

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

Interim Final

Date of Interim Audit Report: Click or tap here to enter text. N/A

If no Interim Audit Report, select N/A

Date of Final Audit Report: May 6, 2020

Auditor Information

Name: Douglas K. Sproat Jr.	Email: dougksproat@gmail.com
Company Name: American Correctional Association	
Mailing Address: 141 Skyline Drive	City, State, Zip: Clinton, Mississippi
Telephone: 601-924-4742	Date of Facility Visit: March 3-5, 2020

Agency Information

Name of Agency: New York Department of Correction and Community Supervision			
Governing Authority or Parent Agency (If Applicable): <small>Click or tap here to enter text.</small>			
Physical Address: 1220 Washington Avenue		City, State, Zip: Albany, NY 12226-2050	
Mailing Address: <small>Click or tap here to enter text.</small>		City, State, Zip: <small>Click or tap here to enter text.</small>	
The Agency Is:	<input type="checkbox"/> Military	<input type="checkbox"/> Private for Profit	<input type="checkbox"/> Private not for Profit
<input type="checkbox"/> Municipal	<input type="checkbox"/> County	<input checked="" type="checkbox"/> State	<input type="checkbox"/> Federal
Agency Website with PREA Information: https://doccs.ny.gov/prea			

Agency Chief Executive Officer

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

Agency-Wide PREA Coordinator

Name: Jason D. Effman, Associate Commissioner	
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 ADS PREA Compliance Managers report Directly to Associate Commissioner

Facility Information

Name of Facility: Auburn Correctional Facility

Physical Address: 135 State Street

City, State, Zip: Auburn, New York, 13021

Mailing Address (if different from above):

Click or tap here to enter text.

City, State, Zip: Click or tap here to enter text.

The Facility Is:

Military

Private for Profit

Private not for Profit

Municipal

County

State

Federal

Facility Type:

Prison

Jail

Facility Website with PREA Information: <https://doocs.ny.gov/location/auburn-correctional-facility>

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: Click or tap here to enter text.)

N/A

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

Click or tap here to enter text.

Warden/Jail Administrator/Sheriff/Director

Name: Timothy D. McCarthy, Superintendent

Email: Timothy.McCarthy@doocs.ny.gov

Telephone: 315-253-8401 ext. 2000

Facility PREA Compliance Manager

Name: Marcus T. Butler

Email: marcus.butler@doocs.ny.gov

Telephone: 315-253-8401 ext. 2160

Facility Health Service Administrator N/A

Name: Linda Decaro, RN NA

Email: linda.decro@doocs.ny.gov

Telephone: 315-253-8401 ext. 6100

Facility Characteristics

Designated Facility Capacity:

1,700

Current Population of Facility:

1,282

Average daily population for the past 12 months:	1341	
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:	19-75	
Average length of stay or time under supervision:	1.95 years	
Facility security levels/inmate custody levels:	Maximum A / Level 1	
Number of inmates admitted to facility during the past 12 months:	7,844	
Number of inmates admitted to facility during the past 12 months whose length of stay in the facility was for 72 hours or more:	3,989	
Number of inmates admitted to facility during the past 12 months whose length of stay in the facility was for 30 days or more:	1,084	
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)	Click or tap here to enter text. <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	
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):	<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 checked="" 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: Click or tap here to enter text. <input type="checkbox"/> N/A	
Number of staff currently employed by the facility who may have contact with inmates:	802	
Number of staff hired by the facility during the past 12 months who may have contact with inmates:	19	
Number of contracts in the past 12 months for services with contractors who may have contact with inmates:	23	
Number of individual contractors who have contact with inmates, currently authorized to enter the facility:	40	
Number of volunteers who have contact with inmates, currently authorized to enter the facility:	167	

Physical Plant

<p>Number of buildings:</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>	84
<p>Number of inmate housing units:</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 (5 blocks with 50 galleries, including 2 Special Housing Unit galleries; Infirmary, and Mental Health)
Number of single cell housing units:	49
Number of multiple occupancy cell housing units:	1
Number of open bay/dorm housing units:	2
Number of segregation cells (for example, administrative, disciplinary, protective custody, etc.):	83
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
Has the facility installed or updated a video monitoring system, electronic surveillance system, or other monitoring technology in the past 12 months?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Medical and Mental Health Services and Forensic Medical Exams	
Are medical services provided on-site?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Are mental health services provided on-site?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

<p>Where are sexual assault forensic medical exams provided? Select all that apply.</p>	<input type="checkbox"/> On-site <input checked="" type="checkbox"/> Local hospital/clinic <input type="checkbox"/> Rape Crisis Center <input type="checkbox"/> Other (please name or describe: Click or tap here to enter text.)
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Investigations

Criminal Investigations

<p>Number of investigators employed by the agency and/or facility who are responsible for conducting CRIMINAL investigations into allegations of sexual abuse or sexual harassment:</p>	<p>31</p>
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<p>When the facility received allegations of sexual abuse or sexual harassment (whether staff-on-inmate or inmate-on-inmate), CRIMINAL INVESTIGATIONS are conducted by: Select all that apply.</p>	<input type="checkbox"/> Facility investigators <input checked="" type="checkbox"/> Agency investigators <input type="checkbox"/> An external investigative entity
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<p>Select all external entities responsible for CRIMINAL INVESTIGATIONS: Select all that apply (N/A if no external entities are responsible for criminal investigations)</p>	<input type="checkbox"/> Local police department <input type="checkbox"/> Local sheriff's department <input type="checkbox"/> State police <input type="checkbox"/> A U.S. Department of Justice component <input type="checkbox"/> Other (please name or describe: Click or tap here to enter text.) <input checked="" type="checkbox"/> N/A
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Administrative Investigations

<p>Number of investigators employed by the agency and/or facility who are responsible for conducting ADMINISTRATIVE investigations into allegations of sexual abuse or sexual harassment?</p>	<p>31</p>
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<p>When the facility receives allegations of sexual abuse or sexual harassment (whether staff-on-inmate or inmate-on-inmate), ADMINISTRATIVE INVESTIGATIONS are conducted by: Select all that apply</p>	<input checked="" type="checkbox"/> Facility investigators <input checked="" type="checkbox"/> Agency investigators <input type="checkbox"/> An external investigative entity
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<p>Select all external entities responsible for ADMINISTRATIVE INVESTIGATIONS: Select all that apply (N/A if no external entities are responsible for administrative investigations)</p>	<input type="checkbox"/> Local police department <input type="checkbox"/> Local sheriff's department <input type="checkbox"/> State police <input type="checkbox"/> A U.S. Department of Justice component <input type="checkbox"/> Other (please name or describe: Click or tap here to enter text.) <input checked="" type="checkbox"/> N/A
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Audit Findings

Audit Narrative (including Audit Methodology)

On March 3-5, 2020, the second PREA audit of the Auburn Correctional Facility (ACF) was conducted at the facility in Auburn, New York. The facility is a part of the New York State Department of Correction and Community Supervision (DOCCS). The audit was conducted by Douglas K. Sproat, Jr., United State Department of Justice certified PREA auditor.

Approximately four weeks before the on-site visit, Marcus T. Butler, Assistant Deputy Superintendent/PREA at ACF mailed the auditor a password-protected flash drive containing the facility's Pre-Audit Questionnaire (PAQ), along with relevant policies and secondary documents supporting each standard. These documents included, but were not limited to, PREA incident reports, training rosters, inmate risk assessments, inmate notifications of investigation results, and statements of the status of various PREA-related issues. These documents were well-organized and comprehensive. DOCCS is meticulous in marking its supporting documents to identify the relevant standards and their subsections. Supporting materials for the PAQ were embedded within the document, making the process for reviewing materials very auditor-friendly. The contents of the flash drive covered every aspect of ACF's operation from incident reports to facility schematics so that a thorough review of the materials would give any auditor an understanding of the facility before ever setting foot on the compound.

The auditor arrived at ACF at 7:45 AM on March 3, 2020. An in-briefing was held in the administrative conference room at 8:00 AM. Those attending included Superintendent Timothy D. McCarthy, First Deputy Superintendent James Donahue, Deputy Superintendent/Security Joseph E. Corey, Deputy Superintendent/Administration Thomas Napoli, Deputy Superintendent/Programs Galyn Schenk, Deputy Superintendent/Health Zebra Cicconi-Crozier, Assistant Deputy Superintendent PREA Marcus Butler, Facility Operational Specialist Dawn Butler, Associate Commissioner for PREA (ACPC) Compliance Jason Effman, and Institutional Steward Debra Vanni.

After a round of introductions, the auditor discussed the logistics of the facility tour and the staff and inmate interviews. The tour began immediately after the in-briefing. It included all areas with inmate traffic and attendance. These areas included, but were not limited to, housing units, academics/vocational complex, prison industries, food service, intake, medical, mental health, religious programming, recreation, bath house, and visitation. The auditor had previously been notified of the timely posting of the notices about the scheduled audit, and he observed these notices while on the tour. He also observed posters throughout the facility about ACF's zero tolerance policy with information on how to report allegations of sexual abuse and sexual harassment. During the initial tour and during revisits to different areas, the auditor also noted camera placement and the use of mirrors in order to evaluate whether the cameras or mirrors gave rise to any PREA-related privacy issues. Prior to and during the on-site part of the audit, the auditor reviewed agency and institutional policies, contracts, training records, training curriculum, and memos/compliance statements.

On March 4 the auditor began the formal interview process. There are six different categories for interviews that are used to elicit information related to PREA compliance: the agency head, the facility director, the facility PREA manager, specialized staff, random staff, and inmates. Not all categories, such as the agency head, may be available during the audit, but the broader the range of interviews, the more comprehensive a view the auditor can gain of the facility being audited. Following PREA-established interview protocols helps to ensure a consistent review of compliance with the standards, regardless of who is doing an audit or the type of facility being audited.

The auditor worked with ACF to identify inmates for his formal interviews, and 22 targeted category inmates were initially identified for formal interviews. However, the majority of those identified declined to be interviewed about PREA issues, leaving a total of 6 inmates in the targeted categories for interviews.

The auditor formally interviewed 37 inmates in a private room designated by the ADSP:

3 transgender inmates,
1 bisexual inmate,
1 inmate who reported prior victimization during the facility PREA screening,
1 inmate who reported sexual abuse prior to incarceration during the facility PREA screening, and
31 randomly-selected inmates.

During the audit, there were no inmates in segregation for risk of victimization, nor had there been any placed in segregation for that reason during the audit period. A review of the total 37 formal and 18 informal interviews establishes that ACF inmates are receiving a very good PREA education. All inmates interviewed could describe the protections of PREA and the different ways to report allegations of sexual misconduct at the prison: by written report/message/letter to staff or third parties such as family, a hotline, advocacy group, or a government entity, as well as a verbal allegation to staff and/or the type of third parties just cited. Every inmate interviewed was aware that allegations could be made anonymously. Of the PREA sexual abuse allegations during the audit period, a review of the files for the investigations reflected timely and appropriate actions in accord with ACF policies and appropriate PREA standards.

The auditor formally interviewed on-site 33 ACF staff, one contractor, and one volunteer. The auditor also conducted a telephone interview with a sexual assault nurse examiner (SANE) from Vera House and the director of Safe Harbors, an advocacy program that provides a confidential service for incarcerated individuals who have been sexually assaulted or abused. The auditor accessed the 777 Hotline used by the inmates and found it to be operational.

Those formally interviewed were:

one Superintendent,
one First Deputy Superintendent,
one Deputy Superintendent—Administration,
one Deputy Superintendent—Security,
one Deputy Superintendent—Health,
one Deputy Superintendent—Programs,
one Assistant Deputy Superintendent PREA Compliance Manager
one captain/PREA point person,
one lieutenant for planning and staffing—1st shift,
one lieutenant—miscellaneous, all shifts,
two investigators—Office of Special Investigations (OSI),
one contractor,
one counselor,
one senior counselor—Supervising Offender Rehabilitation Coordinator,
one head clerk—personnel,
one inmate records coordinator,
one nurse administrator,
one plant superintendent,
one physical therapist,
one supervisor of volunteer services,
one sergeant—1st shift,
one sergeant—vacation relief,

one fire safety officer,
one volunteer academic tutor,
two lieutenants—watch commander relief,
one correctional officer accreditation—1st shift,
one industrial superintendent,
one medical administrator,
one Sexual Assault Nurse Examiner (SANE at Vera House), and
one advocacy program director for Safe Harbors Advocacy Program.

Another 20 staff were informally interviewed. These 53 interviews collectively showed a clear understanding by staff, contractors, and volunteers of PREA, along with an appreciation of the purpose behind it. Everyone understood the role of PREA in the daily operation of the facility. It was clear to the auditor from these formal and informal interviews that the administration at ACF strives diligently to ensure compliance with all of the PREA standards.

The PREA standards require an auditor to view certain areas to verify compliance with the standards. Certain areas, such as the following, are always part of a proper facility tour:

1. intake/reception and screening areas,
2. housing units, dormitories, and individual rooms,
3. healthcare/mental health departments,
4. academic/vocational departments,
5. prison industries,
6. maintenance, recreation, food service, and program areas,
7. any renovations or additions,
8. segregation,
9. commissary, and
10. laundry.

These areas must be examined since they are the locations where inmates are housed and have work/program/education assignments—all areas where potential PREA violations are likely to occur. The auditor had sufficient time to view inmate-staff interactions throughout the compound and to evaluate the nature and quality of those interactions. The auditor informally interviewed and questioned inmates and staff about their knowledge of PREA. Unit logs were reviewed for unannounced rounds conducted by intermediate and higher level supervisors. The auditor noted the consistent use of the opposite gender announcements when female staff entered the housing units and/or any other areas where an inmate might be undressed, showering or using the restroom.

The auditor observed the intake process done by the draft sergeant for PREA risk assessment screening, along with reviewing a sampling of risk assessment outcomes. The auditor also reviewed a contract with Safe Harbors, an entity offering confidential service to incarcerated individuals who have been sexually assaulted or abused.

On March 5, 2020, at the conclusion of the on-site part of the audit, the auditor met with the staff of ACF for an exit briefing. Present for the briefing were the Superintendent, First Deputy Superintendent (FDS), Deputy Superintendent/Security (DSS), Deputy Superintendent/Administration (DSA), Deputy Superintendent/Programs DSP), Deputy Superintendent/Health (DSH), Assistant Deputy Superintendent/PREA (ADS/PREA), and the Institutional Steward. The auditor did not provide a final tally from the audit at that time. He expressed his gratitude to the group for the materials supplied in advance, for their cooperation and hospitality during the audit, and for their commitment to PREA. Because the exit briefing just noted was held late in the day and involved primarily top administrators, on the morning of March 6 a brief meeting was held for other staff so that they could also hear the auditor's closing remarks.

Facility Characteristics

Auburn Correctional Facility (ACF), as it is known today, opened in 1817 as Auburn Prison; it is the oldest continually-operating maximum security facility in the United States. ACF received its first inmates in 1817 and continues to operate today as a modern-day correctional facility. It sits on approximately 24 acres in downtown Auburn, New York. Its physical address is 135 State Street, Auburn, New York 13021.

ACF is an all-male adult facility consisting of 84 buildings. There are 52 housing units. Of these units, 49 are single-cells units, including units for Special Housing Unit (SHU) inmates and Protective Custody inmates. The other configurations are a double occupancy unit for inmates in transit, and dorm-type housing for the infirmary and the Residential Crisis Treatment Program (RCTP).

The facility was designed to hold 1,766 offenders; it had a population of 1,252 at the time the PREA Pre-Audit Questionnaire (PAQ) was completed. Offenders arrive at ACF from either a reception/classification unit or another facility within the New York Department of Correction and Community Supervision (DOCCS). It houses maximum security inmates with an age range of 19-75. Formal counts are held multiple times daily, and the average length of time under supervision at ACF is approximately 1.95 years.

Approximately 802 staff work at ACF. The staff are deployed on 12 shifts to accommodate the facility's population. The eight-hour shifts are as follows:

5:00 AM – 1:00 PM	2:00 PM – 10:00 PM
6:00 AM – 2:00 PM	2:30 PM – 10:30 PM
7:00 AM – 3:00 PM	3:00 P M– 11:00 PM
7:30 AM – 3:30 PM	4:00 PM – 12:00 AM
8:00 AM – 4:00 PM	11:00 PM – 7:00 AM
11:30 AM – 7:30 PM	12:00 AM – 8:00 AM

The primary security work tours are 11:00 PM – 7:00 AM (tour I), 7:00 AM – 3:00 PM (tour II), and 3:00 P M– 11:00 PM (tour III). The other tours are generally staffed with the remaining employees needed to support the operation of the facility.

ACF provides its offenders comprehensive medical and mental health services. The Medical Unit promotes quality health care through the use of staff and contract health care professionals. Providers are on site five days a week with on-call coverage 24/7. Services such as radiology, pharmacy, and dental are provided five days a week, with lab services offered four days weekly. Vision and podiatry services are also offered on site. Supplementary services, such as treatment by specialists or in-patient hospital care, are available as needed off-site.

Mental health services for ACF offenders are offered on-site through a New York State Office of Mental Health Services Satellite Unit, one of 15 located throughout the state. It offers individual sessions and other mental health programming. It functions like a community mental health center, with a staff that includes—but is not limited to—a unit chief, two fulltime psychologists, part-time psychiatrists, fourteen licensed social workers, eight nurses with varying responsibilities, and a rehabilitation counselor.

ACF provides a variety of programs to benefit its offenders. Educational program services at ACF date back to 1961. Offerings include Adult Basic Education, English as a Second Language, vocational

training in trade shop subjects, and college level courses. The counseling program services include Alcohol Substance Abuse Treatment (ASAT), Aggressive Replacement Treatment (ART), and programs facilitated by inmates, staff, and a combinations of inmates and staff. There is a recreational program that includes the use of a gym and outdoor exercise areas. Additionally, the religious program services are offered under the auspices of a wide variety of faith leaders, including—but not limited to—the following: Catholic and Protestant chaplains, an Imam, a rabbi, and a Nation of Islam minister.

There is also a Division of Industries at ACF. CORCRAFT is the trade name of the DOCCS prison industries manufacturing division. At ACF, approximately 2.5 million pairs of license plates are manufactured annually for the New York State Department of Motor Vehicles. Additionally, there is a cabinet shop that produces office and institutional furnishings.

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.

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: 13

List of Standards Exceeded: 115.11, 115.15, 115.16, 115.17, 115.31, 115.32, 115.33, 115.34, 115.35, 115.41, 115.42, 115.53, 115.67

Standards Met

Number of Standards Met: 32

List of Standards Met: 115.12, 115.13, 115.14, 115.18, 115.21, 115.22, 115.43, 115.51, 115.52, 115.54, 115.61, 115.62, 115.63, 115.64, 115.65, 115.66, 115.68, 115.71, 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: Click or tap here to enter text.

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*)

Directives 4027A/Sexual Abuse Prevention and Intervention/Inmate-on-Inmate (11/29/17) and 4028A/Sexual Abuse Prevention & Intervention--Staff-on-Inmate/Staff-on-Parolee (11/29/17) highlight and explain many of the key parts of the DOCCS zero-tolerance policies and practices. The Directives are agency-wide and represent what is required at ACF for the successful maintenance of a PREA-

consistent environment. Because of the clarity of the directives, staff, contractors, volunteers, and interns are all clearly informed/trained about their PREA responsibilities, including the scope of prohibited acts, when and how to make PREA reports, the sanctions for violations, etc. The various specific references to state and federal laws, as well as to relevant inmate rules of conduct, added to the unambiguous nature of the information provided the staff, volunteers, etc., and promotes a comprehensive understanding of PREA and the personal responsibilities of everyone who has inmate contact.

The agency-wide PREA coordinator is an Associate Commissioner for PREA Compliance (ACPC) reporting to the Acting Commissioner, and ACF has an Assistant Deputy Superintendent/PREA (ADS/PREA) who also has PREA responsibilities for two other facilities in the region. He maintains an office at all three facilities. The ADS/PREA reports on ACF PREA issues both to the ACF Superintendent and to the ASPC. This reporting structure, verified through documents and interviews with the Superintendent, is reflective of the agency's intent to maintain a zero-tolerance environment at all of its facilities and its awareness of the need for a regular information flow from all of the state's many facilities. There is also a PREA captain/point person. The auditor reviewed job descriptions for the positions having PREA responsibilities and found them to be quite comprehensive.

A further indicator of the agency's attentiveness to PREA issues are the dates on the Directives and forms, many of which have been reviewed, supplemented, revised, and/or amended—some more than once--since the previous PREA audit. This constant attention to refining and updating the PREA policies underscores an on-going commitment to conform them to a best-practices model using feedback coming from the many DOCCS institutions throughout the state.

The discussions and interviews with staff and inmates during the facility tour, viewing of bulletin boards, multi-lingual PREA posters, pamphlets, handouts and other PREA educational materials, along with a review of policies, amply illustrated a clear focus doing what is needed to maintain a zero tolerance environment at the facility. Interviews with the Superintendent, the FDS, the DSA, the DSS, the DSH, the DSP, and the ADS/PREA showed a sincere commitment to maintaining a PREA-compliant facility. A review of the agency's website also reflects the emphasis DOCCS places on PREA.

The facility's complete support for PREA is evident, and ACF exceeds the requirement for this standard.

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*)

An 11/1/18 Statement of Compliance from the Associate Commissioner for PREA Compliance notes that “DOCCS meets PREA Standard 115.12/212 by not contracting with other entities for the confinement of inmates. NY Consolidated Law Service/Correction Law § 121 provides ‘the private operation or management of a correctional facility ... or a local correctional facility ..., 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.’ New York State is not permitted to enter into contracts for the confinement of inmates.”

However, DOCCS does contract with private agencies or other entities for community-based facilities that do not confine inmates, and it requires each entity to adopt and comply with the PREA standards. Each contract provides for agency contract monitoring to ensure that the contractor meets the PREA standards for community confinement facilities. Regional contract managers monitor the programs monthly. The monitors’ site visits include ensuring zero tolerance policy is in place, ensuring all residents are screened within 24 hours of arrival, ensuring that all residents receive a PREA pamphlet, and ensuring PREA informational posters are visible.

The agency/facility is considered to be in compliance with this standard.

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?
- 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*)

Documentation reviewed and interviews with the Superintendent and the ADS/PREA verified that an annual staffing review is sent to the Deputy Commissioner for Correctional Facilities, the Director of Security Staffing and the ACPC. The review uses the criteria found in this standard as the basis for the plan, including (but not limited to) such matters as any findings of inadequacy from internal or external oversight bodies, all components of the institution's physical plant (including blind spots), composition of the inmate population, number and placement of supervisory staff, and the number of substantiated/unsubstantiated incidents of sexual abuse. The auditor reviewed a template for an annual staffing review, as well as a memo from the Director of Security Staffing to the Superintendent on 12/13/19 verifying that ACF's "current staffing plan and monitoring infrastructure is adequate, and that the available staffing resources are sufficient to meet the staffing plan." He also viewed a post closure report.

Staffing adjustment can be made whenever necessary. Any findings from the review require a plan of action for correction. By policy ACF electronically documents all deviations to the plan. The most common reasons for deviations from the plan were regular days off, annual leave holidays, personal sickness, and job related injuries. The facility uses overtime to fill all its unfilled positions in the plan. Unannounced rounds are conducted by sergeants and lieutenants. As detailed in Directive 4001/Facility Administrative Coverage and Supervisory Rounds and in the Employees' Manual, employees are prohibited from alerting other employees that supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility. There are both daily and weekly reports with sections for documenting unannounced rounds. Interviews by the auditor and a review of log books verified that the rounds are conducted on all shifts. Interviews with staff verified that the rounds include security checks of the housing units to ensure the safety and security of both inmates and staff.

ACF is compliant with this standard.

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*)

DOCCS has facility specific directives outlining the type of facility and age of inmates. The documents reviewed, including New York Consolidated Law Service/Correction Law §77 and the ACF PAQ, along

with observations made during the tour, establish that this standard does not apply to ACF. It is a facility for adults only. This standard is therefore considered to be compliant.

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*)

The facility has robust set of directives/policies/forms covering opposite gender searches and searches of transgender and intersex inmates:

- Directive 4001/Facility Administrative Coverage & Supervisory Rounds (4/25/19)
- Directive 4910/ Contraband and Searches for Contraband (and memo with revisions),
- Directive 2230/Guidelines for Assignment of Male and Female Correction Officers (2/21/19),
- Health Services Policy 1.37/Body Cavity Search,
- Health Services Policy 1.19 Health Appraisal,
- Form 1140/Report of Strip Search or Strip Frisk, and
- Form 2063/Certificate of Search.

They provide detailed information on the appropriate techniques and the various forms for documenting certain searches, allowing for facility staff to do their jobs in a PREA-compliant manner and maintain the documents needed for excellent recordkeeping. According to the PAQ, there were zero opposite-gender strip or visual body cavity searches during the audit period.

The policies also require ACF to adhere to practices that allow for offender privacy when showering, performing bodily functions, or changing clothes, except for exigent or incidental circumstances. Opposite gender announcements are required when staff enter an area restricted to offenders of the opposite gender. Additionally, as noted in Directive 2230, "Staff of the opposite gender shall verbally announce their arrival on a housing unit at a minimum upon each change of shift and when the gender-

supervision on a housing unit changes from exclusively same gender, to mixed or cross gender-supervision to avoid unnecessarily invading the privacy of inmates of the opposite gender, unless emergency conditions dictate otherwise. The announcement(s) by staff must be accomplished in a manner that is easily heard and/or understood by all inmates on the unit. This announcement will be recorded in the unit logbook.” As a further consideration regarding searches of transgender or intersex inmates, the 7/18/19 memo updating Directive 4910 sets out a variety of relevant instructions, including the following:

- Any inmate who is to be pat frisked, who is has Gender Dysphoria, is intersex or who is transgender and has a permit to possess and wear gender affirming/transgender clothing, may request that a Correction Officer of the inmate's preferred gender conduct the pat frisk. It is the policy of the Department to honor that request whenever possible, as determined by the Area Supervisor, and
- When a correction officer conducts a frisk of an inmate who has been issued a permit to possess and wear gender conforming/transgender undergarments over their objection, the correction officer shall record the date, time, place, and the reason for the pat frisk on Form #1140CGPF-T,"Report of Cross Gender Pat Frisk- Transgender Inmate."

The auditor observed both the use of the verbal announcements and the logging of the announcements. The auditor also viewed training logs showing that 100% of the correction officers had search and frisk training during the audit period.

Interviews with staff confirmed that employees were knowledgeable about requirements for making and logging opposite gender announcements and about requirements for opposite-gender/transgender/intersex searches, such as when they are permitted, how they are done, and what documentation is needed. None of the correction officers interviewed had ever had to perform an opposite-gender, transgender, or intersex inmate search. Everyone interviewed understood the prohibition against searches of transgender and intersex offenders to determine their genitalia. The auditor formally and informally questioned a number of inmates regarding privacy and personal search issues. Among those questioned were three transgender inmates, one inmate who reported victimization during his PREA screening, and one inmate who reported abuse prior to incarceration during his PREA screening. None of the inmates who were formally or informally interviewed had ever been searched in an inappropriate way.

Based on the comprehensive nature of ACF's search policies (to include the requirements for documentation), the attention to training, and the execution of the practices set out in the policies, the facility exceeds the requirements of this standard.

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*)

Agency policy provides that inmates with disabilities must have an equal opportunity to learn about, participate in, and benefit from all aspects of a facility's PREA policies. This approach encompasses language and literacy issues, as well as impairments with seeing or hearing. Directive 2612/Inmates With Sensorial Disabilities (12/16/19) sets out the agency's approach to defining a disabled inmate and giving direction on how to meet the agency's/facility's responsibilities in the broad context of meeting the needs of a disabled (such as vision, hearing, or learning impaired) person in the custody of DOCCS.

Directive 4490/Cultural and Language Access Services (8/1/19) sets out in great detail the rights of inmates who are limited English proficient (LEP) to have meaningful access to information (including PREA and various prison documents) so they can understand critical matters. This Directive also includes information about the use of authorized interpreters and the form used if an inmate waives that right, since agency policy prohibits using inmate interpreters, inmate readers, or other types of inmate assistants except in limited circumstances. The auditor reviewed the contract between DOCCS and Language Line Services that ensures ready access to translation/interpretation services. The auditor did not use the Language Line Service during the audit since there were no LEP inmates to be interviewed.

The auditor interviewed the draft sergeant and the ADS/PREA regarding the DOCCS approach to meeting this standard. Although inmates with physical or cognitive disabilities are sent to other DOCCS facilities, ACF does take LEP's, but there were none among the population at the time of the audit. The sergeant and the ADS/PREA both verified that all inmates have an equal opportunity to participate in or benefit from the PREA policies of DOCCS. In response to a question from the auditor, the draft sergeant said he had never had to use any assistance to help him explain PREA to an incoming inmate; he attributed that fact to the on-going PREA education that inmates get in jail or in other facilities before coming to ACF.

The auditor observed the draft process on the first day of the audit, closely watching how the inmate was processed. The draft that day was comprised of a single inmate who appeared to have no disabilities—whether of language, body, or mind--and clearly understood the PREA concepts that were

explained to him. The inmate was actually resistant to the PREA information since he professed to be quite knowledgeable about PREA, having heard the same information many times before.

The ACF uses a gender-specific PREA education video, "Ending Sexual Abuse Behind the Walls," that provides PREA education in several languages (audio and captions) beyond English and Spanish. There is also a brochure (The Prevention of Sexual Abuse in Prison: What Inmates Need to Know) in English, Spanish, and a number of other languages. The choice of languages used for the brochures changes over time to represent the prevalence of certain languages in the state's population. As an example, the brochure is now available in Bengali because of a rise in Bengali speakers among the New York population. The auditor observed a variety of written materials such as posters and pamphlets in multiple languages advising inmates of their rights to be free from sexual abuse, sexual harassment, and retaliation and how to report such actions.

Although physically and/or cognitively disabled inmates are normally sent to specific DOCCS facilities other than to ACF, DOCCS policies have detailed provisions for providing PREA services to both hearing-impaired and visually-impaired offenders. Hearing-impaired offenders are provided written PREA information, such as PREA guidelines, and educational brochures, along with videos with subtitles. Inmates who are visually impaired are provided audio tracks in English, Spanish, and a variety of other languages. Inmates sign for the PREA Sexual Abuse Brochure during intake, citing the language they use on the form to ensure they are receiving the information in a language they can understand. This brochure is available in multiple languages, as noted above. If the document is not available in the correct language, interpretation services are provided.

Among the material reviewed by the auditor was the Facilitator Guide for Inmate Education and Orientation Film (6/15/15), which contains this mandate from DOCCS: "The agency shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills." He also reviewed the Facilitator Training curriculum for inmate orientation (10/2/18) which likewise contains the same reminder, just slightly reworded: "The agency shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills."

The emphasis that DOCCS puts on making sure that all inmates can understand what PREA is and how to benefit from it demonstrates a commitment to this standard. The practices of ACF regarding any disabled or LEP inmates it may receive exceed what is required under 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*)

Directive 2216 and Attachment A/Fingerprinting/Criminal History Inquiry—New Employees and Contractors and Processing Chart (11/1/18) outlines a comprehensive mandate for fingerprinting and doing criminal histories for prospective employees (correction officer, civilians, per diem, part-time, outside agency, etc.) as well as contractors, consultants, etc. Directive 2112 imposes an affirmative duty on the employee to disclose criminal charges as well as certain other “incidents” or “violations” listed in the directive, and the agency requires a signed acknowledgement that the employee has received the Employee Manual, which sets out this requirement. Additionally, there is an agreement between DOCCS and the New York 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. The standard requires a background check at least every five years, but this agreement allows for the timely reporting of important information instead of either waiting for self-reports, promotion background checks, or several years to pass.

For applicants, the agency’s Personal History and Interview Record contains the questions addressed under this standard, such as whether he/she has ever been named, charged, disciplined, engaged in, adjudicated, or convicted of PREA-related matters; the auditor was provided a redacted copy of one of

these Records. Another component of the application process, the Personal History Questionnaire, carries a prominent warning of the consequences of fraud, deception, or making materially false statements during the process of seeking employment. If applicants have prior institutional employers, employers “shall” be contacted for substantiated allegations or resignations during an investigation. For promotions, there is a required check for convictions, administrative findings or sexual abuse or harassment, or other prior incidents of sexual abuse. Sections of Directive 2012 set out what information will/will not be released to a prospective employer without authorization. DOCCS is bound by state law on the release of DOCCS employment information to certain prospective employers without an authorization by that current/previous employee.

The auditor reviewed a memo from the DOCCS director of personnel regarding Fair Chance Hiring Application provisions, setting out the fair chance hiring procedures and their relation to the agency’s required use of the PREA questions. The required PREA screening questions remain a part of the hiring process.

According to the Personnel Procedure Manual—Recruitment Process, “once a candidate of choice has been selected, the facility Superintendent/Regional Director or designee shall submit a Criminal History inquiry to the Employee Investigation Unit as outlined in Department Directive #2216, “Fingerprinting/Criminal History Inquiry-- New Employees, Volunteers.” According to an interview with personnel staff at ACF, if a DOCCS staff member leaves employment and seeks to return, it does not matter how short a time the separation from an employment has been: the criminal history/background check will be done in the same manner as that for a prospective applicant who has not previously been employed by DOCCS.

The agency/facility process covers all aspects of the PREA-related measures of the hiring/promotional process in a very thorough manner, exceeding what is required for compliance.

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*)

The auditor reviewed Directive 3053/Alterations/Construction Request (6/25/18) and Form 1612 "Alterations/Construction Request." They outline the facility's PREA responsibilities under this standard. Both the policy and the form used to request a change clearly require a facility to evaluate and document the need for a requested change. PREA implications must be considered for any change requested, and the form requires comments on what impact (enhance, neutral, negative) any change would have on the facility's PREA responsibilities. The auditor also reviewed a completed Form 1612 for a non-PREA related request for inmate telephones.

According to the PAQ, ACF did not acquire any new facilities or make any substantial expansions since the 2017 PREA audit, not did it install or update any monitoring systems during that same period. The ADSP verified the information recorded in the PAQ, indicating to the auditor that PREA-related information gathered by ACF during that time period (including recommendations from substantiated and unsubstantiated incident reviews) did not require changes in either construction or monitoring technology.

The facility is considered to be in compliance with 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 evidentiarily 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

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

A letter of compliance from the ACPC (3/21/19), states that since the facility does not conduct on-site forensic exams, by policy

When evidentiary or medically appropriate, a victim of sexual abuse shall be transported to an outside hospital and shall be provided treatment and services as required by the laws, regulations, standards and policies established by the State of New York and administered by the New York State Department of Health. This includes, but is not limited to, minimum standards and the uniform evidence protocol adopted by the New York State Department of Health and as specified in the, "A National Protocol for Sexual Assault Medical Forensic Examinations Adults/Adolescents Second Edition."

The auditor reviewed extensive information about the New York State Department of Health SAFE program at <https://health.ny.gov/professionals/safe>. A National Protocol for Sexual Assault Medical Forensic Examinations--Adults/Adolescents, Second Edition, U.S. Department of Justice, 2013 can be found on this site.

Directive 4027B/ Sexual Abuse Reporting & Investigation-Inmate-on-Inmate contains ACF's detailed procedures for on-site collection and preservation of evidence, exclusive of forensic exams, of course. Directive 4028B/ Sexual Abuse Reporting & Investigation-Staff-on-Inmate/Staff-on-Parolee provides a clear notice that "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." Directive #0700/Office of Special Investigations (OSI) sets out the framework for the OSI and outlines its duties for investigations.

DOCCS Division of Health Services Policy 1.60/Sexual Assault covers many of the requirements for this standard, such as the requirements that all treatment for sexual assault victims will be provided without financial liability regardless of whether the victim cooperates in the investigation, that inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and

crisis intervention at a hospital staffed with a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE), and that a victim advocate will be available to provide services. State law also addresses the matter of services being provided without financial liability. The evidence protocol is spelled out by agency policy to conform to PREA standards also. All other portions of this standard are matters of agency policy or state law. The compliance of DOCCS/ACF with PREA Standard 115.21 subsection (e)-1 is specifically set out in the OSI Policy Manual Chapter 5, Sections IV and IV.2.F, which was reviewed by the auditor. OSI collaborates as needed with the New York State Police (NYSP) to conduct investigations of PREA allegations at ACF that may be criminal; and the DOCCS Acting Commissioner has made a formal request to the NYSP for PREA compliance in accord with subsection (f) of this standard.

DOCCS/ACF is compliant with this standard.

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*)

The following directives all play a role in ensuring that allegations of sexual abuse and harassment and related retaliation at ACF are investigated:

- Directive 4027A/ Sexual Abuse Prevention and Intervention/Inmate-on-Inmate (11/29/17),
- Directive 4027B/ Sexual Abuse Reporting & Investigation - Inmate-on-Inmate,
- Directive 4028A (11/29/17)/Sexual Abuse Prevention & Intervention - Staff-on-Inmate/Staff-on-Parolee,
- Directive 4028B/Sexual Abuse Reporting & Investigation - Staff-on-Inmate/Staff-on-Parolee, and
- Directive 0700/Office of Special Investigations/excerpt describing functions of OSI and its Sex Crimes Division (SCD).

A Statement of Compliance (12/22/17) sets out the following:

- The Acting Commissioner of the New York State Department of Corrections and Community Supervision (DOCCS) has delegated the authority to conduct administrative and criminal investigations to the Office of Special Investigations (OSI) in accordance with Corrections Law § 112 and Directive #0700 "Office of Special Investigations (OSI)." OSI works cooperatively with New York State Police (NYS), Bureau of Criminal Investigations (BCI) in the investigations of reported incidents of staff-on-inmate and inmate-on-inmate sexual abuse that may involve criminal conduct. DOCCS has not relinquished this authority to any separate activity.
- The Department of Justice is not responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in New York State DOCCS facilities

Whenever there is an allegation of sexual abuse, sexual harassment, or sexual threats, by policy a prompt, thorough, and objective investigation must always be conducted by the agency's Office of Special Investigations (OSI). OSI must be contacted immediately in accord with the facility's coordinated response plan to investigate the allegations and determine the appropriate investigative response. OSI has the responsibility for ensuring that substantiated allegations are referred to the appropriate entity for administrative, disciplinary, and/or prosecutorial action. The OSI has legal investigative authority within the State of New York and also collaborates with the State Police on any matters that may appear to be criminal. All complaints and information received by OSI related to possible investigations are documented, reviewed, and processed.

More specifically, the Sex Crimes Division (SCD) of the OSI conducts investigations involving sexual misconduct between inmates or parolees and agency/facility staff, as well as inmate-on-inmate sexual

abuse, and assists outside law enforcement in the development of cases for criminal prosecution. SCD conducts other investigative activities as directed by the Deputy Commissioner/Chief of Investigations, the Commissioner, or designee. The SCD also collaborates with others within DOCCS to ensure compliance with the Prison Rape Elimination Act (PREA). The agency website describes the function of the Office of Special Investigations at <https://doccs.ny.gov/more-about-prea>

A Monthly Sexual Abuse /Threat Incident Summary is sent to Deputy Commissioner for Correctional Facilities and Associate Commissioner for PREA Compliance to record the allegations made (or the absence of allegations). The auditor reviewed a redacted sample of a summary from the audit period; these summaries provide the facility with a monthly compilation of PREA-related allegations and serve to inform top agency officials of the frequency and type of allegations throughout the DOCCS system.

DOCCS/ACF is compliant with this standard.

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*)

Security staff must complete extensive training at the agency's Academy that includes PREA training (Module 6 contains "Sexual Abuse Prevention and Response"), but the civilian staff at ACF is also very well-trained. Under Training Manual Subject: 7.000 40 Hour Orientation/Initial Employee Training, there is extensive orientation training for civilian employees, including PREA instruction that occurs during the employee's first 5 days, followed later by an additional 80-hour block of training. After the lengthy orientation and initial training, Training Manual Subject: 0.100/Frequency Training Chart and

Training Bulletin (12/3/18) sets out what type of employee (security, civilian, mental health, etc.) must subsequently receive what training topics and how often (every year, every other year, lifetime, etc.)

Every year security and civilian staff watch a video regarding professional boundaries to emphasize issues that can lead to sexual misconduct. PREA refresher training is required every year for some staff and every other year for others, depending on the employee's status as civilian or security. There are also updated training bulletins distributed annually to be read at civilian staff meetings and at line up (for uniform staff to be read for 72 hours to cover all shifts/absences). All training is documented through the Report of Training Form.

The auditor reviewed the content of a training bulletin about PREA. Providing such refresher training on "the agency's current sexual abuse and sexual harassment policies and procedures" is very helpful when an agency appears to actively review/revise/adjust policies and practices to maintain a zero-tolerance standard at its facilities. Several of the employees interviewed by the auditor mentioned the value of the training bulletins that are read at staff meeting and at line up; they noted that since policies/practices are updated on a fairly regular basis, the training bulletins provided an effective method of keeping the staff current regarding its knowledge of PREA.

Under Training Manual Subject 7.100 (7/10/17), transferring employees (including part-time and per diem staff) must undergo 16 hours of familiarization at their new assignment--including PREA--and sign an acknowledgement form. The training, which must take place on the first two days at the new facility, is specific to the gender of the inmates at the facility. The auditor also reviewed a memo sent to all employees during the audit period from the Acting Commissioner; it was a two-page summary of "Policies and Standards Generally Applicable to All Employees" (7/11/18) referencing PREA-related directives, along with many other key issues for employees. It cited the specific directives so employees could easily review them for more details if needed. The auditor verified through a review of computerized records and signed training forms that staff were current with their PREA refresher training.

Additionally, the auditor viewed the script for the "DOCCS Sexual Abuse Prevention and Response" male and female video course developed by the Albany Training Academy and the Sexual Abuse Prevention and Education Office. He also viewed a power point module for male inmates. These presentations are also used as refresher training for DOCCS employees, as well as being used for training for contractors and volunteers. The interviews with the Superintendent and the ADS/PREA reflected that they were well aware of the benefit of these training programs for both security and non-security staff.

The facility exceeds the requirement for this standard based on the length and frequency of various components of its training program.

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*)

Directive 4027A/Sexual Abuse Prevention and Intervention/Inmate-on-Inmate (11/29/17) and Directive 4028A/ Sexual Abuse Prevention & Intervention - Staff-on-Inmate/Staff-on-Parolee (11/29/17) provide that contractors, contract employees, volunteers, and interns must receive orientation and periodic in-service training consistent with their level of inmate contact. This training provides them with the PREA information necessary to fulfil their responsibilities under the agency's commitment to a zero-tolerance policy, such as how to prevent, detect, and respond to sexual abuse and harassment. Directive 4071/Guidelines for Construction Projects (10/2/18) provides that each contractor must sign Form 4071A. This form sets out the Guidelines for Construction Projects and contains a very detailed section on PREA. By signature on this form, the contractor is acknowledging that it has been personally explained by a DOCCS employee. The Auditor reviewed a signed contractor acknowledgement form from the audit period.

The Application for Volunteer Status is very thorough, and it includes a verification of understanding the DOCCS zero-tolerance policy. Directive 4750/Volunteer Services Program (1/14/19) covers training requirements for volunteers, including job specific training that is in addition to the formal volunteer training. Form #MFVS3087 (12/18), Acknowledgement of "Standards of Conduct for Volunteers" and All Applicable Policies, must be signed by volunteers as a part of orientation. It states, in part:

I hereby acknowledge receipt of the most current versions of the following standards and policies for volunteers. I understand the training that I have received and that I will be held accountable for, and act in accordance with, these standards and policies. I further understand that any violation may result in my termination as an approved volunteer.

This acknowledgement verifies that the volunteer received the following documents, among other materials: Standards of Conduct for Volunteers, Policy on the Prevention of Sexual Abuse & Sexual Harassment of Incarcerated Individuals & Parolees, and Copies of Directives #4027A and #4028A.

Once a volunteer completes orientation, he/she must sign an acknowledgement that includes, among other things, this statement: "I understand the Department's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report such incidents under DOCCS' sexual abuse and sexual harassment prevention, detection, and response policies and procedures. I signed an acknowledgement of receipt and understand the Prison Rape Elimination Act (PREA) policy outlined in the memorandum." A 9/4/18 letter to "All Employees, Contractors, Volunteers and Interns" from the Acting Commissioner addressing agency "Policy on the Prevention of Sexual Abuse and Sexual Harassment of Incarcerated Individuals and Parolees" provided a useful PREA summary for everyone. The auditor also reviewed a volunteer's signed acknowledgement of training from the audit period.

As noted in the narrative for Standard 115.31 above, the auditor viewed the "Sexual Abuse Prevention and Response" video course developed by the Albany Training Academy and the Sexual Abuse Prevention and Education Office. The video is used as a refresher training for DOCCS employees and as a part of the initial training for contractors and volunteers; the video specifically states that the term "staff" includes "any contractor (including vendors) who provides services to inmates or parolees, or any volunteer (including interns)." All volunteers receive some type of orientation prior to beginning service, and refresher orientation is required every 24 months. However, they may receive periodic job specific training as well, and every volunteer serving more than nine hours per week must also receive in-service training annually.

The auditor interviewed a contractor who presents sexual harassment training and a volunteer teacher. Both verified they had been trained, and both were able to state their responsibilities under PREA. DOCCS/ACF exceeds what is required by this standard because of its on-going efforts to train volunteers and contractors about their PREA responsibilities and to thoroughness in documenting their understanding of that training.

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*)

DOCCS 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; the receipt of these materials is documented. The pamphlet, "The Prevention of Sexual Abuse in Prison: What Inmates Need to Know," comes in a male and female version and is available in English and eight other languages. It explains the right to be free from sexual abuse and sexual harassment, the right to be free from retaliation, and how to make a complaint if they think are being subjected to this behavior from staff or inmates.

When an inmate arrives at ACF, whether from a reception center or from another DOCCS institution, the draft sergeant covers the PREA information with the inmate again. The inmate also receives an Inmate Orientation Manual with 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. Additionally, the auditor noted that PREA information in English and Spanish, both posters and brochures, is displayed throughout the compound. DOCCS makes a concerted effort to ensure that PREA information in brochures and videos is gender specific.

Beyond the inmate education that DOCCS previously required for this standard, a new PREA component has been added--an inmate peer education program that supplements the orientation. It builds on the PREA video by having inmate peers use the video as a teaching tool for new ACF inmates, creating a more extensive PREA education than the offering of the regular orientation program as well as offering an inmate-to-inmate perspective. The auditor reviewed the Transitional Service Program Manual, as well as a sampling of signed ACF "Report of Inmate Training Participation/Prevention of Sexual Abuse—PREA" sheets.

The auditor was able to observe the draft processing of one inmate during the on-site audit; he spoke English well and appeared to have no disabilities. The incoming inmate was clearly a veteran of the correctional system, and he tried to forestall his PREA education since he had already heard the information multiple times. The draft sergeant matter-of-factly told the inmate it didn't matter how many times he had already heard the information, he was about to hear it again. It appears that PREA education is a staple in New York, from the jail to the reception center to the receiving facility—no matter how many times an inmate goes through the process.

ACF exceeds what is required of this standard.

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*)

DOCCS Office of Special Investigations (OSI) Policy Manual Chapter 5 reviewed by the auditor sets training requirements for those conducting sex crimes investigations, as noted in a Statement of Compliance from the ACPC. In addition to the general PREA training provided to all employees, the training must cover certain special issues related to conducting such investigations in confinement settings. The investigators within the Sex Crimes Division (SCD) of the OSI, who cover assigned regions of the state, work closely with the New York State Police Bureau of Criminal Investigations as needed. Although the OSI is a part of DOCCS, it is completely separate from and not under the

direction of any facility for which it does investigations. List of trained evidence technicians in the OSI.
Power point OSI training 9/18/18

The auditor interviewed two investigators from OSI who had investigated cases at ACF, and he reviewed a sampling of investigatory files. The investigators outlined the process of their work: receiving the initial allegation/complaint, investigating the case, making a finding, and sending out appropriate notifications. Both investigators appeared to be well-trained and experienced.

The auditor viewed numerous training certificates and signed training rosters for OSI investigators. He also reviewed an overview of an NIC "Investigating Sexual Abuse in a Confinement Setting Course," a three-day training schedule for "Investigating Physical and Sexual Abuse in Institutional Settings," and a very comprehensive OSI SCD training module (8/18/18) providing extensive information on sexual abuse prevention and detection. According to that power point module, an investigator's main objectives are

1. To conduct a thorough and competent investigation that will clearly either support or refute allegations, with evidence, information gathered from witnesses, and documentation;
2. To safeguard the well-being and security of the complainant, the subject, the respondent, the facility and the Department, and ensure the integrity and credibility of the process.

The agency has definitely equipped its investigators to meet those goals. It exceeds the requirements of this standard through the depth of specialized investigative training supplied, along with the thorough documentation of this 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

suspicious 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.)
- 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

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*)

Medical and mental health practitioners must complete the training described in the narrative for Standard 115.31 above, just like all other civilian employees: as set out in 7.000 in the Training Manual (8/13/18), a 40-hour Orientation/Initial Employee Training is required for all full and part-time non-peace officer employees within their first five days of work. This training includes a three-hour class on Sexual Abuse Prevention and Response, along with job-specific PREA training from the new employee's immediate supervisor. A later 80-hour training program is offered quarterly by region, with the employee taking this training during the first quarter it is offered in his/her region. It also includes specific PREA training. Refresher training is provided every other year, but employees also have annual refresher training via training bulletins.

There is an MOU between the New York State Office of Mental Health (OMH) and DOCCS ((9/14/16). It addresses the operation of residential mental health treatment units in correctional facilities. The MOU sets out assorted training requirements, both the DOCCS training required of all new employees but also specific training for those working in the mental health area. The MOU very specifically mandates the type of PREA training covered in the agency's 40-hour and 80-hour training blocks for new employees. However, the MOU also requires the specific type of training required under this standard for "...all full and part time mental health care practitioners (a mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice) shall participate in specialized training provided by DOCCS as required by PREA, 28 C.F.R. 115.35. "

DOCCS Division of Health Services Policy 1.60/Sexual Assault (10/25/17) addresses specific steps to be used in the event of a sexual assault, including a list of SAFE/SANE hospitals to be used since forensic exams are not performed at ACF. It covers such steps as evaluation/examination, notifications, and documentation. This policy also notes that "all inmate allegations of sexual assault be addressed consistent with community standards for handling allegations of sexual assault."

Agency/facility policies mandate that medical and mental health providers receive training in Inmate Sexual Assault Post Exposure Protocol/PREA. The auditor reviewed the training module on "Inmate Sexual Assault Post-Exposure Protocol/PREA" (8/9/16) and found it to be very comprehensive, thoroughly addressing a number of complex but inter-related issues such as diagnosis and treatment, investigation, confidentiality, documentation, etc. It covers the agency's medical and investigative policies and procedures and encourages a collaborative approach to assessing sexual abuse allegations. He also reviewed a signed training roster for "Medical and Mental Health Care Specialized Training on HSPM [Health Services Policy Manual] 1.60 and PREA Standards 115.35/235" for this audit period, along with Form 3150, a mental health referral form that can be used by any employee and also an instruction sheet for SOAP (Subjective, Objective, Assessment, Plan) notes.

ACF exceeds what is required by this standard.

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*)

Directive 4027A (11/29/17) and Directive 4021 (1/1/19) specify that the risk assessment process begins at a reception or intake center upon the inmate's entry into the DOCCS system; the assessment will allow DOCCS to evaluate issues related to the risk of sexual victimization and sexual abusiveness. When needed, DOCCS also uses a Gender Identity interview "designed to help correctly classify inmates who identify themselves as transgender... or gender non-conforming... during PREA Risk Screening (Form 115.41M/F), or who have been diagnosed with Gender Dysphoria...or with an Intersex medical condition..." Once the inmate arrives at the facility of assignment, additional assessments will take place.

The draft intake at ACF will normally be completed within 24 hours; however, if a delay is authorized by the Watch Commander, the intake deadline can be extended to 48 hours, with the timeframe to be documented. The intake process involves a very comprehensive PREA risk assessment, which is set in great detail in ACF's Facility Operations Manual (FOM) PREA #2 (1/22/19, updated 1/3/20). The objective gender-specific risk assessment form at ACF (115.41M since ACF is a male facility). The complete risk screening at ACF as witnessed by the auditor is a multi-step process: PREA assessment and security screening on intake at ACF, with Office of Mental Health (OMH) and/or medical referrals being offered to incoming inmates who either request such referrals or inmates who have certain PREA-related issues in their backgrounds. OMH referrals may also be made during the draft process, depending on the inmate's demeanor. The auditor was present for the draft while on site, and the inmate being screened complained—to no avail--he had already heard the PREA information.

After the initial draft intake of inmates, within 14 days is a reassessment by an Offender Rehabilitation Coordinator (ORC), with another reassessment at 30 days by PREA staff. Additionally, a reassessment occurs anytime thereafter if relevant information becomes available or if an inmate is transferred to another facility. There is also a security screening form (4021) that includes several questions required by this standard that are needed to make an appropriate PREA assessment of an incoming inmate.

The ACF risk assessment is conducted in an area sufficiently private to protect the inmate's confidential information. For purposes of PREA compliance, intake staff must ask certain questions of the inmates, even if the information is already available through inmate records: if they have a mental, physical, or developmental disability, if they have experienced prior victimization, if they perceive themselves to be at risk, and if they want to declare sexual orientation or gender identity (with some ancillary questions about whether they are or are perceived to be LGBTI or gender non-conforming).

Based on this screening, each inmate is given a score to be used as a measure of their potential risk while at ACF. Inmates are not disciplined if they choose not to answer questions during the screening process. Information from the initial assessment and the reassessment(s) is placed in the inmate's classification file. Only authorized staff has access to these files. The Risk Screening Form includes the following language: "Information contained on this form shall not be disclosed to anyone other than to the extent necessary to make security classification, housing/placement, programming, treatment,

investigation, and other security and management decisions.” FOM PREA #2 sets out information on where the forms are to be filed, to whom they can be distributed, and who can access the forms.

The auditor reviewed a sampling of redacted risk assessment forms. Some showed inmates with no risk category noted, others showed high risk for victimization, and others showed high risk for abusiveness. All the assessments documented that when required, referrals to medical or mental health services were offered, with a record of whether the inmate accepted or declined the offer. The final risk assessment determination was made by the ADS/PREA. The auditor also reviewed redacted records of gender identity interviews, security screening forms, and drafts receipts verifying the distribution of PREA information.

Because of the thoroughness of the risk screening process at ACF that follows the initial DOCCS screening, along with the mechanisms for additional reassessments after arrival, ACF exceeds the requirements for 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*)

ACF's Facility Operations Manual (FOM PREA #2) PREA Risk Assessment (1/22/19, updated 1/3/20) is a comprehensive guide to PREA risk assessments and reassessments at ACF, with instructions regarding questions to ask, observations to make, documentation to include, referrals to make, etc. It also deals with issues of confidentiality. It is a model of detailed instructions for who is supposed to do what in order to produce an insightful and effective assessment of an inmate so that the ACF staff can function efficiently in carrying out their PREA responsibilities.

The facility uses the information from the risk assessment solely to inform housing, bed, work, education, and program assignments with the goal of keeping likely victims apart from likely abusers. Under Directive 4009/Minimum Provision for Health and Morale (8/15/19), transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.

Under Directive 4401/Guidance and Counseling Services (1/23/19),

a transgender/intersex inmate may request consideration of placement in a facility for male or female inmates by advising their Offender Rehabilitation Counselor (ORC) of their desire for such placement and providing any information that will assist the Department in assessing the request. Upon request from a transgender or intersex inmate for a transfer from a male classified facility to a female classified facility, or vice versa, the ORC shall update the "Gender Identity Interview Form," Form #115.41GI detailing any information provided by the inmate pertaining to their request. The Gender Identity Interview helps in correctly classifying inmates who identify as transgender or gender non-conforming during the PREA risk screening, or who have been diagnosed with Gender Dysphoria or with an Intersex medical condition. The request is evaluated by a multi-disciplinary Central Office Transgender/Intersex Inmate Placement Review Committee which will consider the inmates' own views with respect to safety, the inmate's gender identity, the inmate's security level, criminal and disciplinary history, current gender expression, medical and mental health information, vulnerability to sexual victimization, and likelihood of perpetrating abuse. The Central Office committee may also consider other factors, such as the composition of an individual facility's inmate population, staffing pattern, and physical layout. Housing assignment by gender identity will be made when appropriate. The decisions are made on a case-by-case basis using information from the screen, assigned PREA classification, and good correctional judgment.

The auditor reviewed a sampling of redacted PREA risk assessment forms from ACF that showed how the forms are used to determine what PREA risk classification, if any, to assign to a particular inmate. Some forms reflected that the inmates were at high risk for abusiveness, while other forms revealed inmates likely to be sexually victimized, and still other forms showing no triggers for a PREA

classification of either abusiveness or victimization. For the assessments showing an abusiveness or victimization classification, the forms always showed that a referral to medical or mental health services as appropriate was made. The auditor also reviewed a sampling of redacted Gender Identity interviews recorded on Form 115.41GI. The following reminder is on the bottom of the form: “Information contained on this form shall not be disclosed to anyone other than to the extent necessary to make security classification, housing/placement, programming, treatment investigation, and other security and management decisions.”

The auditor interviewed three transgender inmates, one bisexual inmate, and two inmates reporting prior victimization. One of the transgender inmates had strong personal opinions about her desire for all transgender inmates to be housed together. She also voiced complaints about showering practices being discriminatory, stating that she could shower only three times a week, while the “heterosexual inmates” in the her living unit could shower every day or even twice a day. After seeking further information about showering practices at ACF, the auditor learned that every inmate—regardless of gender—in that particular living unit was allowed to shower only three times a week. He also learned that every inmate—regardless of gender—could use the ACF Bath House as needed in conjunction with recreational activities. Although annoyed about the lack of specific transgender housing and the purportedly discriminatory showering practices, this particular inmate voiced no complaints about her personal safety or being treated differently because of her transgender status.

The other transgender inmates, as well as the bisexual inmate, did not express any complaints about their living arrangements or any concerns for their privacy. All three specifically said they were not fearful about their personal safety. The two inmates who had previously experienced victimization—one in the community and one in another institution—each said they had not had any occasion to fear for their personal safety.

Based on their policies and the consistent execution of those policies, ACF exceeds the requirements for this standard.

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*)

Directive #4948/Protective Custody (6/29/17) sets out the framework for compliance with this standard. An inmate will not be assigned to Involuntary Protective Custody solely because he has been assessed as at high risk for victimization or because of a report that the inmate was the victim of sexual abuse, although ACF may find that a placement in Involuntary Protective Custody is appropriate. However, that placement will happen only after all alternatives have been evaluated and a determination made that there are no available alternatives that give the separation needed from likely abusers. If an assessment can't be made immediately, ACF 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 why the alternatives were not suitable. Form 2170 is used for a review of the inmate's status.

Under this standard, an involuntary placement in segregation based on the risk of victimization ordinarily must not last longer than 30 days, with a review every 30 days. Under DOCCS policy, the length of the involuntary placement would not ordinarily exceed a 30 day period, but the frequency of a mandatory review at ACF is every seven days for the first two months, should the placement last that long. The auditor reviewed sample forms used for the mandatory reviews and for the "Sexual Victimization Involuntary Protective Custody Restriction of Inmate's Program Participation," (Form 4948A) where the facility documents any program limitations and the reasons for the limitations.

It was confirmed through the PAQ and during interviews with the Superintendent, the ADS/PREA, the DSS, and the DSP that no inmates at high risk for sexual victimization had been placed in involuntary segregated housing during the 12 months prior to the audit. They also emphasized that ACF makes every possible effort to avoid an involuntary placement in segregation because of the risk of victimization.

ACL meets the requirements of this standard.

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*)

Under PREA standards, inmates must know how to report allegations of sexual abuse, harassment, and retaliation; and ACF provides complete information to its inmates about how to make a report. They can report a PREA allegation verbally or in writing to the ACF staff, to OSI or to virtually any number of other people they may encounter at the facility, such as volunteers, contractors, and interns

since each category listed has received training through orientation, policies, manuals, etc., on what to do when receiving a report. Although this standard refers only to “staff” in subsections (c) and (d), DOCCS has commendably broadened this concept and spread the responsibility to receive/make report to “any employee, contractor, volunteer, intern or any employee assigned to work at ACF.”

If an inmate wants to make a report to an entity outside the agency, the New York State Commission on Correction (SCOC) is a specifically-identified outside agency to which a written report (including third-party and anonymous) can be made, with such reports then being forwarded immediately to DOCCS. This information, confirmed by the auditor’s review of a memo from the Chairman SCOC to the Acting Commissioner of DOCCS, is contained in an excellent brochure that every inmate receives and signs for during intake—“The Prevention of Sexual Abuse in Prison/What Inmates Need to Know.” This brochure also indicates that reports can be made to OSI.

The auditor saw abundant PREA materials and signage throughout the facility that give specific internal and external ways for inmates to report sexual abuse or harassment. Inmates can make reports in writing or they can also report information through the 777 system. The auditor tested the 777 number to ensure that it was operational. The DOCCS website also gives information for those outside the facility on how to make a report for an inmate.

The PREA pocket card, in use for staff since 2015, is a useful staff tool for reference regarding what do when receiving a first-hand report of sexual abuse. Directives 4027A/Sexual Abuse Prevention and Intervention/Inmate-on-Inmate (11/29/17) and 4028A/Sexual Abuse Prevention & Intervention--Staff-on-Inmate/Staff-on-Parolee (11/29/17), the Employees’ Manual, PREA Pocket Card, and the “Sexual Abuse Prevention and Response” training from the Training Academy designed for all employees all set out mandatory staff reporting duties. The all provide information on how to receive reports (first hand, 3rd party, and/or anonymous) and exactly what to do.

ACF does not confine inmates solely for immigration purposes. However, information on how to contact relevant consular officials is available since *A Jailhouse Lawyer’s Manual: Immigration & Consular Access Supplement* is available in all DOCCS facility law libraries, as reported in a Statement of Compliance (12/18/17) from the ACPC.

ACF meets the requirement for inmate reporting.

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*)

ACF does not use the grievance process for allegations of sexual abuse. If an inmate attempts to use the grievance process for any sexual misconduct issues, this attempt will immediately be referred by the Inmate Grievance Procedure supervisor to the watch commander for further handling in accordance with agency PREA policies. DOCCS asserts that it is exempt from the standard in accordance with Directive 4040/Inmate Grievance Program (1/20/16). The relevant portions of the Directive are Sections 701.2(j) and 701.3(i).

Because of this exemption, ACF is considered to have met this standard.

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*)

Directive 4404/Inmate Legal Visits (11/2/17) provides that a visit with a representative of rape crisis program will be handled in the same manner as an attorney visit, and under Directive 4421/Privileged Correspondence (6/2/16), inmates' mail to a rape crisis program is treated as legal mail. The Superintendent must designate an area for legal visits, and that would be the location for a counseling visit; the area must be suitable for maintaining the confidentiality of all communications during the visit. The hours for the visits are regulated, but policy provides for consideration of visits outside those hours on a case by case basis. Under Directives 4404/Inmate Legal Visits (9/18/19),

As required under the National PREA Standards 28 C.F.R. §§115.53, 253, and 353, each facility shall enable reasonable communication between inmates and outside victim advocates for emotional support services related to sexual abuse in as confidential a manner as possible. Further, communications with a Rape Crisis Counselor are confidential under CPLR 4510. Accordingly, a certified Rape Crisis Counselor employed by or registered to volunteer with a Rape Crisis Program is entitled to a legal visit with an inmate for the purpose of discussing confidential matters.

If an inmate at ACF who is receiving victim support services is transferred to another facility, ACF will notify the receiving facility to help in continuing the services at the inmate's new location. Directive 4423/Inmate Telephone Calls provides that notices of phone call monitoring notices in English and Spanish must be posted by the telephones; inmates can add a rape crisis counselor number to their telephone list at any time.

The auditor reviewed the MOU between the New York State Office of Victim Services (OVS) and the New York State Office for the Prevention of Domestic Violence (OPDV). The Hotline, which is statewide, offers rape crisis and victim support, along with providing for interpretation services and deaf-relay services as needed. According to information in the New York State Office for the Prevention of Domestic Violence Bulletin/Spring 2019,

In January 2019, Crisis Services began managing the state's PREA Rape Crisis Hotline, a free and confidential service that operates daily from 8 a.m. to 11 p.m. In partnership with OPDV and the state Department of Corrections and Community Supervision (DOCCS), and funded by grants through the State Office of Victim Services (OVS), Crisis Services expanded its call center infrastructure to receive calls from New York's 54 prisons, and hotline staff were cross-trained to respond to the PREA hotline as well as the local and state hotlines. The Center also recruited, hired, and trained additional hotline counselors to meet the increased service demands, and continues to provide bilingual staff (English/Spanish) and utilize phone interpreters to assist callers in their preferred languages.

The OPDV Bulletin further notes that "Inmates use a PIN to place a call and to protect confidentiality, since calls to 777 ... cannot be monitored by the facility. Such calls are recorded, however, and [are] available to DOCCS Central Office investigators in the event of misuse. The 777 brochure in English and Spanish, "Help for Victims of Sexual Abuse in Prisons" sets out victims' rights and gives information on where/how to call for support using the 777 system. The brochure also explains confidentiality issues. The auditor verified the accessibility of the 777 line by using a phone in a general

population living unit. The brochure also provides telephone numbers for the various rape crisis program “PREA Centers” around the state.

The auditor also reviewed a contract with Safe Harbors, which offers a confidential response service for incarcerated individuals who have been sexually abused or assaulted. A telephone interview with the organization’s director confirmed that Safe Harbors provides support for victims at ACF when requested after a sexual assault; its services include support at examinations/investigations and emotional support through crisis intervention and counseling options. Safe Harbors is considered to be one the entities in a network of community-based rape crisis programs (“PREA Centers”) used for supportive services for inmate victims of sexual abuse in the DOCCS system.

Other documents reviewed by the auditor were related to a contract between the New York State Coalition Against Sexual Assault (NYSCASA) and Safe Harbors of the Finger Lakes for the Services to Incarcerated Victims of Sexual Assault Project, funded by a Victims Of Crime Act (VOCA) grant from the Office for Victims of Crime (OVC), U.S. Department of Justice. This contract was awarded to New York State through the New York State Office of Victim Services (NYS OVS) and was signed during the audit period.

ACF exceeds what is required under this standard.

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*)

The DOCCS website’s home page has a PREA link (under “Facilities”) that leads to extensive public information about PREA, including policy, history of combating sexual assault, PREA education, and how to report sexual abuse (either personally or through third party reports on behalf of an inmate) can be made. The auditor’s review of <https://doccs.ny.gov/prea> confirmed the agency offers the public a broad range of PREA information. Information about calling or filing a complaint with OSI can be found here: <https://doccs.ny.gov/office-special-investigations-osi>. Additionally, there are posters and brochures throughout the facility that also provide information about third-party reporting. The auditor verified that information about third-party reporting is being satisfactorily disseminated.

ACF is compliant with 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*)

DOCCS has a number of written materials spelling out the duty to report, while also being careful to attend to issues of both confidentiality and mandatory reporting. These materials include, but aren't limited to, Directives 4027A and 4028A, Employees' Manual, and an MOU with Office of Mental Health. The documents reviewed by the auditor show the facility's emphasis on the responsibility to report. In Directive 4027A, the definition of "staff" is quite broad, thereby spreading out the responsibility to report sexual misconduct and increasing the protections of PREA: "For reporting purposes under this Directive, "employee" includes any employee, contractor or contract employee, volunteer, or intern ..., or any employee, contractor or contract employee assigned to work in a Department correctional facility by any other State." A medical practitioner who receives such information in the course of providing medical treatment to an inmate is required to report the minimum information necessary, and inmates are informed of the medical and mental health care practitioners' duty to report. The agency's documents are unambiguous in outlining the need for information to be kept confidential. Directive 2017A states,

"Reports...are confidential and information, including but limited to, the identity of the victim, the identity of the person reporting the sexual abuse or sexual harassment, the identity of the witnesses, and the identity of the alleged perpetrator, is only to be shared with essential employees involved in the reporting, investigation, discipline and treatment process, or as otherwise required by law."

According to facility policies, when a PREA allegation is made, ACF notifies the OSI and it begins an investigation; staff can also make a report directly to the OSI. Directive 0700/Office of Special Investigations (11/18/18) covers the investigative responsibility for the unit. ACF'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 mechanics of making a report. The specified actions to take are regularly covered in PREA training and are listed on the PREA card issued to staff members.

The facility is compliant with this standard.

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*)

Directive 4948/Protective Custody Status covers in great detail the rationale behind the decision making process for--and the required review process related to--protective custody. The policy covers placing an inmate either in involuntary protective custody because of being subject to a substantial risk of imminent sexual abuse and placing an inmate in voluntary protective custody. The Directive and the related Form 2168A/ Sexual Victimization-Involuntary Protective Custody Recommendation is consistent with the requirements of the standard. ACF did not have any inmates who were subject to Involuntary Protective Custody status due to a substantial risk of imminent sexual abuse during this audit period, and consequently there was no documentation of confinement to review.

Based on the information in the policy cited, the facility is compliant with this standard.

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*)

A memo of 11/7/19 to all Superintendents from the ACPC outlines the required response from DOCCS facilities when an inmate at ACF reports having been sexually abused at another facility. The appropriate time frame—within 72 hours—is set out in the memo, as well as the identification of the form to be used. According to the PAQ, during the audit period ACF had eight inmates reporting having been abused at another facility. It would then have been the responsibility of the ACF Superintendent to notify the other facilities by electronic mail, using Form 115.63 (11/7/19), notifying each facility's Superintendent, DSS, ADS/PREA and PREA Point Person. Whenever ACP notifies another DOCCS facility of an allegation, the ACF ADS/PREA or PREA Point Person and OSI are copied. OSI is required to determine whether an investigation has already been done or whether one needs to be done.

The memo also gave directions for notifications to non-DOCCS entities, along with directions for the documentation to be kept by the notifying facilities and by the receiving DOCCS facilities. It also provided guidance on how to handle situations where the other facility was unknown. The notifying Superintendent or his/her designee is to make follow-up contact with the receiving facility if necessary. There is also detailed information on how the allegations are to be recorded, directing that the Superintendents at both the sending and the receiving facilities record each allegation in the Sexual Abuse Threat/Incident log book for tracking purposes. An attachment to the memo provided a statewide list of jail administrators for easy reference if the abuse occurred in a New York jail.

The auditor's interviews with the FDS, the DSS, and the ADS/PREA confirmed the process used when an incoming inmate reports abuse at another institution: the draft sergeant notifies the watch commander, who then notifies the ADS/PREA, and then the Superintendent so the incident can be reported in a timely manner to the other facility. If abuse at another facility is reported at some time other than at intake, the report is routed to the ADS/PREA and then to the Superintendent so that the proper notification can be done. All notifications are documented.

The auditor reviewed a sampling of redacted reports sent from ACF to another DOCCS facility, all of which were made well within the 72-hour timeframe. He also viewed the two reports of abuse from inmates at other facilities claiming abuse at ACF.

ACF is compliant with this standard.

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*)

Directive 4027B/ Sexual Abuse Reporting & Investigation/Inmate on Inmate (11/12/17) and Directive 4028B/ Sexual Abuse Reporting & Investigation Staff on Inmate, Staff on Parolee (11/19/17) both recognize that an appropriate response to an incident of sexual abuse involves a complex coordination of sequential steps involving a number of activities. DOCCS has therefore directed each facility to have its own specific Coordinated Response Plan.

The auditor reviewed the ACF's Coordinated Response Plan to an Incident of Inmate Sexual Abuse dated 1/2/20. It outlines the response required under this standard when a PREA allegation is reported. This Coordinated Response Plan is very detailed, including the precise steps to take whether the report is first party, third party, or anonymous. It sets out the responsibilities of the staff first responder, watch commander, and medical staff. There are detailed instructions regarding hospitals with SAFE's and SANE's, if off-facility medical services are needed. ACF issues first responder cards to staff for quick reference if needed.

The auditor reviewed a training module on “Sexual Abuse Prevention and Response” (3/15) and a list of staff who had completed the training during the audit period. Interviews confirmed the staff are well versed in the steps to take in the event of a report of sexual abuse; staff training covers the specific duties and reporting structure for security first responders and non-security first responders. Attachment A of the Coordinated Plan is a Sexual Abuse Response and Containment Checklist for the comprehensive documentation of all steps involved in responding to an incident to ensure proper protocols are followed, all notifications are made, and all relevant details are recorded.

The facility is compliant with this standard.

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*)

The ACF Facility Operations Manual PREA #1/Coordinated Response Plan to an Incident of Sexual Abuse (2/4/19) was updated (1/2/20) shortly after the close of the audit period, but the Coordinated Response Plan for the audit period meets the requirement of the standard. It set out in detail the carefully coordinated steps to be taken by staff first responders, medical and mental health practitioners, investigators, and facility leadership when responding appropriately to an incident of sexual abuse. It outlines immediate actions to take, notifications required (both to various agency personnel and to OSI), and referrals for medical and mental health, along with specifying related confidentiality cautions. Attachment A for the Coordinated Plan, Sexual Abuse Response and Containment Checklist, is the tool used for complete documentation of actions taken by first responders, medical and mental health practitioners, investigators, and facility leadership. It serves as a roadmap for every action to be taken and what key steps must be carried out and documented.

During his staff interviews, the auditor found everyone to be very knowledgeable about the response plan and the coordinated responsibilities set out in the plan. No employee interviewed had yet experienced a situation where the Coordinated Plan to an Incident of Sexual Abuse had been used.

The facility is compliant 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*)

The auditor reviewed Directive 2110/ Employee Discipline Suspension from Duty During the Continuation of Disciplinary Proceedings, Directive 2114/Functions of the Bureau of Labor Relations, a memo of 2/12/19 from the Acting Executive Deputy Commissioner to the Acting Commissioner regarding a contract negotiations update, and portions of various contracts with DOCCS. The contracts allow the agency to suspend an employee without pay or temporarily reassign an employee if there is probable cause that the employee's continued presence on the job represents a potential danger to persons or property or would severely interfere with operations.

The auditor's review of Directives, an agency memo, and labor contracts, along with an interview with a human resources staff member at ACF, establish that DOCCS is in compliance 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*)

A memo of 4/18/19 to all DOCCS Superintendents from the ACPC regarding retaliation monitoring sets out the scope of retaliation monitoring:

“For a minimum of four (4) months following a report of sexual abuse or sexual harassment, the facility shall monitor the conduct and treatment of:

- 1) an inmate, including an incarcerated parolee, adolescent offender, or resident who reported an incident of sexual abuse or sexual harassment (including a third-party reporter);
- 2) an inmate, including an incarcerated parolee, adolescent offender, or resident who was reported to have suffered sexual abuse or sexual harassment; and
- 3) an employee who reported an incident of sexual abuse or sexual harassment of an inmate.
- 4) Further, if any other individual (staff, volunteer, contractor, inmate, adolescent offender, resident, etc.) who cooperates with an investigation expresses a fear of retaliation, the facility and agency shall take appropriate measures to protect that individual against retaliation as well.”

As stated on the facility’s Retaliation Monitoring Form, “Pursuant to PREA Standard 115.67, it is agency policy to protect all inmates, parolees and staff who report sexual abuse or sexual harassment, or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates, parolees or staff. The alleged victim and person who reported an incident shall be monitored for a minimum of four (4) months for any evidence of retaliation, including after transfer.” The PAQ indicates that the ADS/PREA at ACF has the role of monitoring for retaliation. The PREA Point Person is the back-up person for monitoring retaliation.

As stated in the memo, “In accordance with Directives 4027B and 4028B, the Office of Special Investigations, Sex Crimes Division shall be notified promptly of any complaint or evidence of retaliation. The complaint or evidence shall be reviewed by OSI for investigation or for further direction. Upon consultation with OSI, the facility shall act promptly to remedy any such retaliation. Monitoring to prevent retaliation shall continue for an additional period of at least four (4) months if the previous period of monitoring indicates a continuing need.” The Employees’ Manual also states, “All allegations of sexual abuse, sexual harassment, or retaliation against staff or an inmate for reporting such an incident or participating in an investigation will be thoroughly investigated.”

The ADS/PREA monitors for possible retaliation for at least four months, with mandatory in-person checks approximately every 30 days for inmates; and OSI must investigate (or act as it otherwise finds necessary) any actual complaint or evidence of retaliation. Upon consultation with OSI, the facility must act promptly to remedy any such retaliation. The monitoring process may involve 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. The completed Retaliation Monitoring Forms, which allow for comprehensive documentation, are confidential and must be properly secured to prevent unauthorized viewing. Access at ACF must be limited to the ADS/PREA, members of the ACF Executive Team, and Central Office representatives responsible for operations and PREA compliance. If an inmate or staff member being monitored transfers to another facility, that facility must be notified that the person is being monitored.

The auditor’s interview with the ADS/PREA verified that ACF takes retaliation monitoring seriously; the ADS/PREA was certain the staff is well aware of the statement in the Employees’ Manual, stated above, that allegations of retaliation—like those of sexual abuse or harassment—“will be thoroughly investigated.”

Although there were no reported instances of retaliation, the retaliation process is automatically triggered in the circumstances set out in the memo of 4/18/19. The auditor looked at blank Forms 115.67 (inmate and staff versions) and a blank spread sheet used to track the retaliation monitoring process (PREA Monitoring Protection from Retaliation form). He also reviewed redacted forms showing

- a form showing a standard four-month process of inmate retaliation tracking that had been closed,
- an email to a receiving facility notifying it that a transferring inmate would need to complete his monitoring process at the new facility, and
- an inmate monitoring process previously extended at ACF for an additional four months, which now would be completed at the new facility to which the inmate was transferring.

The retaliation monitoring process is quite comprehensive and exceeds the requirement for this standard.

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*)

The framework that DOCCS uses to comply with this standard is set out in Directive 4948/Protective Custody Status and Form 2168A/Sexual Victimization—Involuntary Protective Custody Recommendation. If the need arises for post-allegation protective custody, all available alternatives to involuntary protective custody are considered first. The Superintendent, the DSS, and the ADS/PREA both emphasized during their interviews that ACF consistently makes every effort to avoid using sexual victimization involuntary protective custody, using it only when all other alternatives have been found unsuitable. If involuntary custody is unavoidable, there must be a review every 30 days to evaluate the need for continued involuntary protective custody. There were no inmates held involuntarily in segregated housing for protection during the audit period at ACF.

ACF complies with this standard.

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*)

The Office of Special Investigations (OSI), Sex Crimes Division (SCD) in the NY DOCCS conducts investigations as outlined in the PREA standards. The investigators receive specialized training in sexual abuse investigations, and the auditor's review of training certificates verified the appropriate training. There is no requirement for an inmate alleging sexual abuse to submit to a polygraph examination or other procedure for testing veracity as a condition for starting an investigation. Investigations continue, even if the inmate is released or the employee is no longer employed at the facility. 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. The auditor reviewed relevant portions of Chapter 5 and 11 of the Office of Special Investigations Policy Manual to confirm that agency policies conform to this standard. These portions of the Manual were cited in a Statement of Compliance from the ACPC.

The investigators from the SCD of the OSI are assigned to work different regions of the state, and the auditor was able to conduct interviews with two of them while he was on-site at ACF. The investigators were very knowledgeable about PREA and what is required of them when the OSI receives a PREA allegation. The auditor was able to review some ACF case files when he met with the investigators, and he found the files to represent the kind of investigatory approach appropriate for a confinement setting, with ample documentation such as interviews, photographs, etc. The investigators indicated a good working relationship exists between their office and the New York State Police so they can work cooperatively on cases as needed. Both of the investigators interviewed at ACF explained the extensive training that had been provided for them and expressed the satisfaction they felt in doing their jobs.

There have been no referrals for prosecution since the last audit.

The facility is compliant with 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*)

The auditor reviewed a Statement of Compliance memo dated 9/10/18 from the ACPC referencing OSI Policy Manual—Chapter 5, Section 11.4. A review of the cited section, along with information from the interviews with two OSI investigators, allowed the auditor to verify that a preponderance of the evidence is used to determine if allegations of sexual abuse or sexual harassment are substantiated.

ACF is compliant with this standard.

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*)

A memo of 5/17/18 from the Deputy Commissioner/Chief of Investigations and the ACPC addresses the requirements for inmate notifications and gives details for “improved procedures.” The memo is unambiguous about who is to do what and under what circumstances; it covers much of what is required by this standard. Other provisions are covered in the OSI Policy Manual Chapter 5, Section VI.4, as cited in a Statement of Compliance from the ACPC; the auditor reviewing the relevant sections. Except in certain circumstances, investigative policy requires the inmate to be informed of the findings of the investigation, regardless of whether the allegation was deemed to be substantiated, unsubstantiated, or unfounded. The auditor reviewed a sampling of “Notifications to Complainants of Closure of Investigation” sent during the audit year; investigative findings noted in these communications included substantiated, unsubstantiated, and unfounded outcomes.

OSI notifies the facility of the outcome of an investigation, and the facility, in turn, notifies the inmate. As noted in the memo, “In all cases, the Notification of Investigative Determination will be sent to the complainant via Privileged Mail. The complainant’s signature in the Privileged Mail Log will serve as acknowledgment of receipt of the notification of the outcome of the investigation and a copy will be made part of the investigation.”

According to the PAQ, 13 investigations were completed during the audit year, resulting in 10 inmate notifications, all of which were documented. Since inmates no longer in the custody of DOCCS and persons making third party allegations do not require notifications under the agency’s policies, there may often be a difference in the number of investigations completed and the number of notifications.

ACF is in compliance with this standard.

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*)

The agency/facility has comprehensive policies addressing staff discipline (such as Directive 4028A/Sexual Abuse Prevention & Intervention - Staff-on-Inmate/Staff-on-Parolee, Directive 2111/Report of Employee Misconduct, and Directive 2110/Employee Discipline Suspension from Duty During the Continuation of Disciplinary Proceedings). The wording of the various directives and policies reviewed by the auditor, along with the wording in the Employees' Manual and memos such as the one dated 2/5/16 to the Director of Labor Relations from the Deputy Commission for Administrative Services on "Presumptive Disciplinary Sanction for Staff Sexual Misconduct," plainly set out the consequences for PREA violations. There were no disciplinary actions—either terminations or sanctions short of termination—during the audit period.

The facility is in compliance with this standard.

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*)

The agency/facility meets all of the requirements for this standard through the carefully-worded policies/directives and the forms documenting that volunteers have been instructed about their responsibilities and the consequences they face if they fail to carry out their PREA responsibilities. Information for volunteers is comprehensive; in addition to the specifics that should be given to any volunteer in a correctional setting—such as warnings against inappropriate personal contact--there is also ample specific PREA-related material that clearly spells out consequences of violations.

As noted in a Statement of Compliance from the ACPC (9/10/18), the agency's policies setting out the framework for compliance with this standard are to be found in the Office of Special Investigations Policy Manual Chapter 32, Section II, which the auditor reviewed. The auditor also reviewed other materials related to this standard, such as Directive #4750/Volunteer Services Program (1/14/19), Form 4750 C (12/18) Standards of Conduct for Volunteers, Form MFVS 3087 Acknowledgement of "Standards of Conduct for Volunteers" and All Applicable Policies (12/18), and a memo from the DOCCS Acting Commissioner (9/4/18) to "All Employees, Contractors, Volunteers and Interns RE: Policy on the Prevention of Sexual Abuse of Offenders (revised)." He also reviewed relevant sections of the Office of Special Investigations Policy Manual cited in a Statement of Compliance from the ACPC. ACF did not have any volunteers or contractors who engaged in sexual abuse during the audit period.

The auditor's interviews with the supervisor of Volunteer Services, a volunteer, and a contractor confirmed that they were well aware of the repercussions of violating any of the facility's PREA policies.

The facility complies with this standard.

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*)

The agency's policies and directives cover all aspects of this standard. The following materials were reviewed:

- DOCCS Hearing Officer Reference Book for incidents on or after 4/1/17 with Appendix A/Aggravating and Mitigating Factors, Appendix B/Checklist for Tier III Disciplinary Sanctions, and Appendix C/Checklist for Tier III Disciplinary Sanctions,
- Confinement Sanctions Guidelines chart listing sex offenses and progressive sanctions,
- Directive 4932/Chapter V, Standards—Behavior and Allowances (10/2/18),
- Directive 4401/Guidance and Counseling Services, and
- Directives 4027A/Sexual Abuse and Prevention and Intervention—Staff on Inmate (11/29/17),and
- Directive 4028A/Sexual Abuse and Prevention and Intervention—Inmate on Inmate (11/29/17).

The auditor also viewed a redacted inmate misbehavior report (with section headings in English and Spanish) from the audit period, as well as a redacted non-sex offense referral for an inmate to the Guidance Department for evaluation since the inmate had previous sex offenses. These materials demonstrate ACF's actions regarding inmate discipline in PREA-related matters. Additionally, the auditor's interviews with the Superintendent, the FDS, and the ADS/PREA confirmed that disciplinary sanctions for inmates at ACF were in accord with this standard.

The discipline at ACF is progressive and individualized, with aggravating and mitigating circumstances to be considered in each case. An inmate is eligible for treatment if found guilty of sexual abuse while incarcerated. In the case of mentally ill inmates, alternatives such as referral to programming or counseling, should be considered prior to imposing a confinement sanction. For the audit period, ACF did not have any instances of administrative or criminal findings of guilt for inmate-on-inmate sexual abuse.

ACF is compliant with this standard.

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*)

As explained in DOCCS Directive 4301--Mental Health Satellite Services and Commitments to CNYPC (8/18/15), "The New York State Office of Mental Health (OMH) through its Division of Forensic Services provides services to the Department of Corrections and Community Supervision (DOCCS) under custody inmate population." Some of the locations where these services will be provided are "Satellite Units" operated by OMH and located at certain DOCCS facilities. ACF is one of those satellite locations.

Under the DOCCS Division of Health Services (DHS) Policy 1.44--Health Screening of Inmates (7/26/18), when arriving "at a DOCCS facility, every newly received or transferred inmate...will receive a health screening by a Registered Nurse (RN). This screening will include an inquiry into the inmate's current and past health, mental health, and PREA history and immediate referral of any inmate to a health provider if indicated." The screening outlined in FOM PREA #2/PREA Risk Screening (1/22/19), should take place within the first 24 hours, but in certain situations this deadline can be extended from 24 hours to 48 hours. Then, if a mental health referral is needed, the Directive sets out time constraints that are consistent with 115.81: "Regular mental health referrals are addressed within a timeframe that

is consistent with the nature of the referral and within 14 days in accordance with CNYPC Corrections Based Operations (CBO) Policy #1.3.” PREA #2 was updated in early 2020.

As outlined in an MOU between DOCCS and the Office of Mental Health, “OMH further acknowledges that, in accordance with 28 C.F.R. §115.83, mental health evaluation and treatment, as appropriate, shall be offered to all DOCCS inmates who have been identified as victims of sexual abuse in any prison, jail, lockup, or juvenile facility and are willing to undergo such evaluation and/or treatment.”

In reference to DOCCS health services, Policy 1.44 states, “In accordance with the National Prison Rape Elimination Act (PREA) Standards, 28 C.F.R.115.81, any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law. Medical and mental health practitioners shall obtain informed consent (HIPAA release) 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. As above, informed consent/HIPAA release is not required for a referral to the Office of Mental Health”

In addition to the Directive, Policies, and MOU noted above, the auditor reviewed the DOCCS Division of Health Services Policy Inmate Bloodborne Pathogens Significant Exposure Protocol, the ACF Facility Operations Manual—PREA Risk Screening (1/3/20), redacted assessment forms with verification that inmates were offered referrals based on their PREA classifications, a blank Form 3278-PREA Screening for Reception/Classification, Transfers, SHU, Separate KL Unit or Adolescent Offender Admissions Unit, and a blank Form 3150 DOCCS – Mental Health Referral (to be used by any employee).

Interviews with the DSH and the medical administrator further confirmed that the process at ACF for dealing with medical and mental health meets all subsections of 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*)

Auburn's FOM PREA #1/Coordinated Response Plan to an Incident of Inmate Sexual Abuse (2/4/19) outlines the steps ACF will take to ensure an inmate has timely, unimpeded access to all emergency medical treatment and crisis intervention services judged necessary by the appropriate medical and mental health practitioners. This Coordinated Response Plan—which was updated early in 2020—is very detailed, including the steps to take whether the report is first party, third party, or anonymous. It sets out the responsibilities of the staff first responder, watch commander, and medical staff, as well as information about hospitals with SAFE's and SANE's. Both PREA #1 and the Division of Health Services Policy (HSP) 1.60/Sexual Assault (10/15/17) provide that an "...inmate may be transported to a closer or more appropriate hospital if health staff determine the inmate's priority medical needs are such that require immediate or specialized care (e.g., the inmate victim is suffering from traumatic injuries that require a level of care beyond what the certified SAFE/SANE hospital can provide)." HSP 1.60/Sexual Assault further states that all treatment, including outside hospital services, will be provided to victims without financial liability and regardless of whether or not the victim cooperates in any investigation arising from the incident or names the abuser.

The inmate victim of an alleged sexual assault will be medically evaluated regardless of whether or not the allegation has been independently verified prior to the victim's presentation for treatment. If needed, prophylactic medications for certain bloodborne pathogens will be administered in accord with the DOCCS Inmate Bloodborne Pathogen Post Exposure Protocol before transportation to an emergency department, and victims will be offered appropriate tests for sexually transmitted infections. The auditor also reviewed McKinney's Public Health Law § 2807-c, General Hospital Inpatient Reimbursement, which addresses payment for inmate services. The auditor reviewed a sampling of redacted ACF Ambulatory Health Record Progress Notes (Form 3105B1) and Inmate Injury Reports (Form 1595); the forms recorded issues such as an emergency sick call and a putative PREA claim.

First responder cards are issued to staff for quick reference. Interviews confirmed the staff are well versed in the steps to take when an incident of sexual abuse is reported; staff training covers the specific duties and reporting structure for security first responders and non-security first responders. Attachment A of the Coordinated Plan is a Sexual Abuse Response and Containment Checklist for the

complete documentation of each incident to ensure proper protocols are followed. The auditor conducted a telephone interview with a SANE at Vera House to verify the availability of a SANE for inmates at ACF should the need arise. He also did a telephone interview with a victim advocate at Safe Harbors to confirm the availability of the supportive services set out in the standard.

ACF is in compliance with all subsections of this standard.

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*)

As set out in Division of Health Services Policy (HSP) 1.60/Sexual Assault (10/25/17), all allegations of sexual assault must be evaluated immediately by the facility health staff. All treatment, including outside hospital services, will be provided to victims without financial liability, even if the victim does not cooperate in any investigation arising from the incident. The inmate victim of an alleged sexual assault will be medically evaluated regardless of whether or not the allegation has been independently verified prior to the victim's presentation for treatment. When medically appropriate under DOCCS HSP 1.12B/Inmate Bloodborne Pathogen Post Exposure Protocol (10/25/17), prophylactic medications for certain bloodborne pathogens will be administered before transportation to an emergency department. All victims will be offered appropriate tests for sexually transmitted infections.

If it is necessary to transport the inmate to an outside hospital, HSP 1.60 provides that transportation will be coordinated with the Watch Commander to take the victim to an outside hospital emergency department staffed with a certified Sexual Assault Forensic Examiner (SAFE) or certified Sexual Assault Nurse Examiner (SANE). ACF's FOM PREA #1/Coordinated Response Plan to an Incident of Inmate Sexual Abuse (2/4/19) includes a list of hospitals where a SANE/SAFE and a victim advocate are available to provide services. The inmate may be transported to a closer or more appropriate hospital if health staff determine the inmate's priority medical needs are such that require immediate or specialized care (e.g., the inmate victim is suffering from traumatic injuries that require a level of care beyond what the certified SAFE/SANE hospital can provide). Typical of the on-going efforts of DOCCS to maintain a PREA-compliant operation, FOM PREA #1 and PREA #2 (cited below) were updated in early 2020.

Based upon the extensive screening procedures set out in Directive 4027A (using 115.41M and other tools), FOM PREA #2/PREA Risk Screening (1/22/19), and the information from Directive

4410/Guidance and Counseling Services (4/30/18), ACF addresses the requirement of this standard that a facility must attempt to conduct a mental health evaluation of all known inmate-on-inmate abusers within 60 days and offer treatment as deemed appropriate by mental health practitioners. Such abusers may be referred to the Sex Offender Counseling and Treatment Program (SOCTP) per its guidelines. Under HSP 1.60/Sexual Assault, "For all involved inmates, immediate completion and submission of a DOCCS Mental Health Referral, Form 3150, to Mental Health staff." The Directives, along with the ACF FOM PREA #2 and HSP 1.60, address mental health referrals for both incoming inmate-on-inmate abusers and those inmates who appear to be abusing other inmates on the ACF compound.

Under an MOU with the Office of Mental Health (OMH) (1/3/17), OMH has agreed that appropriate mental health evaluation and treatment will be offered to all DOCCS inmates who have been identified as victims of sexual abuse in any prison, jail, lockup, or juvenile facility and are willing to undergo such evaluation and/or treatment. The evaluation and treatment of such victims will include, as needed, follow-up services, treatment plans, and potentially referrals for continued care following their transfer to other facilities or their release from custody. The ACF offers such victims mental health services consistent with the community level of care.

The auditor verified the emergency protocol that would be used for a sexual abuse victim during his interview with the medical administrator.

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*)

Under agency directives and by memo mandating certain practices, DOCCS requires its facilities to follow all provisions of this standard. ACF conducts incident reviews of all substantiated and unsubstantiated allegations. By studying a sampling of incident reviews, the auditor determined that the Review Team was comprised of the appropriate staff and that the issues reviewed by the team were comprehensive and were fully recorded on the Confidential Incident Review Checklist. The Checklist addresses/conforms to all points listed in (d)-1 through (d)-5 of the standard. The ACF distribution list for the Checklist, which gives recommendations for improvements as needed, includes the ACPC, the Superintendent, the ADS/PREA.

Based on a sampling of incident reviews and through an interview with the ASD/PREA, the auditor verified that when the incident review team made recommendations, they were followed or the reasons behind a failure to follow them were documented. The auditor confirmed that the recommendation made for a substantiated allegation he reviewed was implemented. Although no recommendation during the audit period conflicted with any budgetary restraints at the facility, the ADS/PREA did advise the auditor that if finances should become an issue, ACF would document the facility's best efforts to implement the recommendation until finances were available to comply with the recommendation or ACF would find some other approach to addressing the recommendation. Based on the auditor's

review of a sampling of the incident reviews, he could conclude that the incident reviews at ACF were ordinarily conducted within a 30-day timeframe.

ACF is compliant with this standard.

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*)

Directives 4027B and 4028B, along with the Office of Program Planning Research and Evaluation PREA Data Collection, Review, Retention and Publication Manual cover the methods by which the agency complies with this standard. The agency collects confidential incident-based data that includes the needed information for responding to the most recent version of the Survey of Sexual Violence (SSV) compiled by the Bureau of Justice Statistics. The OSI SCD retains control and retention of all investigations files. After a preliminary review, the sexual abuse data is extracted, coded, and prepared for a secondary review with a SCD investigator. Allegations of sexual abuse are based on the most recent definitions from the Bureau of Justice Statistics and reporting requirements as specified in the National Standards to Prevent, Detect and Respond to Prison Rape. A final agency review team consisting of the ACPC, the OSI Chief, the SCD Deputy Chief of Investigations, and the PREA Analyst meet annually to review substantiated PREA allegations before submitting the data to the Bureau of Justice Statistics. The auditor reviewed the letter from the Bureau of Justice Statistics and verified the agency's timely submission of the requested information.

While the above described process addresses the mechanics of aggregating the agency's data to submit to an external source, the Monthly Sexual Abuse/Threat Incident Summary prepared by the DSS of each facility appears to be the method for collecting monthly data for incidents at a given location—data that is ultimately aggregated and used for the SSV. It shows, among other things, the number of allegations of sexual abuse and improper frisks per month and year to date. Each detailed report goes to the Deputy Commissioner for Correctional Facilities and the ACPC. The auditor reviewed a sampling of redacted monthly summaries (Forms 2103SASI and 2103SAII) for ACF for the audit period.

DOCCS does not contract for the confinement of its inmates, so subsection (e) of this standard is not applicable. However, ACF has fulfilled its requirements for data submission and the agency is compliant with the remaining subsections.

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*)

An interview with the ADS/PREA detailed how the data was compiled and then used to improve institutional effectiveness in meeting PREA standards. The DOCCS Office of Program Planning Research and Evaluation--PREA Data Collection, Review, Retention, and Publication Manual 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. A PREA analyst must aggregate the data collected so that the agency can properly assess and improve the effectiveness of its efforts to prevent sexual abuse and sexual harassment. A final review team consisting of the ACPC, 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 before submitting the data to the Bureau of Justice Statistics.

The report contains data reported over a four-year period, with all personal information removed. The annual report prepared from this data compares the statistics from each year, noting problem areas and corrective actions for each facility and the agency, comparing the current year's data and corrective actions with those from prior years, and providing an assessment of progress in addressing sexual abuse. The data is retained and secured by OSI and the PREA analyst. The annual report is available to the public through the agency's website, <https://doccs.ny.gov/about-prea#annual-reports>. The auditor reviewed the agency's most-recently published annual report, which covers statistics from 2013-2016.

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*)

The Office of Program Planning Research and Evaluation/PREA Data Collection, Review, Retention and Publication Manual (8/8/15) states that the information is securely retained by the Office of Special Investigations and retained for 10 years after the date of the initial collection. There are no personal identifiers in the materials published for public reference. The aggregated sexual abuse data is readily available through the DOCCS website. The auditor read the most recent Annual Report on Sexual Victimization (December 2018), which can be viewed here: <https://doccs.ny.gov/about-prea#annual-reports>.

The ADS/PREA confirmed that the practices outlined in the Manual are still the current practices. The agency's policies and practices conform to the requirement of this standard.

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

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

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

DOCCS began conducting PREA audits of its facilities in 2015, beginning with audits in Audit Year three of Cycle One. Since then, PREA audits have been completed at all DOCCS facilities holding inmates on a schedule to ensure that at least one-third of that facility type operated by the DOCCS was and is scheduled to be audited during each audit year. NYS Correction Law § 121 prohibits private ownership or operation of a facility for housing state or local inmates and the private ownership or operation of a facility for the incarceration of other state's inmates; therefore, no private prisons are operated on behalf of the Agency.

However, DOCCS has entered into agreements with private organizations for numerous Community Based Residential Programs (CBRP) to provide up to four months of housing and treatment for selected Parolees. These contracts were effective starting 5/1/17 (seven programs), 10/1/17 (six programs) and 7/23/18 (one program). CBRP audits are scheduled at two per year per contract starting approximately one year after the start of the contract (i.e., two by May 2018, two by October 2018, etc.), thus ensuring that one-third of each of this facility type operated by a private organization on behalf of the agency will be audited during each forthcoming audit year. DOCCS posts audit reports at: <https://doccs.ny.gov/final-audit-reports>.

The auditor was permitted to have unrestricted access to all parts of the facility, with full access to any staff member or inmate as requested. Private areas were made available for interviews, and all documents requested were provided. All staff members were professional and cooperative, and the inmates seemed forthcoming in giving answers to all questions asked. Audit notifications posted in English and Spanish throughout ACF offered the opportunity for inmates to send confidential letters to the auditor before to the audit. The auditor received one inmate letter, with the letter having been treated as legal mail as required under PREA.

Based on a review of an agency statement of compliance from the ACPC and a review of audit reports on the DOCCS website, the auditor can confirm that the agency is in compliance with this standard.

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

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

The auditor reviewed the Statement of Compliance from the ACPC verifying that DOCCS posts all of the PREA audit reports within 90 days. He also viewed the DOCCS web page: <https://doccs.ny.gov/prea>. It contains the PREA audit reports for facilities housing inmates completed from November 6, 2015-April 16, 2020. It also contains the PREA audit reports for the Community Based Residential Programs (CBRP) operating on behalf of DOCCS through December 8, 2019. DOCCS operates 52 State prisons and began conducting its PREA audits in October 2015; the CBRP audits began in 2018. Final Reports are posted to the DOCCS website according to the timeline requirement. The previous PREA audit report for ACF can be found with the audit reports published in 2017.

DOCCS meets the requirement 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.

Douglas K. Sproat, Jr.

May 6, 2020

Auditor Signature

Date