

**NYC Department of Correction
NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum Standards 5-40 Assessment Report – August 2021**

INTRODUCTION

The Prison Rape Elimination Act of 2003 (PREA Public Law 108-79) established federal mandates to identify and prevent prison rape in correctional facilities within the jurisdictions of federal, state, local, and native territories across the United States. Public Law 108-79 was signed into law on September 4, 2003.

The United States Department of Justice adopted the National Standards to Prevent, Detect, and Respond to Prison Rape (the PREA Standards) effective August 20, 2012. In addition to establishing mandatory standards for prevention, detection and response to prison sexual abuse and sexual harassment, the PREA Standards require all correctional facilities to conduct sexual abuse incident reviews and collect uniform data using standardized definitions. Agencies must ensure that data collection includes allegations of sexual abuse and sexual harassment at facilities under its direct control. This incident-based sexual abuse information must be aggregated and made readily available to the public at least annually.

In 2016, the New York City Board of Correction (“the Board”) implemented Sexual Abuse and Sexual Harassment Minimum Standards that are equivalent to the PREA Standards. Pursuant to the Board’s Minimum Standards §5-40 “Data Collection and Review”, the New York City Department of Correction (“the Department”) shall provide to the Board with a semiannual report. This report, which evaluates sexual abuse and sexual harassment allegations made within the past six months (January 2021 through June 2021), analyzes emerging trends and assesses the corrective action contemplated and/or initiated at the facility level and department wide. It is important to note that allegations of sexual abuse and sexual harassment are preliminary and subject to change as these cases develop. Data discussed in allegation categories are not final, as they are ongoing or pending resolution. Data used in this report reflects the most current information available at the time of publication.

Allegations of sexual abuse and sexual harassment are based on the definitions provided by the Department of Justice and reporting requirements as specified in the National Standards to Prevent, Detect, and Respond to Prison Rape, under 28 CFR part 115 under the Prison Rape Elimination Act of 2003. (see Appendix A)

Section One

ALLEGATIONS OF SEXUAL ABUSE AND SEXUAL HARASSMENT

In accordance with the National PREA Standards, the Department reviews data pursuant to §115.87 in order to examine and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training with the ultimate goal of eliminating sexual abuse and sexual harassment within its facilities.

Type of Allegation

Allegations of sexual abuse and sexual harassment are categorized in accordance with the definitions provided by the Prison Rape Elimination Act of 2003. These categories separate allegations by perpetrator type (staff or inmate) and compare this reporting period data to last period’s data, as shown in Figure 1.

Figure 1

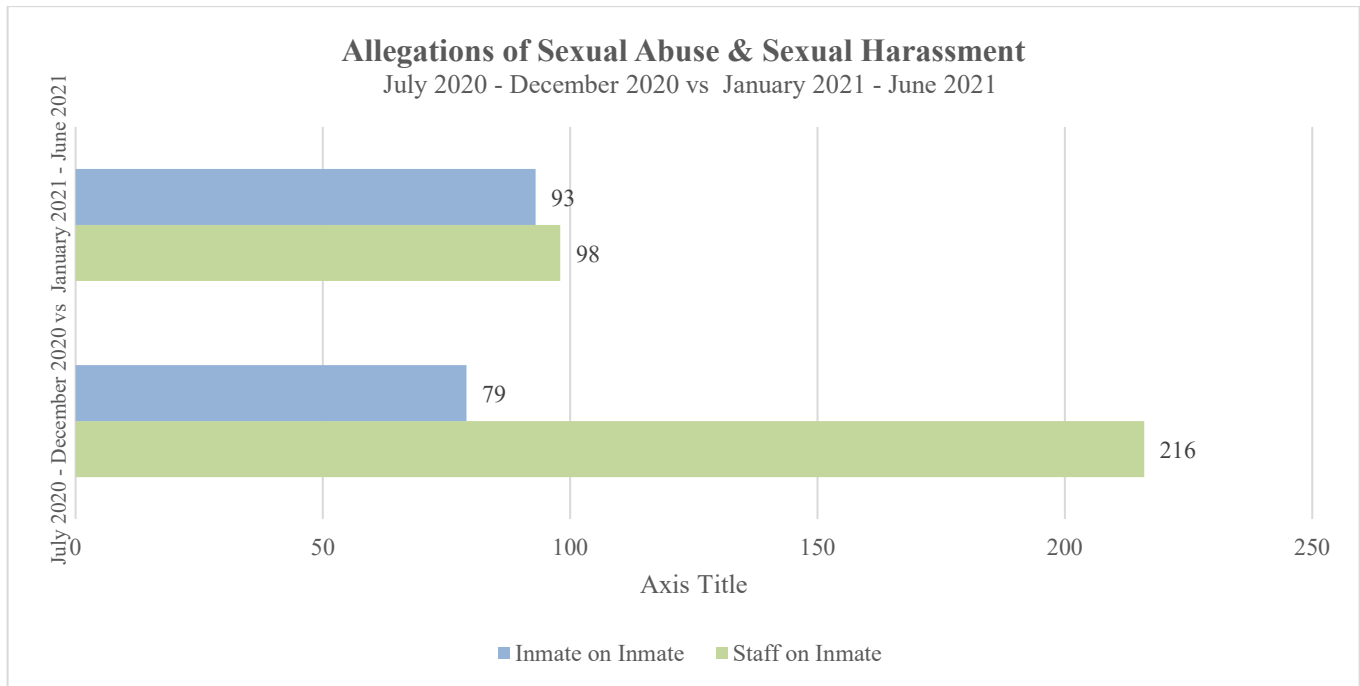


Figure 1 shows the Department is reporting an overall decrease in staff-on-inmate allegations by 54.6 % and an overall increase in inmate-on-inmate allegations by 17.7 % during this reporting period compared to last. Overall, the Department saw 98 allegations of staff-on-inmate sexual abuse and sexual harassment this period versus 216 allegations last period.

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Facility Breakdown

Table 1, below, gives a breakdown of PREA allegations by facility, comparing last reporting period (June 2020 – December 2020) to the current reporting period (January 2021 – June 2021). The Department experienced a marked decrease of PREA allegations in six facilities. The largest decrease was at VCBC, at 60.6%. At GRVC, there was a decrease of allegations by 43.3%.

Table 1

<i>Facility Breakdown Comparison</i>					
	June 2020-Dec. 2020		January 2021-June 2021		
	# of Allegations	%	# of Allegations	%	% Change
RMSC	24	8.14%	30	15.71	25% +
AMKC	63	21.36%	54	28.27	14.29% -
BKDC	0	0%	0	0	-
GRVC	30	10.17%	17	8.9	43.3% -
OBCC	14	4.75%	16	8.38	14.29% +
EMTC	3	1.02%	7	3.67	133.3% +
MDC	90	30.51%	23	12.04	74.4% -
NIC	31	10.51%	23	12.04	25.80% -
RNDC	4	1.36%	6	3.14	50% +
WF	2	.68%	0	0	50% -
VCBC	33	11.19%	13	6.81	60.60% -
BHPW	1	.34%	1	.52	-
HOJC	0	0%	0	0	-
OTHER UNITS	0	0%	1	.52	100% +

Age of Alleged Victim

Tables 2 (previous reporting period) and 3 (current reporting period) compare the ages of alleged victims. The data is further delineated by category of alleged perpetrator (staff or inmate). Of note, approximately 94% of all allegations were reported by inmates ages twenty-two (22) or older.

Table 2

<i>July 2020-December 2020</i>			
<i>Alleged Victim Age at Incident Date</i>	<i># of Allegations</i>	<i>Staff on Inmate</i>	<i>Inmate on Inmate</i>
18≤	0	0	0
19-21	7	4	3
22≥	288	212	76

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Table 3

<i>January 2021 – Jun 2021</i>			
<i>Alleged Victim Age at Incident Date</i>	<i># of Allegations</i>	<i>Staff on Inmate</i>	<i>Inmate on Inmate</i>
18≤	0	0	0
19-21	12	3	9
22≥	179	95	84

Age of Alleged Subject

Table 4 (prior reporting period) and Table 5 (current reporting period) compare the ages of alleged subjects. The data is further delineated by type of alleged victim (staff or inmate). Of note, in approximately 71% of the allegations reported, the alleged identified perpetrator was twenty-two (22) years old or older.

Table 4

<i>July 2020-December 2020</i>			
<i>Alleged Subject Age at Report Date</i>	<i># of Allegations</i>	<i>Staff on Inmate</i>	<i>Inmate on Inmate</i>
18≤	0	0	0
19-21	5	0	5
22≥	195	153	42
Unidentified Alleged Perpetrator (Perpetrator was not identified in the preliminary investigation)	95		

Table 5

<i>January 2021-June 2021</i>			
<i>Alleged Subject Age at Report Date</i>	<i># of Allegations</i>	<i>Staff on Inmate</i>	<i>Inmate on Inmate</i>
18≤	0	0	0
19-21	8	0	8
22≥	124	70	54
Unidentified Alleged Perpetrator (Perpetrator was not identified in the preliminary investigation)	59		

In the prior reporting period, there were 95 allegations where the alleged victim inmate was unable to identify the alleged perpetrator. In the current reporting period, there were 59 allegations where the alleged victim inmate was unable to identify the alleged perpetrator. This shows a 37.9% decrease in incidents where inmates were unable to identify the alleged perpetrator.

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Methods of Reporting

Table 6 assesses the methods used by alleged victims to report PREA allegations. 311 continues to be the most used method of reporting for alleged victims of both staff-on-inmate and inmate-on-inmate incidents.

Table 6

<i>Reporting Breakdown</i>					
		July 2020 – December 2020		January 2021-June 2021	
Staff-Inmate		# of Allegations	%	# of Allegations	%
	311	175	59.32%	71	37.17%
	DOI	2	.68%	0	0%
	Facility	29	9.83%	26	13.61%
	ID	3	1.02%	0	0%
	PREA	2	.68%	1	.52
	Other	5	1.69%	0	0%
Total		216	73.22%	98	51.31%
Inmate-Inmate					
	311	32	10.85%	36	18.85%
	DOI	1	.34%	0	0%
	Facility	41	13.9%	53	27.75%
	ID	0	0%	1	.52%
	PREA	4	1.36%	3	1.57%
	Legal Aid	1	.34%	0	0%
	Other	0	0%	0	0%
Total		79	26.78%	93	48.69%

Overall Trends of PREA Allegations

Table 7 compares total reported incidents for the latter half of 2020 (last reporting period) versus the beginning half of 2021 (current reporting period). The total number of sexual abuse and sexual harassment allegations decreased by 35.25% from the last reporting period to the current reporting period (295 versus 191 allegations, respectively). **Overall, there was a decrease of allegations in all categories of staff-on-inmate sexual harassment and sexual abuse.**

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Table 7

<i>Comparison of Allegations of Sexual Victimization, by Type of Incidents</i>			
	Jul 2020-Dec 2020	Jan 2021 – Jun 2021	% Increase/Decrease
Total	295	191	35.25% -
Staff on Inmate	216	98	54.62% -
Sexual Abuse	127	58	54.33% -
Sexual Harassment	89	40	55.05% -
Inmate on Inmate	79	93	17.72% +
Abusive Sexual Contact	47	67	42.55% +
Non-Consensual Sex Act	5	4	20% -
Sexual Harassment	27	22	18.51% -

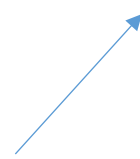
Staff Sexual Abuse & Harassment

Staff sexual abuse includes a wide range of behaviors such as attempted or requested sexual acts, indecent exposure, invasion of privacy and staff voyeurism, as well as completed sexual acts and unwanted touching for sexual gratification. This category represents about 59% of all allegations. There were 98 staff sexual abuse and harassment allegations reported during the first half of 2021, a **54.6% decrease** from the 216 allegations made during the latter half of 2020 (see Table 7).

All staff-on-inmate sexual abuse allegations fall into three categories: Verbal request for any Crime under Penal Law 130, Crimes under Penal Law 130 and Voyeurism. In the latter half of 2020, 3.9 % (5) staff sexual abuse allegations related to a use of force (2), strip search (2) pat-frisk (1) or escort (0). In the first half of 2021, 13.8% (8) staff sexual abuse allegations related to a use of force (1), strip search (7), escort (0) and pat-frisk (0) (see Table 8).

Table 8

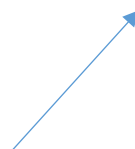
Staff - Inmate Sexual Abuse Jul 2020 - Dec 2020			
Category	# of Allegation		
Inappropriate Touch	88	UOF	2
Crimes Under New York State Penal Law 130	11	Strip Search	2
Voyeurism	2	Escort	0
Other	26	Pat Frisk	1
Grand Total	127	Verbal	5
		Recant	0
		Other	117
		Total	127



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Staff - Inmate Sexual Abuse January 2021 – June 2021

Category	# of Allegation
Inappropriate Touch	40
Crimes Under New York State Penal Law 130	5
Voyeurism	1
Other	12
Grand Total	58



UOF	1
Strip Search	7
Escort	0
Pat Frisk	0
Verbal	1
Recant	0
Other	49
Total	58

Staff Sexual Harassment

PREA-reportable staff sexual harassment includes repeated verbal statements, comments or gestures of a sexual nature to an inmate by a staff member. Total allegations of PREA-reportable staff sexual harassment decreased by 49 – from 89 to 40 – between reporting periods, while homophobic statements increased from 0 to 1. Notably, the only category of sexual harassment that saw a significant change in allegations was “inappropriate comments,” with a decrease of 57.4 %. (see [Table 9](#)).

Table 9

<i>Staff on Inmate Sexual Harassment</i>					
Sub-Category	# Allegations	%	# Allegations	%	% Increase/Decrease
	Jul 2020 - Dec 2020		Jan 2021 - Jun 2021		
Sexual Threat	2	2.25%	2	5.0%	0%
Inappropriate Comments	87	97.75%	37	92.5%	57.47% -
Homophobic Statement	0	0	1	2.5%	100% +
Total	89	100%	40	100%	55.05% -

Inmate Nonconsensual Acts

Nonconsensual acts include inmate-on-inmate sexual penetration without consent or of an inmate who is unable to either consent or refuse. (See [Table 10](#)). During the last reporting period, four (4) of the five (5) reported nonconsensual sex acts were deemed ‘Crimes under New York State Penal Law 130’ and one (1) was categorized as “Inappropriate Touch.” During the current reporting period, three (3) reported nonconsensual sex acts were deemed ‘Crimes under New York State Penal Law 130’ and one (1) was categorized as “Inappropriate Touch”.

The Department has continued its successful reduction of inmate-on-inmate criminal nonconsensual acts. With only four (4) reported this period, the Department has shown consistent improvement from the five (5) reported last period.

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Table 10

<i>Non-Consensual Sex Act</i>	<i># of Allegations</i>	<i># of Allegations</i>
Period	July 2020-Dec 2020	Jan 2021 – Jun 2021
Crimes Under NY State Penal Law 130	4	3
Inappropriate Touch	1	1
Total	5	4

Inmate Abusive Acts

Inmate abusive acts are defined as unwanted intentional touching of an inmate without consent, or of an inmate who is unable to consent or refuse, by another inmate. The total number of inmate abusive act allegations increased by 42.5% (47 allegations to 67), (Table 11).

Table 11

<i>Inmate Abusive Acts</i>	<i># of Allegations</i>	<i>%</i>	<i># of Allegations</i>	<i>%</i>	<i>% Change</i>
	Jul 2020 - Dec 2020		Jan 2021 – Jun 2021		
Inappropriate Touch	32	68%	41	61.19%	28.12% +
Crimes Under NY State Penal Law 130	10	25%	22	32.84%	120% +
Other	5	11%	4	5.97%	20% -
Total	47	100%	67	100%	42.5%+

Inmate Sexual Harassment

In 2013, the Bureau of Justice Statistics added *Inmate Sexual Harassment* to the definitions of sexual victimization. Inmate sexual harassment is defined as repeated and unwanted sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate directed toward another. The amount of said allegations decreased by 18.5% from twenty-seven (27) in the last reporting period to twenty-two (22) allegations in the current reporting period (see Table 12).

Table 12

<i>Inmate Sexual Harassment</i>		
Jul 2020-Dec 2020	Jan 2021-Jun 2021	% Change
# Allegations	# Allegations	
27	22	18.51% -

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Overview of Rates and Trends

The rate of reported allegations of sexual victimization decreased from 37.49 per 1,000 inmates during the latter half of 2020 to 22.98 per 1,000 inmates during the first half of 2021. The rate of staff allegations decreased from 27.45 per 1,000 inmates during July 2020- December 2020 to 11.79 per 1,000 inmates during January 2021-June 2021. The rate of inmate-on-inmate allegations increased slightly from 10.04 per 1,000 inmates to 11.19 per 1,000 inmates (see [Table 13](#)).

Table 13

<i>Total Allegations of Sexual Victimization, by type of incident Jan 2020-Jun 2020 vs Jul 2020-Dec 2020; rate per 1000 inmate population</i>						
Category Type	Jul 2020 -Dec 2020	Jan 2021 -Jun 2021	% (Jul 2020-Dec 2020)	% (Jan 2021-Jun 2021)	rate (Jul 2020-Dec 2020)	rate (Jan 2021-Jun 2021)
Total	295	191	100%	100%	37.49	22.98
Staff on Inmate	216	98	73.22%	51.31%	27.45	11.79
Sexual Abuse	127	58	43.05%	30.37%	16.14	6.98
Sexual Harassment	89	40	30.17%	20.94%	11.31	4.81
Inmate on Inmate	79	93	26.78%	48.69%	10.04	11.19
Abusive Sexual Contact	47	67	15.93%	35.08%	5.97	8.06
Non-Consensual Sex Act	5	4	1.69%	2.09%	0.64	0.48
Sexual Harassment	27	22	9.15%	11.52%	3.43	2.65

Section Two

SUBSTANTIATED, UNSUBSTANTIATED & UNFOUNDED ALLEGATIONS

Allegations of sexual abuse or sexual harassment are substantiated after an event is investigated and determined to have occurred based on a preponderance of evidence. Unsubstantiated allegations are those where the investigation produced insufficient evidence to prove that the event occurred. Unfounded allegations are those that, pursuant to investigation, are proven false.

This report is intended to be an accounting of allegations that were reported during the first half of 2021, along with a description of any work done by the Department, during that six-month time period, to investigate said allegations. Additionally, there is an expectation for this report to compare that work with the data from last reporting period, in order to analyze progress (or lack thereof) between the two reporting periods. The consequence of having such specific and narrow parameters is that the resultant report will present incomplete, partial data. What appears to outline all activity completed by the Department over the past six months is just one chapter of a longer story. Thus, [Table 14](#)'s closure and substantiation rates are not indicative of all the work completed by the Department in the past six months; it does not address (1) any allegations made prior to or after the relevant reporting period, nor (2) any activity taken by Department investigators before or after the relevant reporting period.¹

[Table 14](#) compares the case status of allegations that were *reported, investigated and closed* during the last reporting period versus the case status of allegations that were *reported, investigated and closed* during the current reporting period. Any allegation that came in before or after the reporting period in question and/or was closed before or after the relevant reporting period will **not** be reflected in [Table 14](#).

Importantly, the data in [Table 14](#) for the last reporting period (June 2020- December 2020) reflect the closure status *as of the time of the last report*, six months ago. At present time, additional cases from that reporting period have been closed. For an up-to-date account of resulting determinations that describes the Department's progress on investigating and closing cases, see Section Three.

[Table 14](#) notes that there are 116 pending cases; importantly, **none** of these cases are more than 90 days old, unless they are pending criminal prosecution or with other prosecutorial agencies. [Table 14](#) illustrates the enormous success the PREA Investigation Division has achieved over the course of the last few reporting periods. Compared to last reporting period, where the Department open and closed 160 cases within 6 months' time, the Department's PREA Investigation Division (ID) in this period opened and closed 75 cases in the same amount of time. Although the number of cases from this period is lower, so were the amount of cases opened. The fact that there were over 100 fewer allegations made during this reporting period is a testament to the hard work done by the Department to eliminate PREA-related issues in the facilities. **Like last reporting period, none of the cases that were opened in this**

¹ For example, an allegation made in 2020 that was investigated and closed during the current reporting period is counted in the tally of closed cases. Similarly, an allegation made during the current reporting period that was investigated and closed after June 2021 will be accounted for in the closed case tally for the next reporting period. If an allegation was reported in *last reporting period* and was closed one month later in the *current reporting period*, the case would appear as closed in [Table 14](#).

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reporting period stayed open longer than 90 days; PREA investigations are therefore in compliance with PREA standards once again.

Table 14

<i>Substantiated, Unsubstantiated, Unfounded and Pending Allegations of Sexual victimization Department-wide, January 2021 – June 2021</i>		
	<i>Case Reporting Period</i>	
	<i>Jul 2020-Dec 2020</i>	<i>Jan 2021-Jun 2021</i>
Total Allegations	295	191
Substantiated	4	5
Unsubstantiated	85	38
Unfounded	71	32
Total Closed	160	75
Preliminary Findings-Substantiated	5	4
Preliminary Findings-Unsubstantiated	0	112
Preliminary Findings- Unfounded	0	0
Pending Final Disposition	5	116

Table 15 is an even more comprehensive illustration of the overall work done by Department PREA investigators over the last six months to investigate and resolve cases, because it includes **all** case closures, rather than focusing (as Table 14 does) on only the allegations that were made during the current reporting period. Table 15 shows continued efficiency by the PREA Investigation Division in addressing open cases, with the Division having closed 190 cases in the last six months. There are currently no open cases with allegations from 2019 or earlier, save for a handful of cases that are still pending with external agencies for criminal investigation and/or prosecution. This chart provides an example of progress made by the Department outside of the reporting period data from Table 14.

Table 15

<i>Initiated Investigation</i>				
	<i>2019</i>	<i>2020</i>	<i>2021</i>	<i>Total</i>
Substantiated	0	4	5	9
Unsubstantiated	0	72	38	110
Unfounded	0	39	32	71
Total Closed	0	115	75	190

Rate of Sexual Victimization, By Facility

The rate of sexual victimization is the ratio of the number of incidents compared to the average number of inmates in the Department’s custody between January 2021 and June 2021 of the calendar year. The inmate population includes both detainees and sentenced inmates. All inmate allegations of sexual abuse

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and sexual harassment are taken seriously and investigated thoroughly. **Table 16** reflects all cases closed during the current reporting period, including cases opened prior to the current reporting period.

Table 16

<i>Substantiated, Unsubstantiated and Unfounded Allegations of Sexual Victimization, by facility, rate per 1,000 inmates (Jan 2021 to Jun 2021)</i>							
Facility Name	Total	Substantiated		Unsubstantiated		Unfounded	
		Number	Rate	Number	Rate	Number	Rate
AMKC	53	0	0.00	28	3.37	25	3.01
BHPW	1	0	0.00	1	0.12	0	0.00
GRVC	19	0	0.00	10	1.20	9	1.08
MDC	22	0	0.00	20	2.41	2	0.24
OBCC	17	0	0.00	12	1.44	5	0.60
RMSC	30	8	0.96	18	2.17	4	0.48
RNDC	6	0	0.00	2	0.24	4	0.48
VCBC	13	1	0.12	5	0.60	7	0.84
WF/NIC	23	0	0.00	10	1.20	13	1.56
EMTC	6	0	0.00	4	0.48	2	0.24

Section Three

RESULTING DETERMINATIONS

Resulting determinations from completed investigations are classified as Substantiated, Unsubstantiated, or Unfounded as defined by the PREA Standards. Resulting determinations are defined in Appendix B (p.19).

Of the 190 sexual abuse and sexual harassment allegations that were closed during the current reporting period, seventy-one (71) (37%) were determined to be unfounded. In these cases, the Investigation Division determined that the event did not occur by the presence of compelling and credible evidence that materially contradicted the allegation. The PREA Investigation Division has made incredible strides over the course of the last year in its capacity to unfound false allegations rather than deem them unsubstantiated. Determining that an allegation is “unfounded” requires uncovering evidence to prove the allegation false, is a more difficult standard to meet than unsubstantiation, and shows a commitment to ensuring thorough and solid investigations.

Notably, the Department substantiated a total of nine (9) allegations this period (four allegations whose incident date preceded the current reporting period, and five allegations from the current reporting period). **A major accomplishment by the Department during this period, which is not reflected in any data charts, is during this period, the PREA Investigation Division built up three cases for criminal indictment by the Bronx District Attorney’s Office. Two cases involved Rape in the First Degree; one case was indicted on Criminal Sexual Act in the First Degree.** Those matters are pending with the District Attorney’s Office. This accomplishment demonstrates the commitment of the Department to adhere to a zero-tolerance policy for any sexual assaults within its facilities.

Among completed investigations in 2021, the vast majority of determinations concluded that evidence was insufficient to prove, by a preponderance of evidence, that the event occurred. These cases are referred to as unsubstantiated.

PENDING ALLEGATIONS

The New York City Department of Correction has taken a zero tolerance policy with regard to sexual abuse and sexual harassment, and has advanced measures to improve the ability for victims to report these type of allegations through the creation of a dedicated hotline and posters placed in facilities listing the hotline number and detailing how to report an incident. The Department has also entered into a Memorandum of Understanding with Safe Horizons to provide victim services, access to assistance, and an additional avenue to report allegations of a sexual nature. Similarly, inmates are informed that they may call 311 to report incidents of sexual abuse and harassment.

The Department takes every allegation of sexual misconduct and sexual harassment seriously and investigates each complaint thoroughly. The Department’s Investigation Division handles all PREA-related allegations, initiating an investigation within the first 72 hours. Investigation Division (ID) staff interviews alleged victims, separates individuals from identified alleged perpetrators, collects

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relevant evidence, affords alleged victims mental health, ministerial and victim services, and conducts a preliminary investigation, all within the first 72 hours.

In this reporting period alone, the PREA Investigation Division closed 190 cases (115 allegations that arose prior to January 2021, and 75 that arose between January through June 2021). The Department reached a milestone in the last reporting period, having closed all PREA-reportable cases prior to 2020.² **During this reporting period, the Department was able to close all PREA-reportable cases that were initiated in 2020.**³ **Additionally, all cases that were opened in 2020 and 2021 were closed within 90 days,** aside from those pending with criminal investigative/prosecutorial agencies.

² Cases from this time period that are being investigated by external criminal investigative/prosecutorial agencies remain open; the Investigation Division is expected to stand down on such cases.

³ As above, cases from this time period that are being investigated by external criminal investigative/prosecutorial agencies remain open; the Investigation Division is expected to stand down on such cases.

Section Four

CORRECTIVE ACTION

In order to become compliant with PREA standards, extensive corrective action has been implemented. Staffing increases, timely case closure, retraining of ID investigators, and refining best practices were priorities during this reporting period, and the results have been remarkable. The steps taken in the last few reporting periods have proven to be worthwhile, sustainable changes to the investigative process; as the world faced a pandemic during this reporting period, the PREA ID team was able to maintain compliance with PREA standards and maintain integrity and efficiency.

Staffing

In May 2016, the Investigation Division established a dedicated team of investigators to address allegations of sexual abuse and sexual harassment. The ID PREA Unit consisted of one (1) Deputy Director, one (1) Supervising Investigator, and six (6) investigators. Pursuant to its Corrective Action Plan, the Department has increased the ID PREA Unit staffing levels to one (1) Director, one (1) Deputy Director, eight (9) Supervising Investigators, twenty-one (21) Investigators, to ensure thorough and timely investigations. Importantly, the members of this unit, as well as the Trials and Litigation attorneys assigned to prosecute the substantiated PREA cases, have extensive backgrounds in PREA and/or sex crimes investigations and prosecution.

Corrective Action Plan & Resultant Successes

In June 2018, the Department devised a Corrective Action Plan to address a 1,216-case backlog of PREA-reportable cases, which were defined as being over 90 days old. The Department published a targeted plan in June 2018, which included commitments to hire additional investigators and managers for the ID PREA team, timelines for case reviews and closure, and structural changes to fieldwork and home base rotations. This schedule gave investigators opportunity to respond to new allegations, but also time to address the cases that had been awaiting closure. The Investigation Division also developed a more streamlined closing memorandum for case closures. This administrative change allowed investigators to close cases more quickly without compromising the integrity of the investigation. The strategy worked; **the Department met its goals under the Corrective Action Plan and has since, even during a worldwide pandemic, maintained a 90-day (or less) closure period for all PREA cases.**⁴

The Department remains under a Federal Monitor, pursuant to the Nunez litigation, for all Use of Force cases. The Federal Monitor also oversees and assesses the Department's compliance with investigations of allegations of sexual assault of inmates under the age of 19. In its Eleventh Report, the Monitor evaluated the Department's compliance with PREA-reportable investigations (both sexual assault and sexual harassment). "[The Investigation Division] appointed dedicated and highly qualified leadership to oversee the PREA Team, which brought an increased focus on tracking cases and conducting more

⁴ Except those cases being investigated or prosecuted criminally.

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efficient, higher quality investigations. The Team has both sufficient resources and staffing. The Monitoring Team has generally found the investigators' practices to be sound, the findings to be reasonable, and cases to be closed in a reasonable time period." The Nunez Federal Monitor gave PREA Investigations a rating of **substantial compliance**, which is the highest level of achievement possible, in three consecutive reports, spanning an 18-month time period; this achievement is proof that the Department has shown sustainable, substantial compliance with its PREA investigations.

PRELIMINARY TREND OVERVIEW

During this reporting period, the Department experienced an overall decrease in total PREA allegations (both sexual abuse and sexual harassment): there were 191 total allegations compared to the last reporting period's 295 allegations. **This represents a marked decrease of 35.3% of overall allegations.** One explanation for this successful decrease is the Department's focus on creating the LGBTQ+ Initiatives Unit, which focuses on assisting the Department's most vulnerable population. Overall, this Unit has worked with 100 inmates during this period, providing an outlet for incarcerated individuals to request services. In the past, the PREA Investigation Division has found that frustrated individuals, particularly those who are vulnerable and not receiving mandated services, would often utilize the PREA reporting channels to make false complaints against staff, in order to punish or be separated from certain staff members. With an improved focus in programming, incarcerated individuals are heard and accommodated, and the number of allegations has decreased.

Two other improvements that resulted in an overall decrease in allegations have been: earlier identification of vulnerable populations during the intake process and safety checks that are now conducted 30 days after the incarcerated person has been housed. Once again, increased attention and enhanced care of individuals in custody make them feel safe and heard, leading to fewer PREA allegations. On this topic, increased communication and follow-up between the Department's PREA staff with the Investigation Division's PREA investigators has improved information-sharing about specific issues with staff of incarcerated people. With this improvement in communication, PREA investigators have been able to generate and enforce separation orders between alleged victims and perpetrators more promptly.

During this period, the Investigation Division saw an increase in substantiated inmate-on-inmate allegations from four (4) in the last reporting period to five (5) during this reporting period. Above and beyond these nine (9) substantiated cases, the Department also worked with the Bronx District Attorney's Office to ensure that two incarcerated individuals were indicted for Rape in the First Degree and one incarcerated individual was indicted for Criminal Sexual Act in the First Degree.

The Department experienced 54.6% decrease in staff-on-inmate allegations during the current period, which is a substantial and encouraging change. Some contributing factors include: The Department's roll-out of a PREA Refresher Course and the Department's Sexual Harassment Prevention Course, both of which were required training for all staff during this period, the implementation of electronic training courses (including the above-mentioned courses), which has made the training more accessible to staff, and also made the tracking and auditing of said trainings more reliable.

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The Department continues to ensure staff are educated about PREA, starting at the academy level with each recruit class, and even reaching contractors and volunteers. Everyone receives training on recognizing the signs of sexual abuse and what steps to take when an allegation is made. In addition to posters in the facilities detailing how to report an incident, the Department has strengthened its inmate grievance system to ensure that inmates have an effective outlet to communicate and resolve issues of concern through a streamlined process. And in those situations where an investigation is needed, investigations of sexual harassment and abuse have continued to be completed efficiently and fairly. **The Investigation Division’s PREA unit again has found itself squarely in compliance, responding to allegations within 72 hours, completing investigations within 90 days, and evaluating cases reasonably.**

CONCLUSION

The Department remains committed to progressive culture change, continues to implement the requirements of the PREA Standards and make positive, effective adjustments on an ongoing basis.

APPENDIX A

DEFINITIONS OF SEXUAL VICTIMIZATION

The New York City Department of Correction (DOC) utilizes uniform definitions as provided by 28 C.F.R. §115.6 in the National Standards to Prevent, Detect, and Respond to Prison Rape (under the Prison Rape Elimination Act of 2003).

These definitions are used to categorize allegations of sexual abuse within New York State correctional facilities and to separate allegations by perpetrator type (staff or inmate) and type of abuse.

Similar to the Survey on Sexual Victimization (SSV), the following categories of sexual abuse have been disaggregated into five categories as indicated below.

Inmate Nonconsensual Act - sexual contact of any person without his or her consent, or of a person who is unable to consent or refuse; and

- Contact between the penis and the vulva or the penis and the anus including penetration, however slight; or
- Contact between the mouth and the penis, vulva or anus; or
- Penetration of the anal or genital opening of another person, however slight by a hand, finger, object, or other instrument.

Inmate Abusive Act - sexual contact with any person without his or her consent, or of a person who is unable to consent or refuse; and

- Intentional touching either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.

Inmate Sexual Harassment – Repeated and unwanted sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate directed toward another.

Staff Sexual Misconduct – any act or behavior of a sexual nature directed toward an inmate by an employee, volunteer, contractor or official visitor or other agency representative. Sexual relationships of a romantic nature between staff and inmates are included in this definition. Consensual and nonconsensual acts include:

- Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks that is unrelated to official duties or with the intent to abuse, arouse or gratify sexual desire; or

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- Completed, attempted, threatened, or requested sexual acts; or
- Occurrences of indecent exposure, invasion of privacy, or staff voyeurism for reasons unrelated to official duties or for sexual gratification.

Staff Sexual Harassment – Repeated verbal statements, comments or gestures of a sexual nature to an inmate by an employee, volunteer, contractor, official visitor, or other agency representative, including:

- Demeaning references to gender; or sexually suggestive or derogatory comments about body or clothing;
- Repeated profane or obscene language or gestures.

APPENDIX B

GENERAL DEFINITIONS

Resulting determinations from completed investigations are classified as outlined in the Code of Federal Regulations Title 28, Chapter 1, subpart A, section 115.5, *General Definitions* (28 C.F.R. § 115.5) as Substantiated, Unsubstantiated, or Unfounded. This standard states that agencies shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

Substantiated – An allegation was investigated and determined to have occurred based on a preponderance of the evidence.

Unsubstantiated – An allegation was investigated and the investigation produced insufficient evidence to prove the event occurred.

Unfounded – An allegation was investigated and determined not to have occurred.