

Prison Rape Elimination Act (PREA) Audit Report Community Confinement Facilities

Interim Final

Date of Interim Audit Report: N/A

Date of Final Audit Report: September 26, 2020

Auditor Information

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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: August 13-14, 2020

Agency Information

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

Agency Chief Executive Officer

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

Agency-Wide PREA Coordinator

Name: Jason D. Effman, Associate Commissioner	
Email: jason.effman@doccs.ny.gov	Telephone: (518) 457-3955
PREA Coordinator Reports to: Acting Commissioner	Number of Compliance Managers who report to the PREA Coordinator: 16

Facility Information

Name of Facility: Hudson Adolescent Offender/Work Release Facility			
Physical Address: 50 East Court Street		City, State, Zip: Hudson, NY 12534-0576	
Mailing Address (if different from above): P. O. Box 576		City, State, Zip: Hudson, NY 12534-0576	
The Facility 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
Facility Website with PREA Information: https://doccs.ny.gov/location/hudson-correctional-facility			
Has the facility been accredited within the past 3 years? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
If the facility has been accredited within the past 3 years, select the accrediting organization(s) – select all that apply (N/A if the facility has not been accredited within the past 3 years):			
<input checked="" type="checkbox"/> ACA			
<input type="checkbox"/> NCCHC			
<input type="checkbox"/> CALEA			
<input type="checkbox"/> Other (please name or describe):			
<input type="checkbox"/> N/A			
If the facility has completed any internal or external audits other than those that resulted in accreditation, please describe: The facility has had various audits throughout the year internally, in addition to a PREA preparatory audit.			
Facility Director			
Name: Donna Lewin, Superintendent			
Email: donna.lewin@doccs.ny.gov		Telephone: 518 828-4311	
Facility PREA Compliance Manager			
Name: Tami Finerow			
Email: tami.finerow@doccs.ny.gov		Telephone: 518 828-4311 ext. 2160	
Facility Health Service Administrator <input type="checkbox"/> N/A			
Name: Dr. Doreen Smith			
Email: Doreen.smith@doccs.ny.gov		Telephone: 518 937 3073	
Facility Characteristics			
Designated Facility Capacity:	252		
Current Population of Facility:	91		
Average daily population for the past 12 months:	99		
Has the facility been over capacity at any point in the past 12 months?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Which population(s) does the facility hold?	<input type="checkbox"/> Females <input checked="" type="checkbox"/> Males <input checked="" type="checkbox"/> Both Females and Males		

Age range of population:	16-62	
Average length of stay or time under supervision	142 days	
Facility security levels/resident custody levels	Minimum-medium	
Number of residents admitted to facility during the past 12 months	237	
Number of residents admitted to facility during the past 12 months whose length of stay in the facility was for 72 hours or more:	236	
Number of residents admitted to facility during the past 12 months whose length of stay in the facility was for 30 days or more:	223	
Does the audited facility hold residents for one or more other agencies (e.g. a State correctional agency, U.S. Marshals Service, Bureau of Prisons, U.S. Immigration and Customs Enforcement)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Select all other agencies for which the audited facility holds residents: Select all that apply (N/A if the audited facility does not hold residents for any other agency or agencies):	<input type="checkbox"/> Federal Bureau of Prisons <input type="checkbox"/> U.S. Marshals Service <input type="checkbox"/> U.S. Immigration and Customs Enforcement <input type="checkbox"/> Bureau of Indian Affairs <input type="checkbox"/> U.S. Military branch <input type="checkbox"/> State or Territorial correctional agency <input type="checkbox"/> County correctional or detention agency <input type="checkbox"/> Judicial district correctional or detention facility <input type="checkbox"/> City or municipal correctional or detention facility (e.g. police lockup or city jail) <input type="checkbox"/> Private corrections or detention provider <input type="checkbox"/> Other - please name or describe: Click or tap here to enter text. <input type="checkbox"/> N/A	
Number of staff currently employed by the facility who may have contact with residents:	260	
Number of staff hired by the facility during the past 12 months who may have contact with residents:	57	
Number of contracts in the past 12 months for services with contractors who may have contact with residents:	2	
Number of individual contractors who have contact with residents, currently authorized to enter the facility:	12	
Number of volunteers who have contact with residents, currently authorized to enter the facility:	43	

Physical Plant

<p>Number of buildings:</p> <p>Auditors should count all buildings that are part of the facility, whether residents are formally allowed to enter them or not. In situations where temporary structures have been erected (e.g., tents) the auditor should use their discretion to determine whether to include the structure in the overall count of buildings. As a general rule, if a temporary structure is regularly or routinely used to hold or house residents, or if the temporary structure is used to house or support operational functions for more than a short period of time (e.g., an emergency situation), it should be included in the overall count of buildings.</p>	43
<p>Number of resident housing units:</p> <p>Enter 0 if the facility does not have discrete housing units. DOJ PREA Working Group FAQ on the definition of a housing unit: How is a "housing unit" defined for the purposes of the PREA Standards? The question has been raised in particular as it relates to facilities that have adjacent or interconnected units. The most common concept of a housing unit is architectural. The generally agreed-upon definition is a space that is enclosed by physical barriers accessed through one or more doors of various types, including commercial-grade swing doors, steel sliding doors, interlocking sally port doors, etc. In addition to the primary entrance and exit, additional doors are often included to meet life safety codes. The unit contains sleeping space, sanitary facilities (including toilets, lavatories, and showers), and a dayroom or leisure space in differing configurations. Many facilities are designed with modules or pods clustered around a control room. This multiple-pod design provides the facility with certain staff efficiencies and economies of scale. At the same time, the design affords the flexibility to separately house residents of differing security levels, or who are grouped by some other operational or service scheme. Generally, the control room is enclosed by security glass, and in some cases, this allows residents to see into neighboring pods. However, observation from one unit to another is usually limited by angled site lines. In some cases, the facility has prevented this entirely by installing one-way glass. Both the architectural design and functional use of these multiple pods indicate that they are managed as distinct housing units.</p>	15
<p>Number of single resident cells, rooms, or other enclosures:</p>	130
<p>Number of multiple occupancy cells, rooms, or other enclosures:</p>	3
<p>Number of open bay/dorm housing units:</p>	2
<p>Does the facility have a video monitoring system, electronic surveillance system, or other monitoring technology (e.g. cameras, etc.)?</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>Has the facility installed or updated a video monitoring system, electronic surveillance system, or other monitoring technology in the past 12 months?</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Medical and Mental Health Services and Forensic Medical Exams

<p>Are medical services provided on-site?</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>Are mental health services provided on-site?</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>Where are sexual assault forensic medical exams provided? Select all that apply.</p>	<input type="checkbox"/> On-site <input checked="" type="checkbox"/> Local hospital/clinic <input type="checkbox"/> Rape Crisis Center <input type="checkbox"/> Other (please name or describe: Click or tap here to enter text.)

Investigations

Criminal Investigations

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

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

Audit Narrative

On August 13-14, 2020, an audit was conducted at the Hudson Correctional Facility to determine compliance with the Prison Rape Elimination Act standards finalized August 2012. The auditor was present at the facility from 7:30 am to 6:00 pm on Thursday, 7:30 am to 1:30 pm on Friday. The facility was previously audited in 2017 and found 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 by the American Correctional Association.

Audit Methodology:

The PREA Resource Audit Instrument used for Community Confinement Facilities is furnished by the National PREA Resource Center. This tool includes the following: A) Pre-Audit Questionnaire (PAQ), sent by Hudson 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. The audit was originally scheduled for April 2020 and rescheduled twice due to the pandemic-COVID 19. The auditor reviewed all documents prepared for that time. Any events relative to the standards occurring beyond that period were discussed during the on-site audit.

Pre-audit:

The facility reported that posters announcing the audit with the auditor's name and address were placed throughout the facility in March 2020 announcing the audit and identifying the auditor's address in English and Spanish. They were reposted with the current auditor's address in July 2020. They were on salient blue paper. 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. No confidential correspondence letters were received in response to the posters announcing the audit. This was also verified by this auditor with contact with the previously scheduled auditor. The auditor's post office box was last checked on August 13, 2020, during the on-site visit.

The PAQ and corresponding documentation was reviewed in July 2020 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. PREA Audit reports were available, PREA Annual Reports, the previous PREA audit report from March 2017 for Hudson 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 no Department of Justice involvement nor any information with relevance to PREA. Contact was made with Just Detention International, Inc. (JDI). No specific information was provided as they had not received any concerns regarding this facility.

One week prior to visiting the audit, the auditor sent a list of documentation that would be required to conduct the random and targeted interviews in accordance with the Auditor Handbook as well as requests for randomly selected documentation which would demonstrate the practice of the requirements.

On-site audit:

Entrance Meeting

A brief formal meeting was held with the Executive Team, AC Effman (PREA Coordinator) and the PREA Compliance Manager, (PREA Deputy/Assistant Deputy Superintendent) the morning of the first day of the audit. The following items were reviewed: purpose of audit, goals, and expectations. Tentative schedules were developed regarding the tour, arrangements made for interviews and review of addition documentation. A plan for random and targeted interviews was developed. Interviews were conducted in a private setting.

Facility Tour

A complete tour of the facility was conducted on August 13, 2020. The following areas and operations were visited and observed: inmate living areas including specialized housing, medical operations, library/education areas, recreation areas (indoors and outdoors), vocational training/programming areas, horticulture/greenhouse, barbershop, chapel area, visiting room, laundry, state shop, commissary, store house, small engine repair and food service operations. All areas of the facility were visited that have inmate access. Camera monitoring operations were observed. Supervision practices, blind spots, shower/bathroom facilities, and placement and number of telephones were observed. Cross-gender announcements were made prior to the opposite gender auditor entering the living units. Posters announcing the audit were observed throughout the facility.

Staff Interviews

In accordance with the requirements of the Auditor Handbook, formal staff interviews were conducted with the following:

- A/Superintendent
- PREA Coordinator
- PREA Compliance Manager (incident review team member, retaliation monitoring)
- PREA Point Person (Captain, monitors for retaliation)
- Deputy Superintendent of Security (incident review team, oversees all investigations deemed not to meet definition of PREA)
- Medical/mental health staff (Director of Nursing, Office of Mental Health staff)
- Human Resources supervisor
- Twelve corrections officers from all areas of the facility and each shift (one who worked in the confinement unit)
- Two shift supervisors
- Two investigators, one of which was the supervisor of the Sex Crimes Unit in the Office of Special Investigation (conducted at a prior audit on August 11, 2020)
Two investigators
- One Offender Rehabilitation Coordinators (ORC) counselor (who complete 30-day follow-up assessments)
- One intake sergeant (who completes the initial intake risk screening)
- Volunteer Coordinator
- Grievance Coordinator
- Mailroom staff
- Recreation staff

Informal interviews were conducted during the tour with one commissary worker, one food service employee (supervisor) and one laundry worker. They were informally asked if they knew their obligation under the PREA laws, and to whom would they report any concerns, and they confirmed they had received the training regarding PREA. Two staff interviewed also functioned as a union representative.

After review of documentation and informal questions throughout the on-site audit, it was concluded that no staff had conducted a cross-gender strip search.

Inmate Interviews

A review of inmate records was conducted with the assistance of the PREA Deputy to identify staff as required by the Auditor Handbook. A total of sixteen (16) inmates were selected to be interviewed. No youthful offenders are housed at this facility at the time of the audit due to the mission change. No inmate was identified as having been placed in segregation for high risk of sexual victimization. No inmates were deaf or legally blind. No inmates had a physical disability. No inmates were cognitively impaired. No inmates had identified prior victimization and no inmate had reported sexual abuse or sexual harassment. No inmates had limited English proficiency, no inmates were identified as homosexual or bi-sexual. The auditor found no reason to dispute this during the audit process. Two inmates self-identified as transgender. Inmate interviews were held in the private interview rooms.

PREA Investigations

Investigations are conducted by the Office of Special Investigations (OSI) who report to the Deputy Commissioner/Chief of Investigations. A list of investigations from February 1, 2019 to January 31, 2020 was provided. Investigations occurring from February 2020 were discussed; documentation requested regarding any of these recent investigations was readily provided to the auditor.

Nine investigations were reviewed for this facility with two investigators. Zero inmate-on-inmate abuse

- Four inmate-on-inmate harassment
- Three staff-on-inmate harassment
- Two staff-on-inmate abuse
- No retaliation allegations

Two investigations were substantiated, six were deemed unsubstantiated none unfounded. One investigation is still ongoing.

Investigations were initiated based on numerous avenues: direct contact to OSI from the resident family member; verbal reports to staff; written to staff and the designated outside agency contact State Commission on Correction (SCOC) office.

Exit meeting

An Exit meeting was held with the A/Superintendent and the Executive staff (six total) to review audit experiences, observations, and preliminary 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 or retain any documentation requested. 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. Throughout the report, offenders are referred to as inmates, not residents to provide consistency in reporting. No corrective action was required for this facility.

Facility Characteristics

Hudson Correctional Facility is about 40 miles south of Albany, New York situated on 168 acres in the Hudson River Valley. In June 2016, part of Hudson Correctional Facility was established as a corrections facility to house 16 and 17-year-old inmates (juveniles termed Adolescent Offenders under New York law). Significant upgrades and renovations were made to the facility at that time to include installation of a fence and security monitoring systems for the Adolescent Offender portion of the facility, separating this portion from an outlying work-release and industrial training unit housing adult inmates. The mission of the facility changed one week prior to the audit. The secure portion of the facility is now housing a vulnerable adult population. Hudson also continues to operate as a work release/industrial training facility for adult inmates.

The facility consists of a double fenced chain-link area of approximately 50 acres which housed residents (male and female) ages 16 and 17, and outside the fenced area another separate large building housing adult offenders (males only) 18 and over, in a work-release multipurpose living, dining, and program building. Inmates are assigned to work release or a prison industry program for training. Count on the day of the audit was ten adult offenders' medium custody, 57 adult offenders minimum/work release offenders.

The fenced compound consists of inmate housing cottages as follows:

- C cottage, floor 1 and floor 2, no occupants
- D cottage, floor 1 and floor 2, currently ten adult occupants
- G cottage housed female Adolescent Offenders, floor 1 served as a female separation unit and infirmary, floor 2 was general population housing, no occupants
- E cottage served as a separation unit for male offenders, no occupants.

Inmates' rooms are single occupancy with a common bathroom/shower area. A day room is located on the first floor. Additionally, there are vocational buildings, food service, chapel, medical (including a two-bed infirmary), and administration building. The facility reports there have been no adolescent offender female inmates since June 9, 2020; the last male adolescent offender left on August 6, 2020.

The Work release facility consists of a large multipurpose building which has intake, dining area, inmate housing (double occupancy cubicles), two sides, 1A & 1B, and common showers and bathrooms.

Adult inmates are assigned to work release, the community industrial program, or transition. Adult inmates may work and volunteer as a cadre population outside of the youth compound (outside of sight and hearing of juvenile residents). Juvenile residents, because of their age under 18, were assigned to full-time, daily/hourly programmatic and academic scheduling. Compound, maintenance, grounds, food service, and other duties inside the fenced facility are assigned to staff. Juvenile residents could volunteer to participate in some work programs outside of their scheduled daily programmatic and educational activities. As the new vulnerable adult population was just received, programming has not been established.

Staff worked interchangeably at the adult and youthful areas of the facility. Staff is specifically trained for Hudson Correctional Facility and its prior special mission of level I minimum security, community adults, and juveniles under 18, separated and out of sight and sound/contact with adult offenders (18 and over). Staff at Hudson C.F. include Departments of Guidance and Counseling, Inmate Records, Temporary Relief Program, Library Services, Recreation, and Volunteer Services, Ministerial Services, Academic and Vocational Education, Employee Assistance Program, Security Services, Food Service, Maintenance, Powerhouse, Personnel, Fiscal Services, and Health Services.

Due to the complex evolving mission of this facility, the use of the words residents and inmates are used interchangeably.

Summary of Audit Findings

Standards Exceeded 13

Number of Standards Exceeded: [Click or tap here to enter text.](#)

List of Standards Exceeded: §115.211 - Zero tolerance of sexual abuse and sexual harassment; PREA coordinator, §115.213 - Supervision & Monitoring, §115.216 – Residents with Disabilities and Residents who are Limited English Proficient, §115.217 – Hiring and Promotion Decisions §115.221 – Evidence Protocol and Forensic Medical Examinations, §115.232 – Volunteer and contractor training, §115.233 – Resident Education, §115.234 – Specialized Training: Investigations, §115.241 – Screening for Risk of Victimization and Abusiveness, §115.242 – Use of Screening Information, §115.253 – Resident Access to Outside Confidential Support Services, §115.267 – Agency protection against retaliation, §115.271 Criminal and Administrative Investigations.

Standards Met

Number of Standards Met: 28

Standards Not Met

Number of Standards Not Met: 0

PREVENTION PLANNING

Standard 115.211: Zero tolerance of sexual abuse and sexual harassment; PREA coordinator

115.211 (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

115.211 (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

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 community confinement 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

The PREA Coordinator was 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 sixteen (16) 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."

The PREA Coordinator is continually examining the process to look for areas of improvement. For this audit, the auditor was provided a revision to the facility Coordinated Response Plans (July 2020) developed by a team of key staff. This plan further streamlined the process to ensure that OSI investigators are immediately notified, even when the allegation is vague so that the OSI investigator can determine the appropriate investigative response. Additionally, improvements to ensure inmates are informed regarding medical and mental health staff having to disclose information or suspicions regarding sexual abuse and sexual harassment prior to the initiation of services has been implemented into the health care orientation packet (required per a mandatory standard by the American Correctional Association) in addition to the pamphlet inmates receive on intake. Lastly, further clarification was added to the policy which directs Offender Rehabilitation Counselors (ORCs) when reviewing a transgender case plan to better document the process where the inmate's safety concerns are met.

Although not required by the standard, this facility is part of the agency and therefore has an assigned PREA Compliance Manager. An Assistant Deputy Superintendent (ADS) serves at the PREA Compliance Manager. In addition to the PREA Compliance Manager, the facility has a PREA Point

person who works with the PREA Compliance Manager along with the Central Office Sexual Abuse Prevention & Education Office (SAPEO). At this facility, this person is the rank of Captain. He maintains copies of Risk Assessments and oversees facility investigations deemed to not meet the definition of a PREA violation but require attention for workplace violations.

This process is supported by a memo from the Deputy Commissioner to all Superintendents requires 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, October 2019. The facility Organization Chart shows that the ADS reports to the Superintendent. An email from the Superintendent dated August 2017, appoints the Captain as the PREA Point Person. The PREA Compliance Manager, DSS and the Captain were all interviewed regarding their duties which demonstrated the team effort utilized at this facility to meet the goals of PREA. All indicated they have sufficient time and authority to coordinate the facility's effort to comply with the PREA standards. All indicated they serve on the PREA incident review team, assist with monitoring for retaliation after allegations are made and monitor training activities. The ADS reports that weekly telephone conference calls are made with the PREA Coordinator to ensure up to date information is communicated, and current issues are addressed.

After review of the policies, memos, organizational charts and interviews with the A/Superintendent, PREA Compliance Manager (ADS), PREA Point Person (Captain) and the PREA Coordinator (Associate Commissioner), 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 standard based on the assignment of additional staff to oversee PREA compliance and the detailed commitment to the standards that will be noted throughout this report.

Standard 115.212: Contracting with other entities for the confinement of residents

115.212 (a)

- If this agency is public and it contracts for the confinement of its residents 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 residents.) Yes No NA

115.212 (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 residents.) Yes No NA

115.212 (c)

- If the agency has entered into a contract with an entity that fails to comply with the PREA standards, did the agency do so only in emergency circumstances after making all reasonable attempts to find a PREA compliant private agency or other entity to confine residents? (N/A if the agency has not entered into a contract with an entity that fails to comply with the PREA standards.) Yes No NA

- In such a case, does the agency document its unsuccessful attempts to find an entity in compliance with the standards? (N/A if the agency has not entered into a contract with an entity that fails to comply with the PREA standards.) 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 residents 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 the 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, Community Missions of Niagara, Pathways Renewed Rescue Mission, Windham Residence 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 NYSDOCCS website for review.

A written interview with the agency Reentry Manager, March 2020 (contract monitor for community programs yielded the following confirmation: "New York State contracts with a number of organizations to provide residential programs for parolees and others subject to community supervision upon release. These include Residential Stabilization Programs (RSP) and Community Based Residential Programs (CBRP). Department Reentry Managers are responsible for contract monitoring of such programs. This includes ensuring that program staff participate in PREA training, that residents receive PREA educational materials and that information is posted, and that Program staff comply with reporting requirements as specified by the Department. The new contracts require full PREA compliance and include quarterly goals to ensure that each program is able to achieve full compliance with the PREA Community Confinement Facilities Standards within one year".

(c) Only in emergency circumstances in which all reasonable attempts to find a private agency or other entity in compliance with the PREA standards have failed, may the agency enter into a contract with an entity that fails to comply with these standards. In such a case, the public agency shall document its unsuccessful attempts to find an entity in compliance with the standards.

All private agencies are required to comply with PREA standards. After review of the documentation and agency website, the auditor concludes that there has not been an emergency circumstance which resulted in using a private agency that has failed to comply with these standards.

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

Standard 115.213: Supervision and monitoring

115.213 (a)

- Does the facility have a documented staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring, to protect residents against sexual abuse? Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: The physical layout of each facility? Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: The composition of the resident population? Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: The prevalence of substantiated and unsubstantiated incidents of sexual abuse? Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: Any other relevant factors? Yes No

115.213 (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

115.213 (c)

- In the past 12 months, has the facility 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 assessed, determined, and documented whether adjustments are needed to prevailing staffing patterns? Yes No
- In the past 12 months, has the facility 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 assessed, determined, and documented whether adjustments are needed to the resources the facility has available to commit to ensure adequate staffing levels? 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) For each facility, the agency shall develop and document a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect residents against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, agencies shall take into consideration: (1) The physical layout of each facility; (2) The composition of the resident population; (3) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and (4) Any other relevant factors.

The PAQ indicates that the average daily population since the last PREA audit is 134. However, the staffing plan is predicated on an inmate population of 252. With the efforts made at the agency to protect inmates from the coronavirus, the population has been greatly reduced as reflected in the count on the day of the audit - 67.

In March 2018, the agency developed and documented a new staffing plan for the Adolescent Offender portion of the facility pursuant to the requirements of 115.313 under the Standards for Juvenile Facilities, including staffing ratios. Hudson CF Security/Chart/Staffing Review 1/23/2020 was reviewed. It is a seven-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 February 2020 entitled Annual Supervision and Monitoring Plan Review, specific to Hudson 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 (Associate Commissioner) in addition to the Director of Security Staffing. It addresses the following:

- (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.

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.”

(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 December 2019 demonstrating the process for having deviations documented. The auditor was provided on-site two additional reports for May 2020 and June 2020, randomly requested. Additionally, while on site, the auditor observed ample staff throughout the facility during the tour. The auditor discussed deviations with the A/Superintendent and found that post closures only occur on non-inmate observation posts.

(c) Whenever necessary, but no less frequently than once each year, the facility shall assess, determine, and document whether adjustments are needed to: (1) The staffing plan established pursuant to paragraph (a) of this section; (2) Prevailing staffing patterns; (3) The facility’s deployment of video monitoring systems and other monitoring technologies; and (4) The resources the facility has available to commit to ensure adequate staffing levels.

Although not required by the community corrections standards, the auditor requested and viewed a video of unannounced rounds for a random date established by the auditor (July 20, 2020). Video was reviewed for B cottage first floor as there were no offenders in the separation unit on the requested date. The auditor also requested and received documentation of supervisory unannounced rounds for 5/18/2020 and June 17, 2020.

As stated, the facility completed the Annual Supervision and Monitoring Plan Review and Staffing review. It addresses the eleven points noted in addition to a review of video monitoring, a detailed assessment of staffing patterns as well as resources available to meet the needs of the operation. Due to the dual mission, it is more detailed than that required of a community corrections operation. Therefore, the auditor finds that this facility exceeds the requirements as set forth for community corrections.

Standard 115.215: Limits to cross-gender viewing and searches

115.215 (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

115.215 (b)

- Does the facility always refrain from conducting cross-gender pat-down searches of female residents, except in exigent circumstances? (N/A if the facility does not have female residents.)
 Yes No NA
- Does the facility always refrain from restricting female residents’ access to regularly available programming or other outside opportunities in order to comply with this provision? (N/A if the facility does not have female residents.) Yes No NA

115.215 (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 residents? (N/A if the facility does not have female residents). Yes No NA

115.215 (d)

- Does the facility have policies that enable residents to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks? Yes No
- Does the facility have procedures that enables residents 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 area where residents are likely to be showering, performing bodily functions, or changing clothing? Yes No

115.215 (e)

- Does the facility always refrain from searching or physically examining transgender or intersex residents for the sole purpose of determining the resident's genital status? Yes No
- If a resident's genital status is unknown, does the facility determine genital status during conversations with the resident, 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

115.215 (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 residents 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. This policy indicates that the exam is only conducted by primary care providers.

(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 residents, absent exigent circumstances. Facilities shall not restrict female residents' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision. (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 residents.

Policy and the interview with the PREA Coordinator confirm that all juvenile residents are pat frisked, and strip searched by staff of the same gender. There is an allowance for exigent circumstances which the facility reports have not occurred. Directive #4910 Control and Search for Contraband 6/28/2019 supports that all opposite gender pat frisks of an Adolescent Offender shall be documented on Form #1140CGPF-AO, "Report of Cross Gender Pat Frisk – Adolescent Offender."

(d) The facility shall implement policies and procedures that enable residents 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 a resident 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 logbook.

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. All of the inmate interviews confirm that opposite gender staff are announcing when entering the unit. All random staff interviews confirmed that this is occurring. 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.

During the tour, the auditor observed the showers located in the individual housing units. The showers have curtains to provide privacy but maintain the ability to view sufficiently to ensure safety. Additionally, during the tour the auditor observed the area where strip searches are conducted in Intake, separation unit, and the Visiting Room. All provided appropriate privacy for the inmate during this process.

The auditor viewed the monitoring station for the camera system and found no view that afforded a female staff to view inmates unclothed (nor a male staff when the facility housed female adolescent offenders).

(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 the 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.

Directive #4910 6/28/2019 confirms that 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 resident, 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 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 clothing over their objection when:
 - The inmate presents their permit to possess and wear gender conforming/transgender clothing 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 clothing 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 clothing, 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 clothing over their objection, the correction officer shall record the date, time, place, and the reason for the pat frisk on Form #1140CGPF-T. "Report of Cross Gender Pat Frisk- Transgender Inmate."
- 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."

The facility reports that no cross-gender pat frisk searches of female residents, nor cross-gender strip searches have occurred. The auditor found no reason to dispute this during the audit process. Review of the policies, memo reflecting updated information, the training curriculum, training records as well as all interviews with staff support a finding of compliance with this standard. All staff interviews confirmed 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. The auditor was provided training reports that confirmed that 100% of security staff have been trained regarding how to Pat Frisk and Strip Frisk inmates. Finally, observations during the tour all support that the facility is compliant with all aspects of the standard.

Standard 115.216: Residents with disabilities and residents who are limited English proficient

115.216 (a)

- Does the agency take appropriate steps to ensure that residents 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: Residents who are deaf or hard of hearing? Yes No
- Does the agency take appropriate steps to ensure that residents 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: Residents who are blind or have low vision? Yes No
- Does the agency take appropriate steps to ensure that residents 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: Residents who have intellectual disabilities? Yes No
- Does the agency take appropriate steps to ensure that residents 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: Residents who have psychiatric disabilities? Yes No
- Does the agency take appropriate steps to ensure that residents 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: Residents who have speech disabilities? Yes No
- Does the agency take appropriate steps to ensure that residents 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 residents 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 residents with disabilities including residents 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 residents with disabilities including residents 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 residents with disabilities including residents who: Are blind or have low vision? Yes No

115.216 (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 residents 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

115.216 (c)

- Does the agency always refrain from relying on resident interpreters, resident readers, or other types of resident assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the resident's safety, the performance of first-response duties under §115.264, or the investigation of the resident'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 residents with disabilities (including, for example, residents 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 residents 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 residents with disabilities, including residents 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 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."

The agency has facilities which are designated to house blind and deaf/hard of hearing inmates (Sensorial Needs Unit – SNU) and therefore has the staff available as well as the resources to assist with those needs. This facility is not designed to house inmates with sensorial deficiencies.

(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 residents 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 8/1/2019 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, Bengali, Haitian-Creole, Russian, Polish, Italian, Simplified Chinese, and Korean. The language needed is noted on the receipt of the PREA Sexual Abuse Brochure provided at the intake process. One completed example was provided with the pre-audit documentation, fifteen additional examples were reviewed.

"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.

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. The auditor used the language line to conduct

two interviews with limited English proficient inmates. In addition, during random staff interviews, many staff, including the intake sergeant, are aware of the availability of the line if its use is needed.

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

Directive #2612 Inmates with Sensorial Disabilities 8/1/2019 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.

The PAQ indicates that no inmate has been used to interpret for another inmate regarding confidential 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. Most random interviews acknowledged they were aware that if no other recourse was available, this can occur; other interviews required prompting to confirm this. Without having a specific scenario to relate this question to, the auditor found no concerns with these responses.

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. The written interview with the Acting Commissioner reiterated his support for all these processes in place. The language line is readily available for needs that arise. 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 readily available.

Standard 115.217: Hiring and promotion decisions

115.217 (a)

- Does the agency prohibit the hiring or promotion of anyone who may have contact with residents 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 residents 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 residents 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 residents 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 residents 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 residents who: Has been civilly or administratively adjudicated to have engaged in the activity described in the question immediately above? Yes No

115.217 (b)

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

115.217 (c)

- Before hiring new employees who may have contact with residents, does the agency: Perform a criminal background records check? Yes No
- Before hiring new employees who may have contact with residents, 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

115.217 (d)

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

115.217 (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 residents or have in place a system for otherwise capturing such information for current employees? Yes No

115.217 (f)

- Does the agency ask all applicants and employees who may have contact with residents 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 residents 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

115.217 (g)

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

115.217 (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 and 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 outlines steps to be taken to prior to filing a position with a candidate.

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. The interview with the Human Resources Supervisor also confirmed that incidents of sexual harassment are considered when determining employment. She indicated that the Director of Personnel will review such cases.

(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 and 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 twelve random newly hired and status employee personnel file. 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 manager).

(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.

(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 form was observed in the appropriate employee files randomly reviewed (civilians).

(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 – 10/7/2019 states information about a former employee will be provided to State agencies without authorization and provided to parties other than State agencies with authorization. The interview with the Human Resource Manager confirmed that she would be free to provide information in accordance with this policy.

Review of policy directives, Employee Manual, and the application process support compliance. The application process requires all new applicants and promotional candidates to answer the questions required in subpart (a). 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 investigative unit has a process to ensure that this check would reveal if the employee quit pending an investigation. This was all reiterated during the interview with the Human Resource supervisor.

After analysis of the noted written documentation, interviews and observations, the auditor finds that agency/facility 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 and continually reported.

Standard 115.218: Upgrades to facilities and technologies

115.218 (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 residents 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

115.218 (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 residents 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 A/Superintendent supports this as well. The PAQ indicates that no physical plant expansions or modifications have occurred since the previous PREA audit. This was confirmed with interviews with the staff and observations on site. 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.

As stated, the monitoring system was reviewed, and the auditor found no concerns regarding PREA requirements. For these reasons, the auditor finds the facility in compliance with this standard.

RESPONSIVE PLANNING

Standard 115.221: Evidence protocol and forensic medical examinations

115.221 (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

115.221 (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

115.221 (c)

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

115.221 (d)

- Does the agency attempt to make available to the victim a victim advocate from a rape crisis center? Yes No
- If a rape crisis center is not available to provide victim advocate services, does the agency make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member? (N/A if agency *always* makes a victim advocate from a rape crisis center available to victims.) Yes No NA
- Has the agency documented its efforts to secure services from rape crisis centers? Yes No

115.221 (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

115.221 (f)

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

115.221 (g)

- Auditor is not required to audit this provision.

115.221 (h)

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

Auditor Overall Compliance Determination

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

(a) 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 Reporting & Investigation -Inmate on Inmate (11/29/2017) and #4028B Sexual Abuse Reporting & Investigation -Staff on Inmate/Staff-on-Parolee (11/29/17) outline in detail the requirements for the collection of evidence regarding inmate-on-inmate abuse for use for a situation when evidence must be collected at the facility level. Directive #0700 Office of Special Investigations (OSI) (11/28/2018) addresses the role of the Office of Special Investigations (OSI) Sex Crimes Division (SCD) who conduct investigations involving sexual misconduct.

(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.

The New York State Department of Corrections and Community Supervision (DOCCS) does not conduct on-site forensic medical examinations. In accordance with DOCCS policies, when evidentiary or medically appropriate, a victim of sexual abuse shall be transported to an outside hospital and shall be provided treatment and services as required by the laws, regulations, standards and policies established by the State of New York and administered by the New York State Department of Health. The New York State Department of Health requires hospitals to follow "A National Protocol for Sexual Assault Medical Forensic Examinations Adults/Adolescents Second Edition."

(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, Chapter 20 Sex Crimes Division (provided to and reviewed by the auditor).

The PAQ indicates that during the audit period, no SANE exams were conducted. The auditor found no reason to dispute this during the audit process.

(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 (May 2014) 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/ statement of compliance from the PREA Coordinator confirming this. As noted, the hospital Sexual Assault Team will provide this individual with a victim advocate from the community.

Several of the agency trained investigators have become certified for evidence collection and photographing of crime scenes, above and beyond the specialized training required of investigators (certificates provided to the auditor) therefore ensuring a uniform accurate evidence protocol is followed. 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 115.222: Policies to ensure referrals of allegations for investigations

115.222 (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

115.222 (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

115.222 (c)

- If a separate entity is responsible for conducting criminal investigations, does the policy describe the responsibilities of both the agency and the investigating entity? (N/A if the agency/facility is responsible for conducting criminal investigations. See 115.221(a).) Yes No NA

115.222 (d)

- Auditor is not required to audit this provision.

115.222 (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, Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee, Directive #4027B Sexual Abuse Reporting & Investigation -Inmate on Inmate (11/29/2017) and #4028B Sexual Abuse Reporting & Investigation -Staff on Inmate/Staff-on-Parolee (11/29/17) all 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/department.

(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.

Policies noted above, interviews with the investigators and review of nine investigations from the established 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 collaborates with the State Police on any matters that may appear to be criminal as established by the confidential manual.

TRAINING AND EDUCATION

Standard 115.231: Employee training

115.231 (a)

- Does the agency train all employees who may have contact with residents on: Its zero-tolerance policy for sexual abuse and sexual harassment? Yes No
- Does the agency train all employees who may have contact with residents 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 residents on: Residents' right to be free from sexual abuse and sexual harassment Yes No
- Does the agency train all employees who may have contact with residents on: The right of residents 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 residents on: The dynamics of sexual abuse and sexual harassment in confinement? Yes No
- Does the agency train all employees who may have contact with residents on: The common reactions of sexual abuse and sexual harassment victims? Yes No
- Does the agency train all employees who may have contact with residents 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 residents on: How to avoid inappropriate relationships with residents? Yes No
- Does the agency train all employees who may have contact with residents on: How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming residents? Yes No
- Does the agency train all employees who may have contact with residents on: How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities?
 Yes No

115.231 (b)

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

115.231 (c)

- Have all current employees who may have contact with residents 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

115.231 (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 residents 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) Residents' right to be free from sexual abuse and sexual harassment; (4) The right of residents 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 residents; (9) How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming residents; 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 includes a module on Professional Boundaries.

Training Manual Section #7.000 4/19/2018, 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.

Recruit Training Program 7/10/2017 ensures that sexual abuse prevention and response training is addressed in recruit training. It is a 3-hour training

Training Bulletin 1/8/2018 ensures that PREA refresher is addressed at line-up training annually. It includes the following topics: zero tolerance for sexual abuse and sexual harassment; definitions of sexual abuse and sexual harassment; all staff have a duty to report including third party allegations, staff neglect and misconduct and anonymous allegations; how to report and investigation of all allegations, supervision and monitoring, employee training and limits to cross gender viewing.

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.

A report demonstrating that 100% of staff have been trained for course 35029, Preventing Sexual Abuse, and 17078 PREA Refresher was provided to the auditor.

(b) Such training shall be tailored to the gender of the residents at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male residents to a facility that houses only female residents, 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 and female inmates due to previously housing female adolescent offenders. The PREA Introduction/Transfer Training for male classified facilities updated 12/9/2019 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. Personnel files were reviewed which confirmed orientation training received upon arrival at this facility (as required by NYSDOCCS), which did include PREA refresher training.

(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.

As stated, 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 640 staff have been trained. PREA Refresher 2020 training was underway during the first quarter of 2020, in conjunction with two other "Commissioner's Initiative" Courses "Stereotype Threat" and "Ensuring Professional Interactions with LGBTIQ+ People". Many random staff interviewees did report they had recently attended this training.

(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." One example of this form was provided with the pre-audit documentation.

After review and analysis of the documentation, interviews with staff, the auditor concludes that the standard is deemed compliant. 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. Documentation of training records for courses 35029 PREA and 17078 Refresher were provided to further support that the facility is compliant. It demonstrated that all staff have been trained. Twelve randomly selected correctional staff were interviewed while touring the facility. Some were very experienced, some had under two years' experience. Additionally, a representative of the union was interviewed regarding PREA training, knowledge and any concerns noted by the union. All staff interviews support that staff have received the training and staff were knowledgeable regarding the various aspects required by the standard.

Standard 115.232: Volunteer and contractor training

115.232 (a)

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

115.232 (b)

- Have all volunteers and contractors who have contact with residents 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 residents)? Yes No

115.232 (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 residents 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 residents, but all volunteers and contractors who have contact with residents 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 . . . 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 noting that the applicant understands the training they have received.

No volunteers were present that could be interviewed while the auditor was present at the facility. This was due to the pandemic (coronavirus) restricting volunteer activities. The auditor was given access to all volunteer records, forty-two (42) 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. A refresher is required annually for regularly attending volunteers, therefore

exceeding the standard. These files were highly organized. The process to ensure this occurs was verified with an interview the volunteer coordinator.

Contractual staff signs acknowledgements noting that understood the training they receive. At this facility, no contractual staff are used. However, the auditor reviewed sixteen (16) files for construction workers on site for a project. They acknowledge by signature that they have been informed of the agency's sexual abuse and sexual harassment prevention, detection and response policies and procedure 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 reviewed volunteer and contractor documentation, the auditor finds sufficient evidence to support a finding of exceeds compliance with this standard based on the required annual refresher training for regular volunteers.

Standard 115.233: Resident education

115.233 (a)

- During intake, do residents receive information explaining: The agency's zero-tolerance policy regarding sexual abuse and sexual harassment? Yes No
- During intake, do residents receive information explaining: How to report incidents or suspicions of sexual abuse or sexual harassment? Yes No
- During intake, do residents receive information explaining: Their rights to be free from sexual abuse and sexual harassment? Yes No
- During intake, do residents receive information explaining: Their rights to be free from retaliation for reporting such incidents? Yes No
- During intake, do residents receive information regarding agency policies and procedures for responding to such incidents? Yes No

115.233 (b)

- Does the agency provide refresher information whenever a resident is transferred to a different facility? Yes No

115.233 (c)

- Does the agency provide resident education in formats accessible to all residents, including those who: Are limited English proficient? Yes No
- Does the agency provide resident education in formats accessible to all residents, including those who: Are deaf? Yes No
- Does the agency provide resident education in formats accessible to all residents, including those who: Are visually impaired? Yes No

- Does the agency provide resident education in formats accessible to all residents, including those who: Are otherwise disabled? Yes No
- Does the agency provide resident education in formats accessible to all residents, including those who: Have limited reading skills? Yes No

115.233 (d)

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

115.233 (e)

- In addition to providing such education, does the agency ensure that key information is continuously and readily available or visible to residents through posters, resident 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, residents 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 residents 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 residents 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 resident's new facility differ from those of the previous facility.

The PAQ reports that all inmates have received the education on PREA, in addition to a memo from the PREA Coordinator confirming this 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 resident 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." One example of both types of documentation was provided to the auditor with the pre-audit documentation.

(f) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to residents through posters, residents 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. The auditor viewed the pamphlets and a reference binder located in the inmate library. It was conveyed to the auditor that any inmate can take and view without having to ask permission. The binder is labeled subtly so that it is not easy for others to readily know what the inmate is viewing. The auditor briefly observed orientation for nine inmates. The

video directed for female inmates was viewed, then key staff personally addressed the inmates (the Superintendent and the PREA Deputy). The PREA Deputy states she does this for all sessions at this facility. This demonstrated to the auditor that a sound, meaningful system is in place to ensure that inmates provided this information.

PAQ reports that 237 inmates received comprehensive information during the previous 12-month audit evaluation period. 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. Eleven inmate files were randomly selected; documentation provided that demonstrated training at orientation and/or Phase I of transition services. 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. As stated, the auditor viewed the video. The video used at orientation has been filmed in New York DOCCS using inmates confined in this state. It is twenty-four minutes long. It reviews personal testimony from numerous male 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. There is an additional video that would be shown to the female adolescent offenders which utilized female inmates to provide the information.

Additionally, information regarding PREA and JDI is discreetly available in the library and law library. The auditor reviewed the non-labeled binder and found resourceful information available for the inmate to use as desired.

Inmate interviews confirmed that they are effectively educated regarding their right to be free from sexual abuse and sexual harassment, their right to be free from retaliation, zero tolerance for sexual abuse or sexual harassment, how to file a complaint and agency policy regarding this.

For all the reason stated, the auditor finds ample evidence to support a finding of compliance. Additionally, the auditor believes the facility exceeds the standard based on the extensive information provided at intake via video and in person, the education provided at orientation, the additional education provided for inmate in Transition Phase I, the numerous culturally diverse posters located throughout the facility, the feedback received during the inmate interview, the availability of pamphlets and the video which can be given in eight different languages.

Standard 115.234: Specialized training: Investigations

115.234 (a)

- In addition to the general training provided to all employees pursuant to §115.231, does the agency ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators receive training in conducting such investigations in confinement settings? (N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.221(a).)
 Yes No NA

115.234 (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 115.221(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 115.221(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 115.221(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 115.221(a).) Yes No NA

115.234 (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 115.221(a).) Yes No NA

115.234 (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.

(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.

Office of Special Investigations (OSI), Sex Crimes Division (SCD) 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 provided to the auditor.

The PAQ reports that the agency has thirty-one (31) trained investigators for PREA allegations. Policy noted above and additional documentation showing the training curriculum support a finding of compliance. Documentation (a spread sheet showing training provided and hire dates was provided to the auditor demonstrating the following:

All investigators have received the following:

- PREA training and PREA Refresher training
- OSI Investigative Course
- NIC Investigation Sexual Abuse in a Confinement Setting
- NIC Communicating Effectively and Professionally with LGBTI Offenders
- Interview and Interrogation Course
- Strangulation

Other Specialized Courses received by some of the investigators include:

- Forensic Experiential Trauma Interview (FETI)
- Advocate Training
- Basic Investigative Photography
- Police Crime Scene and Evidence Specialist
- Certified Inspector General Investigator
- Reid Technique Interview and Interrogation
- Cell phone search

Review of the documentation shows that the investigation unit has significant experience in the unit, received the required training, and has received additional above and beyond training. Therefore, the auditor finds that the facility exceeds the standards.

Standard 115.235: Specialized training: Medical and mental health care

115.235 (a)

- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in: How to detect and assess signs of sexual abuse and sexual harassment? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners who work regularly in its facilities.)
 Yes No NA
- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in: How to preserve physical evidence of sexual abuse? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners who work regularly in its facilities.) Yes No NA
- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in: How to respond effectively and

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

- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in: How and to whom to report allegations or suspicions of sexual abuse and sexual harassment? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners who work regularly in its facilities.) Yes No NA

115.235 (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 does not employ medical staff or the medical staff employed by the agency do not conduct forensic exams.) Yes No NA

115.235 (c)

- Does the agency maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners who work regularly in its facilities.) Yes No NA

115.235 (d)

- Do medical and mental health care practitioners employed by the agency also receive training mandated for employees by §115.231? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners employed by the agency.) Yes No NA
- Do medical and mental health care practitioners contracted by and volunteering for the agency also receive training mandated for contractors and volunteers by §115.232? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners contracted by or volunteering for the agency.) Yes No NA

Auditor Overall Compliance Determination

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

(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.

Medical staff are Department of Corrections employees. 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. 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 Emergency Room 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. (d) Medical and mental health care practitioners shall also receive the training mandated for employees under § 115.231 or for contractors and volunteers under § 115.232, depending upon the practitioner's status at the agency.

The PAQ reports there are twelve medical and mental health staff; training is 100% compliant. Documentation was provided which demonstrated that all medical and mental health staff have received the specialized training; random requested documentation demonstrates that they have also attended the regular PREA training that all staff receive. Staff signs the Report of Training Form acknowledging participation in the course; records are maintained by the training staff. Interviews with the nursing supervisor and mental health staff confirm this training occurs. The auditor therefore finds that the facility meets all the requirements of this standard support a finding of compliance.

SCREENING FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS

Standard 115.241: Screening for risk of victimization and abusiveness

115.241 (a)

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

115.241 (b)

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

115.241 (c)

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

115.241 (d)

- Does the intake screening consider, at a minimum, the following criteria to assess residents for risk of sexual victimization: Whether the resident has a mental, physical, or developmental disability? Yes No
- Does the intake screening consider, at a minimum, the following criteria to assess residents for risk of sexual victimization: The age of the resident? Yes No
- Does the intake screening consider, at a minimum, the following criteria to assess residents for risk of sexual victimization: The physical build of the resident? Yes No
- Does the intake screening consider, at a minimum, the following criteria to assess residents for risk of sexual victimization: Whether the resident has previously been incarcerated?
 Yes No
- Does the intake screening consider, at a minimum, the following criteria to assess residents for risk of sexual victimization: Whether the resident's criminal history is exclusively nonviolent?
 Yes No
- Does the intake screening consider, at a minimum, the following criteria to assess residents for risk of sexual victimization: Whether the resident 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 residents for risk of sexual victimization: Whether the resident is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming (the facility affirmatively asks the resident about his/her sexual orientation and gender identity AND makes a subjective determination based on the screener's perception whether the resident 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 residents for risk of sexual victimization: Whether the resident has previously experienced sexual victimization? Yes No
- Does the intake screening consider, at a minimum, the following criteria to assess residents for risk of sexual victimization: The resident's own perception of vulnerability? Yes No

115.241 (e)

- In assessing residents 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 residents 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 residents 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

115.241 (f)

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

115.241 (g)

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

115.241 (h)

- Is it the case that residents 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

115.241 (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 resident's detriment by staff or other residents? 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 residents shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other residents 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. Albion Correctional Facility Operations Manual PREA Risk Screening 1709 states, Screening will be completed by a sergeant or above ordinarily within 24 hours of arrival. Directive #4021 Inmate Reception/Classification (1/23/2019) 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 that 236 inmates have been screened for risk of sexual victimization and risk of sexual abusiveness. Inmate interviews and random review of ten inmate files and all confirmed that this assessment is taking place immediately upon arrival. An additional sixteen (16) risk assessments were provided to the auditor for further review. They demonstrated compliance with the standard and the agency process.

(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 residents for risk of sexual victimization: (1) Whether the residents has a mental, physical, or developmental disability; (2) The age of the inmate;(3) The physical build of the residents; (4) Whether the residents has previously been incarcerated; (5) Whether the resident's criminal history is exclusively nonviolent; (6) Whether the residents has prior convictions for sex offenses against an adult or child; (7) Whether the residents is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming; (8) Whether the residents has previously experienced sexual victimization; (9) The resident's own perception of vulnerability; and (10) Whether the residents 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 residents 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. An example of a completed Risk Assessment was sent to the auditor with the pre-audit documentation.

A Gender Identity Interview process has been developed and recently refined. A form (115.41GI) with specific interview questions is completed by the ORC. One question is specifically dedicated to asking the individual for any information they may wish to provide with respect to their safety in connections with decisions regarding housing and placement. 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 #6.002 Adolescent Offenders, 2/22/2020 and 6.004 Work Release 2/22/2020, states Inmates will be reassessed by an assigned 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 or #115.41F, 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 for the reassessment. One column is designed to be completed by the Intake Sgt, the other by ORC. This allows the ORC to have an immediate review of the information received at the first assessment.

The PAQ indicates that this has occurred 236 times during the designated audit review period. Interviews with the 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 eleven random inmate files confirmed that the ORC review has occurred. It is also documented in the chronological statement as well as on the portion of the form designated to be completed by this review.

(g) An resident'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 resident's risk of sexual victimization or abusiveness.

Facility Operations Manual PREA Risk Screening #6.002 and 6.004 state, 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 utilizing a new intake screening Form 115.41M or 115.41F. No examples of this were available for review; however, the system is in place. The ORC, as required by the agency, reviews a portion of risk assessment at least every 90 days when the inmates have their quarterly assessment with the ORC. If behavior changes are observed, a new risk assessment can be conducted, if warranted. This was confirmed by the interview with an ORC.

(h) Residents 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 #6.002 & 6.004 state, inmates will not be disciplined for refusing to answer or for not disclosing complete information in response to questions asked. Approximately four 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." This was also stated by the Sergeant who conducts the initial risk assessment.

(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 resident's detriment by staff or other inmates.

Facility Operations Manual PREA Risk Screening #6.002 and 6.004 state, PREA Intake Screening Forms (Form 115.41M/115.41F) is confidential. The completed form shall be filed in the Guidance Folder (Assessments Section), and distribution shall be limited to the Watch Commander, Assistant Deputy Superintendent PREA Compliance Manager and Captain/PREA Point Person. Access to completed forms is limited to the Executive Team and Guidance Staff with a business necessity to review the completed forms. Noted on the form is the following: Information contained on this form shall not be disclosed to anyone other than the extent necessary to make security, classification, housing/placement, programing, treatment, investigation and other security and management options. The 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 as follows: Original – File in Guidance Folder (Section IV); Copies – ADS PREA, Captain/PREA Point Person. This was reinforced by the interview with the PREA Deputy.

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 follow-up assessment. The ADS (PREA Compliance Manager) or PREA Point Person (Captain) reviews and makes a final determination on the risk assessment. The auditor confirmed through interviews where the assessments are stored and that only staff with authorization have access to view them. The staff involved in the screening process 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. To further assess compliance, the auditor requested that last eleven inmate records who had been received; all had the appropriate risk assessment initially completed by the sergeant and reviewed by the ORC. The auditor finds that the facility qualifies for a finding of "exceeds standard" based on the immediate review, secondary, third and final review of the assessment process, re-assessment every 90 days, as well as the procedure to ensure the communication of the safety needs of the inmate based on the finding of the risk assessment.

Standard 115.242: Use of screening information

115.242 (a)

- Does the agency use information from the risk screening required by § 115.241, with the goal of keeping separate those residents 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 § 115.241, with the goal of keeping separate those residents 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 § 115.241, with the goal of keeping separate those residents 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 § 115.241, with the goal of keeping separate those residents 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 § 115.241, with the goal of keeping separate those residents at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Program Assignments? Yes No

115.242 (b)

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

115.242 (c)

- When deciding whether to assign a transgender or intersex resident to a facility for male or female residents, does the agency consider on a case-by-case basis whether a placement would ensure the resident's health and safety, and whether a placement would present management or security problems (NOTE: if an agency by policy or practice assigns residents 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 residents, does the agency consider on a case-by-case basis whether a placement would ensure the resident's health and safety, and whether a placement would present management or security problems? Yes No

115.242 (d)

- Are each transgender or intersex resident'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

115.242 (e)

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

115.242 (f)

- 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 residents, does the agency always refrain from placing: lesbian, gay, and bisexual residents in dedicated facilities, units, or wings solely on the basis of such identification or status? (N/A if the agency has a dedicated facility, unit, or wing solely for the placement of LGBT or I residents pursuant to a consent decree, legal settlement, or legal judgement.) Yes No NA
- Unless placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting lesbian, gay, bisexual, transgender, or intersex residents, does the agency always refrain from placing: transgender residents in dedicated facilities, units, or wings solely on the basis of such identification or status? (N/A if the agency has a dedicated facility, unit, or wing solely for the placement of LGBT or I residents pursuant to a consent decree, legal settlement, or legal judgement.) Yes No NA
- Unless placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting lesbian, gay, bisexual, transgender, or intersex residents, does the agency always refrain from placing: intersex residents in dedicated facilities, units, or wings solely on the basis of such identification or status? (N/A if the agency has a dedicated facility, unit, or wing solely for the placement of LGBT or I residents pursuant to a consent decree, legal settlement, or legal judgement.) Yes No NA

Auditor Overall Compliance Determination

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

(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 residents 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 resident.

Facility Operations Manual PREA Risk Screening #6.002 & 6.004 state, 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. The interview with the Watch Commander confirmed this process. An example was sent to the auditor with the pre-audit documentation.

(c) In deciding whether to assign a transgender or intersex resident to a facility for male or female residents, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the resident'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 Deputy Superintendent for Program Services 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 resident 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. Inmate interviews confirmed this assessment occurs when interviewed during the audit. The most recent revision specifically states, "Placement and programming assignments for each transgender or intersex inmate shall be reassessed during each Case Plan Review to review any threats to safety experienced by the inmate. Form #115.41GI will be reviewed, verified as current and accurate, or updated at the Case Plan Review, or, as necessary, at any time there is a change in circumstances. Upon review, if the information contained in Form #115.41GI remains current and accurate, the ORC shall note the same in the chronological entry of the Guidance File."

(e) A transgender or intersex resident'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 residents 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 provided the auditor with a memo regarding Transgender Showers. It confirms the availability of daily showers alone for transgender inmates if they choose.

(g) The agency shall not place lesbian, gay, bisexual, transgender, or intersex residents 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 residents.

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 115.41M/115.41F 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 eleven examples were provided to the auditor on site' they also demonstrated compliance. Additional notifications to the program staff regarding inmates requiring attention were also provided for the auditor to review the process. As stated, at this facility, all inmates are reassessed quarterly, and asked questions again related to sexual abuse/harassment safety. This was confirmed by staff interviews, inmate interviews and a review of the random files. Documentation showing that a transgender inmate's own views are given serious consideration was provided to the auditor. The transgender/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, A/Superintendent, Captain/PREA Point Person and inmates all provide sound evidence for the auditor to find the facility substantially exceeds compliance with this standard.

REPORTING

Standard 115.251: Resident reporting

115.251 (a)

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

115.251 (b)

- Does the agency also provide at least one way for residents 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 resident reports of sexual abuse and sexual harassment to agency officials? Yes No
- Does that private entity or office allow the resident to remain anonymous upon request? Yes No

115.251 (c)

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

115.251 (d)

- Does the agency provide a method for staff to privately report sexual abuse and sexual harassment of residents? 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 residents to privately report sexual abuse and sexual harassment, retaliation by other residents 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 - 11/29/17 and #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 manual and the pamphlet received upon intake that they can tell any staff, contract or volunteer. DOCCS OSI recently implemented a 444 misconduct reporting line which is documented in postings near the phone. All inmate interviews confirmed that they were aware of multiple avenues for making a report. Most indicated they would call the 777 PREA rape crisis hotline number, noting they observed the information on the posters by the phone.

(b) The agency shall also provide at least one way for residents 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 resident 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 DOCCS for investigation. This is confirmed by a memo from the Chairman of the Commission. This information is provided in the pamphlet given to inmates upon arrival, The Prevention of Sexual Abuse in Prison, What Inmates Need to Know. As noted, one investigation illustrated an investigation initiated from contacting this agency. The New York State Department of Corrections and Community Supervision does not detain inmates solely for civil immigration purposes. However, 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.

(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 emphasizes the requirement that staff must accept and forward 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 through 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 (OSI) by calling their number directly or sending an email directly to them. This is reinforced in the PREA training and on individually issues pocket size PREA Response cards for staff. All staff interviews supported that they are aware they have a private mechanism for reporting. Most commented that they could contact OSI directly, noting that this information is noted on their facility Response Card.

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. Responses were consistent with the report being made immediately and either through their direct supervisor to the Watch Commander, or directly to the Watch Commander. 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 supervisor immediately sends a copy to the Watch Commander. To ensure this, the auditor requested and received two grievances filed in the previous twelve months that required a potential PREA investigation. The interview with the Grievance Supervisor confirmed that inmates receive appropriate notification indicating that the complaint is deemed exhausted upon filing for Prison Litigation Reform Act (PLRA) purposes. A copy of this form was provided to the auditor for review. This interview further confirmed that anything that may resemble a PREA allegation is forwarded to the Watch Commander as appropriate for review. Additionally, the interview with the Assistant Deputy Superintendent/PREA Compliance Manager confirmed this process.

As stated in the narrative, investigations were initiated by numerous avenues: direct contact to OSI from the inmate/parolee family member; verbal reports to staff; written to staff and the designated outside agency contact State Commission on Correction (SCOC) office.

Review of the policies, investigations, interviews with staff and inmates, information provided at orientation educating inmates on how to file a report outside the agency, all provided the auditor with sufficient evidence to support a finding of compliance with the standards.

Standard 115.252: Exhaustion of administrative remedies

115.252 (a)

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

115.252 (b)

- Does the agency permit residents 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 a resident 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

115.252 (c)

- Does the agency ensure that: A resident 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

115.252 (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 residents in preparing any administrative appeal.) (N/A if agency is exempt from this standard.) Yes No NA
- If the agency determines that the 90-day timeframe is insufficient to make an appropriate decision and claims an extension of time (the maximum allowable extension of time to respond is 70 days per 115.252(d)(3)) , does the agency notify the resident 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 resident does not receive a response within the time allotted for reply, including any properly noticed extension, may a resident 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

115.252 (e)

- Are third parties, including fellow residents, staff members, family members, attorneys, and outside advocates, permitted to assist residents 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 residents? (If a third-party files such a request on behalf of a resident, 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 resident declines to have the request processed on his or her behalf, does the agency document the resident's decision? (N/A if agency is exempt from this standard.)
 Yes No NA

115.252 (f)

- Has the agency established procedures for the filing of an emergency grievance alleging that a resident 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 a resident 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 resident 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

115.252 (g)

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

Auditor Overall Compliance Determination

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

DOCCS Directive #4040, Inmate Grievance Program (IGP) 1/20/2016, confirms that an inmate is not required to file a grievance about sexual abuse or sexual harassment. Additionally, a memo from the Deputy Commissioner dated 5/15/2019 addresses the process to ensure that any allegation that appears to be about sexual abuse, sexual harassment, or retaliation for a prior complaint regarding sexual abuse and sexual harassment be handled appropriately as already noted in 115.51. 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. As noted, this process was confirmed by a brief interview with the Grievance Coordinator. The agency has opted to be exempt from this standard.

Standard 115.253: Resident access to outside confidential support services

115.253 (a)

- Does the facility provide residents with access to outside victim advocates for emotional support services related to sexual abuse by giving residents 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 enable reasonable communication between residents and these organizations and agencies, in as confidential a manner as possible? Yes No

115.253 (b)

- Does the facility inform residents, 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

115.253 (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 residents 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 residents with access to outside victim advocates for emotional support services related to sexual abuse by giving residents 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 residents 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 Campus. 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. As of October 1, 2019, eight current PREA service providers across the state have staff specifically trained to assist incarcerated individuals at all 52 of the NYSDOCCS facilities. 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.

Telephones are available in the housing units, including the separation unit, . Hudson did not use the tablets for phone use in the separation unit while housing Adolescent Offenders. They were afforded phone calls with the rolling cart phones. Moving forward, Hudson will be utilizing the tablets for phone usage in the separation unit. There are phones in the yard and two available in the gym.

(b) The facility shall inform residents, 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 also provides the agency's address should an inmate wish to correspond instead of talk on the phone. 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 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, Family Services, RESTORE Sexual Assault Services, Safe Harbors of the Finger Lakes, Sexual Assault & Crime Victims Assistance Program at Samaritan Hospital, Victims Assistance Center of Jefferson County, 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 their 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 5/21/2015, 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 9/18/2019, 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. It addresses that any local, state or national organization authorized to provide rape crisis services, victim advocacy services, and emotional support services is considered 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. These State agencies in turn contract with the New York State Coalition Against Sexual Assault and a community service provider to provide both a state-wide rape crisis hotline and, through additional community services providers, a partnership that provides emotional support and victim advocacy services to inmates in all of the State's 52 correctional facilities. Locally, the Sexual Assault & Crime Victims Assistance Program at Samaritan Hospital, part of Northeast Health Foundation, Inc., 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 2021. One example of documentation demonstrating that PREA counseling was requested via the hotline was provided to the auditor with the pre-audit documentation. 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 widely available to inmates within the facility, and the name, address and phone number for Sexual Assault & Crime Victims Assistance Program at Samaritan Hospital is posted on every housing unit.

During the onsite audit, the auditors observed a poster next to every inmate phone providing information on how to access the PREA 777 rape crisis hotline. Many phone areas provide a booth or a separated room for the telephones. 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. This area was observed during the tour. 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. Approximately half of the inmates interviewed indicated 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 as the information is readily available and visible to the inmate population.

Documentation was provided to the auditor reflecting that the 777 number was called one time in June 2020. The interview with the mailroom staff confirmed that written correspondence from the outreach specialist is handled in the same manner as legal mail, opened in the presence of the inmate to protect confidentiality as noted in the mail police.

The auditor spoke to the Program Coordinator for the Crisis Services which receives all calls statewide from the 777 number. She confirmed that her staff receive a background check prior to working for this organization. Additionally, staff receive the required forty (40) hours of training to be certified by the New York State Department of Health. She indicated that staff do also receive on-site additional training for working with incarcerated offenders.

Analysis of the evidence supporting compliance with the standard requirements:
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 NYSDOCCS the most comprehensive services for incarcerated individuals in the nation, therefore meeting the criteria for "exceeds standards." For all the reason stipulated above, the auditor finds this facility/agency exceeds the requirements of this standard.

Standard 115.254: Third-party reporting

115.254 (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 a resident? 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 a resident.

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, Reporting Sexual Abuse and how third-party reports on behalf of an inmate can be made. The website complaint form was tested and received the appropriate, swift response from the agency. This online

complaint form provides an anonymous option. Interviews with the agency investigators confirmed that they have received complaints through this process. An example of a complaint received from a family member was provided to the auditor with the pre-audit documentation which further demonstrated compliance. Therefore, the auditor finds this standard to be deemed compliant.

OFFICIAL RESPONSE FOLLOWING A RESIDENT REPORT

Standard 115.261: Staff and agency reporting duties

115.261 (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 residents 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

115.261 (b)

- Apart from reporting to designated supervisors or officials, do 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

115.261 (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 residents of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services? Yes No

115.261 (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

115.261 (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. Additionally, improvements to ensure inmates are informed regarding medical and mental health staff having to disclose information or suspicions regarding sexual abuse and sexual harassment prior to the initiation of services has been implemented into the health care orientation packet (required per a mandatory standard by the American Correctional Association) in addition to the pamphlet inmates receive on intake.

(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 statutes 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. As stated by the PREA Coordinator, "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. Directive #0700Office of Special Investigations (OSI) supports the following:

Sex Crimes Division: The Sex Crimes Division (SCD) conducts investigations involving unauthorized relationships and sexual misconduct between inmates or parolees and Departmental staff, as well as inmate-on-inmate sexual abuse. Furthermore, the SCD coordinates with outside law enforcement and prosecutors in the development of these cases for criminal prosecution. The SCD also collaborates with others within the Department to ensure compliance with the Prison Rape Elimination Act (PREA).

In addition, the MOU with OMH supports that mental health staff will report any knowledge or suspicion of sexual misconduct directly to the Watch Commander. The interview with mental health staff confirmed that she and her staff are aware of this obligation.

Interviews with security staff, security supervisors, the Watch Commander, and non-first responders support a strong knowledge of the process. The A/Superintendent confirmed that all allegations will be reported to the investigators via the Watch Commander. The auditor did not find any instance of an allegation that was not reported using this process during the PREA audit. In addition, staff has been issued pocket cards that reflect the process. All staff interviewed had the card on their person. Interviews with the investigators ensured they are receiving all allegations of sexual abuse or sexual harassment immediately for their review and action. As noted in the narrative, allegations were received verbally, in writing, through the rape crisis hotline, directly to OSI via relatives and even the Governor's office. For all reason noted, the auditor finds this facility in substantial compliance with the requirements of the standard.

Standard 115.262: Agency protection duties

115.262 (a)

- When the agency learns that a resident is subject to a substantial risk of imminent sexual abuse, does it take immediate action to protect the resident? 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 a resident is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the resident.

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 of victimization or being 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 interview with the A/Superintendent confirmed that an inmate at imminent risk of sexual abuse or any imminent risk of harm shall have immediate action taken to ensure his safety. The facility (PAQ) reports that the facility 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. The auditor found no evidence to dispute this during the audit process. All staff interviews confirmed to the auditor that they would take immediate action if they believed an inmate was at imminent risk of sexual abuse. Inmate interviews illustrated to the auditor that staff are approachable. Corrections Officers and supervisors confirmed that their request based on their observations and suspicions would be supported, and action would be taken to protect the inmate before the event occurred. Based on this and overall observations during the audit, the auditor found this credible and proactivity to be an integral part of the culture of this facility.

Standard 115.263: Reporting to other confinement facilities

115.263 (a)

- Upon receiving an allegation that a resident 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

115.263 (b)

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

115.263 (c)

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

115.263 (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. Additionally, the Office of Special Investigations shall be sent a copy. This process was reinforced by the written interview responses from the Acting Commissioner. The PAQ indicates there have been no allegations received regarding sexual abuse that occurred at another facility. The auditor found no reason to dispute this due to the unique nature of the population. The interview with the A/Superintendent supported that these notifications would be 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 no allegations were received from other facilities regarding abuse that occurred at Hudson Correctional Facility in the past 12 months. Again, the auditor found no reason to dispute this during the audit process due to the mission of the facility.

The policy, review of notification forms and interview with the Superintendent provided the auditor with sufficient evidence to support a finding of compliance. There is a process in place to ensure the requirements of this standard are met. To further ensure the efficiency of this process, the agency

maintains a contact list for all Jail Administrators in the state. The list provided to the auditor was dated 2019.

Standard 115.264: Staff first responder duties

115.264 (a)

- Upon learning of an allegation that a resident 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 a resident 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 a resident 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 a resident 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

115.264 (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 a resident 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. An inmate victim is asked, and any alleged perpetrator are told to not take any action which could potentially destroy evidence such as 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 have been no occurrences of a security staff/non security staff member responding to an incident requiring preservation of physical evidence, no incident with a non-security first responder. The auditor found no reason to dispute this during the audit process.

Both first responder staff and non-first responder staffs 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. For these reasons noted, the auditor finds the facility in compliance with the requirements of this standard.

Standard 115.265: Coordinated response

115.265 (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.

Hudson Correctional Facility FOM 6.001 8/3/2020 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. The interview with the A/Superintendent further solidified that the facility has a Coordinated Response Plan in which staff are knowledgeable regarding it, and it consistently does to the Watch Commander who ensures notifications and appropriate actions are made. All staff interviewed had the PREA Response Card on their possession. Based on the feedback in all interviews, the review of the plan, and review of completed investigations, the auditor finds there is ample evidence to support a finding of compliance.

Standard 115.266: Preservation of ability to protect residents from contact with abusers

115.266 (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 residents pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted? Yes No

115.266 (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 – 4/17/2020, Directive #2114, Function of the Bureau of Labor Relations - 7/10/2019 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. McKinney Civil Service Law §209-a ensures that contracts are continued until a new agreement is reached. 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. Additionally, the auditor spoke with two staff who were union representatives (for the correctional officers and lieutenants) who further assured the auditor there is no concern from the union if a staff member needs to be re-assigned.

Standard 115.267: Agency protection against retaliation

115.267 (a)

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

115.267 (b)

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

115.267 (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 residents 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 residents who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by residents 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 resident 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 resident 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 resident 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

115.267 (d)

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

115.267 (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

115.267 (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 residents and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other residents 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 resident victims or abusers, removal of alleged staff or resident abusers from contact with victims, and emotional support services for residents 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 residents or staff who reported the sexual abuse and of residents who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by residents or staff, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any resident 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 residents, 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 four 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 one example of completed Retaliation Monitoring Forms. The auditor requested additional examples during the audit process. Four additional completed retaliation forms were reviewed and found to be complete and detailed. Interviews with the A/Superintendent, PREA Coordinator, PREA Compliance Manager (ADS, PREA Deputy), DSS and PREA Point Person (Captain) 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.”

INVESTIGATIONS

Standard 115.271: Criminal and administrative agency investigations

115.271 (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 115.221(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 115.221(a).) Yes No NA

115.271 (b)

- Where sexual abuse is alleged, does the agency use investigators who have received specialized training in sexual abuse investigations as required by 115.234? Yes No

115.271 (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

115.271 (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

115.271 (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 resident or staff? Yes No
- Does the agency investigate allegations of sexual abuse without requiring a resident who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding? Yes No

115.271 (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

115.271 (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

115.271 (h)

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

115.271 (i)

- Does the agency retain all written reports referenced in 115.271(f) and (g) for as long as the alleged abuser is incarcerated or employed by the agency, plus five years? Yes No

115.271 (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

115.271 (k)

- Auditor is not required to audit this provision.

115.271 (l)

- When an outside entity investigates sexual abuse, does the facility cooperate with outside investigators and endeavor to remain informed about the progress of the investigation? (N/A if an outside agency does not conduct administrative or criminal sexual abuse investigations. See 115.221(a).) Yes No NA

Auditor Overall Compliance Determination

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

The PAQ indicates no substantiated allegations of conduct that appeared criminal were referred for prosecution since the last PREA audit. The auditor found no reason to dispute this during the audit process.

As noted in the narrative report:

Investigations are conducted by the Office of Special Investigations (OSI) who report to the Deputy Commissioner/Chief of Investigations. A list of investigations from February 1, 2019 to January 31, 2020 was provided. Investigations occurring from February 2020 were discussed; documentation requested regarding any of these recent investigations was readily provided to the auditor.

Nine investigations were reviewed for this facility with two investigators. Zero inmate-on-inmate abuse

- Four inmate-on-inmate harassment
- Three staff-on-inmate harassment
- Two staff-on-inmate abuse
- No retaliation allegations

Two investigations were substantiated, six were deemed unsubstantiated none were unfounded. One investigation is still ongoing.

Investigations were initiated based on numerous avenues: direct contact to OSI from the inmate/parolee family member; verbal reports to staff; written to staff and the designated outside agency contact State Commission on Correction (SCOC) office.

(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) 11/28/2018 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 #4027B Sexual Abuse Reporting & Investigation - Inmate-on-Inmate and Directive #4028B Sexual Abuse Reporting & Investigation -Staff-on-Inmate/Staff-on-Parolee states, A prompt, thorough, and objective investigation shall be conducted in all instances of reported sexual abuse, sexual harassment, or retaliation concerning such an incident. As directed herein and in accordance with Directive #0700, "Office of Special Investigations (OSI)," this investigation shall be initiated promptly and shall be the responsibility of the Office of Special Investigations. Allegations of sexual harassment or sexual threats shall be reviewed by the Office of Special Investigations for a determination as to the appropriate investigative steps to be taken, which may include directing specific steps to be taken in a facility investigation. Furthermore, in instances where any complaint is vague, requires clarification, or appears to lack credibility based upon all of the information available at the time of the report, the Office of Special Investigations may direct that a preliminary inquiry be conducted (e.g., interview, video review, etc.) so that the appropriate response can be determined.

(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.

The Response Plan and Containment Checklist specify that OSI SCD 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 OSI SCD investigators complete any evidence gathering required. Interview with the OSI SCD investigators supported that they are and have been immediately contacted regarding all allegations. Additionally, the review of the completed investigations supported this requirement. This plan was recently updated to further clarify this process ((7/16/2020).

(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 20 June 2020 is considered confidential but was provided to the auditor. The auditor reviewed the document and found it supports compliance with this standard. Additionally, 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 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 that staff actions are reviewed in every case. 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. The auditor found this credible based on review of the investigations and dialogue regarding the findings with the investigators.

(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. One investigation was reviewed were referred for criminal prosecution. Compliance with his 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 #4027B Sexual Abuse Reporting & Investigation - Inmate-on-Inmate and Directive #4028B Sexual Abuse Reporting & Investigation -Staff-on-Inmate/Staff-on-Parolee states 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, as confirmed by the interview with the three investigators. This is further reinforced directly in the letter to the New York State Police Superintendent regarding collaboration with the investigation of potential criminal actions of staff. No investigations reviewed had an incident where the accused left employment during the audit review period. 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. A memo from the Superintendent of the New York State Police dated May 2, 2014 further confirms support by stating, This will serve to confirm that the New York State Department of Corrections and Community Supervision (DOCCS), Office of the Inspector General (IG), Sex Crimes Unit (SCU) and the New York State Police (NYSP), Bureau of Criminal Investigation (BCI) shall continue to work cooperatively in the investigation of reported incidents of staff-on-inmate and inmate-on-inmate sexual abuse that may involve criminal conduct.

Based on review of the policies, agency manual, nine 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. The agency is given and “exceeds standards” due to the extensive training and specialization of investigators in the SCD of OSI.

Standard 115.272: Evidentiary standard for administrative investigations

115.272 (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. This is noted in written policy for OSI and confirmed by the interview with two investigators. Review of the investigation supports that the agency uses a finding of substantiated based on a preponderance of the evidence.

Standard 115.273: Reporting to residents

115.273 (a)

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

115.273 (b)

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

115.273 (c)

- Following a resident'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 resident's unit? Yes No
- Following a resident'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 a resident'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 a resident'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

115.273 (d)

- Following a resident's allegation that he or she has been sexually abused by another resident, 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 a resident's allegation that he or she has been sexually abused by another resident, 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

115.273 (e)

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

115.273 (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 a resident's allegation of sexual abuse suffered in an agency facility, the agency shall inform the resident 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 resident.

All investigations will conclude with the OSI investigator, who will therefore make the notification. As confirmed in the interviews, notifications are given to the Superintendent who then provides to the PREA Deputy. She indicated she forwards the notification to the inmate at his current facility via the legal mail process. One example was provided to the auditor confirming this process.

(c) Following a resident's allegation that a staff member has committed sexual abuse against the resident, the agency shall subsequently inform the resident (unless the agency has determined that the allegation is unfounded) whenever: (1) The staff member is no longer posted within the resident'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 a resident's allegation that he or she has been sexually abused by another resident, 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 resident is released from the agency's custody.

The Office of Special Investigations Policy Manual Chapter 20 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. Examples were provided to the auditor with the documentation reviewed. It supported compliance with these requirements. Notifications were confirmed during the interview and review of investigations with the investigators. Additional examples were provided to the auditor during the on-site visit upon request. Therefore, the auditor finds there was sufficient evidence to support a finding of compliance based on policy and documents noted above.

DISCIPLINE

Standard 115.276: Disciplinary sanctions for staff

115.276 (a)

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

115.276 (b)

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

115.276 (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

115.276 (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 – 4/17/2020, 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. 2019 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 (Chapter 31).

The PAQ indicates that no staff have been terminated for violating agency sexual abuse and/or sexual harassment policy. The auditor found no evidence to dispute this during the audit process. Dialogue with the A/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. Therefore, this standard is deemed compliant.

Standard 115.277: Corrective action for contractors and volunteers

115.277 (a)

- Is any contractor or volunteer who engages in sexual abuse prohibited from contact with residents? 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

115.277 (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 residents? 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 residents 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 residents, 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.

Additional written authority that supports compliance is contained in the OSI Policy Manual Chapter 32, which is exempt from disclosure. It was reviewed by the auditor.

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."

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 temporarily suspend volunteers and contractual staff from entering the facility if there is a suspicion of misbehavior. See comments to 115.32. Additionally he confirmed that he has the authority to terminate the agreement and, if the incident appeared criminal, it would be referred for

prosecution. After analysis of this documentation, policy, and interview, the auditor finds the standard to be compliance.

Standard 115.278: Interventions and disciplinary sanctions for residents

115.278 (a)

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

115.278 (b)

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

115.278 (c)

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

115.278 (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 resident to participate in such interventions as a condition of access to programming and other benefits? Yes No

115.278 (e)

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

115.278 (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

115.278 (g)

- If the agency prohibits all sexual activity between residents, does the agency always refrain from considering non-coercive sexual activity between residents to be sexual abuse? (N/A if the agency does not prohibit all sexual activity between residents.) 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) Residents shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the resident engaged in resident-on-resident sexual abuse or following a criminal finding of guilt for resident-on-resident sexual abuse.

Hearing Officer Reference Book (April 2017), The Hearing Officers determine guilt on misconducts received by inmates in accordance with the requirements reflected in Directive #4932 – Chapter V, Standards Behavior & Allowances – 10/2/2018. Category 101 addresses Sex Offenses. 101.10 Sex Offense An inmate shall not engage in or encourage, solicit or attempt to force another to engage in any sexual act. Forcing or attempting to force another to engage in sexual encouraging or soliciting sexual act; Engaging in sexual act (No Force or coercion) 101.11 Forcible touching, 101.20 Lewd Conduct, 101.21 Physical Contact, 101.22 Stalking.

(b) Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the resident’s disciplinary history, and the sanctions imposed for comparable offenses by other residents with similar histories.

The auditor reviewed the Hearing Officer Reference Book. It provides the guidance for Hearing Officers when imposed disciplinary sanctions on inmate’s misconducts. Aggravating and mitigating factors are considered. In accordance with the Handbook, these include age of the inmate, inmate’s medical condition, inmate’s intellectual capacity, past disciplinary history and record of adjustment, and seriousness of the misconduct. 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 resident’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.

Directive #4932 – Chapter V, Standards Behavior & Allowances – Rev. 8/30/18. states, mental state or intellectual capacity. When an inmate's mental state or intellectual capacity is at issue, a Hearing Officer shall consider evidence regarding the inmate's mental condition or intellectual capacity at the time of the incident and at the time of the Hearing in accordance with this Section.

(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 resident to participate in such interventions as a condition of access to programming or other benefits.

Sex Offender Counseling and Treatment Program Guideline – December 2019 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, 12/5/2019 addresses treatment services, including sex offender treatment programs, available for inmates at NYSDOCCS. 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. Failure to participate, according to staff, can and will prevent an inmate from release. No examples of referral were available to review as no inmates were found guilty of sexual abuse since the last audit.

(e) The agency may discipline a resident 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. One disciplinary packet example was provided for the auditor to review with the pre-audit documentation; however it was from 2015.

Review of the policies and documents noted above support a finding of compliance. The interview with the A/Superintendent supported that sanctions are proportionate to the nature and circumstance and mental disability/illness is considered when determining sanctions in accordance with policy. The PAQ indicated that no inmates have been disciplined for violations of sexual abuse; however, one investigation did lead to a substantiated allegation of inmate on inmate harassment where a misconduct was written and upheld. 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 115.282: Access to emergency medical and mental health services

115.282 (a)

- Do resident 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

115.282 (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 § 115.262? Yes No
- Do security staff first responders immediately notify the appropriate medical and mental health practitioners? Yes No

115.282 (c)

- Are resident 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

115.282 (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) Resident 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) Resident 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 (6001 August 2020), 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. The MOU with OMH supports that mental health staff will evaluate and treat victims. HSPM 1.60 - Sexual Assault – 10/25/17 states, any necessary post exposure testing and treatment, including pregnancy testing and prophylaxis against pregnancy if the inmate victim is at risk, will be initiated. Emergency contraception is available from a contracted pharmacy services vendor.

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 A/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.

Interviews with the medical and mental health staff confirm that inmates have and will receive this treatment in accordance with the professional judgment and community standards of care. One example of medical treatment after a PREA allegation was provided to the auditor to illustrate this. It demonstrated an additional referral for mental health assessment.

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 treatment will be provided.

Standard 115.283: Ongoing medical and mental health care for sexual abuse victims and abusers

115.283 (a)

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

115.283 (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

115.283 (c)

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

115.283 (d)

- Are resident victims of sexually abusive vaginal penetration while incarcerated offered pregnancy tests? (N/A if “all-male” facility. *Note: in “all-male” facilities, there may be residents who identify as transgender men who may have female genitalia. Auditors should be sure to know whether such individuals may be in the population and whether this provision may apply in specific circumstances.*) Yes No NA

115.283 (e)

- If pregnancy results from the conduct described in paragraph § 115.283(d), do such victims receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services? (N/A if “all-male” facility. *Note: in “all-male” facilities, there may be residents who identify as transgender men who may have female genitalia. Auditors should be sure to know whether such individuals may be in the population and whether this provision may apply in specific circumstances.*) Yes No NA

115.283 (f)

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

115.283 (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

115.283 (h)

- Does the facility attempt to conduct a mental health evaluation of all known resident-on-resident abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners? 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 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. It states, 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

HSPM 1.60 - Sexual Assault – 10/25/17 states, Any necessary post exposure testing and treatment, including pregnancy testing and prophylaxis against pregnancy if the inmate victim is at risk, will be initiated. Emergency contraception is available from a contracted pharmacy services vendor.

(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, in accordance with medically established timeframes.

(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.

Directive #4401 Guidance and Counseling addresses treatment services available for inmates at NYSDOCCS. 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 sixty (60) days. They will be referred to the Sex Offender Counseling and Treatment Program per the guideline. In accordance with the SOCTP Guidelines, inmates referred to the program receive an evaluation by specialized staff upon referral to the program.

Policies noted above, interviews with the medical staff, mental health staff, and the A/Superintendent support a finding of compliance. It was reported that there have been no occurrences in the previous audit period to warrant additional follow up treatment. The auditor found no reason to dispute this during the audit process.

DATA COLLECTION AND REVIEW

Standard 115.286: Sexual abuse incident reviews

115.286 (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

115.286 (b)

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

115.286 (c)

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

115.286 (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 §§ 115.286(d)(1) - (d)(5), and any recommendations for improvement and submit such report to the facility head and PREA compliance manager? Yes No

115.286 (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 Supervising Offender Rehabilitation Coordinator (SORC) or member of the Executive Team. 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 – 8/17/2019 is a 6-page form which addresses and requires assessment with all requirements of the standard. Five completed examples were provided to the auditor for review that were conducted during the 12-month audit evaluation period. One demonstrated on review a minor corrective action involving securing of an area which reportedly had occurred. All had detailed summary review of the incidents showing the auditor that each incident is given serious review and consideration for improvement.

Interviews with the A/Superintendent, ADS/PCM and PREA Point Person confirm that incident reviews are completed for each investigation, except those deemed unfounded.

Written authority, the established format, interviews with the staff that complete the incident reviews in addition to review of completed reviews all provided ample evidence for this standard to be deemed compliant.

Standard 115.287: Data collection

115.287 (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

115.287 (b)

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

115.287 (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

115.287 (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

115.287 (e)

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

115.287 (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 Hudson 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 residents;

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 dated November 2019.

As stated above, the policies, retention schedule, review of the data gathering operation, interview with the PREA Coordinator and Assistant Deputy Superintendent 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 2013-2017, completed and published May 2020.

Standard 115.288: Data review for corrective action

115.288 (a)

- Does the agency review data collected and aggregated pursuant to § 115.287 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 § 115.287 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 § 115.287 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

115.288 (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

115.288 (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

115.288 (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 2017. It is thirty (30) 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).

Additionally, the interview with the PREA Deputy support that monthly reports are maintained and sent to central office for current analysis and notation of any trends occurring. Examples were provided with the pre-audit documentation.

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 can 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 115.289: Data storage, publication, and destruction

115.289 (a)

- Does the agency ensure that data collected pursuant to § 115.287 are securely retained?
 Yes No

115.289 (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

115.289 (c)

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

115.289 (d)

- Does the agency maintain sexual abuse data collected pursuant to § 115.287 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. The auditor viewed where sexual abuse/sexual harassment data is retained at the facility. No personal identifiers required redaction on the published data. An annual report is published on the website each year. There are currently four annual reports, providing an analysis of data from 2013 to 2017, and including the aggregated sexual abuse data for 2018, available on the website. Therefore, the auditor finds this standard compliant.

AUDITING AND CORRECTIVE ACTION

Standard 115.401: Frequency and scope of audits

115.401 (a)

- During the prior three-year audit period, did the agency ensure that each facility operated by the agency, or by a private organization on behalf of the agency, was audited at least once? (*Note: The response here is purely informational. A "no" response does not impact overall compliance with this standard.*) Yes No Exceptions granted due to the current pandemic (coronavirus).

115.401 (b)

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

of the current audit cycle.) Yes No NA Exceptions granted due to the current pandemic (coronavirus).

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 residents? Yes No

115.401 (n)

- Were residents 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*)

The Agency has 89 facility PREA reports posted on the website site for audits conducted since it has been initiated which includes nine for private community operations. This includes contractual community based PREA reports posted. Currently there are 52 correctional facilities (prisons) operating. See additional comments throughout the report.

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. The review period is for prior audits completed during the past three years PRECEDING THIS AGENCY AUDIT. The pendency of any agency appeal pursuant to 28 C.F.R. § 115.405 does not excuse noncompliance with this provision. (N/A if there have been no Final Audit Reports issued in the past three years, or in the case of single facility agencies that there has never been a Final Audit Report issued.) Yes No NA

Auditor Overall Compliance Determination

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

The Agency has 89 facility PREA reports posted on the website site for audits conducted since it has been initiated which includes nine for private community operations. This includes 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 resident or staff member, except where the names of administrative personnel are specifically requested in the report template.

Amy J. Fairbanks

September 26, 2020

Auditor Signature

Date