

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

Interim       Final

Date of Report    November 19, 2019

## Auditor Information

Name: Amy Fairbanks	Email: fairbaa@comcast.net
Company Name: American Correctional Association	
Mailing Address: 3105 S. Martin Luther King Jr. Blvd #236	City, State, Zip: Lansing, MI 48910
Telephone: (517) 303-4081	Date of Facility Visit: October 9-11, 2019

## Agency Information

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

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

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

## Agency Chief Executive Officer

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

## Agency-Wide PREA Coordinator

Name: Jason D. Effman	Title: 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: 15

## Facility Information

**Name of Facility:** Eastern Correctional Facility

**Physical Address:** 30 Institution Rd., Napanoch, NY 12458

**Mailing Address (if different than above):** P. O. Box 338, Napanoch, NY 12458-0338

**Telephone Number:** (845) 647-7400

<b>The Facility Is:</b>	<input type="checkbox"/> Military	<input type="checkbox"/> Private for profit	<input type="checkbox"/> Private not for profit
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<input type="checkbox"/> Municipal	<input type="checkbox"/> County	<input checked="" type="checkbox"/> State	<input type="checkbox"/> Federal
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<b>Facility Type:</b>	<input type="checkbox"/> Jail	<input checked="" type="checkbox"/> Prison
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**Facility Mission:** To improve public safety by providing a continuity of appropriate treatment services in safe and secure facilities where all inmates' needs are addressed and they are prepared for release, followed by supportive services for all parolees under community supervision to facilitate a successful completion of their sentence.

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

### Warden/Superintendent

<b>Name:</b> William Lee	<b>Title:</b> Superintendent
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<b>Email:</b> William.lee@doccs.ny.gov	<b>Telephone:</b> (845) 647-7400 ext. 2000
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### Facility PREA Compliance Manager

<b>Name:</b> Calvin Hill	<b>Title:</b> Assistant Deputy Superintendent/PREA
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<b>Email:</b> Calvin.hill@doccs.ny.gov	<b>Telephone:</b> (845) 647-7400 ext. 2160
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### Facility Health Service Administrator

<b>Name:</b> Dr. Mikhail Gusman	<b>Title:</b> Health Services Director
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<b>Email:</b> Mikhail.gusman @doccs.ny.gov	<b>Telephone:</b> (845) 647-7400 ext. 6010
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### Facility Characteristics

<b>Designated Facility Capacity:</b> 985	<b>Current Population of Facility:</b> 932
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<b>Number of inmates admitted to facility during the past 12 months</b>	423
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<b>Number of inmates admitted to facility during the past 12 months whose length of stay in the facility was for 30 days or more:</b>	360
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<b>Number of inmates admitted to facility during the past 12 months whose length of stay in the facility was for 72 hours or more:</b>	400
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<b>Age Range of Population:</b> 18-79	<b>Youthful Inmates Under 18:</b> 0	<b>Adults:</b> 932
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Are youthful inmates housed separately from the adult population?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> NA
Number of youthful inmates housed at this facility during the past 12 months:	0		
Average length of stay or time under supervision:	884 days		
Facility security level/inmate custody levels:	maximum		
Number of staff currently employed by the facility who may have contact with inmates:	505		
Number of staff hired by the facility during the past 12 months who may have contact with inmates:	24		
Number of contracts in the past 12 months for services with contractors who may have contact with inmates:	3		
<b>Physical Plant</b>			
Number of Buildings: 134	Number of Single Cell Housing Units: 6		
Number of Multiple Occupancy Cell Housing Units:	0		
Number of Open Bay/Dorm Housing Units:	3		
Number of Segregation Cells (Administrative and Disciplinary):	32		
Description of any video or electronic monitoring technology (including any relevant information about where cameras are placed, where the control room is, retention of video, etc.): There is limited video coverage			
Type of Medical Facility:	DOCCS Regional Medical Unit		
Forensic sexual assault medical exams are conducted at:	Local Hospital		
<b>Other</b>			
Number of volunteers and individual contractors, who may have contact with inmates, currently authorized to enter the facility:	83 volunteers, 32 contractors		
Number of investigators the agency currently employs to investigate allegations of sexual abuse:	31		

## Audit Narrative

On October 9-11, 2019, an audit was conducted at the Eastern Correctional Facility to determine compliance with the Prison Rape Elimination Act standards finalized August 2012. The auditor was present at the facility from 1:00 pm to 6:00 pm on Wednesday, 7:30 am to 6:00 pm on Thursday, and 8:00 am to 2:30 pm on Friday. The facility was previously audited in 2016 and found to be in compliance with all standards. There were no barriers to completing the audit. The auditor was selected to complete the audit by responding to the request for auditors posted by the American Correctional Association.

### Audit Methodology:

The PREA Resource Audit Instrument used for Adult Prisons and Jails is furnished by the National PREA Resource Center. This tool includes the following: A) Pre-Audit Questionnaire, sent by Eastern Correctional Facility; B) the Auditor Compliance Tool; C) Instructions for the PREA Audit Tour; D) the Interview Protocols; E) the Auditor's Summary Report; F) the Process Map; and G) the Checklist of

Documentation. In addition, the Auditor Handbook 2017 was used to guide the audit process. The Online Audit Process was not used for this audit. Documentation was copied to a thumb drive and mailed to the auditor; it was accessed by the auditor September 7, 2019.

**Pre-audit:**

The facility reported that posters announcing the audit with the auditor's name and address were placed throughout the facility on August 19, 2019 announcing the audit and identifying the auditors address in English and Spanish. They were observed by the auditor throughout the facility during the tour(s). The posters indicated that any correspondence sent to the auditor would be confidential and not disclosed unless required by law. The exceptions in the law were noted. One confidential correspondence letter was received in response to the posters announcing the audit.

The Pre-Audit Questionnaire and corresponding documentation was reviewed in September 2019 and found to be complete. Documentation was provided for each standard and subpart for the auditor to review prior to the on-site audit.

The Agency website was reviewed. Prior PREA Audit reports were available (sixty-seven total), the previous PREA audit report from November 2016 for Eastern Correctional Facility, How to Make a Third-Party Allegation were available as well as the mission statement. In addition, there is a Letter of Understanding to the New York State Police, access to the videos shown to the male and female inmate population, copies of the PREA policies, PREA posters, pamphlets, address, phone number and email link for someone outside to reach the Office of Special Investigations (OSI). The auditor reviewed the mandatory reporting laws, laws regarding where and how juveniles are housed and laws regarding vulnerable adults for the State of New York prior to the audit.

The auditor researched the Internet and found neither evidence of Department of Justice involvement, nor any concerning information. Contact was made with Just Detention International, Inc. No specific information was provided as they had not received any concerns regarding this facility.

**On-site audit:**

A brief formal meeting was held with the Executive Team and the auditor the afternoon of the first day of the audit. The following items were reviewed: purpose of audit, goals and expectations, and the tentative schedule.

Tentative schedules were developed regarding the tour, interviews and review of additional documentation. It had been arranged for interviews to be conducted in a private setting. Rosters of staff and inmates were provided; a list of random and targeted interviews was developed.

A complete tour of the facility was conducted on October 9 & 10, 2019. The following areas and operations were visited and observed: inmate living areas, medical operations, library/education areas, programming areas, mailroom operations, visiting room, maintenance and food service operations. All areas of the facility were visited that have inmate access. Supervision practices, blind spots, bathroom facilities, and placement and number of telephones were observed. Cross-gender announcements were made prior to the opposite gender auditors entering the living units. Posters announcing the audit were observed throughout the facility. They were located next to posters announcing the ACA audit (conducted the same week) and were salient.

Formal interviews were conducted with the following:

- Superintendent
- PREA Coordinator

- PREA Compliance Manager (incident review team member)
- PREA Point Person (Captain, monitors for retaliation)
- Medical/mental health staff (Director of Nursing, Office of Mental Health staff)
- Human Resources supervisor
- Eleven corrections officers/sergeants from all areas of the facility and each shift (one who worked in the confinement unit)
- One counselor
- Two shift supervisors
- Two investigators
- Three counselors (Offender Rehabilitation Counselor, who complete 30-day follow-up assessments)
- The intake sergeant (who completes the initial intake risk screening),
- Volunteer Coordinator
- One volunteer
- One agency nurse.

Informal interviews were conducted during the tour with an Industry supervisor, two chaplains, and one commissary worker. They were informally asked if they knew their obligation under the PREA laws, and to whom would they report any concerns, and they have received the training.

After review of investigations, it was concluded that no staff that had acted as a first responder.

A total of 30 inmates were selected to be interviewed. No youthful offenders are housed at this facility. Targeted inmate interviews included the following:

- Three with limited English (staff interpreter used)
- Two self-identified as transgender
- One self-identified as gay
- Three who initiated a sexual harassment/sexual abuse complaint
- Two who self-reported as having prior victimization
- One inmate who required assistive devices for mobility
- One cognitively impaired inmate
- Six inmates hard of hearing, or legally blind

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

Investigations are conducted by the Office of Special Investigations who report to the Deputy Commissioner/Chief of Investigations. A list of investigations from August 1, 2018 to July 31, 2019 was provided.

Six completed investigations were reviewed for this facility, five deemed unsubstantiated, one unfounded.

- Two inmates-on-inmate abuse
- One inmate-on-inmate harassment
- One Staff-on-inmate harassment
- Two staff-on-inmate abuse

One was the result of a letter sent directly to OSI, one was a third-party allegation, one inmate reported directly to the counselor, and one investigation yielded a secondary retaliation complaint that was appropriately addressed. The auditor found the investigation process to be sound, using a preponderance of evidence to support final decision. More detailed comments are noted in the standard findings.

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

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

**Post on-site audit:**

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

## **Facility Characteristics**

Eastern Correctional Facility is located in the eastern side of New York in Ulster County, in the Hudson Valley Region. There is approximately 702 acres of land; 23 acres inside the walled facility. It is located adjacent to Ulster Correctional Facility. The facility opened in 1900. The physical plant is similar to many facilities opened in that time period in the country, including a walled perimeter. Count on the day of the audit was 940.

Eastern Correctional Facility is maximum security facility that houses male inmates with lengthy sentences, who do not warrant being housed with limited movement. Inmates are housed in five cell blocks (single occupancy), three small dormitories (individual cubicles), a Special Housing Unit (SHU), and a Sensorially Disabled Unit (SDU). The housing units are a mix of new and old cells. Other buildings within the secure perimeter wall include the school, vocational shops, industrial and maintenance shops, kitchen and dining complex, laundry, chapel, gymnasium, hospital, and auditorium. All buildings are connected by enclosed passageways, except the gymnasium, chapel, maintenance building, and one industrial building.

The SDU has been established to assist the hearing and/or visually impaired inmate to function at his maximum capability in a "mainstream prison setting." The SDU is part of one of the five cell blocks that has been retrofitted with a strobe to alert deaf inmates of fire situations/drills. Additionally, inmates assigned to the unit have the opportunity to be issued a "shake/awake" electronic device. This provides for an audible or vibrating alarm in order for blind/deaf inmates to be awake for meals/counts. In the SDU, assessment, education, recreation and counseling are directly accessible to inmates. A specialized housing area has been designated to meet the individual needs of these inmates. The SDU program serves as a resource to those inmates who are mainstreamed within the general population.

Programming opportunities for the inmates include counseling services, academic education, vocational training (building maintenance, culinary arts, masonry, painting and welding), industry training (sign shop, garment shop, metal shop and mattress shop), college, Aggression Replacement Training (ART), substance Abuse programming, transitional services and volunteer services. There is vast space and scheduling for religious services.

This facility is well staffed; the executive team has significant seniority (many with 25 plus years of experience). Most staff are represented by a union.

## Summary of Audit Findings

### Number of Standards Exceeded: 9

- §115.11 - Zero tolerance of sexual abuse and sexual harassment; PREA coordinator,
- §115.16 – Inmates with Disabilities and Inmates who are Limited English Proficient,
- §115.17 – Hiring and Promotion Decisions
- §115.21 – Evidence Protocol and Forensic Medical Examinations
- §115.34 – Specialized Training: Investigations,
- §115.41 – Screening for Risk of Victimization and Abusiveness,
- §115.42 – Use of Screening Information,
- §115.53 – Inmate Access to Outside Confidential Support Services,
- §115.67 – Agency protection against retaliation.

### Number of Standards Met: 36

- §115.12 – Contracting with other entities for the confinement of inmates
- §115.13 – Supervision and Monitoring
- §115.14 – Youthful Inmates
- §115.15 – Limits to Cross-Gender Viewing and Searches
- §115.18 – Upgrades to Facilities and Technology
- §115.22 – Policies to Ensure Referrals of Allegations for Investigations,
- §115.31 – Employee Training
- §115.32 – Volunteer and Contractor Training
- §115.33 – Inmate Education
- §115.35 – Specialized training: Medical and mental health care
- §115.43 – Protective Custody
- §115.51 – Inmate Reporting
- §115.52 – Exhaustion of Administrative Remedies
- §115.54 – Third-Party Reporting
- §115.61 – Staff and Agency Reporting Duties
- §115.62 – Agency Protection Duties
- §115.63 – Reporting to Other Confinement Facilities
- §115.64 – Staff First Responder Duties
- §115.65 – Coordinated Response
- §115.66 – Preservation of ability to protect inmates from contact with abusers
- §115.68 – Post-Allegation Protective Custody
- §115.71 – Criminal and Administrative Agency Investigations
- §115.72 – Evidentiary Standard for Administrative Investigations
- §115.73 – Reporting to Inmate
- §115.76 – Disciplinary sanctions for staff
- §115.77 – Corrective action for contractors and volunteers
- §115.78 – Disciplinary sanctions for inmates
- §115.81 – Medical and mental health screenings; history of sexual abuse
- §115.82 – Access to emergency medical and mental health services
- §115.83 – Ongoing medical and mental health care for sexual abuse victims and abusers
- §115.86 – Sexual abuse incident reviews
- §115.87 – Data Collection
- §115.88 – Data Review for Corrective Action

§115.89 – Data Storage, Publication, and Destruction  
§115.401 – Frequency & Scope of Audits  
§115.403 – Audit Contents & Findings

**Number of Standards Not Met: 0**

**Summary of Corrective Action (if any)**

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

**PREVENTION PLANNING**

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

**115.11 (a)**

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

**115.11 (b)**

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

**115.11 (c)**

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

**Auditor Overall Compliance Determination**

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

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

(a) An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct.

The auditor reviewed excerpts from the following policies:

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

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

Directive #4028A, Sexual Abuse Prevention & Intervention-11/29/17 Staff-on-Inmate/Staff-on-Parolee – II, III, V C. This policy states that the agency has a zero tolerance for sexual abuse and sexual harassment. It emphasizes that inmates and parolees have a right to be free from sexual abuse and sexual harassment. It supports that all matters of sexual abuse, sexual harassment and retaliation will be investigated, and disciplinary action will occur up to prosecution. Definitions are provided regarding staff-on-inmate sexual abuse and harassment. The policy further supports efforts in prevention, detection, response and investigation of sexual abuse, sexual harassment, protection from retaliation, investigation while ensuring the safety and treatment needs of a victim.

(b) An agency shall employ or designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities.

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

- Memo from the Commissioner dated March 14, 2012 appointing the Agency-wide PREA Coordinator who currently holds the position today.
- Email announcement dated April 25, 2013 announcing that Jason Effman holds the rank of Associate Commissioner.
- DOCCS Organizational Chart which indicates that the PREA Coordinator reports directly to the Commissioner.
- Duties Description Associate Commissioner (PREA) Item #00901 Correctional Facility Operations Specialist

The PREA Coordinator and his Correctional Facility Operations Specialist were on site during the audit. Questions were addressed at that time as well as the interviews conducted. The interview supports that he has sufficient time and authority to ensure all activities required by the PREA standards can be addressed. This is further supported by the documentation provided prior to the on-site audit and addressed throughout this report. He further elaborated, "At this time, I have fifteen (15) Assistant Deputy Superintendent (ADS) PREA Compliance Manager items. In addition, each of the 52 facilities

has a Captain or staff member with equivalent responsibilities designated as the PREA Point Person. I interact with the ADS PREA Compliance Managers routinely. We have weekly conference calls to discuss policy updates, new initiatives and to discuss any issues that they or I should be aware of. We email and speak on an ongoing basis as well. In addition, we meet as a group at least annually for training programs, often in conjunction with the Office of Special Investigations, Sex Crimes Division staff. I have two Correctional Facility Operations Specialist (CFOS) items in my Office in Albany who work with the ADS PREA Compliance Managers on a daily basis, and who have frequent contact with the designated PREA Point Persons. They answer questions, provide guidance, and share information. If they cannot answer a question, they bring the matter to my attention.”

(c) Where an agency operates more than one facility, each facility shall designate a PREA compliance manager with sufficient time and authority to coordinate the facility’s efforts to comply with the PREA standards.

At this facility, an Assistant Deputy Superintendent (ADS) serves as the PREA Compliance Manager. In addition to the PREA Compliance Manager, each facility has a PREA Point person who works with the PREA Compliance Manager along with the Central Office Sexual Abuse Prevention & Education Office (SAPEO). This person is the rank of Captain. This was established by a memo from the Deputy Commission to all Superintendents requiring the appointment of a PREA point Person of the rank of Captain (dated August 2017). Duties Description for Assistant Deputy Superintendent SG-25 (PREA) specifies the duties of the PREA Compliance Manager. The current PREA Compliance Manager (ADS) was appointed for this facility January 2019. The facility Organization Chart shows that the ADS reports to the Superintendent. An email from the Superintendent dated February 16, 2016, appoints the Captain as the PREA Point Person. Both the PREA Compliance Manager the Captain were interviewed regarding their duties. Both indicated they have sufficient time and authority to coordinate the facility’s effort to comply with the PREA standards. Both the ADS and the Captain indicated they serve on the PREA incident review team, monitor for retaliation after allegations are made and monitor training activities.

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

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

### **115.12 (a)**

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

### **115.12 (b)**

- Does any new contract or contract renewal signed on or after August 20, 2012 provide for

agency contract monitoring to ensure that the contractor is complying with the PREA standards? (N/A if the agency does not contract with private agencies or other entities for the confinement of inmates OR the response to 115.12(a)-1 is "NO".)  Yes  No  NA

### Auditor Overall Compliance Determination

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

(a) A public agency that contracts for the confinement of its inmates with private agencies or other entities, including other government agencies, shall include in any new contract or contract renewal the entity's obligation to adopt and comply with PREA standards.

The Agency contracts for Community Based Residential Programs; the programs are required to adopt and comply with the PREA standards. The agency has provided contracts for the following: Bridges of Greater NY, Catholic Charities, Hillcrest House, Hope of Buffalo, Saving Grace Ministries, Volunteers of America, Catholic Family Center, Fitzgerald House and Society of St. Vincent De Paul which demonstrated support for a finding of compliance as well as a memo from the Agency PREA coordinator supporting compliance.

(b) Any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards.

The Request for Application for Community Based Residential Programs (CBRP) includes a requirement for compliance with the PREA standards. Effective May 1, 2017 CBRPs are required to become PREA compliant, including PREA certification. Currently six completed reports are available on the NYDOCSSS website for review.

Based on the review of the documentation provided, this Agency is deemed compliant with the requirements of the standard.

## Standard 115.13: Supervision and monitoring

### 115.13 (a)

- Does the agency ensure that each facility has developed a staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring, to protect inmates against sexual abuse?  Yes  No
- Does the agency ensure that each facility has documented a staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring, to protect inmates against sexual abuse?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration the generally

accepted detention and correctional practices in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No

- Does the agency ensure that each facility's staffing plan takes into consideration any judicial findings of inadequacy in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration any findings of inadequacy from Federal investigative agencies in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration any findings of inadequacy from internal or external oversight bodies in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration all components of the facility's physical plant (including "blind-spots" or areas where staff or inmates may be isolated) in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration the composition of the inmate population in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration the number and placement of supervisory staff in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration the institution programs occurring on a particular shift in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No  NA
- Does the agency ensure that each facility's staffing plan takes into consideration any applicable State or local laws, regulations, or standards in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration the prevalence of substantiated and unsubstantiated incidents of sexual abuse in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration any other relevant factors in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No

### 115.13 (b)

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

### 115.13 (c)

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

### 115.13 (d)

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

### Auditor Overall Compliance Determination

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

(a) The agency shall ensure that each facility it operates shall develop, document, and make its best efforts to comply on a regular basis with a 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, facilities shall take into consideration:

(1) Generally accepted detention and correctional practices;

(2) Any judicial findings of inadequacy;

(3) Any findings of inadequacy from Federal investigative agencies;

(4) Any findings of inadequacy from internal or external oversight bodies;

- (5) All components of the facility's physical plant (including "blind-spots" or areas where staff or inmates may be isolated);
- (6) The composition of the inmate population;
- (7) The number and placement of supervisory staff;
- (8) Institution programs occurring on a particular shift;
- (9) Any applicable State or local laws, regulations, or standards;
- (10) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
- (11) Any other relevant factors.

Eastern CF Security/Chart/Staffing Review with Recommended Changes to Facility Plot Plan 12/20/2016 was reviewed. It is a fourteen-page document assessing staffing levels pursuant to all needs of the facility. This document demonstrates that a review of staffing was conducted by the Security Information Staffing Unit/Deputy Commissioner for Correctional Facilities.

An annual staffing review dated May 2019 entitled Annual Supervision and Monitoring Plan Review, specific to Eastern Correctional Facility provides a detailed assessment of each of the categories required by the standard. The Review is sent to the Deputy Commissioner for Correctional Facilities and Agency PREA Coordinator for review and input as well as the Director of Security Staffing.

(b) In circumstances where the staffing plan is not complied with, the facility shall document and justify all deviations from the plan.

Post Closure Reports are completed when a post is closed, explaining the reason. The example of this document was provided to the auditor for June 27, 2019 demonstrating the deviations are documented.

(c) Whenever necessary, but no less frequently than once each year, for each facility the agency operates, in consultation with the PREA coordinator required by § 115.11, the agency shall assess, determine, and document whether adjustments are needed to:

- (1) The staffing plan established pursuant to paragraph (a) of this section;
- (2) The facility's deployment of video monitoring systems and other monitoring technologies; and
- (3) The resources the facility has available to commit to ensure adherence to the staffing plan.

The auditor reviewed the May 2019 Annual Supervision and Monitoring Plan Review. The interview with the PREA Coordinator yielded the following: "I am consulted regarding assessments of, or adjustments to, the staffing plan. On a minimum of an annual basis, a formal written assessment is done by the facility Superintendent and submitted for consideration by myself, the Director of Security Staffing and the Deputy Commissioner for Correctional Facilities. In addition, I am notified of all facility staffing plan adjustments through the Security Staffing Information Unit."

(d) Each agency operating a facility shall implement 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. Such policy and practice shall be implemented for night shifts as well as day shifts. Each agency shall have a policy to prohibit 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.

The Employee Manual indicates that employees are prohibited from alerting other employees that supervisory rounds are occurring, unless the announcement is related to legitimate operational functions. DIR #4001 2/07/2017 Facility Administrative Coverage & Supervisory rounds requires

Security supervisors to conduct daily rounds and complete the Daily Security Supervisor Report which specifically addressed rounds being unannounced.

The policy and document excerpts noted above support a finding of compliance. Additional reason for a determination of compliance area as follows:

- The auditor requested and received copies of shift rosters for randomly requested September 23, 2019 and September 24, 2019. Upon review, they support that officer assignments regarding inmate supervision are not closed; overtime is utilized to ensure the proper number of staff are present.
- Random review of documentation of unannounced rounds during the tour demonstrated compliance with conducting supervisor unannounced rounds.
- Interviews with shift supervisors indicate that a strategy is used to make rounds at irregular intervals.
- The interview with the Superintendent, PREA Compliance Manager and PREA Point person also supported that the staffing roster is reviewed every two weeks to determine if adjustments are needed. A lieutenant is assigned to coordinate staff assignments on a full-time basis.
- Staff were visible in each area of the facility if inmates were present.
- Supervisory staff are actively making rounds in all areas, including support service areas. This was confirmed by reviewed log books randomly while touring in two housing units, and then previous log books from two additional housing units, the draft operation and medical operation. All demonstrated frequent unannounced rounds made by supervisors (as they sign in red ink).
- The auditor requested and viewed unannounced rounds occurring in the SHU on October 5, 2019.

Based on the policy, Employee Manual, documentation of the annual staffing review, randomly requested documentation and observations made during the tour, the auditor finds there is substantial evidence to support that this facility is compliant with this standard.

## Standard 115.14: Youthful inmates

### 115.14 (a)

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

### 115.14 (b)

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

### 115.14 (c)

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

#### Auditor Overall Compliance Determination

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

(a) A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound or physical contact with any adult inmate through the use of a shared dayroom or other common space, shower area or sleeping quarters.

(b) In area outside of housing units, agencies shall either: Maintain sight and sound separation between youthful inmates and adult inmates, or Provide direct staff supervision when youthful inmates and adult inmates have sight, sound or physical contact.

(c) Agencies shall make best efforts to avoid placing youthful inmates in isolation to comply with this provision. Absent exigent circumstances, agencies shall not deny youthful inmates daily large-muscle exercises and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible.

Eastern Correctional Facility DIR #0096 6/9/2016 states, "This facility is classified as a maximum security correctional facility . . . This facility is used for the general confinement of males 18 years of age or older." Inmates under the age of 18 are housed at the Hudson Correctional Facility and Adirondack Adolescent Facility. The State of New York passed a "Raise the Age Law." *New York Consolidated Laws Service > Correction Law (Arts. 1 — 35) > Article 4 Establishment of Correctional Facilities, Commitment to Department and Custody of Inmates (§§ 70 — 79-c) § 77. Adolescent offender facilities.* Based on these documents and the law, as well as observations made during the tour, the auditor finds this standard does not apply to this facility and therefore is deemed to be compliant.

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

### 115.15 (a)

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

### 115.15 (b)

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

### 115.15 (c)

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

### 115.15 (d)

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

### 115.15 (e)

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

## 115.15 (f)

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

### Auditor Overall Compliance Determination

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

(a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.

Directive #2230 Guidelines for Assignment of Male and Female Correction Officers 2/21/2019 addresses which duties cannot be performed by opposite gender staff which includes strip searches, viewing showers, videos of strip searches, special watch, monitoring of inmate bathrooms via Closed-Circuit television (CCTV), and urine specimen collection.

Directive #4910 Control and Search for Contraband 6/28/2019 supports that strip searches shall be conducted by an Officer or employee of the same sex as the inmate being searched.

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

(b) As of August 20, 2015, or August 20, 2017 for a facility whose rated capacity does not exceed 50 inmates, the facility shall not permit cross-gender pat-down searches of female inmates, absent exigent circumstances. Facilities shall not restrict female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision.

This facility does not house female inmates.

(c) The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female inmates.

Directive #4910 Control and Search for Contraband 6/28/2019 A strip search form (Form #1140) is completed for all inmates who are strip searched for probable cause. The PAQ indicates that there has been no cross-gender strip searches. During the audit, the auditor randomly asked two female officers

who both confirmed they have not, nor have they heard of anyone having to conduct a cross-gender strip search.

(d) The facility shall implement policies and procedures that enable 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. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit.

Directive #4001 Facility Administrative Coverage & Supervisory Rounds 4/25/2019 states that staff of the opposite gender shall verbally announce their arrival on a housing unit to avoid unnecessarily invading the privacy of inmate of the opposite gender. It clarifies when the announcement is to be made (i.e. when gender supervision changes) and that it is to be logged in the housing unit log book.

Directive #2230 Guidelines for Assignment of Male and Female Correction Officers 2/21/2019 states that staff of the opposite gender shall verbally announce their arrival on a housing unit to avoid unnecessary invasion of privacy. It emphasizes the inmates' privacy will be protected to the extent the Department is able to do so. It requires the use of and directions for the use of department-approved shower curtains.

All inmate interviews and staff interviews confirmed that inmates are able to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing the breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Over 90% of the inmate interviews confirm that opposite gender staff are announcing when entering the unit. During the tour, the auditor and escort team was announced prior to entering the unit; this did not appear to be odd based on the observations of the inmates in the unit at the time. The auditor observed the notation of "female in the unit" in log books as they were randomly reviewed in the units.

During the tour, the auditor observed shower stalls located in the individual housing units, a main shower area (referred to as the car wash) which has 68 individual shower stalls with shower curtains, and showers in the recreation areas (indoors and in the yard) which have appropriate modesty barriers. Females are not assigned to work in the "car wash." This was confirmed by randomly asking female officers if they have been required to work in that area; all indicated they do not work inside the shower area. Single cells have toilets and sinks in them. The dormitories have common bathrooms with toilets, sinks and showers which all had appropriate privacy. Observations of bathrooms, shower areas, and strip search areas all provided the inmate modesty during these activities.

(e) The facility shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. If the inmate's genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

HSPM 1.19 Health Appraisal 6/11/2019 supports that a facility shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. If an inmate's genital status is unknown, the facility will determine genital status during conversations with the inmate, by reviewing medical records. It further states that a medical practitioner may conduct a full physical examination of an inmate when relevant to the treatment; such an exam will be conducted in private and with the patient's consent. A full physical exam, including assessment of genital status, can

be done during the initial and periodic health appraisals in accordance with DOCCS policies and as needed according to professional judgement. Medical staff shall not conduct a physical exam of an inmate at the direction of the facility's security or administration for the sole purpose of determining that inmate's genital status. If such an exam becomes necessary as part of an assessment for Gender Dysphoria, in connection with hormone treatment or in connection with inmate placement; then an exam can be done only upon direction and approval of the Deputy Commissioner/Chief Medical Officer. Directive #4910 Control and Search for Contraband 6/28/2019 and excerpts from the training curriculum supports that staff are provided specific training which emphasizes professionalism, dignity and respect when searching inmates and when searching transgender inmates.

Memo Jason D. Effman, Associate Commissioner 7/18/2019 RE; Revisions to Directive #4910  
"NOTE: A strip frisk of an inmate who has been diagnosed with Gender Dysphoria shall presumptively be conducted by staff of the same gender as the gender classification of the facility. This presumption is subject to review by Central Office on a case-by-case basis following an incarcerated individual's transfer to a facility consistent with their gender identification or identification of other factors that may warrant a different determination. Staff shall apply procedures as appropriate based upon the anatomy of the inmate. The facility (administration/security) shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. If the inmate's genital status is unknown, a medical provider may determine the inmate's 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."

(f) The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

Directive #4910 Control and Search for Contraband 6/28/2019 and excerpts from the training curriculum supports that staff are provided specific training which emphasizes professionalism, dignity and respect when searching inmates and when searching transgender inmates.

Memo Jason D. Effman, Associate Commissioner 7/18/2019 RE; Revisions to Directive #4910 states, On June 28, 2019, the Department's Bureau of Internal Controls issued a revision to Directive #4910, "Control of & Search for Contraband." The purpose of this revision was to further clarify the protocols for dealing with contraband searches as they relate to transgender and intersex inmates, and inmates with gender dysphoria/GD. These revisions are highlighted below:

- 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.
- Except as provided below, a correction officer shall not perform a non-emergency pat frisk of an inmate who has been issued a permit to possess and wear gender conforming/transgender undergarments over their objection when:
  - The inmate presents their permit to possess and wear gender conforming/transgender undergarments and requests to be pat frisked by a correction officer of a specified gender; and
  - A correction officer of the specified gender is present at the location where the pat frisk is to be conducted and is available to perform the pat frisk.

- Notwithstanding the above provisions, a correction officer may pat frisk an inmate who has been issued a permit to possess and wear gender conforming/transgender undergarments over their objection where exigent circumstances exist, and a correction officer of the specified gender is not present at the location where the pat frisk is to be conducted or, if present, is not available to perform the pat frisk.
- When a male correction officer pat frisks an inmate, who has been issued a permit to possess and wear gender conforming/transgender undergarments, the male correction officer shall not use the palm of his hand when frisking the clothed breast area of the inmate. Instead, a male correction officer shall use the back and side of his hand only and shall use care not to pat the clothed nipples of the inmate. This limitation is not applicable to a female correction officer conducting a pat frisk on the inmate.
- When frisking the clothed inner thigh, groin, or buttocks, a correction officer shall use care not to penetrate any genital opening of the inmate. All correction officers shall conduct themselves professionally, alert to the perceived sensitive nature of the frisk.
- 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 #1140CGPFI. "Report of Cross Gender Pat Frisk- Transgender Inmate."
- A strip frisk of an inmate who has been diagnosed with Gender Dysphoria shall presumptively be conducted by staff of the same gender as the gender classification of the facility. This presumption is subject to review by Central Office on a case-by-case basis following an incarcerated individual's transfer to a facility consistent with their gender identification or identification of other factors that may warrant a different determination. Staff shall apply procedures as appropriate based upon the anatomy of the inmate. The facility (administration/security) shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. If the inmate's genital status is unknown, a medical provider may determine the inmate's 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."

Review of the policies, memo reflecting updated information, the training curriculum, as well as all interviews with staff support a finding of compliance with this standard. Staff interviews support that all are aware that transgender inmates are not to be searched for the sole purpose of determining genital status. All staff and inmate interviews support that inmates are allowed to change clothes, shower and use the toilet without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Staff responses indicate that they are trained on how to conduct pat frisks of transgender and intersex inmates in a professional and respectful manner, and how to conduct searches of transgender and intersex inmates and in the least intrusive manner possible, consistent with security needs. Training emphasizes that staff be professional when conducting personal searches. Documentation demonstrating that staff have received training for the course 01062 Contraband & Frisk was provided to the auditor to further support a finding of compliance.

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

### 115.16 (a)

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

- Does the agency ensure that written materials are provided in formats or through methods that ensure effective communication with inmates with disabilities including inmates who: Have limited reading skills?  Yes  No
- Does the agency ensure that written materials are provided in formats or through methods that ensure effective communication with inmates with disabilities including inmates who: Are blind or have low vision?  Yes  No

#### 115.16 (b)

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

#### 115.16 (c)

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

#### Auditor Overall Compliance Determination

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

(a) The agency shall take appropriate steps to ensure that inmates with disabilities (including, for example, inmates who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech 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. Such steps shall include, when necessary to ensure effective communication with inmates who are deaf or hard of hearing, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. In addition, the agency shall 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, limited reading skills, or who are blind or have low vision. An agency is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens, as those terms are used in regulations promulgated under title II of the Americans With Disabilities Act, 28 CFR 35.164.

Directive #2612 Inmates with Sensorial Disabilities 12/27/2018 references the Americans with Disabilities Act, noting that programs and services provided cannot discriminate against individuals with a disability who are qualified to receive them. It further states, "Qualified Sign Language Interpreting Services: A sign language interpreter certified by the National Registry of Interpreters for the Deaf or other National or New York State credentialing authority, or a sign language interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary. The qualifications of an interpreter are determined by the actual ability of the interpreter in a particular interpreting context to facilitate effective communication. Except as otherwise indicated below, qualified interpreters may include inmates and correctional staff, including Correction Officers and volunteers, when their skills meet the above definition and factors such as emotional or personal involvement and considerations of confidentiality will not adversely affect their ability to interpret effectively, accurately, and impartially; or jeopardize the safety and security of the inmate."

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

As noted in the narrative, this facility is designed to house inmates with sensorial deficiencies. As a result, staff are readily available to assist with assistive devices and interpretation when on site. Inmates interviewed had assistive devices with them.

(b) The agency shall 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, including steps to provide interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

Directive #4490 Cultural and Language Access Services 1/15/2016 ensures inmates with limited English skills will have meaningful access to programs, services and benefits.

Pamphlet translations – The Prevention of Sexual Abuse in Prison What Inmates Need to Know is available in English, Spanish, Haitian-Creole, Russian, Polish, Italian, Mandarin Chinese, and Korean. The language needed is noted on the receipt of the PREA Sexual Abuse Brochure provided at the intake process. Two completed examples were provided with the pre-audit documentation.

The agency has a contract with Language Line Services, Inc. (copy provided to the auditor). Directions for how to access the line was provided to the auditor. In addition, during random staff interviews, many staff, including line staff, are aware of the availability of the line if its use is needed.

(c) The agency shall not rely on inmate interpreters, inmate readers, or other types of inmate assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first-response duties under § 115.64, or the investigation of the inmate's allegations.

Directive #2612 Inmates with Sensorial Disabilities 12/27/2018 supports that generally an inmate will not be used to interpret for another inmate for confidential/sensitive matters unless there are exigent circumstances.

Directive #4490 Cultural and Language Access Services 1/15/2016 states, generally staff shall not rely on an inmate, family member or friend to interpret for communications that involve sensitive confidential or privileged information.

Interviews with random staff confirmed that an inmate will not be used to interpret and has not been used to interpret for confidential information; responses indicated they would seek the assistance of a bi-lingual staff or the Language Line, as noted above. Bi-lingual staff assisted the auditor with conducting interviews for limited-English inmates.

Review of the policies and other documents noted above support that the facility has gone above and beyond by providing information and the video caption in seven additional languages. The documentation for the intake process indicates that language needs are assessed immediately upon arrival, as are any disability needs. With SDU unit further ensures that those with disabilities have their needs addressed. The written interview with the Acting Commissioner reiterated his support for all these processes in place. For these reasons, the auditor finds that the facility is in substantial compliance with this standard. A finding of exceeds standard is due to the numerous language options available.

## Standard 115.17: Hiring and promotion decisions

### 115.17 (a)

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

#### 115.17 (b)

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

#### 115.17 (c)

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

#### 115.17 (d)

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

#### 115.17 (e)

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

#### 115.17 (f)

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

#### 115.17 (g)

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

## 115.17 (h)

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

### Auditor Overall Compliance Determination

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

(a) The agency shall not hire or promote anyone who may have contact with inmates, and shall not enlist the services of any contractor who may have contact with inmates, who—

(1) 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);

(2) 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; or

(3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.

Directive #2216, Fingerprinting/Criminal History Inquiry - New Employees and Contractors – 11/01/2018 states, All employees and contractors of the Department of Corrections and Community Supervision (DOCCS) will be subjected to a criminal history inquiry in order to obtain background information pertinent to the security of operations, to verify data on employment applications, and to receive notification when Department employees are arrested. Employees, contractors may also be fingerprinted in accordance with this directive. This policy applies to all titles as defined in Section II, Definitions. Information Technology Services (ITS) staff, Department of Motor Vehicles (DMV) staff, and Office of Mental Health Staff (OMH) will have criminal history inquiries conducted. Policy indicates a request is submitted to the Employee Investigative Unit (EIU) via email transmittal; a response must be received with non-derogatory indicated prior to the first day of employment. The policy has an Attachment A which designates how this background check is conducted on potential employees, contractors and staff from other agencies.

NYS Department of Correctional Services Personnel Procedure Manual #406A Recruitment Process – 4/8/16 – Forms: PPM 406A1, Recruitment Process Checklist, PPM 406A.2 Employment Telephone Verification.

Memo: from Director of Personnel, 4/30/14, RE: Personnel Procedure #407 – Civilian Promotions, Personal Procedure Manual #407A – Security Promotions, 4/29/14, indicates that prior to employment, every candidate will be reviewed for prior incidents of sexual abuse (criminal conviction or civil

administrative finding). In addition, it states that the Department is prohibited from hiring anyone who has engaged in sexual abuse in a confinement setting, convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse or has been civilly or administratively adjudicated to have engaged in this type of activity.

(b) The agency shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with inmates.

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

(c) Before hiring new employees who may have contact with inmates, the agency shall:

(1) Perform a criminal background records check; and

(2) 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.

(d) The agency shall also perform a criminal background records check before enlisting the services of any contractor who may have contact with inmates. (e) The agency shall 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.

The following documents support a finding of compliance:

- Directive #2216, Fingerprinting/Criminal History Inquiry - New Employees and Contractors – 11/01/2018 requires the background check for all employees, contractors and per diem employees as well as verification of information on the employment application. Attachment A identifies the process for fingerprinting potential employees, employees, contractors and interns.
- NYS Department of Correctional Services Personnel Procedure Manual #406A Recruitment Process – 4/8/16 specifically requires that previous employers shall be contacted for candidates previously employed by a prison, jail, lock up community confinement or juvenile facility. The contact is documented on the form PPM 406A.2 Employment Telephone Verification.
- This requirement is included on the Forms: PPM 406A1, Recruitment Process Checklist.
- PPM 406A2 Employment Telephone Verification
- Personal Procedure #407 4/30/2014 states, Prior to appointment, every candidate selected for a potential promotional appointment will be reviewed for prior incidents of sexual abuse, a conviction for a disqualifying sexual offense, or a civil administrative find for such sexual acts. The review will also identify any incidents of sexual harassment.
- Memo: from Deputy Commissioner and Counsel, 8/18/15, RE: Prison Rape Elimination Act (PREA) – Background Checks – Appendix and Directive #2112, Report of Criminal Charges – 4/10/18. All staff and contractors are fingerprinted prior to employment. The EIU is notified if an arrest is made corresponding to the employee/contractor fingerprint.

The auditor observed documentation regarding staff fingerprints when reviewing sixteen random personnel files and two contractual files. The auditor reviewed the detailed process outlined for the personnel staff to use when needing to acquire background information on all candidates. The Employee Investigative Unit (EIU) centrally established, provides information as needed (observed during the review of the personnel files). By fingerprinting, the agency would receive a report of any arrests that have occurred with these employees nationwide (as confirmed by the interview with the Human Resource Office Assistant 3). One completed example was provided to the auditor with the pre-audit documentation.

(f) The agency shall 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 and in any interviews or written self-evaluations conducted as part of reviews of current employees. The agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.

The following documents support a finding of compliance:

- Electronic Mail Memo: from Director of Personnel, 7/15/15, RE: Fair Chance Hiring Application Revisions and Statewide Employment Application reinforces the use of the Application Form 1253 as a supplement as it contains PREA related questions required to be ask per this requirement of this standard.
- Form 1253 - Personal History and Interview Record - 4/13, Availability Inquiry Correction Sergeant, Availability Inquiry Correction Lieutenant. Form EIU23 - Personal History Questionnaire – (Rev. 6/15) specifically asks all candidates if they have been convicted of a crime involving sexual activity by overt or implied threats of force, or coercion or if the victim did not consent; or if the victim was unable to consent as well as if the candidate has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution. And, 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
- Promotional inquiries within the system (lieutenant, sergeant) include the questions regarding whether the candidate has been involved in an allegation of sexual abuse or sexual harassment? If the allegations were substantiated, if they have been civilly or administratively adjudicated to have engaged in sexual activity in the community by force, overt or implied, or coercion, etc.
- One completed example was provided to the auditor with the pre-audit documentation.
- These questions and responses were observed on the sixteen random personnel files observed during the audit.

(g) Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.

Form EIU23 - Personal History Questionnaire – (Rev. 6/15) The beginning of the questionnaire specifically informs all candidates that all questions must be answered truthfully as the state law and civil service commission rules have the force and effect of law and provide penalties for making a false statement of material fact in any application. Applicants sign this form acknowledging this. This was reviewed on all of the sixteen personnel files reviewed during the audit. One completed example was provided to the auditor with the pre-audit documentation.

(h) Unless prohibited by law, the agency shall 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.

Directive #2012, Release of Employee Personnel and Payroll Information - 8/7/15 states information about a former employee will be provided to State agencies without authorization and provided to parties other than State agencies with authorization. Per this policy, a letter is initiated for staff who resign pending investigation for placement in the personnel file should a reference check be requested from another potential employer. The interview with the Human Resource Officer Assistant 3 confirmed that she would be free to provide information with a signed release. She had not recalled having to provide information like this in the past 12 months.

Review of policy directives, Employee Manual, and the application process support compliance. The Agency has an Employee Investigative Unit (EIU) designated to conduct background checks which does conduct a national search for criminal records. The Agency uses a system which notifies them when a current employee has been arrested so that the circumstances can be investigated. The Employee Manual, which each staff signs an acknowledgment of receipt, notifies employees of a continuing duty to report. Reference checks are conducted by central office; information provided to other states would be provided by central office with a signed release. The following additional documents were reviewed: randomly requested documentation for the last eight newly hired staff, eight staff who have promoted, and two contractual staff were requested and reviewed and found to have documentation to support that background checks have been conducted, employees are asked the targeted questions, employees sign indicating they have received the Employee Manual. The Interview with the Human Resources Manager confirms that this information is gathered and maintained as required by the standards.

After analysis of the noted written documentation, interviews and observations, the auditor finds that agency/facility to be in compliance with this standard. A finding of exceeds standard is provided due to the fingerprinting operation in which any criminal activity would be immediately reported.

## **Standard 115.18: Upgrades to facilities and technologies**

### **115.18 (a)**

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

### **115.18 (b)**

- If the agency installed or updated a video monitoring system, electronic surveillance system, or other monitoring technology, did the agency consider how such technology may enhance the agency's ability to protect inmates from sexual abuse? (N/A if agency/facility has not installed or updated a video monitoring system, electronic surveillance system, or other monitoring

technology since August 20, 2012, or since the last PREA audit, whichever is later.)

Yes  No  NA

### Auditor Overall Compliance Determination

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

(a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect inmates from sexual abuse. (b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect inmates from sexual abuse.

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

Policy noted above supports that sexual abuse and sexual harassment prevention will be considered when making changes to the physical plant or upgrading the camera system. The interview with the Superintendent supports this as well. The last reported upgrade occurred in January 2017. Documentation was provided demonstrating compliance with this standard. Written responses by the Acting Commissioner further ensures that any upgrades to facilities and/or monitoring equipment has a process in place that ensures that changes will be evaluated to protect inmates from sexual abuse.

## RESPONSIVE PLANNING

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

#### 115.21 (a)

- If the agency is responsible for investigating allegations of sexual abuse, does the agency follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions? (N/A if the agency/facility is not

responsible for conducting any form of criminal OR administrative sexual abuse investigations.)

Yes  No  NA

#### 115.21 (b)

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

#### 115.21 (c)

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

#### 115.21 (d)

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

#### 115.21 (e)

- As requested by the victim, does the victim advocate, qualified agency staff member, or qualified community-based organization staff member accompany and support the victim through the forensic medical examination process and investigatory interviews?  Yes  No

- As requested by the victim, does this person provide emotional support, crisis intervention, information, and referrals?  Yes  No

#### 115.21 (f)

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

#### 115.21 (g)

- Auditor is not required to audit this provision.

#### 115.21 (h)

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

### Auditor Overall Compliance Determination

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

(a) To the extent the agency is responsible for investigating allegations of sexual abuse; the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.

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

(b)The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be 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.

State of New York Protocol for the Acute Care of the Adult Patient Reporting Sexual Assault November 2004 (revised 10/08) is used.

(c)The agency shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiary or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs. (d)The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services. (e)As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.

(c)(d)(e) HSPM1.60 Sexual Assault 10/25/20107 states the following:

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

(f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (e) of this section.

The New York State Department of Corrections and Community Supervision (DOCCS), Office of Special Investigations (OSI), Sex Crimes Division (SCD) and the New York State Police (NYSP), Bureau of Criminal Investigation (BCI) work cooperatively in the investigation of inmates' sexual abuse that may rise to criminal conduct as supported by the Directive #0700 Office of Special Investigations (OSI) and a memo from the Superintendent of the New York State Police provided to the auditor.

(g) The requirements of paragraphs (a) through (f) of this section shall also apply to:

(1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in prisons or jails; and (2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in prisons or jails.

Auditor is not required to audit this provision.

(h) For the purposes of this section, a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.

Not applicable to this facility. This was supported by the interview with the PREA Coordinator and a statement of compliance from the Agency PREA Coordinator confirming this. As noted, the hospital Sexual Assault team will provide this individual.

The PAQ indicates that no forensic examinations, SANE or SAFE examinations or exams performed by a qualified medication practitioner occurred during the previous twelve months. During the audit process, the auditor found no reason to dispute this. Interviews with the OSI supervisor and one OSI investigator involved in investigations at this facility confirmed that the actions taken in the policy and manuals would be taken in the event of an allegation of sexual abuse requiring the ability to preserve evidence. The investigator has become certified for evidence collection and photographing of evidence, above and beyond the specialized training required of investigators. For this reason, and due to the specialized nature of the investigators from the Sex Crimes Division, the memo confirming the cooperation between this department and the New York State Police, the auditor finds that the facility exceeds the standard.

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

### 115.22 (a)

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

### 115.22 (b)

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

### 115.22 (c)

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

### 115.22 (d)

- Auditor is not required to audit this provision.

## 115.22 (e)

- Auditor is not required to audit this provision.

### Auditor Overall Compliance Determination

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

(a) The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment. (b) The agency shall have in place a policy 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. The agency shall publish such policy on its Web site or, if it does not have one, make the policy available through other means. The agency shall document all such referrals.

Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee -Both require that all allegations of sexual abuse and sexual harassment or retaliation for reporting such an incident be thoroughly investigated. It further states it will be promptly initiated; the OSI will determine the appropriate investigative response. Directive #0700 Office of Special Investigations 3/9/2018 supports that this will occur as well. The written interview with the Acting Commissioner yielded the following: "In accordance with my authority under Section 112 of the New York State Correction Law, I have designated the Department's Office of Special Investigations (OSI) as the Department's investigative branch to investigate allegations of serious misconduct in the facilities. The Office of Special Investigations conducts criminal and administrative investigations of all allegations of sexual abuse. Allegations of sexual harassment are reviewed by OSI and may either be investigated by OSI or by the facility subject to OSI's review. In any potentially criminal case, OSI coordinates with the New York State Police Bureau of Criminal Investigation and the pertinent District Attorney's Office to ensure that any appropriate criminal charges are pursued."

(c) If a separate entity is responsible for conducting criminal investigations, such publication shall describe the responsibilities of both the agency and the investigating entity.

This is not applicable to this facility as OSI is a part of the agency although outside of the facility.

(d) Any State entity responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.

Auditor is not required to audit this provision.

(e) Any Department of Justice component responsible for conducting administrative or criminal investigations of sexual abuse or sexual harassment in prisons or jails shall have in place a policy governing the conduct of such investigations.

Auditor is not required to audit this provision.

The PAQ indicates there were seven sexual abuse and sexual harassment allegations in the previous twelve months. Policies noted above, interviews with the investigators and review of two investigations from the 12-month audit time frame support that investigations are all appropriately addressed by the OSI involving sexual abuse and sexual harassment, or retaliation and staff neglect that led to sexual abuse or sexual harassment. These investigations are initiated promptly with investigators being contacted immediately in accordance with the facility's coordinated response. This was determined from the review of the investigations, the investigative process and the interviews with the investigators. 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 as established by the confidential manual.

## TRAINING AND EDUCATION

### Standard 115.31: Employee training

#### 115.31 (a)

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

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

#### 115.31 (b)

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

#### 115.31 (c)

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

#### 115.31 (d)

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

#### Auditor Overall Compliance Determination

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

(a) The agency shall train all employees who may have contact with inmates on: (1) Its zero-tolerance policy for sexual abuse and sexual harassment; (2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures; (3) Inmates' right to be free from sexual abuse and sexual harassment; (4) The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment; (5) The dynamics of sexual abuse and sexual harassment in confinement; (6) The common reactions of

sexual abuse and sexual harassment victims; (7) How to detect and respond to signs of threatened and actual sexual abuse; (8) How to avoid inappropriate relationships with inmates; (9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and (10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

Training Manual Section: 0.100 - Frequency Training Chart and Training Bulletins – 12/3/2018 - confirms that PREA Training is provided every two years, and a module on Professional Boundaries provided annually.

Training Manual Section #7.000 40 Hour Orientation/Initial Employee Training confirms that all civilian new employees receive mandatory training which includes 3-hour module on Sexual Abuse Prevention and Response.

Sexual Abuse Prevention and Response Lesson Plan - March 2015 demonstrates that training covers the following topics: Definitions, Zero Tolerance Policy, Inmate/Parolee right to be free from sexual abuse and sexual harassment, inmates have the right to be free from retaliation for reporting sexual abuse or harassment, dynamics of sexual abuse and sexual harassment in confinement for males inmates and female inmates, common reactions of victims, communicating effectively with lesbian, gay, bisexual, transgender and intersex, or gender nonconforming inmates, how to avoid inappropriate relationships, employee responsibilities of prevention, detection, reporting and response and mandatory reporting. Subject 7.000 40-Hour Orientation/Initial Employee Training confirms that PREA training is provided to all new employees, a 3-hour course.

(b) Such training shall be tailored to the gender of the inmates at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male inmates to a facility that houses only female inmates, or vice versa.

Training Manual Section #7.100 Employee Familiarization In-Service Training Program 7/10/2017 specifies that all transfer staff receive familiarization on compliance with PREA and the Department's Sexual Abuse Prevention and Response procedures. It further states that the training will be tailored to the gender of the inmates at the facility, including gender dynamics, for staff who are transferring from a facility that houses opposite gender staff that they on they worked. The training at this facility provides dynamics of abuse between male inmates. The Sexual Abuse Prevention and Response for males dated 1/05/2018 reinforces key terms, zero tolerance, communicating effectively and professionally with LGBTI and GNC inmates, and five actions an employee takes as a first responder and three categories of sexual abuse and misconduct all employees have a duty to report.

(c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall 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. In years in which an employee does not receive refresher training, the agency shall provide refresher information on current sexual abuse and sexual harassment policies.

Training Manual Subject: 0.100 - Frequency Training Chart and Training Bulletins - 7/12/18 - confirms that PREA Training is provided every two years, and a module on Professional Boundaries provided annually. The PAQ indicates that 569 staff have been trained. Four completed examples of this form were provided to the auditor with the pre-audit documentation.

(d) The agency shall document, through employee signature or electronic verification that employees understand the training they have received.

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

The training curriculum supports that all ten topics required by the standard are thoughtfully and thoroughly addressed in the curriculum. The training provides information specific to working with male inmates. Training occurs every two years with a refresher training annually. All staff interviews support that staff have received the training and staff were knowledgeable regarding the various aspects required by the standard. For these reasons, the auditor finds this standard in compliance.

## Standard 115.32: Volunteer and contractor training

### 115.32 (a)

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

### 115.32 (b)

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

### 115.32 (c)

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

### Auditor Overall Compliance Determination

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

(a) The agency shall ensure 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 procedure. (b)The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contract they have with inmates, but all volunteers and contractors who have contact with inmates shall be notified of the

agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.

(a)(b) Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate, 11/29/2017 and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee, 11/29/17, Directive #4750 Volunteer Services Program states, Restrictions: During orientation, volunteers must be cautioned regarding the seriousness of personal/emotional involvement with inmates. This will include visiting, corresponding, and accepting phone calls. In order to avoid any misunderstanding, the following guidelines must be strictly observed:

- a. Volunteers are prohibited from having any sexual contact or engaging in any sexual conduct with an inmate. DOCCS has a zero-tolerance policy for sexual abuse. It is a crime for any employee to engage in sexual conduct or sexual contact with an inmate. For purposes of Penal Law §130.05, an employee also includes any person providing direct services to inmates in a State correctional facility pursuant to a contractual arrangement with the Department or, in the case of a volunteer, a written agreement with the Department. All volunteer applicants will read the most updated version of the Policy on the Prevention of Sexual Abuse of Inmates. All volunteers are to be provided with training on Directives #4027A, "Sexual Abuse Prevention & Intervention - Inmate-on-Inmate," and #4028A, "Sexual Abuse Prevention & Intervention - Staff-on-Inmate/Staff-on-Parolee." All volunteer applicants must acknowledge receipt in writing that they will be held accountable for and act in accordance with the policy and the law. All volunteer applicants must acknowledge that they 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 and Directive #4071 Guidelines for Construction Projects require that contractors, contract employees, volunteers and interns shall receive orientation and periodic in-service training consistent with their level of inmate contact relating to the prevention, detection, and response to sexual abuse and sexual harassment. This is reinforced in the Standards for Conduct for Volunteers within the New York State Department of Corrections and Community Supervision Form #4750 Guidelines for Construction Projects provide written information for contract workers which also require a signed acknowledgment form.

(c) The agency shall maintain documentation confirming that volunteers and contractors understand the training they have received.

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

The auditor was given access to all volunteer records, eighty-three total. Four records randomly selected demonstrated that volunteers receive background checks and sign acknowledgements noting the volunteer/contractor understands the policy on prevention of sexual abuse and sexual harassment in a confinement setting were included in the documentation. These files were very organized. The process to ensure this occurs was verified with the volunteer coordinator.

Contractual staff signs acknowledgements noting that understood the training they receive. At this facility, agency nurses and a phlebotomist were the only contractual staff. One agency nurse was interviewed and confirmed that he received the training and understood his role in preventing, detecting and responding. During the review of personnel files, specifically, two contractual staff files, documents were present which demonstrated that contractual staff have been given the information on PREA and signed indicating they received and understood the information.

Based on review of the information provided to contractual staff and volunteers, review of the randomly requested documentation, and interview with the volunteer coordinator, the auditor finds sufficient evidence to support a finding of compliance with this standard.

## Standard 115.33: Inmate education

### 115.33 (a)

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

### 115.33 (b)

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

### 115.33 (c)

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

### 115.33 (d)

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

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

### 115.33 (e)

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

### 115.33 (f)

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

### Auditor Overall Compliance Determination

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

(a) During the intake process, inmates shall receive information explaining the agency’s zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.

Directive #4021 Offender Reception/Classification dated 01/23/2019 states, Each inmate is to receive the gender-specific Prison Rape Elimination Act (PREA) pamphlet, “The Prevention of Sexual Abuse in Prison; What Inmates Need to Know,” Form #DC055 for inmates assigned to a male classified facility, upon arrival at the facility, and distribution shall be documented on Form #4021A, “Draft Receipt. PREA pamphlets are distributed to each offender upon arrival. . . . Each inmate shall be initially assessed by a Security Supervisor for their risk of being sexually abused by other inmates or sexually abusive toward other inmates using the gender-appropriate PREA Risk Screening Form #115.41M, “PREA Risk Screening Form – Male Facility” in accordance with the facility-specific PREA Risk Screening Facility Operation Manual. Each inmate is to view the gender-specific version of the film “Ending Sexual Abuse Behind the Walls; An Orientation,” during the reception and classification process. Viewing of the film is to be documented on Form #115.33, “Report of Inmate Training Participation.”

(b) Within 30 days of intake, the agency shall provide comprehensive education to inmates either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.

PREA – Sexual Abuse Prevention Inmate Orientation Outline indicates presenters are available at orientation with a guideline of all information that should be presented. PREA – Sexual Abuse Prevention Inmate Orientation Outline is provided to staff presenting the material. The guides ensure the following is addressed: PREA Mission, PREA Coordinator, PREA Compliance Manager, What is PREA, Zero Tolerance, Personal Safety, Standards of Inmate Behavior, What to do if Abused, Reporting Sexual Abuse, Consequences of false reporting, victim services, explaining Pat searches, Confidentiality, Why opposite gender staff verbally announce their presence.

(c) Current inmates who have not received such education shall be educated within one year of the effective date of the PREA standards, and shall 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.

The PAQ reports that all inmates have received the education on PREA as of August 11, 2015.

Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate, 11/29/2017 states, all inmates shall receive during orientation at reception and at facility orientation after transfer, information which addresses sexual abuse and sexual harassment. The information shall be communicated orally and in writing, in a language clearly understood by the inmates. This information will address prevention, self-protection (situation avoidance), reporting sexual abuse, and sexual harassment, and the availability of treatment and counseling. The inmate handbook received upon arrival provides detailed information regarding PREA as well as a pamphlet entitled, The Prevention of Sexual Abuse in Prison, What Inmates Need to Know. This pamphlet highlights the inmates’ right to be free from sexual abuse and sexual harassment, their right to be free from retaliation, and how to make a complaint should they believe they are subjected to this behavior from staff or inmates. As noted, this can be provided to the inmate in English plus seven different languages.

(d) 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.

See comments in 115.16.

(e) The agency shall maintain documentation of inmate participation in these education sessions.

Form 115.33 Report of Inmate Training Participation Prevention of Sexual Abuse PREA requires the inmate to sign that he has seen the video “Ending the Sexual Abuse Behind the Walls: An Orientation.” It specifically states, “REPORT OF INMATE TRAINING PARTICIPATION Prevention of Sexual Abuse – PREA In accordance with Title 28 C.F.R. § 115.33/231(d), by signing below you confirm that you participated in the “Ending Sexual Abuse Behind the Walls: An Orientation” PREA training program.”

(f) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats.

Numerous posters addressing this information were observed throughout the facility. All inmates interviewed verified that they were informed about their right to be free from abuse and harassment, which includes retaliation, and various methods available to them to initiate an investigation, including third party complaints, and how to file a complaint.

PAQ reports that 381 inmates received and given information, 362 inmates received comprehensive education. Review of the policy, inmate interviews regarding their knowledge of PREA and verification of the process in place, in addition to formal and informal interviews with staff all support that the facility is meeting the requirements of this standard. Fifteen inmate files were randomly reviewed. All demonstrated that the inmate signed for receipt of the Prevention of Sexual Abuse in Prison pamphlet and all had signed indicating they observed the orientation video. The video used at orientation has been filmed in New York DOCCS using inmates confined in this state. It is twenty-four (24) minutes long and reviews personal testimony from numerous inmates emphasizing that sexual abuse and sexual harassment more commonly occurring through manipulation and how to avoid manipulation. It reinforces that inmates can report to anyone anytime. It is their right to be free from sexual abuse, sexual harassment and retaliation. It addresses how to report outside the agency, to the Inspector General (IG) (now the Office of Special Investigations), Sexual Abuse Prevention & Education Office (SAPEO), outside Rape Crisis Center and how to have family/friends report. There is a personal message from the Acting Commissioner and the PREA Coordinator. A link to this video is available on the agency website for anyone to view.

## Standard 115.34: Specialized training: Investigations

### 115.34 (a)

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

### 115.34 (b)

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

### 115.34 (c)

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

### 115.34 (d)

- Auditor is not required to audit this provision.

### Auditor Overall Compliance Determination

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

(a) In addition to the general training provided to all employees pursuant to § 115.31, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings. (b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral. (c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.

Office of Special Investigations, Sex Crimes Division training curriculum dated September 2018 for PREA includes an overview of the PREA law, state law, staff and inmate sexual abuse definitions, duty to report, evidence protocols, effective communication with special populations, privacy for interviews, techniques for interviewing victims, credibility assessment, criteria to determine substantiated, unfounded and unsubstantiated investigations, Miranda and Garrity warnings. Investigators also received the standard PREA training, as confirmed by interviews with the investigators and documentation. Additional Training provided to Investigators includes, Investigating Physical and Sexual Abuse in an Institutional Setting, National Institute of Corrections Training – PREA Investigating Sexual Abuse in Confinement Settings. In addition, OSI certificates for specialized training in Basic Investigative Photography and Police Crime Scene and Evidence Specialist. In the interview with the investigators, they shared attending recent training in interviewing techniques for sexual abuse victims.

(d) Any State entity or Department of Justice component that investigates sexual abuse in confinement settings shall provide such training to its agents and investigators who conduct such investigations.

Auditor is not required to audit this provision.

The PAQ reports that the agency has 31 trained investigators for PREA allegations. Policy noted above and additional documentation showing the training curriculum support a finding of compliance. As noted, documentation was provided that showed that the investigative staff designated for this facility

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

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

#### **115.35 (a)**

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

#### **115.35 (b)**

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

#### **115.35 (c)**

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

#### **115.35 (d)**

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

#### **Auditor Overall Compliance Determination**

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

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

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

(a) The agency shall ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in: (1) How to detect and assess signs of sexual abuse and sexual harassment; (2) How to preserve physical evidence of sexual abuse; (3) How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and (4) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

Mental Health staff work in Department of Corrections facilities for the Office of Mental Health through a Memorandum of Understanding. This MOU includes the requirement for PREA training including the specialized training for medical and mental health staff. Medical staff are Department of Corrections employees. The auditor reviewed the specialized training curriculum for medical and mental health staff. Both medical and mental health staff have attended Specialized PREA Training for Medical and Mental Health Providers. Specifically, the training is entitled Inmate Sexual Assault Post Exposure Protocol/PREA (Course 17083). It addresses the emotional and psychological effects of victims of sexual assault, how to report to the Office of Special Investigations, responding to victims, and sending a victim to an ER for a proper forensic examination and evidence collection. Training in how to detect and assess signs of sexual abuse and sexual harassment is provided in the PREA training all staff receives.

(b) If medical staff employed by the agency conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations.

This is not applicable to this facility.

(c) The agency shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere. (d) Medical and mental health care practitioners shall also receive the training mandated for employees under § 115.31 or for contractors and volunteers under § 115.32, depending upon the practitioner's status at the agency.

The PAQ reports there are 26 medical and mental health staff. Documentation was provided which demonstrated that all staff have received the specialized training. Staff signs the completion of Training Form acknowledging participation in the course; records are maintained by the training staff. Interviews with the Medical Director and mental health demonstrate knowledge of the requirements of this standard support a finding of compliance.

# SCREENING FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS

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

### 115.41 (a)

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

### 115.41 (b)

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

### 115.41 (c)

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

### 115.41 (d)

- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (1) Whether the inmate has a mental, physical, or developmental disability?  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (2) The age of the inmate?  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (3) The physical build of the inmate?  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (4) Whether the inmate has previously been incarcerated?  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (5) Whether the inmate's criminal history is exclusively nonviolent?  Yes  No

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

#### 115.41 (e)

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

#### 115.41 (f)

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

#### 115.41 (g)

- Does the facility reassess an inmate's risk level when warranted due to a: Referral?  Yes  No

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

#### 115.41 (h)

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

#### 115.41 (i)

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

#### Auditor Overall Compliance Determination

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

(a) All inmates shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates. (b) Intake screening shall ordinarily take place within 72 hours of arrival at the facility.

Directive 4027A, Sexual Abuse Prevention & Intervention Inmate-on-Inmate requires that all inmates be screened upon arrival at each facility for any indication of risk of abuse or being abused. Eastern Correctional Facility Operations Manual PREA Risk Screening states Screening will be completed by a sergeant or above ordinarily within 24 hours of arrival. Directive #4021 Inmate Reception/Classification further indicates, Each inmate shall be initially assessed by a Security Supervisor for their risk of being sexually abused by other inmates or sexually abusive toward other inmates using the gender-appropriate PREA Risk Screening Form #115.41M, “PREA Risk Screening Form – Male Facility in accordance with the facility-specific PREA Risk Screening Facility Operation Manual. . . .” The PAQ reports the 4,784 inmates have been screened for risk of sexual victimization and risk of sexual abusiveness. Inmate interviews and random review of fifteen inmate files all confirmed that this assessment is taking place immediately upon arrival. The auditor observed portions of the intake process during the audit.

(c) Such assessments shall be conducted using an objective screening instrument. (d) The intake screening shall 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; (2) The age of the inmate;(3) The physical build of the inmate; (4) Whether the inmate has previously been incarcerated; (5) Whether the inmate’s criminal history is exclusively nonviolent; (6) Whether the inmate has prior convictions for sex offenses against an adult or child; (7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming; (8) Whether the inmate has previously experienced sexual victimization; (9) The inmate’s own perception of vulnerability; and (10) Whether the inmate is detained solely for civil immigration purposes. (e) The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency, in assessing inmates for risk of being sexually abusive.

An objective screening tool is used that considers the following information:

Risk of Sexual Victimization:

- mental, physical, development disability
- age
- physical build
- incarcerated for less than two years
- convictions for sex offense against an adult or child
- self identifies as gay, lesbian, bisexual, transgender, intersex or gender nonconforming
- previous experience as a victim of sexual abuse
- inmate’s perception of risk for sexual abuse
- detained solely for civil immigration

Risk of Sexual Abusiveness:

- conviction for a crime related to sexual abuse in correctional setting
- history of committing institutional sexual abuse
- convicted of a violent offense
- history of institutional violence

On this tool, it also addresses the ability to make a subjective assessment regarding gender non-conforming appearance. It notes the following: **SCREENING MUST BE CONDUCTED IN A PRIVATE SETTING.** Additionally, it states, Inmates may not be disciplined for refusing to answer or provide complete responses to these questions and 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.

A Gender Identity Interview process has been developed. A form (115.41GI) with specific interview questions is completed by the ORC. One question is specifically dedicated to asking the individual any information he/she wishes to provide regarding housing, placement and safety. An example was provided to the auditor with the documentation received prior to the on-site audit.

(f) Within a set time period, not to exceed 30 days from the inmate's arrival at the facility, the facility will reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.

Facility Operations Manual PREA Risk Screening #605 states Inmates will be reassessed by an assigned Offender Rehabilitation Coordinator (ORC) ordinarily within 14 days of arrival. A final risk assessment determination shall ordinarily be made by the Assistant Deputy Superintendent PREA Compliance Manager within 30 days of the inmate's arrival at the facility. Directive #4021 Inmate Reception/Classification also requires the following: Each inmate shall be re-assessed by an ORC for their risk of being sexually abused by other inmates or sexually abusive toward other inmates using the gender-appropriate PREA Risk Screening Form #115.41M, in accordance with the facility-specific PREA Risk Screening Facility Operation Manual. Sexual orientation and gender identity information from the PREA Risk Screening shall be used to assign Other Security Characteristics as appropriate.

The same form is used to this reassessment. One column is designed to be completed by the ORC. This allows the ORC to have an immediate review of the information received at the first assessment.

Interviews with three ORCs confirmed this process as stated in the policy. Inmate interviews all confirmed that their risk assessment was re-evaluated with the meeting with the ORC. Review of the fifteen random inmate files confirmed that the ORC review has occurred. It is documented in the chronological statement as well as on the portion of the form designated to be completed by this review.

(g) An inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness.

Facility Operations Manual PREA Risk Screening #605 states, if at any time additional information is received due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness, an inmate's risk level will be reassessed. Reassessment is noted on the same intake screening. No examples of this were available for review; however, the system is in place.

(h) Inmates may not be 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.

Facility Operations Manual PREA Risk Screening #605 states, inmates will not be disciplined for refusing to answer or for not disclosing complete information in response to questions asked. Approximately half of the inmates interviewed were asked if they believed they would be disciplined for not answering the questions. All indicated without hesitation that they had not. As stated, the form also states, "Inmates may not be discipline for refusing to answer or provide complete responses to these questions."

(i) The agency shall implement 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.

Facility Operations Manual PREA Risk Screening #605 states, PREA Intake Screening Forms (Form 115.41M/115.41F) are confidential. The completed form shall be filed in the Guidance Folder (Assessments Section), and distribution shall be limited to the Watch Commander, Assistant Deputy Superintendent PREA Compliance Manager and Captain/PREA Point Person. Access to completed forms is limited to the Executive Team and Guidance Staff with a business necessity to review the completed forms. Noted on the form is the following: Information contained on this form shall not be disclosed to anyone other than the extent necessary to make security, classification, housing/placement, programming, treatment, investigation and other security and management options. The new form for the Gender Identity Interview notes "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 distribution is Distribution: Guidance File (Section 7 - Classification); ADS PREA; Facility Health Services; Sexual Abuse Prevention & Education Office. This was reinforced by the interview with the PREA Coordinator.

The intake screening process is conducted upon arrival by a sergeant to determine any triggers which are documented and immediately addressed (Form 4021). A completed example of this process/form was sent to the auditor with documentation received prior to the on-site audit. Any pertinent information is immediately reported to the Watch Commander, Assistant Deputy Superintendent (PREA Compliance Manager) and Captain/PREA Point Person. This was confirmed by the interviews with these staff. Within a few days of being assigned to the housing unit, the ORC meets with the inmate for an additional assessment. The ADS (PREA Compliance Manager) or PREA Point Person (Captain) reviews and makes a final determination on the risk assessment. The auditor viewed the area in which the assessments are stored and only staff with authorization have access to view them. There were staff interviews with one sergeant that is assigned to conduct the screenings as well as one counselor who is responsible for completing the risk assessment. The staff were extremely knowledgeable on their roles and were able to demonstrate to the auditor the importance of the information that they receive and the reason it needs to remain confidential. The auditor was shown the area in which this review takes place, which is private. One example of a completed risk assessment was sent to the auditor prior to the on-site audit. To further assess compliance, the auditor randomly reviewed fifteen inmate files; all had the appropriate risk assessment initially completed by the sergeant and reviewed by the ORC. The auditor finds that the facility finding of "exceeds standard" is based on the immediate review, secondary, third and final review of the assessment process as well as the procedure to ensure the safety of the inmate based on the finding.

## Standard 115.42: Use of screening information

### 115.42 (a)

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

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

#### 115.42 (b)

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

#### 115.42 (c)

- When deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, does the agency consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether a placement would present management or security problems (NOTE: if an agency by policy or practice assigns inmates to a male or female facility on the basis of anatomy alone, that agency is not in compliance with this standard)?  Yes  No
- When making housing or other program assignments for transgender or intersex inmates, does the agency consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether a placement would present management or security problems?  Yes  No

#### 115.42 (d)

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

#### 115.42 (e)

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

#### 115.42 (f)

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

#### 115.42 (g)

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

#### Auditor Overall Compliance Determination

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

(a) The agency shall use information from the risk screening required by § 115.41 to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive. (b) The agency shall make individualized determinations about how to ensure the safety of each inmate.

Facility Operations Manual PREA Risk Screening #605 states, If the inmate is assessed as potentially being at “high risk of sexual victimization” or “high risk of being sexually abusive,” an immediate referral shall be made to the Watch Commander for housing assignment. . . . The Watch Commander shall determine the most appropriate housing assignment with the goal of keeping separate inmates at high risk of sexual victimization from those at high risk of being sexually abusive. This is done using form 4021 which requires information on inmate safety be summarized and immediately sent to the Watch Commander.

(c) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.

Directive #4021 Inmate Reception/Classification Transgender/Intersex Inmate Classification and Placement states, An inmate who identifies as transgender, intersex, or gender non-conforming during PREA Risk Screening, or who has a diagnosis of Gender Dysphoria or Intersex (identified via extended classification codes), shall be asked additional questions by their ORC using the "Gender Identity Interview," Form #115.41GI, regarding their gender identification, expression, and preferences. The interview will also document the inmate's statement regarding their safety in connection with decisions regarding their housing and placement. Information from the Gender Identity Interview will be used to assist the Department in making an individualized assessment of the inmate's placement and program assignments in order to maximize the inmate's safety. Facility Operations Manual PREA Risk Screening states, A copy of this form shall be provided to the movement and control officer for housing and bed assignments, the housing unit sergeant and the program committee chairperson who shall use the information to determine appropriate work, education, and program assignments. This is documented through a Memorandum, Report of PREA Risk Screening Information. . . . Upon request from an inmate who identifies as transgender or intersex for a transfer from a male classified facility to a female classified facility, or vice versa, the ORC shall notify the Supervising Offender Rehabilitation Coordinator (SORC) upon completion of the Gender Identity Interview, Form #115.41GI. The SORC shall notify the Deputy Superintendent for Program Services and the facility's designated Assistant Deputy Superintendent PREA Compliance Manager. The Reception SORC shall notify the Deputy Superintendent for Program Services or Deputy Superintendent for Reception/Classification and the Assistant Deputy Superintendent PREA Compliance Manager. The Deputy Superintendent for Program Services/Deputy Superintendent for Reception/Classification shall notify the Director of Classification and Movement of the inmate's request via electronic mail, including the completed Form #115.41GI, and the most recently completed gender-appropriate PREA Risk Screening Form #115.41M or Form #115.41F, which shall be used to assist the Department in making an individualized assessment of the inmate's placement and program assignments, in order to maximize the inmate's safety. The request will be forwarded to the Central Office Transgender Placement Review Committee for a case-by-case assessment. Housing assignment by gender identity will be made when appropriate.

(d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.

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

(e) A transgender or intersex inmate's own view with respect to his or her own safety shall be given serious consideration.

Directive #4401 Guidance & Counseling Services states, a transgender or intersex inmate's own view with respect to his or her own safety shall be given serious consideration. The process describes in subpart C further confirmed the written authority for compliance with this standard. Inmate interviews confirmed this during the audit.

(f) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.

Directive #4009 Minimum Provisions for Health and Morale 8/15/2019 states, Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates. The facility offers transgender and intersex inmates the opportunity to shower individually on each housing unit every evening between 5:30 pm – 6:00 pm.

(g) The agency shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such 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 such inmates.

NYS DOCCS does not house lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units or wings solely on the basis of such identification or status. Directive #4021 Inmate Reception/ Classification states, an inmate who identifies as transgender or intersex will not be placed in a gender-specific facility, housing unit, or program based solely on their external genital anatomy. This was further reiterated by the interview with the PREA Coordinator.

Review of the policy and other documentation which included an example of a risk assessment screen for a transgender inmate in addition to Form 4021, comments noted in response to 115.41 and processes in place that communicate risk needs to staff support a finding of compliance. One completed risk assessment was reviewed during the pre-audit. An additional fifteen randomly reviewed on site also demonstrated compliance. At this facility, all inmates are reassessed quarterly, and asked questions again related to sexual abuse/harassment safety. This was confirmed by staff interviews and a review of the random files. The transgender and intersex inmates confirmed they have the ability to shower separately there were no issues. Based upon this analysis of written authority, completed documentation, interviews with the intake sergeant, ORCs, PREA Coordinator/PREA Compliance Manager, Superintendent, Captain/PREA Point Person and inmates all provide sound evidence for the auditor to find the facility substantially exceeds compliance with this standard.

## **Standard 115.43: Protective Custody**

### **115.43 (a)**

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

### **115.43 (b)**

- Do inmates who are placed in segregated housing because they are at high risk of sexual victimization have access to: Programs to the extent possible?  Yes  No

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

#### 115.43 (c)

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

#### 115.43 (d)

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

#### 115.43 (e)

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

#### Auditor Overall Compliance Determination

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

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

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

(a) Inmates at high risk for sexual victimization shall not be placed 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. If a facility cannot conduct such an assessment immediately, the facility may hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment.

Directive #4948 Protective Custody Status 6/29/2017, Involuntary Protective Status states, An inmate who is appropriate for Involuntary Protective Custody solely because he or she is at high risk for sexual victimization, or following a report that the inmate was the victim of sexual abuse, may be placed in Involuntary Protective Custody after a determination has been made that there is no available alternative means of separation from likely abusers. The facility may hold him for less than 24 hours while completing the assessment using Form #2168A Sexual Victimization - Involuntary Protective Custody Recommendation.

(b) Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document: (1) The opportunities that have been limited; (2) The duration of the limitation; and (3) The reasons for such limitations.

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

(c) The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.

Directive #4948 Protective Custody Status, Involuntary Protective Status states, the facility assign inmates at high risk of sexual victimization to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged. Directive #4948 also ensures that placement shall not ordinarily exceed 30 days. If that should occur, the inmate will be reviewed every seven days; documentation noted on Form #2170A.

(d) If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, the facility shall clearly document: (1) The basis for the facility's concern for the inmate's safety; and (2) The reason why no alternative means of separation can be arranged.

Form #2168A Sexual Victimization - Involuntary Protective Custody provides an avenue to document the facilities rationale behind the placement.

(e) Every 30 days, the facility shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population.

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

The PAQ states that no inmates have been placed in involuntary protective custody due to their high risk of sexual victimization. The auditor found no evidence to dispute this during the audit process. The facility has a process in place to ensure proper and quick removal from risk. This process was articulated by all staff during random interviews. Interviews with one supervisor of the SHU and one officer who was working in the SHU support that they have no knowledge of inmates who are alleged victims, or at risk for victimization being placed in this unit. Based upon the written authority and these interviews, the auditor finds the facility is substantially compliant with this standard.

## REPORTING

### Standard 115.51: Inmate reporting

#### 115.51 (a)

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

#### 115.51 (b)

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

### 115.51 (c)

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

### 115.51 (d)

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

### Auditor Overall Compliance Determination

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

(a) The agency shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee - 11/29/17 supports that inmate reports of sexual abuse, sexual harassment, or retaliation can be verbal or in writing. Inmates are notified through the orientation and the pamphlet received upon intake that they can tell any staff, contract or volunteer. All inmate interviews confirmed that they were aware of multiple avenues for making a report. Most indicated they would call the hotline number, noting they observed the information on the posters by the phone.

(b) The agency shall also provide at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request. Inmates detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.

The New York State Commission of Correction (SCOC) has agreed to receive all written inmate reports containing sexual abuse and sexual harassment allegations, including anonymous allegation and will immediately forward them to the DOCCS for investigation. This information is provided in the pamphlet given to inmates upon arrival. The New York State Department of Corrections and Community Supervision does not detain inmates solely for civil immigration purposes. Information on how to

contact relevant consular officials is available. A Jailhouse Lawyer's Manual: Immigration & Consular Access Supplement is available in all NYSDOCCS Facility Law Libraries. Another method for reporting outside the agency is to the sexual abuse hotline. See comments for 115.53.

(c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.

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

(d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of inmates.

Staff may report sexual abuse or sexual harassment privately to the Office of Special Investigations by calling their number directly or sending an email directly to them. This is reinforced in the PREA training. All staff interviews supported that they are aware they have a private mechanism for reporting. Some indicated they could call their union, others indicated they could contact Employee Assistance Program (EAP) staff. Others did comment that they could contact OSI directly.

Review of documentation noted above supports a finding of compliance. Inmates noted that there are several ways to file a complaint at this facility and shared examples of such. Staff is aware of the numerous avenues for filing a complaint, including third party and anonymous. Initial and refresher training emphasize the different avenues for reporting. Staff interviews indicated they would report immediately and knew the process for documenting this. Review of the investigations support that allegations are reported swiftly to the Watch Commander who initiates the coordinated response. Although sexual abuse and sexual harassment complaints are not processed through the administrative procedure for inmate grievances, if a grievance is filed containing anything resembling an allegation, the grievance coordinator immediately sends a copy to the Watch Commander. To ensure this, the auditor requested and received grievances filed in the previous twelve months that were forwarded for review for a potential PREA investigation. Nine examples were provided. Upon review, the auditor concurs that the process is used as noted in 115.52. Inmates receive appropriate notification indicating that the complaint is deemed exhausted upon filing for Prison Litigation Reform Act (PLRA) purposes. This review confirmed that anything that may resemble a PREA allegation is forwarded to the Watch Commander/PREA Captain as appropriate for review. Finally, documentation was provided prior to the audit that the outside reporting agency does in fact inform the facility of reports made to them.

Review of the policies, investigations, interviews with staff and inmates, information provided at orientation information confirming how to file a report outside the agency, documentation showing that this has occurred all provided the auditor with sufficient evidence to support a finding of compliance with the standards.

## Standard 115.52: Exhaustion of administrative remedies

### 115.52 (a)

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

### 115.52 (b)

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

### 115.52 (c)

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

### 115.52 (d)

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

- At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, may an inmate consider the absence of a response to be a denial at that level? (N/A if agency is exempt from this standard.)  Yes  No  NA

#### 115.52 (e)

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

#### 115.52 (f)

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

- Does the agency's final decision document the agency's action(s) taken in response to the emergency grievance? (N/A if agency is exempt from this standard.)  Yes  No  NA

### 115.52 (g)

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

### Auditor Overall Compliance Determination

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

The standard has the following requirements: (a) An agency shall be exempt from this standard if it does not have administrative procedures to address inmate grievances regarding sexual abuse. (b)(1) The agency shall not impose a time limit on when an inmate may submit a grievance regarding an allegation of sexual abuse. (2) The agency may apply otherwise-applicable time limits to any portion of a grievance that does not allege an incident of sexual abuse. (3) The agency shall not require an inmate to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse. (4) Nothing in this section shall restrict the agency's ability to defend against an inmate lawsuit on the ground that the applicable statute of limitations has expired. (c) The agency shall ensure that— (1) An inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and (2) Such grievance is not referred to a staff member who is the subject of the complaint. (d)(1) The agency shall 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. (2) Computation of the 90-day time period shall not include time consumed by inmates in preparing any administrative appeal. (3) The agency may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The agency shall notify the inmate in writing of any such extension and provide a date by which a decision will be made. (4) 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, the inmate may consider the absence of a response to be a denial at that level. (e)(1) Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of inmates. (2) 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. (3) If the inmate declines to have the request processed on his or her behalf, the agency shall document the inmate's decision. (f)(1) The agency shall establish procedures for the filing of an emergency grievance alleging that an inmate is subject to a substantial risk of imminent sexual abuse.

(2) After receiving an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse, the agency shall 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, shall provide an initial response within 48 hours, and shall issue a final agency decision within 5 calendar days. The initial response and final agency decision shall document the agency's determination whether the inmate is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance. (g) The agency may discipline an inmate for filing a grievance related to alleged sexual abuse only where the agency demonstrates that the inmate filed the grievance in bad faith.

DOCCS Directive #4040, Inmate Grievance Program (IGP) 1/20/2016, confirms that an inmate is not required to file a grievance about sexual abuse or sexual harassment. Any inmate grievance that is filed regarding a complaint of sexual abuse or sexual harassment shall immediately be reported by the IGP Supervisor to the Watch Commander for further handling in accordance with Departmental policies. The inmate is informed of this via a memo which informed him that the complaint is deemed exhausted upon filing for PLRA purposes. If the grievance does not set forth any additional matters that require a response, the grievance shall be closed. The agency has opted to be exempt from this standard.

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

### **115.53 (a)**

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

### **115.53 (b)**

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

### **115.53 (c)**

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

- Does the agency maintain copies of agreements or documentation showing attempts to enter into such agreements?  Yes  No

### Auditor Overall Compliance Determination

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

(a) The facility shall 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, and, for persons detained solely for civil immigration purposes, immigrant services agencies. The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible.

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

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

The Winter publication 2018-2019 of DOCCS Today has a detailed headline article outlining the new

hotline, educating staff on the transition to the enhanced service, further demonstrating support of the service from the Acting Commissioner of NYDOCCS.

(b) The facility shall 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.

Posters announcing the service were visible throughout the facility. On the poster, it indicates that the calls are confidential and are not monitored by the facility but that they are recorded in the event of misuse. It further educates the inmate population that the counselors are only allowed to report information back to the Department with the permission of the inmate. PREA brochures, "Help for Victims of Sexual Abuse in Prison" are widely available to inmates and provided to inmates upon arrival at each facility. In addition this pamphlet provides victim support information on how to report abuse, and outlining the PREA Statewide Rape Crisis Hotline, and it provides contact information regarding the community-based Rape Crisis Program (RCP) for rape crisis counseling victim advocacy and emotional support services (Crisis Services, Inc., Crime Victims Treatment Center, RESTORE Sexual Assault Services, Safe Harbors of the Finger Lakes, Sexual Assault & Crime Victims Assistance Program at Samaritan Hospital, and Victims Assistance Services of West COP. It too reinforces that calls are confidential, will not be monitored but are recorded (treated like legal calls). It further informs the inmates that they do not have to have this number on the approved telephone list. Telephone numbers to a specific Rape Crisis Program can be added at any time to their approved telephone list.

The following policy directives support this process: Directive #4423 01/15/2004, Inmate Telephone Calls, an inmate may add an attorney, or Department of Health approved Rape Crisis Program to their telephone list. Directive #4404 Inmate Legal Visits 11/02/2017, there is an area designated for confidential visits. Directive #4421, Privileged Correspondence 06/02/2016, Rape Crisis Programs-inmates can send and receive privileged correspondence.

(c) The agency shall 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. The agency shall maintain copies of agreements or documentation showing attempts to enter into such agreements.

The Agency has a signed MOU with the New York State Office of Victim Services and the New York State OPDV to provide *emotional support services* through September 30, 2020. Locally, the Crime Victims Treatment Center provides emotional support and victim advocacy calls, and receives referrals for such services through the Statewide Rape Crisis Hotline (777) provider. A contract was provided that demonstrated that the agency agrees to the following: participate in PREA training, participate in quarterly working group calls, provide services for hotline calls and referrals, ensure only PREA trained staff and/or volunteers take calls from and provide services to incarcerated victims of sexual assault ensure answering service partners are trained in PREA, confidentiality and procedures and response, tour all incarceration facilities that are in the service areas, provide incarcerated victims of sexual assault with rape crisis counseling, advocacy and emotional support services, follow-up with incarcerated victims of sexual assault who made direct contact seeking rape crisis services via telephone or mail, as requested by the NYSDOCCS refer victims of sexual assault in state and local incarceration facilities to appropriate service providers, complete forms to track project services among other requirements, effective through March 2020. One example of documentation demonstrating that PREA counseling was requested via the hotline was provided to the auditor

During the onsite audit, the auditor tested the 777 services line via an inmate phone located in a general population housing unit. Most phone areas provide a booth when making the telephone calls. Also, there is a private area where inmates can use a phone without anyone in the vicinity listening (same phone provided for legal calls) located outside the living areas, with the assistance of the PREA Compliance Manager/PREA Point Person. Random inmate interviews revealed that the population is aware that there is the ability to call this number by dialing 777 for reporting. They indicated in the interviews that they knew it was recorded because a pin is required. They were not, however, aware of the additional service that could be provided, only that they could report. They further elaborated, though, that they did not need any service like that, so they did not concern themselves with additional information. The inmate orientation manual does dedicate a paragraph on how to get access to outside confidential support services. The auditor did not find these comments concerning; the information is readily available and visible to the inmate population.

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

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

The Captain ensures that weekly checks of the access to the hotline for the emotional support/outside reporting service is operational. The auditor requested documentation to support this; three reports documenting this activity were provided for July 8, 2019, August 26, 2019, and October 6, 2019, for three different phones in the facility.

A Help for Victims of Sexual Abuse in Prison pamphlet does provide detailed information on how to obtain this service. Phone numbers and addresses are provided for agencies throughout the state of New York. This is given to the inmates at intake with the other pamphlet.

Directive #4421 Privileged Correspondence does address that any local, state or national organization authorized to provide rape crisis services, victim advocacy services, and emotional support services is considered privileged correspondence.

For all the reason stipulated above, the auditor finds this facility/agency exceeds the requirements of this standard.

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

### **115.54 (a)**

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

### **Auditor Overall Compliance Determination**

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

The agency shall establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of an inmate.

The auditor reviewed the NYSDOCCS website which has a link to PREA which provides all information about PREA to the public including policy, history of combating sexual assault, PREA education, Report Sexual Abuse and how third party reports on behalf of an inmate can be made.

## OFFICIAL RESPONSE FOLLOWING AN INMATE REPORT

### Standard 115.61: Staff and agency reporting duties

#### 115.61 (a)

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

#### 115.61 (b)

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

### 115.61 (c)

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

### 115.61 (d)

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

### 115.61 (e)

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

### Auditor Overall Compliance Determination

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

(a) The agency shall 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; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

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

(b) Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions.

Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee - 11/29/17 states that reports are confidential and only to be shared with essential employees involved in the reporting, investigation, discipline and treatment process or as otherwise required by law. The Employee Handbook also reinforces this requirement. Form 115.61 Sexual Abuse Response and Containment Checklist is deemed "Confidential" on the form.

(c) Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners shall be required to report sexual abuse pursuant to paragraph (a) of this section and to inform inmates of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services.

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

(d) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable person's statute, the agency shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

This facility does not house inmates under the age of 18 (see 115.14). In this state, vulnerable person statues do not apply to those incarcerated. NY Soc Serv § 492 establishes the "vulnerable persons' central register" It states, this section excludes persons in DOCCS custody. Interview with the PREA Coordinator indicated the following: Our Office of Special Investigations, Sex Crimes Division ensures that outside agencies with jurisdiction are notified of the report. DOCCS is not included within the statutory jurisdiction of the State entity that investigates allegations concerning vulnerable adults. Historically, our OSI SCD would notify the Child Abuse Hotline when an allegation was received concerning a Youthful Inmate under the age of 18. Effective October 1, 2018, two of the Department's facilities have been changed under state law and are now classified by New York State as "Adolescent Offender Facilities." The facilities now fall under the PREA Standards for Juvenile Facilities going forward. Directive #4029 "Reporting Suspected Child Abuse or Maltreatment" was adopted in October 2018 and training regarding compliance with child abuse reporting laws has been conducted at these facilities to ensure that Mandated Reporters comply with New York State law regarding child abuse reporting to the Statewide Central Register of Child Abuse and Maltreatment.

(e) The facility shall report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators.

Sexual Abuse Response and Containment Checklist, which is the form used to communicate an allegation, also addresses confidentiality and the reporting of the incident to the appropriate investigator. As stated, the appropriate investigating agency is the OSI.

Documentation provided support a finding of compliance includes the following: Interviews with security staff, security supervisors, the Watch Commander, and non-first responders support a strong knowledge of the process. In addition, staff has been issued pocket cards that reflect the process. Interviews with the investigators both ensure they are receiving all allegations of sexual abuse or sexual harassment immediately.

## Standard 115.62: Agency protection duties

### 115.62 (a)

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

### Auditor Overall Compliance Determination

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

When an agency learns that an inmate is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the inmate.

Directive #4948 - Protective Custody Status – 6/29/17 addresses the use of involuntary protective custody for an inmate who is subject to a substantial risk of imminent sexual abuse. It supports that placement will occur immediately until the facility can complete an assessment. The interview with the Acting Commissioner further elaborated, “Each case is evaluated by the facility or Office of Special Investigations based upon the nature of the report and the potential harm. Supervisory rounds will also be increased as appropriate. An inmate at risk or a potential predator may be moved to another housing unit or transferred. If no other options are available, a potential victim may be temporarily placed in protective custody until other steps can be taken.”

The facility (PAQ) reports that it has not had any inmates that were subject to Involuntary Protective Custody due to a substantial risk of imminent sexual abuse during this audit period or previous audit period. The auditor found no evidence to dispute this during the audit process.

## Standard 115.63: Reporting to other confinement facilities

### 115.63 (a)

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

### 115.63 (b)

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

### 115.63 (c)

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

## 115.63 (d)

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

### Auditor Overall Compliance Determination

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

(a) Upon receiving an allegation that an inmate was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred. (b) Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation. (c) The agency shall document that it has provided such notification.

Memo: from Jason D. Effman, Associate Commissioner RE: PREA Standard 115.63, addressed to “All Superintendents” states that allegations received from an inmate regarding abuse at another facility will be forwarded from the Superintendent to the Superintendent at the facility where the alleged incident occurred within 72 hours of receiving the report. Form 115.63 shall be used to make the notification. The Office of Special Investigations shall be sent a copy. This process was reinforced by the written interview responses for the Acting Commissioner. The PAQ indicates there have been zero allegations received regarding sexual abuse that occurred at another facility. The interview with the Superintendent supported that these notifications are made by his office within 72 hours of receipt.

(d) The facility head or agency office that receives such notification shall ensure that the allegation is investigated in accordance with these standards.

PAQ indicates zero allegations were received from other facilities regarding abuse that occurred at Eastern Correctional Facility in the past 12 months.

The policy, notification form and interview with the Superintendent provided the audit with sufficient evidence to support a finding of compliance. There is a process in place to ensure the requirements of this standard are met.

## Standard 115.64: Staff first responder duties

### 115.64 (a)

- Upon learning of an allegation that an inmate was sexually abused, is the first security staff member to respond to the report required to: Separate the alleged victim and abuser?  
 Yes  No

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

#### 115.64 (b)

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

#### Auditor Overall Compliance Determination

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

(a) Upon learning of an allegation that an inmate was sexually abused, the first security staff member to respond to the report shall be required to: (1) Separate the alleged victim and abuser; (2) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence; (3) If the abuse occurred within a time period that still allows for the collection of physical evidence, 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; and (4) If the abuse occurred within a time period that still allows for the collection of physical evidence, 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. (b) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.

Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee - 11/29/17, Sexual Abuse Response and Containment Checklist, Sexual Abuse Prevention and Response (SAPR) Lesson Plan, PREA Pocket Card all address the requirements of this standard. Whether a first responder or not, all

reports go to the immediate supervisor and to the Watch Commander. The scene is immediately secured. Any inmates involved are instructed that they cannot destroy evidence by washing brushing teeth, changing clothes, urinating, defecating smoking, drinking or eating. The Sexual Abuse Response and Containment Checklist is initiated.

The PAQ indicates that there has been no occurrence of a security staff member responding to an incident requiring preservation of physical evidence, nor a non-first responder. Of the noted allegations of sexual abuse reviewed by the auditor, this confirmed there was no incident requiring this. Both first responder staff and non-first responder staff attend training as required in 115.31; these requirements are reinforced at that time. Also, staff carry a Pocket Card to review in the event of a situation. All staff interviews demonstrated knowledge of the process support a finding of compliance. Review of the investigations confirmed that no incidents occurred during the 12-month audit period that involved a first responder. For these reasons noted, the auditor finds the facility to be in compliance with the requirements of this standard.

## Standard 115.65: Coordinated response

### 115.65 (a)

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

#### Auditor Overall Compliance Determination

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

The facility shall develop a written institutional plan to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

Eastern Correctional Facility FOM 604 Coordinated Response Plan to an Incident of Inmate Sexual Abuse provides a detailed plan for all staff to follow in the event of a response to an incident of sexual abuse. It addresses First Party/Victim Report action, Third-party, Anonymous report actions, the details of the Coordinated Response as directed by the Watch Commander. This includes notification to OSI, Health Services, and specifics on how to arrange for outside transport and what hospitals to use. It addresses post medical assessment, mental health staff actions, and emphasizes confidentiality. All staff interviewed was knowledgeable regarding the process.

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

### 115.66 (a)

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

### 115.66 (b)

- Auditor is not required to audit this provision.

### Auditor Overall Compliance Determination

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

(a) Neither the agency nor any other governmental entity responsible for collective bargaining on the agency's behalf shall enter into or renew 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. (b) Nothing in this standard shall restrict the entering into or renewal of agreements that govern: (1) The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of §§ 115.72 and 115.76; or (2) Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated.

Directive #2110, Employee Discipline-Suspension from Duty During the Continuation of Disciplinary Proceedings - 7/13/2018, Directive #2114, Function of the Bureau of Labor Relations - 7/17/2015 both comply with the requirements of this standard. There are seven bargaining units represented by four unions representing employees at the NYSDOCCS. The contracts do not preclude the facility from removal of alleged staff pending an outcome of the investigation. This was reinforced by the written interview responses from the Acting Commissioner: The current collective bargaining agreement between the State of New York and the Public Employees Federation, AFL-CIO (PEF) is for the period of 2016-2019. The current collective bargaining agreement between the State of New York and The Civil Service Employees Association, Inc. (CSEA) is for the period 2016-2021. In addition, the collective bargaining agreement between the State of New York and the New York State Correctional Officers and Police Benevolent Association, Inc. (NYSCOPBA) was ratified on January 24, 2019 and is retroactively effective for the period April 1, 2016, through March 31, 2023. The applicable contracts

permit the agency to take appropriate action when warranted to remove alleged staff sexual abusers from contact with any inmate pending the outcome of an investigation or a final determination of whether and to what extent discipline is warranted. The contracts permit the agency to suspend an employee without pay or temporarily reassign an employee when a determination is made that there is probable cause that such employee's continued presence on the job represents a potential danger to persons or property or would severely interfere with operations.

## Standard 115.67: Agency protection against retaliation

### 115.67 (a)

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

### 115.67 (b)

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

### 115.67 (c)

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

- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor inmate program changes?  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor negative performance reviews of staff?  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor reassignments of staff?  Yes  No
- Does the agency continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need?  Yes  No

#### 115.67 (d)

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

#### 115.67 (e)

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

#### 115.67 (f)

- Auditor is not required to audit this provision.

#### Auditor Overall Compliance Determination

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

(a) The agency shall establish 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, and shall designate which staff members or departments are charged with monitoring retaliation. (b) The agency shall 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. (c) For at least 90

days following a report of sexual abuse, the agency shall monitor the conduct and treatment of inmates or staff who reported the sexual abuse and 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, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any inmate disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need. (d) In the case of inmates, such monitoring shall also include periodic status checks. (e) If any other individual who cooperates with an investigation expresses a fear of retaliation, the agency shall take appropriate measures to protect that individual against retaliation. (f) An agency's obligation to monitor shall terminate if the agency determines that the allegation is unfounded.

Employee Manual 2.19 requires that all employees have a duty to report retaliation against inmates or staff who reported such an incident. Memo from Jason D. Effman, Associate Commissioner – 4/18/2019 requires each facility to use multiple protection measure such as housing changes, transfers, removal of alleged staff or inmate abusers from contact with the victim and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse, sexual harassment and/or cooperating with the investigation. It requires the monitoring for a minimum of 4 months, exceeding the requirements of the standard. Form 115.67 Retaliation Monitoring Form ensures that all aspects of this standard are proactively monitored and documented. There is a monitoring form for inmates and another form for staff. It also requires the facility to conduct periodic in-person status checks at least every 30 days. The PREA ADS and PREA Point person are responsible for coordinating these actions. In the event of an allegation, the OSI will be contacted promptly. With the consultation of the OSI, the facility shall promptly remedy the retaliation. Finally, it supports the following: “The obligation to monitor the conduct and treatment of any inmate who reported an incident of sexual abuse or sexual harassment, or who was reported to have suffered sexual abuse or sexual harassment, shall terminate if the agency determines that the allegation is unfounded or if the monitored inmate is released.”

The PAQ indicates there have been no incidents of retaliation during the past twelve months. The auditor found no reason to dispute this during the audit process. During the pre-audit phase, the facility provided the spreadsheet tracking mechanism utilized to document these actions in addition to the Retaliation Monitoring Form. An additional thirteen completed retaliation monitoring forms were reviewed; they were detailed, addressed the requirements, and included staff who reported allegations. Interviews with the Superintendent, PREA Coordinator, PREA Compliance Manager and PREA Point Person all support that retaliation monitoring is taken seriously and well documented. Even if an inmate transfers, the retaliation monitoring is continued at the next NYSDOCCS facility which is another reason for the decision of “exceeds standard.”

## **Standard 115.68: Post-allegation protective custody**

### **115.68 (a)**

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

### **Auditor Overall Compliance Determination**

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

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

Any use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.43.

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

## INVESTIGATIONS

### Standard 115.71: Criminal and administrative agency investigations

#### 115.71 (a)

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

#### 115.71 (b)

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

#### 115.71 (c)

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

#### 115.71 (d)

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

#### 115.71 (e)

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

#### 115.71 (f)

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

#### 115.71 (g)

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

#### 115.71 (h)

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

#### 115.71 (i)

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

#### 115.71 (j)

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

#### 115.71 (k)

- Auditor is not required to audit this provision.

## 115.71 (I)

- 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*)

PAQ indicates no substantiated allegations of conduct that appeared criminal referred for prosecution since the last PREA audit

(a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.

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

(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to § 115.34.

All investigators in the SCD receive training. See 115.34

(c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

Investigators are immediately contacted when a PREA allegation is received, in accordance with the facility's response plan. In accordance with the plan, the first responders ensure evidence is preserved; the investigators complete any evidence gathering required. Interview with the investigators supported that they are and have been immediately contacted regarding all allegations. Review of the completed investigations did support this.

(d) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be

an obstacle for subsequent criminal prosecution. (e) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff. No agency shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

The Office of Special Investigations Policy Manual Chapter 5 August 2019 is considered confidential, but was provided for review by the auditor. The auditor reviewed the document and found it supports compliance with this standard. Polygraph tests are prohibited in accordance with the New York Criminal Procedure Law 160.45 and therefore not used in any aspect of the investigation for sexual abuse or sexual harassment. Review of investigations supported that the credibility of victim, suspect or witness is based on alignment with established facts. This requirement was confirmed by the interview with the investigators.

(f) Administrative investigations: (1) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and (2) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.

The Office of Special Investigations Policy Manual Chapter 5 & 11 is considered exempt from disclosure. The auditor reviewed the document and found it supports compliance with this standard. The interview with the investigators did confirm this. Review of investigations support that they are in standardized, written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.

(g) Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible. (h) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.

The Office of Special Investigations Policy Manual Chapter 11 is considered exempt from disclosure. The auditor reviewed the document and found it supports compliance with this standard. No investigations reviewed were referred for criminal prosecution. Compliance with this requirement was confirmed by the review of the confidential manual and the interview with the investigators. The SCD would be the entity to report all substantiated allegations to licensing bodies, as well as ensures all matters that rise to the level of criminal prosecution are referred for criminal handling.

(i) The agency shall retain all written reports referenced in paragraphs (f) and (g) of this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.

Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee supports the following: Physical (paper) case records of the Office of Special Investigations will be retained by that office for a minimum of seven years. The electronic case file, including copies of the investigative report and other critical documents, shall be permanently retained.

(j) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.

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. No investigations reviewed had an incident where the accused left employment. Based on reviews of investigations from prior audits, the auditor reviewed evidence of this requirement. The interview with the investigators also confirmed that the investigation would continue.

(k) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.

Auditor is not required to audit this provision.

(l) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

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

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

## Standard 115.72: Evidentiary standard for administrative investigations

### 115.72 (a)

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

### Auditor Overall Compliance Determination

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

The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

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

## Standard 115.73: Reporting to inmates

### 115.73 (a)

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

### 115.73 (b)

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

### 115.73 (c)

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

### 115.73 (d)

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

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

#### 115.73 (e)

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

#### 115.73 (f)

- Auditor is not required to audit this provision.

#### Auditor Overall Compliance Determination

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

(a) Following an investigation into an inmate's allegation that he or she suffered sexual abuse in an agency facility, the agency shall inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.

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

(b) If the agency did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the inmate.

All investigations will conclude with the OSI investigator, who will therefore make the notification.

(c) Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, the agency shall subsequently inform the inmate (unless the agency has determined that the allegation is unfounded) whenever: (1) The staff member is no longer posted within the inmate's unit; (2) The staff member is no longer employed at the facility; (3) The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or (4) The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility. (d) Following an inmate's allegation that he or she has been sexually abused by another inmate, the agency shall subsequently inform the alleged victim whenever: (1) The agency learns that the alleged

abuser has been indicted on a charge related to sexual abuse within the facility; or (2) The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility. (e) All such notifications or attempted notifications shall be documented. (f) An agency's obligation to report under this standard shall terminate if the inmate is released from the agency's custody.

The Office of Special Investigations Policy Manual Chapter 5 is considered exempt from disclosure. The auditor reviewed the document and found it supports compliance with all requirements of this standard. Accordingly, the investigator ensures that the notification is made either through the facility superintendent or in person. One example was provided to the auditor with the documentation reviewed. It supported compliance with these requirements.

PAQ indicates there were seven completed allegations of sexual abuse. A copy of the notification was located with each investigative file reviewed by the auditor. The auditor finds there was sufficient evidence to support a finding of compliance based on policy and documents noted above.

## DISCIPLINE

### Standard 115.76: Disciplinary sanctions for staff

#### 115.76 (a)

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

#### 115.76 (b)

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

#### 115.76 (c)

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

#### 115.76 (d)

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

## Auditor Overall Compliance Determination

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

(a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.

Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee 11/29/17 specifically states, Discipline and Prosecution: When investigation substantiates an allegation of sexual abuse and/or inappropriate relationships, it is the Department's policy to refer such incident to the appropriate law enforcement agency or prosecutor, through the Department's Office of Special Investigations, for consideration of criminal charges. Any conduct constituting sexual abuse, sexual harassment, staff voyeurism, inappropriate relationships or any act of retaliation against an inmate, parolee, or employee for reporting an incident of sexual abuse, sexual harassment, staff voyeurism, inappropriate relationships, or for participating in an investigation involving any of those acts may be the basis for disciplinary action whether or not prosecution or a conviction results.

Directive #2110 – Employee Discipline – Suspension from Duty During the Continuation of Disciplinary Proceedings – 7/13/18 states, When the OSI receives a report of staff sexual misconduct, they shall evaluate the facts and circumstances of the report together with any other available information and consult with the appropriate Bureau of Labor Relations representative regarding appropriate action, including removal of the employee from contact with any inmates pending the outcome of an investigation.

Employee Manual – Rev. 2013 specially reinforces that any staff perpetrator of abuse, harassment or voyeurism will be dealt with severely. And, it emphasizes the duty to report sexual abuse and sexual harassment. Memo: Daniel F. Martuscello III, Deputy Commissioner for Administrative Services – 2/5/16 RE: Prison Rape Elimination Act / Presumptive Disciplinary Sanction for Staff Sexual misconduct confirms that termination is the presumptive disciplinary sanction for staff who have engaged in sexual abuse of an inmate. And, Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall continue to be 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."

Directive #2111- Report of Employee Misconduct – 1/5/16 additionally confirms that staff will be disciplined, noting sanctions up to termination for sexual misconduct.

(b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.

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

(c) Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be 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.

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

(d) 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, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

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

During the 12-month audit period, no staff was terminated for violations of these standards. Dialogue with the Superintendent, investigators, PREA Coordinator and PREA Compliance Manager support that all allegations against staff for sexual abuse, sexual harassment, retaliation or neglect are investigated and disciplinary action would be commensurate with the circumstances up to termination for sexual abuse

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

### **115.77 (a)**

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

### **115.77 (b)**

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

## Auditor Overall Compliance Determination

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

(a) Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies. (b) The facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with inmates, in the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer.

Directive #4750, Volunteer Services Program requires that volunteers be notified of the zero tolerance and that they can be criminally liable for their behavior under the definition sexual conduct with an inmate. It states, DOCCS has a zero-tolerance policy for sexual abuse. It is a crime for any employee to engage in sexual conduct or sexual contact with an inmate. For purposes of Penal Law §130.05, an employee also includes any person providing direct services to inmates in a State correctional facility pursuant to a contractual arrangement with the Department or, in the case of a volunteer, a written agreement with the Department.

STANDARDS OF CONDUCT FOR VOLUNTEERS WITHIN THE NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION states, Relationship with Inmates states, “Sexual abuse and sexual harassment violate Department rules and threaten security. All allegations of sexual abuse, sexual harassment, or retaliation for reporting such an incident or participating in an investigation will be thoroughly investigated. It is a crime for a volunteer or intern who provides direct services to inmates in a State correctional facility to engage in a sexual act with an inmate or parolee assigned to that facility, even if the inmate or parolee ‘willingly’ participates in the act. Furthermore, any perpetrator of a sexual abuse or sexual harassment incident will be dealt with severely through discipline or prosecution to the fullest extent permitted by law, and will be reported to any relevant licensing bodies.”

Volunteers sign an acknowledgment that they have received this information, which confirms they will be held accountable and indicates they understand this. Examples were provided with the pre-audit documentation demonstrating compliance. In addition, as noted, the auditor randomly reviewed four volunteer folders and observed the signed acknowledgement. This acknowledgement is re-issued when the volunteer received refresher orientation. The interview with the one volunteer confirmed that this process occurs.

The Pre-Audit Questionnaire notes that no contractor or volunteer has been involved in an investigation regarding sexual abuse or sexual harassment towards an inmate. The auditor found no evidence to dispute this statement during the audit process. The interview with the Superintendent confirmed that he is able and willing to stop volunteers from entering the facility if there is a suspicion of misbehavior. See comments to 115.32. After analysis of this documentation, policy, and interview, the auditor finds the standard to be in compliance.

## Standard 115.78: Disciplinary sanctions for inmates

### 115.78 (a)

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

### 115.78 (b)

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

### 115.78 (c)

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

### 115.78 (d)

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

### 115.78 (e)

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

### 115.78 (f)

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

### 115.78 (g)

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

### Auditor Overall Compliance Determination

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

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

(a) Inmates shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the inmate engaged in inmate-on-inmate sexual abuse or following a criminal finding of guilt for inmate-on-inmate sexual abuse.

Hearing Officer Reference Book, The Hearing Officers determine guilt on misconducts received by inmates in accordance with the requirements reflected in Directive #4932 – Chapter V, Standards Behavior & Allowances – Rev. 8/30/18. Category 101 addresses Sex Offenses An inmate shall not engage in, encourage, solicit or attempt to force another to engage in any sexual act.

(b) Sanctions shall be 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.

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

(c) The disciplinary process shall consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.

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

(d) If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to require the offending inmate to participate in such interventions as a condition of access to programming or other benefits.

Sex Offender Counseling and Treatment Program Guideline – April 2018 verifies that an inmate is eligible for treatment if found guilty of sexual abuse while incarcerated. The inmate will be referred to this program. Directive 4401 Guidance and Counseling, 4/30/2018 addresses treatment services, including sex offender treatment programs, available for inmates at NYDOCCS. It indicates that this will include guilty findings at a tier hearing per Inmate Standards of Behavior for any sexually abusive and/or assaultive act.

(e) The agency may discipline an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact.

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

(f) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

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

(g) An agency may, in its discretion, prohibit all sexual activity between inmates and may discipline inmates for such activity. An agency may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

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

Review of the policies and documents noted above support a finding of compliance. The auditor reviewed disciplinary reports for inmates for sexual activity. Eight were provided; they demonstrated consensual sexual activity – not sexual abuse or harassment. The interview with the mental health professional supports that the inmate will be referred for appropriate counseling if found guilty of a sexual misconduct as described in Category 101. Based on analysis of the evidence, the auditor finds the facility to be compliant with the requirements of this standard.

## MEDICAL AND MENTAL CARE

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

#### 115.81 (a)

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

#### 115.81 (b)

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

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

#### 115.81 (c)

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

#### 115.81 (d)

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

#### 115.81 (e)

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

#### Auditor Overall Compliance Determination

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

(a) 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, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening. (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, staff shall ensure that the inmate is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening.

HSPM 1.44 – Health Screening of Inmates - 7/26/2018 addresses information received related to sexual victimization or abusiveness. It states, upon arrival at a DOCCS facility, every newly received or transferred inmate, including inmates being moved from an owning correctional facility to the same correctional facility Special Housing Unit (SHU), SHU200, separate keeplock unit or Juvenile Separation Unit, 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. 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. PREA Screening Form directs the screener to forward a copy of the form directly to Mental Health to serve as the Mental Health Referral Form. Staff can also submit a referral form.

Eastern Correctional Facility PREA Risk Screening FOM #604, 7/1/2019 indicates, If during the screening process, it is determined that the inmate previously perpetrated sexual abuse whether in an institutional setting or in the community, the Sergeant shall offer to refer the inmate to OMH. The Watch Commander will be notified of the referral.

#4301 – Mental Health Satellite Services and Commitments to CNYPC - 8/18/15, Mental Health Referral Form 3150 supports that referrals received will be addressed within 14 days. The Facility Operations Manual for Eastern Correctional Facility, PREA Risk Screening both describe the specific steps needed to ensure a referral is made at this facility. One mental health professional is assigned full-time to the facility (Social Worker). A regionally-based Psychiatrist and mental health staff visit the facility regularly to provide inmate/patients with mental health services.

(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, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.

The facility is a prison, not a jail.

(d) 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.

(e) Medical and mental health practitioners shall 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.

HSPM 1.44 – Health Screening of Inmates - 7/26/2018 states that any information related to sexual victimization or abusiveness that occurred in an institutional setting is strictly limited to medical and mental health practitioners and other staff as necessary to inform treatment plans and security management decisions, including housing, bed, work, education and program assignments, or as otherwise required by Federal, State, or local law. It also requires medical and mental health practitioners to obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18. The PREA Screening Form also notes an area for reports of sexual victimization that occurred outside the institutional setting.

The PAQ notes the 100% of inmates who disclosed prior victimization during screening were offered a follow-up meeting with medical or mental health, and 100% of inmates who have previously perpetrated sexual abuse during the screening were offered a follow-up meeting with a mental health practitioner. Review of the randomly reviewed risk assessments supported that the procedure as established by this Agency is being followed. Policy, written authority, interviews with mental health staff and intake staff in addition to evidence of compliance in the randomly reviewed files supports a finding of compliance with this standard.

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

### 115.82 (a)

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

### 115.82 (b)

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

### 115.82 (c)

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

### 115.82 (d)

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

### Auditor Overall Compliance Determination

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

(a) Inmate victims of sexual abuse shall 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. (b) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim pursuant to § 115.62 and shall immediately notify the appropriate medical and mental health practitioners. (c) Inmate victims of sexual abuse while incarcerated shall be 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. (d) Treatment services shall be 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.

The Facility Coordinated Response (FOM #604 7/01/2019), HSPM 1.60 Sexual Assault and the New York Public Health Law support that inmates will receive timely, unimpeded access to emergency medical treatment and crisis intervention services. First responders will ensure medical and mental health staff are notified. These documents support that inmate victims of sexual abuse are offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis and treatment services will be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation.

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

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

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

### **115.83 (a)**

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

### **115.83 (b)**

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

#### 115.83 (c)

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

#### 115.83 (d)

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

#### 115.83 (e)

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

#### 115.83 (f)

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

#### 115.83 (g)

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

#### 115.83 (h)

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

#### Auditor Overall Compliance Determination

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

(a) the facility shall 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. (b) The evaluation and treatment of such victims shall 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. (c) The facility shall provide such victims with medical and mental health services consistent with the community level of care.

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

(d) Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests. (e) If pregnancy results from the conduct described in paragraph

These requirements are not applicable to this facility as it houses all males.

(f) Inmate victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.

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

(g) Treatment services shall be 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.

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

(h) All prisons shall 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.

HSPM 1.60 - Sexual Assault – 10/25/17 confirms that a mental health evaluation of all known inmate-on-inmate abusers will be conducted within 60 days. They will be referred to the Sex Offender Counseling and Treatment Program per the guideline. Directive #4401 Guidance and Counseling addresses treatment services available for inmates at NYDOCCS.

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

## DATA COLLECTION AND REVIEW

### Standard 115.86: Sexual abuse incident reviews

#### 115.86 (a)

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

#### 115.86 (b)

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

#### 115.86 (c)

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

#### 115.86 (d)

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

#### 115.86 (e)

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

#### Auditor Overall Compliance Determination

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

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

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

(a) The standard requires that the facility shall 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. (b) Such review shall ordinarily occur within 30 days of the conclusion of the investigation. (c) The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners. (d) The review team shall: (1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse; (2) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility; (3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse; (4) Assess the adequacy of staffing levels in that area during different shifts; (5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and (6) Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1)-(d)(5) of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager. (e) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.

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

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

## **Standard 115.87: Data collection**

### **115.87 (a)**

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

**115.87 (b)**

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

**115.87 (c)**

- Does the incident-based data include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice?  Yes  No

**115.87 (d)**

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

**115.87 (e)**

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

**115.87 (f)**

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

**Auditor Overall Compliance Determination**

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

(a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions; (b) The agency shall aggregate the incident-based sexual abuse data at least annually; (c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.

Directive #4027B, Sexual Abuse Reporting & Investigation Inmate-on-Inmate, Directive #4028B, Sexual Abuse Reporting & Investigation Staff-on-Inmate/Staff-on-Parolee, Office of Program Planning

Research and Evaluation – PREA Data Collection, Review, Retention and Publication Manual support that the facility will maintain monthly sexual abuse/threat incident summaries which are forwarded to the Deputy Commissioner for Correctional Facilities and the Associate Commissioner for Prison Rape Elimination Act (PREA). This provides information that can address the Survey of Sexual Victimization if requested from the Bureau of Justice Statistics. The information is used for the Agency report. An example of this monthly report specific to Eastern Correctional Facility was provided with the pre-audit documentation.

(d) The agency shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews

Office of Program Planning Research and Evaluation supports that the data base is set up to capture agency data from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews. It describes the process for data collection, review, storage and reporting of sexual abuse data.

(e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates;

Documentation was provided demonstrating that Information from the private agencies are incorporated into the agency data base and therefore included.

(f) Upon request, the agency shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

The agency provided documentation indicating receipt of the Survey of Sexual Victimization from the DOJ for data from for calendar year 2016.

As stated above, the policies, retention schedule, review of the data gathering operation, interview with the PREA coordinator and PREA Compliance manager all demonstrate that the requirements of this standard are addressed and therefore the standard is deemed to be compliant. There is a report available on the webpage for the agency that provides an in-depth analysis for the years 2013-2016, completed and published December 2018.

## **Standard 115.88: Data review for corrective action**

### **115.88 (a)**

- Does the agency review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by: Identifying problem areas?  Yes  No
- Does the agency review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by: Taking corrective action on an ongoing basis?  Yes  No
- Does the agency review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies,

practices, and training, including by: Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole?  Yes  No

#### 115.88 (b)

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

#### 115.88 (c)

- Is the agency's annual report approved by the agency head and made readily available to the public through its website or, if it does not have one, through other means?  Yes  No

#### 115.88 (d)

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

#### Auditor Overall Compliance Determination

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

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

Office of Program Planning Research and Evaluation – PREA Data Collection, Review, Retention and Publication Manual requires the PREA Analyst to prepare an aggregate data collected in order to assess and improve the effectiveness of its sexual abuse and sexual harassment prevention program. An annual report is prepared which compares the statistics from each year, compares the data and action plans and assesses the program towards prevention. There are no personal identifiers in the report, as required by the manual. Information that may present a clear and specific threat to the safety

and security of a facility can be redacted; however, an explanation of the contents would be provided. This report is available on the NYSDOCCS website and complies with the requirements of this standard. The auditor reviewed the annual reports which analyzed the data for 2013 to 2016. It is twenty-six (26) pages. Problem areas are identified, an analysis of corrective action is provided. It is approved by the Agency head and the PREA Coordinator (noted on the document as well as indicated in their interviews). For these reasons, the auditor finds the standard compliant. The interview with the PREA Coordinator confirmed that a Program Research Specialist in the Program Planning Research and Evaluation department is dedicated to PREA matters. This person is able to monitor trends and communicate directly with the PREA Coordinator to adjust prevention strategies. This was supported by the written responses for the interview with the Acting Commissioner.

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

### 115.89 (a)

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

### 115.89 (b)

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

### 115.89 (c)

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

### 115.89 (d)

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

### Auditor Overall Compliance Determination

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

(a) The agency shall ensure that data collected pursuant to § 115.87 are securely retained. (b) The agency shall 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. (c) Before making aggregated sexual abuse data publicly

available, the agency shall remove all personal identifiers. (d) The agency shall 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.

Office of Program Planning Research and Evaluation – PREA Data Collection, Review, Retention and Publication Manual states that the information is securely retained by the Office of Special Investigations, retained for ten years after the date of the initial collection, personal identifiers are removed before publishing on the website. Interview with the investigators and PREA Coordinator supported that investigations are securely retained. No personal identifiers required redaction on the published data. Therefore, the auditor finds this standard to be in compliance.

## AUDITING AND CORRECTIVE ACTION

### Standard 115.401: Frequency and scope of audits

#### 115.401 (a)

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

#### 115.401 (b)

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

#### 115.401 (h)

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

#### 115.401 (i)

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

#### 115.401 (m)

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

#### 115.401 (n)

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

### Auditor Overall Compliance Determination

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

See comments in audit narrative and response to standards.

### Standard 115.403: Audit contents and findings

#### 115.403 (f)

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

### Auditor Overall Compliance Determination

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

The Agency has 67 facility PREA reports posted on the website site for audits conducted since 2015. There are also 6 contractual community based PREA reports posted. Currently there are 52 correctional facilities (prisons) operating.

## AUDITOR CERTIFICATION

I certify that:

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

Amy J. Fairbanks  
**Auditor Signature**

November 19, 2019  
**Date**