

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

Interim Final

Date of Interim Audit Report: N/A

If no Interim Audit Report, select N/A

Date of Final Audit Report: May 29, 2021

Auditor Information

Name: Michelle L. Burrows	Email: burrowsm66@aol.com
Company Name: American Correctional Assoc.	
Mailing Address: P.O. Box 802	City, State, Zip: Canal Winchester, OH 43110
Telephone: (703) 224-0000	Date of Facility Visit: April 21-23, 2021

Agency Information

Name of Agency: NY State Department of Corrections and Community Supervision			
Governing Authority or Parent Agency (If Applicable):			
Physical Address: 1220 Washington Avenue		City, State, Zip: Albany, NY 12226-2050	
Mailing Address:		City, State, Zip:	
The Agency Is:	<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	
Email: Jason.effman@doccs.ny.gov	Telephone: 518.457.8134
PREA Coordinator Reports to: Acting Commissioner	Number of Compliance Managers who report to the PREA Coordinator: 16

Facility Information

Name of Facility: Elmira Correctional Facility

Physical Address: 1879 Davis Street

City, State, Zip: Elmira, NY 14901-0500

Mailing Address (if different from above):
P.O. Box 500

City, State, Zip: Elmira, NY 14901-0500

The Facility Is:

Military

Private for Profit

Private not for Profit

Municipal

County

State

Federal

Facility Type:

Prison

Jail

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

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

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

ACA

NCCHC

CALEA

Other (please name or describe:

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 reviews throughout the year internally, in addition to a PREA preparatory review.

Warden/Jail Administrator/Sheriff/Director

Name: John Rich

Email: john.rich@doccs.ny.gov

Telephone: 607.734-3901 x 2000

Facility PREA Compliance Manager

Name: Chris Barkee

Email: chris.barkee@doccs.ny.gov

Telephone: 607.734.3901 x 2160

Facility Health Service Administrator N/A

Name: Mary Coryer

Email: mary.coryer@doccs.ny.gov

Telephone: 607.734.3901 x 6000

Facility Characteristics

Designated Facility Capacity:

1774

Current Population of Facility:

1071

Average daily population for the past 12 months:	1350	
Has the facility been over capacity at any point in the past 12 months?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Which population(s) does the facility hold?	<input type="checkbox"/> Females <input checked="" type="checkbox"/> Males <input type="checkbox"/> Both Females and Males	
Age range of population:	21-84	
Average length of stay or time under supervision:	1034	
Facility security levels/inmate custody levels:	Maximum	
Number of inmates admitted to facility during the past 12 months:	896	
Number of inmates admitted to facility during the past 12 months whose length of stay in the facility was for <i>72 hours or more</i> :	891	
Number of inmates admitted to facility during the past 12 months whose length of stay in the facility was for <i>30 days or more</i> :	764	
Does the facility hold youthful inmates?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Number of youthful inmates held in the facility during the past 12 months: (N/A if the facility never holds youthful inmates)	<input checked="" type="checkbox"/> N/A	
Does the audited facility hold inmates for one or more other agencies (e.g. a State correctional agency, U.S. Marshals Service, Bureau of Prisons, U.S. Immigration and Customs Enforcement)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Select all other agencies for which the audited facility holds inmates: Select all that apply (N/A if the audited facility does not hold inmates for any other agency or agencies):	<input type="checkbox"/> Federal Bureau of Prisons <input type="checkbox"/> U.S. Marshals Service <input type="checkbox"/> U.S. Immigration and Customs Enforcement <input type="checkbox"/> Bureau of Indian Affairs <input type="checkbox"/> U.S. Military branch <input type="checkbox"/> State or Territorial correctional agency <input 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: <input checked="" type="checkbox"/> N/A	
Number of staff currently employed by the facility who may have contact with inmates:	747	
Number of staff hired by the facility during the past 12 months who may have contact with inmates:	31	
Number of contracts in the past 12 months for services with contractors who may have contact with inmates:	9	
Number of individual contractors who have contact with inmates, currently authorized to enter the facility:	51	
Number of volunteers who have contact with inmates, currently authorized to enter the facility:	92	

Physical Plant

Number of buildings: Auditors should count all buildings that are part of the facility, whether inmates are formally allowed to enter them or not. In situations where temporary structures have been erected (e.g., tents) the auditor should use their discretion to determine whether to include the structure in the overall count of buildings. As a general rule, if a temporary structure is regularly or routinely used to hold or house inmates, or if the temporary structure is used to house or support operational functions for more than a short period of time (e.g., an emergency situation), it should be included in the overall count of buildings.	106
Number of inmate housing units: Enter 0 if the facility does not have discrete housing units. DOJ PREA Working Group FAQ on the definition of a housing unit: How is a "housing unit" defined for the purposes of the PREA Standards? The question has been raised in particular as it relates to facilities that have adjacent or interconnected units. The most common concept of a housing unit is architectural. The generally agreed-upon definition is a space that is enclosed by physical barriers accessed through one or more doors of various types, including commercial-grade swing doors, steel sliding doors, interlocking sally port doors, etc. In addition to the primary entrance and exit, additional doors are often included to meet life safety codes. The unit contains sleeping space, sanitary facilities (including toilets, lavatories, and showers), and a dayroom or leisure space in differing configurations. Many facilities are designed with modules or pods clustered around a control room. This multiple-pod design provides the facility with certain staff efficiencies and economies of scale. At the same time, the design affords the flexibility to separately house inmates of differing security levels, or who are grouped by some other operational or service scheme. Generally, the control room is enclosed by security glass, and in some cases, this allows inmates to see into neighboring pods. However, observation from one unit to another is usually limited by angled site lines. In some cases, the facility has prevented this entirely by installing one-way glass. Both the architectural design and functional use of these multiple pods indicate that they are managed as distinct housing units.	13
Number of single cell housing units:	11
Number of multiple occupancy cell housing units:	2
Number of open bay/dorm housing units:	none
Number of segregation cells (for example, administrative, disciplinary, protective custody, etc.):	187
In housing units, does the facility maintain sight and sound separation between youthful inmates and adult inmates? (N/A if the facility never holds youthful inmates)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
Does the facility have a video monitoring system, electronic surveillance system, or other monitoring technology (e.g. cameras, etc.)?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Has the facility installed or updated a video monitoring system, electronic surveillance system, or other monitoring technology in the past 12 months?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Medical and Mental Health Services and Forensic Medical Exams	
Are medical services provided on-site?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Are mental health services provided on-site?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

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

Criminal Investigations

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

<p>Number of investigators employed by the agency and/or facility who are responsible for conducting ADMINISTRATIVE investigations into allegations of sexual abuse or sexual harassment?</p>	<p>31 OSI--Agency 32 Sgt. -- Facility 12 Lt. -- Facility</p>
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<p>When the facility receives allegations of sexual abuse or sexual harassment (whether staff-on-inmate or inmate-on-inmate), ADMINISTRATIVE INVESTIGATIONS are conducted by: Select all that apply</p>	<input checked="" type="checkbox"/> Facility investigators <input checked="" type="checkbox"/> Agency investigators <input type="checkbox"/> An external investigative entity
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<p>Select all external entities responsible for ADMINISTRATIVE INVESTIGATIONS: Select all that apply (N/A if no external entities are responsible for administrative investigations)</p>	<input type="checkbox"/> Local police department <input type="checkbox"/> Local sheriff's department <input type="checkbox"/> State police <input type="checkbox"/> A U.S. Department of Justice component <input type="checkbox"/> Other (please name or describe:) <input checked="" type="checkbox"/> N/A
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Audit Findings

Audit Narrative (including Audit Methodology)

The PREA Audit of the Elmira Correctional Facility was conducted on April 21-23, 2021 by Michelle L. Burrows, Department of Justice (DOJ) certified PREA Auditor. The facility reported that posters announcing the audit with the auditor's name and address were placed throughout the facility in English and Spanish. The posters indicated that any correspondence sent to the auditor would be confidential and not disclosed unless required by law. No confidential correspondence letters were received in response to the posters announcing the audit. The dates of posting were March 16, 2021. This auditor requested a photograph of the postings with the date of posting and she observed the postings in all areas toured and they contained the information required by the DOJ. The auditor's post office box was last checked on April 17, 2021 prior to the on-site visit.

Approximately three and a half weeks prior to the scheduled audit the ADS/PREA Compliance Manager for the Elmira Correctional Facility (ECF) mailed the Auditor a USB thumb drive. The thumb drive contained the facility PAQ and supplemental documentation. The documentation received was organized, highlighted and labeled appropriately. Several emails were exchanged between the auditor and the PREA Compliance Manager prior to the audit and following the audit to obtain clarification and additional information.

The agency website was reviewed and all PREA audit reports were available along with the PREA annual reports. The previous audit report for Elmira CF dated May 30, 2018 was reviewed and there were no previous issues. The mission statement and third-party reporting information was also observed on the website.

A folder for each PREA standard contained an outline of primary and secondary documentation relating to the specific provision of each standard. The PAQ itself contained numerous files embedded/hyperlinked within it, which made the process for reviewing documentation much easier for the Auditor. Documentation contained on the thumb drive consisted of the Departmental Mission; executive team chart with responsibilities of each deputy superintendent. PREA Audit - Pre-audit Questionnaire; documentation folders for each of the 45 PREA Standards; facility layout for ECF; DOCCS Web page home screen; DOH protocol; ECF FOM 08.00 Coordinated response plan to an incident of inmate sexual abuse; ECF FOM 08.08 PREA Risk Screening. ECF Inmate Orientation Pamphlet; 115.15 Cross Gender Training; Several departmental directives pertaining to searches; ACA accreditation report for April 9-11, 2018; and Directives 4027A and 4028A.

In March 2021 the auditor sent an email to the PREA Compliance Manager requesting the following information:

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

- Sample documentation for monitoring retaliation of sexual abuse & sexual harassment investigations over the past 12 months.

All Sexual Assault Reviews during (from the past 12 month) for completed investigations of sexual abuse, excluding unfounded cases.

On-Site Audit:

The Auditor met with the facility staff on Tuesday, April 20, 2021 and discussed the PREA audit process and what could be expected during the on-site portion of the audit. Upon arrival to the facility on day 1, a brief meeting with the Executive Team took place and schedules were developed regarding the tour, arrangements for interviews and review of documentation. and then the tour began.

Elmira CF has 106 total buildings. A complete tour of the facility was conducted as required, (over three days) where inmates are permitted. Elmira CF has multiple blind spot mirrors posted throughout the facility and are currently in the process of having cameras placed in various areas of the facility, to include work and education areas, visiting room, SHU and entry points. The project was placed on hold in 2020 due to COVID-19; however, it is back on track and scheduled to be completed soon. Cross-gender announcements were made by members of the facility staff prior to opposite gender staff entering the living units. Posters announcing the audit were observed throughout the facility.

There are six (6) different PREA interview protocols consisting of the Agency Head, Facility Director, PREA Coordinator, Specialized Staff, Random Staff and inmates. These protocols are used by the auditor to interview staff and inmates as part of the audit. Answers from the interviews are part of the auditor's compliance assessment. On day one of the audit, Elmira Correctional Facility reported a count of (1303) inmates. Inmates were interviewed in the Visiting Room where there was a screened opening separating the auditor and the inmate and the interviews were private. The Auditor conducted:

- (26) Random inmate interviews;
- (2) Limited English Proficient inmates;
- (3) Transgender/Intersex inmates; (2) refused
- (10) Gay/Bisexual inmates;
- (1) Inmates who reported sexual abuse;
- (1) Inmates who disclosed sexual victimization during risk screening;
- (0) Blind, deaf, or hard of hearing inmate;
- (0) Inmates with a physical disability; and
- (2) Cognitive Disability inmate.

Elmira had no inmates that were physically disabled or were blind/deaf/hard of hearing during the onsite portion of the audit. There were no inmates placed in segregation involuntarily due to any reports of abuse or harassment at Elmira CF. All inmates interviewed demonstrated knowledge of the agency's zero tolerance policy for sexual abuse, harassment & retaliation, and were able to identify how to report allegations of sexual abuse, harassment & retaliation. There was recently a change in the outside entity information, and it is recommended the staff continue to educate all inmates on the proper phone number, 444.

The auditor placed a telephone call to the 777-rape crisis center number, to test for accuracy. The call was answered within 20 seconds and I explained my reason for the call. They were very cordial and answered all questions. A call was also placed to the 444 number which is an internal reporting number for the Office of Special Investigations (OSI). The call was answered with no issues.

The standards require the auditor observe all areas of the audited facility paying attention to those areas of the facility that must be observed carefully in order to verify compliance with the standards. 1). Intake/reception/screening area. 2). All housing areas; 3). Health care area. 4). Recreation, cafeteria, and work areas, other programming areas (e.g., education or special education areas) 5). Areas that were renovated, modified, or expanded (if any). Elmira Correctional Facility has not undergone any significant renovations or modifications during the past 12 months. Every area of the facility was observed as the standard requires, and the auditor observed inmates being supervised throughout the audit. Sight lines were closely examined as were the potential for blind spots. The below listed areas needed some sort of viewing adjustment to include:

- Inmate bathroom in medical was unsecured. It was recommended to either keep the door locked at all times or a window needs put in the door. A directive was given to ensure the door remains locked when not in use. (done)
- It was recommended that a mirror be installed in room 233 in Medical (done)
- It was recommended a mirror be installed in the Reception Center testing room (done)
- In the paint class, there was a mirror directly above the toilet that needed to be moved and an additional mirror added on the wall (done)
- In the RPL office/secretary, a mirror needed to be added (done)
- Building Maintenance had a mirror above the toilet that needed to be adjusted away from the toilet area and another mirror needed to be added (done)
- Three classrooms in ICP needed mirrors added to alleviate blind spots (done)
- The electrical classroom needed a mirror added to the back wall (done)
- General Business room needed a mirror added in the corner of the computer room (done)

The Auditor observed signage posted in languages both in English and other than English throughout the facility explaining inmate rights to be free from sexual abuse and how to report allegations of sexual abuse and harassment. The Auditor conducted informal interviews with staff and inmates while touring; observed log-book entries for unannounced rounds being conducted by intermediate and higher-level facility staff; visually reviewed line of sight into bed areas and/or toilet and shower areas. I observed an intake screening on day 2 of the audit. The inmate reported no issues. The offender was provided with a pamphlet on zero tolerance and the inmate handbook contains more information about how to report sexual abuse/harassment.

Elmira Correctional Institution employs (747) staff at the time of the on-site portion of the audit. The Auditor formally interviewed (26) random staff. It should be noted that the random sampling size of staff interviews comprised of Tours 1, 2 and 3 employees, civilian and non-civilian. The auditor also conducted specialized interviews with the following:

- (1) Superintendent;
- (2) Medical/Mental Health staff;
- (1) Human resources staff;
- (0) Volunteers; (have been restricted from entrance due to COVID 19)
- (2) OSI Investigators;
- (5) Staff who perform screening for risk of victimization and abusiveness;
- (2) Staff members on the incident review team;
- (1) Staff member in charge with monitoring retaliation;
- (4) Staff first responders, both security and non-security staff interviewed;
- (2) Intake staff members;
- (5) Intermediate or Higher-Level Facility Staff;
- (1) PREA Compliance Manager;
- (1) PREA Point Person;
- (1) Rape Crisis Center via Zoom on 04/16/21

All Specialized Staff interviews were conducted in accordance with the PREA Guidelines for Auditors: Specialized Staff Interviews.

The Victim Advocacy Program Planned Parenthood of Greater New York, PREA Specialist was interviewed via Zoom on April 16, 2021 prior to the onsite portion of the audit. The Agency Head interview was conducted by this auditor on April 29, 2021. The PREA Coordinator was onsite during this audit and was available for any further questions.

Investigations are conducted by the Office of Special Investigations (OSI) who report to the Deputy Commissioner/Chief of Investigations. A list of investigations was provided. Documentation requested regarding any of these investigations was readily provided to the auditor. During the past 12 months, the Elmira Correctional Facility had (21) allegations of reported sexual abuse and sexual harassment and no inmates had to be transported to the hospital for a SANE/SAFE exam.

There were zero cases referred for criminal prosecution and three cases were unfounded. There were also 289 calls made to the Victim Support line during the 12 months preceding the audit, which only 9 of those were to report sexual abuse/harassment. The Auditor conducted a formal interview with a Senior-Investigator and an Investigator with the Office of Special Investigations (OSI) Sex Crimes Division on April 22, 2021 at Elmira Correctional Facility. The Auditor determined PREA investigations are being completed per NYSDOCCS policy and procedures and are compliant with all applicable PREA standards.

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

Post on-site audit:

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

Facility Characteristics

Elmira, NY is located in the state's "Southern Tier" region and spans the Chemung River. The Facility opened in 1876 as the Elmira Reformatory. The Facility is located on 439.3 acres on the north side of the city has a total of 106 buildings. Many of these buildings are from the old farm operation which is no longer in use; 21.8 acres are contained within the Facility's perimeter. Another 47.5 acres were used for Dairy Farm operations; the remaining 370 acres are wood and pasture lands. An additional 197 acres in town nearby were farmed in support of Dairy operations. Perimeter Security includes walls and double fences with cameras, sensors and a microwave field. There are also five, armed wall towers that are manned 24 hours a day as is the armed perimeter patrol. While there have been changes in the facility including the new main entrance (Building 104) and the fence, it is a fine historical overview. "DOCCS Today" has always been printed in Elmira's Correctional Industries (Corcraft) Print Shop. The entry building is located at the front of the facility, and everyone coming to the facility to include staff and visitors must pass through this entry building before proceeding to any other area of the facility. All entrants are required to show identification. All visitors that have any materials that they are bringing into the facility searched and their hands stamped and must present ID and stamped hand when passing through security to enter the secure area of the facility.

Staffing at Elmira Correctional Facility and Reception Center currently consists of 747 employees. Approximately 520 Security Staff and 192 Civilian Staff operate both the Elmira Correctional Facility and Reception Center. The Facility maintains an Industry Program and an Office of Mental Health Unit, both which utilize their own assigned staff. Several employee committees provide support to staff. These include the Employee Assistance Program, Training Advisory Committee, and the Facility Officer Fund Committee. It is common to see employee committees formed for specific staff members in need. Elmira's employees also extend themselves beyond the walls. The Make-A-Difference and Diversity Committees have donated books, food and funds to local charities and troops overseas. The annual State Employees Federated Appeal (SEFA) raises funds for local, state, and national United Way Agencies.

The total inmate capacity at Elmira Correctional Facility and Reception Center is 1774 adult male inmates. Elmira Correctional Facility and Reception Center does not house Juveniles or Youthful Offenders. The average length of stay for an inmate at Elmira Correctional Facility is 1034 days. The average sentence of an inmate at Elmira is eight years, one month and eighteen days.

When New York's Elmira Reformatory opened in 1876, it rejected 19th century penology's holy trinity of silence, obedience, and labor. Elmira's goal would be reform of the convict, and its methods would be psychological rather than physical. Instead of coercing with the lash, Elmira would encourage with rewards. Mass regimentation would yield to classification and individualized treatment. Instead of fixed sentences to fit the crime, the indeterminate sentence would be adjustable to fit the criminal. Rather than outright release after the offender "paid his debt to society," the new parole procedure would assure he did not begin running up a new tab.

In 1970, the reception center was administratively jointed to the main facility and the complex was renamed the Elmira Correctional Facility and Reception Center. Although no longer a reformatory, Elmira's concentration on younger offenders continued into the early 1990's, when DOCCS established under-21 facilities in the Washington hub. Elmira's population now averages around 35 years of age. Elmira now a general confinement facility for adult males, operates a modern correctional program along the lines laid down by former Superintendent Brockway.

Elmira today offers a culmination of the full range of basic academic education classes as well as pre-GED programs. Programs also exist for Spanish-dominant inmates to improve their abilities in English.

Summary of Audit Findings

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

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

Standards Exceeded

Number of Standards Exceeded: 9

List of Standards Exceeded: 115.11; 115.17; 115.33; 115.34; 115.41; 115.53; 115.67; 115.71; 115.403

Standards Met

Number of Standards Met: (36)

List of Standards Met: 115.12; 115.13; 115.14; 115.15; 115.16; 115.18; 115.21; 115.22; 115.31; 115.32; 115.35; 115.42; 115.43; 115.51; 115.52; 115.54; 115.61; 115.62; 115.63; 115.64; 115.65; 115.66; 115.68; 115.72; 115.73; 115.76; 115.77; 115.78; 115.81; 115.82; 115.83; 115.86; 115.87; 115.88; 115.89; 115.401;

Standards Not Met

Number of Standards Not Met: 0

List of Standards Not Met: Click or tap here to enter text.

PREVENTION PLANNING

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

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

115.11 (a)

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

115.11 (b)

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

115.11 (c)

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

Auditor Overall Compliance Determination

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

(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.

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

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

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

- Memo from the Commissioner dated March 14, 2012 appointing the Agency-wide PREA Coordinator who currently holds the position today.
- Email announcement dated April 25, 2013 announcing that Jason Effman holds the rank of Associate Commissioner.
- DOCCS Organizational Chart which indicates that the PREA Coordinator reports directly to the Commissioner.

The PREA Coordinator was on site during the audit. 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. The PREA Coordinator is continually examining the process to look for areas of improvement.

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

The designated PREA Compliance Manager for Elmira Correctional Facility also serves for Southport, and Willard DTC. She was promoted to this position effective June 3, 2019. The Assistant Deputy Superintendent/PREA Compliance Manager is an upper-level position at the facility and reports to the facility Superintendent with joint reporting to Agency Associate Commissioner for PREA. Memorandum dated August 17, 2017, subject Facility PREA Point Person, from Deputy Commissioner for Correctional Facilities and Associate Commissioner for PREA designates the Assistant Deputy Superintendent as the facility compliance manager and directs each facility to identify and designate a PREA Point Person to assist the facility compliance manager in efforts to comply with PREA standards. Additionally, this directive outlines specific responsibilities of these local positions. These responsibilities include maintaining a direct and open line of communication with the ADS/PREA compliance manager, assisting with monitoring retaliation, ensuring response to allegations, and serves as a member of the incident review team. The PREA Point Person for Elmira Correctional Facility is DSS Tim Carroll.

The auditor concluded that the agency and the facility are committed to the prevention, detection and response to sexual abuse and harassment after review of the policies, memos, organizational charts and interviews with the Superintendent, PREA Compliance Manager, PREA Point Person and the PREA Coordinator. This state has a comprehensive commitment to the standards and with all staff involved, it is deemed they exceed this standard which will be evident throughout this report.

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

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

115.12 (a)

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

115.12 (b)

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

Auditor Overall Compliance Determination

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

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

The Agency contracts for Community Based Residential Programs; the programs are required to adopt and comply with the PREA standards. The agency has provided contracts for the following: Bridges of Greater NY, Catholic Charities, Hillcrest House, Hope of Buffalo, Saving Grace Ministries, Volunteers of America, Catholic Family Center, Fitzgerald House, 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.

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

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 nine completed reports from 2017 to present are available on the NYSDOCCS website for review.

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

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

Standard 115.13: Supervision and monitoring

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

115.13 (a)

- Does the facility have a documented staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring, to protect inmates against sexual abuse?
 Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: Generally accepted detention and correctional practices?
 Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: Any judicial findings of inadequacy? Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: Any findings of inadequacy from Federal investigative agencies? Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: Any findings of inadequacy from internal or external oversight bodies? Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: All components of the facility's physical plant (including

“blind-spots” or areas where staff or inmates may be isolated)? Yes No

- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: The composition of the inmate population? Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: The number and placement of supervisory staff? Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: The institution programs occurring on a particular shift? Yes No NA
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: Any applicable State or local laws, regulations, or standards? Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: The prevalence of substantiated and unsubstantiated incidents of sexual abuse? Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: Any other relevant factors? Yes No

115.13 (b)

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

115.13 (c)

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

115.13 (d)

- Has the facility/agency implemented a policy and practice of having intermediate-level or higher-level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment? Yes No

- Is this policy and practice implemented for night shifts as well as day shifts? Yes No
- Does the facility/agency have a policy prohibiting staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility? Yes No

Auditor Overall Compliance Determination

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

(a) The agency shall ensure that each facility it operates shall develop, document, and make its best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration:

- (1) Generally accepted detention and correctional practices;**
- (2) Any judicial findings of inadequacy;**
- (3) Any findings of inadequacy from Federal investigative agencies;**
- (4) Any findings of inadequacy from internal or external oversight bodies;**
- (5) All components of the facility’s physical plant (including “blind-spots” or areas where staff or inmates may be isolated);**
- (6) The composition of the inmate population;**
- (7) The number and placement of supervisory staff;**
- (8) Institution programs occurring on a particular shift;**
- (9) Any applicable State or local laws, regulations, or standards;**
- (10) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and**
- (11) Any other relevant factors.**

The PAQ indicates that the average daily population since the last PREA audit is 1488 and since the pandemic, there has been a reduction of the inmate population. However, the staffing plan is based on an inmate population of 1774.

Elmira CF Security/Chart/Staffing Review with Recommended Changes to Facility Plot Plan 3/01/17 was reviewed along with the annual reviews for 2018, 2019, and 2020. It is a nineteen-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.

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

Situations where the staffing plan is not complied with are documented directly into the database in the Post Closure Report using codes from the Post Closure Key. The Chart Sergeant for each of the three tours is responsible for the scheduling of staff to ensure posts are covered. When a deviation from the

Plot Plan is necessary the Watch Commander is notified, the closure and reason for deviation is noted on the post tracking grid, and then entered into the database. Reports from all three tours is collected daily and submitted to the Staffing Lieutenant who reviews, then reports are routed to the Captain, Deputy Superintendent for Security, and the Superintendent. The most common reason for deviating from staffing plan was stated as area/building closure. Interviews with Superintendent, Watch Commander, and Shift Supervisors indicate deviations from staffing plan are consistently and thoroughly documented. Examples of the Post Closure Reports were provided to this auditor for review to demonstrate the documentation of any changes in the staffing plan.

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

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

An annual staffing review dated December 4, 2020 titled Annual Supervision and Monitoring Plan Review, specific to Elmira 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 in addition to the Director of Security Staffing.

(d) Each agency operating a facility shall implement a policy and practice of having intermediate-level or higher-level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts. Each agency shall have a policy to prohibit staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

Directive 4001, Facility Administrative Coverage and Supervisory Rounds, states that Executive Team members, designated Division Heads, etc. shall make unannounced rounds in living and activity areas and that it was to be logged in the area logbook. Rounds are documented in the respective area logbooks, on the Weekly Administrative Activity Report, and on the Daily Security Supervisor Report, Form 4001B. The Weekly Administrative Activity Report, Form 4001A, is completed and forwarded to the Superintendent for the Executive Team and Designated Division Heads rounds to ensure Executive Team members make rounds in areas not necessarily under their direct responsibility. Interviews with staff and review of logbooks entries were conducted and found to follow NYDOCCS policy.

The policy noted above and interviews with the Superintendent, Supervisory Staff, Random review of the Weekly Activity Reports, and review of logbook entries support the finding of compliance.

Standard 115.14: Youthful inmates

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

115.14 (a)

- Does the facility place all youthful inmates in housing units that separate them from sight, sound, and physical contact with any adult inmates through use of a shared dayroom or other

common space, shower area, or sleeping quarters? (N/A if facility does not have youthful inmates [inmates <18 years old].) Yes No NA

115.14 (b)

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

115.14 (c)

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

Auditor Overall Compliance Determination

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

(a) A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound or physical contact with any adult inmate through the use of a shared dayroom or other common space, shower area or sleeping quarters. (b) In area outside of housing units, agencies shall either: Maintain sight and sound separation between youthful inmates and adult inmates or Provide direct staff supervision when youthful inmates and adult inmates have sight, sound or physical contact. (c) Agencies shall make best efforts to avoid placing youthful inmates in isolation to comply with this provision. Absent exigent circumstances, agencies shall not deny youthful inmates daily large-muscle exercises and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible.

Elmira CF does not house inmates under the age of 18 and based on the law as well as observations made, this auditor finds this standard is not applicable and is compliant.

Standard 115.15: Limits to cross-gender viewing and searches

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

115.15 (a)

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

115.15 (b)

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

115.15 (c)

- Does the facility document all cross-gender strip searches and cross-gender visual body cavity searches? Yes No
- Does the facility document all cross-gender pat-down searches of female inmates? (N/A if the facility does not have female inmates.) Yes No NA

115.15 (d)

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

115.15 (e)

- Does the facility always refrain from searching or physically examining transgender or intersex inmates for the sole purpose of determining the inmate's genital status? Yes No

- If an inmate's genital status is unknown, does the facility determine genital status during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner? Yes No

115.15 (f)

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

Auditor Overall Compliance Determination

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

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

Elmira CF does not house female inmates.

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

Elmira CF documents all cross-gender strip searches and visual body cavity searches and does not house females. There was no cross-gender strip searches or visual body cavity searches conducted at Elmira. Health Care Services Directive 1.37, Body Cavity Search states, “a Correction Officer, the same sex as the inmate, will be present during the exam,” and documentation of the body cavity search is done in the inmate’s Ambulatory Health Record Progress Note Form 3105. The PAQ and interviews with staff indicate there has been no cross-gender Strip or Visual Body Cavity Searches conducted at Elmira.

(d) The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit.

Directive 2230 Guidelines for Assignment of Male and Female Correction Officers discusses that staff of the opposite gender shall verbally announce their arrival on a housing unit to avoid unnecessary invasion of privacy. It highlights 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.

Directive 4001, Facility Administrative Coverage & Supervisory Rounds dated states “staff of the opposite gender shall verbally announce their arrival on a housing unit to avoid unnecessarily invading the privacy of inmates of the opposite gender, unless emergency conditions dictate otherwise. An announcement is required when the gender supervision on a housing unit changes from exclusively same gender to mixed or cross gender supervision. This announcement must be logged in the housing unit logbook.”

All staff and inmate 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. During inmate interviews there were some inmates who stated that not all female staff announce themselves when entering the unit (see deficiency/corrective action below). This auditor observed the announcement being made when we entered the units. Staff interviews also gathered that female staff announce themselves upon entering the housing units.

Deficiency and Corrective Action:

After touring the Field House, it was discovered that there were blind spot mirrors in the shower area which made it possible for the inmates to be viewed during their showers. Even though they continue to wear their boxers while in the shower, the auditor felt that it was important to remove the mirrors from this area to alleviate any questions and if the inmate does decide to shower “naked”, then there will be no question of female staff viewing him. This was completed and pictures were given to the auditor to prove it was done. No further corrective action is necessary.

During inmate interviews, some inmates stated that female staff do not announce when they are on the units. After discussion with the Superintendent and his executive team, it was determined that making the announcement at the beginning of the housing unit is fine, however, those inmates who live at the far end of the housing unit, may not have heard the announcement as the acoustics in the housing units are difficult. As a result, the Superintendent stated that female staff will make a second announcement when they are halfway down the range to ensure that all inmates are aware that a female staff is on the unit. The auditor accepts this change so no further action is necessary.

(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, 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. This language has also been incorporated in Directive 4910 dated 12/02/2020.

Through interviews with staff and inmates, there were no instances that required a search or examination of a transgender or intersex inmate to determine their genital status.

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

Directive 4910 Control and Search for Contraband 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 or intersex inmates.

A review of the policies, the training curriculum, training records as well as all interviews with staff and random conversations with inmates 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 of the 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. The training emphasizes that staff are to 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. Staff interviews all confirmed that they have been appropriately trained regarding how to search transgender/intersex persons and cross-gender pat searches.

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

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

115.16 (a)

- Does the agency take appropriate steps to ensure that inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect,

and respond to sexual abuse and sexual harassment, including: inmates who are deaf or hard of hearing? Yes No

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

115.16 (b)

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

115.16 (c)

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

Auditor Overall Compliance Determination

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

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

Directive 2612, Inmates with Sensorial Disabilities 10/01/2020 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 an 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.”

(b) The agency shall take reasonable steps to ensure meaningful access to all aspects of the agency’s efforts to prevent, detect, and respond to sexual abuse and sexual harassment to inmates who are limited English proficient, including steps to provide interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

DIR 4490, Cultural and Language Access Services, establishes policy and procedures to ensure that all individuals with LEP have meaningful access to programs, services, and benefits. Contract PS67902 ensures services interpreting services are available through Language Line Services, Inc. Agency policy requires that for all interpretation or translation services provided to an inmate, it is to be tracked on the Language Access Plan Compliance Report, Form 4490D. Interviews with ORC’s confirmed this information.

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

The agency refrains from use of inmate interpreters, inmate readers, or inmate assistance barring exigent circumstances such as when a delay could compromise an inmate’s safety, performance of first-response duties, or the investigation of the inmate’s allegation. DIR 4490, Cultural and Language Access Services, provides that the general prohibition on using inmate interpreters based on confidentiality and security concerns "does not apply during exigent circumstances, such as where an extended delay in obtaining qualified interpretation services could compromise an inmate’s/parolee’s safety or health, the performance of first-response duties in connection with a report of sexual abuse, or the investigation of an inmate’s/parolee’s sexual abuse allegations." The facility reports there were no instances where inmate interpreters, readers, or other types of inmate assistants have been used in the performance of first response duties, which was verified through interviews with PREA Compliance Manager and various staff and inmates.

During the previous twelve months, the language line services were not used for purposes of reporting a sexual assault/harassment case.

Standard 115.17: Hiring and promotion decisions

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

115.17 (a)

- Does the agency prohibit the hiring or promotion of anyone who may have contact with inmates who has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997)? Yes No
- Does the agency prohibit the hiring or promotion of anyone who may have contact with inmates who has been convicted of engaging or attempting to engage in sexual activity in the community

facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse? Yes No

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

115.17 (b)

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

115.17 (c)

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

115.17 (d)

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

115.17 (e)

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

115.17 (f)

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

115.17 (g)

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

115.17 (h)

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

Auditor Overall Compliance Determination

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

(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.**

DIR 2216, Fingerprinting/Criminal History Inquiry – New Employees and Contractors, 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. Personnel Procedure Manual 407, Civilian Promotions, and 407A, Security Promotions, direct that candidates for employment and contractors will be bypassed and not considered for hiring or promotion if they have engaged in any activity delineated in the five subsections of element (a) of this standard, thereby prohibiting the enlistment of services of any candidate who meets the criteria. New York State Civil Service regulates hiring procedures for all state agencies. Security positions are hired from the Civil Service registry and processed through a centralized practice by the agency's Employee Investigation Unit (EIU).

(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.

Any incidents of sexual harassment will be considered in determining whether to hire an individual or to enlist the services of a contractor who may have contact with inmates as directed by Personnel Procedures Manual 407, Civilian Promotions and 407A, Security Promotions. The interview with the HR Supervisor confirmed that incidents of sexual harassment are definitely considered when determining employment.

(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.

Personnel Procedure Manual 406A, Recruitment Process, establishes policy for contacting the former institutional employer for candidates who have been previously employed by a prison, jail, lockup, community confinement facility or juvenile facility. Each facility is required to complete a Recruitment Process Checklist (406A1) upon recommending a vacant position be filled and thereby confirming to have contacted all prior institutional employers regarding substantiated allegations of sexual abuse or resignations during a pending investigation of an allegation of sexual abuse and to have sent emails to ODM, Office of Special Investigations and Labor Relations for inquiries on current employees considered for promotion. The interview with the Human Resources Manager and review of local personnel files indicates this checklist is completed on all civilian employee hires.

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

The majority of contractors enlisted to work at Elmira in the last 12 months do not have contact with inmates; however, the facility ran background checks on all of them prior to authorizing entrance into the facility. These contractors are installing the new camera system in the facility.

(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.

DIR 2216, Fingerprinting/Criminal History Inquiry - New Employees and Contractors, establishes the policy that all employees and contractors of the New York State 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. Criminal history inquiries are conducted by the Department's Employee Investigation Unit (EIU) and must be completed prior to the first date of employment. Criminal background records checks are not

conducted after an employee's initial hire as the Agency has a system in place to capture this information on an ongoing basis.

(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.

Each employee is required to complete a Personal History Questionnaire, Form EIU23. This questionnaire requires yes/no responses to the following questions: 1) "Have you ever been the subject of disciplinary action in connection with any employment? This would include, but is not limited to: suspension, termination, written warning, verbal warning, or formal counseling."; 2) Have you ever been named in any allegations of sexual abuse (i.e., engaging in or attempting to engage in any form of sexual activity with a person by force, overt or implied threats of force, or coercion; without the person's consent, or when the victim was unable to consent) or sexual harassment?"; 3) Have you ever been asked to resign from any employment in lieu of termination or resigned during a pending investigation?"; 4) Have you ever been convicted of a crime where you engaged in or attempted 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 if the victim was unable to consent?"; 5) Have you ever been civilly or administratively adjudicated to have engaged in or attempted 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 if the victim was unable to consent?"; 6) Have you ever engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution. DIR 2112, Report of Criminal Charges, imposes upon employees a continuing affirmative duty to disclose any of the above misconduct.

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

Form EIU23 clearly states, "Applicants are cautioned to answer every question, truthfully and without evasion. Both New York State Civil Service Law and the Rules and Regulations of the Civil Service Commission, which have the force and effect of law, provide penalties for making a false statement of material fact in any application, or for practicing any fraud or deception in obtaining or attempting to obtain municipal employment. Such penalties include rejection for appointment, revocation of employment and prosecution. Interviews conducted also confirmed that staff are aware of the penalties for giving false information or omitting information.

(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 provide information in accordance with this policy.

The following policies and procedures and supporting documentation: DOCCS DIR2216, Fingerprinting/Criminal History Inquiry New Employees and Contractors; NYS Department of Correctional Services Personal Procedure Manual 406A Recruitment Process; Directive 2112, Report of Criminal Charge; Directive 2012, Release of Employee Personnel and Payroll Information; Memo: from Darren Ayotte, Director of Personnel, RE: Personnel Procedure 407 – Civilian Promotions, Personnel

A review of randomly selected files was conducted by this auditor. There was a mixture of random files to include new hires (civilian/non-civilian), promotions, and contractors. This confirmed the questions are asked on the application, background checks have been completed, and the individuals acknowledge receiving the Employees' Manual.

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

Standard 115.18: Upgrades to facilities and technologies

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

115.18 (a)

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

115.18 (b)

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

Auditor Overall Compliance Determination

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

(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.

Directive 3053, Alterations/Construction Request, 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.

(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.

Elmira Correctional Facility has added a video monitoring system, electronic surveillance system, or other monitoring technology since their last PREA audit. Elmira Correctional Facility underwent an extensive video camera monitoring project that was still being completed during the onsite portion of the audit. The facility will have exceptional coverage via video monitoring and audio monitoring which makes it very difficult to commit any wrongdoing. These cameras will not be constantly monitored.

RESPONSIVE PLANNING

Standard 115.21: Evidence protocol and forensic medical examinations

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

115.21 (a)

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

115.21 (b)

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

115.21 (c)

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

115.21 (d)

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

115.21 (e)

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

115.21 (f)

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

115.21 (g)

- Auditor is not required to audit this provision.

115.21 (h)

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

Auditor Overall Compliance Determination

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

(a) 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.

The Office of Special Investigations, Sex Crimes Division is responsible for investigating allegations of sexual abuse and harassment and they follow a uniform evidence method that maximizes their potential to obtain usable physical evidence for criminal prosecutions and administrative proceedings as per Directive 0700, Office of Special Investigations. The Sex Crimes Division of OSI conducts investigations involving sexual misconduct between inmates/parolees and department staff, as well as inmate on inmate sexual abuse. OSI Investigators coordinate with prosecuting authorities or other outside law enforcement in the development of cases for criminal prosecution. According to the Office of Investigations Manual Chapter 21, all OSI investigators are trained in evidence collection that includes methods of documenting, collecting, and preserving physical evidence to ensure the best analysis results. The agency utilizes hospitals that follow SANE/SAFE evidence protocols and forensic medical examinations.

(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.

Elmira CF 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." Elmira's inmates are transported to Lourdes Hospital in Binghamton, NY.

(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.

All victims of sexual abuse shall be afforded access to forensic medical examinations at an outside facility, without financial cost, where evidentially or medically appropriate. Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.

Health Services has a list of SAFE/SANE hospitals and is responsible for confirming that a SANE/SAFE and a Victim Advocate are available to provide services prior to transporting. The inmate may be transported to a closer or more appropriate hospital if health staff determine the inmate's priority medical needs are such that require immediate or specialized care (e.g., inmate victim has injuries that require a level of care beyond what the certified SAFE/SANE hospital can provide). Admission to the facility infirmary and expedited follow-up assessment by a primary care provider is required upon the inmate victim's return from an outside hospital emergency department. The primary care provider will continue any appropriate post exposure prophylactic medications initiated at the outside hospital or at the facility. A mental health referral is immediately initiated upon return to the facility.

Elmira CF had no instances in the previous 12 months where a SANE/SAFE examination was needed.

(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.

Health Services Policy Manual 1.60, Sexual Assault, provides that victims of sexual abuse shall be afforded access to crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment. Health care staff will ensure that a SAFE/SANE and a Victim Advocate are available to provide services prior to transport. Interviews with the OSI Investigators, Assistant Deputy Superintendent/PREA Compliance Manager and PREA Facility Point Person confirmed inmates would quickly be provided victim's advocate and/or rape crisis center 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.

Health Care Services policy 1.60, an advocate is provided to the inmate upon request to provide emotional support through the forensic medical examination and investigation interviews. An interview was conducted via Zoom prior to the audit (4/16/2020). She stated that she has been assigned to Elmira since February 2021 and has not had any issues with gaining access to clients even with COVID and if the inmate requested assistance at the medical exam or during investigatory interviews, she would definitely be available. The advocate stated that even though she is new to this facility, she has had no issues with getting assistance from the ADS/PREA compliance manager when scheduling a meeting/phone call with

the inmates. There were 289 calls to the Victim Support Services hotline in the 12 months prior to the audit. The auditor also interviewed the previous Victim Advocate (4/16/2021) who serviced Elmira for approximately 3 years. She stated she never had any barriers when it came to gaining access to the inmates.

(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.

This provision is not applicable to Elmira CF as the agency is responsible for investigating allegations of sexual abuse.

(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.

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

Standard 115.22: Policies to ensure referrals of allegations for investigations

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

115.22 (a)

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

115.22 (b)

- Does the agency have a policy and practice in place to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior? Yes No

- Has the agency published such policy on its website or, if it does not have one, made the policy available through other means? Yes No
- Does the agency document all such referrals? Yes No

115.22 (c)

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

115.22 (d)

- Auditor is not required to audit this provision.

115.22 (e)

- Auditor is not required to audit this provision.

Auditor Overall Compliance Determination

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

(a) The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.

In the last twelve months, Elmira CF had a total of 21 sexual abuse and/or sexual harassment investigations. Eleven resulted in an administrative investigation and ten were referred for criminal investigation. All but one investigation had been completed. Allegations included: 3-harassment by staff; 2-sexual abuse and harassment by staff; and 2 sexual abuse by staff. Per directives 4027A, Sexual Abuse Prevention and Intervention - Inmate on Inmate, DIR 4027B, Sexual Abuse Reporting & Investigation – Inmate-on-Inmate: DIR 4028A, Sexual Abuse Prevention & Intervention – Staff on Inmate/Staff on Parolee, and DIR 4028B: Sexual Abuse Reporting & Investigation – Staff on Inmate/Staff on Parolee, the Agency ensures 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.

DIR 0700, Office of Special Investigations, authorizes and designates the Office of Special Investigations as the official investigative unit for all administrative and criminal investigations for the New York State Department of Corrections and Community Supervision under Section 112 of the Correction Law. The Office of Special Investigations is further responsible with ensuring that substantiated allegations are referred to the appropriate person(s) for administrative, disciplinary, and/or prosecutorial action. All complaints and information received by Office of Special Investigations relative to possible investigations are documented, reviewed, and processed. Office of Special Investigation Sex Crime Unit has the authority to refer cases to New York Bureau of Criminal Investigations, when appropriate, and works in conjunction with the local District Attorney's Office for prosecutions. Interviews with the Senior Investigator and Investigator of the Office of Special Investigations/Sex Crimes Division confirmed procedures are well established and followed. Not all investigations have been completed as there is more information or interviews needed to complete the process. The closed investigations reviewed by auditor were found to be investigated by the Office of Special Investigations in accordance with related agency policy. DIR 4027A and 4028A are published on the agency website at <https://doccs.ny.gov/about-prea#policy> and explain the policy and procedure to ensure allegations are reported to the Office of Special Investigations. This auditor reviewed the website and policies and found them to be complete and thorough. Interviews with the PREA Compliance Manager, Shift Supervisors, Watch Commander and OSI Investigators confirmed that all PREA allegations are taken seriously and are handled appropriately and timely.

(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 part of the standard is not applicable as a separate entity is not responsible for conducting investigations; however, OSI does work collaboratively with the New York State Police and Bureau of Criminal Investigations of reported allegations of staff on inmate and inmate on inmate sexual abuse cases that may involve criminal conduct.

The PAQ indicates there were 21 sexual abuse and sexual harassment allegations in the established previous twelve-month period. Policies noted above, interviews with the investigators and review of 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 plan. 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 they indicated they will collaborate with the State Police on any matters that may appear to be criminal as established by the confidential manual. Therefore, this standard is found to be compliant.

TRAINING AND EDUCATION

Standard 115.31: Employee training

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

115.31 (a)

- Does the agency train all employees who may have contact with inmates on its zero-tolerance policy for sexual abuse and sexual harassment? Yes No

- Does the agency train all employees who may have contact with inmates on how to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures? Yes No
- Does the agency train all employees who may have contact with inmates on inmates' right to be free from sexual abuse and sexual harassment Yes No
- Does the agency train all employees who may have contact with inmates on the right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment? Yes No
- Does the agency train all employees who may have contact with inmates on the dynamics of sexual abuse and sexual harassment in confinement? Yes No
- Does the agency train all employees who may have contact with inmates on the common reactions of sexual abuse and sexual harassment victims? Yes No
- Does the agency train all employees who may have contact with inmates on how to detect and respond to signs of threatened and actual sexual abuse? Yes No
- Does the agency train all employees who may have contact with inmates on how to avoid inappropriate relationships with inmates? Yes No
- Does the agency train all employees who may have contact with inmates on how to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates? Yes No
- Does the agency train all employees who may have contact with inmates on how to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities? Yes No

115.31 (b)

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

115.31 (c)

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

115.31 (d)

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

Auditor Overall Compliance Determination

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

(a) The agency shall train all employees who may have contact with inmates on: (1) Its zero-tolerance policy for sexual abuse and sexual harassment; (2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures; (3) Inmates' right to be free from sexual abuse and sexual harassment; (4) The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment; (5) The dynamics of sexual abuse and sexual harassment in confinement; (6) The common reactions of sexual abuse and sexual harassment victims; (7) How to detect and respond to signs of threatened and actual sexual abuse; (8) How to avoid inappropriate relationships with inmates; (9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and (10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

Elmira Correctional Facility trains all employees who may have contact with inmates on 1) its zero tolerance policy for sexual abuse and sexual harassment; 2) on how to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures; 3) on inmates' right to be free from sexual abuse and sexual harassment; 4) on the right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment; 5) the dynamics of sexual abuse and sexual harassment in confinement; 6) on the common reactions of sexual abuse and sexual harassment victims; 7) on how to detect and respond to signs of threatened and actual sexual abuse; 8) on how to avoid inappropriate relationships with inmates; 9) on how to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and 10) on how to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

DOCCS body of directives clearly expresses zero-tolerance for sexual misconduct. The Agency Employees' Manual, along with Directives 4027A and 4028A, set forth the Department's zero-tolerance policy for sexual abuse. The Employees' Manual also sets forth the applicability to all staff, further defining staff as all employees, contractors, and volunteers. Receipt of this manual is acknowledged through signature by all staff upon hire and is widely inclusive in the expectations of staff regarding PREA prevention, detection, responding and reporting. New York State Department of Corrections and Community Supervision Training Manual, Subject: 7.000, 40 Hour Orientation/Initial Employee Training, establishes guidelines for civilian employees' mandatory initial training. This training curricula is mandatory for all civilian employees and includes the 3-hour course, code 35029. Twenty (20) individual

randomly selected employee training records and three randomly selected training rosters were reviewed.

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

Training Manual Section 7.100 Employee Familiarization In-Service Training Program 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 customized to the gender of the inmates at the facility, including gender dynamics, for staff who are transferring from a facility that houses opposite gender inmates.

The auditor requested the facility to identify staff who have transferred from a female facility to this facility. Documentation was provided showing no staff have transferred to Elmira from a female facility. It should be noted that DOCCS requires all transferring staff to participate in facility orientation that includes PREA training that is tailored to the gender classification of the facility.

(c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide each employee with refresher training every two years to ensure that all employees know the agency’s current sexual abuse and sexual harassment policies and procedures. In years in which an employee does not receive refresher training, the agency shall provide refresher information on current sexual abuse and sexual harassment policies.

Training Manual Subject: 0.100 - Frequency Training Chart and Training Bulletins confirms that PREA Training is provided every two years, and a module on Professional Boundaries provided annually. The PAQ indicates that 747 staff have been trained. PREA Refresher 2020 training was completed during the first quarter of 2020, in conjunction with two other Commissioner’s Initiative Courses, “Stereotype Threat” and “Ensuring Professional Interactions with LGBTQI+ People”. The majority of random staff interviewees did report they had received 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 and more were reviewed during the onsite portion of the audit.

The auditor relied on random staff interviews, interview with PREA Compliance Manager and the following policies/procedures, manuals, documents, etc.: Training Manual Subject: 0.100 – Frequency Training Chart and Training Bulletins; Training Bulletin 7, PREA: Sexual Abuse Prevention and Response; Training Manual Subject: 7.100 – Employee Familiarization; Training Manual Subject: 7.000 – Initial Employee Training 40-hour Orientation; Acting Commissioner Memo – RE: Policies and Standards Generally Applicable to all Employees; Deputy and Associate Commissioner Memo – RE: Sexual Abuse Prevention and Response Training; Sexual Abuse Prevention and Response Lesson Plan and training documentation reviewed sent with the PAQ as well as provided during the on-site visit which meets the standard. During staff interviews, the Auditor was impressed with the effectiveness of the training program since everyone—no matter what the question—immediately supplied an appropriate answer. Elmira CF clearly places an emphasis on employee training, both security and non-security, as

indicated by the excellent training curriculum used for employee training (initial and subsequent in the first year and later in-service/refresher training as specified by policy).

Standard 115.32: Volunteer and contractor training

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

115.32 (a)

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

115.32 (b)

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

115.32 (c)

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

Auditor Overall Compliance Determination

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

(a) The agency shall ensure that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection and response policies and procedure.

Directive 4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive 4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee, 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 (including secure messaging (email) and packages) 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.

(b)The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contract they have with inmates, but all volunteers and contractors who have contact with inmates shall be notified of the agency’s zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.

All volunteer applicants must 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.”

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

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 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.

According to the PAQ, there have been 143 volunteers/contractors who have contact with inmates trained in the agency policies and procedures regarding sexual abuse/harassment prevention, detection, and response. Acknowledgment forms were provided with the PAQ and onsite for review to ensure compliance to this standard is met. Due to COVID-19, Volunteers have not been permitted into the facility for over a year and there was no date on when they would return.

Standard 115.33: Inmate education

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

115.33 (a)

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

115.33 (b)

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

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

115.33 (c)

- Have all inmates received the comprehensive education referenced in 115.33(b)? Yes No
- Do inmates receive education upon transfer to a different facility to the extent that the policies and procedures of the inmate's new facility differ from those of the previous facility? Yes No

115.33 (d)

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

115.33 (e)

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

115.33 (f)

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

Auditor Overall Compliance Determination

Exceeds Standard (*Substantially exceeds requirement of standards*)

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

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

DIR 4021, Inmate Reception/Classification, provides that upon arrival at the facility, each inmate receives a gender-specific pamphlet "The Prevention of Sexual Victimization in Prison", Form DC055. This information explains the agency's zero-tolerance policy regarding sexual abuse and sexual harassment, and addresses prevention, self-protection (situation avoidance), reporting sexual abuse, and sexual harassment, and the availability of treatment and counseling. This information is provided in formats accessible to all inmates. The brochures and handbooks are available in English, Spanish, Haitian-Creole, Russian, Bengali, Chinese, and Korean.

In the last twelve months, 896 inmates were given this information at intake and 764 inmates received comprehensive education on their rights to be free from both sexual abuse/harassment and retaliation for reporting such incidents.

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

DIR 4027A, Sexual Abuse Prevention & Intervention - Inmate on Inmate, ensures that inmates receive during orientation information which addresses sexual abuse and sexual harassment, and the information is to be communicated orally and in writing, in a language clearly understood by the inmates. Each inmate receives an Inmate Orientation Manual that includes PREA information and Audio education is available to the visually impaired through CDs and cassette tapes. Facility staff, the Office of Cultural and Language Access Services staff interpreters, and a Language Line Service is available to the facility for interpretation services when needed.

During the orientation process and within the first week of arrival, inmates view the PREA video "Ending Sexual Abuse Behind the Walls: An Orientation" which is facilitated by staff. This video is available in English, Spanish, Haitian-Creole, Russian, Bengali, Chinese, Korean, and closed caption and is gender specific. This video covers the agency's zero-tolerance policy; prevention; self-protection; how to report sexual abuse suspicions, assaults, and harassment; and how to utilize the PREA hotline for emotional support. The video is impactful by using actual inmates providing testimonies and input on how to stay safe in the correctional setting. Staff conducting the training expands on the previous information provided in the handbook and pamphlet using the PREA-Sexual Abuse Prevention Inmate Orientation Outline, which includes: 1) Introduction and history, explains the role and duties of PREA Coordinator, the role and duties of the Assistant Deputy Superintendent/PREA Compliance Manager, and explains multiple ways to make a report; 2) defines PREA; 3) defines the Agency's zero-tolerance policy; 4) explains the right of every inmate to be free from sexual abuse or sexual harassment and what that means; 5) explains the inmate behavior expectations and defines sexual abuse and sexual harassment; 6) explains what to do if abused; 7) explains how and to whom to report, including 3rd party and anonymous reports; 8) covers the consequences of a false report; 9) explains availability of Victim Services; 9) explains the difference between an authorized Pat Frisk and sexual abuse; 10) covers confidentiality; 11) explains the

requirement of opposite gender staff to announce presence on housing unit and why it is done; 12) provides for a questions and answer period.

(c) Current inmates who have not received such education shall be educated within one year of the effective date of the PREA standards and shall receive education upon transfer to a different facility to the extent that the policies and procedures of the inmate's new facility differ from those of the previous facility.

Any inmates who were admitted to the facility prior to August 20, 2012 were provided the comprehensive PREA education and was completed by August 5, 2015. The video "Ending Sexual Abuse Behind the Walls" was shown and training facilitated to all inmates. Randomly selected inmates on the tour and during inmate interviews confirms that the protocols and procedures are being followed.

Directive 4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate, 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 Victimization in Prison, What You 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.

All inmates transferred to Elmira CF receive a PREA pamphlet in preferred language upon arrival, explaining the agencies and facility's zero-tolerance policy regarding sexual abuse and sexual harassment and explaining how to report incidents or suspicions of sexual abuse or sexual harassment. The PREA Pamphlet is provided in the new arrival packet as confirmed during the interview with the Draft Sergeant. Lead auditor observed the draft process during the site visit and found process working as required by policy. Review of draft receipts of inmates along with inmate interviews further validate this process regularly and consistently takes place.

(d) The agency shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills.

DIR 4027A, Sexual Abuse Prevention & Intervention - Inmate on Inmate, directs that the PREA information and education shall be communicated orally and in writing, in a language clearly understood by the inmates. This information addresses prevention, self-protection (situation avoidance), reporting sexual abuse, and sexual harassment, and the availability of treatment and counseling. Educational information is provided in formats accessible to all inmates. The brochures The Prevention of Sexual Victimization in Prison - What You Need to Know and Help for Victims of Sexual Abuse in Prison-Victim Support and handbooks are available in English, Spanish, Mandarin Chinese, Haitian-Creole, Korean, Bengali, and Russian. Audio education is available to the visually impaired through DVDs and CD's. Facility staff, the Office of Cultural and Language Access Services staff interpreters, and a Language Line Service is available to the facility for interpretation services when needed. There were two inmates identified as Limited English Proficient (LEP) and the auditor interviewed both of them. They were offered an interpreter and both accepted. The auditor determined the inmates were provided the educational information in a manner of their understanding. Inmates with extreme disabilities hampering communication skills, include those who are deaf and visually impaired, would be housed at a different facility.

(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 and during the onsite visit.

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

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. Numerous posters addressing this information were observed throughout the facility.

The PAQ shows that 896 inmates received this information at intake and 764 received comprehensive education. Review of the policy, inmate interviews regarding their knowledge of PREA and verification of the process in place, in addition to formal and informal interviews with staff all support that the facility is meeting the requirements of this standard. The auditor requested and received documentation for 10 inmates and the documentation demonstrated that the inmates signed for receipt of the Prevention of Sexual Victimization in Prison pamphlet and all had signed indicating they observed the orientation video. The video reinforces that inmates can report to anyone at any time, it is their right to be free from sexual abuse and harassment and retaliation.

All of the inmate interviews confirmed that they are 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. The auditor finds sufficient evidence to support a finding of compliance. The auditor relied on information provided with the PAQ and random interviews with staff/inmates, Draft Sgt., Superintendent and the following documentation: Directive 4021 – Offender Reception/Classification; Directive 4027A – Sexual Abuse Prevention & Intervention Inmate – on – Inmate; Deputy Commissioner for Program Services Memo – RE: PREA: Inmate Orientation Film Implementation; Associate Commissioner Memo – RE: New and Updated PREA Material; Associate Commissioner Memo – RE: Sexual Abuse Prevention Inmate Orientation Outline; Elmira Correctional Facility: Inmate Orientation Sign-in Sheets, PREA Posters and Pamphlets; and a review of Draft Receipts of randomly selected inmate records was conducted. 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 many ethnically diverse posters located throughout the facility, the feedback received during the inmate interviews, the availability of pamphlets and the video which can be given in seven different languages.

Standard 115.34: Specialized training: Investigations

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

115.34 (a)

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

115.34 (b)

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

115.34 (c)

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

115.34 (d)

- Auditor is not required to audit this provision.

Auditor Overall Compliance Determination

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

Does Not Meet Standard (*Requires Corrective Action*)

(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.

NYSDOCCS Office of Special Investigations (OSI) Policy Manual Chapter 21 (confidential) sets forth training requirements for Sex Crimes Investigations; ensures in addition to the general training provided to all employees pursuant to §115.31, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings. All new Office of Special Investigations Sex Crimes Division Investigators attend Basic Office of Special Investigations Investigator School which includes the following curricula: New York State Department of Corrections and Community Supervision Office of Special Investigations Overview Training, NIC PREA course Investigating Sexual Abuse in a Confinement Setting initial and advanced, and Communicating Effectively and Professionally with LGBTI Offenders.

(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.

Auditor's review of the specialized training curricula discussed above reveals instruction for 1) conducting sexual abuse investigations in confinement settings; 2) techniques for interviewing sexual abuse victims; 3) proper use of Miranda and Garrity warnings; 4) sexual abuse evidence collection in confinement settings; 5) criteria and evidence required to substantiate a case for administrative action or prosecution referral. consistent with requirements of this standard.

(c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.

New York State Department of Corrections and Community Supervision maintains documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations through participation rosters and hours entered into the training database upon completion. Training records are maintained by the Office of Special Investigations Training Coordinator. There are 31 investigators state-wide in the Agency.

The assigned Senior Investigator and Investigator were interviewed by the auditor and they were both found to be very knowledgeable and well trained in conducting investigations. They conveyed the required steps covered in the training materials and agency policies. Cases are assigned to the designated investigator and once the investigator completes a case, it is presented to the Assistant Deputy Chief who works with New York State Police BCI and the local District Attorney in making the final disposition on assigning for a criminal prosecution. All completed investigations are reviewed by the Assistant Deputy Chief prior to the case being submitted for closure. OSI has recently changed their report format making it much more user friendly and all aspects of the process are covered in detail.

Training records were provided for 31 investigators to provide evidence of the general and specialized training. All Office of Special Investigations/Sex Crimes Division investigators have had the training required by the PREA Standards through internal trainings, outside interview trainings, and online NIC Investigations trainings. The Investigating Sexual Abuse in a Confinement Setting course is taken as part of every investigator's initial training. At a subsequent date and after they have gained substantial

investigative experience, each investigator takes PREA: Investigating Sexual Abuse in a Confinement Setting: Advanced Investigations. A number of the investigators have additional trainings and certifications including Police Crime Scene Photography, Evidence Collection, training in digital forensic evidence collection, and Certified FETI - Forensic Experiential Trauma Interview methodology for science-based trauma interviewing.

The agency has definitely equipped its investigators with extensive knowledge in conducting airtight investigations and very detailed report writing. A number of the investigators have additional trainings and certifications including Police Crime Scene Photography, Evidence Collection, training in digital forensic evidence collection, and Certified FETI - Forensic Experiential Trauma Interview methodology for science-based trauma interviewing. NYSDOCCS exceeds the requirements of this standard through the depth of specialized investigative training supplied, along with the thorough documentation of this training. Based on analysis of information obtained from interviews, document review, investigator's training records and certifications, and policy review, and the stringent training requirements of the Sex Crimes Division over and beyond the requirement of this standard, New York State Department of Corrections and Community Supervision and by extension, Elmira Correctional Facility exceeds requirements of this standard.

Standard 115.35: Specialized training: Medical and mental health care

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

115.35 (a)

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

115.35 (b)

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

115.35 (c)

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

115.35 (d)

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

Auditor Overall Compliance Determination

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

(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 section is NA 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.

The PAQ reports there are sixty-eight (68) medical/mental health staff. Mental health staff needs are met by the staff who are assigned to Elmira Correctional Facility adjacent to this prison. Documentation was provided which demonstrated that all staff have received the specialized training. Staff signs the Report of Training Form acknowledging participation in the course; records are maintained by the training staff.

(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.

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 training documents for medical/mental health, and they all have received the training mandated under 115.31 and 115.32.

NYS DOCCS Training Manual Subject 7.000; 40 hour Orientation/Initial Employee Training, Non-Peace Officer Employees at Facilities - 5/19/20 (Mandatory); Office Of Mental Health (OMH) Memorandum of Understanding; Power Point Presentation: PREA: Medical and Mental Health Care HSPM 1.60 and PREA Standards; outlines how the agency shall ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in: How to detect and assess signs of sexual abuse and sexual harassment; How to preserve physical evidence of sexual abuse; How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and How and to whom to report allegations or suspicions of sexual abuse and sexual harassment. The Auditor determined medical/mental health staff are very familiar with PREA and the process for detecting and assessing signs of sexual abuse and sexual harassment and how to preserve physical evidence of sexual abuse. Interviews with the Nursing Supervisor, Mental Health Supervisor, and Deputy Superintendent of Health Services, demonstrate knowledge of the requirements of this standard support a finding of compliance.

SCREENING FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS

Standard 115.41: Screening for risk of victimization and abusiveness

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

115.41 (a)

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

115.41 (b)

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

115.41 (c)

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

115.41 (d)

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

- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (8) Whether the inmate has previously experienced sexual victimization? Yes No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (9) The inmate's own perception of vulnerability? Yes No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (10) Whether the inmate is detained solely for civil immigration purposes? Yes No

115.41 (e)

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

115.41 (f)

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

115.41 (g)

- Does the facility reassess an inmate's risk level when warranted due to a referral? Yes No
- Does the facility reassess an inmate's risk level when warranted due to a request? Yes No
- Does the facility reassess an inmate's risk level when warranted due to an incident of sexual abuse? Yes No
- Does the facility reassess an inmate's risk level when warranted due to receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness? Yes No

115.41 (h)

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

115.41 (i)

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

Auditor Overall Compliance Determination

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

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

Elmira CF screens all inmates for risk of victimization and abusiveness upon arrival per Directive 4027A, Sexual Abuse Prevention & Intervention Inmate on Inmate. Elmira CF FOM 08.08, PREA Risk Screening states, "The Draft (intake) Sgt. will screen the incarcerated individual upon transfer within 24-hours after arrival using the PREA Risk Screening Form 115.41M.

Within 5 to 14 days of arrival, a reassessment is conducted by the Offender Rehabilitation Coordinator (ORC) for the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.

The PAQ reports that 891 inmates have been screened for risk of sexual victimization and risk of sexual abusiveness. Inmate interviews and random review of twenty inmate files and all confirmed that this assessment is taking place immediately upon arrival. An additional twenty (20) 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.

The New York State Department of Corrections and Community Supervision PREA Risk Screening Form 115.41M is a thorough, information-gathering and quantitative instrument. The instrument allows for recording the responses of the inmate. Auditor's analysis of the instrument determines it to be a factual based and objective instrument.

(d) The intake screening shall consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (1) Whether the inmate has a mental, physical, or developmental

disability; (2) The age of the inmate;(3) The physical build of the inmate; (4) Whether the inmate has previously been incarcerated; (5) Whether the inmate's criminal history is exclusively nonviolent; (6) Whether the inmate has prior convictions for sex offenses against an adult or child; (7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming; (8) Whether the inmate has previously experienced sexual victimization; (9) The inmate's own perception of vulnerability; and (10) Whether the inmate is detained solely for civil immigration purposes.

The screening instrument includes whether the inmate has a mental, physical, or developmental disability, the age and physical build of the inmate, previous incarceration history, whether the inmate's criminal history is exclusively nonviolent, prior convictions for sex offenses, whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming, past sexual victimization, self-perception of vulnerability and civil immigration status.

(e) The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency, in assessing inmates for risk of being sexually abusive.

NYSDOCCS PREA Risk Screening Form 115.41M includes questions to collect data for assessing sexual abusive behavior risk and considers: a) convictions of a crime related to sexual abuse of another inmate, detainee, or resident; b) known history of committing institutional sexual abuse; c) convictions of a violent offense; and d) known history of committing institutional violence.

(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.

Within 5 to 14 days of arrival, a reassessment is conducted by the Offender Rehabilitation Coordinator (ORC) for the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening. Elmira CF FOM 08.08, PREA Risk Screening states, "...reassessed by an assigned Offender Rehabilitation Coordinator (ORC) ordinarily within 14 days of arrival at the facility." The ADS PREA Compliance Manager shall make a final risk assessment determination ordinarily within 30 days of the inmate's arrival at the facility. Interviews with a SORC and ORC's confirms this process and interviews with inmates confirmed that the risk assessment was re-evaluated when meeting with the ORC. A review of random files also confirmed the reviews with the ORC's has occurred. According to the PAQ, there have been 764 reassessments in the 12 months prior to the audit.

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

FOM 08.08, PREA Risk Screening states, "If at any time additional information is received due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the incarcerated individual's risk of sexual victimization or abusiveness, an incarcerated individual's risk level will be reassessed." Interviews with ORC's and the PREA Compliance Manager confirm that risk assessments are completed when warranted.

(h) Inmates may not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (d)(1), (d)(7), (d)(8), or (d)(9) of this section.

FOM 08.08, PREA Risk Screening states, “Incarcerated individuals shall not be disciplined for refusing to answer or for not disclosing complete information in response to questions asked pursuant to the PREA Risk Screening process.” Inmate interviews confirmed that they felt they would not be disciplined for refusing to answer any questions.

(i) The agency shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the inmate’s detriment by staff or other inmates.

FOM 08.08, PREA Risk Screening states, PREA Intake Screening Forms (Form 115.41 M/115.41 F) are confidential. The completed form shall be filed in the Guidance Folder (Assessments Section), and distribution shall be limited to the 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.”

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 DSS/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 (DSS) reviews and makes a final determination on the risk assessment. The auditor confirmed through interviews that only staff with authorization have access to view them.

There were staff interviews with a sergeant that is assigned to conduct the screenings as well as several counselors who are responsible for completing the risk assessment. The staff were exceptionally 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 and attended an initial risk assessment screening at intake. To further assess compliance, the auditor randomly reviewed twenty inmate files. 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 115.42: Use of screening information

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

115.42 (a)

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

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

115.42 (b)

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

115.42 (c)

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

115.42 (d)

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

115.42 (e)

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

115.42 (f)

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

115.42 (g)

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

Auditor Overall Compliance Determination

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

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

Facility Operations Manual 08.08, PREA Risk Screening states, "If the incarcerated individual 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 incarcerated individuals at high risk of sexual victimization from those at high risk of being sexually abusive.

(b) The agency shall make individualized determinations about how to ensure the safety of each inmate.

FOM 08.08 PREA Risk Screening, states, "Information from the Gender Identity Interview Form 115.41GI will be used to assist the Department in making an individualized assessment of the incarcerated individual's placement and program assignments in order to maximize the incarcerated individual's safety." Inmates determined to be at high risk for victimization are interviewed followed by periodic spot checks by the Assistant Deputy Superintendent/PREA Compliance Manager and the inmate's own views of safety are given serious consideration with regard to safety. Bed and/or housing moves, adjustments to programming/work/education assignments may be recommended in order to ensure safety of the individual. Interviews with the Superintendent, Assistant Deputy Superintendent/PREA Compliance Manager, and DSS/PREA Point Person confirmed this practice is well established.

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

DIR 4401, Guidance & Counseling Services directs the procedure for a transgender or intersex inmate to make a request for consideration of placement in a facility for male or female inmates by advising their Offender Rehabilitation Coordinator of their desire for such placement and providing any information that will assist the agency in assessing the request. This request is made by completion of Gender Identity Interview Form 115.41GI by the inmate's counselor and will be evaluated by a multidisciplinary Central Office Transgender/Intersex Inmate Placement Review Committee. This Committee will consider the inmate's own views with respect to safety, the inmate's gender identity, the inmate's security level, criminal and disciplinary history, current gender expression, medical and mental health information, vulnerability to sexual victimization, and likelihood of perpetrating abuse.

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

DOCCS DIR 4401, Guidance and Counseling Services, states "In keeping with the Department's "Policy on the Prevention of Sexual Abuse of Inmates" (Directives 4027A, 4027B, 4028A, and 4028B), at each Initial and Case Plan Review an ORC will inquire whether or not an inmate has any issues, concerns or questions related to sexual abuse document the response as part of the respective review and initiate any required action, including referrals. 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 inmate's own view with respect to his or her own safety shall be given serious consideration.

DOCCS utilizes Gender Identity Interview Form 115.41GI which also documents the inmate's statement regarding their safety in connection with decisions regarding their housing and placement and are given serious consideration.

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

DOCCS DIR 4009 states, "Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates. Elmira CF had five transgender inmates and three were interviewed and they confirmed that they were given the opportunity to shower separately.

(g) The agency shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates.

The auditor conducted an evaluation of the housing assignments of all inmates identified as being lesbian, gay, bisexual, transgender, or intersex and concluded that Elmira Correctional Facility has no dedicated unit or wing for housing inmates with this identification or status. Inmates of all SOGI are housed in a variety of units and wings throughout the facility.

The Auditor relied upon interviews with random staff, random inmates, Draft Sgt., PREA Compliance Manager/PREA Point Person, and the following policies/procedures and documentation provided with the PAQ and onsite reviews of documentation: Deputy Commissioner Memo – RE: Prison Rape Elimination Act (PREA) Risk Screening; Associate Commissioner Memo – RE: New/Revised Other Security Characteristics Regarding Sexual Orientation and Gender Identity; DIR 4021, Inmate Reception/Classification; DIR 4401, Guidance and Counseling Services; DIR 4009 Minimum Provisions for Health and Morale; Elmira CF Report of Risk Screening Information and ECF FOM 08.08 -- PREA Risk Screening. Therefore, the auditor finds compliance with this standard.

Standard 115.43: Protective Custody

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

115.43 (a)

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

115.43 (b)

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

- Do inmates who are placed in segregated housing because they are at high risk of sexual victimization have access to: Work opportunities to the extent possible? Yes No
- If the facility restricts any access to programs, privileges, education, or work opportunities, does the facility document the opportunities that have been limited? (N/A if the facility *never* restricts access to programs, privileges, education, or work opportunities.) Yes No NA
- If the facility restricts any access to programs, privileges, education, or work opportunities, does the facility document the duration of the limitation? (N/A if the facility *never* restricts access to programs, privileges, education, or work opportunities.) Yes No NA
- If the facility restricts any access to programs, privileges, education, or work opportunities, does the facility document the reasons for such limitations? (N/A if the facility *never* restricts access to programs, privileges, education, or work opportunities.) Yes No NA

115.43 (c)

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

115.43 (d)

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

115.43 (e)

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

Auditor Overall Compliance Determination

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

(a) Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers. If a facility cannot conduct such an assessment immediately, the facility may hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment.

NYSDOCCS and ECF sets out the basis for compliance with this standard in Directive 4948 Protective Custody. An inmate appropriate for Involuntary Protective Custody solely because of an assessment of being at high risk for victimization or following a report that the inmate was the victim of sexual abuse, may be put in Involuntary Protective Custody. However, that placement can occur only after all alternatives have been evaluated and a determination made that there are no alternatives available to provide the separation needed from likely abusers. If an assessment can't be made immediately, ECF can place the inmate in Involuntary Protective Custody for less than 24 hours while completing the assessment, using Form 2168A, "Sexual Victimization – Involuntary Protective Custody Recommendation." Due to the type of facility Elmira is, all inmates are single celled.

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

DOCCS has policies for documenting every step of the Involuntary Protective Custody assignments, from the reason for the placement to the limitations (if any) on the inmate's participation in programs, work assignments, etc. Form 2168A has a checklist of all the possible alternatives for involuntary protective custody and a place to explain the reasoning why the alternatives were rejected.

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

In accordance with DIR 4948, Protective Custody Status, the facility assigns inmates at high risk of sexual victimization to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged. Form 2168A includes the basis for the facility's concerns for the inmate's safety and documentation of what alternatives were considered and assessed to be unavailable.

Under this standard, an involuntary placement in segregation based on the risk of victimization ordinarily must not last longer than 30 days, and there must be a review every 30 days. Under DOCCS policy, the length of the involuntary placement would not ordinarily exceed 30 days, in accordance with the standard. The auditor reviewed sample forms for the mandatory reviews and for the "Sexual Victimization Involuntary Protective Custody Restriction of Inmate's Program Participation," where the facility must document any program limitations and the reasons for the limitations. No inmates at risk of sexual victimization were held in involuntary segregated housing in the past 12 months as verified through interviews with staff and review of files.

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

DIR 4948, Protective Custody Status, Form 2168A must be clearly documented with the facility's concerns for the inmate's safety and explanation of what alternatives were considered and assessed to be unavailable when inmate was placed on Involuntary Protective Custody for high risk of victimization.

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

Directive 4948 also ensures that placement shall not ordinarily exceed 30 days. If that should occur, the inmate will be reviewed every seven days; documentation is noted on Form 2170A. The PAQ states that no inmates have been placed in involuntary protective custody due to their high risk of sexual victimization.

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

REPORTING

Standard 115.51: Inmate reporting

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

115.51 (a)

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

115.51 (b)

- Does the agency also provide at least one way for inmates to report sexual abuse or sexual harassment to a public or private entity or office that is not part of the agency? Yes No
- Is that private entity or office able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials? Yes No
- Does that private entity or office allow the inmate to remain anonymous upon request?
 Yes No
- Are inmates detained solely for civil immigration purposes provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security? (N/A if the facility *never* houses inmates detained solely for civil immigration purposes)
 Yes No NA

115.51 (c)

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

115.51 (d)

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

Auditor Overall Compliance Determination

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

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

Directive 4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive and 4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee supports that inmate reports of sexual abuse, sexual harassment, or retaliation can be verbal or in writing. NYSDOCCS has procedures allowing for multiple internal and external ways for inmates to report sexual abuse, sexual harassment, and retaliation. PREA reporting methods are shared with inmates at intake, during orientation, in the PREA brochure, and on posters throughout the facility. The PREA Brochure, The Prevention of Sexual Victimization in Prison: What You Need to Know, informs inmates they can report verbally and in writing to staff, the PREA Compliance Manager, write the PREA Point Person, write the Office of Special Investigations, and report to an outside agency, the New York State Commission of Correction. Inmates can write to the SCOC and ask to remain anonymous if they wish to report anonymously through an outside entity that is not a part of the agency. Inmates may also report allegations through a third party or send an anonymous report. Inmate interviews indicated they were comfortable reporting sexual abuse or sexual harassment, and they knew the different methods available for reporting. DOCCS OSI recently implemented a 444 misconduct reporting line which is documented in postings near the phone.

A test call was placed to the 444 number on day 1 of the audit and it went through. I explained who I was and the reason for my call. Inmates also have other avenues to report any allegations of sexual abuse/harassment.

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

The New York State Commission of Correction (SCOC) has agreed to receive all written inmate reports containing sexual abuse and sexual harassment allegations, including anonymous allegations and will immediately forward them to DOCCS for investigation as they are an outside entity that is not a part of the agency (this is confirmed via memo dated May 24, 2017 from the Chairman). This information is provided to the inmate upon arrival to the facility in draft.

NYSDOCCS does not detain inmates solely for civil immigration purposes. Information on how to contact relevant consular officials is available -A Jailhouse Lawyer's Manual: Immigration & Consular Access Supplement is available in all NYSDOCCS Facility Law Libraries.

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

DOCCS Employees' Manual, Revised 2019, states that staff have a duty to report sexual abuse and sexual harassment, retaliation, and confidentiality. All staff shall report immediately and according to DIR 4027A, Sexual Abuse Prevention & Intervention – Inmate-on-Inmate, and DIR 4028A, Sexual Abuse Prevention & Intervention- Staff-on-Inmate: a) Any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not the facility is part of the Agency; b) Retaliation against inmates or staff who reported such an incident; and c) Any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. The duty to report includes third-party and anonymous reports. Interviews with all staff indicate that reports are accepted in writing, from third parties, anonymously, and verbally and the verbal reports are documented in writing their supervisor. This information is also supplied to the employees through the Albany Training Academy, Sexual Abuse Prevention & Education Office lesson plan, Sexual Abuse Prevention and Response, which states "Third-party and anonymous reports must be reported to an immediate supervisor (or above, as previously stated) who will forward the information through the chain of command. The report will be documented and referred to the Office of Special Investigations for further direction or to initiate an investigation."

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

The staff's PREA Pocket Card outlines that staff can privately report by calling the Office of Special Investigations, Sex Crimes Division. The training lesson plan also informs the staff they can contact OSI via email or by telephone. Staff indicated through interviews they were aware of the methods available to them to report sexual abuse and sexual harassment of inmates.

Policy review and interviews with DSS/PREA Point Person(s), ADS/PREA Compliance Manager, Superintendent, AC/PREA Coordinator, combined with auditor's observations during tour, interviews with inmates, interviews with staff, review of handbook and other available literature signifies Elmira CF meets the requirements of this standard.

Standard 115.52: Exhaustion of administrative remedies

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

115.52 (a)

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

115.52 (b)

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

115.52 (c)

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

115.52 (d)

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

115.52 (e)

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

115.52 (f)

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

115.52 (g)

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

Auditor Overall Compliance Determination

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

DOCCS Directive 4040, Inmate Grievance Program (IGP), 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.

During the past 12 months, 3 allegations were made through the grievance process. These allegations were logged, forwarded to the Watch Commander for investigation, and notification was made to the inmate that the allegation is referred for investigation. Local procedures were verified through interviews with the Grievance Coordinator and ADS/PREA Compliance Manager. Elmira CF is found to meet this standard through non-applicability with all provisions except provision (a) stating exemption.

Standard 115.53: Inmate access to outside confidential support services

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

115.53 (a)

- Does the facility provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations? Yes No
- Does the facility provide persons detained solely for civil immigration purposes mailing addresses and telephone numbers, including toll-free hotline numbers where available of local, State, or national immigrant services agencies? (N/A if the facility *never* has persons detained solely for civil immigration purposes.) Yes No NA

- Does the facility enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible? Yes No

115.53 (b)

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

115.53 (c)

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

Auditor Overall Compliance Determination

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

(a) The facility shall provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies. The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible.

Upon an offender's assignment to the facility, that offender is provided an Inmate Orientation Handbook, as well as an informational PREA brochure. Victim Support brochures are also widely available in many areas throughout the facility. These reference materials contain the contact information for several confidential support services. As well as contact information for confidential rape crisis support services are freely displayed throughout the facility and in all offender housing areas.

DIR 4423, Inmate Telephone Calls provides guidelines for monitoring notices and instructs each facility to post the following notice in English and Spanish adjacent to any telephone to be used by inmates: calls to 777 are not monitored by the facility. Calls through the 777 hotline are treated as confidential. Conversations between inmates and representatives of Rape Crisis Programs are confidential. The rape crisis counselors providing services to inmates are only allowed to report information back to the Department if the inmate gives permission. DIR 4404, Inmate Legal Visits, provides guidance on visits between an inmate and a representative, including an employee or registered volunteer, or a rape crisis program and the Superintendent shall designate an area for these visits which ensures the confidentiality of all communications during the visit.

(b) The facility shall inform inmates, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

DIR 4423 Inmate Telephone Calls states: Monitoring Notice: The following notice shall be posted in English and Spanish adjacent to any telephone to be used by inmates advising them that their telephone calls may be monitored:

NOTICE
ALL INMATE TELEPHONE CONVERSATIONS ARE SUBJECT TO
ELECTRONIC MONITORING AND/OR RECORDING BY DEPARTMENTAL PERSONNEL
AVISO
TODAS LAS LLAMADAS TELEFONICAS DE LOS RECLUSOS PUEDEN SER
ESCUCHADAS
POR MEDIOS ELECTRONICOS Y PUEDEN SER GRABADAS POR EL PERSONAL DEL
DEPARTAMENTO

It also states offenders may add an approved rape crisis support service organization to their approved phone call list. In doing this, policy clearly states these phone calls are to be treated as confidential. Additionally, offenders may access the PREA Statewide Rape Crisis Hotline by dialing 777 from any phone within their housing units and recreation areas. While the informational poster posted adjacent to most offender phones clearly indicates that the PREA Statewide Rape Crisis Hotline is a confidential call, it further notes that the conversation is still recorded in the event of offender misuse.

DIR 4404 Inmate Legal Visits allows advocates assigned to approved rape crisis support service centers to have unmonitored visits with offenders in the legal visitation area. Per Rape Crisis Program Legal Calls policy memorandum from the agency PREA Coordinator, confidential victim support and advocacy legal calls are also provided to rape crisis program staff for the provision of emotional support and victim advocacy services and DIR 4421 Privileged Correspondence notifies offenders that correspondence with approved rape crisis support services is considered confidential and subject only to physical inspection in the presence of the offender as 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 auditor reviewed the MOU between Elmira CF and the Planned Parenthood of Greater NY, Inc/NYSCASA signed during the audit period and continuing until 3/31/21. The Hotline, which is statewide, offers rape crisis and victim support, and it also provides for interpretation services and deaf-relay services when needed. The contract period for Planned Parenthood is April 1, 2020 thru March 31, 2021 and the newest MOU was sent to the auditor after the onsite portion of the audit and is effective April 1, 2021 through September 30, 2022.

Planned Parenthood 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 verified 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, and complete forms to track project services among other requirements.

During the onsite portion of the audit, the auditor observed posters in every housing unit providing information on how to access this service. Posters are next to each phone. There are also phones in the yard area and in the gym for the inmates to use. The auditor spoke to a Victim Advocate for Elmira and she confirmed that she receives referrals from the statewide 777 number. The standard requires that the agency provide access and this agency has gone above and beyond that requirement by creating a system by which inmates may directly access specified services.

Based on policy review, contracts review, documentation review, interviews with inmates, interviews with Associate Commissioner/PREA Coordinator, ADS/PREA Compliance Manager, Planned Parenthood Victim Advocate and Supervisor and review of correspondence records by ECF with community rape crisis centers, and Hotline call tracking reports provided, Elmira CF exceeds requirements of this standard.

Standard 115.54: Third-party reporting

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

115.54 (a)

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

Auditor Overall Compliance Determination

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

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

NYDOCCS Web page for PREA outlines the method for third party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of an inmate. The Auditor reviewed the NYDOCCS Policy Web page to ensure compliance with 115.54(a). Third party reports can also be made to the Superintendent or Watch Commander or by contacting the Office of Special Investigations. Random interviews with staff and

inmates determined that they are aware of the third-party reporting process. DOCCS/ECF meets this standard.

OFFICIAL RESPONSE FOLLOWING AN INMATE REPORT

Standard 115.61: Staff and agency reporting duties

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

115.61 (a)

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

115.61 (b)

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

115.61 (c)

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

115.61 (d)

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

115.61 (e)

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

Auditor Overall Compliance Determination

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

(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 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 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 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, 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.

In accordance with New York Consolidated Laws, Social Services Law - SOS § 488-497. Vulnerable persons' central register, New York State Department of Corrections and Community Supervision is exempt from the vulnerable persons' central register requirements to receive reportable incidents involving covered persons. Elmira Correctional Facility does not house inmates under the age of 18.

(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.

DIR 4027A, Sexual Abuse Prevention & Intervention - Inmate on Inmate and DIR 4028A, Sexual Abuse Prevention & Intervention - Staff on Inmate/Staff on Parolee, all allegations of sexual abuse, sexual harassment, or retaliation against staff, an inmate or a parolee for reporting such an incident or participating in an investigation shall be immediately reported to the Office of Special Investigations who will assign to the appropriate investigator and ensure allegation is thoroughly investigated. DIR 0700, Office of Special Investigations, establishes and grants authority to the Office of Special Investigations, Sex Crimes Division to conduct these investigations.

Elmira CF FOM 8.00, Coordinated Response Plan to an Incident of Inmate Sexual Abuse, lays out the responsibilities of the Watch Commander to document any reports of sexual abuse and sexual harassment, regardless of the method received, and to refer to the Office of Special Investigations/Sex Crimes Division. A review of cases shows that all allegations are reported to the assigned investigator.

A review of all information received to include policies, case files, Elmira CF FOM, and interviews with the OSI Investigators, AC/PREA Coordinator, Superintendent, ADS/PREA Compliance Manager, Watch Commander, and shift supervisors, concludes that Elmira CF meets all provisions of this standard.

Standard 115.62: Agency protection duties

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

115.62 (a)

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

Auditor Overall Compliance Determination

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

Does Not Meet Standard (*Requires Corrective Action*)

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

In accordance with DIR 4948, Protective Custody Status, DOCCS maximizes the safety and security of the inmates who are subject to a substantial risk of imminent sexual abuse. Inmates may be placed in one of three Protective Custody Statuses: 1) Voluntary, Involuntary, and Sexual Victimization Involuntary. The facility reports that there were no inmates determined to be subject to a substantial risk of imminent sexual abuse at Elmira CF over the past 12 months.

Document review and results of interviews with Associate Commissioner/PREA Coordinator, Superintendent and ADS/PREA Compliance Manager, and DSS/PREA Point Person determines compliance with this standard.

Standard 115.63: Reporting to other confinement facilities

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

115.63 (a)

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

115.63 (b)

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

115.63 (c)

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

115.63 (d)

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

Auditor Overall Compliance Determination

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

(a) 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.

NYDOCCS policy (Memo: from Jason D. Effman, Associate Commissioner RE: PREA Standard 115.63, addressed to “All Superintendents”) requires upon receiving an allegation that an inmate was sexually abused while confined at another facility, the Superintendent of the facility that received the allegation must notify the head of the facility where the sexual abuse is alleged to have occurred within 72 hours and facility must also notify the Office of Special Investigations (OSI). 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 interview conducted with the Acting Commissioner on April 29, 2021.

The PAQ indicates there were 8 instances reported regarding sexual abuse that occurred at another facility in the 12 months prior to the audit. The interview with the Superintendent supported that these notifications are made by his office within 72 hours of receipt. Copies of this documentation was readily provided to the auditor. Review confirmed that the notification is made from the Superintendent to the Head of the Facility immediately.

(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 three allegations were received from another facility regarding abuse that occurred at Elmira Correctional Facility in the past 12 months. A copy of the notification was provided to the auditor for review. This notification was from the Superintendent to the Superintendent.

Auditor finds compliance based on review of the following: Memo from Jason Effman, Associate Commissioner, RE: Reporting to other Confinement Facilities (Revised); Jail Administrators contact Information; and interviews conducted with the Agency Head (4/29/21), Facility Superintendent and PREA Compliance Manager, who acknowledged notifications of abuse from one facility to another are investigated in accordance with standard 115.63 (d) and interview.

Standard 115.64: Staff first responder duties

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

115.64 (a)

- Upon learning of an allegation that an inmate was sexually abused, is the first security staff member to respond to the report required to: Separate the alleged victim and abuser?
 Yes No
- Upon learning of an allegation that an inmate was sexually abused, is the first security staff member to respond to the report required to: Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence? Yes No
- Upon learning of an allegation that an inmate was sexually abused, is the first security staff member to respond to the report required to: Request that the alleged victim not take any

actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating, if the abuse occurred within a time period that still allows for the collection of physical evidence? Yes No

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

115.64 (b)

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

Auditor Overall Compliance Determination

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

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

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

According to the PAQ, there were zero instances where a staff member responding to an incident requiring preservation of physical evidence. A review of the investigations confirmed that no incidents occurred during the 12-month audit period that involved a first responder to act to preserve evidence.

The auditor finds compliance based on interviews with security and non-security staff where most staff were found to be knowledgeable of their responsibilities as a first responder and review of DIR 4027A, Sexual Abuse Prevention & Intervention – Inmate on Inmate and DIR 4028A, Sexual Abuse and Prevention & Intervention – Staff on Inmate/Staff on Parolee, Sexual Abuse Response and Containment Checklist, Sexual Abuse Prevention and Response (SAPR) Lesson Plan, PREA Pocket Card and FOM 8.00, Coordinated Response Plan to an Incident of Inmate Sexual Abuse, with which all address the requirements of this standard.

Standard 115.65: Coordinated response

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

115.65 (a)

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

Auditor Overall Compliance Determination

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

(a) 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.

Elmira Correctional Facility FOM 08.00, 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 and Anonymous reports, 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 medical assessment, post medical assessment, mental health staff actions, and emphasizes confidentiality as well. All staff interviewed was knowledgeable regarding the process. The interview with the Superintendent further solidified that the facility has a Coordinated Response Plan in which staff are knowledgeable regarding it, and it consistently goes to the Watch Commander who ensures notifications and appropriate actions are made. Based on the feedback in interviews, the review of the plan, and review of completed investigations, the auditor finds there is more than enough evidence to support a finding of compliance.

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

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

115.66 (a)

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

115.66 (b)

- Auditor is not required to audit this provision.

Auditor Overall Compliance Determination

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

(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.

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

Standard 115.67: Agency protection against retaliation

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

115.67 (a)

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

115.67 (b)

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

115.67 (c)

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

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

115.67 (d)

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

115.67 (e)

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

115.67 (f)

- Auditor is not required to audit this provision.

Auditor Overall Compliance Determination

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

(a) The agency shall establish a policy to protect all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff and shall designate which staff members or departments are charged with monitoring retaliation.

DIR 4027B Sexual Abuse Reporting & Investigation - Inmate on Inmate, and DIR 4028B, Sexual Abuse Reporting & Investigation - Staff on Inmate/Parolee, prohibit retaliation and directs investigation of complaints by Office of Special Investigations/Sex Crimes Division. State of New York Department of Corrections and Community Supervision Employee's Manual, Rule 2.19 defines the Agency's zero-tolerance policy for sexual abuse, sexual harassment, and retaliation against any person who reports such an incident or participates in an investigation. Rule 2.20 directs staff to report any retaliation against inmates or staff. Memorandum from Associate Commissioner/PREA Coordinator, dated April 18, 2019 (revised), directs protection of inmates, parolees and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff and institutes 120 days of monitoring. The employees charged with monitoring retaliation at Elmira CF is the ADS/PREA Compliance Manager with the assistance of the PREA Point Person.

(b) The agency shall employ multiple protection measures, such as housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations. (c) For at least 90 days following a report of sexual abuse, the agency shall monitor the conduct and treatment of inmates or staff who reported the sexual abuse and of inmates who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff and shall act promptly to remedy any such retaliation. Items the agency should monitor include any inmate disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need. (d) In the case of inmates, such monitoring shall also include periodic status checks. (e) If any other individual who cooperates with an investigation expresses a fear of retaliation, the agency shall take appropriate measures to protect that individual against retaliation.

The memo from AC Effman dated 4/18/19 states:

For a minimum of four (4) months following a report of sexual abuse or sexual harassment, the facility shall monitor the conduct and treatment of: 1) an inmate, including an incarcerated parolee, adolescent offender, or resident who reported an incident of sexual abuse or sexual harassment (including a third-party reporter); 2) an inmate, including an incarcerated parolee, adolescent offender, or resident who was reported to have suffered sexual abuse or sexual harassment; and 3) an employee who reported an incident of sexual abuse or sexual harassment of an inmate. 4) Further, if any other individual (staff, volunteer, contractor, inmate, adolescent offender, resident, etc.) who cooperates with an investigation expresses a fear of retaliation, the facility and agency shall take appropriate measures to protect that individual against retaliation as well. In accordance with Directives 4027B and 4028B, the Office of Special Investigations, Sex Crimes Division shall be notified promptly of any complaint or evidence of retaliation. The complaint or evidence shall be reviewed by OSI for investigation or for further direction. Upon consultation with OSI, the facility shall act promptly to remedy any such retaliation. Monitoring to prevent retaliation shall continue for an additional period of at least four (4) months if the previous period of monitoring indicates a continuing need.” The Employees’ Manual also states, “All allegations of sexual abuse, sexual harassment, or retaliation against staff or an inmate for reporting such an incident or participating in an investigation will be thoroughly investigated.

Form 115.67 Retaliation Monitoring Form ensures that all aspects of this standard are 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 facility provided the spreadsheet tracking mechanism along with ten examples of completed Retaliation Monitoring Forms. A review of the above-mentioned procedures and forms provided along with interviews with the Superintendent, PREA Coordinator, PREA Compliance Manager and PREA Point Person, all support that retaliation monitoring is taken seriously and well documented. The retaliation monitoring is continued even if the inmate transfers to another DOCCS facility. With all information provided and the

fact that DOCCS monitors for 120 days or longer, this supports the decision to find that DOCCS/ECF exceeds this standard.

Standard 115.68: Post-allegation protective custody

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

115.68 (a)

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

Auditor Overall Compliance Determination

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

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

Directive 4948, Protective Custody Status and Form 2168A, Sexual Victimization—Involuntary Protective Custody Recommendation sets forth the minimum conditions of confinement. If the need arises for post-allegation protective custody, all available alternatives to involuntary protective custody are considered first. The Superintendent, PREA Coordinator and the ADS/PREA emphasized during their interviews that ECF consistently makes every effort to avoid using sexual victimization involuntary protective custody, using it only when all other alternatives have been found unsuitable. If involuntary custody is unavoidable, there must be a review every 30 days to evaluate the need for continued involuntary protective custody.

According to the PAQ, there were no instances of Involuntary Protective Custody at Elmira CF.

INVESTIGATIONS

Standard 115.71: Criminal and administrative agency investigations

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

115.71 (a)

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

- Does the agency conduct such investigations for all allegations, including third party and anonymous reports? [N/A if the agency/facility is not responsible for conducting any form of criminal OR administrative sexual abuse investigations. See 115.21(a).] Yes No NA

115.71 (b)

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

115.71 (c)

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

115.71 (d)

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

115.71 (e)

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

115.71 (f)

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

115.71 (g)

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

115.71 (h)

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

115.71 (i)

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

115.71 (j)

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

115.71 (k)

- Auditor is not required to audit this provision.

115.71 (l)

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

Auditor Overall Compliance Determination

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

(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.

The Office of Special Investigations (OSI), Sex Crimes Division in the NYSDOCCS conducts investigations as outlined in the PREA standards. DOCCS DIR 0700 – Office of Special Investigations; Chapter 21, Sex Crimes Division (confidential procedures); Chapter 12 Case Tracking and Investigative Reports (Confidential); “states All reports of sexual abuse, sexual harassment, and retaliation against an inmate or staff member for reporting or taking part in an investigation of possible sexual abuse or harassment will be thoroughly investigated. 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 by the facility. Additionally, 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.

The Investigators continually receive specialized training in sexual abuse investigations pursuant to standard 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.

DIR 0700, Office of Special Investigations and Investigations Training directs and instructs Sex Crimes Division Investigators to gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; to interview alleged victims, suspected perpetrators, and witnesses; and to review prior complaints and reports of sexual abuse involving the suspected perpetrator.

(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.

Per OSI Manual, Chapter 21, Sex Crimes Division, (Confidential), When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews as set forth in Directive 0102 only after consulting with the DCI or ADCI and 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.

DOCCS directives clearly state 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. Credibility of an inmate or staff is based on an assessment of the individual's history of institutional behavior, prior allegations, any disciplinary history, and any other factors relevant to the investigation according to the interviews conducted. 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 in the State of New York per Criminal Procedure Law section 160.45 Polygraph tests; prohibition against. A review of cases closed in the last 12 months indicated no truth-telling device was used during the investigation.

(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.

OSI Manual, Chapter 12-Case Tracking and Investigative Reports is a confidential document reviewed by this auditor and found that it supports compliance with this standard. The interview with investigators

did confirm that staff actions are reviewed in every case and a review of investigations supports they are in uniform, written reports that include a description of the physical evidence reasoning behind the credibility assessments and investigative facts and findings.

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

DIR 4027A, DIR 4028A, OSI Training Curriculums and OSI policy manual Chapter 12, requires that all criminal investigations be documented in written reports. As a function of that documentation, these reports should include a description of the physical evidence, testimonial evidence, and documentary evidence. A review of files maintained by OSI specific to this facility provided detailed written reports of both the allegations and the subsequent investigation. Interviews with the OSI Investigators shows that all substantiated allegations of conduct that appear to be criminal are referred for prosecution.

(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.

Office of Special Investigations Policy Manual, Chapter 21 (confidential) directs 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. Review of investigative files indicated that investigations continue even after the departure of an employee from employment.

(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 section.

(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 dates 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."

The Auditor reviewed the following documentation to determine the findings: DOCCS DIR 0700 – Office of Special Investigations; Chapter 21, Sex Crimes Division (confidential procedures); Chapter 12, Case Tracking and Investigative Reports (Confidential); Elmira Correctional facility had (21) reports of sexual abuse, sexual harassment or sexual misconduct in the past 12 months that were investigated by OSI and none were referred for prosecution. The Auditor determined compliance through review of all above mentioned documentation, policies and procedures, training logs, interviews with two OSI, Sex Crimes Investigators and reviews of investigative case files from Elmira CF in this audit period. Therefore, the auditor concludes that investigations are addressed promptly, thoroughly, in a manner which will hold up in court, and with a review of incidents to address staff actions and assess credibility consistently, which shows this portion of the PREA standards is taken very seriously by NYSDOCCS. The facility is given an exceeds on this standard due to the specialization of the investigators, the thoroughness of the reports and the extensive training they receive.

Standard 115.72: Evidentiary standard for administrative investigations

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

115.72 (a)

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

Auditor Overall Compliance Determination

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

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

OSI Manual, Chapter 21, Sex Crimes Division (confidential procedures); PowerPoint Presentation Excerpt: PREA Specialized Training Investigations – outlines how the agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated. Interviews with the investigators confirmed they have no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse/sexual harassment are substantiated. An allegation is determined to have occurred based upon the preponderance of the evidence when the weight of the evidence indicates that the allegation is more likely to be true than not true.

The Auditor determined compliance through review of policy and procedures; review of investigative case files; additional supporting documentation and training logs; Chapter 21, Sex Crimes Division (confidential procedures); Interview conducted with DOCCS OSI Investigators with the Sex Crimes Division. Elmira CF has had (21) sexual abuse, harassment, misconduct cases in the last 12 months that were investigated by OSI.

Standard 115.73: Reporting to inmates

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

115.73 (a)

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

115.73 (b)

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

115.73 (c)

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

115.73 (d)

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

alleged abuser has been convicted on a charge related to sexual abuse within the facility?

Yes No

115.73 (e)

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

115.73 (f)

- Auditor is not required to audit this provision.

Auditor Overall Compliance Determination

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

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

The Superintendent of the facility where the incident was reported to have occurred and the facility where the inmate is currently housed will be notified of the outcome of the investigation via a "Notification of Investigative Determination". OSI/Sex Crimes Division shall forward a completed copy of the Notification of Investigative Determination via electronic mail to the appropriate facility Superintendents, Assistant Deputy Superintendent/PREA Compliance Manager, or the facility's PREA Point Person. Case files reviewed indicated that inmates were notified of the disposition by the Sex Crimes Division via Privileged Mail, for which the inmate will sign for receipt.

Documents reviewed included: 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.

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

All investigations are completed by an OSI investigator which is a part of the agency; therefore, this section is NA.

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

According to Office of Special Investigations Policy Manual, Chapter 21 (confidential), following an inmate's allegation that a staff member has committed sexual abuse against the inmate, for substantiated or unsubstantiated staff on inmate sexual abuse cases, the inmate is notified when the staff is no longer posted within the unit, no longer employed at the facility, indicted or convicted on a sexual abuse charge related to that incident. Investigation updates in criminal cases are provided in writing by the Sex Crimes Division Investigator or in direct communication from the DCI or ADCI to the inmate. Elmira Correctional Facility had seventeen cases within the past 12 months. Auditor's interview with Sex Crimes Division Investigator and a Senior Investigator confirmed this policy requirement is in practice.

(d) Following an inmate's allegation that he or she has been sexually abused by another inmate, the agency shall subsequently inform the alleged victim whenever: (1) The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or (2) The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.

According to Office of Special Investigations Policy Manual, Chapter 21, following an inmate's allegation that he or she has been sexually abused by another inmate, the agency informs the victim whenever the agency learns the abuser has been indicted or convicted on a charge related to the sexual abuse incident. These investigation updates are provided in writing by the DCI or ADCI. Elmira Correctional Facility had no cases that met this condition within the last 12 months. Auditor's interview with Sex Crimes Investigator and Senior Investigator confirmed this policy requirement is in practice.

(e) All such notifications or attempted notifications shall be documented.

Documentation of the notifications referenced in the above paragraphs is retained with the investigation case file and by the agency's PREA Management Office. Twenty-six cases were closed, and evidence of notification was provided for review. Evidence of notification to inmate was provided for each of the Office of Investigations cases reviewed by auditor.

Elmira CF is found to meet the provisions of this standard based on the interviews with the investigators and Superintendent and review of OSI Chapter 21, Sex Crimes Division, and the examples provided prior to and during the audit.

DISCIPLINE

Standard 115.76: Disciplinary sanctions for staff

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

115.76 (a)

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

115.76 (b)

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

115.76 (c)

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

115.76 (d)

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

Auditor Overall Compliance Determination

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

(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, 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 – 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 severally. It also 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. 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 – 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–RE: Prison Rape Elimination Act / Presumptive Disciplinary Sanction for Staff Sexual misconduct and Directive 2111-Report of Employee Misconduct – 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.

DIR 4028A, Sexual Abuse Reporting & Investigation - Staff on Inmate/Staff on Parolee directs 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.

Elmira CF had no staff terminated for violation of these standards. Interviews with the PREA Compliance Manager, Superintendent, and OSI Investigators supports that all allegations against staff for sexual abuse, sexual harassment, retaliation or neglect are investigated and disciplinary action would be proportionate with the circumstances up to and including termination for sexual abuse.

Standard 115.77: Corrective action for contractors and volunteers

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

115.77 (a)

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

115.77 (b)

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

Auditor Overall Compliance Determination

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

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

OSI Policy/Procedure Manual Chapter 32, Reporting of Misconduct to Outside Agencies is deemed confidential; however, was reviewed by this auditor and the information is in line with reporting processes. DIR 4750, Volunteer Services Program clearly states, "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." It also states, "During volunteer orientation, volunteers must be informed that a formal suspension/dismissal procedure exists and what constitutes grounds for suspension and/or dismissal. Grounds for suspension/dismissal of volunteers are usually based on a violation of the "Standards of Conduct for Volunteers," form 4750C and all applicable policies, and the nature of such a violation."

All volunteers/contractors must sign an acknowledgement form and Standards of Conduct form prior to providing any services to inmates. Volunteers have not been in the facility for over a year due to COVID

19 and the only contractor available to interview was in medical (physical therapist). There have been no instances in the last 12 months where a volunteer/contractor has been reported to law enforcement for engaging in sexual abuse of inmates. Interviews with the Superintendent and PREA Compliance Manager confirmed this. Therefore, it is found that Elmira CF meets all the provisions of this standard.

Standard 115.78: Disciplinary sanctions for inmates

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

115.78 (a)

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

115.78 (b)

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

115.78 (c)

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

115.78 (d)

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

115.78 (e)

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

115.78 (f)

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

115.78 (g)

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

Auditor Overall Compliance Determination

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

(a) Inmates shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the inmate engaged in inmate-on-inmate sexual abuse or following a criminal finding of guilt for inmate-on-inmate sexual abuse. (b) Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the inmate's disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories.

DIR 4932 outlines procedures for all inmate disciplinary hearings. DOCCS Hearing Officer Reference Book is used as a guide for the Hearing Officer on the obligation of appropriate discipline for misbehavior and emphasizes the importance of fairness and consistency in disciplinary dispositions. Disciplinary sanctions may be imposed on inmates who engage in sexual abuse and harassment. Inmates can be subject to discipline internally for inmate-on-inmate sexual abuse. Sanctions are commensurate with the nature and circumstances of the abuse committed, the inmate's disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories. There have been no administrative or criminal findings of inmate-on-inmate sexual abuse that have occurred at the facility.

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

The guidance to Hearing Officers on Using Progressive Discipline, and the Guidelines for Disciplinary Dispositions, clearly states a person with a diminished intellectual capacity may be less blameworthy for acts of misbehavior. To the extent it is known by the hearing officer, an inmate's diminished intellectual capacity should be considered a mitigating factor in accordance with established procedures. In Appendix C, the checklist states the hearing officer should consider special conditions; such as inmate whose mental health is at issue in accordance with established procedures and/or inmate who intellectual capacity is at issue in accordance with established procedures, prior to deciding on sanctions to impose.

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

Directive 4401 Guidance and Counseling, addresses treatment services and Sex Offender Counseling and Treatment Program Guidelines which verifies that an inmate is eligible for treatment if found guilty of

sexual abuse while incarcerated. The inmate will be referred to this program, including sex offender treatment programs, available for inmates at DOCCS. It indicates that this will include guilty findings at a tier hearing per Inmate Standards of Behavior for any sexually abusive and/or assaultive act.

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

DIR 4028A, directs any incident of sexual assault on staff by an inmate or parolee will be immediately reported to the Office of Special Investigations and handled in accordance with established Department policy for investigation and criminal prosecution of inmates. This directive will be enforced only if it is determined the staff member did not consent to the 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.

DIR 4028A states no retaliation of any kind shall be taken against an inmate, parolee, or employee for good faith reporting of sexual abuse, sexual harassment, or sexual threats. A report made in good faith based upon a reasonable belief that the alleged conduct did occur does not constitute falsely reporting an incident or lying for the purpose of disciplinary action, even if 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.

DOCCS prohibits all sexual activity between inmates and disciplines inmates for such activity per DIR 4027A, Sexual Abuse Prevention & Intervention – Inmate-on-Inmate.

There have been no administrative findings of inmate-on-inmate sexual abuse that occurred in the last twelve months. The auditor determined compliance based on interviews with the Superintendent, PREA Compliance Manager and PREA Point Person and a review of the following documentation: Directive 4401 – Guidance and Counseling Services; Directive 4027A – Sexual Abuse Prevention & Intervention Inmate – on – Inmate; Directive 4028A – Sexual Abuse Prevention & Intervention Staff – on – Inmate; Directive 4932 – Standards Behavior & Allowances; Sex Offender Counseling and Treatment Program Guidelines and Hearing Officer Standards of Inmate Behavior and Confinement Sanctions Guidelines.

MEDICAL AND MENTAL CARE

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

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

115.81 (a)

- If the screening pursuant to § 115.41 indicates that a prison inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, do staff

ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening? (N/A if the facility is not a prison.)

Yes No NA

115.81 (b)

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

115.81 (c)

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

115.81 (d)

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

115.81 (e)

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

Auditor Overall Compliance Determination

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

(a) If the screening pursuant to § 115.41 indicates that a prison inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.

Health Services Policy 1.44, Health Screening of Inmates, notes that upon arrival at a DOCCS facility, every newly received or transferred inmate, will receive a health screening by a Registered Nurse (RN). This screening will include an inquiry into the inmate's current and past health, mental health, and PREA

history and immediate referral of any inmate to a health provider if indicated. In the past twelve months, 100% of offenders received at Elmira CF who disclosed prior victimization during screening were offered a follow-up meeting with a medical or mental health practitioner.

(b) If the screening pursuant to § 115.41 indicates that a prison inmate has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening.

DIR 4301, Mental Health Satellite Services and Commitments to CNYPC, and Elmira FOM 08.08 PREA Risk Screening, regular mental health referrals are addressed within a timeframe that is consistent with the nature of the referral and within 14 days. In the past twelve months, 100% of offenders received at ECF who previously perpetrated sexual abuse, as indicated during the screening, were offered a follow up meeting with a mental health practitioner.

(c) If the screening pursuant to § 115.41 indicates that a jail inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.

See comments in section (a) and (b).

(d) Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law.

HSPM 1.44, Health Screening of Inmates, states that any information related to sexual victimization or abusiveness that occurred in an institutional setting is strictly limited to medical and mental health practitioners and other staff as necessary to inform treatment plans and security management decisions, including housing, bed, work, education and program assignments, or as otherwise required by Federal, State, or local law. The PREA Screening Form also notes an area for reports of sexual victimization that occurred outside the institutional setting.

Form 3278 includes a brief review again of whether the inmate has been sexually abused or victimized. It provides a place to obtain consent for those who report abuse that occurred outside the prison to obtain consent. It is specified that it is for inmates over the age of eighteen. It provides a referral for mental health and notification to the Watch Commander if the information causes a concern, demonstrating that the information is only provided to staff to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments.

(e) Medical and mental health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18.

HSPM 1.44, Health Screening of Inmates also requires medical and mental health practitioners to obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18. It should be noted that since the form was implemented, DOCCS no longer houses inmates under the age of 18. It should be noted that since the form was implemented, DOCCS no longer houses inmates under the age of 18.

Review of the randomly reviewed risk assessments supported that the procedure as established by this Agency is being followed. Policy, written authority, interviews with mental health and medical staff and intake staff in addition to evidence of compliance in the randomly reviewed files supports a finding of compliance with this standard.

Standard 115.82: Access to emergency medical and mental health services

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

115.82 (a)

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

115.82 (b)

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

115.82 (c)

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

115.82 (d)

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

Auditor Overall Compliance Determination

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

(a) Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.

Elmira FOM 08.00, Coordinated Response Plan, 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.

(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.

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 needs are available 24/7.

(c) Inmate victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.

ECF FOM 08.00, Coordinated Response, requires that security shall arrange to have all offenders involved in the incident to be separately escorted to medical immediately regardless of when the incident is alleged to have occurred. Advise Medical of the reported involvement of each participant. Note that there is a 2-hour optimum window to initiate medical post exposure prophylactic treatment; time is of the essence to have the participants seen by medical staff as soon after the incident as is possible.

(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.

Health Services Policy 1.60, Sexual Assault, states all victims of sexual abuse will be afforded access to forensic medical examinations at an outside facility and any other medical treatment, without financial cost, where evidentially or medically appropriate. Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment. Also, New York Public Health Law, Section 2807-c states that no general hospital shall refuse to provide hospital services to a person presented or proposed to be presented for admission to such general hospital by a representative of a correctional facility.

Interviews with medical/mental health staff gathered there were no instances in the last twelve months requiring any inmate to be transported to an outside hospital for a medical evaluation. Compliance is evaluated based on agency policy and interviews with healthcare staff. All staff are knowledgeable of policy and able to recite procedures and protocols. Therefore, ECF meets the provisions of this standard.

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

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

115.83 (a)

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

115.83 (b)

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

115.83 (c)

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

115.83 (d)

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

115.83 (e)

- If pregnancy results from the conduct described in paragraph § 115.83(d), do such victims receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services? (N/A if “all-male” facility. *Note: in “all-male” facilities, there may be inmates who identify as transgender men who may have female genitalia. Auditors should be sure to know whether such individuals may be in the population and whether this provision may apply in specific circumstances.*) Yes No NA

115.83 (f)

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

115.83 (g)

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

115.83 (h)

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

Auditor Overall Compliance Determination

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

(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.

HSPM 1.60, Sexual Assault, requires that all allegations of sexual assault must be evaluated immediately by the facility health staff.

(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.

HSPM 1.60, Sexual Assault, notes that the inmate victim of an alleged sexual assault will be medically evaluated regardless of whether or not the allegation has been independently verified prior to the victim's presentation for treatment. For all involved inmates, immediate completion and submission of a DOCCS Mental Health Referral, Form 3150, to Mental Health staff.

(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 and Office of Mental Health Memorandum of Understanding 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

The provisions are NA as this is an all-male facility.

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

HSPM 1.60, Sexual Assault, HSPM 1.12B, Inmate Blood borne Pathogens Significant Exposure Protocol 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.

Health Services Policy 1.60, Sexual Assault, states all victims of sexual abuse will be afforded access to forensic medical examinations at an outside facility and any other medical treatment, without financial cost, where evidentially or medically appropriate. Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment. Also, New York Public Health Law, Section 2807-c states that no general hospital shall refuse to provide hospital services to a person presented or proposed to be presented for admission to such general hospital by a representative of a correctional facility.

(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 DOCCS. HSPM 1.44, 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.

As appropriate, offenders are provided the opportunity to attend follow-up treatments. This standard is designed to ensure ongoing medical and mental health care for sexual abuse victims and abusers. The medical services provided are consistent with the community level of care. The Medical and Mental Health Department has satisfied every aspect of the provisions and is in compliance with the standards.

DATA COLLECTION AND REVIEW

Standard 115.86: Sexual abuse incident reviews

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

115.86 (a)

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

115.86 (b)

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

115.86 (c)

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

115.86 (d)

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

115.86 (e)

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

Auditor Overall Compliance Determination

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

(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.

According to DOCCS procedural memo to all superintendents dated May 9, 2014, sexual abuse incident reviews are required under section 115.86 of the PREA Standards following the completion of the

investigation by the Office of Special Investigations. A review must be conducted within 30 days of the conclusion of the investigation unless the allegation is unfounded.

(c) The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.

The same memo also states: The PREA Standards require the review team to include upper-level facility management officials, with input from line supervisors, investigators, and medical or mental health practitioners. The chair of the review team will be the Assistant Deputy Superintendent PREA Compliance Manager (ADS/PREA). For those facilities that do not yet have an ADS/PREA, an ADS/PREA from a nearby facility or one of the Correctional Facility Operations Specialists (CFOS) in the Sexual Abuse Prevention & Education Office, will participate and be responsible for coordinating the review and completing the review form. The DSS/PREA Point Person, will be the security representative on the review team.

(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.

In accordance with the same procedural memo, a form has been designed to capture the review and any recommendations of the review team. This form is designed to consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse. It considers whether the incident or allegation was motivated by race, ethnicity, gender identity, sexual orientation, gang affiliation, an offender's status or perceived status within any of the aforementioned categories, as well as other group dynamics at the facility. In conducting incident reviews, the review team does consider adequacy of staffing levels in the area during different shifts, whether physical barriers in the area may enable abuse, and whether monitoring technology should be deployed or augmented to supplement supervision by staff. Following consideration, the review team prepares a report of its findings, including recommendations for improvement, and submits said report to the Superintendent and the PREA Coordinator. Elmira CF had eleven (11) incident reviews in the 12 months prior to the audit.

(e) The facility shall implement the recommendations for improvement or shall document its reasons for not doing so.

The Sexual Abuse Incident Review Checklist includes a section for identifying recommendations for improvements to better prevent, detect, or response to sexual abuse. Of the 11 cases reviewed, recommendations for improvements were given consideration on all.

Interviews with Associate Commissioner/PREA Coordinator, ADS/PREA Compliance Manager, Superintendent, and DSS/PREA Point Person found that all parties carry out constant awareness in pushing recommendations to make the facility safer and to improve procedures where needed.

Standard 115.87: Data collection

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

115.87 (a)

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

115.87 (b)

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

115.87 (c)

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

115.87 (d)

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

115.87 (e)

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

115.87 (f)

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

Auditor Overall Compliance Determination

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

(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;

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.

(b) The agency shall aggregate the incident-based sexual abuse data at least annually;

An annual report is prepared of these findings for each facility and at the Agency level from the Monthly Sexual Abuse/Threat Incident Summary Reports.

(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.

Information included on the Monthly Sexual Abuse/Threat Incident Summary report: 1) log number; 2) date of report; 3) time of report; 4) date of incident; 5) time of incident; 6) name and identification number of inmate(s) involved; 7) location of incident; 8) brief description; 9) date and time Office of Special Investigations contacted; 10) name of staff involved; and 11) total number of sexual abuse allegations by month and year to date.

(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

DIR 4027B, Sexual Abuse Reporting & Investigation Inmate on Inmate and DIR 4028B Sexual Abuse Reporting & Investigation Staff on Inmate/Staff on Parolee directs sexual abuse data is extracted, coded, and prepared for a secondary review with a Sex Crimes Division investigator.

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

DOCCS does not contract for confinement of inmates.

(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 24, 2020.

As stated above, the policies, retention schedule, review of the data gathering operation, interview with the PREA Coordinator and ADS/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 115.88: Data review for corrective action

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

115.88 (a)

- Does the agency review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by: Identifying problem areas? Yes No
- Does the agency review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by: Taking corrective action on an ongoing basis? Yes No
- Does the agency review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by: Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole? Yes No

115.88 (b)

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

115.88 (c)

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

115.88 (d)

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

Auditor Overall Compliance Determination

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

(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.

PREA Data Collection, Review, Retention and Publication Manual directs the PREA Analyst to prepare and aggregate data collected in coordination with the Sexual Abuse Prevention & Education Office and the Office of Special Investigations Sex Crimes Division in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices and training throughout the year. An annual report is prepared which includes identification of problem areas, and corrective action for each facility and 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.

PREA Data Collection, Review, Retention and Publication Manual directs the annual report include a comparison of the current year's data and corrective actions with those from prior years and provides an assessment of progress in addressing sexual abuse. A review of the annual reports posted on the DOCCS website shows all prior years starting in 2013.

(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.

Per the PREA Data Collection, Review, Retention and Publication Manual, following approval by the Associate Commissioner/PREA Coordinator and the Commissioner, the report is then made available to the public through the DOCCS website. A review of the DOCCS website finds all agency PREA reports publicly available: <https://doccs.ny.gov/about-prea#annual-reports>.

(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.

Personal identifiers are the only information redacted from the public and the Annual Report is designed for public release therefore no information is redacted.

Based on review of the related documents noted above, review of the annual report published to the public website, and interviews with the Acting Commissioner, Associate Commissioner/PREA Coordinator, ADS/PREA Compliance Manager, ECF meets all provisions of this standard.

Standard 115.89: Data storage, publication, and destruction

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

115.89 (a)

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

115.89 (b)

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

115.89 (c)

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

115.89 (d)

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

Auditor Overall Compliance Determination

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

(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.

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

AUDITING AND CORRECTIVE ACTION

Standard 115.401: Frequency and scope of audits

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

115.401 (a)

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

115.401 (b)

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

115.401 (h)

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

115.401 (i)

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

115.401 (m)

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

115.401 (n)

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

Auditor Overall Compliance Determination

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

Does Not Meet Standard (*Requires Corrective Action*)

(a) As noted with the Statement of Compliance, Frequency and Scope of Audits (11/1/18), PREA Audits have been completed at all DOCCS Correctional Facilities in accordance with schedule to ensure that at least one-third of each facility type operated by the Agency was and is scheduled to be audited during each audit year.

(b) This is Audit Year 2 of Cycle 3

(h) The auditor had full access to all areas of the facility.

(i) All documents requested by the auditor were received in a timely manner

(m) The auditor was permitted to conduct private interviews with inmates

(n) Inmates were permitted to correspond with the auditor using privileged mail processes even though no letters were received.

The auditor was given unrestricted access to the institution and provided with all reference materials requested. The auditor was provided with an efficient location from which to interview both employees and staff. Agency staff ensured that the flow of interview traffic was never restricted, and that the auditor was able to attend all requested offender functions throughout the facility as requested. The auditor did not experience any significant barriers, in any stage of the audit, that were under the control of either the agency or ECF. Elmira CF meets all requirements of this standard.

Standard 115.403: Audit contents and findings

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

115.403 (f)

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

Auditor Overall Compliance Determination

Exceeds Standard (*Substantially exceeds requirement of standards*)

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

Does Not Meet Standard (*Requires Corrective Action*)

New York State Department of Corrections and Community Supervision PREA Final Reports are posted at <https://doccs.ny.gov/final-audit-reports>. Statement of Compliance from Associate Commissioner/PREA Coordinator Jason D. Effman dated November 1, 2018 attests that the agency posts all final PREA audit reports on the agency website within 90 days of issuance by the auditor. The auditor reviewed the website several times and there are currently 99 PREA audit reports since 2015. The website is easy to navigate through and provides an overview of PREA to include the agency's zero tolerance policy, PREA educational videos, brochures and posters, instructions for third party reporting, etc. The website also provides links to the PREA Standards, PREA Resource Center, National Institute of Corrections, Office of Justice Programs, Just Detention International and the Moss Group, Inc. This information is made available to public access above and beyond requirements of the PREA standards and thereby exceeds provisions of this standard.

AUDITOR CERTIFICATION

I certify that:

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

Auditor Instructions:

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

Michelle L. Burrows

May 29, 2021

Auditor Signature

Date

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

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