

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

Interim     Final

Date of Report: December 8, 2019

## Auditor Information

Name: Michelle L. Burrows

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Company Name:

Mailing Address: P.O. Box 802

City, State, Zip: Canal Winchester, OH 43110

Telephone: 614.519.8181

Date of Facility Visit: Oct. 30 to Nov. 1, 2019

## Agency Information

Name of Agency:

**NY State Department of Corrections and Community  
Supervision**

Governing Authority or Parent Agency (If Applicable):

Physical Address: **1220 Washington Avenue**

City, State, Zip: **Albany, NY 12226-2050**

Mailing Address:

City, State, Zip:

The Agency Is:

Military

Private for Profit

Private not for Profit

Municipal

County

State

Federal

Agency Website with PREA Information:

<http://www.doccs.ny.gov/PREA/PREAinfo.html>

## Agency Chief Executive Officer

Name: **Anthony J. Annucci**

Email: **commissioner@doccs.ny.gov**

Telephone: **518.457.8134**

## Agency-Wide PREA Coordinator

Name: **Jason D. Effman**

Email: **Jason.effman@doccs.ny.gov**

Telephone: **518.457.3955**

PREA Coordinator Reports to:

Acting Commissioner

Number of Compliance Managers who report to the PREA  
Coordinator

16

## Facility Information

**Name of Facility:** Wende Correctional Facility

**Physical Address:** 3040 Wende Road

**City, State, Zip:** Alden, New York 14004

**Mailing Address (if different from above):**

**City, State, Zip:**

**The Facility Is:**

Military

Private for Profit

Private not for Profit

Municipal

County

State

Federal

**Facility Type:**

Prison

Jail

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

**Has the facility been accredited within the past 3 years?**  Yes  No

**If the facility has been accredited within the past 3 years, select the accrediting organization(s) – select all that apply (N/A if the facility has not been accredited within the past 3 years):**

ACA

NCCHC

CALEA

Other (please name or describe:

N/A

**If the facility has completed any internal or external audits other than those that resulted in accreditation, please describe:**  
NA

### Warden/Jail Administrator/Sheriff/Director

**Name:** Stewart T. Eckert, Superintendent

**Email:** Stewart.Eckert@doccs.ny.gov

**Telephone:** (716) 937-4000 x 2000

### Facility PREA Compliance Manager

**Name:** Timothy Franclemont, Assistant Deputy Superintendent/PREA Compliance Manager

**Email:** Tim.Franclemont@doccs.ny.gov

**Telephone:** (716) 937-4000 x 2160

**Facility Health Service Administrator**  N/A

**Name:** Jaqueline Levitt, MD

**Email:** Jaqueline.Levitt@doccs.ny.gov

**Telephone:** (716) 937-4000 x 6128

## Facility Characteristics

Designated Facility Capacity:	918	
Current Population of Facility:	757	
Average daily population for the past 12 months:	712	
Has the facility been over capacity at any point in the past 12 months?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Which population(s) does the facility hold?	<input type="checkbox"/> Females <input checked="" type="checkbox"/> Males <input type="checkbox"/> Both Females and Males	
Age range of population:	18-87	
Average length of stay or time under supervision:	30 months	
Facility security levels/inmate custody levels:	Maximum	
Number of inmates admitted to facility during the past 12 months:	1444	
Number of inmates admitted to facility during the past 12 months whose length of stay in the facility was for 72 hours or more:	1376	
Number of inmates admitted to facility during the past 12 months whose length of stay in the facility was for 30 days or more:	1167	
Does the facility hold youthful inmates?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Number of youthful inmates held in the facility during the past 12 months: (N/A if the facility never holds youthful inmates)	<input checked="" type="checkbox"/> N/A	
Does the audited facility hold inmates for one or more other agencies (e.g. a State correctional agency, U.S. Marshals Service, Bureau of Prisons, U.S. Immigration and Customs Enforcement)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<p><b>Select all other agencies for which the audited facility holds inmates: Select all that apply (N/A if the audited facility does not hold inmates for any other agency or agencies):</b></p>	<input type="checkbox"/> Federal Bureau of Prisons <input type="checkbox"/> U.S. Marshals Service <input type="checkbox"/> U.S. Immigration and Customs Enforcement <input type="checkbox"/> Bureau of Indian Affairs <input type="checkbox"/> U.S. Military branch <input type="checkbox"/> State or Territorial correctional agency <input type="checkbox"/> County correctional or detention agency <input type="checkbox"/> Judicial district correctional or detention facility <input type="checkbox"/> City or municipal correctional or detention facility (e.g. police lockup or city jail) <input type="checkbox"/> Private corrections or detention provider <input type="checkbox"/> Other - please name or describe: <a href="#">Click or tap here to enter text.</a> <input checked="" type="checkbox"/> N/A	
Number of staff currently employed by the facility who may have contact with inmates:	816	

Number of staff hired by the facility during the past 12 months who may have contact with inmates:	95 hires/transfers
Number of contracts in the past 12 months for services with contractors who may have contact with inmates:	6
Number of individual contractors who have contact with inmates, currently authorized to enter the facility:	9
Number of volunteers who have contact with inmates, currently authorized to enter the facility:	115
<b>Physical Plant</b>	
<p><b>Number of buildings:</b></p> <p>Auditors should count all buildings that are part of the facility, whether inmates are formally allowed to enter them or not. In situations where temporary structures have been erected (e.g., tents) the auditor should use their discretion to determine whether to include the structure in the overall count of buildings. As a general rule, if a temporary structure is regularly or routinely used to hold or house inmates, or if the temporary structure is used to house or support operational functions for more than a short period of time (e.g., an emergency situation), it should be included in the overall count of buildings.</p>	67
<p><b>Number of inmate housing units:</b></p> <p>Enter 0 if the facility does not have discrete housing units. DOJ PREA Working Group FAQ on the definition of a housing unit: How is a "housing unit" defined for the purposes of the PREA Standards? The question has been raised in particular as it relates to facilities that have adjacent or interconnected units. The most common concept of a housing unit is architectural. The generally agreed-upon definition is a space that is enclosed by physical barriers accessed through one or more doors of various types, including commercial-grade swing doors, steel sliding doors, interlocking sally port doors, etc. In addition to the primary entrance and exit, additional doors are often included to meet life safety codes. The unit contains sleeping space, sanitary facilities (including toilets, lavatories, and showers), and a dayroom or leisure space in differing configurations. Many facilities are designed with modules or pods clustered around a control room. This multiple-pod design provides the facility with certain staff efficiencies and economies of scale. At the same time, the design affords the flexibility to separately house inmates of differing security levels, or who are grouped by some other operational or service scheme. Generally, the control room is enclosed by security glass, and in some cases, this allows inmates to see into neighboring pods. However, observation from one unit to another is usually limited by angled site lines. In some cases, the facility has prevented this entirely by installing one-way glass. Both the architectural design and functional use of these multiple pods indicate that they are managed as distinct housing units.</p>	52
Number of single cell housing units:	48
Number of multiple occupancy cell housing units:	4
Number of open bay/dorm housing units:	1
Number of segregation cells (for example, administrative, disciplinary, protective custody, etc.):	75
In housing units, does the facility maintain sight and sound separation between youthful inmates and adult inmates? (N/A if the facility never holds youthful inmates)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
Does the facility have a video monitoring system, electronic surveillance system, or other monitoring technology (e.g. cameras, etc.)?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No



# Audit Findings

## Audit Narrative

*The auditor's description of the audit methodology should include a detailed description of the following processes during the pre-onsite audit, onsite audit, and post-audit phases: documents and files reviewed, discussions and types of interviews conducted, number of days spent on-site, observations made during the site-review, and a detailed description of any follow-up work conducted during the post-audit phase. The narrative should describe the techniques the auditor used to sample documentation and select interviewees, and the auditor's process for the site review.*

A PREA Audit of Wende Correctional Facility (WCF), New York Department of Corrections and Community Supervision (DOCCS) was conducted on October 30-November 1, 2019, by Michelle L. Burrows, DOJ Certified PREA Auditor. The Adult Prisons and Jails audit instrument was used to conduct the WCF audit and was furnished by the National PREA Resource Center. There were no barriers to completing this audit. Approximately three weeks prior to the audit, WCF provided this auditor with the PAQ and appropriate policies, procedures, and facility documentation related to the standards for review. Wende CF is a maximum-security facility and no female inmates are housed at the WCF.

On October 3, 2019, the auditor sent an email to the PREA Compliance Manager requesting the following:

- 20-Random Employee background checks.
- 10-Contractor background checks.
- 20-Random Employee PREA training documentation.
- 10-Random Medical/Mental Health PREA specialized training documentation.
- 5-(Contractors) Medical/Mental Health PREA specialized training documentation.
- 20-Random Contractor/Volunteer PREA training documentation.
- Samples of written PREA Inmate education material, i.e. Inmate handbooks, posters, brochures.
- 20-Random Inmates that received PREA comprehensive education within 30 days of arrival.
- 20-Random Inmate Risk screenings for sexual victimization/abuse to include reassessment within 30 days of arrival.
- Completed sexual abuse & sexual harassment investigations; PAQ reported (during the past 12 months).
- Sample documentation for monitoring retaliation of sexual abuse & sexual harassment investigations over the past 12 months.
- All Sexual Assault Reviews during (from the past 12 month) for completed investigations of sexual abuse, excluding unfounded cases.

All documentation was received as requested. The background checks for employees and contractors are unable to be copied and retained by the auditor as they contain confidential information. However, the auditor did review the actual files and found them to be compliant with completing background checks.

At approximately 8:00 a.m. on October 30, 2019, an informal briefing was conducted with the Superintendent and his executive team and we discussed the PREA audit process and schedule and the approximate number of specialized and random staff that were going to be interviewed during the audit. Wende CF was finishing their ACA audit so this auditor began the tour until the ACA audit was completed. Inmate population on day 1 of the audit was 771.

All areas of the facility which were accessible to inmates were observed. The outside buildings were toured on November 1, 2019 with the ADS/PREA Compliance Manager and the PREA Point Person. These areas included Inmate Housing Areas, Segregation, Food Service, Inmate Dining Hall, Regional Medical Unit, Laundry, Visitation, Transportation Hub, State Shop, Commissary, Package Room, Intake, Academic and Vocational areas, Library and Legal Library. Random inmates and staff were interviewed during the tour. Inmates were knowledgeable of the facility PREA program and staff were aware of their responsibilities under the PREA guidelines. Appropriate PREA signs and posters were visible throughout all areas of the facility. Prior to the audit, the auditor requested the postings be placed and a photograph of the posting be sent. The photograph was received on September 19, 2019. The notice of the PREA audit was posted throughout the facility on Sept. 19, 2019 in English and Spanish on bright blue paper; however, not all company's in the housing units had them. The PREA auditor requested they be placed on all company's in order to give the inmates more opportunity to write to the auditor. (This was completed immediately.)

Wende Correctional Institution employed (816) staff at the time of the on-site portion of the audit. The Auditor interviewed (15) random staff. It should be noted that the random sampling size of staff interviews comprised of Tours 1, 2 and 3 employees, civilian and non-civilian. The auditor also conducted specialized interviews with the following:

- (4) Medical/Mental Health staff (to include contractors);
- (1) Human resources staff;
- (1) Volunteer;
- (2) OSI Investigators (at Gowanda CF on 11/5/19);
- (4) Staff who perform screening for risk of victimization and abusiveness;
- (2) Staff members on the incident review team;
- (1) Staff member charged with monitoring retaliation;
- (4) Intermediate supervisors
- (4) Staff first responders, both security and non-security staff interviewed;
- (2) Intake staff members
- (1) Superintendent;
- (1) PREA Coordinator
- (1) PREA Compliance Manager;
- (1) PREA Point Person;
- (1) Rape Crisis Center via phone on 11/5/19 at Gowanda CF

All Specialized Staff interviews were conducted in accordance with the PREA Guidelines for Auditors: Specialized Staff Interviews. This auditor also reviewed written PREA audit interviews of the DOCCS Acting Commissioner and the Associate Commissioner designated as the Agency PREA Coordinator.

Some random inmates were interviewed during the tours. Nineteen random inmates were formally interviewed. The random interviewees were selected from the housing rosters and designated lists of inmates provided by the facility. At least two inmates from each of the seven housing units plus one inmate from the SHU were interviewed. This included (3) transgender inmates, (1) non-English speaking inmate, (1) blind inmate and (1) deaf inmate, (2) cognitive inmates, (1) pansexual inmate, (1) disabled inmate, (3) who reported sexual victimization, and (3) who reported sexual assault. These interviews verified that female staff are announcing their presence when entering the housing units and that the inmates are receiving the required PREA information. Two inmates interviewed indicated they did not feel safe at WCF so the ADS/PREA Compliance Manager was immediately notified and the inmates were interviewed regarding their safety. Both inmates denied needing Protective Housing and signed the form stating such. The Victim Advocacy Program Office of Victim Services/Office for the Prevention of Domestic Violence Case Manager was interviewed via telephone on November 4, 2019 at Gowanda CF as they cover Wende

CF, Gowanda and Collins facilities as well. The Agency Head interview had previously been conducted by another DOJ certified PREA Auditor and was accepted by this Auditor. The PREA Coordinator was onsite during the audit and he was interviewed during this time.

During the past 12 months, the Wende Correctional Facility had (13) allegations of reported sexual abuse and sexual harassment with one inmate being transported to the local hospital for a SANE/SAFE exam. The results of the DNA test regarding this case were still pending during the audit. OSI will finalize the investigation once the test results are obtained and then the decision will be made on how to further proceed.

Two allegations resulted in an administrative investigation and eleven were referred for criminal investigation. There were also 17 hotline calls made during the 12 months preceding the audit. Most of these hotline calls were related to complaints of inappropriate “pat frisk” situations and did not rise to the level of administrative investigations. All complaints were investigated by the facility and the more serious complaints were referred to OSI for further investigation. All documentation was reviewed during and after the audit. The Auditor conducted a formal interview with the acting Asst. Deputy Chief of Investigations and a Senior-Investigator with the Office of Special Investigations (OSI) Sex Crimes Division on November 5, 2019 at Gowanda Correctional Facility which also included the interview for Wende CF and Collins CF. The Auditor determined PREA investigations are being completed per NYS DOCCS policy and procedures and are compliant with all applicable PREA standards.

After the on-site audit was completed, the auditor conducted an exit-briefing with members of the Executive staff. The Auditor could not give an outcome of the audit. The Auditor thanked the facility staff and commended them on their hard work and commitment to the Prison Rape Elimination Act. During the report writing period the Auditor reviewed additional policies & procedures and supplementary documentation that was received during the audit and several emails were sent/received requiring clarification of practices and documentation.

## Facility Characteristics

*The auditor's description of the audited facility should include details about the facility type, demographics and size of the inmate, resident or detainee population, numbers and type of staff positions, configuration and layout of the facility, numbers of housing units, description of housing units including any special housing units, a description of programs and services, including food service and recreation. The auditor should describe how these details are relevant to PREA implementation and compliance.*

The Wende Correctional Facility, a facility within the New York State Department of Corrections and Community Supervision (DOCCS), is located at 3040 Wende Road, Alden, New York, 14004-1187. The facility was constructed in 1924 to serve as the Erie County Penitentiary and farm. It was acquired by the DOCCS and made operational on November 1, 1983. WCF is a maximum-security institution located approximately 16 miles east of Buffalo, New York. It houses general confinement male offenders and functions as an intake center for male offenders from county jails in western New York.

WCF is made up of new and old buildings. In 1983, an entry mega structure, food service complex and gymnasium were added. In 1990, a mental health unit was constructed and in 1998, a Regional Medical Unit was constructed. The facility consists of seven cell blocks, a mental health unit building and a regional medical unit. Ancillary areas and buildings include administrative offices, inmate dining areas, gymnasium, storehouse, garage, maintenance, and programs. A, B, C and D blocks house general population inmates, who are assigned to various programs. C block houses new inmates received from the county. Protective custody and involuntary protective custody inmates are housed in E block, while F block houses special needs inmates. The special housing unit occupies the first floor of G block, while the second and third floors are dorm housing.



Wende is a transportation hub, transporting offenders in and out of the hub as well as between institutions and court and medical transportation.

Among the population served at Wende are sex offenders, visually impaired and hearing impaired, dialysis patients, substance abusers, severe mental health and intermediate care mental health, as well as general population maximum security adult male felons. Wende's programs, work and therapeutic activities are designed to meet the needs of a diverse population. Their program goals include preparing men for release to the community and helping them to be a productive part of the facility community.

## Summary of Audit Findings

*The summary should include the number and list of standards exceeded, number of standards met, and number and list of standards not met.*

During an interview with a deaf inmate, the question was asked if female staff announce their presence when arriving on the housing unit. Since the inmate was deaf, he did not know. When asked if he knew when females were on the unit, he stated he did not know until he saw them. After discussion with the PREA Coordinator, Superintendent, PREA compliance manager and Executive team, a new process was put into place to ensure the deaf inmates would know when a female was on the housing unit. Female staff must flash the unit lights upon arrival to ensure deaf inmates are aware of their presence. A memo was drafted by the Superintendent and approved by this auditor for distribution to all staff. It was read in "lineup" beginning immediately.

During the audit, it was discovered that notifications to the other facilities were being delayed as the facility was contacting OSI to find out if an investigation had already been opened on that case. The delay would be up to 120 hours. After discussion with the PREA Coordinator during the audit, a memo was written and sent out statewide on November 7, 2019 along with a form change to ensure the 72-hour deadline is not missed. A draft copy of the memo was obtained and approved by this auditor on November 5, 2019 and a confirmation email was received on November 8, 2019 to show distribution statewide.

There was some information provided by inmates that they did not receive the PREA Video when they were transferred to Wende CF because they were transferred to be placed in the SHU or Protective Custody, which meant they bypassed the orientation phase of the process (these types of transfers are rare). They were processed at intake as required; however, they were immediately transferred to the SHU or PC unit. After discussion with the administrative staff, a memo was drafted by the Deputy Superintendent of Programs to the Offender Rehabilitation Coordinators (ORC) to ensure the inmates are shown the PREA Video and approved by this auditor.

The auditor discovered that some information was missing from the employee files that showed the security staff had background checks conducted. This was discovered during an audit at Rochester CF the previous week and a discussion with AC Effman at Rochester CF on October 22, 2019 took place, direction was given on how to obtain the background check information for the auditors. Therefore, the information was obtained when requested.

**Auditor Note:** No standard should be found to be “Not Applicable” or “NA”. A compliance determination must be made for each standard.

### Standards Exceeded

**Number of Standards Exceeded:** 7

**List of Standards Exceeded:** 115.11; 115.17; 115.22; 115.34; 115.53; 115.67; 115.71

### Standards Met

**Number of Standards Met:** 38 115.12; 115.13; 115.14; 115.15; 115.16; 115.18; 115.21; 115.31; 115.32; 115.33; 115.35; 115.41; 114.42; 115.43; 115.51; 115.52; 114.54; 115.61; 115.62; 115.63; 116.64; 115.65; 115.66; 115.68; 115.72; 115.73; 115.76; 115.77; 115.78; 115.81; 115.82; 115.83; 115.86; 115.87; 115.88; 115.89; 115.401; 115.403

### Standards Not Met

**Number of Standards Not Met:** 0

**List of Standards Not Met:**

## PREVENTION PLANNING

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

All Yes/No Questions Must Be Answered by The Auditor to Complete the Report

#### 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*)

## Instructions for Overall Compliance Determination Narrative

*The narrative below must include a comprehensive discussion of all the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.*

New York State Department of Corrections and Community Supervision has two written policies mandating zero tolerance toward all forms of sexual abuse and sexual harassment (DIR4027A, Sexual Abuse Prevention & Intervention – Inmate on Inmates and DIR4028A, Sexual Abuse Prevention & Intervention – Staff on Inmate/Staff on Parolee). These two policies collectively outline the agency's approach to preventing, detecting, and responding to sexual abuse, sexual harassment, and sexual threats. Policies state sexual abuse and sexual harassment violate Department rules and threaten security and that all allegations of sexual abuse, sexual harassment, or retaliation for reporting such an incident of participating in an investigation will be thoroughly investigated. Policy states that perpetrators will be dealt with severely through discipline or prosecution to the fullest extent permitted by law. Policy provides definitions consistent with those found in Prison Rape Elimination Act of 2003, (PREA), 42 U.S.C. §15609. Under § 130.05 of New York State Penal Law, it is a crime for staff to engage in a sexual act with an inmate or parolee. Strategies for prevention and response include training, a duty to report, requirements, and enforcement of discipline and prosecution for those who offend.

Jason Effman currently serves as Associate Commissioner/PREA Coordinator, as designated through memorandum dated April 23, 2013 from then Commissioner Brian Fischer. The PREA Coordinator is an upper level position in the agency hierarchy and reports directly to the Agency Head as indicated by New York State Department of Corrections and Community Supervision Central Office Organization Chart and interviews with PREA Coordinator and Agency Head. The Associate Commissioner/PREA Coordinator is a dedicated position and through interview with Associate Commissioner Effman, it was confirmed that his time is almost exclusively devoted to overseeing the agency's efforts to develop, implement and oversee agency efforts to comply with PREA standards in all his facilities and he has sufficient time and authority to do so. He further manages this through regular and direct coordination with sixteen (16) Assistant Deputy Superintendent/PREA Compliance Managers who are instrumental in PREA coordination and execution at the facility level. During his interview, Acting Commissioner Anthony J. Annucci articulated complete support of efforts by Associate Commissioner Effman, the Zero Tolerance mandate throughout the agency, and a continued commitment for agency compliance.

Based on auditor's analysis of related policy, review of executive memorandums, review of agency and facility organization charts, and formal staff interviews it is determined that Wende Correctional Facility satisfies all elements required of this standard. In addition, the designation of a PREA Point Person for every facility is above and beyond the minimum requirements, therefore, New York State Department of Corrections and Community Supervision and Wende is found to exceed this standard. DOCCS goes above and beyond to alleviate Prison Rape. They have established several ways to report, who they can report to, victim services, prosecuting cases, establishing a sex crimes unit, etc. Therefore, this auditor finds they exceed this standard as they have taken a pro-active approach and have established a Sexual Abuse Prevention and Education Office.

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

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

### 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.)  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*)

### Instructions for Overall Compliance Determination Narrative

*The narrative below must include a comprehensive discussion of all the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.*

New York State Correction Law section 121 provides that the private operation or management of a correctional facility for housing state or local inmates or the private ownership or operation of a facility for the incarceration of other state's inmates is prohibited. Thus, no private prisons are operated on behalf of the Agency.

NYDOCCS has entered into agreements with private organizations for 14 Community Based Residential Programs to provide up to 4 months of housing and treatment for selected Parolees. These contracts were effective starting 5/1/17 (7 programs), 10/1/17 (6 programs) and July 23, 2018 (1 program). Each contract permits contract monitoring and requires the Program to achieve and maintain PREA Compliance, and to arrange for PREA Audits on a schedule set in consultation with the DOCCS Agency-Wide PREA Coordinator. This standard does not apply to Wende Correctional Facility as they do not contract directly with private agencies or other entities.

## Standard 115.13: Supervision and monitoring

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.13 (a)

- Does the facility have a documented staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring, to protect inmates against sexual abuse?  Yes  No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: Generally accepted detention and correctional practices?  Yes  No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: Any judicial findings of inadequacy?  Yes  No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: Any findings of inadequacy from Federal investigative agencies?  Yes  No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: Any findings of inadequacy from internal or external oversight bodies?  Yes  No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: All components of the facility's physical plant (including "blind-spots" or areas where staff or inmates may be isolated)?  Yes  No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: The composition of the inmate population?  Yes  No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: The number and placement of supervisory staff?  Yes  No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: The institution programs occurring on a particular shift?  Yes  No  NA
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: Any applicable State or local laws, regulations, or standards?  Yes  No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: The prevalence of substantiated and unsubstantiated incidents of sexual abuse?  Yes  No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: Any other relevant factors?  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*)

### Instructions for Overall Compliance Determination Narrative

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NYS DOCCS ensures that each facility has developed and documented a staffing plan that provides for adequate levels of staffing. A comprehensive and extensive staffing plan is developed and established through the New York State Department of Corrections and Community Supervision Security Information Staffing Unit. The staffing plan for Wende Correctional Facility is predicated on 919 inmates. The average daily number of inmates since the last PREA audit is 803 inmates. The current plan calls for 570 security positions, which includes the supervisory positions on each tour. The plan takes into consideration staff utilization, post closures, additional services usage, preplanning practices, leave policies and schedules, local agreements, supervisory charts, and job descriptions in addition to each of the categories required by this standard to provide for adequate levels of staffing. Information obtained through personal review of documents noted, interview with the Superintendent, PREA Coordinator, Compliance Manager, and Deputy Superintendent. Wende Correctional Facility uses video monitoring in the SHU (segregation) only and is monitored in the Watch Commander's office.

Circumstances where the staffing plan (Plot Plan) is not complied with is documented directly into the database in the Post Closure Report using codes from the Post Closure Key. Any deviations from the staffing plan are documented and justified. Auditor's review of these reports and interviews with Superintendent and Assistant Deputy Supt. indicate deviations from staffing plan are consistently and thoroughly documented.

The most recent staffing plan review was conducted by Superintendent Eckert and is dated June 10, 2019, as evidenced by memorandum reference subject Wende Correctional Facility Annual Supervision and Monitoring Plan Review. The review concluded that the facility's current staffing plan and monitoring infrastructure is adequate, and that the available staffing resources (570 security positions) are enough to meet the staffing plan. As indicated in the referenced memorandum, the review included generally accepted detention and correctional practices, any judicial finding of inadequacy (none), any findings of inadequacy from federal investigative agencies (none), findings of inadequacy from internal or external oversight bodies (none), all components of the physical plant, composition of inmate population, number and placement of supervisory staff, institution programs occurring on a particular shift, applicable State or local laws, regulations or standards, (Agency Directives & ACA), prevalence of substantiated and unsubstantiated incidents of sexual abuse. The annual review is a collaborative effort between the facility superintendent, compliance manager, and PREA Coordinator. Information verified through personal observation, review of documents cited, interviews with Superintendent, PREA Coordinator, and Compliance Manager.

## Standard 115.14: Youthful inmates

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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*)

### Instructions for Overall Compliance Determination Narrative

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State of New York Executive Order No. 150 dated December 22, 2015 established separate correctional facilities within the New York State Department of Corrections and Community Supervision exclusively for youth. In 2018, the State of New York passed a "Raise the Age Law" which is being implemented in two phases starting in October 2018. Correction Law § 77, enacted effective April 10, 2017, required the state to establish one or more facilities to serve "adolescent offenders" sentenced to the Department of Corrections and Community Supervision. DIR0063 states the facility is used for general confinement of males 18 years of age or older. The daily population reports for past 12 months indicate no inmates under the age of 18 have been housed at Wende Correctional Facility. This fact was further confirmed during interviews with the Superintendent, PREA Coordinator, and Compliance Manager. This standard is not applicable to Wende Correctional Facility.

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

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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, except in exigent circumstances? (N/A if the facility does not have female inmates.)  
 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 if the facility does not have female inmates.)  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? (N/A if the facility does not have female inmates.)  Yes  No  NA

#### 115.15 (d)

- Does the facility have policies 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 have procedures 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*)

#### Instructions for Overall Compliance Determination Narrative

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DOCCS/Wende Correctional Facility policy prohibits cross-gender strip searches or cross gender visual body cavity searches. All strip searches are authorized by a supervisor and documented. The facility has implemented policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without non-medical staff of the opposite gender viewing their buttocks, or genitalia, except when such viewing is incidental to routine checks. Staff is trained to conduct cross-gender pat-down searches, in case of an emergency, and searches of transgender and intersex inmates using the least intrusive method possible. Staff interviews showed a thorough understanding of the inmate search policy. All security staff receive annual training, shift briefing training in conjunction with the PREA video training, which covers policy and procedures concerning searches.

As observed by the auditor, staff are knowledgeable and professional in conducting searches. The PAQ showed that 97% of security staff received the appropriate training. After questioning this issue, documentation was provided to show that 100% of security staff received the required training. During the tour of the facility the Auditor observed staff announcements made when entering areas where inmates were likely to be showering, performing bodily functions, or changing clothing. Wende CF does not search or physically examine inmates for the sole purpose of determining the inmate's genital status. If the inmate's genital status is unknown, it may be

determined 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.

The Auditor received secondary documentation of staff training records submitted with the PAQ and reviewed additional training records and lesson plans on-site and saved copies to a flash drive. Through interviews with staff and inmates it was determined proper cross-gender pat-down searches, and searches of transgender and inter-sex inmates are conducted in accordance with policy & procedures.

Wende CF has not conducted any cross-gender strip searches or cross-gender visual body cavity searches in the past 12 months. Wende CF is an all-male facility, therefore 115.15(b) and parts of(c) are N/A as there are no female inmates housed at WCF. This is outlined in NY DOCCS DIR 2230, Guidelines for Assignment of Male and Female Correctional Officers dated 02/21/2019; HSPM 1.37 Body Cavity Search 12/29/16 & DIR4001, Facility Administrative Coverage & Supervisory Rounds dated 4/25/19. Other directives and information relied upon to find compliance are: Memo: Facility Prison Rape Elimination Act (PREA) Point Person, RE: Inmate allowed to shower separately; HSPM 1.19 Health Appraisal dated 6/11/19; and NYS DOCCS DIR 4910, Control and Search for Contraband dated 6/28/19 and memo update of DIR 4910 dated July 18, 2019.

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

### **All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### **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*)

## Instructions for Overall Compliance Determination Narrative

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Wende Correctional Facility takes steps and has a policy which ensures 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. Wende provides inmates with materials which are available in English and Spanish as well as several other languages (Chinese, Korean, Russian, etc.). They also have access to a translation hotline. PREA posters and educational materials are provided in English and Spanish. Inmates who are deaf are provided PREA information through written form, i.e. PREA guidelines, Education Brochures and Videos with subtitles. Inmates who are blind or sight impaired are provided an audio track in English, Spanish and six additional languages. PREA Videos are available with subtitles. Wende does not rely on inmate interpreters, inmate readers, or other types of inmate assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise an inmate's safety, the performance of first-responder duties, or the investigation of an inmate's allegations.

The Auditor observed throughout the facility written materials, posters, pamphlets all in multiple languages advising inmates of their rights to be free from sexual abuse, sexual harassment and retaliation and how to report such. There were thirty-four inmates with limited English speaking and a staff interpreter was utilized to interview four of them. As stated in the narrative, there was a communication breakdown with the deaf inmates as there was no way for them to know when a female was working the unit until the inmates saw her. This was rectified during the audit with a memo written by the Deputy Superintendent of Security and approved by this auditor.

The Auditors conducted random staff and inmate interviews and interviewed the (Intake) Officers as well as reviewed the following policies/procedures and supporting documentation provided with the PAQ and on-site: NYDOCCS DIR 2612, Inmates with Sensorial Disabilities dated 12/27/18; DOCCS DIR 4490, Cultural and Language Access Services dated 8/1/19; Associate Commissioner Memo – RE: "Ending Sexual Abuse Behind the Walls: An Orientation" DVD; and Brochures in English, Haitian Creole, Italian, Polish, Russian, Simplified Chinese, Spanish and Korean. Auditor's analysis of documented interpretive services, contracts, interviews with staff and inmates conclude Wende Correctional Facility meets provisions of this standard. With the extensive missions of this facility, the Agency's efforts to have readily available the PREA education video in six (6) languages (audio & captions) beyond English and Spanish is enough in this auditor's evaluation to exceed requirements of this standard.

## Standard 115.17: Hiring and promotion decisions

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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 who may have contact with inmates?  Yes  No
- Does the agency consider any incidents of sexual harassment in determining whether 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*)



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NYDOCCS prohibits hiring and/or promoting anyone who has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution. DOCCS completes criminal background checks on all new employees, contract staff and volunteers before they can have contact with inmates. DOCCS policy requires that all new employees be asked whether they have engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution; 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 or been civilly or administratively adjudicated to have engaged in the activity described above.

DOCCS has an agreement with the New York State Division of Criminal Justice Services to notify the agency of any arrest of an employee, contract staff or volunteer unless the Division is prohibited by State statute to do so. Additionally, policy requires staff to report any criminal charges immediately. Wende CF hired (38) new employees and had (57) transfers within the past 12 months. In the past 12 months, the number of contracts for services where criminal background record checks were conducted on all staff covered in the contract who might have contact with inmates, Wende CF had (8). Through interviews with staff and review of employee personnel records (20) hire packets, all randomly selected by auditor, there was some inconsistency with the documentation maintained in the files, as referenced in the narrative. It is evident Wende Correctional Facility does not hire, promote staff or contractors who have engaged in sexual abuse in Prisons, Jails, Lockups or other confinement facilities.

The auditor relied on random staff interviews, Human Resources Manager interview, Investigative Staff interview, Superintendent Interview and the following policies/procedures and supporting documentation: DOCCS DIR 2216, Fingerprinting/Criminal History Inquiry New Employees and Contractors; NYS Department of Correctional Services Personal Procedure Manual 406A Recruitment Process; Directive 2112, Report of Criminal Charge; Directive 2012, Release of Employee Personnel and Payroll Information; Memo: from Darren Ayotte, Director of Personnel, RE: Personnel Procedure 407 – Civilian Promotions, Personal Procedure Manual 407A – Security Promotions; RE: Prison Rape Elimination Act (PREA)-Background Checks Appendix A.

Interviews conducted with Acting Commissioner, Associate Commissioner/PREA Coordinator, Superintendent, Human Resources Manager combined with the body of documents reviewed validate the protocols identified in above narrative are followed at Wende Correctional Facility finding compliance with this standard. The auditor needs to note that evaluation of the protocols and procedures of the Agency's on-going, real-time system in place for notification of any criminal activity and that criminal background checks are run on all volunteers where it is not required by this standard, WCF exceeds this standard.

## Standard 115.18: Upgrades to facilities and technologies

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

### 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*)

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Wende Correctional Facility has not acquired a new facility or made a substantial expansion to the facility since the last PREA audit. However, DIR3053, Alterations/ Construction Request establishes policy that requires consideration of the effect of the design, acquisition, or modification upon the agency's ability to protect inmates from sexual abuse when designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities. Form1612, Alterations/Construction Request, contains section for superintendent to indicate if alteration/modifications will enhance, have no impact, or have negative impact on the facility's ability to protect inmates from sexual abuse.

Wende Correctional Facility has not installed or updated a video monitoring system, electronic surveillance system, or other monitoring technology since their last PREA audit. However, DIR3053, Alterations/Construction Request establishes policy that requires consideration of how such technology may enhance the agency's ability

to protect inmates from sexual abuse when installing or updating electronic monitoring technology. Review of the Staffing Plan indicates of use of electronic surveillance is a consideration when the annual reviews are conducted.

Compliance with this standard was determined based on policy review and interviews with Acting Commissioner, Superintendent and PREA Compliance Manager. No new construction has been conducted since the last PREA audit. Wende Correctional Facility meets provisions of this standard.

## RESPONSIVE PLANNING

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

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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 evidentially 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? (N/A if the agency *always* makes a victim advocate from a rape crisis center available to victims.)  Yes  No  NA
- 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 agency 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 *always* makes a victim advocate from a rape crisis center available to victims.)  Yes  No  NA

## Auditor Overall Compliance Determination

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NYDOCCS is responsible for criminal and administrative investigations. The Department's Office of Special Investigations Sex Crimes Division conducts the investigations. The Department works with the New York State Police Bureau of Criminal Investigation to investigate reports of Staff-on-Inmate and Inmate-on-Inmate sexual assault that may involve criminal charges. Directives for Sexual Abuse Reporting and Investigation and the Inmate on Inmate Sexual Abuse Dispatch and Operational Guidelines outline evidence protocols for administrative investigations and criminal prosecutions. NYDOCCS utilizes community hospitals that follow the National Protocol for Sexual Assault Medical Forensic Examinations for evidence protocols and forensic medical examinations.

Operational Guidelines-Office of Special Investigations (OSI) Immediate Dispatch, Inmate on Inmate/Staff on Inmate; outlines the agency's approach to the extent the agency is responsible for investigating allegations of sexual abuse, the agency follows a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. Interviews were conducted with investigators from the Office of Special Investigations on November 5, 2019 at Gowanda CF (the week following this audit, as they cover all facilities in this region). Interviews confirmed that PREA investigations are completed as outlined by the standards and both investigators were very knowledgeable of the investigation process, evidence collection protocols, and the use of the Sexual Abuse Checklist. Emergency health care as well as forensic examinations by SANE/SAFE staff are provided at an outside facility with no cost to the inmate. An advocate is provided to the inmate upon request to provide emotional support through the forensic medical examination and investigation interviews. There was one forensic medical exam performed by SANE/SAFE staff at the Erie County Medical Center during the last twelve months. SANE/SAFE exams can also be performed at Strong Memorial Hospital and Rochester General Hospital in Rochester.

The Auditor finds compliance with this standard after interviews with medical staff, OSI investigators, PREA Compliance Manager and review of the following documentation: Directive 4027B – Sexual Abuse Reporting & Investigation Inmate – on – Inmate; HSPM 1.60 – Sexual Assault Operational Guidelines – Office of Special Investigations, Immediate Dispatch: Inmate – on – Inmate/Staff – on – Inmate; Department of Health Protocol for the Acute Care of Adult Patient Reporting Sexual Assault; New York State Police Superintendent Letter - RE: Implementation of the PREA Standards; and Power Point Presentation Excerpt: PREA Specialized Training: Investigations.

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

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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 the policy 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*)

## Instructions for Overall Compliance Determination Narrative

*The narrative below must include a comprehensive discussion of all the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.*

NYDOCCS works with the New York State Police Bureau of Criminal Investigation to investigate reports of Staff – on–Inmate and Inmate-on-Inmate sexual assault that may involve criminal charges. All allegations are investigated and reported with findings as required by this standard. DOCCS Directives, Sexual Abuse Reporting and Investigations Inmate on Inmate, Sexual Abuse Reporting and Investigations Staff on Inmate and Office of Sexual Investigations Sex Crimes Unit, require that all allegations of sexual abuse and sexual harassment be referred for investigation. The Office of Special Investigations Sex Crimes Division conducts these investigations.

Documentation of the administrative investigation is maintained by the Office of Special Investigations Sex Crimes Division and outcomes are shared with the Superintendent. Interviews conducted with investigators from the Office of Special Investigations demonstrated a better understanding of their responsibilities in an investigation. The roles and responsibilities are clearly defined in policy. The agency's policy is available on the agency's website. Wende Correctional Facility had (13) reported cases of sexual abuse or harassment during the auditing period. Eleven of the allegations were referred for criminal investigation.

Interviews were conducted with investigators from the Office of Special Investigations on November 5, 2019 at Gowanda Correctional Facility and the interviews covered Wende CF, Gowanda CF and Collins CF as the investigators cover all these facilities. Interviews confirmed that PREA investigations are completed as outlined by the standards and both investigators were very knowledgeable of the investigation process and the use of the Sexual Abuse Response and Containment Checklist. The investigators brought several investigations for my review for all three facilities. The investigations reviewed were thorough and complete.

The auditor-based compliance on interviews with the Superintendent, OSI investigators, random staff, inmate interviews, PREA Compliance Manager/PREA Point Person, and reviewed the following policies/procedures: Directive 0700 – Office of Special Investigations; Directive 4027A – Sexual Abuse Prevention & Intervention Inmate – on – Inmate Directive 4027B – Sexual Abuse Reporting & Investigation Inmate – on – Inmate; Directive 4028A – Sexual Abuse Prevention & Intervention Staff-on-Inmate; Directive 4028B – Sexual Abuse Reporting & Investigation Staff–on–Inmate. The Acting Commissioner of DOCCS has delegated the authority to conduct administrative and criminal investigations to the Office of Special Investigations (OSI) in accordance with Correction Law 112 and Directive 0700, Office of Special Investigations.” OSI works cooperatively with the New York State Police (NYSP), Bureau of Criminal Investigation (BCI) in the investigation of reported incidents of staff on inmate and inmate-on-inmate sexual abuse that may involve criminal conduct.

## TRAINING AND EDUCATION

### Standard 115.31: Employee training

**All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**



### 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*)

### Instructions for Overall Compliance Determination Narrative

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Staff at Wende Correctional Facility, when interviewed, demonstrated knowledge and insight into PREA. Staff at the facility were asked specific, scripted questions from the random staff interview format, all of which were professionally and confidently answered. The questions were directed at specific training about the following: The agency zero-tolerance policy for sexual abuse and sexual harassment; How to fulfill their responsibilities concerning prevention, detection, reporting, and response concerning sexual abuse and sexual harassment; The inmates' rights to be free from sexual abuse and sexual harassment; Inmate and employee's rights to be free from retaliation for reporting sexual abuse and sexual harassment; The dynamics of sexual abuse and harassment in confinement; The common reaction of victims to sexual abuse and sexual harassment; How to detect signs of sexual abuse and sexual harassment; How to avoid inappropriate relationships; How to communicate effectively and professionally with inmates (LBGTI); and how to comply with relevant laws related to mandatory reporting.

Additional questions were also asked of staff concerning their training, their first responder duties, inmate reporting of sexual abuse and sexual harassment, inmate limited privacy issues (including "knock and announce") and the safety and security of staff and inmates at the facility. The auditor was very impressed with the responses received and the staff's evaluation of safety and security for the Wende Correctional Facility. The agency provides PREA refresher training every year during in-service. Employees are kept updated on these policies through pre-shift briefings and annual in-service.

The auditor relied on random staff interviews, interview with PREA Compliance Manager and the following policies/procedures, manuals, documents, etc.: Training Manual Subject: 0.100 – Frequency Training Chart and Training Bulletins; Training Bulletin 7, PREA: Sexual Abuse Prevention and Response; Training Manual Subject: 7.100 – Employee Familiarization; Training Manual Subject: 7.000 – Initial Employee Training 40-hour Orientation; Acting Commissioner Memo – RE: Policies and Standards Generally Applicable to all Employees; Deputy and Associate Commissioner Memo – RE: Sexual Abuse Prevention and Response Training; Sexual Abuse Prevention and Response Lesson Plan and training documentation reviewed sent with the PAQ as well as provided during the on-site visit which meets the standard.

## Standard 115.32: Volunteer and contractor training

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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*)

### Instructions for Overall Compliance Determination Narrative

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All contractors and volunteers who have contact with inmates at the Wende CF receive PREA training prior to working in the facility. Orientation includes the agency's policy and procedures regarding sexual abuse and sexual harassment prevention, detection, reporting, and response including zero tolerance. Upon completion of orientation, the volunteer/contractor signs the Acknowledgment Form. Signed forms are maintained at the facility. Wende CF had one volunteer available during the on-site audit for interview and she was knowledgeable of their role and responsibilities. Acknowledgment forms were provided with the PAQ and onsite for review to ensure compliance to this standard is met.

The auditor relied on the interviews with the volunteers, PREA Compliance Manager interview and the following documentation to determine compliance: Directive 4027A – Sexual Abuse Prevention & Intervention Inmate – on – Inmate; Directive 4028A – Sexual Abuse Prevention & Intervention Staff – on – Inmate; Directive 4071 – Guidelines for Construction Projects; Directive 4750 – Volunteer Services Program; Acting Commissioner Memo – RE: Policy on the Prevention of Sexual Abuse of Offenders to all Employees, Contractors, Volunteers and Interns; and review of the Volunteer and Contractor training and acknowledgment forms.

## Standard 115.33: Inmate education

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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 the comprehensive education referenced in 115.33(b)?  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*)

### Instructions for Overall Compliance Determination Narrative

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NYDOCCS provides PREA education to all inmates beginning at intake into the agency. At reception, inmates are provided a PREA pamphlet and inmate handbook which explains the agency's zero tolerance policy regarding

sexual abuse and sexual harassment and how to report incidents. When receiving inmates at the facility, the Draft Sgt. covers the PREA information with the inmate. The inmate also receives an Inmate Orientation Manual that includes PREA information and a pamphlet “The Prevention of Sexual Abuse in Prison.” These materials cover the agency’s zero tolerance policy and how to report incidents. Inmates also view the PREA video “Ending Sexual Abuse Behind the Walls: An Orientation.”

Inmate education is documented for each inmate and maintained in the inmate’s file. Random inmate interviews confirm they have received PREA information at intake and during orientation at the facility. All inmates transferred to Wende Correctional Facility receive a PREA pamphlet in preferred language upon arrival, explaining the agency’s and facility’s zero-tolerance policy regarding sexual abuse and sexual harassment and explaining how to report incidents or suspicions of sexual abuse or sexual harassment. The PREA Pamphlet is offered during the interview with the Draft Sgt. who covers the Zero Tolerance policy verbally and tells the inmate how to make a report. Wende CF received one inmate during the audit and the auditor was in the midst of interviews when the intake process took place. The documentation was reviewed prior to, during and after the audit to ensure the facility is compliant with this standard.

The agency ensures that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, brochures or other written formats as directed through DIR4027A. Offenders are provided a brochure and an Inmate Handbook containing PREA information and provided instructions on reporting methods, and what to do if an offender feels threats to his safety. Handbooks are available in English and Spanish. Zero-Tolerance Policy posters (English and Spanish) are placed throughout the living units, break rooms, offender dining areas, law library, general library, offender work and educational areas, and multi-purpose areas and visitation. Inmate Handbook in both English and Spanish is available in the Law Library. Auditor observed a thorough display of posters and accessibility of the Inmate Handbook throughout the facility.

The auditor relied on information provided with the PAQ and random interviews with staff/inmates, Draft Sgt., Superintendent and the following documentation: Directive 4021 – Offender Reception/Classification; Directive 4027A – Sexual Abuse Prevention & Intervention Inmate – on – Inmate; Deputy Commissioner for Program Services Memo – RE: PREA: Inmate Orientation Film Implementation; Associate Commissioner Memo – RE: New and Updated PREA Material; Associate Commissioner Memo – RE: Sexual Abuse Prevention Inmate Orientation Outline; Wende Correctional Facility: Inmate Orientation Sign-in Sheets, PREA Posters and Pamphlets; and a review of Draft Receipts of randomly selected inmate records was conducted.

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

### **All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### **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 receive 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*)

### Instructions for Overall Compliance Determination Narrative

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NYDOCCS Office of Special Investigations (OSI) Policy Manual Chapter 5 (confidential) sets forth training requirements for Sex Crimes Investigations; ensures in addition to the general training provided to all employees

pursuant to §115.31, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings. DOCCS has played a key role introducing legislation to make sexual conduct between an employee and an inmate under the Department's custody, a crime. Shortly after that law was enacted in 1996, the Department established a "Sex Crimes Unit" within the Office of Special Investigations, one of the first in the nation. These specialized investigators work closely with the New York State Police Bureau of Criminal Investigations.

The Auditor interviewed two DOCCS Investigators from (OSI) Sex Crime Division on November 5, 2019 at Gowanda Correctional Facility as they also cover Wende CF and Collins; reviewed training records/logs for investigative staff and determined specialized training for sexual abuse investigations has been conducted for all DOCCS investigative staff. OSI investigators are sent to multiple trainings to stay up to date with any new evidence protocols and technology discoveries. During the interviews of the investigators, the Auditor discussed practices and reviewed sample investigations pertaining to Wende Correctional Facility. The agency meets this standard with just the basic training for the investigators. Based on analysis of information obtained from interviews, document review, investigator's training records and certifications, and policy review, Wende Correctional Facility meets requirements of this standard. In addition, auditor's analysis of the extensive training acquired by investigators assigned to this specialized unit as described in the paragraph above, the Agency and Wende Correctional Facility exceeds the requirements of this standard.

The Auditor reviewed training records/logs for investigative staff and determined specialized training for sexual abuse investigations has been conducted for all DOCCS investigative staff. National Institute of Corrections Training (Section Overview) PREA: Investigating Sexual abuse in Confinement Settings (DOCCS Course Code 17072); Chapter 5, Sex Crimes Division (confidential procedures); the agency specialized training includes techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral. Report of Training Form for PREA Specialized Training-9/18/18 RE: Investigations; documents that the agency investigators have completed the required specialized training in conducting sexual abuse investigations. DOCCS currently has 31 investigators employed who have completed the required training.

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

### **All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### **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? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners who work regularly in its facilities.)  Yes  No  NA
  
- 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? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners who work regularly in its facilities.)  Yes  No  NA



- 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? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners who work regularly in its facilities.)  Yes  No  NA
- 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? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners who work regularly in its facilities.)  Yes  No  NA

### 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 or the agency does not employ medical staff.)  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? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners who work regularly in its facilities.)  Yes  No  NA

### 115.35 (d)

- Do medical and mental health care practitioners employed by the agency also receive training mandated for employees by §115.31? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners employed by the agency.)  Yes  No  NA
- Do medical and mental health care practitioners contracted by or volunteering for the agency also receive training mandated for contractors and volunteers by §115.32? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners contracted by or volunteering for the agency.)  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*)



## Instructions for Overall Compliance Determination Narrative

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NYS DOCCS, Wende Correctional Facility has an MOU with the New York State Office of Mental Health. There are medical and mental health staff working out of Wende CF and are available to inmates when needed. A review of the PAQ showed the facility had only 93% of medical/mental health staff completing this training. During the audit, training documentation was provided to show that 100% of medical/mental health staff received the required training, therefore, bringing Wende CF into compliance with this standard. WCF does not conduct forensic exams. If a forensic exam would be required, the inmate will be transported to a local hospital (Erie County Medical Center). Staff interviewed were very familiar with first responder duties and protocols when an inmate must go out for a forensic exam. When the inmate returns from the hospital, they are placed in the infirmary where they remain until seen by medical/mental health for follow-up care assessments.

NYS DOCCS Training Manual Subject 7.000; 40 hour Orientation/Initial Employee Training, Non-Peace Officer Employees at Facilities - 7/10/17 (Mandatory); Office Of Mental Health (OMH) Memorandum of Understanding- 9/14/16; Power Point Presentation: PREA: Medical and Mental Health Care HSPM 1.60 and PREA Standards; outlines how the agency shall 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; How to preserve physical evidence of sexual abuse; How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and How and to whom to report allegations or suspicions of sexual abuse and sexual harassment. The Auditor determined medical/mental health staff are very familiar with PREA and the process for detecting and assessing signs of sexual abuse and sexual harassment and how to preserve physical evidence of sexual abuse.

The agency shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere. The Auditor reviewed training documentation; Regional Training Forms, Specialized Training Medical/Mental Health Staff. The Auditor received completed staff training records and reviewed additional documentation while on-site.

## SCREENING FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS

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

**All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### 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, as 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, as 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, as 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 an incident of sexual abuse?  Yes  No
- Does the facility reassess an inmate's risk level when warranted due to 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*)

### Instructions for Overall Compliance Determination Narrative

*The narrative below must include a comprehensive discussion of all the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.*

Wende CF screens all inmates for risk of victimization and abusiveness upon arrival. An initial screening is completed by the Draft (intake) Sgt. upon arrival. Within 5 to 14 days of arrival, a reassessment is conducted by the Offender Rehabilitation Coordinator (ORC) for the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening. The screening instrument includes whether the inmate has a mental, physical, or developmental disability, the age and physical build of the inmate, previous incarceration history, whether the inmate's criminal history is exclusively nonviolent, prior convictions for sex offenses, whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming, past sexual victimization, self-perception of vulnerability and civil immigration status. Inmates are not disciplined for refusing to answer questions during the screening process. Information obtained during the initial assessment and reassessment is placed in the inmate's guidance file to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates. Only authorized staff has access to these files. A draft arrived during the audit; however, the auditor was during inmate interviews and was unable to observe the intake process. Risk screening documentation was reviewed before, during and after the audit to find compliance.

The Auditor relied on interviews with random staff, Draft Sgt., ORC's, and random inmates as well as review of policies/procedures and any supporting documentation to determine compliance with this standard: Wende CF FOM 2023 – PREA Risk Screening; Form 115.41M PREA Risk Screening Form -- Male Facility; Memo New/Revised Other Security Characteristics regarding Sexual Orientation and Gender Identity (SOGI); examples of Risk Screening Forms obtained prior, during and after the audit. Therefore, the auditor finds that WCF meets the requirements of this standard.

## Standard 115.42: Use of screening information

## All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

### 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? (N/A if the agency has a dedicated facility, unit, or wing solely for the placement of LGBT or I inmates pursuant to a consent decree, legal settlement, or legal judgement.)  
 Yes  No  NA
- 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? (N/A if the agency has a dedicated facility, unit, or wing solely for the placement of LGBT or I inmates pursuant to a consent decree, legal settlement, or legal judgement.)  
 Yes  No  NA
- 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? (N/A if the agency has a dedicated facility, unit, or wing solely for the placement of LGBT or I inmates pursuant to a consent decree, legal settlement, or legal judgement.)  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*)

### Instructions for Overall Compliance Determination Narrative

*The narrative below must include a comprehensive discussion of all the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.*

NYDOCCS uses information from the risk assessment to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive. Transgender or intersex (T/I) inmate’s housing is considered on a case-by-case basis, placement considers the inmate’s health and safety, and whether the placement would present management or security problems; placement is reassessed as needed; T/I inmates own view with respect to his or her own safety is given consideration; T/I inmates are given the opportunity to shower separately from other inmates. Wende CF makes individualized determinations about how to ensure the safety of each inmate. Wende CF does not place LGBTI inmates in a dedicated unit based solely on identification or status. The auditor determined compliance through review of Policy/Procedures, interviews with the PREA Compliance Manager and staff responsible for Risk Screening. WCF had (5) transgender/intersex inmates and all were interviewed and (15) gay/bisexual inmates (of which three were interviewed).

The Auditor relied upon interviews with random staff, random inmates, Draft Sgt., PREA Compliance Manager/PREA Point Person, and the following policies/procedures and documentation provided with the PAQ and onsite reviews of documentation: Deputy Commissioner Memo – RE: Prison Rape Elimination Act (PREA) Risk Screening; Associate Commissioner Memo – RE: New/Revised Other Security Characteristics Regarding Sexual Orientation and Gender Identity; Wende CF Report of Risk Screening Information and Wende CF FOM 2023 -- PREA Risk Screening.

## Standard 115.43: Protective Custody

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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 any access to programs, privileges, education, or work opportunities, does the facility document the opportunities that have been limited? (N/A if the facility *never* restricts access to programs, privileges, education, or work opportunities.)  Yes  No  NA
- If the facility restricts any access to programs, privileges, education, or work opportunities, does the facility document the duration of the limitation? (N/A if the facility *never* restricts access to programs, privileges, education, or work opportunities.)  Yes  No  NA
- If the facility restricts any access to programs, privileges, education, or work opportunities, does the facility document the reasons for such limitations? (N/A if the facility *never* restricts access to programs, privileges, education, or work opportunities.)  Yes  No  NA

#### 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*)

#### Instructions for Overall Compliance Determination Narrative

*The narrative below must include a comprehensive discussion of all the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.*

NYDOCCS and WCF sets out the basis for compliance with this standard in Directive 4948 Protective Custody. An inmate appropriate for Involuntary Protective Custody solely because of an assessment of being at high risk for victimization or following a report that the inmate was the victim of sexual abuse, may be put in Involuntary Protective Custody. However, that placement can occur only after all alternatives have been evaluated and a determination made that there are no alternatives available to provide the separation needed from likely abusers. If an assessment can't be made immediately, WCF can place the inmate in Involuntary Protective Custody for less than 24 hours while completing the assessment, using Form 2168A, "Sexual Victimization – Involuntary Protective Custody Recommendation." DOCCS has policies for documenting every step of the Involuntary Protective Custody assignments, from the reason for the placement to the limitations (if any) on the inmate's participation in programs, work assignments, etc. Form 2168A has a checklist of all the possible alternatives for involuntary protective custody and a place to explain the reasoning why the alternatives were rejected.

Under this standard, an involuntary placement in segregation based on the risk of victimization ordinarily must not last longer than 30 days, and there must be a review every 30 days. Under DOCCS policy, the length of the involuntary placement would not ordinarily exceed 30, in accord with the standard. The auditor reviewed sample forms for the mandatory reviews and for the "Sexual Victimization Involuntary Protective Custody Restriction of Inmate's Program Participation," where the facility must document any program limitations and the reasons for the limitations.

It was confirmed through the PAQ and during interviews with the PREA Point Person, PREA Compliance Manager and the Superintendent that no inmates at high risk for sexual victimization had been placed in involuntary segregated housing during the 12 months prior to the audit. The PREA Point Person also emphasized that WCF makes every possible effort to avoid an involuntary placement in segregation based on the risk of victimization.

# REPORTING

## Standard 115.51: Inmate reporting

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

### 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? (N/A if the facility *never* houses inmates detained solely for civil immigration purposes)  
 Yes  No  NA

### 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*)

## Instructions for Overall Compliance Determination Narrative

*The narrative below must include a comprehensive discussion of all the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.*

NYDOCCS has procedures allowing for multiple internal and external ways for inmates to report sexual abuse, sexual harassment, and retaliation. PREA reporting methods are shared with inmates at intake, during orientation, in the PREA brochure, and on posters throughout the facility. The PREA Brochure, The Prevention of Sexual Abuse in Prison What Inmates Need to Know, informs inmates they can report verbally and in writing to staff, write the PREA Point Person, write the Office of Special Investigations, and report to an outside agency to the New York State Commission of Correction. Inmates may also report allegations through a third party or send an anonymous report. Inmate interviews indicated they were comfortable reporting sexual abuse or sexual harassment and they knew the different methods available for reporting. Staff indicated through interviews they were aware of the methods available to them to report sexual abuse and sexual harassment of inmates. The staff's Prison Rape Elimination Act (PREA) pocket card also outlines that staff can privately report by calling the Office of Special Investigations, Sex Crimes Division.

NYDOCCS has a confidential rape crisis hotline which also provides an additional avenue for inmates to report sexual abuse/harassment which is (777). A phone call was placed to the 777 number from a phone in a housing unit and I spoke with a rape-crisis counselor. I explained my reason for the call, and they were very receptive of my questions. Inmates were very well educated on their options to use (777), as this number allows for crisis counseling, a referral for emotional support and advocacy services as well as taking reports of sexual abuse.

The Auditor determined compliance through random interviews with staff, inmates and the PREA Coordinator. The Auditor also made observations of signage posted throughout the facility for staff and inmates to privately report sexual abuse and sexual harassment. This auditor also relied on the following documentation sent prior to the audit and obtained during the audit: Employee Manual Section - 2.20 (Revised 2013); Directive 4027A, Sexual Abuse Prevention & Intervention - Inmate on Inmate; DIR 4028A Sexual Abuse Prevention & Intervention - Staff on Inmate; Sexual Abuse Prevention and Response (SAPR) Lesson Plan; Inmate education pamphlet, the "Prevention of Sexual Abuse in Prison, What Inmates need to know" outlines how the agency shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

## Standard 115.52: Exhaustion of administrative remedies

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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

#### 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*)

### Instructions for Overall Compliance Determination Narrative

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The agency shall be exempt from this standard if it does not have administrative procedures to address inmate grievances regarding sexual abuse. DOCCS is exempt from this Standard in accordance with Directive 4040 Inmate Grievance Program, Section 701.3, General Policies, dated 01/20/2016. The DOCCS is exempt in accordance with Directive 4040 Inmate Grievance Program and 702.2(it) Correction Law, Section 139.9, 9NYCRR Part 7695. A grievance filed is deemed exhausted upon filing with regards to the Prison Litigation Reform Act. I interviewed the grievance officer on day one of the audit and she explained her process to me. If she receives a grievance involving a sexual misconduct complaint as well as other complaints in the grievance, she will notify the Watch Commander about the sexual misconduct complaint and then close that portion of the grievance. The remaining complaints that were not PREA related will be followed up by her.

Inmates are not required to file grievances concerning alleged incidents of sexual abuse and sexual harassment. DOCCS not only addresses such in the above directive, but outlines in a summary memorandum concerning sexual abuse and sexual harassment complaints the following: "Any inmate grievance 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 shall be 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 facility is exempt from this standard making Standard 115.52 compliant (not applicable).

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

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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? (N/A if the facility *never* has persons detained solely for civil immigration purposes.)  Yes  No  NA
- 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*)

### Instructions for Overall Compliance Determination Narrative

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*meet the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.*

On November 4, 2019, the auditor conducted a telephone interview with a Case Manager of the Rape Crisis Center associated with Wende, Gowanda and Collins Correctional Facilities, Office of Victim Services (OVS) and Office for the Prevention of Domestic Violence (OPDV).

The individual stated they do have an MOU in place with DOCCS, through NYSCASA. According to DOCCS, OVS/OPDV provides services under a contract with New York State Coalition Against Sexual Assault (NYSCASA) that is funded by the NYS Office of Victim Services. She stated the PREA Compliance Manager is their primary contact with these facilities and they would contact them with any issues. If services were to be provided over the phone, she stated they would contact the PREA Compliance Manager and the manager would set the inmate up with a legal call. She stated that every hospital has their own advocacy program for rape crisis, however, if anyone requests their services for support, they would accompany them to the hospital. She also stated they would accompany the inmate during a forensic medical exam, investigatory interviews/court proceedings if requested, emotional support services, crisis intervention, provide as much information as possible to the victim and make any relevant referrals. She stated calls remain confidential unless the inmate threatens to harm themselves or if they discuss anything that is mandated by law to report (juvenile abuse, etc.). She stated all services provided are available to all inmates regardless of whether they have reported sexual abuse or sexual harassment.

The auditor reviewed the MOU between OVS-OPDV/NYSCASA signed during the audit period and continuing until 9/30/20 regarding an expanded PREA Hotline Project. The Hotline, which is statewide, offers rape crisis and victim support, and it also provides for interpretation services and deaf-relay services when needed.

NYSDOCCS meets the standard by providing services; however, they exceed the standard as New York has the most comprehensive victim support program available to survivors of sexual victimization in any state prison system in the nation. The 777 direct-dial number is available every day, in English, Spanish and other languages, at all 52 facilities operated by DOCCS. In addition to the state-wide 777 rape crisis hotline, every facility has an associated community-based rape crisis program designated as that facility's "PREA Center" for the provision of ongoing victim support and advocacy services. Services are provided via legal calls and/or legal visits.

The Auditor relied on interviews with the PREA Compliance Manager, Rape Crisis Case Manager, random staff/inmate interviews and the following documentation was reviewed as well as observations of memorandums and signage posted throughout the facility providing inmates access to outside victim advocates for emotional support services related to sexual abuse: Directive 4423 – Inmate Telephone Calls; Directive 4404 – Inmate Legal Visits; Directive 4421 – Privileged Correspondence; and Memo: from Jason D. Effman, Associate Commissioner to All Superintendents, 12/18/18, Implementation of PREA Statewide Rape Crisis Hotline.

## **Standard 115.54: Third-party reporting**

**All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

### **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*)

### Instructions for Overall Compliance Determination Narrative

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NYDOCCS Web page for PREA reference outlines the method for third party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of an inmate. The Auditor reviewed the NYDOCCS Policy Web page dated 8/22/18 to ensure compliance with 115.54(a). Also, random interviews with staff and inmates determined that they are aware of the third-party reporting process. DOCCS/WCF meets this standard.

## OFFICIAL RESPONSE FOLLOWING AN INMATE REPORT

### Standard 115.61: Staff and agency reporting duties

**All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### 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*)

### Instructions for Overall Compliance Determination Narrative

*The narrative below must include a comprehensive discussion of all the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.*

DOCCS policy outlines that all staff are 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; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. Also, apart from reporting to designated supervisors or officials, staff shall not reveal 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.

According to facility policies, when a PREA allegation is made, WCF notifies OSI and it begins an investigation; staff can also make a report directly to OSI. Wende CF's confidential Sexual Abuse Response and Containment Checklist is for documenting the key elements of who reports what and when, along with the ensuing actions taken and notifications made once a report is received. Interviews with staff verified their knowledge of their duty to report and the process of making a report. The specified actions to take are listed on the PREA card issued to every staff member.

The Auditor was able to determine compliance through random staff interviews and the policy and procedure reviews: DOCCS Employee Manual Section - 2.20; DIR 4027A – Sexual Abuse Prevention & Intervention - Inmate on Inmate; and DIR 4028A - Sexual Abuse Prevention & Intervention – Staff on Inmate/Staff on Parolee-11/29/17.

## Standard 115.62: Agency protection duties

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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*)

### Instructions for Overall Compliance Determination Narrative

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DOCCS policy requires staff to take immediate action to protect any inmate subject to substantial risk of sexual abuse. Immediate steps to be taken to protect inmates with a substantial risk of sexual abuse are outlined in

policies. Inmates are immediately removed from the area and placed in a safe location. All responses to interview questions showed the staff knew what needed to take place if an imminent risk situation arose.

Staff interviews gleaned a complete understanding of the steps needed to protect an inmate at risk of sexual abuse. Wende CF has not had any reports of an inmate who was at substantial risk of imminent sexual abuse during the 12 months prior to the audit. The auditor relied on random staff interviews, random inmate interviews, PREA Compliance Manager interview, Superintendent Interview, and review of Directive 4040 – Inmate Grievance Program and Directive 4948 – Protective Custody Status.

## Standard 115.63: Reporting to other confinement facilities

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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*)

### Instructions for Overall Compliance Determination Narrative

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*conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.*

NYDOCCS policy requires upon receiving an allegation that an inmate was sexually abused while confined at another facility, the Superintendent of the facility that received the allegation must notify the head of the facility where the sexual abuse is alleged to have occurred within 72 hours. The facility must also notify the Office of Special Investigations (OSI). WCF also maintains a statewide list of jail administrators for easy reference if the abuse occurred in a New York jail. Reports of abuse at other facilities are also entered in Wende's Sexual Abuse/Threat Incident log. During a previous audit, it was discovered that notifications to the other facilities were being delayed as the facility was contacting OSI to find out if an investigation had already been opened on that case. The delay would be up to 120 hours. After discussion with the PREA Coordinator during the audit, a memo was written and sent out statewide on November 7, 2019 along with a form change to ensure the 72-hour deadline is not missed. A draft copy of the memo was obtained on November 5, 2019 (and approved by this auditor) and a confirmation email was received on November 8, 2019 to show distribution.

During the past year, Wende Correctional Facility received (7) notifications of sexual abuse from other facilities; and in the last 12 months, WCF has notified (7) facilities regarding allegations of incidents at those facilities and all had an investigation conducted.

Auditor finds compliance based on review of the following: Memo from Jason Effman, Associate Commissioner, RE: Reporting to other Confinement Facilities (Revised) PREA Standard/263-Entire Form 115.63 Report of Sexual Abuse - 11/07/19 - Jail Administrators contact Information; "Sexual Abuse Threat Incident Log Books" – Covers Inmate on Inmate/Staff on Inmate; outlines how the facility head or agency office that receives such notification shall ensure that the allegation is investigated in accordance with these standards. Interviews were conducted with the Agency Head and Facility Superintendent who acknowledged notifications of abuse from one facility to another are investigated in accordance with standard 115.63 (d) and interview with PREA Compliance Manager.

## **Standard 115.64: Staff first responder duties**

### **All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### **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*)

#### Instructions for Overall Compliance Determination Narrative

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NYDOCCS provides training to all first responders which include the separation of the alleged victim and abuser; preservation and protection of the crime scene until appropriate steps can be taken to collect evidence; the collection of physical evidence, requesting that the alleged victim not take any actions that could destroy physical evidence, including, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating. Staff (civilian and non-civilian) is knowledgeable of their responsibilities when responding to reports of sexual abuse. Staff also carry a PREA Pocket Card for ready access with step by step instructions to follow.

The auditor also reviewed, with random staff, scripted questions about first responder duties, including: "If you are the first person to be alerted that an inmate has allegedly been the victim of sexual abuse, what is your responsibility in that situation?" All interviews were positive and favorable, and it was clear that staff were knowledgeable about their duties and responsibilities as first responders.

To find compliance, the auditors relied on random staff interviews and a review of the following policies/procedures: Directive 4027A – Sexual Abuse Prevention & Intervention Inmate – on – Inmate; Directive 4028A – Sexual Abuse Prevention & Intervention Staff – on – Inmate; Wende CF FOM 2006 – Coordinated Response Plan to an Incident of Inmate Sexual Abuse; Associate Commissioner Memo – RE: PREA Coordinated Response Plan; Sexual Abuse Response and Containment Checklist; Deputy Commissioner Memo – RE: PREA Coordinated Response Plan; and Sexual Abuse Prevention and Response (SAPR) Lesson Plan.

## Standard 115.65: Coordinated response

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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*)

#### Instructions for Overall Compliance Determination Narrative

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Wende Correctional Facility's Coordinated Response Plan to an Incident of Inmate Sexual abuse was reviewed and the plan coordinates actions taken in response to an incident of sexual abuse among first responders, security, medical and mental health practitioners, Office of Special Investigations, facility administration, and victim advocates. A checklist is utilized to ensure all process steps are completed and notifications are made. The facility specific plan also addresses, SAFE/SANE hospitals, third-party and anonymous reports (documentation, and referral to the Office of Special Investigations), victim advocates, and notifications.

The auditor relied upon random staff interviews, Investigative interviews; and Medical staff interviews as well as the following documentation: Associate Commissioner Memo – RE: PREA Coordinated Response Plan and Sexual Abuse Response and Wende CF Coordinated Response Plan to an incident of Inmate Sexual Abuse FOM 2006 dated 06/28/19. Wende CF is complaint with this standard.



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

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

### 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*)

### Instructions for Overall Compliance Determination Narrative

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DOCCS Union Contracts allow the removal of alleged staff sexual abusers from contact with inmates pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted. Also, a review of the collective bargaining agreements was conducted.

The Auditor determined compliance through policy and procedure review; State Union Contracts documentation; Interviews conducted with the Superintendent and Investigative Staff and the following relevant policies/procedures: A Review of DOCCS DIR2110, Employee Discipline-Suspension from Duty during the Continuation of Disciplinary Proceedings; DIR2114, Functions of the Bureau of Labor Relations; New York state Governor's Office of Employee Relations (GOER); Therefore, WCF is compliant with this standard.



## Standard 115.67: Agency protection against retaliation

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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 inmates 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*)

#### Instructions for Overall Compliance Determination Narrative

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DOCCS has policies and processes in place to protect inmates and staff that report sexual abuse and harassment. The PREA Compliance Manager is responsible for monitoring retaliation at Wende CF. In the past 12 months, there have been zero (0) number of incidents of retaliation. Those that report are monitored for at least (4) months. The PCM monitoring responsibilities includes any inmate disciplinary reports, housing, program changes, negative performance reviews, or reassignments of staff. DOCCS policy allows the monitoring period to be continued as needed. Monitoring continues upon transfer to another facility. Retaliation is monitored through records reviews and in-person status checks approximately every 30 days for a minimum of 4 months and longer

if necessary. A retaliation monitoring form details this 30-day intermittent review with a conclusion allowing for the completion of monitoring, the termination of monitoring or to continue monitoring. The agency/facility is required to act promptly to remedy any retaliation. At the time of the audit, the ADS/PREA Compliance Manager was monitoring 21 inmates for retaliation.

The auditor relied upon interviews with the PREA Compliance Manager, Superintendent, and the following policies/procedures and other supporting documentation: Employee Manual – 2.19; Associate Commissioner Memo – RE: Agency Protection against Retaliation, 115.67/267, and Retaliation Monitoring Form-115.67/115.67A; Retaliation Monitoring Form 115.67. Wende was monitoring 11 inmates at the time of the audit. Documentation was reviewed during the audit as well as attached to the PAQ. WCF is compliant with this standard; The auditor’s interview with the ADS/PREA verified that WCF takes retaliation monitoring very seriously; the ADS/PREA expressed confidence that the staff is well aware of the statement in the Employees’ Manual, that allegations of retaliation—like those of sexual abuse and harassment—“will be thoroughly investigated.” The retaliation monitoring process is comprehensive and exceeds the requirement for this standard as they monitor for (4) months.

## Standard 115.68: Post-allegation protective custody

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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*)

### Instructions for Overall Compliance Determination Narrative

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DOCCS Directive 4948/Protective Custody Status and Form 2168A/Sexual Victimization—Involuntary Protective Custody Recommendation lays out the process for protective custody status. Should the need arise for post-allegation protective custody, all available alternatives to involuntary protective custody are considered first. The PREA Compliance Manager accentuated during his interview that WCF consistently makes every effort to avoid using sexual victimization involuntary protective custody and uses it only after all other alternatives have been found unsuitable. If involuntary custody is unavoidable, there must be a review every 30 days to determine

whether there is a need for continued involuntary protective custody. There were no inmates held involuntarily in segregated housing for protection during the audit period at Wende Correctional Facility.

## INVESTIGATIONS

### Standard 115.71: Criminal and administrative agency investigations

#### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

##### 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*)

### Instructions for Overall Compliance Determination Narrative

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The Office of Special Investigations (OSI), Sex Crimes Division in the NYDOCCS conducts investigations as outlined in the PREA standards. The Investigators continually receive specialized training in sexual abuse investigations pursuant to standard 115.34. Interviews and documentation support that investigations into all allegations of sexual abuse, sexual harassment, and sexual misconduct are done promptly, thoroughly, and objectively to include third party and anonymous reports.

DOCCS policies and procedures outline how the agency shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator. When evidence appears to support criminal prosecution, the OSI conducts interviews only after consulting with prosecutors to ensure the interviews will not hinder subsequent criminal prosecution. By agency policy, every allegation of sexual abuse and sexual harassment is investigated, and the agency will validate the credibility of an alleged victim, suspect, or witness is assessed on an individual basis and shall not be determined by the person's status as inmate or staff.

DOCCS does not require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation. Investigations continue even if the inmate is released or the employee is no longer employed at the facility. The auditor was able to review some WCF case files when she met with the investigators, and she found the files to represent a thorough investigatory approach with ample documentation, to include such materials as interviews, photographs, etc. The investigators indicated a good working relationship between their office and the New York State Police exists when necessary for them to work cooperatively on a case. Administrative investigations are very well written, and documentation of the process is very thorough. Reports are maintained for a minimum of 7 years. An electronic copy of the reports with the other critical documents (medical, depositions) are permanently maintained.

Interviews with two OSI investigators took place on November 5, 2019 at Gowanda Correctional Facility, as they cover Wende CF and Collins CF as well, and they were very impressive. They were very knowledgeable about PREA and their responsibilities when they receive an allegation.

The Auditor reviewed the following documentation to determine the findings: DOCCS DIR 0700 – Office of Special Investigations; Chapter 5, Sex Crimes Division (confidential procedures); Chapter 11 Case Tracking and Investigative Reports (Confidential); Wende Correctional facility had (11) reports of sexual abuse, sexual harassment or sexual misconduct in the past 12 months that were investigated by OSI. The Auditor determined compliance through review of all above mentioned documentation, policies and procedures, training logs, interviews with two OSI, Sex Crimes Investigators and reviews of investigative case files from Wende CF in this audit period. Review of the policies, agency manual, investigations and interviews with the investigations, the auditor concludes that investigations are addressed promptly, thoroughly, in a manner which will hold up in court, and with a review of incidents to address staff actions and assess credibility consistently, which shows this portion of the PREA standards is taken very seriously by NYSDOCCS and they exceed this standard.

## Standard 115.72: Evidentiary standard for administrative investigations

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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*)

### Instructions for Overall Compliance Determination Narrative

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OSI Manual, Chapter 5, Sex Crimes Division (confidential procedures); PowerPoint Presentation Excerpt: PREA Specialized Training Investigations – 8/15/19 outlines how the agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

The Auditor determined compliance through review of policy and procedures; review of investigative case files; additional supporting documentation and training logs; Chapter 5, Sex Crimes Division (confidential procedures); Interview conducted with DOCCS OSI Investigators with the Sex Crimes Division at Gowanda CF on November 5, 2019. Wende CF has had (11) sexual abuse, harassment, misconduct cases in the last 12 months that were investigated by OSI.

## Standard 115.73: Reporting to inmates

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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 inmate, unless the agency has determined that the allegation is unfounded, or unless the inmate has been released from custody, does the agency subsequently inform the inmate 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 inmate, unless the agency has determined that the allegation is unfounded, or unless the inmate has been released from custody, does the agency subsequently inform the inmate 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 inmate, unless the agency has determined that the allegation is unfounded, or unless the inmate has been released from custody, does the agency subsequently inform the inmate 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 inmate, unless the agency has determined that the allegation is unfounded, or unless the inmate has been released from custody, does the agency subsequently inform the inmate 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*)

### Instructions for Overall Compliance Determination Narrative

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DOCCS Office of Special Investigations (OSI) has a process that notifies the inmate once the investigation has been closed out which indicates if the allegation has been substantiated, unsubstantiated or unfounded. The OSI Investigator notifies the inmate directly in cases of substantiated outcomes and it is recorded in the case file. Investigations that are unsubstantiated or unfounded are sent to the inmate's facility Superintendent and provided to the inmate in person or via the legal mail process.

In the past (12) months, Wende CF has had (13) notifications made to inmates regarding the outcome of investigations. The Auditor reviewed the following materials to determine compliance and conducted interviews with the Investigative Staff and the PREA Compliance Manager/PREA Point Person: Office of Special Investigations

Chief – Memo RE: Notification of Investigative Determination dated 5/17/18; and Chapter 5, Sex Crimes Division (confidential procedures). Examples of notifications to inmates was provided to the auditor for review.

## DISCIPLINE

### Standard 115.76: Disciplinary sanctions for staff

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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*)

## Instructions for Overall Compliance Determination Narrative

*The narrative below must include a comprehensive discussion of all the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.*

DOCCS policy addresses disciplinary sanctions of employees up to removal for PREA related issues. The employee manual provided to all employees explains the disciplinary process to them. DOCCS policy states "All allegations of sexual abuse, sexual harassment, or retaliation against staff, an inmate, or a parolee for reporting such an incident or participating in an investigation will be thoroughly investigated. Furthermore, any perpetrator of a sexual abuse or sexual harassment incident will be dealt with severely through discipline or prosecution to the fullest extent permitted by law." Wende CF has had no incidents of employee discipline or termination for issues of sexual abuse or sexual harassment in the past year. Staff interviews revealed an awareness of the departments zero tolerance policy as it pertains to sexual abuse and sexual harassment.

The auditor reviewed the following and conducted interviews with random staff, PREA Compliance Manager, and the OSI Investigators: Review of Chapter 32, Reporting of Misconduct to Outside Agencies (confidential procedures); Directive 4028A – Sexual Abuse Prevention & Intervention Staff – on – Inmate; Directive 2110 – Employee Discipline – Suspension from Duty During the Continuation of Disciplinary Proceedings; Directive 2111, Report of Employee Misconduct; and the Employee Manual.

## Standard 115.77: Corrective action for contractors and volunteers

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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*)

### Instructions for Overall Compliance Determination Narrative

*The narrative below must include a comprehensive discussion of all the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.*

NYDOCCS has a zero-tolerance policy regarding sexual abuse and sexual harassment of inmates by volunteers and contractors. The policy outlines criminal actions taken if a volunteer/contractor sexually abuses or participates in sexual harassment of an inmate. Wende CF has had no incidents of a volunteer/contractor engaging in sexual abuse or harassment of an inmate in the past year.

The auditor relied on the following documentation to find compliance along with the interview of a volunteer, the Imam and the PREA Compliance Manager: Volunteer and Contractor Acknowledgments of Orientation or PREA; Directive 4750 – Volunteer Service Program; Directive 2605 – Sexual Harassment in the Workplace; OSI Chapter 32 - Reporting of Misconduct to Outside Agencies and Memo dated 09/04/18 reminding staff/contractors/volunteers of zero tolerance.

## Standard 115.78: Disciplinary sanctions for inmates

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

## 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)

- If the agency prohibits all sexual activity between inmates, 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*)

## Instructions for Overall Compliance Determination Narrative

*The narrative below must include a comprehensive discussion of all the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.*

DOCCS policy outlines that disciplinary sanctions may be imposed on inmates who engage in sexual abuse and harassment. Inmates can be subject to discipline internally for inmate on inmate sexual abuse. Sanctions are 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. Inmates are not disciplined for sexual relations with staff unless it is determined it was without staff consent. Mental disabilities and/or mental illness are taken into consideration when determining disciplinary sanctions. There have been no administrative or criminal findings, inmate/inmate sexual abuse or staff/inmate sexual abuse at Wende CF. Wende does offer therapy, counseling, and/or any other interventions as outlined in the Sex Offender Counseling and Treatment Program Guide. The agency also prohibits all sexual activity between inmates as outlined in policies/procedures.

The auditor determined compliance based on random staff and inmate interviews and review of the following documentation: Directive 4401 – Guidance and Counseling Services; Directive 4027A – Sexual Abuse Prevention & Intervention Inmate – on – Inmate; Directive 4028A – Sexual Abuse Prevention & Intervention Staff – on – Inmate; Directive 4932 – Standards Behavior & Allowances; Sex Offender Counseling and Treatment Program Guidelines and Hearing Officer Standards of Inmate Behavior and Confinement Sanctions Guidelines.

## MEDICAL AND MENTAL CARE

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

#### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

##### 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

### 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*)

### Instructions for Overall Compliance Determination Narrative

*The narrative below must include a comprehensive discussion of all the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.*

According to DOCCS policy (Directive 4301), if the PREA risk screening indicates that an inmate has experienced prior sexual victimization or has perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening. All information related to sexual victimization or abusiveness that occurred in an institutional setting is strictly limited to medical/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. This information is maintained in the inmates' "guidance" file, which is confidential.

The auditor relied on interviews with inmates, MH staff, Draft staff, PREA Compliance Manager, ORC's and review of HSPM Policy 1.44—Health Screening of Inmates; DIR4301—Mental Health Satellite Services and Commitments to CNYPC; HSPM Policy 1.12B—Inmate Bloodborne Pathogens Significant Exposure Protocol; and the OMH MOU to find compliance with this standard.

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

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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*)



## Instructions for Overall Compliance Determination Narrative

*The narrative below must include a comprehensive discussion of all the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.*

Wende CF inmates receive timely, unimpeded access to emergency medical treatment and crisis intervention services. This includes inmate victims of sexual abuse. Inmates of sexual assault are provided treatment which includes outside hospital services without financial responsibility. The nature and scope of the services offered to the inmate population are determined by the medical/mental health practitioners at Wende CF according to their professional judgment. SAFE/SANE hospitals are identified by the Health Services Policy Manual. Wende CF has a policy/protocol in place to transport a victim of sexual abuse to an outside SAFE/SANE hospital for medical examination (Strong Memorial Hospital, Rochester General Hospital, or Erie County Medical Center), if required. Wende CF has processes to provide emergency prophylactic medications if deemed appropriate. Wende CF had one incident that required transport to a SAFE/SANE hospital in the past 12 months.

The auditor was able to find compliance by conducting interviews with medical staff, PREA Compliance Manager, random staff interviews and the following documentation: Directive 4027B – Sexual Abuse Reporting & Investigation Inmate – on – Inmate; Directive 4028B – Sexual Abuse Reporting & Investigation Staff – on – Inmate; HSPM 1.60 - Sexual Assault – SAFE/SANE Hospitals; Wende CF FOM 2006 – Coordinated Response Plan to an Incident of Inmate Sexual Abuse dated 6/28/19.

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

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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. *Note: in “all-male” facilities, there may be inmates who identify as transgender men who may have female genitalia. Auditors should be sure to know whether such individuals may be in the population and whether this provision may apply in specific circumstances.*)  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. *Note: in “all-male” facilities, there may be inmates who identify as transgender men who may have female genitalia. Auditors should be sure to know whether such individuals may be in the population and whether this provision may apply in specific circumstances.*)  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*)

## Instructions for Overall Compliance Determination Narrative

*The narrative below must include a comprehensive discussion of all the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.*

NYDOCCS has protocols in place to provide ongoing medical treatment of inmates who claim sexual abuse. Medical staff interviewed were knowledgeable in the emergency protocol to follow with sexual abuse victims. The agency/facility offers 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. The Office of Mental Health, Memorandum of Understanding states that those identified as victims shall receive, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care, following the transfer to or placement in, other facilities, or their release from custody. Further, the facility shall provide victims with mental health services, consistent with the community level of care by scheduling appointments with OMH. Individual counseling is offered to inmates who request on-going treatment related to sexual abuse or being a perpetrator of sexual abuse.

The auditor relied upon interviews with the Medical/Mental Health Staff, PREA Compliance Manager, Random Staff/Inmate Interviews and the following supporting documentation provided with the PAQ: HSPM 1.60 - Sexual Assault; HSPM 1.12B – Inmate Bloodborne Pathogens Significant Exposure; HSPM 1.44 – Health Screening of Inmates; and OMH MOU; Examples of progress notes and doctor's orders regarding an inmate being sent to the local hospital for a SAFE/SANE exam and the tests completed. Wende CF is compliant with this standard.

## DATA COLLECTION AND REVIEW

### Standard 115.86: Sexual abuse incident reviews

**All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### 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*)

### Instructions for Overall Compliance Determination Narrative

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DOCCS agency policy states the facility conducts a Sexual Abuse Incident Review at the conclusion of every criminal or administrative sexual abuse investigation unless the allegation has been determined to be unfounded. Further, it is directed that an incident review will take place within 30 days of the conclusion of the abuse investigation, and that the Incident Review Team includes upper-level management officials and allows input from line supervisors, investigators, and medical and mental health practitioners. The memorandum above also stipulates that the facility prepares a report of findings, recommendations for improvement and submits such a report to the PREA Compliance Manager. Wende Correctional Facility, in the past 12 months, held (11) incident reviews. The incident review team reviewed the circumstances of the incidents; the inmates and staff involved, whether actions taken were consistent with agency policies and procedures, if allegation or investigation indicates a need for policy changes and whether the incident or allegation were motivated by race, ethnicity, gender identity, lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status, gang affiliation. The report is completed and submitted to the Superintendent and Facility PREA Compliance Manager.

The auditor finds compliance based on interviews with the Superintendent, PREA Compliance Manager and PREA Point Person and the following documentation submitted with the PAQ: Incident review team meeting reports, a memorandum from the Agency Deputy Commissioner and the Associate Commissioner/Agency PREA Coordinator referencing PREA Procedural Enhancements outlines procedures for compliance with the standard on Sexual Abuse Incident Reviews.

## Standard 115.87: Data collection

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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*)

### Instructions for Overall Compliance Determination Narrative

*The narrative below must include a comprehensive discussion of all the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.*

NYDOCCS Office of Program Planning Research and Evaluation Policy for PREA Data Collection, Review, Retention and Publication Manual outlines basic procedures for data collection of sexual abuse data. The data collected is based on the most recent version of the Survey of Sexual Violence conducted by the Dept. Of Justice. NYSDOCCS reviews and collects the data as needed from all available reports, investigations, and sexual abuse incident reviews. DOCCS provides all data from the previous calendar year to the DOJ upon request. The data for 2017 was submitted to the Bureau of Justice Statistics on January 15, 2019, prior to the deadline for the submission. This includes, but is not limited to Office of Special Investigations, Sex Crime Division (SCD) data, sexual abuse incident review information, unusual incidents, personnel records, confidential security information, inmate records, disciplinary data, and the inmate locator system.

After preliminary review and preparation of all Office of Special Investigations Sex Crimes Division allegations, sexual abuse data is extracted, coded, and prepared for a secondary review with a SCD investigator. A final review team consisting of the Associate Commissioner/PREA Coordinator, the Chief of the Office of Special Investigations, the Deputy Chief of Investigations of the Sex Crimes Division and the PREA Analyst meet annually to review substantiated PREA allegations prior to submission of data to the Bureau of Justice Statistics.

The auditor relied upon an interview with the PREA compliance manager and the following supplied documentation: DOJ Letter to Commissioner Annucci requesting the 2017 SSV; Office of Program Planning Research and Evaluation; PREA Data Collection, Review, Retention and Publication Manual; Directive 4027B –

## Standard 115.88: Data review for corrective action

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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*)

## Instructions for Overall Compliance Determination Narrative

*The narrative below must include a comprehensive discussion of all the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.*

NYDOCCS prepares an annual report which includes identification of problem areas, corrective action for each facility, and the agency. The annual report includes a comparison of the current year's data and corrective actions with prior years and provides an assessment of progress in addressing sexual abuse. Before publishing the annual report, the agency removes all personal identifiers. The annual report is made available to the public through the agency's website. DOCCS Annual Report on Sexual Victimization is available for review on the agency's website. The latest annual report was published December 2018 for the period of 2013-2016.

The auditor reviewed the following documents: Office of Program Planning Research and Evaluation PREA Data Collection, Review, Retention and Publication Manual; NYDOCCS PREA Web Page, [www.doccs.ny.gov/PREA/PREAinfo.html](http://www.doccs.ny.gov/PREA/PREAinfo.html); Therefore, Wende CF/DOCCS is compliant with this standard.

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

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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*)

### Instructions for Overall Compliance Determination Narrative

*The narrative below must include a comprehensive discussion of all the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.*

The DOCCS PREA Data Collection, Review, Retention, and Publication Manual (revised on 8/18/15) outlines basic procedures for data collection, review, storage and reporting of sexual abuse data and ensures that the incident based information and aggregate data is collected and securely retained for at least ten years after date of initial collection unless Federal, State or local law requires otherwise. The data is retained and secured by OSI and the PREA Analyst. The manual also outlines that the agency will prepare an annual report and that the report include: identification of problem areas, corrective actions for each facility and the agency, a comparison of the current year's data and corrective actions with those from prior years, and provides an assessment of progress in addressing sexual abuse.

Prior to publishing the annual report, the agency removes all personal identifiers. The annual report is made available to the public through the agency's website, [www.doccs.ny.gov/PREA/PREAinfo.html](http://www.doccs.ny.gov/PREA/PREAinfo.html), which was reviewed as a part of the audit process.

## AUDITING AND CORRECTIVE ACTION

### Standard 115.401: Frequency and scope of audits

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.401 (a)

- During the prior three-year audit period, 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? (*Note: The response here is purely informational. A "no" response does not impact overall compliance with this standard.*)  Yes  No

#### 115.401 (b)

- Is this the first year of the current audit cycle? (*Note: a "no" response does not impact overall compliance with this standard.*)  Yes  No
- If this is the second year of the current audit cycle, 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 during the first year of the current audit cycle? (N/A if this is **not** the *second* year of the current audit cycle.)  Yes  No  NA
- If this is the third year of the current audit cycle, did the agency ensure that at least two-thirds of each facility type operated by the agency, or by a private organization on behalf of the agency, were audited during the first two years of the current audit cycle? (N/A if this is **not** the *third* year of the current audit cycle.)  Yes  No  NA

#### 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

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## Instructions for Overall Compliance Determination Narrative

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The Auditor reviewed the DOCCS web page at [www.doccs.ny.gov/PREA/PREA\\_Final\\_Audit\\_Reports.html](http://www.doccs.ny.gov/PREA/PREA_Final_Audit_Reports.html), containing the 72 audit reports for PREA audits completed from November 6, 2015 through November 29, 2019 and (6) Community Based Residential Program audits with the most recent being dated June 9, 2019. The Agency began conducting its PREA audits in October 2015 with 12 facilities audited in the first cycle. Second cycle Final Reports include: 23 in year one, 19 in year two, and 18 in year three so far. Four additional Agency run facilities have been audited since the writing of the this report this year. The Auditor reviewed the schedule of audits and verified that the NYS DOCCS has, beginning in audit year 3 of cycle 1, ensured that at least one-third of each facility type operated by the Agency was and is scheduled to be audited.

NYS Correction Law section 121 provides that the private ownership or operation of a facility for housing state or local inmates or the private ownership or operation of a facility for the incarceration of other state's inmates is prohibited. Thus, no private prisons are operated on behalf of the Agency. However, New York State Department of Corrections and Community Supervision has entered into agreements with private organizations for 14 Community Based Residential Programs (CBRP) to provide up to 4 months of housing and treatment for selected Parolees. These contracts became effective according to the following schedule: Seven (7) programs on 5/1/17, six (6) programs on 10/01/17, and one (1) program on 7/23/18. In compliance with PREA requirements, these contracts permit monitoring and requires the program to achieve and maintain PREA Compliance and to arrange for PREA Audits on a schedule set in consultation with the New York State Department of Corrections and Community Supervision PREA Coordinator. The CBRP audits began in 2018, with four audits being completed as of date of this report. Information obtained through interview with Associate Commissioner/PREA Coordinator and a review of the NYDOCCS website.

## Standard 115.403: Audit contents and findings

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 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. The review period is for prior audits completed during the past three years PRECEDING THIS AUDIT. 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

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#### Instructions for Overall Compliance Determination Narrative

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The Auditor reviewed the NYDOCCS web page at, [www.doccs.ny.gov/PREA/PREA\\_Final\\_Audit\\_Reports.html](http://www.doccs.ny.gov/PREA/PREA_Final_Audit_Reports.html) containing the 72 audit reports for PREA audits completed from November 6, 2015 through November 29, 2019 and (6) operated Community Based Residential Program (CBRP) on behalf of New York State Department of Corrections and Community Supervision, as of last update of June 9, 2019. New York State Department of Corrections and Community Supervision operates 52 State prisons. The Agency began conducting its PREA audits in October 2015. The CBRP audits began in 2018, with six audits being completed as of date of this report. Final Reports are posted to the Agency website according to the timeline requirement. Therefore, the New York Department of Corrections and Community Supervision meets the mandate of this standard.

## 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.

### Auditor Instructions:

Type your full name in the text box below for Auditor Signature. This will function as your official electronic signature. Auditors must deliver their final report to the PREA Resource Center as a searchable PDF format to ensure accessibility to people with disabilities. Save this report document into a PDF format prior to submission.<sup>1</sup> Auditors are not permitted to submit audit reports that have been scanned.<sup>2</sup> See the PREA Auditor Handbook for a full discussion of audit report formatting requirements.

Michelle L. Burrows

December 8, 2019

**Auditor Signature**

**Date**

<sup>1</sup> See additional instructions here: <https://support.office.com/en-us/article/Save-or-convert-to-PDF-d85416c5-7d77-4fd6-a216-6f4bf7c7c110>.

<sup>2</sup> See *PREA Auditor Handbook*, Version 1.0, August 2017; Pages 68-69.