

**NYC Department of Correction  
NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum  
Standards 5-40 Assessment Report – February 15, 2020**

## **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 (July 2019 through December 2019), 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

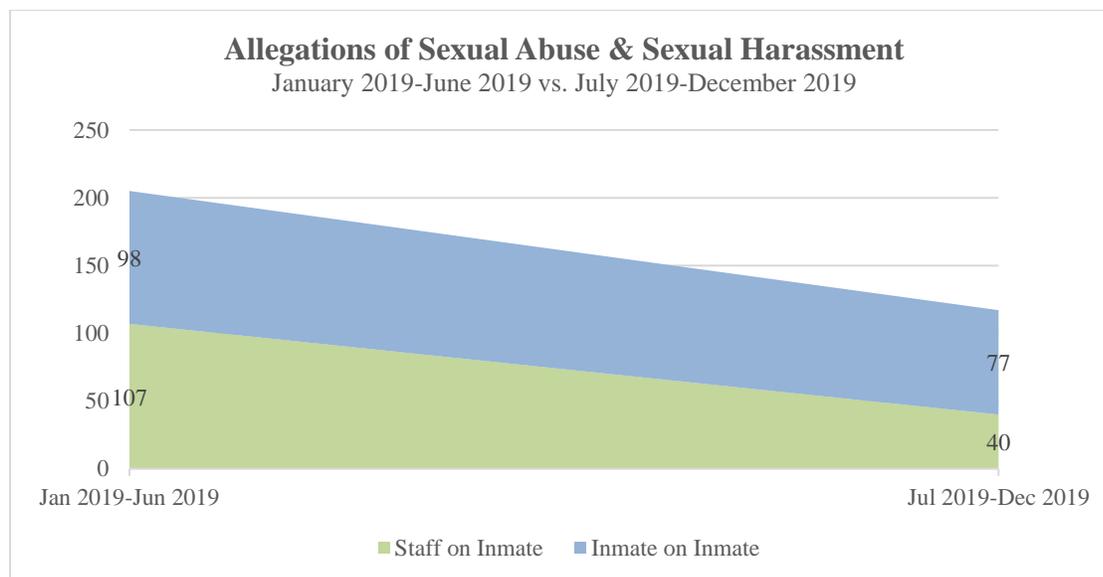
### ALLEGATIONS OF SEXUAL ABUSE AND SEXUAL HARASSMENT

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 that the encouraging trend from last reporting period – that allegations of both sexual abuse and sexual harassment are decreasing – is continuing throughout this reporting period. Last year at this time, the number of Inmate on Inmate sexual abuse allegations was 106 and the number of Staff on Inmate sexual abuse allegations was 165. Last reporting period, the Department saw those numbers decline to 98 and 107, respectively (a 24% overall reduction in allegations). This reporting period, the numbers decreased even more dramatically to 77 Inmate on Inmate allegations and 40 Staff on Inmate allegations of sexual abuse – an overall reduction of sexual abuse allegations by 43%.

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**Facility Breakdown**

Table 1, below, gives a breakdown of PREA allegations by facility, comparing last reporting period (January 2019 – June 2019) to the current reporting period (July 2019 – December 2019).

The successful reduction in allegations can be attributed to diligent efforts by the Department to educate both staff and inmates. Staff has demonstrated increased buy-in and accountability. This has led to and influenced a culture of more accurate reporting. Educating the inmate population about the importance of PREA and how false allegations negatively impact PREA reporting mechanisms has led to a decrease in allegations made at almost every single facility.

There were three facilities experiencing an upward trend – two in particular: OBCC (increasing from 13 allegations to 26) and VCBC (increasing from 3 allegations to 6). It is relevant to note here that the Department’s PREA Investigation Team has recognized that there are some inmates who make a disproportionately high number of unfounded or unsubstantiated PREA complaints; many of the inmates making those complaints are housed at these two facilities, some of whom aged out of HOJC and RNDC, facilities which, during this reporting period, experienced a dramatic decrease in allegations (75% and 91% reduction, respectively).<sup>1</sup>

**Table 1**

<i>Facility Breakdown Comparison</i>					
	Jan 2019-Jun 2019		Jul 2019-Dec 2019		
	# of Allegations	%	# of Allegations	%	% Change
RMSC	22	10.73%	17	14.53%	22.73% ↓
AMKC	32	15.61%	20	17.09%	37.50% ↓
BKDC	15	7.32%	11	9.40%	26.67% ↓
GRVC	45	21.95%	7	5.98%	84.44% ↓
OBCC	13	6.34%	26	22.22%	100% ↑
EMTC	10	4.88%	7	5.98%	30.00% ↓
MDC	10	4.88%	11	9.40%	10.00% ↑
NIC	2	0.98%	2	1.71%	0.00%
RNDC	11	5.37%	1	0.85%	90.91% ↓
WF	14	6.83%	0	0.00%	100% ↓
VCBC	3	1.46%	6	5.13%	100% ↑
BPHW	2	0.98%	1	0.85%	50.00% ↓
HOJC	20	9.76%	5	4.27%	75.00% ↓
OTHER UNITS	6	2.93%	3	2.56%	50.00% ↓

<sup>1</sup> The Nunez Federal Monitor noted in his Seventh Report that “[i]n the Monitoring Team’s experience, an increased rate of allegations is typical in Facilities with high levels of disorder and that undergo significant transitions. . .”

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**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 90% of all allegations were reported by inmates ages twenty-two (22) or older.

**Table 2**

<i>January 2019-June 2019</i>			
<i>Alleged Victim Age at Incident Date</i>	<i># of Allegations</i>	<i>Staff on Inmate</i>	<i>Inmate on Inmate</i>
18≤	21	3	18
19-21	6	1	5
22≥	178	103	75

**Table 3**

<i>July 2019-December 2019</i>			
<i>Alleged Victim Age at Incident Date</i>	<i># of Allegations</i>	<i>Staff on Inmate</i>	<i>Inmate on Inmate</i>
18≤	5	1	4
19-21	4	3	1
22≥	108	36	72

**Age of Alleged Subject**

Tables 4 (previous reporting period) and 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 63% of all allegations reported, the alleged perpetrator was twenty-two (22) years old or older.

**Table 4**

<i>January 2019-June 2019</i>			
<i>Alleged Subject Age at Report Date</i>	<i># of Allegations</i>	<i>Staff on Inmate</i>	<i>Inmate on Inmate</i>
18≤	18	0	18
19-21	3	0	3
22≥	108	65	43
Unidentified Alleged Perpetrator (Perpetrator was not identified in the preliminary investigation)	76		

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**Table 5**

<i>July 2019-December 2019</i>			
<i>Alleged Subject Age at Report Date</i>	<i># of Allegations</i>	<i>Staff on Inmate</i>	<i>Inmate on Inmate</i>
18≤	4	0	4
19-21	0	0	0
22 ≥	85	30	55
Unidentified Alleged Perpetrator (Perpetrator was not identified in the preliminary investigation)	28		

In the prior reporting period, there were 76 allegations where the alleged victim inmate was unable to identify the alleged perpetrator, accounting for 37% of all PREA-reportable incidents. In the current reporting period, there were only 28 allegations where the alleged perpetrator was unidentified, accounting for 25% of all PREA-reportable incidents.

**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>					
		January 2019-June 2019		July 2019-December 2019	
Staff-Inmate		# of Allegations	%	# of Allegations	%
	311	81	39.51%	34	29.06%
	DOI	2	0.98%	0	0.00%
	Facility	16	7.80%	5	4.27%
	ID	3	1.46%	0	0.00%
	PREA	2	0.98%	0	0.00%
	Other	3	1.46%	1	0.85%
<b>Total</b>		<b>107</b>	<b>52.20%</b>	<b>40</b>	<b>34.19%</b>
Inmate-Inmate					
	311	48	23.90%	42	35.90%
	DOI	0	0.00%	1	0.85%
	Facility	30	14.63%	20	17.09%
	ID	0	0.00%	5	4.27%
	PREA	3	1.46%	4	3.42%
	Legal Aid	3	1.46%	2	1.71%
	Other	14	6.83%	3	2.56%
<b>Total</b>		<b>98</b>	<b>48.29%</b>	<b>77</b>	<b>65.81%</b>

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**Overall Trends of PREA Allegations**

Table 7 compares total reported incidents for the first half of 2019 versus the latter half of 2019. The total number of sexual abuse and sexual harassment allegations decreased by 42.93% from the last reporting period to the current reporting period (205 versus 117 allegations, respectively). Overall, there was a decrease of allegations in all categories of sexual harassment and sexual abuse. Staff-on-Inmate sexual allegations decreased by sixty-seven (or, 62.62 %) from one hundred-seven (107) allegations in the first half of 2019 to forty (40) allegations during the current reporting period.

**Table 7**

<i>Comparison of Allegations of Sexual Victimization, by type of Incidents</i>			
	Jan 2019-Jun 2019	Jul 2019-Dec 2019	% Increase/Decrease
<b>Total</b>	<b>205</b>	<b>117</b>	42.93% ↓
<b>Staff on Inmate</b>	<b>107</b>	<b>40</b>	62.62% ↓
Sexual Abuse	77	36	53.25% ↓
Sexual Harassment	30	4	86.67% ↓
<b>Inmate on Inmate</b>	<b>98</b>	<b>77</b>	21.43% ↓
Abusive Sexual Contact	50	41	18.00% ↓
Non-Consensual Sex Act	32	24	25.00% ↓
Sexual Harassment	16	12	25.00% ↓

**Staff Sexual Abuse**

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 30% of all allegations. There were 36 staff sexual abuse allegations reported during the latter half of 2019, a 53% decrease from the 77 allegations made during the first half of 2019 (see Table 7).

All staff-on-inmate sexual abuse allegations fall into three categories: Inappropriate Touch, Crimes under Penal Law 130 and Voyeurism. For the first half of 2019, about 35% (27) of staff sexual abuse were alleged to have occurred during an incident that was otherwise not sexual in nature: a use of force (7), strip search (9), pat-frisk (3), contraband retrieval (3) and escort (5). For the latter half of 2019, about 14% (5) of staff sexual abuse were alleged to have occurred during a use of force (1), strip search (1) and escort (3) (see Table 8).

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**Table 8**

<i>Staff-Inmate Sexual Abuse Jan 2019-Jun 2019</i>	
Category	# of Allegations
Inappropriate Touch	40
Crimes Under New York State Penal Law 130	24
Voyeurism	13
Grand Total	77

UOF	7
STRIP SEARCH	9
PAT FRISK	3
CONTRABAND	3
ESCORT	5
35% encompasses above secondary incidents	
NON COOP	8
VERBAL	6
RECANT	1
UNDUE	2
OTHER	33
<b>TOTAL</b>	<b>77</b>

<i>Staff-Inmate Sexual Abuse Jul 2019-Dec 2019</i>	
Category	# of Allegations
Inappropriate Touch	27
Crimes Under New York State Penal Law 130	5
Voyeurism	3
Other	1
Grand Total	36

UOF	1
STRIP SEARCH	1
ESCORT	3
14% encompasses above secondary incidents	
VERBAL	5
RECANT	2
OTHER	24
<b>TOTAL</b>	<b>36</b>

**Staff Sexual Harassment**

PREA-reportable staff sexual harassment includes repeated verbal statements, and comments or gestures of a sexual nature to an inmate by a staff member. Total allegations of PREA-reportable staff sexual harassment decreased by sixteen (or, 87%) between the January 2019 - June 2019 reporting period (30 allegations) and the July 2019-December 2019 reporting period (4 allegations).

These numbers represent a major turnaround in just six months' time. Last period, the Department saw an increase in PREA-reportable sexual harassment allegations by seven (or, 30.43%). This period, the numbers are down – or non-existent – in every single category of sexual harassment (see [Table 9](#)).

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**Table 9**

<i>Staff on Inmate Sexual Harassment</i>					
Sub-Category	# Allegations	%	# Allegations	%	% Increase/Decrease
	Jan 2019-Jun 2019		Jul 2019-Dec 2019		
Sexual Threat	16	45.45%	3	75%	81% ↓
Inappropriate Comments	6	20%	1	25%	83% ↓
Body Part View	2	6.67%	0	0%	
Homophobic Statement	1	3.33%	0	0%	
Retaliation	3	10%	0	0%	
Other	2	6.67%	0	0%	
Total	30	100.00%	4	100.00%	87% ↓

**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. This category represents 15.61% of all January 2019-June 2019 allegations, and 20.51% of all July 2019-December 2019 allegations. (See [Table 10](#)). During the last reporting period, out of thirty-two (32) alleged non-consensual sex acts, 31 (97%) fell into the category ‘Crimes under New York State Penal Law 130. During the current reporting period, all twenty-four (24) alleged non-consensual sex acts fell into the category ‘Crimes under New York State Penal Law 130.

Again, the Department has reversed an upward trend in allegations during this reporting period. Last period, the number of inmate non-consensual act allegations increased from 29 to 31. This period, the number of such allegations decreased lower than last period *and* the period before last.

**Table 10**

<i>Non Consensual Sex Act</i>	<i># of Allegations</i>	<i># of Allegations</i>
Period	January 2019-June 2019	July 2019-December 2019
Crimes Under NY State Penal Law 130	31	24

**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. Inmate abusive acts represented 24.39% of all allegations for the period of January 2019-June 2019 compared to 35% during July 2019-December 2019. However, the total number of inmate abusive act allegations decreased by 18% (50 allegations to 41). Last period, the Department saw a decrease in this category by 5.66%; this sizeable decrease in allegations is an encouraging trend (see [Table 11](#)).

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**Table 11**

Inmate Abusive Acts	# of Allegations		# of Allegations		% Change
	January 2019-June 2019	%	July 2019-December 2019	%	
Inappropriate Touch	44	88.00%	37	90%	16% ↓
Crimes Under NY State Penal Law 130	6	12.00%	2	5%	67% ↓
Other	0	0.00%	2	5%	
Total	50	100.00%	41	100.00%	18% ↓

**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 number of such allegations has decreased by 25% from sixteen (16) allegations during January 2019-June 2019 to twelve (12) allegations for the July 2019- December 2019 time period (see [Table 12](#)).

**Table 12**

<i>Inmate Sexual Harassment</i>				
Jan 2019-Jun 2019		Jul 2019-Dec 2019		% Change
# Allegations	%	# Allegations	%	
16	7.80%	12	10.00%	25.00% ↓

**Overview of Rates and Trends**

The rate of reported allegations of sexual victimization decreased from 10.71 per 1,000 inmates during the first half of 2019 to 7.57 per 1,000 inmates during the latter half of 2019. The rate of staff allegations decreased from 5.59 per 1,000 inmates during January 2019- June 2019 to 2.59 per 1,000 inmates during July 2019-December 2019. The rate of inmate-on-inmate allegations also decreased slightly from 5.12 per 1,000 inmates to 4.98 per 1,000 inmates (see [Table 13](#)).

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Table 13

<i>Total Allegations of Sexual Victimization, by type of incident, Jan 2019-Jun 2019 vs Jul 2019-Dec 2019; rate per 1000 inmate population</i>						
<b>Category Type</b>	<b>Jan 2019-Jun 2019</b>	<b>Jul 2019-Dec 2019</b>	<b>% (Jan 2019-Jun 2019)</b>	<b>% (Jul 2019-Dec 2019)</b>	<b>rate (Jan 2019-Jun 2019)</b>	<b>rate (Jul 2019-Dec 2019)</b>
<b>Total</b>	<b>205</b>	<b>117</b>	<b>100.00%</b>	<b>100.00%</b>	<b>10.71</b>	<b>7.57</b>
<b>Staff on Inmate</b>	<b>107</b>	<b>40</b>	<b>52.20%</b>	<b>34.19%</b>	<b>5.59</b>	<b>2.59</b>
Sexual Abuse	77	36	37.56%	30.77%	4.02	2.33
Sexual Harassment	30	4	14.63%	3.42%	1.57	0.26
<b>Inmate on Inmate</b>	<b>98</b>	<b>77</b>	<b>47.80%</b>	<b>65.81%</b>	<b>5.12</b>	<b>4.98</b>
Abusive Sexual Contact	50	41	24.39%	35.04%	2.61	2.65
Non-Consensual Sex Act	32	24	15.61%	20.51%	1.67	1.55
Sexual Harassment	16	12	7.80%	10.26%	0.84	0.78

## 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 2019, 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, in reality, 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.<sup>2</sup>

[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](#).<sup>3</sup>

Importantly, the data in [Table 14](#) for the last reporting period (January 2019-June 2019) 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<sup>4</sup>. For an up-to-date account of resulting determinations that describes the Department's progress on investigating and closing cases, see [Section Three](#).

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<sup>2</sup> For example, an allegation made in 2018 that was investigated and closed during the current reporting period (July-December 2019) is not counted in the tally of closed cases. Similarly, an allegation made during the current reporting period that was investigated and closed after the reporting period (for example, in January 2020) will not be accounted for in the closed case tally. If an allegation was reported in June 2019 (*last reporting period*) and was closed one month later in July 2019 (*current reporting period*), the case would not appear as closed in [Table 14](#).

<sup>3</sup> Additional cases were closed by the Department during the time period of July 2019 – December 2019, however, those cases related to allegations that were reported prior to July 2019. [Table 15](#) provides one example of additional work completed by the Department during the current reporting period: data on allegations reported prior to July 2019 but closed during the current reporting period.

<sup>4</sup> Specifically, since the publishing of the last report six months ago, 12 (7.36%) of those 163 pending cases have been closed. 1 was deemed substantiated, 9 were deemed unsubstantiated, and 2 were determined to be unfounded.

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**Table 14**

<i>Substantiated, Unsubstantiated, Unfounded and Pending Allegations of Sexual victimization Department-wide, January 2019-December 2019</i>		
	<i>Case Reporting Period</i>	
	<i>Jan 2019-Jun 2019</i>	<i>Jul 2019-Dec 2019</i>
<b>Total Allegations</b>	205	117
Substantiated	1	6
Unsubstantiated	20	5
Unfounded	21	16
<b>Total Closed</b>	<b>42</b>	<b>27</b>
Preliminary Findings-Substantiated	1	7
Preliminary Findings-Unsubstantiated	194	110
Preliminary Findings- Unfounded	10	0
Pending Final Disposition	163	117

Table 15 indicates allegations reported prior to July 2019 (allegations reported from 2016 up and until June 30th, 2019 but closed during the July 2019-December 2019 reporting period).

**Table 15**

	<i>Initiated Investigation</i>				<i>Total</i>
	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>Jan2019-Jun 2019</i>	
Substantiated	0	1	4	2	7
Unsubstantiated	2	40	155	29	226
Unfounded	0	10	70	23	103
<b>Total Closed</b>	<b>2</b>	<b>51</b>	<b>229</b>	<b>54</b>	<b>336</b>

There were a total of 336 PREA cases closed during the current reporting period (July 2019-December 2019) that were reported prior to July 1st, 2019.<sup>5</sup> This chart provides an example of progress made by the Department outside of the reporting period data from Table 14.

As Table 15 demonstrates, the Department is closing PREA cases earlier than it ever has before, having closed 229 cases already from the year 2018, and 81 from 2019.

<sup>5</sup> This data, again, reflects only the efforts made in the current reporting period and does not present a full picture of the Department’s progress in closing open allegations.

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**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 July and December 2019 of the calendar year. The inmate population includes both detainees and sentenced inmates. All inmate allegations of sexual abuse and sexual harassment are taken seriously and investigated thoroughly.

**Table 16**

<i>Substantiated, Unsubstantiated and Unfounded Allegations of Sexual Victimization, by facility, rate per 1,000 inmates</i>							
		<b>Substantiated</b>		<b>Unsubstantiated</b>		<b>Unfounded</b>	
<b>Facility Name</b>	<b>Total</b>	<b>Number</b>	<b>Rate</b>	<b>Number</b>	<b>Rate</b>	<b>Number</b>	<b>Rate</b>
AMKC	20	0	0	0	0	0	0
BKDC	11	0	0	1	0.06	1	0.06
EMTC	7	0	0	0	0	2	0.12
GRVC	7	0	0	1	0.06	0	0
MDC	11	0	0	0	0	1	0.06
HOJC	5	0	0	0	0	4	0.24
OBCC	26	6	0.39	1	0.06	3	0.18
RMSC	17	0	0	2	0.12	3	0.18
RNDC	1	0	0	0	0	0	0
VCBC	6	0	0	0	0	0	0
WF	0	0	0	0	0	0	0
NIC	2	0	0	0	0	2	0.12

## 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 fully defined in Appendix B (p.21).

Of the 117 sexual abuse and sexual harassment allegations reported during July 2019-December 2019, sixteen (16) (14 %) 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. Notably, the Department has substantiated six (6) allegations during this period, compared to one (1) in the last period, representing a **600% increase in substantiation rate** for the respective reporting period. Additionally, during this reporting period, the Department substantiated an additional seven (7) cases whose investigation had been initiated prior to this reporting period, for a total of thirteen (13) cases substantiated during the latter half of 2019. This statistic is correlated to the Department's enhanced training of investigative staff, including training in trauma-informed interviewing.

Among completed investigations in 2019, the vast majority of resulting 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. To that end, the Department's Investigation Division handles all PREA-related allegations, responding to each one within 72 hours. Within those first 72 hours, Investigation Division ("ID") staff interviews alleged victims, separates said individuals from identified alleged perpetrators, collects relevant evidence, affords alleged victims mental health, ministerial and victim services, and conducts a preliminary investigation. Because of the high number of allegations, and the Department's commitment to extensively investigating every allegation, by early 2018, the Investigation Division had developed a

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backlog<sup>6</sup> of 1,216 PREA cases. Through strategic hiring, planning and restructuring, the Department was able to eliminate this backlog during the last reporting period, and closed hundreds of cases above and beyond that, while still responding to and investigating new allegations within 72 hours.

In this reporting period alone, the PREA Investigation Division closed 363 cases (336 allegations that arose prior to July 2019, and 27 that arose between July through December 2019). The Department reached a milestone in the last reporting period, having closed all PREA-reportable cases from 2015, 2016 and 2017<sup>7</sup>. During this reporting period, the Department was able to close all PREA-reportable cases that were initiated in 2018 that are not still pending with criminal investigative/prosecutorial agencies.

## **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.

#### *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 (8) Supervising Investigators, twenty-seven (27) Investigators, and two (2) Data Analysts 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.

The Department has PREA Compliance Managers (PCM) at six (6) facilities. In 2017, the facilities assigned uniform staff as PREA Ambassadors to work with each PCM and to assist with PREA implementation. PREA Ambassadors are also in each facility that does not have its own PCM. These staff members are responsible for PREA compliance matters within those facilities.

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<sup>6</sup> "Backlog" was defined as any case open for over 90 days.

<sup>7</sup> 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.

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*Corrective Action Plan*

In June 2018, the Department devised a Corrective Action Plan to address the backlog of PREA-reportable cases, which were defined as being over 90 days old. The Department acknowledged that although the Investigation Division had already conducted an investigation into all 1,216 backlogged cases, the cases were still lingering without final reviews or dispositions. A targeted plan, published in June 2018, committed to the closure of these cases by February 2019.

In order to reach that goal, the Department hired additional investigators and managers for the ID PREA team, as mentioned above. Investigators were given timelines for case review and closure, and rotated, strategically, in and out of the field. 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 surpassed its goal by closing hundreds more PREA-reportable cases.

*Additional Steps Taken Towards Compliance*

In January 2019, the Department composed a second Corrective Action Plan in response to a Board of Correction (“Board”) audit of ID’s closing memoranda. The Department has met the primary goals of that Plan, having retrained investigative staff, instituted new policy to make certain alleged victims are interviewed in confidential locations, improved its notification process for complainants who are no longer incarcerated, and mandated earlier supervisory review of open investigations. The Department also intends, as part of this Plan, to implement a computerized case management system for PREA cases by the end of 2020. In the meanwhile, the Department has committed to continue to manually collect, track, and publish its data on PREA allegations and investigations. The Department looks forward to another audit of investigative files by the Board in the coming months.

During this reporting period, an independent auditor reviewed the Investigation Division PREA investigations of alleged incidents occurring in the RMSC facility. The audit concluded that Investigation Division **exceeded** PREA standards; the auditor stated he was very impressed with the investigators’ knowledge and thorough work.

In order to further enhance the skills of PREA investigators, the entire PREA Investigative Unit was trained in Trauma-Informed Interviewing Training Standards. This course was developed by the Mayor’s Office to End Domestic and Gender-Based Violence. Before it was published and used as a universal training manual for all city agencies, it was reviewed and edited by

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several city executives.<sup>8</sup> During the previous reporting period, the Department's Deputy Commissioner of Investigation and Trials along with members of the Investigation Division's PREA and Training teams took the course. Subsequently, in November 2019, the Director of Training Programs and Initiatives at the Mayor's Office to End Domestic and Gender-Based Violence came to the Department and trained every PREA investigator.

### PRELIMINARY TREND OVERVIEW

During calendar year 2019, the Department experienced a dramatic decrease in overall allegations of sexual abuse and sexual harassment that were PREA reportable. There were 117 PREA reportable sexual abuse and sexual harassment allegations during the period of July 2019-December 2019 compared to 205 PREA reportable allegations during the period of January 2019-June 2019, representing an overall **decrease of total PREA-reportable allegations (sexual abuse and sexual harassment) by 42.93%**. This continues a trend from the last reporting period, where the Department registered a 24.35% decrease in allegations. The importance of this continued downward trend cannot be overstated; one successful reporting period is promising, but a sustained decrease in sexual abuse and harassment allegations over the course of eighteen months is confirmation of the Department's success.

Allegations in almost every single category have declined during this reporting period.

Some of the most encouraging data includes:

- Substantial reductions of PREA-reportable allegations at HOJC (**down 75.00%**, from twenty allegations in the last period to five in this period), GRVC (**down 84.44%**, from forty-five allegations in the last period to seven in this period), RNDC (**down 90.91%**, from 11 allegations in the last period to one allegation in this period), and WF (**down 100%**, from 14 allegations in the last period to **zero** in this period).
- Staff-on-Inmate PREA-reportable allegations are **down by 62.62%**, from 107 in the last reporting period to 40 in this reporting period.
- Inmate-on-Inmate PREA-reportable allegations are **down by 21.43%**, from 98 in the last reporting period to 77 in this reporting period.

PREA Investigation Division substantiation rates have vastly improved since the last reporting period. In the first half of 2019, the Investigation Division substantiated twelve PREA cases, for a substantiation rate of 1.81%<sup>9</sup>. During this reporting period, the Investigation Division substantiated thirteen PREA cases, for a substantiation rate of 3.58%.<sup>10</sup>

The Department is continuously working to prevent sexual victimization. In an attempt to reduce the number of incidents of sexual victimization, the Department continues to designate specific

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<sup>8</sup> Including, but not limited to, Bureau Chiefs and Deputies from all five District Attorneys Offices, the Law Department, the Department of Investigation, the New York City Police Department, Health and Hospitals, and the Deputy Commissioner of Investigation and Trials at the Department of Correction.

<sup>9</sup> This calculation is based on Investigation Division's closure of 663 cases during the first half of 2019.

<sup>10</sup> Because the PREA investigative team was no longer facing an overwhelming number of backlogged cases this reporting period, it closed fewer cases overall (363 versus 663), hence the higher rate of substantiation despite what otherwise appears to be a minor increase of substantiated cases from twelve to thirteen.

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housing areas for individuals who are potential sexual victims (SV). These housing areas are restricted to SVs and those who do not have a sexual designation. Anyone designated as a potential Sexual Abuser (SA), can not be housed with a SV, unless it is a specialized housing unit. In these instances, the SVs and SAs beds or cells are not in close proximity and are closely watched by staff. In addition, staff conducts thorough physical searches for blind-spots in isolated areas within inmate housing and common areas. These blind-spot checks are in addition to the standard tours conducted several times a day.

The Department continues to ensure staff are educated about PREA, which would include educating new recruits or newly onboarded employees, and also 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 facility detailing how to report an incident, the Department has strengthened our inmate grievance system to ensure that inmates have an effective outlet to communicate and resolve issues of concern through a streamlined process.

The Department has implemented significant custody management changes, and currently houses consistent with a person's gender identity. In addition to relocating the Transgender Housing Unit to Rose M. Singer Center (RMSC), we have opened up a new admission house in RMSC for individuals who come into custody and identify, or have been identified, as transgender female or intersex. The Department also considers anyone who is transgender female, and requests to be housed in the female facility, for housing placement in a general population housing unit. We are evaluating each individual on a case-by-case basis, as warranted by the PREA Standards and Board of Correction Minimum Standards, and placing them by their gender identity in a male or female facility, as long as the placement does not present management or security problems.

The Department remains committed to progressive culture change and continues to implement the requirements of the PREA Standards and make 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:

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- 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
- 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.