

Prison Rape Elimination Act (PREA) Audit Report

Adult Prisons & Jails

☐ Interim ☒ Final

Date of Interim Audit Report: ☒ N/A

Date of Final Audit Report: June 30, 2021

Auditor Information

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Company Name: American Correctional Association	
Mailing Address: 3105 S. Martin Luther King Jr. Blvd #236	City, State, Zip: Lansing, MI 48910
Telephone: (517) 303-4081	Date of Facility Visit: May 19-21, 2021

Agency Information

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

Agency Chief Executive Officer

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

Agency-Wide PREA Coordinator

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

Facility Information

Name of Facility: Washington Correctional Facility			
Physical Address: 72 Lock Eleven Lane		City, State, Zip: Comstock, NY 12821-0180	
Mailing Address (if different from above): PO Box 180		City, State, Zip: Comstock, NY 12821-0180	
The Facility Is:	<input type="checkbox"/> Military	<input type="checkbox"/> Private for Profit	<input type="checkbox"/> Private not for Profit
<input type="checkbox"/> Municipal	<input type="checkbox"/> County	<input checked="" type="checkbox"/> State	<input type="checkbox"/> Federal
Facility Type:	<input checked="" type="checkbox"/> Prison	<input type="checkbox"/> Jail	
Facility Website with PREA Information: https://doccs.ny.gov/location/Washington-correctional-facility			
Has the facility been accredited within the past 3 years? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
If the facility has been accredited within the past 3 years, select the accrediting organization(s) – select all that apply (N/A if the facility has not been accredited within the past 3 years): <input checked="" type="checkbox"/> ACA <input type="checkbox"/> NCCHC <input type="checkbox"/> CALEA <input type="checkbox"/> Other (please name or describe: Click or tap here to enter text.) <input type="checkbox"/> N/A			
If the facility has completed any internal or external audits other than those that resulted in accreditation, please describe: The facility has had various reviews throughout the year internally which include security, staffing fire/safety, in addition to a PREA compliance site assessment.			
Warden/Jail Administrator/Sheriff/Director			
Name: Teresa M. Tynon			
Email: teresa.tynon@doccs.ny.gov		Telephone: 518 639-4486 ext. 2000	
Facility PREA Compliance Manager			
Name: Aaron Torres and Bruce W. Chapman A/Captain			
Email: aaron.torres@doccs.ny.gov		Telephone: 518 639-4486 ext. 5550	
Facility Health Service Administrator <input type="checkbox"/> N/A			
Name: David Karandy			
Email: David.Karandy@doccs.ny.gov		Telephone: 518 639-4486 ext. 6000	
Facility Characteristics			
Designated Facility Capacity:	734		
Current Population of Facility:	568		

Average daily population for the past 12 months:	657	
Has the facility been over capacity at any point in the past 12 months?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Which population(s) does the facility hold?	<input type="checkbox"/> Females <input checked="" type="checkbox"/> Males <input type="checkbox"/> Both Females and Males	
Age range of population:	18-63	
Average length of stay or time under supervision:	385 days	
Facility security levels/inmate custody levels:	Medium Security	
Number of inmates admitted to facility during the past 12 months:	653	
Number of inmates admitted to facility during the past 12 months whose length of stay in the facility was for 72 hours or more:	647	
Number of inmates admitted to facility during the past 12 months whose length of stay in the facility was for 30 days or more:	542	
Does the facility hold youthful inmates?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Number of youthful inmates held in the facility during the past 12 months: (N/A if the facility never holds youthful inmates)	Click or tap here to enter text. <input checked="" type="checkbox"/> N/A	
Does the audited facility hold inmates for one or more other agencies (e.g. a State correctional agency, U.S. Marshals Service, Bureau of Prisons, U.S. Immigration and Customs Enforcement)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Select all other agencies for which the audited facility holds inmates: Select all that apply (N/A if the audited facility does not hold inmates for any other agency or agencies):	<input type="checkbox"/> Federal Bureau of Prisons <input type="checkbox"/> U.S. Marshals Service <input type="checkbox"/> U.S. Immigration and Customs Enforcement <input type="checkbox"/> Bureau of Indian Affairs <input type="checkbox"/> U.S. Military branch <input type="checkbox"/> State or Territorial correctional agency <input type="checkbox"/> County correctional or detention agency (not physically housed at the facility) <input type="checkbox"/> Judicial district correctional or detention facility <input type="checkbox"/> City or municipal correctional or detention facility (e.g. police lockup or city jail) <input type="checkbox"/> Private corrections or detention provider <input type="checkbox"/> Other - please name or describe: Click or tap here to enter text. <input checked="" type="checkbox"/> N/A	
Number of staff currently employed by the facility who may have contact with inmates:	345	
Number of staff hired by the facility during the past 12 months who may have contact with inmates:	3	
Number of contracts in the past 12 months for services with contractors who may have contact with inmates:	6	
Number of individual contractors who have contact with inmates, currently authorized to enter the facility:	6	

Number of volunteers who have contact with inmates, currently authorized to enter the facility:	47
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.	113
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.	14
Number of single cell housing units:	0
Number of multiple occupancy cell housing units:	0
Number of open bay/dorm housing units:	14
Number of segregation cells (for example, administrative, disciplinary, protective custody, etc.):	32
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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has the facility installed or updated a video monitoring system, electronic surveillance system, or other monitoring technology in the past 12 months?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Medical and Mental Health Services and Forensic Medical Exams	
Are medical services provided on-site?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Are mental health services provided on-site?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Where are sexual assault forensic medical exams provided? Select all that apply.	<input type="checkbox"/> On-site <input checked="" type="checkbox"/> Local hospital/clinic <input type="checkbox"/> Rape Crisis Center <input type="checkbox"/> Other (please name or describe: Click or tap here to enter text.)	
Investigations		
Criminal Investigations		
Number of investigators employed by the agency and/or facility who are responsible for conducting CRIMINAL investigations into allegations of sexual abuse or sexual harassment:	31	
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.	<input type="checkbox"/> Facility investigators <input checked="" type="checkbox"/> Agency investigators <input type="checkbox"/> An external investigative entity	
Select all external entities responsible for CRIMINAL INVESTIGATIONS: Select all that apply (N/A if no external entities are responsible for criminal investigations)	<input type="checkbox"/> Local police department <input type="checkbox"/> Local sheriff's department <input type="checkbox"/> State police <input type="checkbox"/> A U.S. Department of Justice component <input type="checkbox"/> Other (please name or describe: Click or tap here to enter text.) <input checked="" type="checkbox"/> N/A	
Administrative Investigations		
Number of investigators employed by the agency and/or facility who are responsible for conducting ADMINISTRATIVE investigations into allegations of sexual abuse or sexual harassment?	31	
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	<input checked="" type="checkbox"/> Facility investigators <input checked="" type="checkbox"/> Agency investigators <input type="checkbox"/> An external investigative entity	
Select all external entities responsible for ADMINISTRATIVE INVESTIGATIONS: Select all that apply (N/A if no external entities are responsible for administrative investigations)	<input type="checkbox"/> Local police department <input type="checkbox"/> Local sheriff's department <input type="checkbox"/> State police <input type="checkbox"/> A U.S. Department of Justice component <input type="checkbox"/> Other (please name or describe: Click or tap here to enter text.) <input checked="" type="checkbox"/> N/A	

Audit Narrative

On May 19-21, 2021, an audit was conducted at the Washington Correctional Facility to determine compliance with the Prison Rape Elimination Act standards finalized August 2012. The auditor was present at the facility from 3:00pm to 5:30pm on Wednesday, 7:30am to 5:30pm on Thursday, and 7:30am to 3:00pm on Friday. The facility was previously audited in May 2018 and found compliant with all standards. There were no barriers to completing the audit. The auditor was selected to complete the audit by responding to the request for auditors by the American Correctional Association.

Audit Methodology:

The PREA Resource Audit Instrument used for Adult Prisons and Jails is furnished by the National PREA Resource Center. This tool includes the following: A) Pre-Audit Questionnaire (PAQ), B) the Auditor Compliance Tool; C) Instructions for the PREA Audit Tour; D) the Interview Protocols; E) the Auditor's Summary Report; F) the Process Map; and G) the Checklist of Documentation. In addition, the Auditor Handbook 2021 was used to guide the audit process. The Online Audit Process was used to initiate the audit; a paper report was provided.

Pre-audit:

The facility reported that posters announcing the audit with the auditor's name and address were placed throughout the facility on March 22, 2021 announcing the audit and identifying the auditor's address in English and Spanish. They were on salient yellow paper. The posters indicated that any correspondence sent to the auditor would be confidential and not disclosed unless required by law. The exceptions in the law were noted. One confidential correspondence letter was received in response to the posters announcing the audit. The auditor's post office box was last checked on May 21, 2021.

The PAQ and corresponding documentation was reviewed in April 2021 and found to be complete. Documentation was provided for each standard and subpart for the auditor which was reviewed prior to the on-site audit.

The Agency website was reviewed. PREA Audit reports, PREA Annual Reports, the previous PREA audit report from May 2018 for Washington Correctional Facility, How to Make a Third-Party Allegation were available as well as the mission statement. In addition, there is a Letter of Understanding to the New York State Police, access to the videos shown to the male and female incarcerated individual population, copies of the PREA policies, PREA posters, pamphlets, address, phone number and email link for someone outside to reach the Office of Special Investigations (OSI). The auditor reviewed the mandatory reporting laws, laws regarding where and how juveniles are housed and laws regarding vulnerable adults for the State of New York prior to the audit.

The auditor researched the Internet and found no Department of Justice involvement. Contact was made with Just Detention International, Inc. (JDI). No specific information was provided as they had not received any concerns regarding this facility.

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

On-site audit:

Entrance Meeting

A brief formal meeting was held with the Superintendent, Deputy Superintendent of Programs, Acting Captain/PREA Point Person, Deputy Superintendent of Administration, Supervising Offender Rehabilitation Coordinator and the PREA Compliance Manager (PCM) the afternoon of the first day of

the audit. The following items were reviewed: purpose of audit, goals, and expectations. Tentative schedules were developed regarding the tour, arrangements made for interviews and review of additional documentation. Rosters of staff and incarcerated individuals were provided; a plan for random and targeted interviews was developed. Interviews were arranged to be conducted in a private setting.

Facility Tour

A complete tour of the facility was conducted on May 19-20, 2021. The following areas and operations were visited and observed: administrative areas, incarcerated individual living areas, medical operations, intake operations, library/education areas, recreation areas (indoors and outdoors), vocational training (welding, small engine repair, building maintenance), industry program (recycling), barbershop, chapel areas, visiting room, laundry, state shop, commissary, store house, and food service operations. All areas of the facility were visited that have incarcerated individual access. There are only exterior cameras at this facility. Supervision practices, blind spots, shower/bathroom facilities, and placement and number of telephones were observed. Cross-gender announcements were made prior to the opposite gender auditor entering the living units. Posters announcing the audit were observed throughout the facility.

Staff Interviews

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

- A/Commissioner
- Superintendent
- PREA Coordinator
- PREA Compliance Manager (incident review team member, retaliation monitoring)
- PREA Point Person (A/Captain, incident review team, oversees all investigations initiated at the facility)
- Medical – Nurse Administrator
- Mental Health Unit Chief
- Human Resources staff
- Watch Commander Tour 3
- Staff who supervises SHU
- Twelve corrections officers/sergeants from all areas of the facility and each shift
- Two shift supervisors who conduct unannounced rounds
- Two investigators, one supervisor from the Sex Crimes Division in the Office of Special Investigation
- Two Offender Rehabilitation Coordinators (ORC) referred to as counselor (who complete follow-up assessments risk assessment, one who conduct orientation)
- One intake sergeant (who completes the initial intake risk screening)
- Volunteer Coordinator
- Grievance Supervisor
- One agency (contractual) staff - phlebotomist
- One staff who is in the Crisis Investigation Unit (CIU)
- One staff who is a union representative
- Mailroom staff
- Training Coordinator
- Chaplain
- Recreation staff

Informal interviews were conducted during the tour with the commissary supervisor, laundry supervisor, storehouse supervisor, and state shop supervisor. They were informally asked if they knew their obligation under the PREA laws, and to whom would they report any concerns, and they confirmed they

had received the training regarding PREA. After review of documentation and informal questions throughout the on-site audit, it was concluded that no staff had conducted a cross-gender strip search, no staff has acted as a first responder.

Incarcerated individual Interviews

A review of incarcerated individual records was conducted with the assistance of the PREA Compliance Manager to identify incarcerated individuals as required by the Auditor Handbook. A total of twenty-eight (28) incarcerated individuals were selected to be interviewed. No one declined to be interviewed. No youthful offenders are housed at this facility. No incarcerated individual was identified as having been placed in segregation for high risk of sexual victimization. At the time of the audit, no incarcerated individuals were self-identified as being transgender/intersex. The auditor interviewed at least one incarcerated individual from each housing unit. Additionally, the auditor requested to interview the oldest incarcerated individual, youngest incarcerated individual, incarcerated individual housed at this facility the longest, and the incarcerated individual newest to arrive to the facility. Targeted incarcerated individual interviews represented the following:

- Two with limited English, staff interpreter used for one interview
- Two self-identified as gay/bi-sexual
- Three who had initiated a sexual harassment/sexual abuse complaint
- Two who self-reported as having prior victimization
- Three incarcerated individual who had a physical challenge (hard of hearing, vision challenges)
- One with cognitive challenges

Incarcerated individual interviews were held in the private interview rooms.

PREA Investigations

Investigations are conducted by the Office of Special Investigations (OSI), Sex Crimes Division who report to the Deputy Commissioner/Chief of Investigations. A list of investigations from March 1, 2020 to February 28, 2021 was provided. Investigations occurring from February 2020 to present were discussed; documentation requested regarding any of these recent investigations was readily provided to the auditor. Ten investigations were reviewed for this facility with two investigators, one supervisor.

- Three incarcerated individual – on incarcerated individual abuse
- One incarcerated individual – on incarcerated individual
- One staff-on-incarcerated individual harassment
- Five staff-on-incarcerated individual abuse
- Zero retaliation allegations

No investigations were concluded to be substantiated, nine were deemed unsubstantiated and one unfounded. Investigations were initiated based on numerous avenues: direct report to staff, including medical staff, from the incarcerated individual; third party report, anonymous report, phone call from family, mail and report to the “PREA Hotline”.

Exit meeting

An Exit meeting was held with the Superintendent, Acting Deputy Superintendent Security (A/CAPTAIN), Deputy Superintendent of Programs, Acting Captain, Deputy Superintendent of Administration, Fire/Safety Officer and the PREA Compliance Manager (PCM) to review audit experiences, observations and preliminary findings. The auditor reported that she was allowed free access to all areas of the facility, access to interview incarcerated individuals and staff selected randomly and intentionally, and to see or retain any documentation requested. It was noted that a final report should be expected within 45 days. No areas needing correction were revealed during the pre-audit and on-site 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

Washington Correctional Facility is medium security facility that houses male incarcerated individuals. Washington Correctional Facility is located in the city of Comstock in Washington County. The facility was constructed in 1985. The facility is on approximately 1161 acres of land, 61 acres inside the perimeter and outside the perimeter.

Within the compound there are housing units, food service operations, maintenance, activities building, recreation areas, school building, intake operations, medical building, commissary, store house, state shop and laundry, Special Housing Unit (SHU), and a large recreational yard.

Housing areas consist of the prototype cubicle style housing typically found in many NYSDOCCS facilities. They are considered an open dormitory setting however each bed is separated by a half wall providing some individual definition of space but affording the officer the ability to have direct supervision from the desk. Common bathrooms are designed with linear stalls with doors with one quarter removed to provide privacy but ensure security. Three urinals are linear across from the toilet stalls. The showers have six shower heads with the access from the toilet area blocked by a curtain which affords privacy yet allows the officer to sufficiently view to ensure safety. There is a dayroom area with tables, a separated room for television. There are two phone booths in the day room. Each dormitory has laundry facilities. There is one Special Housing Unit (SHU), with thirty-two cells, single occupancy for placement of incarcerated individuals from Washington Correctional Facility. Medical services are provided in the medical building which also has two rooms for medical observation. Medical services are provided 24 hours a day. One mental health staff is available on this site who provides emergent mental health needs, if needed. One housing unit was closed at the time of the audit.

All facilities in NYSDOCCS have a Guidance and Counseling unit that provides therapeutic programming and assistance with placement of work assignments and programming needs. Staff are referred to as Offender Rehabilitation Coordinator(ORC). These staff have an assignment caseload/function. All staff can conduct risk assessments on the incarcerated individuals either upon arrival or during classification review every quarter. They provide Transitional Services which is designed to assist with transition through the incarcerated individual's sentence. PREA education is a part of these services.

Programs and services for the incarcerated individual population include Alcohol and Substance Abuse Treatment (ASAT), Aggression Replacement Training (ART), English as a Second Language (ESL) and Transitional Services. Academic education is available ranging from special education, through to high school equivalency. Additionally, incarcerated individuals who qualify may participate in college. Vocational education consists of horticulture, building maintenance, small engine repair, custodial maintenance, computer operator and welding. There are library services, commissary, recreation, and religious services available. The incarcerated individuals have electronic tablets which provide the ability to access educational materials, music, videos and secure messaging to their family and friends. Volunteer services provide additional services to the incarcerated population; however, they have not been active due to the coronavirus pandemic. Incarcerated individual's movement occurs through direct and indirect supervision, call outs and a movement schedule.

This facility is well staffed; most staff are represented by a union. Security staff work typically three shifts: Tour 1 11:00pm to 7:00am, Tour 2 7:00am to 3:00pm and Tour 3 3:00pm to 11:00pm. The only contractual staff are agency nurses and other medical ancillary staff services. All other medical staff are employees of the NYSDOCCS. Mental health services are provided by the Department of Mental Health through a memorandum of Understanding (MOU).

Incarcerated individuals housed at this facility are medium custody. The PREA Compliance Manager confirmed the facility has no incarcerated individuals who are considered potential victims, no incarcerated individuals who are considered potential abusers. This facility is not designed to house incarcerated individuals with sensorial deficiencies or physical disabilities. Count on the first day of the audit was 495.

Summary of Audit Findings

Standards Exceeded

Number of Standards Exceeded: 12

List of Standards Exceeded: §115.11 - Zero tolerance of sexual abuse and sexual harassment; PREA coordinator, §115.16 – Inmates with Disabilities and Inmates who are Limited English Proficient, §115.17 – Hiring and Promotion Decisions §115.21 – Evidence Protocol and Forensic Medical Examinations, §115.32 – Volunteer Services, §115.33 – Inmate Education, §115.34 – Specialized Training: Investigations, §115.41 – Screening for Risk of Victimization and Abusiveness, §115.42 – Use of Screening Information, §115.53 – Inmate Access to Outside Confidential Support Services, §115.67 – Agency protection against retaliation, §115.71 Criminal and administrative investigations

Standards Met

Number of Standards Met: 33

Standards Not Met

Number of Standards Not Met: 0

PREVENTION PLANNING

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

115.11 (a)

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

115.11 (b)

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

115.11 (c)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Directive #4027A, Sexual Abuse Prevention & Intervention-11/29/17 (Inmate-on-Inmate)
- Directive #4028A, Sexual Abuse Prevention & Intervention-11/29/17 Staff-on-Inmate/Staff-on-Parolee
- Employee Manual
- Memo from the Commissioner dated March 14, 2012 appointing the Agency-wide PREA Coordinator who currently holds the position today.
- Email announcement dated April 25, 2013 announcing that Jason Effman holds the rank of Associate Commissioner.
- DOCCS Organizational Chart which indicates that the PREA Coordinator reports directly to the Commissioner.
- Duties Description Associate Commissioner (PREA) Item #00901
- Duties Description for Assistant Deputy Superintendent SG-25 (PREA)
- Facility Organization Chart
- Interview with the PREA Coordinator
- Interview with the PREA Compliance Manager
- Interview with the PREA Point Person

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

The auditor reviewed excerpts from the following policies:

Directive #4027A, Sexual Abuse Prevention & Intervention-11/29/17 (Inmate-on-Inmate). Inmate-on-Inmate – II, III, IV D 1 states that the agency has a zero tolerance for sexual abuse and sexual harassment. It further emphasizes that incarcerated individuals and parolees have a right to be free from sexual abuse and sexual harassment. It supports that all matters of sexual abuse, sexual harassment and retaliation will be investigated, and disciplinary action will occur up to prosecution. Definitions are provided for all aspects regarding Inmate-on-Inmate sexual abuse and harassment.

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

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

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

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

The interview with the Agency PREA Coordinator confirmed the following: “My time is almost exclusively devoted to PREA compliance and the prevention of sexual abuse and sexual harassment, as well as work on policy matters concerning our transgender, gender nonconforming and gender nonbinary population and workforce.” He confirmed he works with sixteen (16) Assistant Deputy Superintendent (ADS) PREA Compliance Manager. As vacancy arise, the PREA Coordinator works through the appointments process to fill the positions. He additionally confirmed that each of the 50 facilities has a Captain or staff member with equivalent responsibilities designated as the PREA Point Person. The PREA Coordinator interacts with the ADS PREA Compliance Managers routinely. He stated, “we have bi-weekly conference calls to discuss policy updates, new initiatives and to discuss any issues that they or I should be aware of. We email and speak on an ongoing basis as well. In addition, with the exception of 2020 due to COVID-19, we meet as a group at least annually for training programs, often in conjunction with the Office of Special Investigations, Sex Crimes Division staff.” “There are two Correctional Facility Operations Specialist (CFOS) items in my office who work with the ADS PREA Compliance Managers on a daily basis, and who have frequent contact with the designated PREA Point Persons. They answer questions, provide guidance, and share information. If they cannot answer a question, they bring the matter to my attention. In addition, we recently created a Director of PREA Compliance who will be the assistant agency-wide PREA Coordinator. The Director will report to me, will assume primary responsibility for the PREA Audit Program, and will assist me in overseeing all PREA compliance activities and the development and implementation of strategies to reduce incidents of sexual victimization. I recently began the recruitment and hiring process. If an issue with compliance is identified, I review the matter with members of the Central Office or facility Executive Team with subject matter expertise, to determine whether the issue is with the policy or implementation of the policy. Then, I either issue a revised policy, work with the proper Deputy Commissioner to prepare a policy revision or provide clarifying direction as appropriate. For significant issues, I will bring the matter to the attention of the Acting Commissioner and the Department’s Executive Team.”

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

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

At this facility, an Assistant Deputy Superintendent (ADS) serves at the PREA Compliance Manager (PCM). In addition to the PREA Compliance Manager, the facility has a PREA Point Person who works with the PREA Compliance Manager along with the Central Office Sexual Abuse Prevention & Education Office (SAPEO). At this facility, this person is the rank of A/Captain. He maintains copies of Risk Assessments and oversees the initiation of facility investigations.

This process is supported by a memo from the Deputy Commissioner to all Superintendents requires the appointment of a PREA Point Person of the rank of Captain (dated August 2017). Duties Description for Assistant Deputy Superintendent SG-25 (PREA) specifies the duties of the PREA Compliance Manager. The facility Organization Chart shows that the ADS reports to the Superintendent. The PREA Compliance Manager, and A/Captain were all interviewed regarding their duties which demonstrated the team effort utilized at this facility to meet the goals of PREA. Both indicated they have sufficient time and authority to coordinate the facility's effort to comply with the PREA standards. All indicated they serve on the PREA incident review team, assist with monitoring for retaliation after allegations are made and monitor training activities. The ADS reports that bi-weekly telephone conference calls are made with the PREA Coordinator to ensure up to date information is communicated, and current issues are addressed. The Superintendent demonstrated to the auditor during the on-site audit her commitment to zero tolerance of sexual abuse and sexual harassment and her support for the efforts of the PCM and PREA Point Person.

They indicated they coordinate efforts to ensure compliance by keeping communication channels with staff open. This was evident to the auditor during the on-site audit. Additionally, the Executive team conducted a complete review of operations, which revealed areas of need and ensuring correction. Specifically, it was believed that the view to the urinals needed a barrier. Evidence was provided to the auditor demonstrating that these barriers were ordered and will be placed in the bathroom areas shortly.

After review of the policies, memos, organizational charts, observations and interviews with the Superintendent, PREA Compliance Manager, PREA Point Person and the PREA Coordinator, the auditor concluded that the agency and the facility are committed to the prevention, detection and

response to sexual abuse and harassment. This state and this facility exceed the standards based on the detailed commitment to the standards that will be noted throughout this report.

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

115.12 (a)

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

115.12 (b)

- Does any new contract or contract renewal signed on or after August 20, 2012 provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards? (N/A if the agency does not contract with private agencies or other entities for the confinement of inmates OR the response to 115.12(a)-1 is "NO".) ☒ Yes ☐ No ☐ NA

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Community Based Programs Contracting with DOCCS
- Request for Application for Community Based Residential Programs (CBRP)
- Statement of compliance PREA Coordinator
- NY CLS § Correc 121
- CBRP PREA Schedule

(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 – Chemung, Schuyler, and Diocese of Rochester, 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, Rescue Mission of Utica, MADE Transitional Services, 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. Recently, two private organizations terminated their contracts. There are now a total of 13 operations contracted with for the confinement of previously incarcerated individuals.

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

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

A written interview with the agency Reentry Manager, March 2020 (contract monitor for community programs yielded the following confirmation: "New York State contracts with a number of organizations to provide residential programs for parolees and others subject to community supervision upon release. These include Residential Stabilization Programs (RSP) and Community Based Residential Programs (CBRP). Department Reentry Managers are responsible for contract monitoring of such programs. This includes ensuring that program staff participate in PREA training, that residents receive PREA educational materials, and that information is posted, and that Program staff comply with reporting requirements as specified by the Department. The new contracts require full PREA compliance and include quarterly goals to ensure that each program is able to achieve full compliance with the PREA Community Confinement Facilities Standards within one year". The auditor reaffirmed in April 2021 that these responses are still current.

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

Standard 115.13: Supervision and monitoring

115.13 (a)

- Does the agency ensure that each facility has developed a staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring, to protect inmates against sexual abuse? ☒ Yes ☐ No
- Does the agency ensure that each facility has documented a staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring, to protect inmates against sexual abuse? ☒ Yes ☐ No
- Does the agency ensure that each facility's staffing plan takes into consideration the generally accepted detention and correctional practices in calculating adequate staffing levels and determining the need for video monitoring? ☒ Yes ☐ No
- Does the agency ensure that each facility's staffing plan takes into consideration any judicial findings of inadequacy in calculating adequate staffing levels and determining the need for video monitoring? ☒ Yes ☐ No
- Does the agency ensure that each facility's staffing plan takes into consideration any findings of inadequacy from Federal investigative agencies in calculating adequate staffing levels and determining the need for video monitoring? ☒ Yes ☐ No
- Does the agency ensure that each facility's staffing plan takes into consideration any findings of

inadequacy from internal or external oversight bodies in calculating adequate staffing levels and determining the need for video monitoring? ☒ Yes ☐ No

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

115.13 (b)

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

115.13 (c)

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

- In the past 12 months, has the facility, in consultation with the agency PREA Coordinator, assessed, determined, and documented whether adjustments are needed to: The resources the facility has available to commit to ensure adherence to the staffing plan? ☒ Yes ☐ No

115.13 (d)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Employee Manual
- Interview with the Superintendent
- Interview with the PREA Coordinator
- Post Closure Reports – example and randomly requested
- Staffing Plan Annual Review
- DIR #4001 4/25/2019 Facility Administrative Coverage & Supervisory Rounds
- Annual Supervision and Monitoring Plan Review
- Interviews with the PREA Compliance Manager
- Interviews with Supervisors
- Interview with random staff

(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 760. The pandemic has resulted in a recent temporary reduction of the incarcerated individual population. However, the staffing plan is predicated on an incarcerated individual population of 734. With the efforts made at the agency to protect incarcerated individuals from the coronavirus, the population has been reduced as reflected in the count on the day of the audit.

The interview with the Superintendent and review of the staffing plan confirmed the following:

- (1) The facility has been maintaining accreditation status through the American Correctional Association. Internal security audits are conducted based on National Institute of Corrections (NIC) guidelines.
- (2) There are no judicial findings of inadequacy;
- (3) There are no findings of inadequacy from Federal investigative agencies;
- (4) There are no findings of inadequacy from internal or external oversight bodies;
- (5) All components of the facility's physical plant are reviewed. Video monitoring is used and upgrades to the system are planned.
- (6) The composition of the incarcerated individual population has been the same for several years.
- (7) The number and placement of supervisory staff has been reviewed and determined to be adequate. Review of rounds and staffing occur regularly. The last Security Chart and Staffing Review Report for the facility is dated March 26, 2019.
- (8) Institution programs occurring on a particular shift has a detailed evaluation of the time and days of the programs occurring.
- (9) Any applicable State or local laws, regulations, or standards are reviewed. Staff discuss with the auditor that changes are forthcoming to the SHU operations related to the Halt Act.
- (10) The prevalence of substantiated and unsubstantiated incidents of sexual abuse are addressed.
- (11) No other relevant factors have been identified.

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

After review of the documentation provided the auditor confirmed that Post Closure Reports are completed when a post is closed, explaining the reason. The example of this document was provided to the auditor for February 2021 demonstrating the process for having deviations documented. The auditor randomly requested to review post closure reports for the 7th day of the month for the previous six months. The review demonstrated that post closures are monitored daily and documented regarding how the closure is addressed. Hours closed had documentation showing how the hours were reconciled. Additionally, while on site, the auditor observed ample staff throughout the facility during the tour. The interview with the Superintendent confirmed that the "Plot Plan", based on security level, capacity, physical plant, programs, and general operation is utilized and regularly reviewed on an ongoing basis and formally annually. She noted that incidents of sexual abuse or sexual misconduct are considered among other factors. Video monitoring is analyzed but only as an addition to supervision, not to replace it. She indicated there is a Staffing Lieutenant and a Chart Sergeant who constantly monitor staffing needs, post closures and other temporary adjustments.

(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.

As stated, the facility completed the Annual Supervision and Monitoring Plan Review. The interview with the PREA Coordinator yielded the following: "I am consulted regarding assessments of, or adjustments to, facility staffing plans. In recent years when the purpose of Adirondack and Hudson Correctional Facilities changed to Adolescent Offender Facilities and then back to adult prisons for specialized populations, I was involved in the development of the staffing plan. At least annually, a formal written assessment is done by the facility Superintendent and submitted for consideration by the Director of Security Staffing, the Deputy Commissioner for Correctional Facilities, and me. In addition, I am notified of all facility staffing plan adjustments through the Security Staffing Information Unit. " The interviews with the Superintendent, PREA Compliance Manager and PREA Point Person also supported that the staffing roster is reviewed informally daily and every two weeks to determine if adjustments are needed.

An annual staffing review dated December 2020 entitled Annual Supervision and Monitoring Plan Review, specific to Washington 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.

The Employees' Manual indicates that employees are prohibited from alerting other employees that supervisory rounds are occurring unless the announcement is related to legitimate operational functions. DIR #4001 4/25/2019 Facility Administrative Coverage & Supervisory Rounds requires Security supervisors to conduct daily rounds and complete the Daily Security Supervisor Report which specifically addressed rounds being unannounced.

The auditor requested and received copies of the Daily Security Supervisory Report and logbook entries for a randomly picked date (March 31, 2021) for all three shifts. The document demonstrated that unannounced rounds are conducted. Interviews with shift supervisors (two) indicate that a strategy is used to make rounds at irregular intervals. The auditor asked staff during random interviews if they see the supervisor on their shift conducting unannounced rounds. All confirmed they do, and they are not informed of his/her arrival, nor do they alert other staff when the supervisor makes rounds. Finally, a logbook was randomly selected and reviewed during the tour and found to reflect supervisory, unannounced rounds.

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

Standard 115.14: Youthful inmates

115.14 (a)

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

115.14 (b)

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

115.14 (c)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Washington Correctional Facility DIR #0084 3/18/2021
- NYS CLS Correc §80
- Interviews

(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.

Washington Correctional Facility DIR #0084

states, "This facility is used for the general confinement of males 18 years of age or older."

The State of New York passed a "Raise the Age Law," effective April 10, 2017 *New York Consolidated Laws Service > Correction Law (Arts. 1 — 35) > Article 4 Establishment of Correctional Facilities, Commitment to Department and Custody of Inmates (§§ 70 — 79-c) § 77. Adolescent offender facilities. The state shall establish one or more facilities with enhanced security features and specially trained staff to serve the adolescent offenders sentenced to a determinate or indeterminate sentence for committing offenses on or after their sixteenth birthday who are determined to need an enhanced level of secure care which shall be managed by the department with the office of children and family services assistance, and services or programs.* That law has since been amended, adopting Correction Law § 80, effective April 3, 2020, requiring DOCCS and the New York State Office of Children and Family Services to "establish a transition plan and protocol to be used in transferring custody of all adolescent offenders and individuals under the age of eighteen from the custody of the department to the custody of the office of children and family services." Correction Law § 77 is repealed, effective October 1, 2020. As of October 6, 2020, all offenders under the age of 18 have been transferred out of DOCCS custody and are now housed by the New York State Office of Children and Family Services.

The interview with the Superintendent and the Nursing Director confirmed that there are no incarcerated individuals under the age of 18 at this facility. Based on these documents and the law, as well as observations made during the tour, the auditor finds this standard does not apply to this facility and therefore is deemed to be compliant.

Standard 115.15: Limits to cross-gender viewing and searches

115.15 (a)

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

115.15 (b)

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

115.15 (c)

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

115.15 (d)

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

115.15 (e)

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

115.15 (f)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Directive #2230 Guidelines for Assignment of Male and Female Correction Officers 2/21/2019
- Directive #4910 Control and Search for Contraband 12/2/2020
- HSPM 1.37 Body Cavity Search 12/26/2016
- Directive #4001 Facility Administrative Coverage & Supervisory Rounds 4/25/2019
- HSPM 1.19 Health Appraisal 6/11/2019
- Memo Jason D. Effman, Associate Commissioner 7/18/2019 RE; Revisions to Directive #4910 "Control of & Search for Contraband"
- Facility KHRT Course 35029
- Facility KHRT Course 01062 to 17008
- PREA Training Curriculum 2020
- Contraband and Frisk Curriculum 17008 1/2021
- Interviews with random staff
- Interviews with random incarcerated individual
- PAQ
- FAQ

The PAQ indicates that there has been no cross-gender strip or cross-gender visual body cavity searches of inmates, no cross-gender strip or cross-gender visual body cavity searches of inmates that did not involve exigent circumstances or were performed by non-medical staff.

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

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

Directive #4910 Control and Search for Contraband 12/2/2020 supports that strip searches shall be conducted by an Officer or employee of the same sex as the incarcerated individual being searched. It additionally states that any incarcerated individual who has Gender Dysphoria, is intersex, or transgender with a permit to wear gender affirming/transgender clothing may request that a Correction Officer of the incarcerated individual's preferred gender conduct the pat frisk, when the request can be honored.

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

This facility only houses male incarcerated individuals.

(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.

As stated, the facility does not house female incarcerated individuals. The auditor was informed that strip searches and/or strip frisk would be reported on Form 1140 in accordance with policy which only affords a strip search/frisk of the same gender of staff. The auditor found no reason to dispute this during the audit process.

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

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

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

All incarcerated individual interviews and staff interviews confirmed that incarcerated individuals are able to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing the breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. All but one (who indicated sometimes) of the incarcerated individual interviews confirm that opposite gender staff are announcing when entering the unit. All random staff interviews confirmed that this is occurring. During the tour, the auditor and escort team was announced prior to entering the unit; this did not appear to be odd based on the observations of the incarcerated individuals in the unit at the time.

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

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

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

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

Directive #4910 confirms that a strip frisk of an inmate who has been diagnosed with Gender Dysphoria shall presumptively be conducted by staff of the same gender as the gender classification of the facility. Staff shall apply procedures as appropriate based upon the anatomy of the inmate. The facility (administration/security) shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. If the inmate's genital status is unknown, a medical provider may determine the inmate's genital status during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

All staff interviews confirmed acknowledgment of this requirement.

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

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

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

- Any incarcerated individual who is to be pat frisked, who has Gender Dysphoria, is intersex or who is transgender and has a permit to possess and wear gender affirming/transgender clothing, may request that a Correction Officer of the incarcerated individual's preferred gender conduct the pat frisk. It is the policy of the Department to honor that request whenever possible, as determined by the Area Supervisor.
- Except as provided below, a correction officer shall not perform a non-emergency pat frisk of an incarcerated individual who has been issued a permit to possess and wear gender conforming/transgender clothing over their objection when:
 - The incarcerated individual presents their permit to possess and wear gender conforming/transgender clothing and requests to be pat frisked by a correction officer of a specified gender; and
 - A correction officer of the specified gender is present at the location where the pat frisk is to be conducted and is available to perform the pat frisk.
- Notwithstanding the above provisions, a correction officer may pat frisk an incarcerated individual who has been issued a permit to possess and wear gender conforming/transgender clothing over their objection where exigent circumstances exist, and a correction officer of the

specified gender is not present at the location where the pat frisk is to be conducted or, if present, is not available to perform the pat frisk.

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

Training records provided to the auditor confirmed that staff have been trained in contraband control and frisk searches. Training records were provided that demonstrated that 189 staff have completed the training. Boss chairs were observed in the facility which reduces the needs for strip searches. Staff interviews all confirmed they have been appropriately trained in how to conduct cross-gender pat-down searches, and searches of transgender and intersex incarcerated individuals.

Observations made during the on-site portion of the audit, review of the policies, memo reflecting updated information, the training curriculum, training records as well as all interviews with staff support a finding of compliance with this standard. All staff interviews confirmed that all are aware that transgender incarcerated individuals are not to be searched for the sole purpose of determining genital status. All staff and incarcerated individual interviews support that incarcerated individuals 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. In accordance with FAQ clarifications, policy was updated to allow a transgender/intersex incarcerated individual to designate the gender of the staff to frisk search in accordance with the individuals preferred gender. Interviews all confirmed that they have been appropriately trained regarding how to search transgender/intersex persons and cross-gender pat searches. The auditor had determined this facility is compliant with this standard.

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

115.16 (a)

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

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

115.16 (b)

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

115.16 (c)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations during the tour
- Interviews A/Commissioner
- Interviews Incarcerated individuals LEP
- Random staff
- PAQ
- Directive #2612 Inmates with Sensorial Disabilities 10/1/2020
- Directive #4490 Cultural and Language Access Services 1/6/2020
- Language Access Line Contract
- "Ending Sexual Abuse Behind the Walls: An Orientation"
- Inmate Education & Orientation Film Facilitator Guide 6/25/15
- Inmate Education Facilitator Training NYDOCCS 5/13/2015
- Pamphlet translations – The Prevention of Sexual Victimization in Prison: What You Need to Know
- Form 4021A revised 5/15/2020
- Form 4021A facility specific documents
- Memo - Jason D. Effman, Associate Commissioner New and Updated PREA Materials

The PAQ indicates that the number of instances where inmate interpreters, readers, or other types of inmate assistants have been used and it was not the case that an extended delay in obtaining another interpreter could compromise the resident's safety, the performance of first-response duties under § 115.64, or the investigation of the resident's allegations is zero.

(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 10/1/2020 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 a particular interpreting context to facilitate effective communication. Except as otherwise indicated below, qualified interpreters may include inmates and correctional staff, including Correction Officers and volunteers, when their skills meet the above definition and factors such as emotional or personal involvement and considerations of confidentiality will not adversely affect their ability to interpret effectively, accurately, and impartially; or jeopardize the safety and security of the inmate." As noted in the narrative, this facility is not designated to house incarcerated individuals with sensorial deficiencies or physical disabilities.

The interview with the A/Commissioner confirms the following: "DOCCS has designated facilities and established programs to meet the needs for sensorial disabled incarcerated individuals. The facilities have additional resources for the incarcerated individuals in their populations including but not limited to manual translators (i.e., sign language interpreters), electronic reading devices, magnifiers, and other accommodations as appropriate to ensure access to all programs, including the Department's PREA program."

(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.

The interview with the A/Commissioner confirms the following: DOCCS has a system-wide language access policy that ensures that individuals who require assistance with language can still fully participate in critical functions. This includes using the Language Line services for translation of written documents or interpretation of spoken language. Our Office of Cultural and Language Access Services

is responsible for implementing DOCCS' Language Access Plan and ensuring that Limited English Proficient (LEP) individuals can access the Department's programs, services and benefits. In keeping with State language access policies, DOCCS makes vital documents available in English, Spanish, Bengali, Simplified Chinese, Haitian Creole, Korean, and Russian. This includes the Department's PREA informational brochures and our incarcerated individuals education film which includes audit and subtitles in English, Spanish, Chinese, Haitian Creole, Italian, Korean, Polish, and Russian. Languages are periodically updated based upon data regarding language dominance in the State. Vital documents, including information on PREA, are in the process of being made available in Bengali.

Directive #4490 Cultural and Language Access Services 1/6/2020 ensures inmates with limited English skills will have meaningful access to programs, services and benefits.

Pamphlet translations – The Prevention of Sexual Victimization in Prison What You Need to Know is available in English, Spanish, Bengali, Simplified Chinese, Haitian Creole, Korean, and Russian. The language needed is noted on the receipt of the PREA Sexual Abuse Brochure provided at the intake process. One completed example was provided with the pre-audit documentation, fifteen additional examples were reviewed while on site, randomly requested.

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

The agency has a contract with Language Line Services, Inc. (copy provided to the auditor). Directions for how to access the line was provided to the auditor. During random staff interviews, many staff, including the intake sergeant, indicated they are aware of the availability of the line if its use is needed. Interviews with LEP incarcerated individuals confirmed that they have been provided information in their language (Spanish) and they see the posters throughout the facility in Spanish. Additionally, they received an orientation manual in Spanish.

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

Directive #2612 Inmates with Sensorial Disabilities 8/1/2019 supports that generally an incarcerated individual will not be used to interpret for another incarcerated individual for confidential/sensitive matters unless there are exigent circumstances.

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

As stated, the PAQ indicates that no incarcerated individual has been used to interpret for another incarcerated individual regarding confidential information. Interviews with random staff confirmed that an incarcerated individual will not be used to interpret and has not been used to interpret for confidential information; responses indicated they would seek the assistance of a bi-lingual staff or the Language Line, as noted above. Most random staff interviews, after prompting, acknowledged they were aware that if no other recourse was available, the Language Line is an option; other interviews required prompting to confirm this. Without having a specific scenario to relate this question to, the auditor found no concerns with these responses.

Review of the policies and other documents noted above support that the facility has gone above and beyond by providing information and the video caption in seven additional languages. The

documentation for the intake process indicates that language needs are assessed immediately upon arrival, as are any disability needs. The written interview with the Acting Commissioner reiterated his support for all these processes in place. The language line is readily available for needs that arise. For these reasons, the auditor finds that the facility is in substantial compliance with this standard. A finding of exceeds standard is due to the numerous language options readily available, for educating the incarcerated individuals about PREA.

Standard 115.17: Hiring and promotion decisions

115.17 (a)

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

115.17 (b)

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

115.17 (c)

- Before hiring new employees, who may have contact with inmates, does the agency: perform a criminal background records check? ☒ Yes ☐ No
- Before hiring new employees, who may have contact with inmates, does the agency: consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers

for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse? ☒ Yes ☐ No

115.17 (d)

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

115.17 (e)

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

115.17 (f)

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

115.17 (g)

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

115.17 (h)

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

Auditor Overall Compliance Determination

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

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations
- Interviews Human Resource staff
- Employment Application
- Documents - Personnel files of those hired or promoted in the past 12 months
- Documentation randomly requested staff confirmation of fingerprint process
- PAQ
- Directive #2216, Fingerprinting/Criminal History Inquiry - New Employees and Contractors – 11/01/2018
- NYS Department of Correctional Services Personnel Procedure Manual #406A Recruitment Process – 4/8/16 – Forms: PPM 406A1, Recruitment Process Checklist, PPM 406A.2
- Employment Telephone Verification
- Recruitment Process checklist
- Memo: from Director of Personnel, 4/30/14, RE: Personnel Procedure #407 – Civilian Promotions, Personal Procedure Manual #407A – Security Promotions, 4/29/14
- Electronic Mail Memo: from Director of Personnel, 7/15/15, RE: Fair Chance Hiring Application Revisions and Statewide Employment Application reinforces the use of the Application.
- Form 1253 - Personal History and Interview Record - 4/13
- NYS Department of Correctional Services Personnel Procedure Manual #406A Recruitment Process – 4/8/16
- Availability Inquiry Correction Sergeant
- Availability Inquiry Correction Lieutenant
- Memo: from Deputy Commissioner and Counsel, 8/18/15, RE: Prison Rape Elimination Act (PREA) – Background Checks – Appendix
- Directive #2112, Report of Criminal Charges – 4/10/18
- Form EIU23 - Personal History Questionnaire – (Rev. 6/15)
- Employee Manual Revised 2019
- Directive #2012, Release of Employee Personnel and Payroll Information – 10/7/2019
- Facility example and requested documentation Form 1253 Derogatory Denial or Approval on Background Check
- Telephone interview with central office EIU staff.
- Email confirmation Coordinator- Employee Investigative Unit
- Contractor personnel file

The PAQ indicates that three staff have been hired who may have contact with incarcerated individuals in the previous twelve months.

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

(1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);

(2) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or

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

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

NYS Department of Correctional Services Personnel Procedure Manual #406A Recruitment Process – 4/8/16 – Forms: PPM 406A1, Recruitment Process Checklist, PPM 406A.2 Employment Telephone Verification outlines steps to be taken to prior to filing a position with a candidate.

Memo: from Director of Personnel, 4/30/14, RE: Personnel Procedure #407 – Civilian Promotions, Personal Procedure Manual #407A – Security Promotions, 4/29/14, indicates that prior to employment, every candidate will be reviewed for prior incidents of sexual abuse (criminal conviction or civil administrative finding). In addition, it states that the Department is prohibited from hiring anyone who has engaged in sexual abuse in a confinement setting, convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse or has been civilly or administratively adjudicated to have engaged in this type of activity.

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

Memo: from Director of Personnel, 4/30/14, states a review will be conducted that identify any incidents of sexual harassment. In addition, RE: Personnel Procedure #407 – Civilian Promotions, Personal Procedure Manual #407A – Security Promotions, 4/29/14 states that the Department is required to consider any incidents of sexual harassment in determining whether to promote anyone who may have contact with incarcerated individuals. The application requests the applicant to disclose if there has been a prior history of sexual misconduct and specifically sexual harassment. The interview with the Human Resources staff also confirmed that incidents of sexual harassment are considered when determining employment. She indicated that the Director of Personnel will review such cases.

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

(1) Perform a criminal background records check; and

(2) Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.

(d) The agency shall also perform a criminal background records check before enlisting the services of any contractor who may have contact with inmates. (e) The agency shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates or have in place a system for otherwise capturing such information for current employees.

The following documents support a finding of compliance:

- Directive #2216, Fingerprinting/Criminal History Inquiry - New Employees and Contractors –

11/01/2018 requires the background check for all employees, contractors and per diem employees as well as verification of information on the employment application. Attachment A identifies the process for fingerprinting potential employees, employees, contractors and interns.

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

The phone interview with EIU staff and email exchange with the EIU Coordinator confirmed that a detailed background check is conducted and is documented using the telephone verification form and Recruitment Process Checklist as required by NYS Department of Correctional Services Personnel Procedure Manual #406A Recruitment Process when checking references. There is notation to check prior institutional employers on the checklist.

The auditor observed documentation regarding staff fingerprints and background check completion when reviewing personnel files for the last eight staff hired, three transfer personnel file, and one contractual staff file and one mental health staff files. The auditor reviewed the detailed process outlined for the personnel staff to use when needing to acquire background information on all candidates. The Employee Investigative Unit (EIU) centrally established, provides information as needed (observed during the review of the personnel files). By fingerprinting, the agency would receive a report of any arrests that have occurred with these employees nationwide (as confirmed by the interview with the Human Resource staff).

The auditor requested and received verification of randomly requested current employees' verification of fingerprinting for staff with the last name beginning with C, H, L, T, the first three (if available), twelve total.

(f) The agency shall ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The agency shall also impose upon employees a continuing affirmative duty to disclose any such misconduct.

The following documents support a finding of compliance:

- Electronic Mail Memo: from Director of Personnel, 7/15/15, RE: Fair Chance Hiring Application Revisions and Statewide Employment Application reinforces the use of the Application Form 1253 as a supplement as it contains PREA related questions required to be ask per this requirement of this standard.
- Form 1253 - Personal History and Interview Record - 4/13, Availability Inquiry Correction Sergeant, Availability Inquiry Correction Lieutenant. Form EIU23 - Personal History

Questionnaire – (Rev. 6/15) specifically asks all candidates if they have been convicted of a crime involving sexual activity by overt or implied threats of force, or coercion or if the victim did not consent; or if the victim was unable to consent as well as if the candidate has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution, and, who may have contact with inmates who has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution

- Promotional inquiries within the system (lieutenant, sergeant) include the questions regarding whether the candidate has been involved in an allegation of sexual abuse or sexual harassment, if the allegations were substantiated, if they have been civilly or administratively adjudicated to have engaged in sexual activity in the community by force, overt or implied, or coercion, etc.

The auditor observed on the randomly reviewed newly hired personnel file applications that they are directly asked the questions noted in provision (a). The auditor has been provided at previous audits and with pre-audit documentation that documentation showing that promotional candidates are asked the questions during the promotional process (application). The auditor reviewed signed acknowledgements of the Employees' Manual (twenty-seven total) in the randomly selected personnel files) which directs staff that they have a continuing affirmative duty to disclose any such misconduct, and the auditor asked staff during randomly interviews if they have a continuing duty to report misconduct that occurred outside the facility and they all confirmed they did.

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

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

(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 consult the Hiring Authority at central office to ensure proper handling of the information.

Review of policy directives, Employees' Manual, and the application process support compliance. The application process requires all new applicants and promotional candidates to answer the questions required in subpart (a). The Agency has an Employee Investigative Unit (EIU) designated to conduct background checks which does conduct a national search for criminal records. The Agency uses a system which notifies them when a current employee has been arrested so that the circumstances can be investigated. The Employees' Manual, which each staff signs an acknowledgment of receipt, notifies employees of a continuing duty to report. Reference checks are conducted by central office; information provided to other states would be provided by central office with a signed release. The investigative unit has a process to ensure that this check would reveal if the employee quit pending an investigation. This was all reiterated during the interview with the Human Resource supervisor.

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

Standard 115.18: Upgrades to facilities and technologies

115.18 (a)

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

115.18 (b)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations
- Interviews A/Commissioner
- Interview Superintendent
- PAQ
- Directive #3053, Alterations and Construction Request 4/22/2019
- Facility example Form 1612 June 2020

The PAQ indicates the facility has not acquired any new facilities or made any substantial expansions or modifications of existing facilities since the last PREA audit nor installed or updated a video monitoring system, electronic surveillance system, or other monitoring technology since the last PREA audit.

(a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition,

expansion, or modification upon the agency's ability to protect inmates from sexual abuse. (b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect inmates from sexual abuse.

Directive #3053, Alterations and Construction Request 4/22/2019 specifically notes that prior to submitting a request to alter or construct a building, the ability to protect incarcerated individuals 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 incarcerated individuals 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 incarcerated individuals from sexual abuse. Form 1612 Part IV addresses these requirements, specifically requiring that the ability to enhance safety and protect the incarcerated individual from sexual abuse is addressed prior to approval of the plans.

The interview with the A/Commissioner confirmed the following: "In accordance with Department Policy (Directive 3053 "Alterations/Construction Requests"), each facility Superintendent must obtain Central Office approval for any alteration or construction project. As a part of that process, the Superintendent submits a Form 1612 Alterations/Construction Requests form. The Superintendent is required to evaluate the scope of the alteration and consider the effect of the design, acquisition, or modification upon the ability to protect incarcerated individuals from sexual abuse. The Superintendent indicates on the form whether the alteration's impact will enhance, be neutral, or have a negative impact on the ability to protect incarcerated individuals from sexual abuse. Our Division of Facilities Planning and Development reviews these requests and obtains comments from the Associate Commissioner/PREA Coordinator, and other appropriate Central Office units, before approving any request.

The Department has wide-spread audio/video surveillance in a number of its facilities, and also coverage in specialized units such as Special Housing Units, Behavioral Health Units, and our new Residential Rehabilitation Units. When a report of sexual abuse or sexual harassment is received by our Office of Special Investigations (OSI), standard protocol calls for them to secure surveillance footage for the date, time and location of the reported incident. Video surveillance has provided corroborating evidence used to help obtain convictions and has also assisted in vindicating wrongfully accused staff.

It is becoming more frequent for DOCCS OSI, Sexual Abuse Prevention & Education Office, and Operations to review areas of concern for possible adjustment of existing camera systems, or to make recommendations for augmentation of the system. Regrettably, technical limitations do prevent rapid adjustments to the surveillance system. In recent years, the Department has significantly expanded its video surveillance capabilities with installation of full coverage camera systems at Attica and Clinton Correctional Facilities, and completion of a significant expansion of the existing camera system at Bedford Hills Correctional Facility. Camera system installation projects are in various stages of construction at Auburn, Coxsackie, Downstate, Elmira, Great Meadow, Green Haven, Shawangunk, and Southport Correctional Facilities. The following facilities are currently in the design phase: Albion (expansion), Eastern, Fishkill, Greene, Marcy, Mid-State, Orleans, Sing Sing, Sullivan, Taconic (expansion), and Wende Correctional Facilities. The long-term goal is to install full-coverage camera systems at all maximum and medium-security facilities. Beginning in 2017, DOCCS has piloted the use of Body-Worn Cameras in several correctional facilities. Body-Worn Camera systems are now in place at Clinton, Bedford Hills, Greene, Great Meadow, Albion, Taconic, Fishkill, and Green Haven Correctional Facilities. With the assistance of a grant from the Bureau of Justice Assistance, expansion to Auburn, Mid-State, Sullivan, and Franklin Correctional Facilities is planned. In addition, the

Department was recently awarded a FY 2019 Body-Worn Camera grant with an award period of October 1, 2019 through September 30, 2022. The Department's intent is to use the grant and matching funds to expand its use of body-worn cameras to 11 other correctional facilities."

Policy noted above supports that sexual abuse and sexual harassment prevention will be considered when making changes to the physical plant or upgrading the camera system. The interview with the Superintendent supports this as well. The PAQ indicates that no physical plant expansions or modifications have occurred since the previous PREA audit. This was confirmed with interviews with the staff and observations on site. Written responses by the Acting Commissioner further ensures that any upgrades to facilities and/or monitoring equipment has a process in place that ensures that changes will be evaluated to protect incarcerated individuals from sexual abuse. The interview with the Superintendent and PCM both confirmed that elimination of sexual abuse and sexual harassment is considered for all updates. For these reasons, the auditor finds the facility in compliance with this standard.

RESPONSIVE PLANNING

Standard 115.21: Evidence protocol and forensic medical examinations

115.21 (a)

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

115.21 (b)

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

115.21 (c)

- Does the agency offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiary or medically appropriate? ☒ Yes ☐ No
- Are such examinations performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible? ☒ Yes ☐ No

- If SAFEs or SANEs cannot be made available, is the examination performed by other qualified medical practitioners (they must have been specifically trained to conduct sexual assault forensic exams)? ☒ Yes ☐ No
- Has the agency documented its efforts to provide SAFEs or SANEs? ☒ Yes ☐ No

115.21 (d)

- Does the agency attempt to make available to the victim a victim advocate from a rape crisis center? ☒ Yes ☐ No
- If a rape crisis center is not available to provide victim advocate services, does the agency make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member? ☐ Yes ☐ No ☒ 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 entity follow the requirements of paragraphs (a) through (e) of this section? (N/A if the agency/facility is responsible for conducting criminal AND administrative sexual abuse investigations.) ☐ Yes ☐ No ☒ NA

115.21 (g)

- Auditor is not required to audit this provision.

115.21 (h)

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

Auditor Overall Compliance Determination

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

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Directive #4027B Sexual Abuse Reporting & Investigation -Inmate on Inmate (11/29/2017)
- Directive #4028B Sexual Abuse Reporting & Investigation -Staff on Inmate/Staff-on-Parolee (11/29/17)
- Directive #0700 Office of Special Investigations (OSI) 9/10/2020
- HSPM1.60 Sexual Assault 10/25/2017
- A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents, April 2013
- Statement of Compliance regarding OSI Investigation Manual – confidential
- Memo to the Superintendent of the New York State Police (May 2014)
- § 2807-c. General hospital inpatient reimbursement for..., NY PUB HEALTH §...
- Observations
- Interview PREA Compliance Manager
- PAQ
- List of SANE certified hospitals for the state of New York
- Coordinated Response Plan to An Incident of Incarcerated Individual Sexual Abuse FOM 440, 3/15/2021
- Documentation regarding one SANE exam being initiated in the past 12 months.

The PAQ indicates there has been one forensic medical exam offered, one SANE/SAFE exam offered during the previous twelve months (same incident).

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

Directive #4027B Sexual Abuse Reporting & Investigation -Inmate on Inmate (11/29/2017) and #4028B Sexual Abuse Reporting & Investigation -Staff on Inmate/Staff-on-Parolee (11/29/17) outline in detail the requirements for the collection of evidence regarding Inmate-on-Inmate abuse for use for a situation when evidence must be collected at the facility level. Directive #0700 Office of Special Investigations (OSI) 9/10/2020 addresses the role of the Office of Special Investigations (OSI) Sex Crimes Division (SCD) who conduct investigations involving sexual misconduct.

(b)The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011.

The New York State Department of Corrections and Community Supervision (DOCCS) does not conduct on-site forensic medical examinations. In accordance with DOCCS policies, when evidentiarily or medically appropriate, a victim of sexual abuse shall be transported to an outside hospital and shall be provided treatment and services as required by the laws, regulations, standards and policies established by the State of New York and administered by the New York State Department of Health.

The New York State Department of Health requires hospitals to follow "A National Protocol for Sexual Assault Medical Forensic Examinations Adults/Adolescents Second Edition."

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

(c)(d)(e) HSPM1.60 Sexual Assault 10/25/2017 states the following:

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

The auditor was provided with a list of SANE certified hospitals in the State of New York. Coordinated Response Plan to An Incident of Incarcerated Individual Sexual Abuse FOM 440 lists the three closest SANE services. Additionally, the auditor observed the contact information for the three closest SANE certified hospitals to the facility are noted in the PREA Binder for the Watch Commander's reference.

Additionally, the auditor was provided the documentation regarding the one referral for a SANE exam that occurred during the previous twelve months, supporting that the facility will offer SANE exams when a sexual abuse allegation occurs where an exam is warranted.

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

The New York State Department of Corrections and Community Supervision (DOCCS), Office of Special Investigations (OSI), Sex Crimes Division (SCD) and the New York State Police (NYSP), Bureau of Criminal Investigation (BCI) work cooperatively in the investigation of incarcerated individuals' sexual abuse that may rise to criminal conduct as supported by the Directive #0700 Office of Special Investigations (OSI) and a memo to the Superintendent of the New York State Police (May 2014) provided to the auditor.

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

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

Auditor is not required to audit this provision.

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

Not applicable to this facility. This was supported by the interview with the PREA Compliance Manager. As noted, the hospital Sexual Assault Team will provide this individual with a victim advocate from the community, certified through the New York Department of Health.

Policy supports the requirements of the provisions. Processes are in place to ensure an incarcerated individual is sent to a hospital for a SANE exam when allegations are made to support a referral. State law and policy support that a qualified advocate is available through the hospital. Several of the agency trained investigators have become certified for evidence collection and photographing of crime scenes, above and beyond the specialized training required of investigators (certificates provided to the auditor) therefore ensuring a uniform accurate evidence protocol is followed. At this facility, medical documentation was provided for an incident where an incarcerated individual was sent out for a SANE exam for a reported incident that occurred days previous but still within the 120-hour window. For these reasons, and due to the specialized nature of the investigators from the Sex Crimes Division, the memo confirming the cooperation between this department and the New York State Police, the auditor finds that the facility exceeds the standard.

Standard 115.22: Policies to ensure referrals of allegations for investigations

115.22 (a)

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

115.22 (b)

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

115.22 (c)

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

115.22 (d)

- Auditor is not required to audit this provision.

115.22 (e)

- Auditor is not required to audit this provision.

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations
- Interviews Acting Commissioner
- Interviews Investigative Staff
- Documentation of investigations
- Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate (11/29/17)
- Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee (11/29/17)
- Directive #4027B Sexual Abuse Reporting & Investigation -Inmate on Inmate (11/29/2017)
- Directive #4028B Sexual Abuse Reporting & Investigation -Staff on Inmate/Staff-on-Parolee (11/29/17)
- PAQ
- Directive #0700 Office of Special Investigations 9/10/20
- Facility example Form 2103SAIL (11/17)
- Facility example Form 2103 SASI (11/17)
- Coordinated Response Plan to An Incident of Incarcerated Individual Sexual Abuse FOM 440

The PAQ indicates there have been thirteen allegations, three resulting in administrative investigations and ten resulting in potential criminal investigations in the past 12 months.

(a) The agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment. (b) The agency shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The agency shall publish such policy on its Web site or, if it does not have one, make the policy available through other means. The agency shall document all such referrals.

Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate, Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee, Directive #4027B Sexual Abuse Reporting & Investigation -Inmate on Inmate (11/29/2017) and #4028B Sexual Abuse Reporting & Investigation -Staff on Inmate/Staff-on-Parolee (11/29/17) all require that all allegations of sexual abuse and sexual harassment or retaliation for reporting such an incident be thoroughly investigated. It further states it will be promptly initiated; the OSI will determine the appropriate investigative response. Directive #0700 Office of Special Investigations 9/10/20 supports that this will occur as well.

The interview with the A/Commissioner confirmed the following: "In accordance with my authority under Section 112 of the New York State Correction Law, I have designated the Department's Office of Special Investigations (OSI) as the Department's investigative branch to investigate allegations of serious misconduct in the facilities. The Office of Special Investigations conducts criminal and administrative investigations of all allegations of sexual abuse. Allegations of sexual harassment are reviewed by OSI and may either be investigated by OSI or by the facility subject to OSI's review. In any potentially criminal case, OSI coordinates with the New York State Police Bureau of Criminal Investigation and the pertinent District Attorney's Office to ensure that any appropriate criminal charges are pursued."

Coordinated Response Plan to An Incident of Inmate Sexual Abuse FOM 440 requires the Watch Commander to contact OSI when an incident of sexual abuse has occurred. The interview with the investigators confirmed that they have been notified timely of all allegations of sexual abuse, sexual harassment and/or retaliation. The review of the investigations supported this as well. All allegations are documented on the Form 2103SAIL and Form 2103 SASI. Documentation demonstrating this was provided with the pre-audit documentation.

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

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

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

Auditor is not required to audit this provision.

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

Auditor is not required to audit this provision.

Policies noted above, interviews with the investigators and review of investigations from the established 12-month audit time frame support that investigations are all appropriately addressed by the OSI involving sexual abuse and sexual harassment, or retaliation and staff neglect that led to sexual abuse or sexual harassment. These investigations are initiated promptly with investigators being contacted immediately in accordance with the facility's coordinated response. This was determined from the review of the investigations, the investigative process and the interviews with the investigators. It was established that OSI has legal investigative authority within the State of New York and also collaborates with the State Police on any matters that may appear to be criminal as established by the confidential manual.

TRAINING AND EDUCATION

Standard 115.31: Employee training

115.31 (a)

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

115.31 (b)

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

115.31 (c)

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

115.31 (d)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Training Manual Section: 0.100 - Frequency Training Chart and Training Bulletins – 12/3/2018
- Training Manual Subject 8.300A – Recruit Training Catalog of Courses 7/10/17
- Training Bulletin #7 PREA: Sexual Abuse Prevention and Response (PREA) 1/22/20
- Training Manual Subject #7.000 – Initial Employee Training/40 hour Orientation 5/19/20
- Training Manual Section #7.100 Employee Familiarization In-Service Training Program 5/19/2020 Sexual Abuse Prevention and Response Introduction – Transfer Lesson Plan 17093 1/2018
- Memo – Commissioner 7/13/20 RE: Policies and Standards Generally Applicable to all Employees
- Memo – Deputy Commissioner/Associate Commissioner (PREA Coordinator) 4/8/2015 RE: Sexual Abuse Prevention and Response Training
- Report of Training Form: Sexual Abuse Prevention and Response Introduction – Transfer (PREA) RTF – PREA 7/2017
- Sexual Abuse Prevention and Response Refresher Training Lesson Plan – January 2020
- Recruit Training Program 7/10/2017
- Training Bulletin 1/22/20
- KHRT #35029
- KHRT #17093
- KHRT #17078
- Completed Training Intro/Transfer Refresher 2020
- Observations
- Interviews Random staff

- Review of training records for one staff who transferred from a female facility
- PAQ - Number of staff with inmate contact trained, percentage trained
- FAQ

The PAQ indicates there are 345 employees who have contact with incarcerated individuals who were trained on PREA requirements as outlined in the provision.

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

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

Training Manual Section #7.000 4/19/2018, 40 Hour Orientation/Initial Employee Training confirms that all civilian new employees receive mandatory training which includes 3-hour module on Sexual Abuse Prevention and Response.

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

Training Bulletin 1/22/20 ensures that PREA refresher is addressed at line-up training annually for uniformed line staff, and as a written refresher for non-uniformed and supervisory staff.

The auditor reviewed Sexual Abuse Prevention and Response Refresher Training Lesson Plan – January 2020 17078. It demonstrates that training covers the following topics: Definitions, Zero Tolerance Policy, Inmate/Parolee right to be free from sexual abuse and sexual harassment, inmates have the right to be free from retaliation for reporting sexual abuse or harassment, dynamics of sexual abuse and sexual harassment in confinement for males incarcerated individuals and female incarcerated individuals, common reactions of victims, communicating effectively with lesbian, gay, bisexual, transgender and intersex, or gender nonconforming incarcerated individuals, how to avoid inappropriate relationships, employee responsibilities of prevention, detection, reporting and response and mandatory reporting. Subject 7.000 40-Hour Orientation/Initial Employee Training confirms that PREA training is provided to all new employees, a 3-hour course.

An interview with the trainer confirmed that new staff do not have incarcerated individual contact before receiving training on PREA which supports clarification provided in the FAQ. A report demonstrating that staff have been trained for course 35029, Preventing Sexual Abuse, and 17078 PREA Refresher was provided to the auditor.

(b) Such training shall be tailored to the gender of the 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 Facility Familiarization In-Service Training Program 5/19/2020 specifies that all transfer staff receive familiarization on compliance with PREA and the Department's Sexual Abuse Prevention and Response procedures. It further states that the training will be tailored to the gender of the incarcerated individuals at the facility, including gender dynamics, for staff who are transferring from a facility that houses opposite gender staff that they on they worked. The training at this facility provides dynamics of abuse between male incarcerated individuals. The PREA Introduction/Transfer Training for male classified facilities updated 12/9/2019 reinforces key terms, zero tolerance, communicating effectively and professionally with LGBTI and GNC incarcerated individuals, and five actions an employee takes as a first responder and three categories of sexual abuse and misconduct all employees have a duty to report. One personnel file for a staff who transferred from a female facility was reviewed which confirmed orientation training received upon arrival at this facility (as required by NYSDOCCS), which did include PREA refresher training for male facilities.

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

As stated, Training Manual Subject: 0.100 - Frequency Training Chart and Training Bulletins - 7/12/18 - confirms that PREA Training is provided every two years, and a module on Professional Boundaries provided annually. The PAQ indicates that 640 staff have been trained. PREA Refresher 2020 training was underway during the first quarter of 2020, in conjunction with two other "Commissioner's Initiative" Courses "Stereotype Threat" and "Ensuring Professional Interactions with LGBTIQ+ People". Many random staff interviewees did report they had recently attended this training.

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

The training form signed by staff after completion of training states, "By signing below you confirm that you participated in the Prevention of Sexual Abuse – PREA training program and that you understand the training that you have received." One example of this form was provided with the pre-audit documentation.

After review and analysis of the documentation, interviews with staff, the auditor concludes that the standard is deemed compliant. The training curriculum supports that all ten topics required by the standard are thoughtfully and thoroughly addressed in the curriculum. The training provides information specific to working with male incarcerated individuals. Training occurs every two years with a refresher training annually. Documentation of training records for courses 35029 PREA and 17078 Refresher were provided to further support that the facility is compliant. It demonstrated that all staff have been trained. All staff interviews support that staff have received the training and staff were knowledgeable regarding the various aspects required by the standard. Lastly, one record was reviewed for a staff who transferred from a female facility which demonstrated that training was conducted relevant to a male facility.

Standard 115.32: Volunteer and contractor training

115.32 (a)

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

115.32 (b)

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

115.32 (c)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate, 11/29/2017
- Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee, 11/29/17
- Directive #4750 Volunteer Services Program 7/21/20
- Standards of Conduct for Volunteers 12/18
- Application for Volunteer Status 12/18
- Form MFVS3087 Acknowledgement of "Standard of Conduct for Volunteers" 12/18
- Directive #4071 Guidelines for Construction Projects 4/10/2019
- Memo- Commissioner 9/4/18 RE: Policy on the Prevention of Sexual Abuse of Offenders (revised) to all Employees, Contractors, Volunteers, and Interns
- Observations
- Interview contractor
- Review volunteer/contractor training records
- Interview with the Volunteer Coordinator
- PAQ

The PAQ indicates there are 53 volunteers and contractors who have been trained in agency policies and procedures regarding sexual abuse/harassment prevention, detection, and response.

(a) The agency shall ensure that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection and response policies and procedure. (b) The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contract they have with inmates, but all volunteers and contractors who have contact with inmates shall be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.

(a)(b) Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate, 11/29/2017 and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee, 11/29/17, Directive #4750 Volunteer Services Program states, Restrictions: During orientation, volunteers must be cautioned regarding the seriousness of personal/emotional involvement with inmates. This will include visiting, corresponding, and accepting phone calls. In order to avoid any misunderstanding, the following guidelines must be strictly observed: Volunteers are prohibited from having any sexual contact or engaging in any sexual conduct with an inmate. DOCCS has a zero-tolerance policy for sexual abuse. It is a crime for any employee to engage in sexual conduct or sexual contact with an inmate. For purposes of Penal Law §130.05, an employee also includes any person providing direct services to inmates in a State Correctional Facility pursuant to a contractual arrangement with the Department or, in the case of a volunteer, a written agreement with the Department. All volunteer applicants will read the most updated version of the Policy on the Prevention of Sexual Abuse of Inmates.

All volunteers are to be provided with training on Directives #4027A, "Sexual Abuse Prevention & Intervention - Inmate-on-Inmate," and #4028A, "Sexual Abuse Prevention & Intervention - Staff-on-Inmate/Staff-on-Parolee." All volunteer applicants must acknowledge receipt in writing that they will be held accountable for and act in accordance with the policy and the law. All volunteer applicants must acknowledge that they understand the Department's zero tolerance policy regarding sexual abuse and sexual harassment and how to report such incidents under DOCCS' sexual abuse and sexual harassment prevention, detection, and response policies and procedures and Directives #4071 Guidelines for Construction Projects and #4750 Volunteer Services Program require that contractors, contract employees, volunteers and interns shall receive orientation and periodic in-service training consistent with their level of incarcerated individual contact relating to the prevention, detection, and response to sexual abuse and sexual harassment. This is reinforced in the Standards for Conduct for Volunteers within the New York State Department of Corrections and Community Supervision Form #4750C and Form #4071A Guidelines for Construction Projects which provide written information for contract workers and also require a signed acknowledgment form. Volunteers must also sign Form MFVS3087 Acknowledgement of "Standard of Conduct for Volunteers" and All Applicable Policies.

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

Form # MFVS3087 Acknowledgement of "Standard of Conduct for Volunteers" and All Applicable Policies and Form #4071A Guidelines for Construction Projects provide written information for contract workers which also require a signed acknowledgment form.

The auditor was given a spreadsheet with information regarding all volunteers, fingerprints taken, background checks and orientation in addition to access to all volunteer records. Four records randomly selected demonstrated that volunteers receive background checks and sign acknowledgements noting the volunteer/contractor understands the policy on prevention of sexual abuse and sexual harassment in a confinement setting were included in the documentation. A refresher is required annually, therefore exceeding the standard. This was observed in one of the volunteer folders. These files were highly organized. The process to ensure this occurs was verified with an interview the volunteer coordinator.

The auditor reviewed documentation regarding contractual staff. It demonstrated that contractual staff signs acknowledgements noting that understood the training they receive. A review of their documentation confirmed that contractual staff have been given the information on PREA and signed indicating they received and understood the information. One contractual medical staff was interviewed and confirmed that he received the training and understood his role in preventing, detecting and responding to PREA allegations.

Based on review of the information provided to contractual staff and volunteers, review of the randomly requested documentation, interview with the contractual staff and interview with the volunteer coordinator, the auditor finds sufficient evidence to support a finding of exceeds compliance with this standard due to the required annual refresher training for volunteers. No volunteer was available to be interviewed as they have not present in the facility due to the coronavirus pandemic precautions.

Standard 115.33: Inmate education

115.33 (a)

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

115.33 (b)

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

115.33 (c)

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

115.33 (d)

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

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

115.33 (e)

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

115.33 (f)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations Posters, pamphlets
- Interviews Intake staff
- Interviews Random incarcerated individuals
- Intake records
- Documentation of additional information in 30 days
- Education materials
- Documentation of incarcerated individual participation in education sessions
- Posters, handbooks, etc.
- PAQ
- Directive #4021 Inmate Reception/Classification dated 01/23/2019
- Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate, 11/29/2017
- Memo Deputy Commissioner/Associate Commissioner 6/18/2015 RE: PREA Inmate Orientation Film Implementation
- Form 115.33L Report of Inmate Training Participation

- Form 115.33 – Report of Inmate Participation
- Memo Deputy Commissioner 3/25/16 RE: Revised Transitional Services Phase I
- Transitional Services Phase I Manual - Male Facilities Introduction and PREA Module 2016
- Memo Associate Commissioner – 12/28/2015 RE: New and Updated PREA Materials
- Memo Associate Commissioner – 12/28/2015 RE: Reasonable Accommodations PREA Information
- Inmate Orientation Outline
- Memo Associate Commissioner – 10/26/2015 RE: Ending Sexual Abuse Behind the Walls: An Orientation
- Facility specific – Orientation Sign in sheet and Form 115.33
- Facility Specific “Catch Up” training of inmate population schedule
- Facility Specific – Orientation Packet/Signed acknowledgement of receipt

The PAQ indicates that 653 incarcerated individuals were admitted that were given information at intake, 542 stayed past 30 days who received comprehensive education on their rights to be free from both sexual abuse/harassment and retaliation for reporting such incidents and on agency policies and procedures for responding to such incidents within 30 days of intake.

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

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

The interview with the intake sergeant confirmed that she provides the PREA pamphlet and facility orientation book when the inmates arrive at this facility.

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

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

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

The PAQ reports that all incarcerated individuals have received the education on PREA, in addition to a memo from the PREA Coordinator confirming this as of August 11, 2015.

Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate, 11/29/2017 states, all inmates shall receive during orientation at reception and at facility orientation after transfer, information which addresses sexual abuse and sexual harassment. The information shall be communicated orally and in writing, in a language clearly understood by the inmates. This information will address prevention, self-protection (situation avoidance), reporting sexual abuse, and sexual harassment, and the availability of treatment and counseling. The inmate handbook received upon arrival provides detailed information regarding PREA as well as a pamphlet entitled, The Prevention of Sexual 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 six different languages.

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

See comments in 115.16.

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

Form 115.33 Report of Inmate Training Participation Prevention of Sexual Abuse PREA requires the incarcerated individual to sign that he has seen the video "Ending the Sexual Abuse Behind the Walls: An Orientation." It specifically states, "REPORT OF INMATE TRAINING PARTICIPATION Prevention of Sexual Abuse – PREA In accordance with Title 28 C.F.R. § 115.33/231(d), by signing below you confirm that you participated in the "Ending Sexual Abuse Behind the Walls: An Orientation" PREA training program." One example of both types of documentation was provided to the auditor with the pre-audit documentation.

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

Numerous posters addressing this information were observed throughout the facility. All incarcerated individuals 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 incarcerated individual library. It was conveyed to the auditor that any incarcerated individual 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 incarcerated individual is viewing.

Review of the policy, incarcerated individual interviews regarding their knowledge of PREA and verification of the process in place, in addition to formal and informal interviews with staff all support that the facility is meeting the requirements of this standard. Fifteen incarcerated individual files were

randomly selected (last fifteen to arrive); documentation provided demonstrated training at orientation and/or Phase I of Transitional Services. All demonstrated that the incarcerated individual signed for receipt of the Prevention of Sexual Abuse in Prison pamphlet and all had signed indicating they observed the orientation video. As stated, the auditor viewed the video. The video used at orientation has been filmed in New York DOCCS using incarcerated individuals confined in this state. It is twenty-four minutes long. It reviews personal testimony from numerous male incarcerated individuals emphasizing that sexual abuse and sexual harassment more commonly occurring through manipulation and how to avoid manipulation. It reinforces that incarcerated individuals can report to anyone anytime. It is their right to be free from sexual abuse, sexual harassment and retaliation. It addresses how to report outside the agency, to the Inspector General (IG) (now the Office of Special Investigations), Sexual Abuse Prevention & Education Office (SAPEO), outside Rape Crisis Center and how to have family/friends report. There is a personal message from the Acting Commissioner and the PREA Coordinator. A link to this video is available on the agency website for anyone to view.

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

Incarcerated individual interviews confirmed that they are effectively educated regarding their right to be free from sexual abuse and sexual harassment, their right to be free from retaliation, zero tolerance for sexual abuse or sexual harassment, how to file a complaint and agency policy regarding this. The auditor observed orientation for PREA during the onsite portion of the audit.

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

Standard 115.34: Specialized training: Investigations

115.34 (a)

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

115.34 (b)

- Does this specialized training include techniques for interviewing sexual abuse victims? [N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.21(a).] ☒ Yes ☐ No ☐ NA
- Does this specialized training include proper use of Miranda and Garrity warnings? [N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.21(a).] ☒ Yes ☐ No ☐ NA

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

115.34 (c)

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

115.34 (d)

- Auditor is not required to audit this provision.

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations
- Interviews Investigative staff
- Training completion docs
- Curriculum
- Training policy
- PAQ # of investigators agency
- Statement of Compliance
- Power Point Presentation: PREA Specialized Training – 9/14/18
- NIC training – PREA: Investigating Sexual Abuse in Confinement Settings
- KHRT Training Report for Course #17072
- Training report for investigators for 35029
- Report of Training Form for Sexual Abuse Investigations and PREA Update 6/19/2014
- Training completion certificates – Evidence Specialist 13, Investigative Photography 24 total

The PAQ indicates there are currently 31 investigators trained to handle and respond to sexual abuse allegations.

(a) In addition to the general training provided to all employees pursuant to § 115.31, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings. (b) Specialized training shall

include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral. (c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.

Office of Special Investigations (OSI), Sex Crimes Division (SCD) training curriculum dated September 2018 for PREA includes an overview of the PREA law, state law, staff and incarcerated individual sexual abuse definitions, duty to report, evidence protocols, effective communication with special populations, privacy for interviews, techniques for interviewing victims, credibility assessment, criteria to determine substantiated, unfounded and unsubstantiated investigations, Miranda and Garrity warnings. Investigators also received the standard PREA training, as confirmed by interviews with the investigators and documentation provided to the auditor.

Policy noted above and additional documentation showing the training curriculum support a finding of compliance. Documentation (a spread sheet showing training provided and hire dates) was provided to the auditor demonstrating the following:

All investigators have received the following:

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

Other Specialized Courses received by some of the investigators include:

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

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

Auditor is not required to audit this provision.

Policy, training curriculum, interview with investigators, and training certificates provide sufficient evidence that the facility is compliant with the provisions of the standard. Review of the documentation shows that the investigation unit has significant experience in the unit, received the required training, and has received additional above and beyond training. Therefore, the auditor finds that the facility exceeds the standards.

Standard 115.35: Specialized training: Medical and mental health care

115.35 (a)

- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in how to detect and assess signs of sexual

abuse and sexual harassment? (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*)

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Training Manual Subject – 7.000, 40 Hour Orientation/Initial Employee Training – 5/19/20 (Mandatory)
- Training Manual Subject – 7.150, Orientation Program for Per Diem and Non-Departmental Employees – 5/19/2020
- Office of Mental Health Memorandum of Understanding – 9/14/2016
- TeleMed: Inmate Sexual Assault Post Exposure Protocol PREA 8/10/2016
- Facility Medical Staff KHRT & RTF – Medical/Mental Health Training code 17083
- OMH Staff Medical/Mental Health Training code 17083
- OMH Staff Medical/Mental Health Training code 17093
- Observations
- Interviews Medical and mental health staff
- Sexual Assault Post Exposure Protocol/PREA (Course 17083)
- PAQ

The PAQ indicates that the facility has seventeen medical and mental health staff.

(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. Medical 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. Interviews with medical and mental health staff confirmed that they receive the specialized training and the regular PREA training.

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

This is not applicable to this facility.

(c) The agency shall maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere. (d) Medical and

mental health care practitioners shall also receive the training mandated for employees under § 115.31 or for contractors and volunteers under § 115.32, depending upon the practitioner's status at the agency.

Documentation was provided which demonstrated that all medical staff and mental health staff have received the specialized training in addition to the regular PREA training. Staff signs the Report of Training Form acknowledging participation in the course; records are maintained by the training staff. Interviews with the nursing supervisor and mental health staff confirm they and their staff receive the medical and mental health specialized training and regular PREA training. The auditor therefore finds that the facility meets all the requirements of this standard support a finding of compliance.

SCREENING FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS

Standard 115.41: Screening for risk of victimization and abusiveness

115.41 (a)

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

115.41 (b)

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

115.41 (c)

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

115.41 (d)

- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (1) Whether the inmate has a mental, physical, or developmental disability? ☒ Yes ☐ No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (2) The age of the inmate? ☒ Yes ☐ No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (3) The physical build of the inmate? ☒ Yes ☐ No

- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (4) Whether the inmate has previously been incarcerated? ☒ Yes ☐ No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (5) Whether the inmate's criminal history is exclusively nonviolent? ☒ Yes ☐ No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (6) Whether the inmate has prior convictions for sex offenses against an adult or child? ☒ Yes ☐ No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming (the facility affirmatively asks the inmate about his/her sexual orientation and gender identity AND makes a subjective determination based on the screener's perception whether the inmate is gender non-conforming or otherwise may be perceived to be LGBTI)? ☒ Yes ☐ No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (8) Whether the inmate has previously experienced sexual victimization? ☒ Yes ☐ No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (9) The inmate's own perception of vulnerability? ☒ Yes ☐ No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (10) Whether the inmate is detained solely for civil immigration purposes? ☒ Yes ☐ No

115.41 (e)

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

115.41 (f)

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

115.41 (g)

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

115.41 (h)

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

115.41 (i)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Interviews Staff who perform risk screens
- Random review of incarcerated individuals risk assessments
- Interview PREA Coordinator
- Interview PREA Compliance Manager
- Directive 4027A, Sexual Abuse Prevention & Intervention Inmate-on-Inmate 11/29/17

- Directive #4021 Inmate Reception/Classification (1/23/2019)
- Forms 115.41M, 115.41 GI, 4021A Draft receipt
- PREA Risk Screening FOM 442 10/1/2020
- Random incarcerated individuals' interviews
- FAQ

The PAQ indicates that 647 incarcerated individuals were screened who were screened for risk of sexual victimization or risk of sexually abusing other inmates within 72 hours of their entry into the facility, 647 who were reassessed for their risk of sexual victimization or of being sexually abusive within 30 days after their arrival at the facility based upon any additional, relevant information received since intake.

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

Directive 4027A, Sexual Abuse Prevention & Intervention Inmate-on-Inmate requires that all incarcerated individuals be screened upon arrival at each facility for any indication of risk of abuse or being abused. Washington Correctional Facility Operations Manual PREA Risk Screening states, Screening will be completed by a sergeant or above ordinarily within 24 hours of arrival. Directive #4021 Inmate Reception/Classification (1/23/2019) further indicates, each inmate shall be initially assessed by a Security Supervisor for their risk of being sexually abused by other inmates or sexually abusive toward other inmates using the gender-appropriate PREA Risk Screening Form #115.41M, "PREA Risk Screening Form – Male Facility in accordance with the facility-specific PREA Risk Screening Facility Operation Manual. . . ." Incarcerated individual interviews and random review of fifteen incarcerated individual files and all confirmed that this assessment is taking place immediately upon arrival.

(c) Such assessments shall be conducted using an objective screening instrument. (d) The intake screening shall consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (1) Whether the inmate has a mental, physical, or developmental disability; (2) The age of the inmate; (3) The physical build of the inmate; (4) Whether the inmate has previously been incarcerated; (5) Whether the inmate's criminal history is exclusively nonviolent; (6) Whether the inmate has prior convictions for sex offenses against an adult or child; (7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming; (8) Whether the inmate has previously experienced sexual victimization; (9) The inmate's own perception of vulnerability; and (10) Whether the inmate is detained solely for civil immigration purposes.

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

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

Risk of Sexual Victimization:

- mental, physical, development disability
- age
- physical build
- incarcerated for less than two years
- convictions for sex offense against an adult or child
- self identifies as gay, lesbian, bisexual, transgender, intersex or gender nonconforming

- previous experience as a victim of sexual abuse
- inmate's perception of risk for sexual abuse
- detained solely for civil immigration

Risk of Sexual Abusiveness:

- conviction for a crime related to sexual abuse in institutional setting or community
- history of committing institutional sexual abuse, convicted of or known history
- convicted of a violent offense
- history of institutional violence

An example of a completed Risk Assessment was sent to the auditor with the pre-audit documentation. On this tool, it also addresses the ability to make a subjective assessment regarding gender non-conforming appearance. Interviews with staff who complete the risk assessment verified to the auditor that they will make a notation if they believe an incarcerated individual is demonstrating effeminate mannerisms but will also note the response given by the individual. Therefore, the procedure is compliant with the clarifications in the FAQs for this standard.

Additionally, on the form is the following: SCREENING MUST BE CONDUCTED IN A PRIVATE SETTING. Additionally, it states, Inmates may not be disciplined for refusing to answer or provide complete responses to these questions and Information contained on this form shall not be disclosed to anyone other than to the extent necessary to make security classification, housing placement, programming, treatment, investigation, and other security and management decisions.

A Gender Identity Interview process has been developed and refined. A form (115.41GI dated 6/20) with specific interview questions is completed by the ORC. One question is specifically dedicated to asking the individual for any information they may wish to provide with respect to their safety in connections with decisions regarding housing and placement.

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

Facility Operations Manual PREA Risk Screening, states Inmates will be reassessed by an assigned ORC ordinarily within 14 days of arrival. A final risk assessment determination shall ordinarily be made by the Assistant Deputy Superintendent PREA Compliance Manager within 30 days of the inmate's arrival at the facility. Directive #4021 Inmate Reception/Classification also requires the following: Each inmate shall be re-assessed by an ORC for their risk of being sexually abused by other inmates or sexually abusive toward other inmates using the gender-appropriate PREA Risk Screening Form #115.41M, in accordance with the facility-specific PREA Risk Screening Facility Operation Manual. Sexual orientation and gender identity information from the PREA Risk Screening shall be used to assign Other Security Characteristics as appropriate. The interview with the ORC and random incarcerated individuals confirmed that they are being interviewed and verbally asked the relevant questions again at this time. Therefore, the facility also complies with the clarifications made in the FAQ.

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

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

Facility Operations Manual PREA Risk Screening 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. Reassessment is noted utilizing a new intake screening Form 115.41M. The ORC, as required by the agency, reviews a portion of risk assessment at least every 90 days when the incarcerated individuals have their quarterly assessment with the ORC. If behavior changes are observed, a new risk assessment can be conducted, if warranted. This was confirmed by the interview with the ORC and all random incarcerated individual interviews.

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

Facility Operations Manual PREA Risk Screening states, inmates will not be disciplined for refusing to answer or for not disclosing complete information in response to questions asked. Incarcerated individuals interviewed were asked if they believed they would be disciplined for not answering the questions. Most indicated without hesitation that they had not. As stated, the form also states, Inmates may not be discipline for refusing to answer or provide complete responses to these questions. This was also stated by the Sergeant who conducts the initial risk assessment and the ORC who complete the review. All random incarcerated interviews confirmed they did not believe they would be disciplined if they didn't answer the questions.

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

Facility Operations Manual PREA Risk Screening states, PREA Intake Screening Forms (Form 115.41M) is confidential. The completed form shall be filed in the Guidance Folder (Assessments Section), and distribution shall be limited to the Watch Commander, Assistant Deputy Superintendent PREA Compliance Manager and Captain/PREA Point Person. Access to completed forms is limited to the Executive Team and Guidance Staff with a business necessity to review the completed forms. This was verified by interviews with the SORC, ORC and security staff who informed the auditor that the key to this area is a security key, requiring the Watch Commander approval for use after hours and a form to be completed. Noted on the form is the following: Information contained on this form shall not be disclosed to anyone other than the extent necessary to make security, classification, housing/placement, programing, treatment, investigation and other security and management options.

The interview with the PREA Coordinator confirms, "During the risk screening process, the screening form is routed to the ADS PREA Compliance Manager and the designated PREA Point Person at the respective facility. Policy dictates that the PREA Intake Screening Forms are confidential. The completed forms are filed in each incarcerated individual's Guidance Folder with other sensitive and protected assessments. Access to completed forms is limited to the Executive Team and Guidance Staff with a business necessity to review the completed forms. Completed PREA Risk Screening forms are part of the document package that will be reviewed when a transgender incarcerated individual requests placement in a correctional facility consistent with their gender identity. In such an instance, review is limited to the Executive level and legal staff who are involved in making the case-by-case placement determination. An incarcerated individual's assessment as potentially being at 'high risk of sexual victimization' or 'high risk of being sexually abusive' is made available to staff only as necessary in furtherance of the goal to keep separate those incarcerated individuals at high risk of being sexually victimized from those at high risk of being sexually abusive. An incarcerated individual's assessment as potentially being at 'high risk of sexual victimization' or 'high risk of being sexually abusive' is provided

to the facility Movement and Control Office, who uses the information to inform housing and bed assignments, and to the Program Committee Chairperson, who uses the information to inform work, education, and program assignments.”

The form for the Gender Identity Interview notes “Information contained on this form shall not be disclosed to anyone other than to the extent necessary to make security classification, housing/placement, programming, treatment, investigation, and other security and management decisions.” The distribution is as follows: Original – File in Guidance Folder (Section IV); Copies – ADS PREA, Captain/PREA Point Person. This was reinforced by the interview with the PCM.

To review, the intake screening process is conducted upon arrival by a sergeant to determine any triggers which are documented and immediately addressed (Form 115.41M). 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 A/CAPTAIN/PREA Point Person. This was confirmed by the interviews with these staff. Within a few days of being assigned to the housing unit, the ORC meets with the incarcerated individual for an additional follow-up assessment. The ADS (PREA Compliance Manager) or PREA Point Person reviews and makes a final determination on the risk assessment. The auditor confirmed through interviews where the assessments are stored and that only staff with authorization have access to view them. There were staff interviews with one sergeant that is assigned to conduct the screenings as well two ORCs who are responsible for completing the risk assessment. The staff were extremely knowledgeable on their roles and were able to demonstrate to the auditor the importance of the information that they receive and the reason it needs to remain confidential. The auditor was shown the area in which this review takes place, which is private. To further assess compliance, the auditor requested that last fifteen incarcerated individual records who had been received; all had the appropriate risk assessment initially completed by the sergeant and reviewed by the ORC. The auditor finds that the facility qualifies for a finding of “exceeds standard” based on the immediate review, secondary, third and final review of the assessment process, re-assessment every 90 days, initial assessment within 24 hours as well as the procedure to ensure the communication of the safety needs of the incarcerated individual based on the finding of the risk assessment.

Standard 115.42: Use of screening information

115.42 (a)

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

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

115.42 (b)

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

115.42 (c)

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

115.42 (d)

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

115.42 (e)

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

115.42 (f)

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

115.42 (g)

- Unless placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting lesbian, gay, bisexual, transgender, or intersex inmates, does the agency always refrain from placing:

lesbian, gay, and bisexual inmates in dedicated facilities, units, or wings solely on the basis of such identification or status? (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*)

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations
- Interviews PREA Compliance Manager
- Interview Staff who conduct Risk screens
- Interview PREA Coordinator
- Policy which addresses individualized determinations for safety, housing/program case by case for transgender
- Documentation for housing, bed, work, education, program – Form 115.42 Report of Risk Screening Information
- Documentation how decisions are made
- Policy regarding transgender reassessment, opportunity to shower separate, consider own views, placement of lesbian, gay, bisexual, transgender, intersex
- Directive #4021 Inmate Reception/Classification Transgender/Intersex Inmate Classification and Placement 1/23/19
- FOM PREA Risk Screening
- Directive #4401 Guidance & Counseling Services 8/21/20
- Directive #4021 Inmate Reception/ Classification
- Gender Identity Interview Form - 115.41GI 6/20/20

- Directive #4009, Minimum Provisions for Health and Morale, 8/15/2019
- Interview with the Movement and control officer
- Interview with the Program committee chair
- Interview with the Watch Commander

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

Facility Operations Manual PREA Risk Screening states, If the inmate is assessed as potentially being at “high risk of sexual victimization” or “high risk of being sexually abusive,” an immediate referral shall be made to the Watch Commander for housing assignment. . . . The Watch Commander shall determine the most appropriate housing assignment with the goal of keeping separate inmates at high risk of sexual victimization from those at high risk of being sexually abusive. This is done using via a telephone call to the Watch Commander and the housing assignment information is noted using for 115.41M. The interview with the Watch Commander confirmed this process. An example was sent to the auditor with the pre-audit documentation.

Documentation supporting this process was provided to the auditor with the review of the randomly requested documentation. The interview with the Watch Commander confirmed this process. A PREA binder/procedure outlines where to house individuals who are at risk for victimization or those who are potential abusers at this facility.

The auditor interviewed the movement and control officer and the Program Committee Chair who verified this process. As stated in the facility description, there are no potential victims or potential perpetrators currently housed at this facility.

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

Directive #4021 Inmate Reception/Classification Transgender/Intersex Inmate Classification and Placement states, An inmate who identifies as transgender, intersex, or gender non-conforming during PREA Risk Screening, or who has a diagnosis of Gender Dysphoria or Intersex (identified via extended classification codes), shall be asked additional questions by their ORC using the “Gender Identity Interview,” Form #115.41GI, regarding their gender identification, expression, and preferences. The interview will also document the inmate’s statement regarding their safety in connection with decisions regarding their housing and placement. Information from the Gender Identity Interview will be used to assist the Department in making an individualized assessment of the inmate’s placement and program assignments in order to maximize the inmate’s safety. Facility Operations Manual PREA Risk Screening states, A copy of Form 115.42 Report of Risk Screening Information shall be provided to the movement and control officer for housing and bed assignments, the housing unit sergeant and the program committee chairperson who shall use the information to determine appropriate work, education, and program assignments. This is documented through a Memorandum, Report of PREA Risk Screening Information. . . . Upon request from an inmate who identifies as transgender or intersex for a transfer from a male classified facility to a female classified facility, or vice versa, the ORC shall notify the Supervising Offender Rehabilitation Coordinator (SORC) upon completion of the Gender Identity Interview, Form #115.41GI. The SORC shall notify the Deputy Superintendent for Program

Services and the facility's designated Assistant Deputy Superintendent PREA Compliance Manager. The Deputy Superintendent for Program Services/Deputy Superintendent for Reception/Classification shall notify the Director of Classification and Movement of the inmate's request via electronic mail, including the completed Form #115.41GI, and the most recently completed gender-appropriate PREA Risk Screening Form #115.41M or Form #115.41F, which shall be used to assist the Department in making an individualized assessment of the inmate's placement and program assignments, in order to maximize the inmate's safety. The request will be forwarded to the Central Office Transgender Placement Review Committee for a case-by-case assessment. Housing assignment by gender identity will be made when appropriate.

(d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate. (e) A transgender or intersex inmate's own view with respect to his or her own safety shall be given serious consideration.

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

Directive #4401 Guidance & Counseling Services states, all incarcerated individuals are reviewed on a quarterly basis to assess programs, personal goals, goals for the next quarter in addition to four questions specific to sexual abuse and sexual harassment safety. Incarcerated individual interviews confirmed this during the audit. The file for the incarcerated individual who identified as transgender but was no longer at the facility was provided to the auditor for review. As requested, the auditor was provided documentation to demonstrate this occurred; it was noted in the chronological section of the incarcerated individual's file.

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

Directive #4009, Minimum Provisions for Health and Morale, 8/15/2019, states, Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates. The PCM confirmed, if needed, separate shower times would be arranged. The memo demonstrating the process to ensure showers for transgender/intersex inmates was provided to the auditor. It ensures that no-peak shower times which may include count are identified to ensure privacy for the transgender/intersex inmate.

(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 interview with the PREA Coordinator confirmed the following: "The New York State Department of Corrections and Community Supervision does not have any facilities, units or wings dedicated to lesbian, gay, bisexual, transgender or intersex incarcerated individuals. When a transgender or intersex incarcerated individual requests a facility assignment based upon their gender identity, an individualized assessment is conducted, and such placements are made when warranted. Many LGBTIQ+ incarcerated individuals are housed in the general population, although their specific housing location will be influenced by their vulnerability. Other LGBTIQ+ incarcerated individuals will be housed

in a unit that is appropriate based on other needs, including discipline, chronic protective custody, mental health, or treatment needs.”

Directive #4021 Inmate Reception/ Classification states, an inmate who identifies as transgender or intersex will not be placed in a gender-specific facility, housing unit, or program based solely on their external genital anatomy. This was further reiterated by the interview with the PREA Coordinator.

Review of the policy and other documentation which included an example of a risk assessment screen for a transgender inmate in addition to Form 115.42, comments noted in response to 115.41M and processes in place that communicate risk needs to staff support a finding of compliance. One completed risk assessment was reviewed during the pre-audit. Additional documentation from fifteen randomly selected files also demonstrated compliance. Thirteen examples of notifications to the program staff regarding inmates requiring attention, going back to 2018, were also provided for the auditor to review the process. As stated, at this facility, all inmates are reassessed quarterly, and asked questions again related to sexual abuse/harassment safety. This was confirmed by staff interviews and incarcerated individual interviews. Documentation showing that a transgender incarcerated individual's own views are given serious consideration was provided to the auditor and supported by the interviews with the ORCs. Based upon this analysis of written authority, completed documentation, interviews with the intake sergeant, ORCs, PREA Coordinator, PREA Compliance Manager, and incarcerated individuals all provide sound evidence for the auditor to find the facility substantially exceeds compliance with this standard.

Standard 115.43: Protective Custody

115.43 (a)

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

115.43 (b)

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Interviews Superintendent
- Staff who supervise SHU
- Directive #4948 Protective Custody Status 12/24/20
- Forms #2168A, #2170A and #4948A
- Documentation supporting that placement in SHU did not occur
- PAQ

The PAQ states that no incarcerated individuals have been placed in involuntary protective custody due to their high risk of sexual victimization. The auditor found no evidence to dispute this during the audit process. The auditor did receive documentation regarding an incident that supported that the victim was housed in the medical observation area.

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

Directive #4948 Protective Custody Status 12/24/20, Involuntary Protective Status states, An inmate who is appropriate for Involuntary Protective Custody solely because he or she is at high risk for sexual victimization, as determined by an assessment conducted pursuant to Directive #4027A and PREA standards, or following a report that the inmate was the victim of sexual abuse, where 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, and who does not voluntarily accept admission into Protective Custody Status may be placed in Involuntary Protective Custody on such basis only after an assessment has been made that there is no available alternative means of separation from likely abusers. If the facility cannot conduct such an assessment immediately, the facility may hold him for less than 24 hours while completing the assessment using Form #2168A Sexual Victimization - Involuntary Protective Custody Recommendation.

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

Directive #4948 Protective Custody Status, Involuntary Protective Status states that inmates placed in Involuntary Protective Custody shall have access to program, privileges, education and work to the extent possible. It notes that it will be documented on Form #4948A.

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

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

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

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

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

Directive #4948 also ensures that placement shall not ordinarily exceed 30 days. If that should occur, the inmate will be reviewed every seven days for the first two months, and at least every 30 days thereafter by a three-member committee consisting of a representative of the facility Executive Staff, a Security Supervisor and a member of the Guidance and Counseling staff; documentation is noted on Form #2170A.

The interview with the Superintendent, supervising sergeant for SHU in addition to documentation regarding an incident that supported that the victim was housed in the medical observation area confirmed that IPC placement will be used as a last resort. Based upon the written authority and these interviews, the auditor finds the facility is substantially compliant with this standard.

REPORTING

Standard 115.51: Inmate reporting

115.51 (a)

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

115.51 (b)

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive - 11/29/17
- Directive 4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee - 11/29/17
- Sexual Abuse Prevention and Response (SAPR) Lesson Plan
- OSI 444 Poster for Internal Reporting
- Letter The New York State Commission of Correction (SCOC) Inmate and Resident reporting
- Prevention of Sexual Victimization in Prison, What You Need to Know brochure
- Statement of Compliance
- Employee Manual
- PREA Pocket Card
- Interviews incarcerated individuals
- Interviews random staff

(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 - 11/29/17 and #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee - 11/29/17 supports that inmate reports of sexual abuse, sexual harassment, or retaliation can be verbal or in writing. Incarcerated individuals are notified through the orientation manual and the pamphlet received upon intake that they can tell any staff, contract or volunteer. The Orientation Manual for Washington Correctional Facility dedicates numerous pages to PREA. It includes information from JDI. DOCCS OSI implemented a 444-misconduct reporting line which is documented in postings near the phone. All incarcerated individual interviews confirmed that they were aware of multiple avenues for making a report. Most indicated they would call the 777 PREA rape crisis hotline number, noting they observed the information on the posters by the phone. It was reported to the auditor that DOCCS is in the

process of updating its incarcerated individual education to reinforce that the purpose of the 777 line is to provide emotional support counseling.

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

The New York State Commission of Correction (SCOC) has agreed to receive all written inmate reports containing sexual abuse and sexual harassment allegations, including anonymous allegation and will immediately forward them to DOCCS for investigation. This is confirmed by a memo from the Chairman of the Commission. This information is provided in the pamphlet given to inmates upon arrival, The Prevention of Sexual Victimization in Prison, What You Need to Know. The New York State Department of Corrections and Community Supervision does not detain inmates solely for civil immigration purposes. However, information on how to contact relevant consular officials is available. A Jailhouse Lawyer's Manual: Immigration & Consular Access Supplement is available in all NYSDOCCS Facility Law Libraries.

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

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

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

Staff may report sexual abuse or sexual harassment privately to the Office of Special Investigations by calling their number directly or sending an email directly to them. This is reinforced in the PREA training and on individually issued pocket size PREA Response cards for staff. All staff interviews supported that they are aware they have a private mechanism for reporting. Most commented that they could contact OSI directly, noting the number on the Response Card for this.

As stated in the narrative, investigations were initiated from numerous sources: direct report to staff, including medical staff, from the incarcerated individual; third party report, anonymous report, phone call from family, mail and report to the "PREA Hotline". Review of documentation noted above supports a finding of compliance. Incarcerated individuals noted that there are several ways to file a complaint at this facility and shared examples of such. Staff is aware of the numerous avenues for filing a complaint,

including third party and anonymous. Initial and refresher training emphasize the different avenues for reporting. Staff interviews indicated they would report immediately and knew the process for documenting this. Responses were consistent with the report being made immediately and either through their direct supervisor to the Watch Commander, or directly to the Watch Commander. Review of the investigations support that allegations are reported swiftly to the Watch Commander who initiates the coordinated response. Although sexual abuse and sexual harassment complaints are not processed through the administrative procedure for incarcerated individual grievances, if a grievance is filed containing anything resembling an allegation, the grievance supervisor immediately sends a copy to the Watch Commander. The interview with the Grievance Supervisor confirmed that incarcerated individuals receive appropriate notification indicating that the complaint is deemed exhausted upon filing for Prison Litigation Reform Act (PLRA) purposes. A copy of this form was provided to the auditor for review. This interview further confirmed that anything that may resemble a PREA allegation is forwarded to the Watch Commander as appropriate for review. Additionally, the interview with the Assistant Deputy Superintendent/PREA Compliance Manager confirmed this process. Additionally, two examples of grievance with PREA allegations being forwarded to the Watch Commander were provided to the auditor reinforcing this process.

As stated in the narrative, investigations were initiated based on numerous avenues. Review of the policies, investigations, interviews with staff and incarcerated individuals, information provided at orientation all provided the auditor with sufficient evidence to support a finding of compliance with the standards.

Standard 115.52: Exhaustion of administrative remedies

115.52 (a)

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

115.52 (b)

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

115.52 (c)

- Does the agency ensure that: An inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint? (N/A if agency is exempt from this standard.) ☐ Yes ☐ No ☒ NA

- Does the agency ensure that: Such grievance is not referred to a staff member who is the subject of the complaint? (N/A if agency is exempt from this standard.) ☐ Yes ☐ No ☒ NA

115.52 (d)

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

115.52 (e)

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

115.52 (f)

- Has the agency established procedures for the filing of an emergency grievance alleging that an inmate is subject to a substantial risk of imminent sexual abuse? (N/A if agency is exempt from this standard.) ☐ Yes ☐ No ☒ NA
- After receiving an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse, does the agency immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken? (N/A if agency is exempt from this standard.) ☐ Yes ☐ No ☒ NA

- After receiving an emergency grievance described above, does the agency provide an initial response within 48 hours? (N/A if agency is exempt from this standard.) ☐ Yes ☐ No ☒ NA
- After receiving an emergency grievance described above, does the agency issue a final agency decision within 5 calendar days? (N/A if agency is exempt from this standard.) ☐ Yes ☐ No ☒ NA
- Does the initial response and final agency decision document the agency's determination whether the inmate is in substantial risk of imminent sexual abuse? (N/A if agency is exempt from this standard.) ☐ Yes ☐ No ☒ NA
- Does the initial response document the agency's action(s) taken in response to the emergency grievance? (N/A if agency is exempt from this standard.) ☐ Yes ☐ No ☒ NA
- Does the agency's final decision document the agency's action(s) taken in response to the emergency grievance? (N/A if agency is exempt from this standard.) ☐ Yes ☐ No ☒ NA

115.52 (g)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- DOCCS Directive #4040, Inmate Grievance Program (IGP) 1/20/2016
- Interview Grievance Coordinator
- Memo to inmate regarding sexual abuse or sexual harassment grievance

The standard has the following requirements: (a) An agency shall be exempt from this standard if it does not have administrative procedures to address inmate grievances regarding sexual abuse. (b)(1) The agency shall not impose a time limit on when an inmate may submit a grievance regarding an allegation of sexual abuse. (2) The agency may apply otherwise-applicable time limits to any portion of a grievance that does not allege an incident of sexual abuse. (3) The agency shall not require an inmate to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse. (4) Nothing in this section shall restrict the agency's ability to defend against an inmate lawsuit on the ground that the applicable statute of limitations has expired. (c) The agency shall ensure that— (1) An inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and (2) Such grievance is not referred to a staff member who is the subject of the complaint. (d)(1) The agency shall issue a final agency decision on

the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance. (2) Computation of the 90-day time period shall not include time consumed by inmates in preparing any administrative appeal. (3) The agency may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The agency shall notify the inmate in writing of any such extension and provide a date by which a decision will be made. (4) At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial at that level. (e)(1) Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of inmates. (2) If a third party files such a request on behalf of an inmate, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process. (3) If the inmate declines to have the request processed on his or her behalf, the agency shall document the inmate's decision. (f)(1) The agency shall establish procedures for the filing of an emergency grievance alleging that an inmate is subject to a substantial risk of imminent sexual abuse. (2) After receiving an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse, the agency shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken, shall provide an initial response within 48 hours, and shall issue a final agency decision within 5 calendar days. The initial response and final agency decision shall document the agency's determination whether the inmate is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance. (g) The agency may discipline an inmate for filing a grievance related to alleged sexual abuse only where the agency demonstrates that the inmate filed the grievance in bad faith.

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

Standard 115.53: Inmate access to outside confidential support services

115.53 (a)

- Does the facility provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations? ☒ Yes ☐ No
- Does the facility provide persons detained solely for civil immigration purposes mailing addresses and telephone numbers, including toll-free hotline numbers where available of local, State, or national immigrant services agencies? (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*)

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations
- Interviews Random incarcerated individuals
- Policy/procedure governing access to outside victim advocates for emotional support
- Memo, Associate Commissioner RE: A PREA Statewide Rape Crisis Hotline went into effect January 8, 2019
- Directive #4423 Inmate Telephone Calls 1/15/14
- Directive #4421, Privileged Correspondence 6/02/2016
- Directive #4404 Inmate Legal Visits 9/18/19
- Interview Mailroom supervisor
- Contract NYSCASA and designated Rape Crisis Programs
- MOUs OVS and OPDV
- Rape Crisis Program contract with NYSCASA
- Poster Sexual Abuse Hotline 777 Program (English and Spanish)
- Facility Orientation Handbook – victim services
- Poster PREA brochures, “Help for Victims of Sexual Abuse in Prison”
- PREA brochures, “Help for Victims of Sexual Abuse in Prison”
- Documentation of legal status handling correspondence to PREA Auditor
- Documentation of legal telephone calls arranged for incarcerated individuals to conduct private phone sessions with staff from the advocacy service.

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

A memo from Jason D. Effman, Associate Commissioner indicates the following: A PREA Statewide Rape Crisis Hotline went into effect January 8, 2019. A 777-speed dial number, available through the Inmate Telephone System, is active at all New York DOCCS Correctional Facilities, , and the Willard Drug Treatment Campus. Calls made are routed to one number, who provides crisis counseling services and if requested, a referral to a Rape Crisis Program for follow-up services. Multi-language services can be provided. If requested, they will also make referrals to the DOCCS via OSI, the facility Assistant Deputy Superintendent/PREA Compliance Manager, facility designated PREA Point Person or to the PREA Coordinator. As of February 2021, there are ten current PREA service providers across the state have staff specifically trained to assist incarcerated individuals at all 50 of the NYSDOCCS facilities. All conversations are kept confidential; they are not monitored. Ongoing emotional support and victim advocacy services are provided via legal calls (privately, arranged by the PREA Compliance Manager or Guidance staff) and in some locations via legal visits. Documentation of legal telephone calls arranged for incarcerated individuals to conduct private phone sessions with staff from the advocacy service was provided to the auditor for review.

There are two phone booths in each housing unit. Additionally, there are telephones available in the yard and gym for incarcerated individuals' use. Directive #4421, Privileged Correspondence 06/02/2016, Rape Crisis Programs- inmates can send and receive privileged correspondence. It addresses that any local, state or national organization authorized to provide rape crisis services, victim advocacy services, and emotional support services is considered privileged correspondence. Mailroom staff confirmed that correspondence with these organizations is considered confidential and handled in the same manner as legal mail. Documentation of a logbook entry in the legal mail log for the advocacy service was provided to the auditor for further evidence of compliance. Therefore, the auditor finds the facility provides reasonable communication.

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

The Winter publication 2018-2019 of DOCCS Today has a detailed headline article outlining the new hotline, educating staff on the transition to the enhanced service, further demonstrating support of the service from the Acting Commissioner of NYSDOCCS.

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

Posters announcing the service were visible throughout the facility. On the poster, it indicates that the calls are confidential and are not monitored by the facility but that they are recorded in the event of misuse. It also provides the agency's address should an incarcerated individual wish to correspond instead of talk on the phone. It further educates the incarcerated individual population that the counselors are only allowed to report information back to the Department with the permission of the incarcerated individual. PREA brochures, "Help for Victims of Sexual Victimization in Prison" are widely available to incarcerated individuals. In addition this pamphlet provides victim support information on how to report abuse, and outlining the PREA Statewide Rape Crisis Hotline, and it provides contact information regarding the community-based Rape Crisis Program (RCP) for rape crisis counseling victim advocacy and emotional support services (Crisis Services, Inc., Crime Victims Treatment Center, Family Services Center for Victim Safety & Support, RESTORE Sexual Assault Services, Safe Harbors of the Finger Lakes, Sexual Assault Resource Center of Planned Parenthood of Greater NY, St. Peter's Crime Victim Services at Samaritan Hospital, Victim Advocacy Services of Planned Parenthood of Greater NY, Victims Assistance Center of Jefferson County, Victims Assistance Services of WestCOP, and Vera House, Inc. It too reinforces that calls are confidential, will not be monitored but are recorded. It further informs the incarcerated individuals that they do not have to have 777 on their approved telephone list. Telephone numbers to a specific Rape Crisis Program can be added at any time to their approved telephone list. The facility provided examples of ongoing counseling via telephone for numerous incarcerated individuals during the audit period. Also, the facility provided examples of ongoing counseling via telephone for numerous incarcerated individuals during the audit period.

The following policy directives support this process: Directive #4423 5/21/2015, Inmate Telephone Calls, an incarcerated individual may add an attorney, or Department of Health approved Rape Crisis Program to their telephone list. Directive #4404 Inmate Legal Visits 9/18/2019, there is an area designated for confidential visits and as stated, Directive #4421, Privileged Correspondence 06/02/2016, Rape Crisis Programs- incarcerated individuals can send and receive privileged correspondence.

(c) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse. The agency shall maintain copies of agreements or documentation showing attempts to enter into such agreements.

The Agency has a signed MOU with the New York State Office of Victim Services and the New York State OPDV to provide *emotional support service*. These State agencies in turn contract with the New York State Coalition Against Sexual Assault and a community service provider to provide both a state-wide rape crisis hotline and, through additional community services providers, a partnership that provides emotional support and victim advocacy services to incarcerated individuals in all of the State's 50 correctional facilities. The St. Peter's Crime Victim Services @ Samaritan Hospital provides emotional support and victim advocacy calls and receives referrals for such services through the Statewide Rape Crisis Hotline (777) provider. A contract was provided that demonstrated that the agency agrees to the following: participate in PREA training, participate in quarterly working group calls, provide services for hotline calls and referrals, ensure only PREA trained staff and/or volunteers take calls from and provide services to incarcerated survivors 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 survivors of sexual assault with rape crisis counseling, advocacy and emotional support services, follow-up with incarcerated survivors 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 provides, complete forms to track project services among other requirements. At this facility, St. Peter's Crime Victim Services @ Samaritan Hospital provides the on-going support following a referral

from the statewide hotline or as arranged by the PREA Compliance Manager. A Help for Victims of Sexual Abuse in Prison pamphlet does provide detailed information on how to obtain this service. Phone numbers and addresses are provided for agencies throughout the State of New York.

During the onsite audit, the auditor observed a poster next to every incarcerated individual phone providing information on how to access this line. Also, there is a private area where incarcerated individuals can use a phone without anyone in the vicinity listening (same phone provided for legal calls) located outside the living areas, with the assistance of the PREA Compliance Manager/PREA Point Person or ORC. Random incarcerated individual interviews revealed that the population is aware that there is the ability to call this number by dialing 777 for reporting. Some indicated in the interviews that they thought it was recorded because a pin is required. Approximately half of the incarcerated individuals interviewed indicated they were not, however, aware of the additional service that could be provided, only that they could report. They further elaborated, though, that they did not need any service like that, so they did not concern themselves with additional information. The auditor did not find these comments concerning as the information is readily available and visible to the incarcerated individual population.

Documentation was provided to the auditor reflecting that the 777 number was called 37 times in the previous twelve months. This information is contained in a report that gives the number for all facilities, broken down by length of call (one to five minutes, five to ten minutes, ten to fifteen minutes, over fifteen minutes) as well as a reflection on any trends occurring for the month. The auditor requested and received documentation that incarcerated individuals are afforded the advocacy service.

The auditor reached out to a representative from the St. Peters Crime Victims Services who provides Crime Victims/Sexual Assault Counseling for survivors of sexual abuse or sexual harassment who are seeking these services at this facility. She confirmed that her organization can provide these services through the mail, in person or over the phone. Services can include the following: emotional support services, crisis intervention, information and relevant referrals. Depending on how the request is received this may also include accompaniment during forensic medical exam and accompaniment during investigatory interviews and court proceedings. Staff who perform these services are certified by the New York State Department of Health. All individuals who are requiring services receive the agency service guidelines and confidentiality limitations through the mail. They are discussed during the first session with the individual to ensure the content is understood. Individuals receiving these services are referred by the statewide crisis service phone number or a direct referral from the facility (PREA Deputy).

The auditor communicated with the Program Coordinator for the Crisis Services which receives all calls statewide from the 777 number. She confirmed the following: Crisis Services provides/serves as the vendor of the New York State PREA Rape Crisis Hotline for incarcerated survivors within DOCCS facilities on behalf of the NYS Office for the Prevention of Domestic Violence. The organization provides the following: emotional support services, crisis intervention, and information. Contact is made via the phone. The individual can then receive follow up services from specialized rape crisis programs that provide PREA related services. Callers can select English or Spanish on the PREA Hotline at time of caller. If another preferred language is required, Hotline staff have access to a live, over the phone, interpretation through a contracted company. Hotline staff undergo 40 Hours of Rape Crisis and Domestic/Family Violence Advocate certification in addition to a several week on the job orientation and onboarding training. Following that, staff receive regular 1:1 supervision and group supervision. Staff are required to maintain at least 10 hours of professional development towards certification annually.

As illustrated, this crisis service and on-going emotional support service has commitment and support from the Governor's office, Commissioner's office, and key organizations in the state. Review of the policy, observation of the area where the phone calls can be made, and strong knowledge of the availability of the service as demonstrated by the incarcerated individual interviews all support a finding of compliance. The auditor believes these enhanced services provide incarcerated individuals in the NYSDOCCS the most comprehensive services for incarcerated individuals in the nation, therefore meeting the criteria for "exceeds standards".

Standard 115.54: Third-party reporting

115.54 (a)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations
- DOCCS website

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

The auditor reviewed the NYSDOCCS website which has a link to PREA which provides all information about PREA to the public including policy, history of combating sexual assault, PREA education, Reporting Sexual Abuse and how third-party reports on behalf of an incarcerated individual can be made. The website complaint allows for confidentiality and anonymity. This online complaint form provides an anonymous option. Previous interviews with the agency investigators confirmed that they have received complaints through this process. Additionally, the visiting room has information posted regarding zero tolerance for sexual abuse and sexual harassment and how to file a complaint. Therefore, the auditor finds this standard to be deemed compliant.

OFFICIAL RESPONSE FOLLOWING AN INMATE REPORT

Standard 115.61: Staff and agency reporting duties

115.61 (a)

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

115.61 (b)

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

115.61 (c)

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

115.61 (d)

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

115.61 (e)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations
- Interviews Random sample of staff
- Interviews Medical staff
- Interview PREA Coordinator
- Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate
- Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee - 11/29/17
- Employee Manual
- Office of Mental Health MOU
- Directive #0700 Office of Special Investigations (OSI)
- Statement of Compliance
- HSPM 1.01 Inmate Orientation to Health Care Services – 8/21/20 Form 3102 Health Services Orientation 8/21/20
- Coordinated Response Plan – Facility specific
- Watch Commander Quick Reference Chart for Sexual Abuse/Sexual Harassment related complaints
- Watch Commander Sexual Abuse Response Checklist

(a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

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

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

Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee - 11/29/17 states that reports are confidential and only to be shared with essential employees involved in the reporting, investigation, discipline and treatment process or as otherwise required by law. The Employees' Manual also

reinforces this requirement. Random staff interviews relayed to the auditor that they are aware of the requirement to maintain confidentiality.

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

Directive #4027A Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee 11/29/17 specifically addresses that a medical practitioner is required to report the minimum information necessary. Additionally, improvements to ensure incarcerated individuals are informed regarding medical and mental health staff having to disclose information or suspicions regarding sexual abuse and sexual harassment prior to the initiation of services has been implemented into the health care orientation packet (required per a mandatory standard by the American Correctional Association) in addition to the pamphlet incarcerated individuals receive on intake.

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

This facility does not house incarcerated individuals under the age of 18 (see 115.14). In this state, vulnerable person statutes do not apply to those incarcerated. NY Soc Serv § 492 establishes the "vulnerable persons' central register" It states, this section excludes persons in DOCCS custody. Interview with the PREA Coordinator indicated the following: "DOCCS is not included within the statutory jurisdiction of the State entity that investigates allegations concerning vulnerable adults. As of August 6, 2020, DOCCS no longer houses any individuals under the age of 18. Previously, beginning October 1, 2018, the Department's two "Adolescent Offender Facilities" fell under the PREA Standards for Juvenile Facilities. Directive #4029 "Reporting Suspected Child Abuse or Maltreatment" was adopted in October 2018 and training regarding compliance with child abuse reporting laws was conducted at those facilities to ensure that Mandated Reporters complied with New York State Law regarding child abuse reporting to the Statewide Central Register of Child Abuse and Maltreatment. Directive #4029 was rescinded effective March 24, 2021."

(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.

As stated, the appropriate investigating agency is the OSI. Directive #0700 Office of Special Investigations (OSI) supports the following: The Sex Crimes Division (SCD) conducts investigations involving unauthorized relationships and sexual misconduct between incarcerated individuals or parolees and Departmental staff, as well as Inmate-on-Inmate sexual abuse. Furthermore, the SCD coordinates with outside law enforcement and prosecutors in the development of these cases for criminal prosecution. The SCD also collaborates with others within the Department to ensure compliance with the Prison Rape Elimination Act (PREA).

In addition, the MOU with OMH supports that mental health staff will report any knowledge or suspicion of sexual misconduct directly to the Watch Commander.

Interviews with security staff, security supervisors, the Watch Commander, and non-first responders support a strong knowledge of the process. The Superintendent confirmed that all allegations will be reported to the investigators via the Watch Commander. The auditor did not find any instance of an allegation that was not reported using this process during the PREA audit. In addition, staff has been issued pocket cards that reflect the process. All staff interviewed had the card on their person. Interviews with the investigators ensured they are receiving all allegations of sexual abuse or sexual

harassment immediately for their review and action. All staff interviews confirmed their knowledge of the requirement to maintain confidentiality. For all reason noted, the auditor finds this facility in substantial compliance with the requirements of the standard.

Standard 115.62: Agency protection duties

115.62 (a)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations
- Interviews A/Commissioner
- Interview Superintendent
- Interview Random staff
- Directive #4948 - Protective Custody Status – 12/24/20
- Form #2168A Sexual Victimization – Involuntary Protective Custody Recommendation
- PAQ

The PAQ indicates there have been no times the facility determined that an incarcerated individual was at risk of imminent sexual abuse. The auditor found no reason to dispute this during the audit process.

Directive #4948 - Protective Custody Status – 12/24/20 addresses the use of involuntary protective custody for an incarcerated individual who is subject to a substantial risk of imminent sexual abuse. It supports that placement will occur immediately until the facility can complete an assessment. The interview with the Acting Commissioner further elaborated, "Each case is evaluated by the facility or Office of Special Investigations based upon the nature of the report and the potential harm. Supervisory rounds will also be increased as appropriate. An incarcerated individual at risk or a potential predator may be moved to another housing unit or transferred. If no other options are available, a potential victim may be temporarily placed in protective custody until other steps can be taken."

The interview with the Superintendent confirmed that an incarcerated individual at imminent risk of sexual abuse or any imminent risk of harm shall have immediate action taken to ensure his safety. All staff interviews confirmed to the auditor that they would take immediate action if they believed an incarcerated individual was at imminent risk of sexual abuse. Incarcerated individual interviews illustrated to the auditor that staff are approachable. Corrections Officers and supervisors confirmed that this request would be supported, and action would be taken to protect the incarcerated individual before the believed event occurred. Based on this and overall observations during the audit, the auditor found this credible and to be an integral part of the culture of this facility.

Standard 115.63: Reporting to other confinement facilities

115.63 (a)

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

115.63 (b)

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

115.63 (c)

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

115.63 (d)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations
- Interview with A/Commissioner
- Interview Superintendent
- Memo: Associate Commissioner RE: PREA Standard 115.63
- Form 115.63
- Jail Administrators contact information
- PAQ

The PAQ indicates that zero allegations were sent that incarcerated individual was abused while confined at another facility, three allegations of sexual abuse were received from another facility.

(a) Upon receiving an allegation that an inmate was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred. (b) Such notification shall be provided as soon

as possible, but no later than 72 hours after receiving the allegation. (c) The agency shall document that it has provided such notification.

Memo: from Jason D. Effman, Associate Commissioner RE: PREA Standard 115.63, addressed to All Superintendents” states that allegations received from an inmate regarding abuse at another facility will be forwarded from the Superintendent to the Superintendent at the facility where the alleged incident occurred within 72 hours of receiving the report. Form 115.63 shall be used to make the notification. Additionally, the Office of Special Investigations shall be sent a copy. This process was reinforced by the written interview responses from the Acting Commissioner. He states, “Allegations received at one facility involving a different facility are forwarded to the Superintendent of the facility where the abuse allegedly occurred, with a copy of the notification to the Office of Special Investigations. Allegations from other agencies are typically received by the Office of Special Investigations or the Associate Commissioner/PREA Coordinator. . . . The allegation is referred to the Office of Special Investigations for an investigation, and to the Superintendent or designee for appropriate documentation. If the incarcerated individual is currently in a DOCCS facility, the Assistant Deputy Superintendent PREA Compliance Manager also ensures that retaliation monitoring is initiated, and access to victim support and advocacy services is facilitated if desired. 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 with the pre-audit documentation. Review confirmed that the notification is made from the Superintendent to the Head of the Facility immediately, typically the same day. “

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

Copies of the notices received from other facilities were sent to the auditor with the pre-audit documentation.

The policy and interview with the A/Commissioner and Superintendent provided the auditor with sufficient evidence to support a finding of compliance. There is a process in place to ensure the requirements of this standard are met. To further ensure the efficiency of this process, the agency maintains a contact list for all Jail Administrators in the state.

Standard 115.64: Staff first responder duties

115.64 (a)

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

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

115.64 (b)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations
- Random staff interviews
- Directive #4027B Sexual Abuse Prevention & Intervention Inmate-on-Inmate
- Directive #4028B Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee - 11/29/17
- Sexual Abuse Prevention and Response (SAPR) Lesson Plan
- Watch Commander Sexual Abuse Response Checklist
- PREA Pocket Card
- Facility Coordinated Response FOM
- PAQ

The PAQ indicates there were zero allegations of sexual abuse that allowed for time to collect evidence.

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

Directive #4027B Sexual Abuse Prevention & Intervention Inmate-on-Inmate and Directive #4028B Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee - 11/29/17, Watch

Commander Sexual Abuse Response Checklist, Sexual Abuse Prevention and Response (SAPR) Lesson Plan, PREA Pocket Card all address the requirements of this standard. Whether a first responder or not, all reports go to the immediate supervisor and to the Watch Commander. The scene is immediately secured. An inmate victim is asked, and any alleged perpetrator are told to not take any action which could potentially destroy evidence such as washing, brushing teeth, changing clothes, urinating, defecating smoking, drinking or eating. Watch Commander Sexual Abuse Response Checklist is initiated.

Both first responder staff and non-first responder staff attend training as required in 115.31; these requirements are reinforced at that time. Also, staff carry a Pocket Card to review in the event of a situation. All staff interviews demonstrated knowledge of the process support a finding of compliance. All staff had their Response Card with them. For these reasons noted, the auditor finds the facility in compliance with the requirements of this standard.

Standard 115.65: Coordinated response

115.65 (a)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Facility Coordinated Response Plan
- Observations
- Interview Superintendent
- Random staff interviews
- Interview with Watch Commander

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.

Washington Correctional Facility FOM 440 March 2021 Coordinated Response Plan to an Incident of Incarcerated individual Sexual Abuse provides a detailed plan for all staff to follow in the event of a response to an incident of sexual abuse. It addresses First Party/Victim Report action, Third-party, Anonymous report actions, the details of the Coordinated Response as directed by the Watch Commander. This includes notification to OSI, Health Services, and specifics on how to arrange for outside transport and what hospitals to use. It addresses post medical assessment, mental health staff actions, and emphasizes confidentiality. All staff interviewed were 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, reports are directed to the Watch Commander who ensures notifications and appropriate actions are made. The interview with the Watch Commander confirmed he receives all notifications regarding PREA allegations. All staff interviewed had the PREA Response Card on their possession. Based on the feedback in all interviews, the review of the plan, and review of completed investigations, the auditor finds there is ample evidence to support a finding of compliance.

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

115.66 (a)

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

115.66 (b)

- Auditor is not required to audit this provision.

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Directive #2110, Employee Discipline-Suspension from Duty During the Continuation of Disciplinary Proceedings – 4/17/2020
- Directive #2114, Function of the Bureau of Labor Relations - 7/10/2019
- Eight union contracts
- Union Contracts continuation after expiration – Taylor Law Tri-Borough Amendment
- Interview A/Commissioner

(a) Neither the agency nor any other governmental entity responsible for collective bargaining on the agency's behalf shall enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff sexual abusers from contact with any inmates pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted. (b) Nothing in this standard shall restrict the entering into or renewal of agreements that govern: (1) The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of §§ 115.72 and 115.76; or (2) Whether a no-contact assignment that is imposed

pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated.

Directive #2110, Employee Discipline-Suspension from Duty During the Continuation of Disciplinary Proceedings – 4/17/2020, Directive #2114, Function of the Bureau of Labor Relations - 7/10/2019 both comply with the requirements of this standard. There are eight contracts that address staff at this facility. The contracts do not preclude the facility from removal of alleged staff pending an outcome of the investigation. This was reinforced by the written interview responses from the Acting Commissioner: He states, "the current collective bargaining agreement between the State of New York and the Public Employees Federation, AFL-CIO (PEF) is for the period of 2016-2019. The current collective bargaining agreement between the State of New York and The Civil Service Employees Association, Inc. (CSEA) is for the period 2016-2021. In addition, the collective bargaining agreement between the State of New York and the New York State Correctional Officers and Police Benevolent Association, Inc. (NYSCOPBA) was ratified on January 24, 2019 and is retroactively effective for the period April 1, 2016 – March 31, 2023. The applicable contracts permit the agency to take appropriate action when warranted to remove alleged staff sexual abusers from contact with any incarcerated individual pending the outcome of an investigation or a final determination of whether and to what extent discipline is warranted. The contracts permit the agency to suspend an employee without pay or temporarily reassign an employee when a determination is made that there is probable cause that such employee's continued presence on the job represents a potential danger to persons or property or would severely interfere with operations."

Additionally, the auditor spoke with one staff who is a union representative. He further assured the auditor there is no concern from the union if a staff member needs to be re-assigned.

Review of policy, interview with the A/Commissioner, review of contracts and interview with a union representative provide the auditor with sufficient evidence to support a finding of compliance.

Standard 115.67: Agency protection against retaliation

115.67 (a)

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

115.67 (b)

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

115.67 (c)

- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor the conduct

and treatment of residents or staff who reported the sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff? ☒ Yes ☐ No

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

115.67 (d)

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

115.67 (e)

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

115.67 (f)

- Auditor is not required to audit this provision.

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Employee Manual
- Memo, Associate Commissioner – 4/18/2019 RE: Agency Protection against Retaliation
- Retaliation Monitoring Form 115.67-I, 115.67 -S
- Retaliation Tracking Sheets
- Observations
- Interviews A/Commissioner
- Interview Superintendent
- Interview with designated staff members charged with monitoring for retaliation (PREA Compliance Manager and PREA Point Person)
- PAQ

The PAQ indicates that there were no reported incidents of retaliation occurred.

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

Employee Manual 2.19 requires that all employees have a duty to report retaliation against incarcerated individuals or staff who reported such an incident. Memo from Jason D. Effman, Associate Commissioner – 4/18/2019 requires each facility to use multiple protection measure such as housing changes, transfers, removal of alleged staff or incarcerated individual abusers from contact with the victim and emotional support services for incarcerated individuals or staff who fear retaliation for reporting sexual abuse, sexual harassment and/or cooperating with the investigation. It requires the

monitoring for a minimum of four months, exceeding the requirements of the standard. Form 115.67 Retaliation Monitoring Form ensures that all aspects of this standard are proactively monitored and documented. There is a monitoring form for incarcerated individuals 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, the form supports the following: "The obligation to monitor the conduct and treatment of any incarcerated individual 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 incarcerated individual is released."

The interview with the A/Commissioner revealed the following: "Decisions on protective measures are made on a case-by-case basis. Both the facility administration and the Office of Special Investigations consider whether the present housing placement is appropriate and, if not, consider whether a move to another housing unit or a transfer to another facility is appropriate. In any case involving transportation to a hospital for a forensic examination by a SAFE/SANE provider, the incarcerated individual is returned either to the facility infirmary or the infirmary at a designated catchment facility. This ensures both a proper medical follow-up and that the incarcerated individual is placed in a safe environment while options are considered. With respect to access to emotional support services, information on the Department's "777" PREA Statewide Rape Crisis Hotline, Victim Advocacy & Emotional Support Partnership is widely distributed in the facilities and is provided by medical staff when appropriate following a medical assessment for a significant exposure. The Department, in partnership with the State Office of Victim Services, State Office for the Prevention of Domestic Violence, the New York State Coalition Against Sexual Assault and a number of providers, launched a statewide rape crisis hotline in January 2019, expanding the nearly five-year old Enhanced Victim Services pilot program. In addition to hotline services, all facilities have the capacity to provide ongoing victim advocacy and emotional support services through several community-based partner programs and other victim assistance programs. All incarcerated individuals, parolees, and staff who report sexual abuse or sexual harassment, or who cooperate with sexual abuse or sexual harassment investigations are protected from retaliation by other incarcerated individuals or staff. This includes housing changes or transfers for incarcerated individual victims or abusers, removal of alleged staff or incarcerated individual abusers from contact with victims, and emotional support services for incarcerated individuals or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations. Retaliation monitoring includes review of any incarcerated individual disciplinary reports, housing or program changes, or any negative performance reviews or reassignments of staff. In the case of incarcerated individuals, retaliation monitoring is for a minimum of four months, subject to extension when there is a report of retaliation and includes periodic in-person status checks approximately every 30 days. In-person status checks are also encouraged for any staff who reported an incident. The Department's protocols for retaliation monitoring are initiated for any individual who cooperates with an investigation and expresses a fear of retaliation. Monitoring for signs of retaliation is coordinated by the Assistant Deputy Superintendent/PREA Compliance Manager with the assistance of the designated PREA Point Person. Any complaint or evidence of retaliation is referred to the Office of Special Investigations, Sex Crimes Division for investigation and to be promptly remedied."

During the pre-audit phase, the facility provided the spreadsheet tracking mechanism utilized to document these actions and examples of Retaliation Monitoring Forms. An additional ten monitoring forms were requested and received. They supported that monitoring is occurring in accordance with the requirements of the standard – it is initiated at the time of the report, periodic meetings are conducted, disciplinary reports/program changes are reviewed, it concludes if the investigation is deemed unfounded, and it is forwarded to the receiving facility if the incarcerated individual is transferred before the end of the 120 days monitoring period. Interviews with the A/Commissioner, Superintendent, PREA Compliance Manager and PREA Point Person all support that retaliation monitoring is taken seriously

and well documented. Even if an incarcerated individual transfers, the retaliation monitoring is continued at the next NYSDOCCS facility which is another reason for the decision of "exceeds standard."

Standard 115.68: Post-allegation protective custody

115.68 (a)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations
- Interviews Superintendent
- Interview staff who supervises SHU
- Policy regarding use of restrictive housing to protect an incarcerated individual who has suffered abuse
- PAQ
- Directive #4948 Protective Custody Status 12/24/20
- Form 2168A

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

Finding of compliance based on the following: See comments on 115.43. The PAQ indicates that no incarcerated individuals have been placed in segregated housing due to suffering sexual abuse. This was confirmed by an interview with the Superintendent and staff supervising the SHU. The auditor found no reason to dispute this during the audit process. Based on comments noted on 115.43 this standard is found to be compliant.

INVESTIGATIONS

Standard 115.71: Criminal and administrative agency investigations

115.71 (a)

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

115.71 (b)

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

115.71 (c)

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

115.71 (d)

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

115.71 (e)

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

115.71 (f)

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

115.71 (g)

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

115.71 (h)

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

115.71 (i)

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

115.71 (j)

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

115.71 (k)

- Auditor is not required to audit this provision.

115.71 (l)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations
- Interviews Investigative staff
- Interview Incarcerated individuals who reported a sexual abuse
- Interview with the Superintendent
- Investigative reports
- Retention schedule
- Directive #0700 Office of Special Investigations (OSI) 11/28/2018
- Directive #4027B Sexual Abuse Reporting & Investigation - Inmate-on-Inmate
- Directive #4028B Sexual Abuse Reporting & Investigation -Staff-on-Inmate/Staff-on-Parolee
- Response Plan and Watch Commander Sexual Abuse Response Checklist
- Letter to the New York State Police Superintendent
- PAQ
- New York Criminal Procedure Law 160.45

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

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

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

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

All investigators in the SCD receive training. See 115.34

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

The Response Plan and Watch Commander Sexual Abuse Response Checklist specify that OSI SCD investigators are immediately contacted when a PREA allegation is received, in accordance with the

facility's response plan. In accordance with the plan, the first responders ensure evidence is preserved; the OSI SCD investigators complete any evidence gathering required. Interview with the OSI SCD investigators supported that they are and have been immediately contacted regarding all allegations. This plan was recently updated to further clarify this process.

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

The Office of Special Investigations Policy Manual, 2021 is considered confidential but was provided to the auditor. The auditor reviewed the document and found it supports compliance with this standard. Additionally, polygraph tests are prohibited in accordance with the New York Criminal Procedure Law 160.45 and therefore not used in any aspect of the investigation for sexual abuse or sexual harassment. This requirement was confirmed by the interview with the investigators.

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

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

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

The Office of Special Investigations Policy Manual is considered exempt from disclosure. The auditor reviewed the document and found it supports compliance with this standard. One investigation was reviewed were referred for criminal prosecution. Compliance with this requirement was confirmed by the review of the confidential manual and the interview with the investigators. The SCD would be the entity to report all substantiated allegations to licensing bodies, as well as ensures all matters that rise to the level of criminal prosecution are referred for criminal handling.

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

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

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

The departure of an alleged abuser or victim from the employment or control of the agency does not provide a basis for terminating an investigation, as confirmed by the interview with the three investigators. This is further reinforced directly in the letter to the New York State Police Superintendent regarding collaboration with the investigation of potential criminal actions of staff. The interview with the investigators also confirmed that the investigation would continue.

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

Auditor is not required to audit this provision.

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

Directive #0700 Office of Special Investigations (OSI) states that the Sex Crimes Division (SCD) conducts investigations involving sexual misconduct between incarcerated individuals and departmental staff as well as Inmate-on-Inmate sexual abuse. It further states they will assist outside law enforcement in the development of cases for criminal prosecution. A memo from the Superintendent of the New York State Police dated May 2, 2014 further confirms support by stating, This will serve to confirm that the New York State Department of Corrections and Community Supervision (DOCCS), Office of the Inspector General (IG), Sex Crimes Unit (SCU) and the New York State Police (NYSP), Bureau of Criminal Investigation (BCI) shall continue to work cooperatively in the investigation of reported incidents of staff-on-inmate and Inmate-on-Inmate sexual abuse that may involve criminal conduct.

The interview with the A/Commissioner indicated the following: "DOCCS Office of Special Investigations, Sex Crimes Division is the lead investigative body for our sexual abuse investigations. OSI will work cooperatively with the New York State Police (NYSP), Bureau of Criminal Investigation (BCI) and the District Attorney's Office (the local prosecuting authority), but the SCD Investigator is the lead investigator in each case and DOCCS does not relinquish jurisdiction. The BCI will often conduct certain interviews in a potentially criminal case where doing so is necessary to ensure that there are no Garrity issues. DOCCS OSI SCD, the NYSP BCI and the District Attorney's Office exchange information throughout the investigation."

Based on review of the policies, agency manual, investigations and interviews with the A/Commissioner and investigators, the auditor concludes that investigators address investigations promptly, thoroughly, in a manner which will hold up in court, and with a review of incidents to address staff actions and assesses credibility consistently. The agency is given and "exceeds standards" due to the extensive training and specialization of investigators in the SCD of OSI.

Standard 115.72: Evidentiary standard for administrative investigations

115.72 (a)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations
- Statement of Compliance
- Interviews Investigative staff
- Review of investigations using preponderance of evidence (administrative)

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

The established definition for concluding that an investigation has been substantiated supports that the agency uses a preponderance of evidence. This is noted in written policy for OSI and confirmed by the interview with two investigators. Review of the investigation supports that the agency uses a finding of substantiated based on a preponderance of the evidence.

Standard 115.73: Reporting to inmates

115.73 (a)

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

115.73 (b)

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

115.73 (c)

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

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

115.73 (d)

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

115.73 (e)

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

115.73 (f)

- Auditor is not required to audit this provision.

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations
- Interview Superintendent
- Interviews with Investigative staff
- 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
- Statement of Compliance

- Interviews with Incarcerated individuals who reported a sexual abuse
- Documentation of notifications

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

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

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

All investigations will conclude with the OSI investigator, who will therefore make the notification. As confirmed in the interviews, notifications are given to the Superintendent who then provides to the ADS – PREA. The Superintendent indicated she forwards the notification to the incarcerated individual at his current facility via the legal mail process. Ten examples were provided to the auditor confirming this process.

(c) Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, the agency shall subsequently inform the inmate (unless the agency has determined that the allegation is unfounded) whenever: (1) The staff member is no longer posted within the inmate's unit; (2) The staff member is no longer employed at the facility; (3) The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or (4) The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility. (d) Following an inmate's allegation that he or she has been sexually abused by another inmate, the agency shall subsequently inform the alleged victim whenever: (1) The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or (2) The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility. (e) All such notifications or attempted notifications shall be documented. (f) An agency's obligation to report under this standard shall terminate if the inmate is released from the agency's custody.

The Office of Special Investigations Policy Manual is considered exempt from disclosure. The auditor reviewed the document and found it supports compliance with all requirements of this standard. Accordingly, the investigator ensures that the notification is made either through the Facility Superintendent or in person. As stated, examples of notifications were provided to the auditor – ten total. It supported compliance with these requirements. One incarcerated individual interview who had reported an allegation indicated he did receive written notification of the results of the investigation. The Superintendent confirmed that this is required for investigations. Therefore, the auditor finds there was sufficient evidence to support a finding of compliance based on policy and documents noted above.

DISCIPLINE

Standard 115.76: Disciplinary sanctions for staff

115.76 (a)

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

115.76 (b)

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

115.76 (c)

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

115.76 (d)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations
- Directive #2110 – Employee Discipline – Suspension from Duty During the Continuation of Disciplinary Proceedings – 4/17/2020
- Employees' Manual
- Directive #2111- Report of Employee Misconduct – 9/8/2020
- Statement of compliance

- 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
- Directive #4028A Sexual Abuse Prevention & Intervention Staff-on-Inmate/Staff-on-Parolee 11/29/17
- PAQ
- OSI Manual

The PAQ indicates that no staff has been terminated, no staff referred to licensing bodies for violating agency sexual abuse and/or sexual harassment policy since the last PREA audit.

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

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

Directive #2110 – Employee Discipline – Suspension from Duty During the Continuation of Disciplinary Proceedings – 4/17/2020, states, When the OSI receives a report of staff sexual misconduct, they shall evaluate the facts and circumstances of the report together with any other available information and consult with the appropriate Bureau of Labor Relations representative regarding appropriate action, including removal of the employee from contact with any incarcerated individuals pending the outcome of an investigation.

Employees' Manual – Rev. 2019 specially reinforces that any perpetrator of a sexual abuse incident, sexual harassment or act of staff voyeurism will be dealt with severely. It emphasizes the duty to report sexual abuse and sexual harassment. Memo: Daniel F. Martuscello III, Deputy Commissioner for Administrative Services – 2/5/16 RE: Prison Rape Elimination Act / Presumptive Disciplinary Sanction for Staff Sexual misconduct confirms that termination is the presumptive disciplinary sanction for staff who have engaged in sexual abuse of an incarcerated individual. 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 – 9/8/2020 additionally confirms that staff will be disciplined, noting sanctions up to termination for sexual misconduct. The OSI Manual (confidential) additionally confirms this requirement.

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

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

(c) Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

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

(d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

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

Additionally, dialogue with the Superintendent, investigators, PREA Coordinator and PREA Compliance Manager support that all allegations against staff for sexual abuse, sexual harassment, retaliation or neglect are investigated and disciplinary action would be commensurate with the circumstances up to termination for sexual abuse. Therefore, this standard is deemed compliant.

Standard 115.77: Corrective action for contractors and volunteers

115.77 (a)

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

115.77 (b)

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

Auditor Overall Compliance Determination

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

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Interviews Superintendent
- Directive #4750, Volunteer Services Program
- Standards of Conduct For Volunteers Within The New York State Department Of Corrections And Community Supervision
- Memo Commissioner – 9/4/18 Conduct for Volunteers
- Acknowledgements of Standards of Conduct for Volunteers and All Applicable Policies
- PAQ

The Pre-Audit Questionnaire notes that no contractor or volunteer has been involved in an investigation regarding sexual abuse or sexual harassment towards an incarcerated individual. The auditor found no evidence to dispute this statement during the audit process.

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

Directive #4750, Volunteer Services Program, updated 7/21/2020, requires that volunteers be notified of the DOCCS zero tolerance policy and that they can be criminally liable for their behavior under the definition sexual conduct with an inmate. It states, DOCCS has a zero-tolerance policy for sexual abuse. It is a crime for any employee to engage in sexual conduct or sexual contact with an inmate. For purposes of Penal Law §130.05, an employee also includes any person providing direct services to inmates in a State Correctional Facility pursuant to a contractual arrangement with the Department or, in the case of a volunteer, a written agreement with the Department. Additionally, it stipulates the following: 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 Standard of Conduct for Volunteers.

Standards of Conduct for Volunteers Within The New York State Department Of Corrections And Community Supervision, Relationship with Inmates states, “sexual abuse and sexual harassment violate Department rules and threaten security. All allegations of sexual abuse, sexual harassment, or retaliation for reporting such an incident or participating in an investigation will be thoroughly investigated. It is a crime for a volunteer or intern who provides direct services to inmates in a State Correctional Facility to engage in a sexual act with an inmate or parolee assigned to that facility, even if the inmate or parolee ‘willingly’ participates in the act. Furthermore, any perpetrator of a sexual abuse or sexual harassment incident will be dealt with severely through discipline or prosecution to the fullest extent permitted by law and will be reported to any relevant licensing bodies.”

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

The interview with the Superintendent confirmed that she is able and willing to temporarily suspend volunteers and contractual staff from entering the facility if there is a suspicion of misbehavior. See comments to 115.32. Additionally, she confirmed that she has the authority to terminate the agreement and, if the incident appeared criminal, it would be referred for prosecution. After analysis of this documentation, policy, and interview, the auditor finds the standard to be compliance.

Standard 115.78: Disciplinary sanctions for inmates

115.78 (a)

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

115.78 (b)

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

115.78 (c)

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

115.78 (d)

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

115.78 (e)

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

115.78 (f)

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

115.78 (g)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations
- Interviews Superintendent
- Hearing Officer Reference Book April 2017
- Directive #4028A, Sexual Abuse Prevention & Intervention – Staff-on-Inmate/Staff-on-Parolee, 11/29/17
- Directive 4401 Guidance and Counseling, 12/5/2019
- Disciplinary record for actions against incarcerated individuals for sexual conduct with staff
- Document showing sanctions commensurate
- Directive #4932 – Chapter V, Standards Behavior & Allowances – 10/2/2018
- Directive #4027A, Sexual Abuse Prevention & Intervention – Inmate-on-Inmate – 11/29/17
- PAQ
- Non-Sex Offense Referral Sex Offender Counseling and Treatment Program
- One referral

The PAQ indicates there have been no administrative findings or criminal findings of inmate-on-inmate sexual abuse. The auditor found no reason to dispute this during the audit process.

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

Hearing Officer Reference Book (April 2017), The Hearing Officers determine guilt on misconducts received by inmates in accordance with the requirements reflected in Directive #4932 – Chapter V, Standards Behavior & Allowances – 10/2/2018. Category 101 addresses Sex Offenses. 101.10 Sex Offense An inmate shall not engage in or encourage, solicit or attempt to force another to engage in any sexual act. The Hearing Officer Reference Book provides recommended sanction ranges for different categories of sex offenses including forcing or attempting to force another to engage in any sexual act, encouraging or soliciting sexual act; and engaging in asexual act (when there is no force or coercion). Similar guidance is provided for charges including 101.11 Forcible touching, 101.20 Lewd Conduct, 101.21 Physical Contact, and 101.22 Stalking.

(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.

The auditor reviewed the Hearing Officer Reference Book. It provides the guidance for Hearing Officers when imposed disciplinary sanctions on inmate's misconducts. Aggravating and mitigating factors are considered. In accordance with the Handbook, these include age of the inmate, inmate's medical

condition, inmate's intellectual capacity, past disciplinary history and record of adjustment, and seriousness of the misconduct. Confinement/sanctions recommendations are based on the severity of the incident and formatted in a table to reflect appropriate graduated sanctions. For the most serious sex offense charge, recommended penalties consider whether the perpetrator used force or coercion, or previously engaged in similar misconduct.

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

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

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

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

Sex Offender Counseling and Treatment Program Guideline – December 2019 verifies that an inmate is eligible for treatment if found guilty of sexual abuse while incarcerated. The inmate will be referred to this program. Directive 4401 Guidance and Counseling, 12/5/2019 addresses treatment services, including sex offender treatment programs, available for inmates in NYSDOCCS. It indicates that this will include guilty findings at a tier hearing per Inmate Standards of Behavior for any sexually abusive and/or assaultive act. Failure to participate, according to staff, can and will prevent an inmate from release. One example of a Non-Sex Offense Referral Sex Offender Counseling and Treatment Program was provided to the auditor to support that this process occurs.

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

Directive #4028A, Sexual Abuse Prevention & Intervention – Staff-on-Inmate/Staff-on-Parolee, 11/29/17 supports that the agency disciplines inmates for sexual conduct with staff only upon finding that the staff member did not consent to such contact. The auditor requested examples of prior misconducts and was provided documentation indicting there has been two misconducts written on inmates for sexual misconduct against staff during the audit evaluation period. It confirmed that the misconduct was written on the inmate for sexual behavior in which the staff did not consent to the behavior.

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

Directive #4028A, Sexual Abuse Prevention & Intervention – Staff-on-Inmate/Staff-on-Parolee, 11/29/17, Directive #4027A, Sexual Abuse Prevention & Intervention – Inmate-on-Inmate – 11/29/17

support that a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred does NOT constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

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

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

Review of the policies and documents noted above support a finding of compliance. The interview with the Superintendent supported that sanctions are proportionate to the nature and circumstance and mental disability/illness is considered when determining sanctions in accordance with policy. Based on analysis of the evidence, the auditor finds the facility to be compliant with the requirements of this standard.

MEDICAL AND MENTAL CARE

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

115.81 (a)

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

115.81 (b)

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

115.81 (c)

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

115.81 (d)

- Is any information related to sexual victimization or abusiveness that occurred in an institutional setting strictly limited to medical and mental health practitioners and other staff as necessary to inform treatment plans and security management decisions, including housing, bed, work,

education, and program assignments, or as otherwise required by Federal, State, or local law?

☒ Yes ☐ No

115.81 (e)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations
- Interviews Incarcerated individuals who disclose sexual victimization at risk screening
- Interview Staff Responsible for risk screening
- Interview medical staff
- Documents showing mental health referral
- Document's showing limited information to custody staff
- HSPM 1.44 – Health Screening of Inmates - 7/26/2018
- Facility PREA Risk Screening FOM
- Directive #4301 – Mental Health Satellite Services and Commitments to CNYPC – 6/10/2020, Mental Health Referral Form 3150
- Form 3278
- OMH MOU
- PAQ

The PAQ indicates that 100% of incarcerated individuals who disclosed prior victimization during screening who were offered a follow up meeting with medical/mental health practitioner, 100% of incarcerated individuals who disclosed previously perpetrated sexual abuse during screening who were offered a follow up meeting with medical/mental health practitioner.

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

HSPM 1.44 – Health Screening of Inmates - 7/26/2018 addresses information received related to sexual victimization or abusiveness. It states, upon arrival at a DOCCS facility, every newly received or

transferred inmate, including inmates being moved from an owning correctional facility to the same correctional facility Special Housing Unit (SHU), SHU200, separate keep lock unit will receive a health screening by a Registered Nurse (RN). This screening will include an inquiry into the inmate's current and past health, mental health, and PREA history and immediate referral of any inmate to a health provider if indicated. In accordance with the National Prison Rape Elimination Act (PREA) Standards, 28 C.F.R. 115.81, any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law. Medical and mental health practitioners shall obtain informed consent (HIPAA release) from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18. As above, informed consent/HIPAA release is not required for a referral to the Office of Mental Health. PREA Screening Form directs the screener to forward a copy of the form directly to Mental Health to serve as the Mental Health Referral Form. Staff can also submit a referral form.

Washington Correctional Facility PREA Risk Screening FOM 442 indicates, If during the screening process, it is determined that the incarcerated individual previously disclosed sexual victimization or perpetrated sexual abuse whether in an institutional setting or in the community, the Sergeant shall offer to refer the incarcerated individual to OMH. The Watch Commander will be notified of the referral. Based on responses in an interview, the auditor requested and received verification of the referral during the audit for one incarcerated individual.

Directive #4301 – Mental Health Satellite Services and Commitments to CNYPC – 6/10/2020, Mental Health Referral Form 3150 supports that referrals received will be addressed within fourteen days. The Facility Operations Manual for Washington Correctional Facility, PREA Risk Screening both describe the specific steps needed to ensure a referral is made at this facility.

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

The facility is a prison, not a jail.

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

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

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

PREA Screening Form also notes an area for reports of sexual victimization that occurred outside the institutional setting.

Form 3278 includes a brief review again of whether the inmate has been sexually abused or victimized. It is completed by health care staff upon arrival. It affords 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 triggers 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.

The PAQ notes the 100% of incarcerated individuals who disclosed prior victimization during screening were offered a follow-up meeting with medical or mental health, and 100% of incarcerated individuals who have previously perpetrated sexual abuse during the screening were offered a follow-up meeting with a mental health practitioner. The auditor finds this credible based on the process for intake. Additionally, the intake sergeant, ORC and mental health staff and PREA Compliance Manager confirmed to the auditor that the referral is walked over directly to the mental health staff, in person or in his intake box. The PREA Compliance Manager gets notified and he indicates he follows up to ensure the encounter occurred.

Review of the randomly reviewed risk assessments supported that the procedure as established by this Agency is being followed. Policy, written authority, interviews with intake staff and the ORC in addition to evidence of compliance provided on sight by the PREA Compliance Manager/ADS supports a finding of compliance with this standard.

Standard 115.82: Access to emergency medical and mental health services

115.82 (a)

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

115.82 (b)

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

115.82 (c)

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

115.82 (d)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations made during the tour
- Interviews Medical staff
- Review of SANE packet
- HSPM 1.60 - Sexual Assault – 10/25/17
- Facility Coordinated Response FOM
- New York Public Health Law § 2807-c

(a) Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment. (b) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim pursuant to § 115.62 and shall immediately notify the appropriate medical and mental health practitioners. (c) Inmate victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate. (d) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

The Facility Coordinated Response (FOM 440, August 2020), HSPM 1.60 Sexual Assault and the New York Public Health Law support that inmates will receive timely, unimpeded access to emergency medical treatment and crisis intervention services. First responders will ensure medical and mental health staff are notified. These documents support that incarcerated individual 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.

Medical staff are available twenty-four hours a day, seven days a week. Mental health staff are available for crisis intervention 24/7. Interviews with medical staff, the Superintendent and PREA Compliance Manager support that victims will receive immediate unimpeded access to emergency medical care in accordance with professionally accepted standards of care. Post Exposure prophylactic needs will be immediately evaluated prior to sending the victim to the hospital, in accordance with the

HSPM 1.12B Inmate Bloodborne Pathogens Significant Exposure Protocol. A List of SANE/SAFE hospitals is maintained with Health Services and the Watch Commander.

Interviews with the medical staff confirm that incarcerated individuals have and will receive this treatment in accordance with the professional judgment and community standards of care.

During the audit period, it was reported that one incarcerated individual who alleged being sexually abused warranting medical care was given appropriate care, including being sent to the local hospital. The auditor was provided the medical documentation to review.

Based on the interviews and policy, the auditor finds the standard to be compliant as the coordinated response plan and staff knowledge of the process support that this will be provided.

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

115.83 (a)

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

115.83 (b)

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

115.83 (c)

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

115.83 (d)

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

115.83 (e)

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

115.83 (f)

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

115.83 (g)

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

115.83 (h)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations made during the tour
- Interviews Incarcerated individuals who reported a sexual abuse
- Interviews Medical staff
- Interviews Security staff and Non-Security staff First Responders
- HSPM 1.60 - Sexual Assault – 10/25/17
- HSPM 1.12B Inmate Bloodborne Pathogens Significant Exposure Protocol – 10/25/17
- Facility Coordinated Response FOM
- Directive #4401 Guidance and Counseling addresses treatment services available for incarcerated individuals at NYSDOCCS.HSPM 1.60 - Sexual Assault – 10/25/17
- New York Public Health Law § 2807-c
- Documentation showing victims are offered tests for STDs as medically appropriate - delete
- PAQ

(a) the facility shall offer medical and mental health evaluation and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility. (b) The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody. (c) The facility shall provide such victims with medical and mental health services consistent with the community level of care.

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

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

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

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

HSPM 1.60 - Sexual Assault – 10/25/17, HSPM 1.12B Inmate Bloodborne Pathogens Significant Exposure Protocol – 10/25/17 confirms that a victim will be offered appropriate tests for sexually transmitted infections, in accordance with medically established timeframes.

(g) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

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

(h) All prisons shall attempt to conduct a mental health evaluation of all known Inmate-on-Inmate abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.

Directive #4401 Guidance and Counseling addresses treatment services available for incarcerated individuals at NYSDOCCS. HSPM 1.60 - Sexual Assault – 10/25/17 confirms that a mental health evaluation of all known Inmate-on-Inmate abusers will be conducted within sixty (60) days. They will be referred to the Sex Offender Counseling and Treatment Program per the guideline. In accordance with the SOCTP Guidelines, incarcerated individuals referred to the program receive an evaluation by specialized staff upon referral to the program.

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

DATA COLLECTION AND REVIEW

Standard 115.86: Sexual abuse incident reviews

115.86 (a)

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

115.86 (b)

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

115.86 (c)

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

115.86 (d)

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

115.86 (e)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Memo: Deputy Commissioner and Associate Commissioner - 5/9/14 RE: Prison Rape Elimination Act Procedural Enhancements Sexual Abuse Response and Containment Checklist; Sexual Abuse Incident Reviews and Security Staffing Audits
- Sexual Abuse Incident Review Checklist – 9/17/2020
- Completed Sexual Abuse Incident Review
- Observations
- Interviews Superintendent
- Interviews PREA Compliance Manager
- Interview Incident Review Team Members - three
- PAQ

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

Memo: from Joseph F. Bellnier, Deputy Commissioner and Jason D. Effman, Associate Commissioner - 5/9/14 RE: Prison Rape Elimination Act Procedural Enhancements Sexual Abuse Response and Containment Checklist; Sexual Abuse Incident Reviews and Security Staffing Audits and the Sexual Abuse Incident Review Checklist – 9/17/2020 addresses the requirements of the standard as follows: Sexual Abuse incident reviews are required, a form has been developed which captures the review and any recommendations of the review team. Reviews are conducted by the Assistant Deputy Superintendent (PREA Compliance Manager), PREA Point Person/Captain and a third member; at this facility it is the Supervising Offender Rehabilitation Coordinator (SORC) or member of the Executive Team. Input is collected from investigators, the area sergeant, Health Services and the Office of Mental Health in addition to others deemed necessary. It requires a review within 30 days of the conclusion of the investigation unless determined to be unfounded. It also supports that the team will work closely with the facility staff to ensure any recommendations are successfully implemented. The Sexual Abuse Incident Review Checklist – 9/17/2020 is a 6-page form which addresses and requires assessment with all requirements of the standard.

Interviews with the Superintendent, ADS PREA Compliance Manager and PREA Point Person confirm that incident reviews are completed for each investigation, as indicated by the standard provisions, except those deemed unfounded. The facility provided fifteen completed reports which were reviewed; they demonstrated compliance with the standard. One had revealed that a mental health referral based on the receipt of the allegation was not completed due to the incarcerated individual transferring out of the facility, and the receiving facility not being notified. Reminder of the follow up for mental health referrals was concluded. Additionally, the facility began collecting information thirty days after the incident, as in some cases, waiting until the conclusion is sent by OSI puts the review at a disadvantage when assessing the incident. It was observed and noted that this process ensured the facility the ability to make more effective reviews.

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

Standard 115.87: Data collection

115.87 (a)

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

115.87 (b)

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

115.87 (c)

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

115.87 (d)

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

115.87 (e)

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

115.87 (f)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- 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

- Data Dictionary
- Facility Specific Form 2103SAII and 2103SASI
- Observations
- Interview ADS - PREA
- Definitions used for collecting data
- Sample showing inclusion of private facility.
- Completed SSV 2019
- Interview with the PREA Coordinator
- Annual Report June 2021

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

Directive #4027B, Sexual Abuse Reporting & Investigation Inmate-on-Inmate, Directive #4028B, Sexual Abuse Reporting & Investigation Staff-on-Inmate/Staff-on-Parolee, Office of Program Planning Research and Evaluation – PREA Data Collection, Review, Retention and Publication Manual support that the facility will maintain monthly sexual abuse/threat incident summaries which are forwarded to the Deputy Commissioner for Correctional Facilities and the Associate Commissioner for Prison Rape Elimination Act (PREA). This provides information that can address the Survey of Sexual Victimization if requested from the Bureau of Justice Statistics. The information is used for the Agency report. An example of this monthly report specific to Washington Correctional Facility was provided with the pre-audit documentation.

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

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

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

Documentation was provided demonstrating that Information from the private agencies is incorporated into the agency data base and therefore included. A separate area of the Annual Report provides statistics on community based residential program sites.

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

The agency provided documentation indicating receipt of the Survey of Sexual Victimization from the DOJ for data dated November 2019.

The PREA Coordinator confirmed the following: The agency does 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 and training. There is a Program Research Specialist 3 in our Program Planning Research and Evaluation department who is dedicated to PREA

matters. All of her raw data files and her final reports are stored in restricted drives set up by the State Office of Information Technology Services (ITS). Her paper records are all stored in locked file cabinets. My copies of the final data reports and other ad hoc reports are stored in my locked office. I review both regular and ad hoc reports produced by Research for me. Our Office of Special Investigations and I work closely with the PREA Program Research Specialist 3 to monitor trends. We continue to adjust our prevention strategies based on our analysis of the data. For 2021, I initiated a new report that is provided on a monthly basis to our Superintendents. This report includes a year-to-date breakdown of complaints of sexual abuse, sexual harassment and unauthorized relationships for each facility. This allows facility leadership to more closely monitor trends and be responsive. We prepare and publish an annual report of the allegations of sexual abuse and sexual harassment as reported to the Department, including information concerning reports at each facility. The Report addresses facility-specific and Department-wide corrective action. As an addendum to the report, DOCCS publishes aggregated sexual abuse data from facilities under its direct control and private facilities with which the agency contracts. We have not redacted any material. Our annual report does not provide case specific information and only aggregated data is presented to avoid identifying any individual or confidential information.

As stated above, the policies, retention schedule, review of the data gathering operation, interview with the PREA Coordinator and Assistant Deputy Superintendent PREA Compliance Manager all demonstrate that the requirements of this standard are addressed and therefore the standard is deemed to be compliant. There is a report available on the webpage for the agency that provides an in-depth analysis for the years 2014-2018, completed and published June 2021.

Standard 115.88: Data review for corrective action

115.88 (a)

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

115.88 (b)

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

115.88 (c)

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

115.88 (d)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Observations
- Interviews Acting Commissioner
- Interview PREA Coordinator/Associate Commissioner
- Interview PREA Compliance Manager
- Link to website
- Annual Report on Sexual Victimization 2014 to 2018, including aggregated data from 2019
- Office of Program Planning Research and Evaluation – PREA Data Collection, Review, Retention and Publication Manual

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

Office of Program Planning Research and Evaluation – PREA Data Collection, Review, Retention and Publication Manual requires the PREA Analyst to prepare an aggregate data collected in order to assess and improve the effectiveness of its sexual abuse and sexual harassment prevention program. An annual report is prepared which compares the statistics from each year, compares the data and action plans and assesses the program towards prevention. There are no personal identifiers in the report, as required by the manual. Information that may present a clear and specific threat to the safety and security of a facility can be redacted; however, an explanation of the contents would be provided. This report is available on the NYSDOCCS website and complies with the requirements of this standard. The auditor reviewed the annual reports which analyzed the data for 2014 to 2018. It is nineteen (19) pages. Problem areas are identified, an analysis of corrective action is provided. It is approved by the Acting Commissioner and the PREA Coordinator (noted on the document as well as indicated in their interviews).

Additionally, the interview with the ADS - PREA supports that monthly reports are maintained and sent to central office for current analysis and notation of any trends occurring. This data accumulated as additional monthly information is added. Examples were provided with the pre-audit documentation.

The interview with the Acting Commissioner confirmed the following: “Incident-based data is primarily used to identify facilities or locations within facilities that have recurring reports of abuse. Our Research office has a researcher dedicated to work full-time on PREA matters. She works directly with the Associate Commissioner/PREA Coordinator in an effort to identify patterns and trends including common characteristics of victim prone incarcerated individuals, common characteristics of incarcerated individual abusers, and any other trends that may be addressed through training or policy changes. The data also plays a key role in keeping the Department’s training on sexual abuse prevention and response current. He confirmed he approved the annual reports.” Additionally, the Associate Commissioner, PREA Coordinator stated, “ I review both regular and ad hoc reports produced by Research for me. Our Office of Special Investigations and I work closely with the PREA Program Research Specialist 3 to monitor trends. We continue to adjust our prevention strategies based on our analysis of the data. For 2021, I initiated a new report that is provided on a monthly basis to our Superintendents. This report includes a year-to-date breakdown of complaints of sexual abuse, sexual harassment and unauthorized relationships for each facility. This allows facility leadership to more closely monitor trends and be responsive. We prepare and publish an annual report of the allegations of sexual abuse and sexual harassment as reported to the Department, including information concerning reports at each facility. The Report addresses facility-specific and Department-wide corrective action. As an addendum to the report, DOCCS publishes aggregated sexual abuse data from facilities under its direct control and private facilities with which the agency contracts. We have not redacted any material. Our annual report does not provide case specific information and only aggregated data is presented to avoid identifying any individual or confidential information.”

For these reasons, the auditor finds the standard compliant. The interview with the PREA Coordinator confirmed that a Program Research Specialist in the Program Planning Research and Evaluation department is dedicated to PREA matters. This person is able to monitor trends and communicate directly with the PREA Coordinator to adjust prevention strategies. As indicated above, this was supported by the written responses for the interview with the Acting Commissioner.

Standard 115.89: Data storage, publication, and destruction

115.89 (a)

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

115.89 (b)

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

115.89 (c)

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

115.89 (d)

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

Auditor Overall Compliance Determination

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

The auditor reviewed, gathered, analyzed and/or retained the following evidence related to this standard:

- Office of Program Planning Research and Evaluation – PREA Data Collection, Review, Retention and Publication Manual
- Observations
- Interviews PREA Coordinator
- Document that is on the website
- Historical data since 2012
- Interview with the Acting Commissioner

(a) The agency shall ensure that data collected pursuant to § 115.87 are securely retained. (b) The agency shall make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its website or, if it does not have one, through other means. (c) Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers. (d) The agency shall maintain sexual abuse data collected pursuant to § 115.87 for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.

Office of Program Planning Research and Evaluation – PREA Data Collection, Review, Retention and Publication Manual states that the information is securely retained by the Office of Special Investigations, retained for ten years after the date of the initial collection, personal identifiers are removed before publishing on the website. Interview with the investigators and PREA Coordinator supported that investigations are securely retained. The auditor viewed where sexual abuse/sexual harassment data is retained at the facility. No personal identifiers required redaction on the published

data. The Associate Commissioner (PREA Coordinator) confirmed the following: "There is a Program Research Specialist 3 in our Program Planning Research and Evaluation department who is dedicated to PREA matters. All of her raw data files and her final reports are stored in restricted drives set up by the State Office of Information Technology Services (ITS). Her paper records are all stored in locked file cabinets. My copies of the final data reports and other ad hoc reports are stored in my locked office."

Based on the above, the auditor finds this standard to be in compliance.

AUDITING AND CORRECTIVE ACTION

Standard 115.401: Frequency and scope of audits

115.401 (a)

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

115.401 (b)

- 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

DOCCS audited 20 correctional facilities during the first year of the audit cycle (more than one-third of the current 50 facilities), including our one remaining DOCCS community confinement facility). It is noted that four of the audits were delayed due to COVID-19 and that, although the on-site portions of the audits were conducted during audit year 1, the reports were received in September 2020 and thus were technically completed during audit year 2.

- 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*)

The Agency has 99 facility PREA reports posted on the website site for audits conducted since it has been initiated which includes private community operations. This includes contractual community based PREA reports posted. Currently there are 50 correctional facilities (prisons) operating. See comments in audit narrative and in response to standards throughout this report. The PREA Coordinator provided the following statement of compliance:

“DOCCS began conducting PREA Audits in Audit Year 3 of Cycle 1. Since that time, PREA Audits have been completed at all DOCCS Correctional Facilities on a 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. DOCCS posts all audit on the DOCCS website in accordance with PREA Standard 115.403 subsection (f) which may be reviewed at <https://doccs.ny.gov/final-audit-reports>.

NYS Correction Law section 121 provides that the private ownership or operation of a facility for housing state or local inmates or the private ownership or operation of a facility for the incarceration of other state’s inmates is prohibited. Thus, no private prisons are operated on behalf of the Agency. DOCCS has entered into agreements with private organizations for 14 Community Based Residential Programs to provide up to 4 months of housing and treatment for selected Parolees. These contracts were effective starting 5/1/17 (7 programs), 10/1/17 (6 programs) and 7/23/18 (1 program). Audits are scheduled at 2 per year per contract starting approximately 1 year after the start of the contract (i.e., two by May 2018, two by October 2018, etc.), thus ensuring that one-third of each facility type operated by a private organization on behalf of the agency will be audited during each forthcoming audit year. DOCCS posts CBRP audit reports at <https://doccs.ny.gov/about-prea#policy>.

Standard 115.403: Audit contents and findings

115.403 (f)

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

Auditor Overall Compliance Determination

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

The Agency has 99 facility PREA reports posted on the website site for audits conducted since it has been initiated which includes private community operations. This includes contractual community based PREA reports posted. Currently there are 50 correctional facilities (prisons) operating.

The PREA Coordinator has provided the following statement of compliance:
DOCCS posts all Final PREA Audit Reports on the DOCCS website within 90 days of issuance by the auditor in accordance with PREA Standard 115.403 subsection (f). Audit reports are published at <https://doccs.ny.gov/final-audit-reports>.

AUDITOR CERTIFICATION

I certify that:

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

Amy J. Fairbanks
Auditor Signature

June 30, 2021
Date