

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

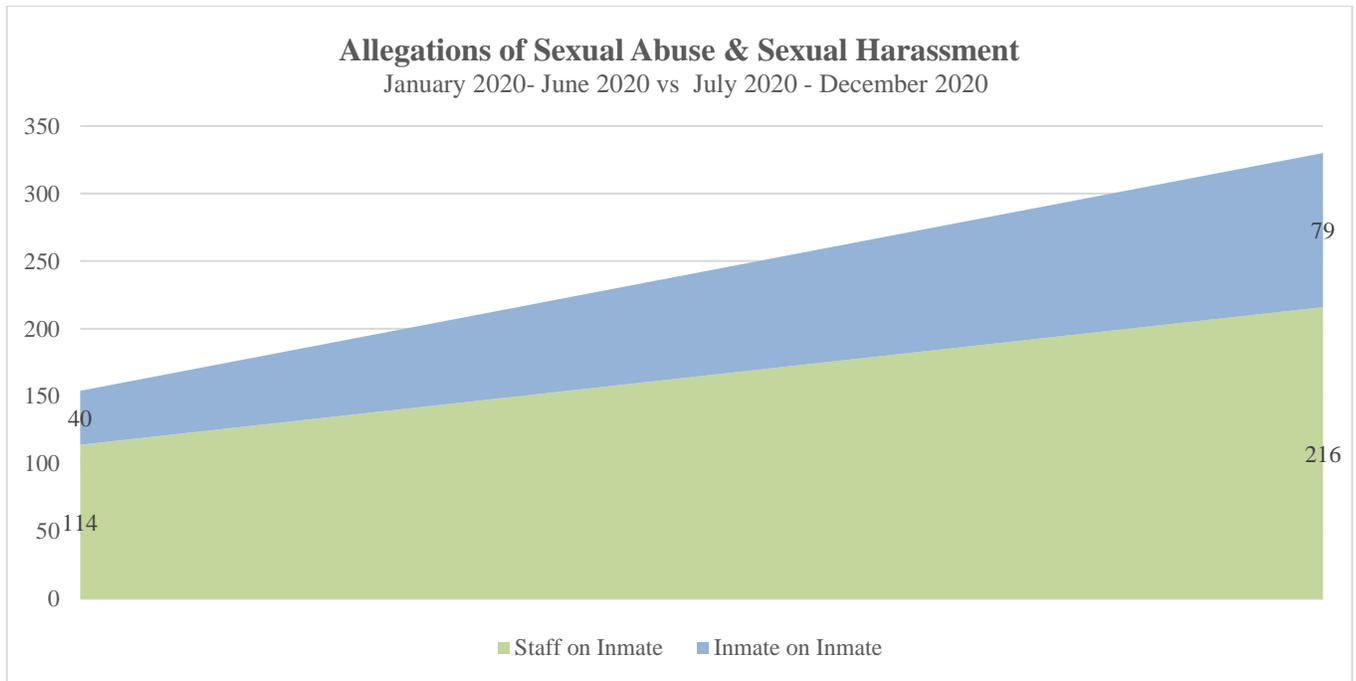


Figure 1 shows the Department is reporting an overall increase in staff-on-inmate allegations by 89.5% and an overall increase in inmate-on-inmate allegations by 97.5% during this reporting period compared to last. Overall, the Department saw 216 allegations of staff-on-inmate sexual abuse and sexual harassment this period versus 114 allegations last period.

This time last year, the Department recorded a similar number of inmate-on-inmate allegations (77, compared to 79 in this period). As for staff-on-inmate allegations, the Department has identified three reasons for the 97.5% increase.

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The main reason is a change in protocol mandated and implemented by the Board of Corrections last reporting period with respect to sexual harassment allegations, which is still affecting reporting numbers in this period. The Board of Corrections decided that “repeated” sexual harassment includes a comment made with sexual undertones by a person who has been accused of making a sexual comment in the past, to anyone, whether that previous allegation was substantiated or not. This change in definition inflated the number of sexual harassment allegations the Department was required report as a “PREA” allegation.¹ Eighty-nine (89) of the Department’s 216 staff-on-inmate allegations were claims of sexual harassment. Comparatively speaking, during the last reporting period, the Department only had thirty-eight (38) such claims. But this time last year (during the reporting period that spanned July 2019 – December 2019), the Department saw four (4) such claims. The progress made to undercut harassment allegations should not be ignored; the recent change to the definition of “PREA-reportable sexual harassment” sets a new, higher standard.

Second, the Department continues, in a seemingly intensifying fashion, to grapple with a small number of inmates making a large number of unsubstantiated or unfounded complaints. During this reporting period, **just five inmates were responsible for reporting 79 (or, 36.6%) of the Department’s 216 staff-vs-inmate allegations; a total of ten inmates (the previously mentioned five plus another five inmates) were responsible for reporting 99 (or, 45.8%) of these 216 allegations.** Although not all of these cases have been formally closed yet, preliminary assessments suggest that they will all result in a finding of Unsubstantiated or Unfounded.

Of the 295 allegations in this reporting period, 216 were allegations of sexual abuse. The five above-mentioned inmates represent 23.6% (51 of 216) staff-on-inmate sexual abuse allegations. **Plainly, almost one-quarter of the Department’s staff-on-inmate sexual abuse allegations for this reporting period were made by the same five people.** Not one of those allegations has been supported by any credible evidence. **Those same five inmates also represent 48% (38 of 79) staff-on-inmate sexual harassment allegations.** Expand that list to include the ten previously referenced inmates and the number reaches 68% (54 of 79). **Thus, the same 10 inmates represent over two thirds of all of the Department’s staff-on-inmate sexual harassment allegations.**

The Department has attempted, for years, to partner with three different District Attorney’s Offices in order to combat the rampant false reporting of PREA allegations. Finally, during this reporting period, the Bronx District Attorney’s Office has agreed to assess one (1) of the five (5) individuals for criminal prosecution. The Department will comment on the progress of this prosecution in its next 5-40 Report.

Lastly, in May 2019, the Department reviewed and updated Directive 5011R-A: Elimination of Sexual Abuse and Sexual Harassment. The directive now mirrors PREA Federal standards. One update to the Directive which could account for a rise in sexual abuse allegations is that the Department now classifies a verbal request by any staff member for a crime listed under Penal Law section 130 as sexual abuse. Prior to this change, verbal requests were generally not classified as “sexual abuse.”

¹ It should be noted that all staff-on-inmate and inmate-on-inmate sexual harassment allegations, whether they are deemed “PREA-Reportable” or not, are investigated by the highly-trained, specialized “PREA investigators” within the Investigation Division.

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Facility Breakdown

Table 1, below, gives a breakdown of PREA allegations by facility, comparing last reporting period (January 2020 – June 2020) to the current reporting period (July 2020 – December 2020).

Table 1

<i>Facility Breakdown Comparison</i>					
	Jan 2020-June 2020		July 2020-Dec 2020		
	# of Allegations	%	# of Allegations	%	% Change
RMSC	15	9.74%	24	8.14%	60% +
AMKC	35	23.18%	63	21.36%	80% +
BKDC	0	0.00%	0	0%	-
GRVC	40	26.49%	30	10.17%	25% -
OBCC	10	6.62%	14	4.75%	40% +
EMTC	1	0.66%	3	1.02%	200% +
MDC	19	12.58%	90	30.51%	374% +
NIC	12	7.95%	31	10.51%	158% +
RNDC	9	5.96%	4	1.36%	56% -
WF	2	1.32%	2	.68%	-
VCBC	8	5.30%	33	11.19%	313% +
BHPW	1	0.66%	1	.34%	-
HOJC	0	0.00%	0	0%	-
OTHER UNITS	2	1.32%	0	0%	100% -

The Department has experienced an increase of PREA allegations in a several facilities. The overall increase in allegations is explained above; the *location* of the increased allegations can be traced to the decision to reduce the number of housing areas throughout the facilities, thereby increasing the inmate population.

Additionally, the ten individuals that were identified (as listed above with Figure 1) as making repeated allegations are the same inmates that were housed in MDC, NIC, VCBC facilities with increased numbers of allegations.

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 97.6% of all allegations were reported by inmates ages twenty-two (22) or older.

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Table 2

<i>January 2020-June 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≤	2	1	1
19-21	6	6	0
22≥	146	107	39

Table 3

<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

Age of Alleged Subject

Tables 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 97.6% of the allegations reported, the alleged identified perpetrator was twenty-two (22) years old or older.

Table 4

<i>January 2020-June 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≤	1	0	1
19-21	0	0	0
22≥	113	91	22
Unidentified Alleged Perpetrator (Perpetrator was not identified in the preliminary investigation)	40		

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Table 5

<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		

In the prior reporting period, there were 40 allegations where the alleged victim inmate was unable to identify the alleged perpetrator, accounting for 26% of all PREA-reportable incidents. In the current reporting period, there were 95 allegations where the alleged victim inmate was unable to identify the alleged perpetrator, accounting for 32% 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 2020-June 2020		July 2020 – December 2020	
		# of Allegations	%	# of Allegations	%
Staff-Inmate					
	311	90	58.44%	175	59.32%
	DOI	3	1.95%	2	.68%
	Facility	13	8.44%	29	9.83%
	ID	3	1.95%	3	1.02%
	PREA	3	1.95%	2	.68%
	Other	2	1.30%	5	1.69%
Total		114	74.03%	216	73.22%
Inmate-Inmate					
	311	17	11.04%	32	10.85%
	DOI	0	0.00%	1	.34%
	Facility	15	9.74%	41	13.9%
	ID	0	0.00%	0	0%
	PREA	2	1.30%	4	1.36%
	Legal Aid	2	1.30%	1	.34%
	Other	4	2.60%	0	0%
Total		40	25.97%	79	26.78%

Overall Trends of PREA Allegations

Table 7 compares total reported incidents for the first half of 2020 (last reporting period) versus the latter half of 2020 (current reporting period). The total number of sexual abuse and sexual harassment allegations increased by 91.6% from the last reporting period to the current reporting period (154 versus 295 allegations, respectively). Overall, there was an increase of allegations in all staff-on-inmate categories of sexual harassment and sexual abuse. The Department has noted the reasons for this trend.

Table 7

<i>Comparison of Allegations of Sexual Victimization, by type of Incidents</i>			
	Jan 2020-June 2020	Jul 2020-Dec 2020	% Increase/Decrease
Total	154	295	91.6% +
Staff on Inmate	114	216	89.5% +
Sexual Abuse	76	127	65.8% +
Sexual Harassment	38	89	134.2% +
Inmate on Inmate	40	79	97.5% +
Abusive Sexual Contact	26	47	80.8% +
Non-Consensual Sex Act	8	5	37.5% -
Sexual Harassment	6	27	350% +

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, unwanted touching for sexual gratification, and requests for any acts that fall under New York Penal Law section 130. This category represents about 43% of all allegations. There were 127 staff sexual abuse allegations reported during the latter half of 2020, a 67% increase from the 76 allegations made during the beginning half of 2020 (see Table 7).

All staff-on-inmate sexual abuse allegations falls into three categories- Verbal request for any Crime under Penal Law 130, Crimes under Penal Law 130 and Voyeurism. For the latter half of 2020, about 4% (5) of staff sexual abuse were alleged to have occurred during a use of force (2), strip search (2) pat-frisk (1) and escort (0). For the first half of 2020, about 16% (12) of staff sexual abuse were alleged to have occurred during a use of force (1), strip search (7), escort (3) and pat-frisk (1) (see Table 8).

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Table 8

<i>Staff-Inmate Sexual Abuse Jan 2020-Jun 2020</i>	
Category	# of Allegations
Inappropriate Touch	53
Crimes Under New York State Penal Law 130	12
Voyeurism	7
Other	4
Grand Total	76

UOF	1
Strip Search	7
Escort	3
Pat frisk	1
16% encompasses above secondary	
Verbal	21
Recant	2
Other	41
Total	76

<i>Staff - Inmate Sexual Abuse Jul 2020 - Dec 2020</i>	
Category	# of Allegation
Inappropriate Touch	88
Crimes Under New York State Penal Law 130	11
Voyeurism	2
Other	26
Grand Total	127

UOF	2
Strip Search	2
Escort	0
Pat Frisk	1
Verbal	5
Recant	0
Other	117
Total	127

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 increased by 51 between the July 2020 and December 2020, while Sexual Threat and Homophobic Statements each decreased by 1. Notably, the only category of sexual harassment that saw a significant change in allegations was “inappropriate comments”. This data is corroborative of the stricter standard of PREA reporting put into place last reporting period (see [Table 9](#)).

Table 9

<i>Staff on Inmate Sexual Harassment</i>					
Sub-Category	# Allegations	%	# Allegations	%	% Increase/Decrease
	Jan 2020 - Jun 2020		Jul 2020 - Dec 2020		
Sexual Threat	2	5%	2	2.25%	0%
Inappropriate Comments	35	92%	87	97.75%	148.57% +
Homophobic Statement	1	3%	0	0	100% -
Total	38	100%	89	100%	134.21% +

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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, five (5) of the eight (8) reported nonconsensual sex acts were deemed ‘Crimes under New York State Penal Law 130’ and three (3) were categorized as “Inappropriate Touch”. During the current reporting period, four (4) 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 the reduction seen in this period, the Department has shown consistent improvement from the five reported last period and twenty-four allegations the period before that. **From last reporting period to the current, the Department decreased its number of said allegations by 37.5%.**

Table 10

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

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 81% (26 allegations to 47),** ([Table 11](#)).

Table 11

<i>Inmate Abusive Acts</i>	<i># of Allegations</i>	<i>%</i>	<i># of Allegations</i>	<i>%</i>	<i>% Change</i>
	Jan 2020 - Jun 2020		Jul 2020 - Dec 2020		
Inappropriate Touch	18	69%	32	68%	78% +
Crimes Under NY State Penal Law 130	8	31%	10	25%	25% +
Other	0	0%	5	11%	n/a +
Total	26	100%	47	100%	81% +

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

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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 increased by 350% from six (6) allegations in the last reporting period to twenty-seven (27) allegations in the current reporting period (see [Table 12](#)).

Table 12

<i>Inmate Sexual Harassment</i>				
Jan 2020-Jun 2020		Jul 2020-Dec 2020		% Change
# Allegations		# Allegations		
6	12%	27	48%	350% +

Overview of Rates and Trends

The rate of reported allegations of sexual victimization increased from 19.57 per 1,000 inmates during the first half of 2020 to 37.49 per 1,000 inmates during the latter half of 2020. The rate of staff allegations increased from 14.49 per 1,000 inmates during the first half of 2020 to 27.45 per 1,000 inmates during the latter half of 2020. The rate of inmate-on-inmate allegations also increased from 5.08 per 1,000 inmates to 10.04 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	Jan 2020-Jun 2020	Jul 2020 - Dec 2020	% (Jan 2020-Jun 2020)	% (Jul 2020-Dec 2020)	rate (Jan 2020-Jun 2020)	rate (Jul 2020-Dec 2020)
Total	154	295	100%	100%	19.57	37.49
Staff on Inmate	114	216	74.03%	73.22%	14.49	27.45
Sexual Abuse	76	127	49.35%	43.05%	9.66	16.14
Sexual Harassment	38	89	24.68%	30.17%	4.83	11.31
Inmate on Inmate	40	79	25.97%	26.78%	5.08	10.04
Abusive Sexual Contact	26	47	16.88%	15.93%	3.30	5.97
Non-Consensual Sex Act	8	5	5.19%	1.69%	1.02	0.64
Sexual Harassment	6	27	3.90%	9.15%	0.76	3.43

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 latter half of 2020, 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 really 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.²

[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 (January 2020 – June 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 135 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 closed 89 cases within 6 months' time, the Department's PREA Investigation Division (ID) in this period opened and closed 160 cases in the same amount of time, for an increase of **80%**. Moreover, in this period, *none* of the cases that were opened stayed open longer than 90 days. Thus, the Investigation Division maintained compliance with its PREA mandates once again during this period.

Another important accomplishment featured in [Table 14](#) is the increase in number of cases closed "unfounded". Over the last reporting period, the Department has been able to close **36.5%** more cases

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

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as unfounded than last period; this reflects a stronger emphasis within the Department’s Investigation Division on evidence collection and assessment.

Table 14

<i>Substantiated, Unsubstantiated, Unfounded and Pending Allegations of Sexual victimization Department-wide, July 2020 - December 2020</i>		
	<i>Case Reporting Period</i>	
	<i>Jan 2020-Jun 2020</i>	<i>Jul 2020-Dec 2020</i>
Total Allegations	154	295
Substantiated	9	4
Unsubstantiated	28	85
Unfounded	52	71
Total Closed	89	160
Preliminary Findings-Substantiated	4	3
Preliminary Findings-Unsubstantiated	148	132
Preliminary Findings- Unfounded	2	0
Pending Final Disposition	65	135

Table 15 illustrates the continued success by the PREA Investigation Division in addressing allegations reported prior to July 2020 (allegations reported up and until June 30, 2020 but closed during the July 2020-December 2020 reporting period).³

Table 15

<i>Initiated Investigation</i>				
	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>Total</i>
Substantiated	0	3	2	5
Unsubstantiated	0	41	85	126
Unfounded	0	33	69	102
Total Closed	0	77	156	233

As Table 15 demonstrates, the Department continues to close PREA cases efficiently. This period, the ID was able to close 77 cases from 2019 and 156 cases from the first six months of 2020. The Department no longer has any open PREA investigations from 2019 or prior. Moreover, during the latter half of 2020, despite the COVID19 pandemic and all of its obstacles, the Department was able to close a total of 233 cases above and beyond Table 14’s 160 cases, for a grand total of 393 cases closed. This compares to last period’s 267 closed cases, **an increase of 47% case closure rate.**

³ Additional cases were closed by the Department during the time period of July 2020 – Dec 2020, however, those cases related to allegations that were reported prior to July 2020. Table 15 provides one example of additional work completed by the Department during the current reporting period: data on allegations reported prior to July 2020 but closed during the current reporting period.

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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 2020 and December 2020 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 (July 2020 to December 2020)</i>							
Facility Name	Total	Substantiated		Unsubstantiated		Unfounded	
		Number	Rate	Number	Rate	Number	Rate
AMKC	30	1	0.13	20	2.54	9	1.14
BHPW	1	0	0.00	1	0.13	0	0.00
GRVC	16	0	0.00	9	1.14	7	0.89
MDC	61	1	0.13	32	4.07	28	3.56
OBCC	4	0	0.00	1	0.13	3	0.38
RMSC	10	1	0.13	5	0.64	4	0.51
RNDC	0	0	0.00	0	0.00	0	0.00
VCBC	22	1	2.80	12	1.52	9	1.14
WF	2	0	0.00	1	0.13	1	0.13
NIC	14	0	0.00	4	0.51	10	1.27

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 (pg. 21).

Of the 295 sexual abuse and sexual harassment allegations reported during July 2020- December 2020, seventy-one (71) (24%) 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. Last reporting period, 52 cases were unfounded; this period, the Department was able to unfound 71.

Among completed investigations in 2020, 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.

The Department substantiated four cases that were initiated during this reporting period, and another two cases that were initiated prior to this reporting period, for a total of six substantiated cases. Last period saw a higher number of substantiated cases (a total of 11), but a much lower number of unfounded cases.

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 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 233 cases (77 allegations that arose prior to July 2020, and 156 that arose between January and June 2020). The Department reached a milestone in the last reporting period, having closed all PREA-reportable cases from 2015, 2016 and

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2017.⁴ During this reporting period, the Department hit yet another milestone and was able to close all PREA-reportable cases that were initiated in 2018 and 2019.⁵ Additionally, **all cases that were opened in 2020 were closed within 90 days**, aside from those pending with external agencies.

⁴ 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.

⁵ 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. By the end of this reporting period, the ID PREA Unit had (1) Director, one (1) Deputy Director, nine (9) Supervising Investigators, and twenty-five (25) 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.

The Department has civilian PREA Compliance Managers (PCM) at three (3) facilities. In 2017, the facilities assigned uniform staff as PREA Ambassadors to work with each PCM and to assist with PREA implementation. The Department also has uniform staff that function as PCMs in each facility that does not have a civilian equivalent. These staff members are responsible for the day-to-day PREA compliance matters within the facilities.

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.⁶

⁶ Except those cases being investigated or prosecuted criminally.

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In fact, the ID PREA Corrective Action Plan was so successful, that when the ID recently restructured its Use of Force investigative teams, the Department mirrored the PREA structure in creating a Use of Force Intake Squad to handle early, hands-on, swift Use of Force investigations while other investigators managed long-term investigations and closure of older matters. Through a year of work, despite the pandemic, the Intake Squad, like the PREA Unit, has maintained compliance without fail.

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 Tenth Report, the Monitor evaluated the Department's compliance with PREA-reportable investigations (both sexual assault and sexual harassment). The Monitor applauded the significant, sustained improvements of the Investigation Division. As mentioned on page 161 of the Tenth Report, "The ID Division has made significant strides in investigating PREA cases timely and fully erased the backlog of cases related to this age group. ID has appointed dedicated and highly qualified leadership to oversee the PREA Team, which has brought an increased focus on tracking cases and conducting more efficient, higher quality investigations. The Team has both sufficient resources and staffing. The Monitoring Team has found that generally the investigators' practices were sound, the findings were reasonable, and cases were closed in a reasonable time period. The Department has maintained Substantial Compliance with this provision."⁷ In conclusion, the Monitor gave PREA Investigations a rating of **substantial compliance**, which is the highest level of achievement possible, quite difficult to attain and marks the second report in a row they have achieved this. Although the Eleventh Monitor's Report has yet to be published, the Department expects similar praise therein.

PRELIMINARY TREND OVERVIEW

During this reporting period, the Department experienced explainable increases in overall allegations of staff-on-inmate sexual abuse (repeat allegations by the same ten inmates, newly defined sexual abuse criteria, pursuant to the Federal standards) and staff-on-inmate sexual harassment (newly defined harassment criteria, as determined recently by the Board of Correction).

There were 295 PREA reportable sexual abuse and sexual harassment allegations during this period compared to 154 PREA reportable allegations during the period of January 2020 to June 2020, representing an increase of 91.6%. While the 154 allegations are still significantly lower than the 295 allegations in this reporting this period, the Department is striving to return to the downward trend it was seeing last period.

As described throughout this report, the Department experienced a substantial increase (65.8%) in allegations of staff-on-inmate sexual abuse during this reporting period as well as an 134% increase in staff-on-inmate sexual harassment allegations. The Department also saw a considerable decrease (37.5%) in all inmate-on-inmate non-consensual sex acts allegations.

The Department is aware that as long as a small number of inmates continue to make unsubstantiated/unfounded sex abuse and harassment allegations against staff, the Department will continue to see an undesirable increase in the numbers it reports. Thus, the Department is committed to

⁷ See, <https://www1.nyc.gov/site/doc/media/nunez-reports.page> pg. 161.

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combat this issue, by working with the inmates directly and by continuing to be persistent with District Attorneys Offices in the prosecution of false allegations.

Due to the recent change by the Board of Correction in its definition of “repeated” sexual harassment, staff harassment allegation numbers have risen. Under this new definition, if an inmate has ever complained that a certain staff member made an untoward or indecent comment – to any inmate – then the next time that staff member is alleged to have made a sexually-motivated comment, that complaint will be logged as “PREA-reportable”, *whether the initial harassment complaint was substantiated, unsubstantiated, or unfounded*. Under this rubric, it is not at all surprising that the Department has an increase in PREA-reportable staff-related harassment numbers.

Investigations of sexual harassment and abuse have continued, consistently, despite higher caseloads and a global pandemic, to be completed efficiently and fairly. The ID PREA Division has found itself squarely in compliance; responding to allegations within 72 hours, completing investigations within 90 days, and evaluating cases reasonably, as the Federal Monitor has noted. During a time when a pandemic hit without warning, compliance is a remarkable achievement.

The Department continues to ensure staff are educated about PREA, starting at the academy level with each new recruit class and also inclusive of 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. The Department continues to operate the Special Consideration Unit (SCU) our female for individuals who come into custody and identify, or have been identified, as transgender, intersex and gender non-binary. The Department evaluates everyone 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. To further promote transparency, the Department has refined its processes by giving additional details as to why an individual may be denied placement in, or removed, from the SCU, as well as explaining the reasons why an individual may be reconsidered for placement in the SCU. More discrete and confidential means of disclosing one’s identity have been established. We are also in the process of considering a SCU in a male facility for vulnerable gay, bisexual and transgender men.

CONCLUSION

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.