documentation showing the training curriculum support a finding of compliance. As noted, documentation was provided that showed that the investigative staff designated for

this facility also received additional specialized training in Crime Scene Evidence, NIC Investigator training, and Evidence Technician Certification. Therefore, the auditor finds that the facility exceeds the standards.

## Standard 115.35: Specialized training: Medical and mental health care

### 115.35 (a)

- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in how to detect and assess signs of sexual abuse and sexual harassment?  Yes  No
- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in how to preserve physical evidence of sexual abuse?  Yes  No
- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in how to respond effectively and professionally to victims of sexual abuse and sexual harassment?  Yes  No
- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in how and to whom to report allegations or suspicions of sexual abuse and sexual harassment?  Yes  No

### 115.35 (b)

- If medical staff employed by the agency conduct forensic examinations, do such medical staff receive appropriate training to conduct such examinations? (N/A if agency medical staff at the facility do not conduct forensic exams.)  Yes  No  NA

### 115.35 (c)

- Does the agency maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere?  Yes  No

### 115.35 (d)

- Do medical and mental health care practitioners employed by the agency also receive training mandated for employees by §115.31?  Yes  No
- Do medical and mental health care practitioners contracted by and volunteering for the agency also receive training mandated for contractors and volunteers by §115.32?  Yes  No

### Auditor Overall Compliance Determination

**Exceeds Standard** (*Substantially exceeds requirement of standards*)

**Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)

**Does Not Meet Standard** (*Requires Corrective Action*)

(a) Mental Health staff work in Department of Corrections facilities for the Office of Mental Health through a Memorandum of Understanding. This MOU includes the requirement for PREA training including the specialized training for medical and mental health staff. Medical staffs are Department of Corrections employees. Both attend Specialized PREA Training for Medical and Mental Health Providers which includes how to detect and assess signs of sexual abuse and sexual harassment, how to report and who to report to allegations or suspicions of sexual abuse and sexual harassment, and evidence collection preservation.

(b) Not applicable.

(c) (d) Staff signs the completion of Training Form acknowledging participation in the course; records are maintained by the training staff.

Policy noted above, documentation showing that all medical/mental health staff have received the specialized training and interviews with the medical, mental health and director of Nursing demonstrate knowledge of the requirements of this standard support a finding of compliance.

## SCREENING FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS

### Standard 115.41: Screening for risk of victimization and abusiveness

#### 115.41 (a)

- Are all inmates assessed during an intake screening for their risk of being sexually abused by other inmates or sexually abusive toward other inmates?  Yes  No
- Are all inmates assessed upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates?  Yes  No

#### 115.41 (b)

- Do intake screenings ordinarily take place within 72 hours of arrival at the facility?  
 Yes  No

#### 115.41 (c)

- Are all PREA screening assessments conducted using an objective screening instrument?  
 Yes  No

#### 115.41 (d)

- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (1) Whether the inmate has a mental, physical, or developmental disability?  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (2) The age of the inmate?  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (3) The physical build of the inmate?  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (4) Whether the inmate has previously been incarcerated?  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (5) Whether the inmate's criminal history is exclusively nonviolent?  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (6) Whether the inmate has prior convictions for sex offenses against an adult or child?  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming (the facility affirmatively asks the inmate about his/her sexual orientation and gender identity AND makes a subjective determination based on the screener's perception whether the inmate is gender non-conforming or otherwise may be perceived to be LGBTI)?  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (8) Whether the inmate has previously experienced sexual victimization?  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (9) The inmate's own perception of vulnerability?  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (10) Whether the inmate is detained solely for civil immigration purposes?  Yes  No

#### 115.41 (e)

- In assessing inmates for risk of being sexually abusive, does the initial PREA risk screening consider, when known to the agency: prior acts of sexual abuse?  Yes  No

- In assessing inmates for risk of being sexually abusive, does the initial PREA risk screening consider, when known to the agency: prior convictions for violent offenses?  Yes  No
- In assessing inmates for risk of being sexually abusive, does the initial PREA risk screening consider, when known to the agency: history of prior institutional violence or sexual abuse?  Yes  No

#### 115.41 (f)

- Within a set time period not more than 30 days from the inmate's arrival at the facility, does the facility reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening?  Yes  No

#### 115.41 (g)

- Does the facility reassess an inmate's risk level when warranted due to a: Referral?  Yes  No
- Does the facility reassess an inmate's risk level when warranted due to a: Request?  Yes  No
- Does the facility reassess an inmate's risk level when warranted due to a: Incident of sexual abuse?  Yes  No
- Does the facility reassess an inmate's risk level when warranted due to a: Receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness?  Yes  No

#### 115.41 (h)

- Is it the case that inmates are not ever disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (d)(1), (d)(7), (d)(8), or (d)(9) of this section?  Yes  No

#### 115.41 (i)

- Has the agency implemented appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates?  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)

**Does Not Meet Standard** (*Requires Corrective Action*)

(a) (b) Directive 4027A, Sexual Abuse Prevention & Intervention Inmate-on-Inmate requires that all inmates be screened upon arrival at each facility for any indication of risk of abuse or being abused. Facility Operations Manual PREA Risk Screening states Screening will be completed by a sergeant or above ordinarily within 24 hours of arrival.

(c), (d), (e) An objective screening tool is used that considers the following information:

Risk of Sexual Victimization:

mental, physical, development disability

age

physical build

incarcerated for less than two years

convictions for sex offense against an adult or child

self identifies as gay, lesbian, bisexual, transgender, intersex or gender nonconforming

previous experience as a victim of sexual abuse

inmate's perception of risk for sexual abuse

detained solely for civil immigration

Risk of Sexual Abusiveness:

conviction for a crime related to sexual abuse in correctional setting

history of committing institutional sexual abuse

convicted of a violent offense

history of institutional violence

(f) Facility Operations Manual PREA Risk Screening states Inmates will be reassessed by an assigned Offender Rehabilitation Coordinator (ORC) ordinarily within 14 days of arrival. A final risk assessment determination shall ordinarily be made by the Assistant Deputy Superintendent PREA Compliance Manager within 30 days of the inmate's arrival at the facility.

(g) Facility Operations Manual PREA Risk Screening states, If at any time additional information is received due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness, an inmate's risk level will be reassessed. Reassessment is noted on the same intake screening.

(h) Facility Operations Manual PREA Risk Screening states, Inmates will not be disciplined for refusing to answer or for not disclosing complete information in response to questions asked.

(i) Facility Operations Manual PREA Risk Screening states, PREA Intake Screening Forms (Form 115.41M/115.41F) are confidential. The completed form shall be filed in the Guidance Folder (Assessments Section), and distribution shall be limited to the Watch Commander, Assistant Deputy Superintendent PREA Compliance Manager and Captain/PREA Point Person. Access to completed forms is limited to the Executive Team and Guidance Staff with a business necessity to review the completed forms. Noted on the form is the following: Information contained on this form shall not be disclosed to anyone other than the extent necessary to make security, classification, housing/placement, programing, treatment, investigation and other security and management options.

The intake screening process is conducted upon arrival by a sergeant to determine any triggers. Additionally, there are PREA related questions that are asked by the medical staff as well during the intake. Any pertinent information is immediately reported to the Watch Commander, Assistant Deputy Superintendent (PREA Compliance Manager) and Captain/PREA Point Person. Within a few days of being assigned to the housing unit, the unit counselor meets with the inmate for an additional assessment. The

Assistant Deputy Superintendent (PREA Compliance Manager) reviews and makes a final determination on the risk assessment. The auditor viewed the area in which the assessment are stored and only staff with authorization have access to view them. There were staff interviews with one sergeant that is assigned to conduct the screenings as well as two counselors who are responsible for completing the risk assessment. The staffs were extremely knowledgeable on their roles and were able to demonstrate to the auditor the importance of the information that they receive and the reason it needs to remain confidential. The auditor was shown the area in which this review takes place, which is private. Five randomly selected inmates were asked during their interviews if they felt they would be disciplined for refusing to answer; all stated "No". The auditor finds that the facility finding based on the immediate review, secondary, third and final review of the assessment process as well as the procedure to ensure the safety of the inmate based on the finding. The final analysis of the evidence for this standard indicates the facility has provided the information for this auditor to make a final determination. Based upon this analysis, the auditor finds the facility substantially exceeds compliance with this standard.

## Standard 115.42: Use of screening information

### 115.42 (a)

- Does the agency use information from the risk screening required by § 115.41, with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Housing Assignments?  Yes  No
- Does the agency use information from the risk screening required by § 115.41, with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Bed assignments?  Yes  No
- Does the agency use information from the risk screening required by § 115.41, with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Work Assignments?  Yes  No
- Does the agency use information from the risk screening required by § 115.41, with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Education Assignments?  Yes  No
- Does the agency use information from the risk screening required by § 115.41, with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Program Assignments?  Yes  No

### 115.42 (b)

- Does the agency make individualized determinations about how to ensure the safety of each inmate?  Yes  No

### 115.42 (c)

- When deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, does the agency consider on a case-by-case basis whether a placement would

ensure the inmate's health and safety, and whether a placement would present management or security problems (NOTE: if an agency by policy or practice assigns inmates to a male or female facility on the basis of anatomy alone, that agency is not in compliance with this standard)?  Yes  No

- When making housing or other program assignments for transgender or intersex inmates, does the agency consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether a placement would present management or security problems?  Yes  No

#### 115.42 (d)

- Are placement and programming assignments for each transgender or intersex inmate reassessed at least twice each year to review any threats to safety experienced by the inmate?  Yes  No

#### 115.42 (e)

- Are each transgender or intersex inmate's own views with respect to his or her own safety given serious consideration when making facility and housing placement decisions and programming assignments?  Yes  No

#### 115.42 (f)

- Are transgender and intersex inmates given the opportunity to shower separately from other inmates?  Yes  No

#### 115.42 (g)

- Unless placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting lesbian, gay, bisexual, transgender, or intersex inmates, does the agency always refrain from placing: lesbian, gay, and bisexual inmates in dedicated facilities, units, or wings solely on the basis of such identification or status?  Yes  No
- Unless placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting lesbian, gay, bisexual, transgender, or intersex inmates, does the agency always refrain from placing: transgender inmates in dedicated facilities, units, or wings solely on the basis of such identification or status?  Yes  No
- Unless placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting lesbian, gay, bisexual, transgender, or intersex inmates, does the agency always refrain from placing: intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status?  Yes  No

## Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a) Facility Operations Manual PREA Risk Screening states, A copy of this form shall be provided to the movement and control officer for housing and bed assignments, the housing unit sergeant and the program committee chairperson who shall use the information to determine appropriate work, education, and program assignments. This is documented through a Memorandum, Report of PREA Risk Screening Information.

(b) Facility Operations Manual PREA Risk Screening states, If the inmate is assessed as potentially being at “high risk of sexual victimization” or “high risk of being sexually abusive,” an immediate referral shall be made to the Watch Commander for housing assignment. . . . The Watch Commander shall determine the most appropriate housing assignment with the goal of keeping separate inmates at high risk of sexual victimization from those at high risk of being sexually abusive.

(c) (e) Directive #4401 Guidance & Counseling Services states, An inmate may request consideration of placement in a facility for male or female inmates by advising their ORC of their desire for such placement. The request will be evaluated by a multi-disciplinary committee which shall consider the inmates’ own views with respect to safety, the inmate’s gender identity, the inmate’s security level, criminal and disciplinary history, current gender expression, medical/mental health information vulnerability to sexual victimization and likelihood of perpetrating abuse. A Gender Identity Interview Guide form is completed.

(d) Directive #4401 Guidance & Counseling Services states, all inmates are reviewed on a quarterly basis to assess programs, personal goals, goals for the next quarter in addition to four questions specific to sexual abuse and sexual harassment safety.

(f) Directive #4009 Minimum Provisions for Health and Morale states, Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates. Fishkill Correctional Facility houses inmates in dorm settings; adequate time to shower separately is provided.

(g) NYS DOCCS does not house lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units or wings solely on the basis of such identification or status.

Review of the policy and other documentation, comments noted in response to 115.41 and processes in place that communicate risk needs to programming/educational staff support a finding of compliance. Seven completed risk assessments were reviewed during the pre-audit. An additional fifteen randomly requested from the month of March were also requested and reviewed. At this facility, all inmates are reassessed quarterly and asked questions again related to sexual abuse/harassment safety. The transgender and intersex inmates stated during the interviews “we have the ability to shower separately during the day and there are no issues”. The final analysis of the evidence for this standard indicates the facility has provided the information for this auditor to make a final determination. Based upon this analysis, the auditor finds the facility substantially exceeds compliance with this standard based on the quarterly review of all inmates.

## Standard 115.43: Protective Custody

### 115.43 (a)

- Does the facility always refrain from placing inmates at high risk for sexual victimization in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers?  Yes  No
- If a facility cannot conduct such an assessment immediately, does the facility hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment?  Yes  No

### 115.43 (b)

- Do inmates who are placed in segregated housing because they are at high risk of sexual victimization have access to: Programs to the extent possible?  Yes  No
- Do inmates who are placed in segregated housing because they are at high risk of sexual victimization have access to: Privileges to the extent possible?  Yes  No
- Do inmates who are placed in segregated housing because they are at high risk of sexual victimization have access to: Education to the extent possible?  Yes  No
- Do inmates who are placed in segregated housing because they are at high risk of sexual victimization have access to: Work opportunities to the extent possible?  Yes  No
- If the facility restricts access to programs, privileges, education, or work opportunities, does the facility document: The opportunities that have been limited?  Yes  No
- If the facility restricts access to programs, privileges, education, or work opportunities, does the facility document: The duration of the limitation?  Yes  No
- If the facility restricts access to programs, privileges, education, or work opportunities, does the facility document: The reasons for such limitations?  Yes  No

### 115.43 (c)

- Does the facility assign inmates at high risk of sexual victimization to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged?  Yes  No
- Does such an assignment not ordinarily exceed a period of 30 days?  Yes  No

### 115.43 (d)

- If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, does the facility clearly document: The basis for the facility's concern for the inmate's safety?  Yes  No
- If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, does the facility clearly document: The reason why no alternative means of separation can be arranged?  Yes  No

### 115.43 (e)

- In the case of each inmate who is placed in involuntary segregation because he/she is at high risk of sexual victimization, does the facility afford a review to determine whether there is a continuing need for separation from the general population EVERY 30 DAYS?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a) Directive #4948 Protective Custody Status, Involuntary Protective Status states, An inmate who is appropriate for Involuntary Protective Custody solely because he or she is at high risk for sexual victimization, or following a report that the inmate was the victim of sexual abuse, may be placed in Involuntary Protective Custody after a determination has been made that there is no available alternative means of separation from likely abusers. The facility may hold him for less than 24 hours while completing the assessment using Form #2168A Sexual Victimization - Involuntary Protective Custody Recommendation.

(b) Directive #4948 Protective Custody Status, Involuntary Protective Status states that inmates placed in Involuntary Protective Custody shall have access to program, privileges, education and work to the extent possible.

(c) Directive #4948 Protective Custody Status, Involuntary Protective Status states, the facility assign inmates at high risk of sexual victimization to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged.

(d) Form #2168A Sexual Victimization - Involuntary Protective Custody documents the facilities rationale behind the placement.

(e) Directive #4948 also ensures that placement shall not ordinarily exceed 30 days. If that should occur, the inmate will be reviewed every seven days; documentation noted on Form #2170A.

Finding of compliance based on the following: The Pre-Audit Questionnaire states that no inmates have been placed in involuntary protective custody due to their high risk of sexual victimization. The auditor found no evidence to dispute that statistic during the audit process. The facility has a process in place to ensure proper and quick removal from risk. This process was articulated by all staff interviewed. Interviews with two

supervisors of special housing units and one officer support those inmates who are alleged victims, or at risk for victimization are not placed in special housing. The final analysis of the evidence for this standard indicates the facility has provided the information for this auditor to make a final determination. Based upon this analysis, the auditor finds the facility is substantially compliant with this standard based on the PAQ, and interviews.

## REPORTING

### Standard 115.51: Inmate reporting

#### 115.51 (a)

- Does the agency provide multiple internal ways for inmates to privately report: Sexual abuse and sexual harassment?  Yes  No
- Does the agency provide multiple internal ways for inmates to privately report: Retaliation by other inmates or staff for reporting sexual abuse and sexual harassment?  Yes  No
- Does the agency provide multiple internal ways for inmates to privately report: Staff neglect or violation of responsibilities that may have contributed to such incidents?  Yes  No

#### 115.51 (b)

- Does the agency also provide at least one way for inmates to report sexual abuse or sexual harassment to a public or private entity or office that is not part of the agency?  Yes  No
- Is that private entity or office able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials?  Yes  No
- Does that private entity or office allow the inmate to remain anonymous upon request?  Yes  No
- Are inmates detained solely for civil immigration purposes provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security?  Yes  No

#### 115.51 (c)

- Does staff accept reports of sexual abuse and sexual harassment made verbally, in writing, anonymously, and from third parties?  Yes  No
- Does staff promptly document any verbal reports of sexual abuse and sexual harassment?  Yes  No

#### 115.51 (d)

- Does the agency provide a method for staff to privately report sexual abuse and sexual harassment of inmates?  Yes  No

## Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a) Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee - 11/29/17 supports that inmate reports of sexual abuse, sexual harassment, or retaliation can be verbal or in writing.

(b) The New York State Commission of Correction (SCOC) has agreed to receive all written inmate reports containing sexual abuse and sexual harassment allegations, including anonymous allegation and will immediately forward them to the DOCCS for investigation. This information is provided in the pamphlet given to inmates upon arrival. The New York State Department of Corrections and Community Supervision does not detain inmates solely for civil immigration purposes. Information on how to contact relevant consular officials is available. A Jailhouse Lawyer's Manual: Immigration & Consular Access Supplement is available in all NYSDOCCS Facility Law Libraries.

(c) Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee - 11/29/17 supports that staff will immediately notify his or her supervisor if they receive a report of sexual abuse, sexual harassment sexual threats or retaliation for reporting such an incident. Staff training for PREA further emphasis the requirement that staff must accept any reports whether verbal, in writing, anonymous or third party of sexual abuse, sexual harassment or retaliation immediately to their supervisor who will then forward the information to the chain of command. In addition, the Employee's Manual notes the requirement of the duty to report sexual abuse and sexual harassment, retaliation that resulted from a PREA complaint as well as staff neglect that may have contributed to an incident of sexual abuse or sexual harassment. "This duty to report includes third party and anonymous reports."

(d) Staff may report sexual abuse or sexual harassment privately to the Office of Special Investigations by calling their number directly or sending an email directly to them. This is reinforced in the PREA training.

Review of documentation noted above supports a finding of compliance. Inmates noted that there are several ways to file a complaint at this facility and shared examples of such. Staff is aware of the numerous avenues for filing a complaint, including third party and anonymous. Review of the twenty-two (22) investigations support that allegations are reported swiftly to the Watch Commander who initiates the coordinated response. Although sexual abuse and sexual harassment complaints are not processed through the administrative procedure for inmate grievances, if a grievance is filed containing anything resembling an allegation, the grievance coordinator immediately sends a copy to the Watch Commander. The complaint is deemed exhausted upon filing for Prison Litigation Reform Act (PLRA) purposes. This was supported by the interview with the grievance coordinator.

## Standard 115.52: Exhaustion of administrative remedies

### 115.52 (a)

- Is the agency exempt from this standard? NOTE: The agency is exempt ONLY if it does not have administrative procedures to address inmate grievances regarding sexual abuse. This does not mean the agency is exempt simply because an inmate does not have to or is not ordinarily expected to submit a grievance to report sexual abuse. This means that as a matter of explicit policy, the agency does not have an administrative remedies process to address sexual abuse.  Yes  No  NA

#### 115.52 (b)

- Does the agency permit inmates to submit a grievance regarding an allegation of sexual abuse without any type of time limits? (The agency may apply otherwise-applicable time limits to any portion of a grievance that does not allege an incident of sexual abuse.) (N/A if agency is exempt from this standard.)  Yes  No  NA
- Does the agency always refrain from requiring an inmate to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse? (N/A if agency is exempt from this standard.)  Yes  No  NA

#### 115.52 (c)

- Does the agency ensure that: An inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint? (N/A if agency is exempt from this standard.)  Yes  No  NA
- Does the agency ensure that: Such grievance is not referred to a staff member who is the subject of the complaint? (N/A if agency is exempt from this standard.)  Yes  No  NA

#### 115.52 (d)

- Does the agency issue a final agency decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance? (Computation of the 90-day time period does not include time consumed by inmates in preparing any administrative appeal.) (N/A if agency is exempt from this standard.)  Yes  No  NA
- If the agency claims the maximum allowable extension of time to respond of up to 70 days per 115.52(d)(3) when the normal time period for response is insufficient to make an appropriate decision, does the agency notify the inmate in writing of any such extension and provide a date by which a decision will be made? (N/A if agency is exempt from this standard.)  Yes  No  NA
- At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, may an inmate consider the absence of a response to be a denial at that level? (N/A if agency is exempt from this standard.)  Yes  No  NA

#### 115.52 (e)

- Are third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse? (N/A if agency is exempt from this standard.)  
 Yes  No  NA
- Are those third parties also permitted to file such requests on behalf of inmates? (If a third-party files such a request on behalf of an inmate, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.) (N/A if agency is exempt from this standard.)  Yes  No  NA
- If the inmate declines to have the request processed on his or her behalf, does the agency document the inmate's decision? (N/A if agency is exempt from this standard.)  
 Yes  No  NA

#### 115.52 (f)

- Has the agency established procedures for the filing of an emergency grievance alleging that an inmate is subject to a substantial risk of imminent sexual abuse? (N/A if agency is exempt from this standard.)  Yes  No  NA
- After receiving an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse, does the agency immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken? (N/A if agency is exempt from this standard.)  
 Yes  No  NA
- After receiving an emergency grievance described above, does the agency provide an initial response within 48 hours? (N/A if agency is exempt from this standard.)  Yes  No  NA
- After receiving an emergency grievance described above, does the agency issue a final agency decision within 5 calendar days? (N/A if agency is exempt from this standard.)  
 Yes  No  NA
- Does the initial response and final agency decision document the agency's determination whether the inmate is in substantial risk of imminent sexual abuse? (N/A if agency is exempt from this standard.)  Yes  No  NA
- Does the initial response document the agency's action(s) taken in response to the emergency grievance? (N/A if agency is exempt from this standard.)  Yes  No  NA
- Does the agency's final decision document the agency's action(s) taken in response to the emergency grievance? (N/A if agency is exempt from this standard.)  Yes  No  NA

#### 115.52 (g)

- If the agency disciplines an inmate for filing a grievance related to alleged sexual abuse, does it do so ONLY where the agency demonstrates that the inmate filed the grievance in bad faith? (N/A if agency is exempt from this standard.)  Yes  No  NA

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

DOCCS Directive #4040, Inmate Grievance Program (IGP), confirms that an inmate is not required to file a grievance about sexual abuse or sexual harassment. Any inmate grievance that is filed regarding a complaint of sexual abuse or sexual harassment shall immediately be reported by the IGP Supervisor to the Watch Commander for further handling in accordance with Departmental policies. The complaint is deemed exhausted upon filing for PLRA purposes. If the grievance does not set forth any additional matters that require a response, the grievance shall be closed. The agency has opted to be exempt from this standard.

## Standard 115.53: Inmate access to outside confidential support services

### 115.53 (a)

- Does the facility provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations?  Yes  No
- Does the facility provide persons detained solely for civil immigration purposes mailing addresses and telephone numbers, including toll-free hotline numbers where available of local, State, or national immigrant services agencies?  Yes  No
- Does the facility enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible?  Yes  No

### 115.53 (b)

- Does the facility inform inmates, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws?  Yes  No

### 115.53 (c)

- Does the agency maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse?  Yes  No
- Does the agency maintain copies of agreements or documentation showing attempts to enter into such agreements?  Yes  No

**Auditor Overall Compliance Determination**

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a) A memo from Jason D. Effman, Associate Commissioner indicates the following: A PREA Statewide Rape Crisis Hotline went into effect January 8, 2019. A 777-speed dial number, available through the Inmate Telephone System, is active at all New York DOCCS Correctional Facilities, Adolescent Offender Facilities, and the Willard Drug Treatment Center. Calls made are routed to one number, who provides crisis counseling services and if requested, a referral to a Rape Crisis Program for follow-up services. Multi-language services can be provided. If requested, they will also make referrals to the DOCCS via OSI, the facility Assistant Deputy Superintendent/PREA Compliance Manager, facility designated Point person or to the PREA Coordinator. Referral to the six current PREA services providers across the state has staff specifically trained to assist incarcerated individuals. These centers currently serve 40 of the NYDOCCS facilities. The remaining 14 DOCCS facilities are served primarily by local victim assistance programs and the current PREA Centers on an as-needed basis. All conversations are kept confidential. Ongoing emotional support and victim advocacy services are still provided via legal calls and in some locations via legal visits.

In addition, an announcement dated March 19, 2019, by Governor Cuomo includes quotes from the Governor and key organizations which represents a strong, comprehensive, cohesive support of these services. This includes the Lieutenant Governor, Director of Office of Victim Services, Director, Acting DOCCS Commissioner, Executive Director of State Office for the Prevention of Domestic Violence (OPDV), the CEO of the Crisis Services of Buffalo and Erie County (who receives calls initiated by the 777 number), the Executive Director of the New York State Coalition Against Sexual Assault, the Director of Victim Assistance Services/ West COP, the Director of the Sexual Assault and Crime Victims Assistance Program at St. Peter’s Health Partners, the PREA Outreach and Education Specialist at RESTORE, the Program Director for Safe Harbors of the Finger Lakes, the PREA Program Coordinator at the Crime Victims Treatment Center and the Deputy Executive Director of Just Detention International.

The Winter publication 2018-2019 of DOCCS Today has a detailed headline article outlining the new hotline, educating staff on the transition to the enhanced service, further demonstrating support of the service from the Acting Commissioner of NYDOCCS.

(b) Posters announcing the service were visible throughout the facility. On the poster, it indicates that the calls are confidential and are not monitored by the facility but that they are recorded in the event of misuse. It further educates the inmate population that the counselors are only allowed to report information back to the Department with the permission of the inmate. PREA brochures, “Help for Victims of Sexual Abuse in Prison” are widely available to inmates provided to inmates upon arrival at each facility. In addition to

providing This pamphlet provides victim support information on how to report abuse, and outlining the PREA Statewide Rape Crisis Hotline, and it provides contact information regarding the community-based Rape Crisis Program (RCP) for rape crisis counseling victim advocacy and emotional support services (Crisis Services, Inc., Crime Victims Treatment Center, RESTORE Sexual Assault Services, Safe Harbors of the Finger Lakes, Sexual Assault & Crime Victims Assistance Program at Samaritan Hospital, and Victims Assistance Services of West COP. It too reinforces that calls are confidential, will not be monitored but are recorded (treated like legal calls). It further informs the inmates that they do not have to have this number on the approved telephone list. Telephone numbers to a specific Rape Crisis Program can be added at any time to their approved telephone list.

The following policy directives support this process: Directive #4423, Inmate Telephone Calls, an inmate may add an attorney, or Department of Health approved Rape Crisis Program to their telephone list. Directive #4404, Inmate Legal Visits, there is an area designated for confidential visits. Directive #4421, Privileged Correspondence, Rape Crisis Programs- inmates can send and receive privileged correspondence.

(c)The Agency is the beneficiary of has a signed MOU with the New York State Office of Victim Services and the New York State OPDV to provide through September 30, 2020.

During the onsite audit, the auditor tested the 777 services line via the inmate phones located in the special housing unit and a general population housing unit. Also, there is a private area where inmates can use the phone without anyone in the vicinity listening (same phone provided for legal calls) located outside the living areas. Some phones in the living areas also provided privacy as they were located in a separate area. Documentation was provided that demonstrated that eleven inmates are actively involved with the advocacy program. Inmate interviews revealed that the population is aware that this service is available to them. Inmate interviews demonstrated they are knowledgeable regarding the service available to them, knowing that it is a free service and a confidential service.

As illustrated, this service has commitment and support from the Governor's office, Commissioner's office, and key organizations in the state. Review of the policy, observation of the area where the phone calls can be made, and strong knowledge of the availability of the service as demonstrated by the inmate interviews all support a finding of compliance.

These enhanced services now provide inmates in the NYDOCCS the most comprehensive services for incarcerated individuals in the nation, therefore meeting the criteria for "Exceeds Standards."

## Standard 115.54: Third-party reporting

### 115.54 (a)

- Has the agency established a method to receive third-party reports of sexual abuse and sexual harassment?  Yes  No
- Has the agency distributed publicly information on how to report sexual abuse and sexual harassment on behalf of an inmate?  Yes  No

### Auditor Overall Compliance Determination

**Exceeds Standard** (*Substantially exceeds requirement of standards*)

- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

NYSDOCCS website has a link to PREA which provides all information about PREA to the public including policy, history of combating sexual assault, PREA education, Report a Sexual Abuse and how third party reports on behalf of an inmate can be made. Review of the investigations did reveal that a third party complaint was made from a visitor on behalf of an inmate not being visited by this visitor which was swiftly and fully investigated.

## OFFICIAL RESPONSE FOLLOWING AN INMATE REPORT

### Standard 115.61: Staff and agency reporting duties

#### 115.61 (a)

- Does the agency require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency?  Yes  No
- Does the agency require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding retaliation against inmates or staff who reported an incident of sexual abuse or sexual harassment?  Yes  No
- Does the agency require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding any staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse or sexual harassment or retaliation?  Yes  No

#### 115.61 (b)

- Apart from reporting to designated supervisors or officials, does staff always refrain from revealing any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions?  Yes  No

#### 115.61 (c)

- Unless otherwise precluded by Federal, State, or local law, are medical and mental health practitioners required to report sexual abuse pursuant to paragraph (a) of this section?  Yes  No
- Are medical and mental health practitioners required to inform inmates of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services?  Yes  No

### 115.61 (d)

- If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, does the agency report the allegation to the designated State or local services agency under applicable mandatory reporting laws?  Yes  No

### 115.61 (e)

- Does the facility report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a) Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee - 11/29/17 Requires all employees (which includes contractor, contract employee, volunteer, intern or other state employee assigned to the facility) to immediately report to his immediate supervisor any information pertaining to a sexual abuse, sexual harassment, retaliation. The Employee Manual requires staff to report immediately any knowledge, suspicion, or information regarding an incident of sexual abuse, sexual harassment, any retaliation against an inmate or staff who report such an incident and any neglect or violation of responsibilities that may have contributed to an incident or retaliation.

(b) Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee - 11/29/17 states that reports are to be confidential and only shared with essential employees involved in the reporting, investigation, discipline and treatment process or as otherwise required by law. The Employee Handbook also reinforces this requirement.

(c) Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee 11/29/17 specifically addresses that a medical practitioner is required to report the minimum information necessary.

(d) This facility does not house inmates under the age of 18. In this state, vulnerable person statues do not apply to those incarcerated.

(e) Sexual Abuse Response and Containment Checklist also addresses confidentiality and the reporting of the incident to the appropriate investigator.

Documentation provided support a finding of compliance. Interviews with security staff, security supervisors, the Watch Commander, and non-first responders support a strong knowledge of the process. In addition, staff has been issued pocket cards that reflect the process. Review of twenty-two investigations support that the process was followed.

## Standard 115.62: Agency protection duties

### 115.62 (a)

- When the agency learns that an inmate is subject to a substantial risk of imminent sexual abuse, does it take immediate action to protect the inmate?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Directive #4948 - Protective Custody Status – 6/29/17 addresses the use of involuntary protective custody for an inmate who is subject to a substantial risk of imminent sexual abuse, support that placement will occur immediately until the facility can complete an assessment. The facility reports that it has not had any inmates that were subject to Involuntary Protective Custody due to a substantial risk of imminent sexual abuse during this audit period or previous audit period. The auditor found no evidence to dispute this during the audit process.

## Standard 115.63: Reporting to other confinement facilities

### 115.63 (a)

- Upon receiving an allegation that an inmate was sexually abused while confined at another facility, does the head of the facility that received the allegation notify the head of the facility or appropriate office of the agency where the alleged abuse occurred?  Yes  No

### 115.63 (b)

- Is such notification provided as soon as possible, but no later than 72 hours after receiving the allegation?  Yes  No

### 115.63 (c)

- Does the agency document that it has provided such notification?  Yes  No

### 115.63 (d)

- Does the facility head or agency office that receives such notification ensure that the allegation is investigated in accordance with these standards?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a) (b) (c) Memo: from Jason D. Effman, Associate Commissioner RE: PREA Standard 115.63, addressed to "All Superintendents" states that allegations received from an inmate regarding abuse at another facility will be forwarded from the Superintendent to the Superintendent at the facility where the alleged incident occurred within 72 hours of receiving the report. Form 115.63 shall be used to make the notification. The Office of Special Investigations shall be sent a copy. Documentation of all six notifications sent to other facilities received at this facility were provided during the audit they were reviewed and demonstrated compliance with the standard.

(d) For all allegations regarding abuse that occurred at another NYSDOCCS facility, the Office of Special Investigations Sex Crimes Division ensures the allegation has been investigated. The Pre-Audit Questionnaire notes that six notifications were received from other facilities.

The memo from the Associate Commissioner, and Form 115.63 provide written authority and the method for how to document when allegations are made at other facilities or about events that have occurred at other facilities. Review of the notices received, investigations conducted and notices sent support a finding of compliance with this standard.

## Standard 115.64: Staff first responder duties

### 115.64 (a)

- Upon learning of an allegation that an inmate was sexually abused, is the first security staff member to respond to the report required to: Separate the alleged victim and abuser?  
 Yes  No
- Upon learning of an allegation that an inmate was sexually abused, is the first security staff member to respond to the report required to: Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence?  Yes  No
- Upon learning of an allegation that an inmate was sexually abused, is the first security staff member to respond to the report required to: Request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating, if the abuse occurred within a time period that still allows for the collection of physical evidence?  Yes  No
- Upon learning of an allegation that an inmate was sexually abused, is the first security staff member to respond to the report required to: Ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating, if the abuse occurred within a time period that still allows for the collection of physical evidence?  Yes  No

## 115.64 (b)

- If the first staff responder is not a security staff member, is the responder required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a) (b) Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee - 11/29/17, Sexual Abuse Response and Containment Checklist, Sexual Abuse Prevention and Response (SAPR) Lesson Plan, PREA Pocket Card all address the requirements of this standard. Whether a first responder or not, all reports go to the immediate supervisor and to the Watch Commander. The scene is immediately secured. Any inmates involved are instructed that they cannot destroy evidence by washing brushing teeth, changing clothes, urinating, defecating smoking, drinking or eating. The Sexual Abuse Response and Containment Checklist is initiated.

Review of policy, the Pocket Card issued to staff and all staff interviews demonstrated knowledge of the process support a finding of compliance. Review of the investigations confirmed that no incidents occurred during the 12 month audit period that involved a first responder.

## Standard 115.65: Coordinated response

### 115.65 (a)

- Has the facility developed a written institutional plan to coordinate actions among staff first responders, medical and mental health practitioners, investigators, and facility leadership taken in response to an incident of sexual abuse?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Fishkill Coordinated Response Plan to an Incident of Inmate Sexual Abuse specific to Fishkill Correctional Facility provides a detailed plan for all staff to follow in the event of a response to an incident of sexual

abuse. All staff interviewed were knowledgeable regarding the process. Review of the investigations support that separation of the inmates is quick, as is notification to the Watch Commander and the investigators.

## Standard 115.66: Preservation of ability to protect inmates from contact with abusers

### 115.66 (a)

- Are both the agency and any other governmental entities responsible for collective bargaining on the agency's behalf prohibited from entering into or renewing any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff sexual abusers from contact with any inmates pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted?  Yes  No

### 115.66 (b)

- Auditor is not required to audit this provision.

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Directive #2110, Employee Discipline-Suspension from Duty During the Continuation of Disciplinary Proceedings - 7/13/2018, Directive #2114, Function of the Bureau of Labor Relations - 7/17/2015 both comply with the requirements of this standard. There are seven bargaining units represented by four unions representing employees at the NYSDOCCS. The contracts do not preclude the facility from removal of alleged staff pending an outcome of the investigation.

## Standard 115.67: Agency protection against retaliation

### 115.67 (a)

- Has the agency established a policy to protect all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff?  Yes  No
- Has the agency designated which staff members or departments are charged with monitoring retaliation?  Yes  No

### 115.67 (b)

- Does the agency employ multiple protection measures, such as housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations?  Yes  No

#### 115.67 (c)

- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor the conduct and treatment of residents or staff who reported the sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff?  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor the conduct and treatment of inmates who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff?  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Act promptly to remedy any such retaliation?  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor any inmate disciplinary reports?  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor inmate housing changes?  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor inmate program changes?  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor negative performance reviews of staff?  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor reassignments of staff?  Yes  No
- Does the agency continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need?  Yes  No

#### 115.67 (d)

- In the case of inmates, does such monitoring also include periodic status checks?  
 Yes  No

### 115.67 (e)

- If any other individual who cooperates with an investigation expresses a fear of retaliation, does the agency take appropriate measures to protect that individual against retaliation?  
 Yes  No

### 115.67 (f)

- Auditor is not required to audit this provision.

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a), (c), (e) Employee Manual 2.19 requires that all employees have a duty to report retaliation against inmates or staff who reported such an incident. Memo from Jason D. Effman, Associate Commissioner - 3/30/2018 requires each facility to use multiple protection measure such as housing changes, transfers, removal of alleged staff or inmate abusers from contact with the victim and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse, sexual harassment and/or cooperating with the investigation. Form 115.67 Retaliation Monitoring Form ensures that all aspects of this standard are proactively monitored and documented. There is a monitoring form for inmates and another form for staff.

(b) Memo from Jason D. Effman, Associate Commissioner - 3/30/2018 requires the facility PREA Compliance Manager and PREA Point Person to ensure compliance with retaliation monitoring.

(d) Memo from Jason D. Effman, Associate Commissioner - 3/30/2018 requires the facility conduct periodic in-person status checks at least every 30 days.

During the pre-audit phase, the facility provided four examples of retaliation monitoring. At the facility, the auditor was provided with additional documentation for all Retaliation Monitoring that has been conducted during the 12-month audit period. Interviews with the Superintendent, PREA Coordinator, PREA Compliance Manager and PREA Point Person all support that retaliation monitoring is taken seriously and well documented. Even if an inmate transfers, the retaliation monitoring is continued at the next NYSDOCCS facility which the basis for the decision of "exceeds standard". Although no current examples demonstrated retaliation monitoring past the 90-day requirement, the interview with the PREA Compliance Manager and PREA Point Person confirmed that there is a current case which they believe warrants a continuation.

### Standard 115.68: Post-allegation protective custody

#### 115.68 (a)

- Is any and all use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse subject to the requirements of § 115.43?  Yes  No

## Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Finding of compliance based on the following: See comments on 115.43. The PAQ indicates that no inmates have been placed in segregated housing due to suffering sexual abuse. As stated in 115.43, this was confirmed by interviews with three staff who work/supervise those areas. The auditor found no reason to dispute this during the audit process. Based on comments noted on 115.43 this standard is found to be compliant.

## INVESTIGATIONS

### Standard 115.71: Criminal and administrative agency investigations

#### 115.71 (a)

- When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, does it do so promptly, thoroughly, and objectively? [N/A if the agency/facility is not responsible for conducting any form of criminal OR administrative sexual abuse investigations. See 115.21(a).]  Yes  No  NA
- Does the agency conduct such investigations for all allegations, including third party and anonymous reports? [N/A if the agency/facility is not responsible for conducting any form of criminal OR administrative sexual abuse investigations. See 115.21(a).]  Yes  No  NA

#### 115.71 (b)

- Where sexual abuse is alleged, does the agency use investigators who have received specialized training in sexual abuse investigations as required by 115.34?  Yes  No

#### 115.71 (c)

- Do investigators gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data?  Yes  No
- Do investigators interview alleged victims, suspected perpetrators, and witnesses?  
 Yes  No
- Do investigators review prior reports and complaints of sexual abuse involving the suspected perpetrator?  Yes  No

#### 115.71 (d)

- When the quality of evidence appears to support criminal prosecution, does the agency conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution?  Yes  No

#### 115.71 (e)

- Do agency investigators assess the credibility of an alleged victim, suspect, or witness on an individual basis and not on the basis of that individual's status as inmate or staff?  Yes  No
- Does the agency investigate allegations of sexual abuse without requiring an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding?  Yes  No

#### 115.71 (f)

- Do administrative investigations include an effort to determine whether staff actions or failures to act contributed to the abuse?  Yes  No
- Are administrative investigations documented in written reports that include a description of the physical evidence and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings?  Yes  No

#### 115.71 (g)

- Are criminal investigations documented in a written report that contains a thorough description of the physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible?  Yes  No

#### 115.71 (h)

- Are all substantiated allegations of conduct that appears to be criminal referred for prosecution?  Yes  No

#### 115.71 (i)

- Does the agency retain all written reports referenced in 115.71(f) and (g) for as long as the alleged abuser is incarcerated or employed by the agency, plus five years?  Yes  No

#### 115.71 (j)

- Does the agency ensure that the departure of an alleged abuser or victim from the employment or control of the agency does not provide a basis for terminating an investigation?  Yes  No

#### 115.71 (k)

- Auditor is not required to audit this provision.

## 115.71 (l)

- When an outside entity investigates sexual abuse, does the facility cooperate with outside investigators and endeavor to remain informed about the progress of the investigation? (N/A if an outside agency does not conduct administrative or criminal sexual abuse investigations. See 115.21(a).)  Yes  No  NA

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a) (l) Directive #0700 Office of Special Investigations (OSI) states that the Sex Crimes Division (SCD) conducts investigations involving sexual misconduct between inmates and departmental staff as well as inmate-on-inmate sexual abuse. It further states they will assist outside law enforcement in the development of cases for criminal prosecution. ) Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee clarify that if a complaint is vague, requires clarification, or appears to lack credibility, the OSI may direct that a preliminary inquiry be conducted.

(b) All investigators in the SCD receive training. See 115.34

(c) Investigators are immediately contacted when a PREA allegation is received, in accordance with the facility's response plan. In accordance with the plan, the first responders ensure evidence is preserved; the investigators complete any evidence gathering required.

(d) (e) The Office of Special Investigations Policy Manual Chapter 5 is considered confidential, but was provided for review by the auditor. The auditor reviewed the document and found it supports compliance with this standard. Polygraph tests are prohibited in accordance with the New York Criminal Procedure Law 160.45 and therefore not used in any aspect of the investigation for sexual abuse or sexual harassment.

(f) The Office of Special Investigations Policy Manual Chapter 5 & 11 is considered exempt from disclosure. The auditor reviewed the document and found it supports compliance with this standard.

(g) The Office of Special Investigations Policy Manual Chapter 11 is considered exempt from disclosure. The auditor reviewed the document and found it supports compliance with this standard.

(h) The SCD reports all substantiated allegations to licensing bodies, as well as ensures all matters that rise to the level of criminal prosecution are referred for criminal handling.

(i) Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee supports that physical records of OSI investigations will be retained for at least seven years; electronic files are retained permanently.

(j) The departure of an alleged abuser or victim from the employment or control of the agency does not provide a basis for terminating an investigation; this was demonstrated in one of the investigations that was reviewed.

Based on review of the policies, agency manual, twenty-two (22) investigations and interviews with the investigations, the auditor concludes that investigations are address promptly, thoroughly, in a manner which will hold up in court, and with a review of incidents to address staff actions, and assesses credibility consistently.

## Standard 115.72: Evidentiary standard for administrative investigations

### 115.72 (a)

- Is it true that the agency does not impose a standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

The established definition for concluding that an investigation has been substantiated supports that the agency uses a preponderance of evidence. Review of the investigations supports that the agency uses a finding of substantiated based on a preponderance of the evidence.

## Standard 115.73: Reporting to inmates

### 115.73 (a)

- Following an investigation into an inmate's allegation that he or she suffered sexual abuse in an agency facility, does the agency inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded?  Yes  No

### 115.73 (b)

- If the agency did not conduct the investigation into an inmate's allegation of sexual abuse in an agency facility, does the agency request the relevant information from the investigative agency in order to inform the inmate? (N/A if the agency/facility is responsible for conducting administrative and criminal investigations.)  Yes  No  NA

### 115.73 (c)

- Following an inmate's allegation that a staff member has committed sexual abuse against the resident, unless the agency has determined that the allegation is unfounded, or unless the resident has been released from custody, does the agency subsequently inform the resident whenever: The staff member is no longer posted within the inmate's unit?  Yes  No
- Following an inmate's allegation that a staff member has committed sexual abuse against the resident, unless the agency has determined that the allegation is unfounded, or unless the resident has been released from custody, does the agency subsequently inform the resident whenever: The staff member is no longer employed at the facility?  Yes  No
- Following an inmate's allegation that a staff member has committed sexual abuse against the resident, unless the agency has determined that the allegation is unfounded, or unless the resident has been released from custody, does the agency subsequently inform the resident whenever: The agency learns that the staff member has been indicted on a charge related to sexual abuse in the facility?  Yes  No
- Following an inmate's allegation that a staff member has committed sexual abuse against the resident, unless the agency has determined that the allegation is unfounded, or unless the resident has been released from custody, does the agency subsequently inform the resident whenever: The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility?  Yes  No

#### 115.73 (d)

- Following an inmate's allegation that he or she has been sexually abused by another inmate, does the agency subsequently inform the alleged victim whenever: The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility?  Yes  No
- Following an inmate's allegation that he or she has been sexually abused by another inmate, does the agency subsequently inform the alleged victim whenever: The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility?  Yes  No

#### 115.73 (e)

- Does the agency document all such notifications or attempted notifications?  Yes  No

#### 115.73 (f)

- Auditor is not required to audit this provision.

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)

**Does Not Meet Standard** (*Requires Corrective Action*)

(a) Memorandum from the Deputy Commissioner/Chief of Office of Special Investigations and Associate Commissioner for PREA Compliance - 5/17/18 RE: Notification of Investigative Determination to Inmates or Parolees/Residents. Notifications of the investigations are provided to the Superintendent where the complainant/inmate is currently housed, via a "Notification of Investigation Determination" who in turn notifies the complainant/inmate via Privileged Mail which the complainant/inmate will sign for receipt.

(b), (c), (d), (e) The Office of Special Investigations Policy Manual Chapter 5 is considered exempt from disclosure. The auditor reviewed the document and found it supports compliance with this standard.

Finding of compliance based on policy and documents noted above. The auditor reviewed notifications corresponding to the concluded investigations in the investigation file in addition to duplicates notices provided by the facility.

## DISCIPLINE

### Standard 115.76: Disciplinary sanctions for staff

#### 115.76 (a)

- Are staff subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies?  Yes  No

#### 115.76 (b)

- Is termination the presumptive disciplinary sanction for staff who have engaged in sexual abuse?  Yes  No

#### 115.76 (c)

- Are disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories?  Yes  No

#### 115.76 (d)

- Are all terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, reported to: Law enforcement agencies (unless the activity was clearly not criminal)?  Yes  No
- Are all terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, reported to: Relevant licensing bodies?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a) Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee 11/29/17 Inmate-on-Inmate, Directive #2110 – Employee Discipline – Suspension from Duty During the Continuation of Disciplinary Proceedings – 7/13/18, Employee Manual – Rev. 2013, Memo: Daniel F. Martuscello III, Deputy Commissioner for Administrative Services – 2/5/16 RE: Prison Rape Elimination Act / Presumptive Disciplinary Sanction for Staff Sexual misconduct, and Directive #2111- Report of Employee Misconduct – 1/5/16 all support compliance with staff discipline, noting sanctions up to termination for sexual misconduct.

(b) Memo: Daniel F. Martuscello III, Deputy Commissioner for Administrative Services – 2/5/16 RE: Prison Rape Elimination Act / Presumptive Disciplinary Sanction for Staff Sexual misconduct supports that termination is the presumptive disciplinary sanction for staff who have engaged in sexual abuse.

(c) Memo: Daniel F. Martuscello III, Deputy Commissioner for Administrative Services – 2/5/16 RE: Prison Rape Elimination Act / Presumptive Disciplinary Sanction for Staff Sexual misconduct and Directive #2111- Report of Employee Misconduct – 1/5/16 supports that disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment are commensurate with the nature and circumstances of the acts committed, the staff member’s disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

(d) Office of Special Investigations Policy Manual is considered exempt from public disclosure. The auditor reviewed the document and found that it supports compliance with this standard.

During the 12-month audit period, no staff was terminated for violations of these standards. Dialogue with the Superintendent, investigators, PREA Coordinator and PREA Compliance Manager support that all allegations against staff for sexual abuse, sexual harassment, retaliation or neglect are investigated and disciplinary action is commensurate with the circumstances up to termination for sexual abuse. As noted previously, a letter is placed in the employee file in the event that they resign prior to the conclusion of the investigation. Interviews support that the investigation continues. If allegations are substantiated, licensing bodies are informed as required.

## **Standard 115.77: Corrective action for contractors and volunteers**

### **115.77 (a)**

- Is any contractor or volunteer who engages in sexual abuse prohibited from contact with inmates?  Yes  No
- Is any contractor or volunteer who engages in sexual abuse reported to: Law enforcement agencies (unless the activity was clearly not criminal)?  Yes  No

- Is any contractor or volunteer who engages in sexual abuse reported to: Relevant licensing bodies?  Yes  No

#### 115.77 (b)

- In the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer, does the facility take appropriate remedial measures, and consider whether to prohibit further contact with inmates?  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a) (b) Directive #4750, Volunteer Services Program – 2/8/16, Memo: from Anthony J. Annucci, Acting Commissioner - 9/4/18 RE: Policy on the Prevention of Sexual Abuse of Offenders (revised) Office of Ministerial, Family and Volunteer Services 2015 and Division of Ministerial, Family and Volunteer Services Volunteer Information Packet, Rev. 6/10/14 support compliance with the requirements of this standard.

The Pre-Audit Questionnaire notes that no contractor or volunteer has been involved in an investigation regarding sexual abuse or sexual harassment towards an inmate. The auditor found no evidence to dispute this statement during the audit process. Volunteers and contractors and provided information about their responsibilities prior to entering the facility. See comments to 115.32.

#### Standard 115.78: Disciplinary sanctions for inmates

##### 115.78 (a)

- Following an administrative finding that an inmate engaged in inmate-on-inmate sexual abuse, or following a criminal finding of guilt for inmate-on-inmate sexual abuse, are inmates subject to disciplinary sanctions pursuant to a formal disciplinary process?  Yes  No

##### 115.78 (b)

- Are sanctions commensurate with the nature and circumstances of the abuse committed, the inmate's disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories?  Yes  No

##### 115.78 (c)

- When determining what types of sanction, if any, should be imposed, does the disciplinary process consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior?  Yes  No

#### 115.78 (d)

- If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, does the facility consider whether to require the offending inmate to participate in such interventions as a condition of access to programming and other benefits?  Yes  No

#### 115.78 (e)

- Does the agency discipline an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact?  Yes  No

#### 115.78 (f)

- For the purpose of disciplinary action does a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred NOT constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation?  Yes  No

#### 115.78 (g)

- Does the agency always refrain from considering non-coercive sexual activity between inmates to be sexual abuse? (N/A if the agency does not prohibit all sexual activity between inmates.)  
 Yes  No  NA

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a) Hearing Officer Reference Book, The Hearing Officers determine guilt on misconducts received by inmates in accordance with the requirements reflected in Directive #4932 – Chapter V, Standards Behavior & Allowances – Rev. 8/30/18.

(b) Hearing Officer Reference Book provides the guidance for Hearing Officers when imposed disciplinary sanctions on inmate's misconducts. Aggravating and mitigating factors are considered. Confinement/sanctions recommendations are based on the severity of the incident and formatted in a table to reflect appropriate graduated sanctions.

(c) Hearing Officer Reference Book addresses that a review of mentally ill inmates should be considered before imposing confinement sanctions that includes the following: referral to programming or counseling, non-confinement sanction would be most likely to correct negative behavior, if non-confinement sanctions have been tried in the past, and any other special consideration., Directive #4932 – Chapter V, Standards

Behavior & Allowances – Rev. 8/30/18 establishes rules and regulations for inmate indoctrination, guidance, counseling, and training.

(d) Sex Offender Counseling and Treatment Program Guideline – April 2018 verifies that an inmate is eligible for treatment if found guilty of sexual abuse while incarcerated. The inmate will be referred to this program. Directive 4401 Guidance and Counseling addresses treatment services available for inmates at NYDOCCS.

(e) Directive #4028A, Sexual Abuse Prevention & Intervention – Staff – on – Inmate/Staff-on-Parolee, 11/29/17 supports that the agency disciplines inmates for sexual conduct with staff only upon finding that the staff member did not consent to such contact.

(f) Directive #4028A, Sexual Abuse Prevention & Intervention – Staff – on – Inmate/Staff-on-Parolee, 11/29/17, Directive #4027A, Sexual Abuse Prevention & Intervention – Inmate – on - Inmate – 11/29/17 support that a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred does NOT constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

(g) Directive #4027A, Sexual Abuse Prevention & Intervention – Inmate – on – Inmate – 11/29/17, consistent with Standard of Inmate Behavior indicates that unless deemed sexual abuse or sexual harassment, other sexual contact of a sexual nature is prohibited.

Review of the policies and documents noted above support a finding of compliance. Furthermore, review of the investigations which were deemed unfounded did not initiate a misconduct toward the inmate, even though there was an incident with substantial evidence to support it. The auditor requested disciplinary reports for inmates for sexual activity. Two were provided and reviewed; they were regarding consensual sexual activity – not sexual abuse or harassment. The interview with the Unit Chief for mental health and Health Services Administrator support that the inmate will be referred for appropriate counseling; if the inmate meets the criteria, the inmate’s ability to earn good time is conditioned upon successful completion of the counseling program.

## MEDICAL AND MENTAL CARE

### Standard 115.81: Medical and mental health screenings; history of sexual abuse

#### 115.81 (a)

- If the screening pursuant to § 115.41 indicates that a prison inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, do staff ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening? (N/A if the facility is not a prison.)  
 Yes    No    NA

#### 115.81 (b)

- If the screening pursuant to § 115.41 indicates that a prison inmate has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, do staff ensure

that the inmate is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening? (N/A if the facility is not a prison.)  Yes  No  NA

#### 115.81 (c)

- If the screening pursuant to § 115.41 indicates that a jail inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, do staff ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening?  Yes  No  NA

#### 115.81 (d)

- Is any information related to sexual victimization or abusiveness that occurred in an institutional setting strictly limited to medical and mental health practitioners and other staff as necessary to inform treatment plans and security management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law?  Yes  No

#### 115.81 (e)

- Do medical and mental health practitioners obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a), (b) HSPM 1.44 – Health Screening of Inmates - 7/26/2018 addresses information received related to sexual victimization or abusiveness. PREA Screening Form directs the screener to forward a copy of the form directly to Mental Health to serve as the Mental Health Referral Form. Staff can also submit a referral form. Directive #4301 – Mental Health Satellite Services and Commitments to CNYPC - 8/18/15, Mental Health Referral Form 3150 supports that referrals received will be addressed within 14 days. The Facility Operations Manual for Fishkill Correctional Facility, PREA Risk Screening both describe the specific steps needed to ensure a referral is made at this facility. A total of five mental health staff are assigned at the facility to provide mental health services to the inmate population.

(c) The facility is a prison, not a jail.

(d), (e) HSPM 1.44 – Health Screening of Inmates - 7/26/2018 states that any information related to sexual victimization or abusiveness that occurred in an institutional setting is strictly limited to medical and mental health practitioners and other staff as necessary to inform treatment plans and security management decisions, including housing, bed, work, education and program assignments, or as otherwise required by Federal, State, or local law. It also requires medical and mental health practitioners to obtain informed

consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18. The PREA Screening Form also notes an area for reports of sexual victimization that occurred outside the institutional setting.

The auditor requested the first 15 risk assessments conducted in March 2019. As the medical staff conduct a portion of the risk assessment, referrals for mental health follow up are made at the time of the screening. Review of the randomly requested risk assessment supported that the procedure as established by this Agency is being followed, which meets the requirements of the standard.

## Standard 115.82: Access to emergency medical and mental health services

### 115.82 (a)

- Do inmate victims of sexual abuse receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment?  
 Yes  No

### 115.82 (b)

- If no qualified medical or mental health practitioners are on duty at the time a report of recent sexual abuse is made, do security staff first responders take preliminary steps to protect the victim pursuant to § 115.62?  Yes  No
- Do security staff first responders immediately notify the appropriate medical and mental health practitioners?  Yes  No

### 115.82 (c)

- Are inmate victims of sexual abuse offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate?  Yes  No

### 115.82 (d)

- Are treatment services provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a), (b), (c), (d) The Facility Coordinated Response, HSPM 1.60 Sexual Assault and the New York Public Health Law support that inmates will receive timely, unimpeded access to emergency medical treatment and crisis intervention services, first responders will ensure medical and mental health staff are notified. These documents support that inmate victims of sexual abuse are offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis and treatment services will be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation.

Medical staffs are available twenty four hours a day, seven days a week (24/7). Mental health staffs are available through an on-call schedule 24/7. Interviews with medical, mental health staff, the Superintendent and PREA Compliance Manager support that victims will receive immediately unimpeded access to emergency medical care in accordance with professionally accepted standards of care. Post Exposure prophylactic needs will be immediately evaluated prior to sending the victim to the hospital, in accordance with the HSPM 1.12B Inmate Blood borne Pathogens Significant Exposure Protocol. A List of SANE/SAFE hospitals is maintained with Health Services and the Watch Commander.

During the audit period, no inmates were sexually abused warranting medical care provided at the hospital. The auditor found no reason to dispute this during the audit process. Based on the interviews and policy, the auditor finds the standard to be compliant as the coordinated response plan and staff knowledge of the process support that this will be provided.

## **Standard 115.83: Ongoing medical and mental health care for sexual abuse victims and abusers**

### **115.83 (a)**

- Does the facility offer medical and mental health evaluation and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility?  Yes  No

### **115.83 (b)**

- Does the evaluation and treatment of such victims include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody?  Yes  No

### **115.83 (c)**

- Does the facility provide such victims with medical and mental health services consistent with the community level of care?  Yes  No

### **115.83 (d)**

- Are inmate victims of sexually abusive vaginal penetration while incarcerated offered pregnancy tests? (N/A if all-male facility.)  Yes  No  NA

### **115.83 (e)**

- If pregnancy results from the conduct described in paragraph § 115.83(d), do such victims receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services? (N/A if all-male facility.)  Yes  No  NA

#### 115.83 (f)

- Are inmate victims of sexual abuse while incarcerated offered tests for sexually transmitted infections as medically appropriate?  Yes  No

#### 115.83 (g)

- Are treatment services provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident?  Yes  No

#### 115.83 (h)

- If the facility is a prison, does it attempt to conduct a mental health evaluation of all known inmate-on-inmate abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners? (NA if the facility is a jail.)  Yes  No  NA

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a), (b), (c) HSPM 1.60 - Sexual Assault – 10/25/17 and Office of Mental Health Memorandum of Understanding 9/14/16 confirms compliance with the requirement that all victims will be provided with ongoing medical and mental health services consistent with community standards. Treatment will include follow up services, treatment plans and if needed, continuing care upon release.

(d), (e) These requirements are not applicable to this facility as it houses all males.

(f) HSPM 1.60 - Sexual Assault – 10/25/17, HSPM 1.12B Inmate Blood borne Pathogens Significant Exposure Protocol – 10/25/17 confirms that a victim will be offered appropriate tests for sexually transmitted infections.

(g) HSPM 1.60 - Sexual Assault – 10/25/17 supports that medical treatment will be without cost to the victim, regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

(h) HSPM 1.60 - Sexual Assault – 10/25/17 confirms that a mental health evaluation of all known inmate-on-inmate abusers will be conducted within 60 days. They will be referred to the Sex Offender Counseling and

Treatment Program per the guideline. Directive 4401 Guidance and Counseling addresses treatment services available for inmates at NYDOCCS.

Policies noted above, interviews with the medical staff, mental health staff, and the Superintendent support a finding of compliance.

## DATA COLLECTION AND REVIEW

### Standard 115.86: Sexual abuse incident reviews

#### 115.86 (a)

- Does the facility conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded?  Yes  No

#### 115.86 (b)

- Does such review ordinarily occur within 30 days of the conclusion of the investigation?  Yes  No

#### 115.86 (c)

- Does the review team include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners?  Yes  No

#### 115.86 (d)

- Does the review team: Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse?  Yes  No
- Does the review team: Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; gang affiliation; or other group dynamics at the facility?  Yes  No
- Does the review team: Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse?  Yes  No
- Does the review team: Assess the adequacy of staffing levels in that area during different shifts?  Yes  No
- Does the review team: Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff?  Yes  No
- Does the review team: Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to §§ 115.86(d)(1) - (d)(5), and any recommendations for improvement and submit such report to the facility head and PREA compliance manager?  Yes  No

### 115.86 (e)

- Does the facility implement the recommendations for improvement, or document its reasons for not doing so?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a), (b), (c), (d), (e) Memo: from Joseph F. Bellnier, Deputy Commissioner and Jason D. Effman, Associate Commissioner - 5/9/14 RE: Prison Rape Elimination Act Procedural Enhancements Sexual Abuse Response and Containment Checklist; Sexual Abuse Incident Reviews and Security Staffing Audits and the Sexual Abuse Incident Review Checklist – 7/21/17 addresses the requirements of the standard as follows: Sexual Abuse incident reviews are required, a form has been developed which captures the review and any recommendations of the review team. Reviews are conducted by the Assistant Deputy Superintendent (PREA Compliance Manager), PREA Point Person (Captain) and a third member; at this facility it is the Lieutenant. Input is collected from investigators, the area sergeant, Health Services and the Office of Mental Health in addition to others deemed necessary. It requires a review within 30 days of the conclusion of the investigation unless determined to be unfounded. It also supports that the staff will work closely with the facility staff to ensure any recommendations are successfully implemented. The Sexual Abuse Incident Review Checklist – 7/21/17 is a 6-page form which addresses and requires assessment with all requirements of the standard.

Interviews with the Superintendent, PREA Compliance Manager and PREA Point Person confirm that incident reviews are completed for each investigation, except those deemed unfounded. Documentation was provided that demonstrated a thorough review of the incident.

### Standard 115.87: Data collection

#### 115.87 (a)

- Does the agency collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions?  Yes  No

#### 115.87 (b)

- Does the agency aggregate the incident-based sexual abuse data at least annually?  
 Yes  No

#### 115.87 (c)

- Does the incident-based data 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?  Yes  No

#### 115.87 (d)

- Does the agency maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews?  Yes  No

#### 115.87 (e)

- Does the agency also obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates? (N/A if agency does not contract for the confinement of its inmates.)  Yes  No  NA

#### 115.87 (f)

- Does the agency, upon request, provide all such data from the previous calendar year to the Department of Justice no later than June 30? (N/A if DOJ has not requested agency data.)  Yes  No  NA

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a), (b), (c) Directive #4027B, Sexual Abuse Reporting & Investigation Inmate – on – Inmate, Directive #4028B, Sexual Abuse Reporting & Investigation Staff – on – Inmate/Staff-on-Parolee, Office of Program Planning Research and Evaluation – PREA Data Collection, Review, Retention and Publication Manual support that the facility will maintain monthly sexual abuse/threat incident summaries which are forwarded to the Deputy Commissioner for Correctional Facilities and the Associate Commissioner for Prison Rape Elimination Act (PREA). This provides information that can address the Survey of Sexual Victimization if requested from the Bureau of Justice Statistics. The information is used for the Agency report.

(d) Office of Program Planning Research and Evaluation supports that the data base is set up to capture agency data from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.

(e) Information from the private agencies are incorporated into the agency data base and therefore included.

(f) The last request for data from the DOJ was for calendar year 2017; the response was provided in advance of the January 18, 2019 deadline. As stated above, the policies, retention schedule, review of the data gathering operation, interview with the PREA coordinator and PREA manager all demonstrate that the requirements of this standard are address and therefore the standard is deemed to be compliant. There is a

report available on the webpage for the agency that provides an in-depth analysis for the years 2013-2016, completed and published December 2018.

## Standard 115.88: Data review for corrective action

### 115.88 (a)

- Does the agency 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: Identifying problem areas?  Yes  No
- Does the agency 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: Taking corrective action on an ongoing basis?  Yes  No
- Does the agency 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: Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole?  Yes  No

### 115.88 (b)

- Does the agency's annual report include a comparison of the current year's data and corrective actions with those from prior years and provide an assessment of the agency's progress in addressing sexual abuse  Yes  No

### 115.88 (c)

- Is the agency's annual report 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?  Yes  No

### 115.88 (d)

- Does the agency indicate the nature of the material redacted where it redacts specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a), (b), (c), (d) Office of Program Planning Research and Evaluation – PREA Data Collection, Review, Retention and Publication Manual requires the PREA Analyst to prepare an aggregate data collected in order to assess and improve the effectiveness of its sexual abuse and sexual harassment prevention program. An annual report is prepared which compares the statistics from each year, compares the data and action plans and assesses the program towards prevention. There are no personal identifiers in the report, as required by the manual. Information that may present a clear and specific threat to the safety and security of a facility can be redacted; however, an explanation of the contents would be provided. This report is available on the NYSDOCCS website and complies with the requirements of this standard.

The auditor reviewed the annual reports which analyzed the data for 2013 to 2016.

## Standard 115.89: Data storage, publication, and destruction

### 115.89 (a)

- Does the agency ensure that data collected pursuant to § 115.87 are securely retained?  
 Yes  No

### 115.89 (b)

- Does the agency make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its website or, if it does not have one, through other means?  Yes  No

### 115.89 (c)

- Does the agency remove all personal identifiers before making aggregated sexual abuse data publicly available?  Yes  No

### 115.89 (d)

- Does the agency maintain sexual abuse data collected pursuant to § 115.87 for at least 10 years after the date of the initial collection, unless Federal, State, or local law requires otherwise?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

(a), (b), (c), (d) Office of Program Planning Research and Evaluation – PREA Data Collection, Review, Retention and Publication Manual states that the information is securely retained by the Office of Special Investigations, retained for 10 years after the date of the initial collection, personal identifiers are removed before publishing on the website. Interview with the investigators and PREA Coordinator supported that

investigations are securely retained. No personal identifiers required redaction on the published data. Therefore, the auditor finds this standard to be in compliance.

## AUDITING AND CORRECTIVE ACTION

### Standard 115.401: Frequency and scope of audits

#### 115.401 (a)

- During the three-year period starting on August 20, 2013, and during each three-year period thereafter, did the agency ensure that each facility operated by the agency, or by a private organization on behalf of the agency, was audited at least once? (N/A before August 20, 2016.)  
 Yes  No  NA

#### 115.401 (b)

- During each one-year period starting on August 20, 2013, did the agency ensure that at least one-third of each facility type operated by the agency, or by a private organization on behalf of the agency, was audited?  Yes  No

#### 115.401 (h)

- Did the auditor have access to, and the ability to observe, all areas of the audited facility?  
 Yes  No

#### 115.401 (i)

- Was the auditor permitted to request and receive copies of any relevant documents (including electronically stored information)?  Yes  No

#### 115.401 (m)

- Was the auditor permitted to conduct private interviews with inmates, residents, and detainees?  
 Yes  No

#### 115.401 (n)

- Were inmates permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)

**Does Not Meet Standard** (*Requires Corrective Action*)

See comments in audit narrative.

## Standard 115.403: Audit contents and findings

### 115.403 (f)

- The agency has published on its agency website, if it has one, or has otherwise made publicly available, all Final Audit Reports within 90 days of issuance by auditor. The review period is for prior audits completed during the past three years PRECEDING THIS AGENCY AUDIT. In the case of single facility agencies, the auditor shall ensure that the facility's last audit report was published. The pendency of any agency appeal pursuant to 28 C.F.R. § 115.405 does not excuse noncompliance with this provision. (N/A if there have been no Final Audit Reports issued in the past three years, or in the case of single facility agencies that there has never been a Final Audit Report issued.)  Yes  No  NA

### Auditor Overall Compliance Determination

**Exceeds Standard** (*Substantially exceeds requirement of standards*)

**Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)

**Does Not Meet Standard** (*Requires Corrective Action*)

The Agency has 60 facility PREA reports posted on the website site for audits conducted since 2015. There are also 4 contractual community based PREA reports posted.

## AUDITOR CERTIFICATION

I certify that:

- The contents of this report are accurate to the best of my knowledge.
- No conflict of interest exists with respect to my ability to conduct an audit of the agency under review, and
- I have not included in the final report any personally identifiable information (PII) about any inmate or staff member, except where the names of administrative personnel are specifically requested in the report template.

*Amy J. Fairbanks*

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**Auditor Signature**

**Date 6/7/2019**