

**PREA AUDIT REPORT**     Interim     Final

**ADULT PRISONS & JAILS**

**Date of report:** 2/10/17

<b>Auditor Information</b>			
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<b>Telephone number:</b> 785-766-2002			
<b>Date of facility visit:</b> 12/12-12/13/16			
<b>Facility Information</b>			
<b>Facility name:</b> North Dakota State Penitentiary (NDSP)			
<b>Facility physical address:</b> 3100 Railroad Avenue, Bismarck, ND 58506			
<b>Facility mailing address:</b> <i>(if different from above)</i> P.O. Box 5521 Bismark, ND. 58506			
<b>Facility telephone number:</b> (701) 328-6100			
<b>The facility is:</b>	<input type="checkbox"/> Federal	<input checked="" type="checkbox"/> State	<input type="checkbox"/> County
	<input type="checkbox"/> Military	<input type="checkbox"/> Municipal	<input type="checkbox"/> Private for profit
	<input type="checkbox"/> Private not for profit		
<b>Facility type:</b>	<input checked="" type="checkbox"/> Prison	<input type="checkbox"/> Jail	
<b>Name of facility's Chief Executive Officer:</b> Warden Colby Braun			
<b>Number of staff assigned to the facility in the last 12 months:</b> <a href="#">Click here to enter text.</a>			
<b>Designed facility capacity:</b> <a href="#">Click here to enter text.</a>			
<b>Current population of facility:</b> <a href="#">Click here to enter text.</a>			
<b>Facility security levels/inmate custody levels:</b> Maximum Custody			
<b>Age range of the population:</b> 18+			
<b>Name of PREA Compliance Manager:</b> Maren Arbach		<b>Title:</b> Director of Training	
<b>Email address:</b> <a href="mailto:marbach@nd.gov">marbach@nd.gov</a>		<b>Telephone number:</b> 701-328-6653	
<b>Agency Information</b>			
<b>Name of agency:</b> North Dakota Department of Corrections and Rehabilitation			
<b>Governing authority or parent agency:</b> <i>(if applicable)</i> <a href="#">Click here to enter text.</a>			
<b>Physical address:</b> 3100 Railroad Ave. Bismark, ND. 58506			
<b>Mailing address:</b> <i>(if different from above)</i> P.O. Box 5521 Bismark, ND. 58506			
<b>Telephone number:</b> 701-328-6616			
<b>Agency Chief Executive Officer</b>			
<b>Name:</b> Leann Bertsch		<b>Title:</b> Director	
<b>Email address:</b> <a href="mailto:lebertsc@nd.gov">lebertsc@nd.gov</a>		<b>Telephone number:</b> 701-328-6616	
<b>Agency-Wide PREA Coordinator</b>			
<b>Name:</b> Steve Engen		<b>Title:</b> Director of Staff Development and Facility Inspections	
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## AUDIT FINDINGS

### NARRATIVE

The North Dakota Department of Corrections and Rehabilitation had a PREA audit conducted of the North Dakota State Penitentiary (NDSP) on December 12 & 13, 2016. Audits of both NDSP and James River Correctional Center (JRCC) occurred the week of December 11<sup>th</sup>. Both facilities are adult state-run male prison facilities, and audits were conducted by 360 Correctional Consulting, LLC, led by certified PREA auditors Talia Huff and Ray Reno.

More than six (6) weeks prior to arriving on site, auditors provided an Auditor Notice to be posted in all living units, facility entrance, visitation areas, medical areas, mental health areas, and other common areas. Confirmation of these notices being posted was provided to auditors on 10/26/16. It was noted throughout the site review that the Auditor Notices were abundantly posted. In addition, documentation was provided to the auditors via thumb drive prior to the audit in a very organized fashion, to include the Pre-Audit Questionnaire and standard-by-standard files containing supporting documentation. Correspondence between the auditors and the PREA Coordinator occurred throughout the pre-audit phase. Prior to arrival, the auditors submitted a tentative audit schedule to the facility to outline audit activities for the onsite portion. On December 12, 2016, auditors reported to the North Dakota Department of Corrections and Rehabilitation (NDDOCR) central office to initiate the audit. This is the same site where NDSP is located. An opening meeting was held with administration. Present for the opening meeting was: Steve Engen, PREA Coordinator; Colby Braun, Warden of NDSP; Maren Arbach, PREA Compliance Managers of NDSP; as well as other leadership and support staff.

Auditors then conducted the site review of NDSP, accompanied by the PREA team. The site review spanned seven buildings and included three single-cell housing units and four multi-occupancy units, and one open bay/dorm style unit. Auditors toured all other areas including industry buildings, kitchen and dining hall, recreation areas, and all other facility grounds in which there was inmate access or potential inmate/staff access. PREA signage was abundantly evident throughout the facility, ensuring that reporting information was adequately visible for all inmates, staff, and visitors as well. Auditors noted some physical barrier issues throughout the site review and discussed those with the PREA team. Physical barrier issues that were noted and corrected from the previous PREA audit (as well as some that were not pointed out by auditors) were still in place indicating a continuity and awareness of sexual safety. Video monitoring is used in the hallways and common areas of the living units, but not in the dorm rooms or in the bathrooms.

Some specific things noted on the site review:

- Well thought out camera placement, request for additional cameras and DVRs has been requested but not yet approved
- No cameras/mirrors in the laundry area, several blind spots particularly behind dryers
- No cameras/mirrors in Education classroom; i.e. solid door with no window
- No camera/mirrors in dish room and several areas in food service area where staff and inmates could be isolated
- No cameras/mirrors in treatment classrooms, hallways, or offices
- Administrative Segregation control room designated as "male staff only" position
- North Unit Kitchen: no cameras/mirrors, several blind spots, dry storage blind spot
- Overflow stairwell: no cameras/mirrors and blind spots
- Lack of cameras/mirrors at Rough Rider Industries

Following the site review, interviews of agency level and specialized staff were conducted primarily on December 12, while interviews of random inmates and staff were conducted on December 13, 2016. The PREA team was available at all times for auditor clarification and consultation and helped to ensure an efficient audit. Random inmates and random staff (from all three shifts) were interviewed. In addition, interviews with leadership, specialized staff, and targeted inmates were conducted. Overwhelmingly, staff and inmates were very familiar with PREA. In

fact, the level and depth of PREA knowledge and awareness was advanced; those interviewed were well aware of how to report and respond, and inmates' rights to be free from sexual abuse and sexual harassment. Staff confidently knew reporting and response, dynamics of sexual abuse and sexual harassment in confinement, effective communication and policy regarding LGBT inmates, and first responder duties, etc. Inmates appeared to have a high level of trust and confidence in the staff, administration, and reporting process.

DOCR/NDSP conducts administrative investigations and, in fact, now have the authority to conduct criminal investigations, though criminal investigations are generally referred to the Highway Patrol. This agency has a prompt and genuine practice of addressing sexual safety in its facilities and upholds the intent behind the PREA standards. The agency has a very strong and beneficial relationship with the Highway Patrol, which was commended. Knowledge of and investment in the implementation of PREA was evident throughout administration and management of the DOCR and reflected support from the top down. Auditors were very impressed with the level of genuine investment and dedication of PREA at the facility and agency level.

As noted in the previous PREA audit, NDSP still faces challenges with physical plant/physical barrier issues simply due to the nature of the older facility. While NDSP is an older facility, NDSP has implemented measures to combat these issues; issues within the facility's control such as additional cameras in high risk areas, mirrors, motion lighting, and removing physical barriers where possible. The DOCR has made budget requests to rectify these issues with additional staff and cameras.

## **DESCRIPTION OF FACILITY CHARACTERISTICS**

North Dakota State Penitentiary is the original prison complex for the state and houses minimum to maximum custody adult male inmates, with a capacity of 796 inmates. The inmate population at the time of the onsite audit was 749.

The North Dakota State Penitentiary was established in Bismarck in 1885. The goal of the prison is to "keep the public safe, while also offering rehabilitative work, treatment, and educational programs that will effect change in the inmates' behavior."

The administration building is newer construction and leads into the secure perimeter of the prison. There is a newer section and an older section of the facility that houses minimum to maximum custody inmates. The AS (administrative segregation) Unit has five wings, including 10 supermax cells which have cameras.

The older part of the facility is faced with physical plant challenges that decrease the level of sexual safety; this area would benefit greatly from physical plant renovations and additional camera coverage in blind spots and isolated areas.

Aside from the living units, the rest of the grounds consist of Rough Riders Industries, which comprises three large buildings that house upholstery, furniture, the tag plant, and the metal shop. There is little to no camera coverage in the industries buildings.

There is a large outdoor recreation yard.

## **SUMMARY OF AUDIT FINDINGS**

It was clear that inmate safety is of upmost importance at NDSP and for the DOCR agency. Auditors were very impressed with the efforts and accomplishments made to achieve PREA compliance. Twenty-four (24) standards were met, seventeen (17) standards were exceeded, two (2) were not applicable, and zero (0) were not met.

Number of standards exceeded: 17

Number of standards met: 24

Number of standards not met: 0

Number of standards not applicable: 2

## **Standard 115.11 Zero tolerance of sexual abuse and sexual harassment; PREA Coordinator**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Organizational Chart

### **Interviews, Document and Site Review:**

NDDOCR and NDSP have a zero tolerance policy toward all forms of resident sexual abuse and sexual harassment, which is outlined in their PREA Policy 3C-4. The PREA Policy outlines the agency's approach to preventing, detecting, and responding to sexual abuse and sexual harassment and includes such definitions that are congruent with the PREA standards and includes a description of agency strategies and responses to reduce and prevent sexual abuse and sexual harassment of inmates. This policy incorporates requirements of the PREA standards and also agency and facility methods of compliance. Beyond language in policy, NDSP appears to have a culture that also exudes zero tolerance.

All interviews with staff, inmates, and specialized staff affirm the zero tolerance policy and measures of prevention, detection, and response strategies.

NDDOCR has appointed an upper-level PREA Coordinator who also serves in the position of Director of Staff Development and Facility Inspections; Steve Engen. The auditor reviewed the agency organizational chart, which listed the PREA Coordinator (PC) position. Steve Engen, as the PC, reported that he has sufficient time and has authority to develop and oversee agency PREA compliance efforts. The PREA Coordinator reports directly to the Director/Agency Head Leann Bertsch. Interviews with the Director and PC revealed that PREA compliance efforts are a priority. Each facility under the DOCR has a designated PREA Compliance Manager (PCM). At NDSP, the PCM is the Director of Training; Maren Arbach. Mrs. Arbach reported that she has sufficient time to oversee facility PREA compliance. As Director of Training and her involvement in leadership, she has sufficient authority to do so.

### **Corrective Action:**

None.

## **Standard 115.12 Contracting with other entities for the confinement of inmates**

- Exceeds Standard (substantially exceeds requirement of standard)

- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

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**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Contracts for confinement (4)

**Interviews, Document and Site Review:**

The agency does contract for the confinement of inmates. The PREA Policy 3C-4 contains the requirements of this standard. The auditor was provided all contracts for review and also interviewed the Agency Contract Administrator, located at the central office. The auditor reviewed contracts with the following: The Center Inc., Bismarck Transitional Center, Lake Region Residential Reentry Center, and Tompkins Rehabilitation Center. Each of the contracts includes the following language (as provision #6):

*The CONTRACTOR shall comply with the Prison Rape Elimination Act of 2003 ("PREA"), 42 U.S.C. § 15601 et. seq., and all applicable PREA Standards and DOCR Adult Services Policies related to PREA for the prevention, detection, monitoring, investigation, and eradication of any form of sexual abuse within CONTRACTOR facilities, programs, or offices, whether owned, operated or contracted. This includes the education and training of staff, education for offenders, conducting investigations, reporting incidents to the DOCR, compiling incident data and aggregate data, and providing incident and aggregate data to DOCR on an annual basis. The CONTRACTOR acknowledges that, in addition to its self-monitoring requirements, DOCR will conduct announced or unannounced compliance monitoring, including on-site monitoring. Failure to comply with PREA and applicable PREA Standards and DOCR Policies may result in termination of the contract.*

Discussion with the Agency Contract Administrator revealed that he was very knowledgeable about the PREA standards and their obligations thereof, as the contracting agency. All the contracted placements have undergone PREA audits and the agency has obtained and reviewed those audit reports. As seen in the language above, the agency conducts announced and unannounced compliance monitoring, which was also articulated by the Agency Contract Administrator. The auditor learned that the agency has the FACTS system, which was developed in-house for monitoring purposes; it guides the onsite monitoring process and when monitoring is required. It is used for monitoring many things; one being PREA. The FACTS system, advanced knowledge and monitoring with announced and unannounced compliance monitoring exceeds the standard.

**Corrective Action:**

None.

**Standard 115.13 Supervision and monitoring**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Staffing Policy 1C-5
- NDSP Staffing Plan
- NDSP Staffing Plan Review
- Staffing Plan Memo
- Supervisor Rounds

**Interviews, Document and Site Review:**

NDSP has developed, implemented, and documented a staffing plan that provides for adequate levels supervision and NDSP makes its best effort to comply with it. The Staffing Plan document cites minimum staffing levels during different times of the day shift as well as the night shift. It addresses the use of video monitoring and cites position responsibilities of the Captain, Sergeant, Control Officer, Driver, Rover Officer, and Outdoor Security. Reduction of operational services is then outlined, in the event of staff shortage. NDSP then has a Staffing Plan Deviation Form for documenting deviations (reason for deviation, number of staff, and efforts to prevent the deviation).

Auditors spoke with Training Director and two shift supervisors about staffing numbers. All felt that the total staffing number is adequate. The day shift Administrative Captain makes the roster and ensures adequate staffing on a daily basis. These staff confirmed there were no cases during the review period where the facility did not meet their minimum staffing number. When the shift is short, they can have staff stay over on shift or come in early. On day and evening shifts, there are staff available who are not counted on the roster, but who had been trained as corrections officers who can fill in. There are also some posts that can be collapsed or closed, if needed. Non-uniform case managers have filled in for staff shortage for a short time. When the shift supervisor knows a shift will be short in advance, they send out an e-mail asking for volunteers to fill the shift. Per the warden, the staffing numbers are adequate, but they could benefit from adding one additional to south unit on evening shift. The larger issue they struggle with would be with security staff turnover.

The average daily number of residents was 753 and the staffing plan was predicated on 753 residents. The auditor was provided with documentation of their staffing plan, through a lens of sexual safety, which included consideration of the 11 required elements of this provision. The plan states, “Based on the number of allocated positions, 43 staff is needed to fully staff one shift during standard operational hours when frequent inmate movement occurs to effectively detect, prevent altercations, physical or sexual abuse, self harm, general misconduct and escape. The minimal amount of staff to properly monitor the facility during daytime hours of operation is 39. These minimum staffing numbers allow for normal operations with no constraints under normal circumstances. The 39 positions ensure all housing units and recreation areas have adequate supervision, limiting the potential for distribution in the safe orderly running of the facility. These positions are necessary to operate the regularly scheduled activities and operations at the NDSP.”

It was articulated in interviews with the PREA Compliance Manager and PREA Coordinator there were no deviations from the staffing plan, which is also what was reported on the Pre-Audit Questionnaire. A Staffing Plan Memo was also provided which noted that no deviations had occurred throughout the review period and that any vacant positions on shift are filled with OT employees. Auditor observations supported that the facility maintains the staffing plan and adequate staffing levels and that there were no deviations.

NDSP demonstrated policy and practice of annual staffing plan reviews, which was also articulated by the Warden, PREA Compliance Manager, and PREA Coordinator in interviews and discussions. Staffing plan review documents, the NDSP Staffing Analysis, were provided for auditor review. This appears to be an institutionalized practice as evidenced by supporting documentation of the annual reviews from previous years as well. The reviews are signed by the PREA Coordinator.

The policy and practice of unannounced rounds is well institutionalized at NDSP. The PREA Policy 3C-4 on page 8 asserts the way this is put into practice: that they are conducted on all shifts by intermediate or high level staff and documented in the ELITE system as "Supervisors Round." Documentation of these Supervisors Rounds were provided for auditor review and revealed that these were routinely and consistently conducted as set forth in policy. In addition, it was consistently reported during staff interviews that supervisors conduct these rounds.

**Corrective Action:**

None.

**Standard 115.14 Youthful inmates**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)
- Not Applicable

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**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Directive 4B-5

**Interviews, Document and Site Review:**

This standard is not applicable. Neither NDSP nor the agency houses youthful inmates, as evidenced by PREA Policy 3C-4 and the Directive 4B-5. Any inmate under the age of 18 is placed in the North Dakota Youth Correctional Center.

## Standard 115.15 Limits to cross-gender viewing and searches

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Policy 3A-6 Control of Contraband
- Body Searches Lesson Plan
- Online Searches curriculum

### **Interviews, Document and Site Review:**

PREA Policy 3C-4 outlines each provision of this standard beginning on page 8. It states there are no cross-gender strip searches or any visual body cavity searches except in exigent circumstances (“exigent circumstance” is defined per the PREA standards). 3C-4 asserts that staff will document any cross gender strip or body cavity searches in the electronic log. There were no instances of such to document. Since there are no female inmates at NDSP, provision (b) is not applicable.

Policy and practice at NDSP enables inmates to shower and perform bodily functions without being viewed by staff of the opposite gender and also requires opposite-gender staff to announce their presence. The auditors learned that an “all genders” announcement is routinely made at the beginning of each shift and while this practice does not, in itself, satisfy the requirements of this standard, the auditor gathered that when the status quo of the officers change, a “female on the unit” announcement is made. When non-uniform staff come onto a unit or when a female officer comes onto a unit where there was no female officer, the “female” announcement is made. Staff and inmate interviews corroborated this and inmates reported that staff are respectful, ensuring they have adequate privacy for those functions. Policy 3C-4 mandates that “female on the floor” will be announced prior to entering any area where an inmate is in a state of undress or using the toilet and it mandates this announcement to be documented in the ELITE system.

Auditors viewed camera monitors and had discussions with staff, captains, and leadership regarding the viewing of cameras; inquiring about cross-gender viewing. Posts in the infirmary and AS Control have been determined to be male-only posts due to the potential for cross-gender viewing. While onsite, auditors noted that only males occupied these posts and informal discussion verified that to be true. Auditors were provided documentation that outlined this limited camera viewing. This documentation was given to captains to be relayed during briefings. It conveyed the male only posts as well as stations in which use access was limited to only cells in that specific area. It referenced this standard and also asserted that Master Control “will maintain access to view these cells through the accurate control system for instances when exigent circumstances require control of these doors for the safety and security of the facility.”

In addition, all staff consistently reported that a transgender or intersex inmate could not be searched for the sole purpose of determining their genital status. They further articulated that information could be obtained by conversation with the inmate, looking in records, and/or through medical. This language is also in policy and policy also states, "During the PREA Intake Screening interview with a transgender or intersex inmate, staff will ask the inmate if they prefer to be searched by a male or female officer. This information will be recorded in alerts in ELITE."

Officers receive training on conducting searches on an annual basis and the facility reported that 100% of security staff had received the training. Part of that training consists of educating staff about the limits to viewing and searches pursuant to this standard as well as conducting cross gender pat searches and searches of transgender or intersex inmates. Staff consistently reported this through interviews and were able to articulate the content. The auditor was provided curricula for review and verification.

**Corrective Action:**

None.

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

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- NDDOCR Inmate PREA Training Powerpoint and lesson plan
- Disability Memo
- Interpreter Contract and invoice
- English Proficiency Assessment
- New Arrival Checklist

**Interviews, Document and Site Review:**

NDSP provides, as necessary, for disabled and LEP (limited English proficient) inmates to benefit from efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Auditors noted on the site tour that there was ample signage posted throughout the facility that was in both English and Spanish. PREA Policy 3C-4 very clearly outlines how this shall be accomplished, on page 9 as follows:

*1.) Interpreter services for the deaf, blind or hard of hearing inmates, and Non-English speaking inmates.*

*a.) 1-877-650-8027*

b.) Account Number: 9823

c.) Your Full Name: Employee Name

d.) Department Number: NDSP 530.0, JRCC 530.1-10, MRCC 530.1-20, PP 530.3

e.) For additional information see, appendix A.

2.) Inmates who have intellectual, psychiatric, or speech disabilities will review materials with staff to ensure comprehension.

PREA material is provided in written form in the Inmate Handbook, as well as in a PowerPoint that is presented to inmates. The Powerpoint is one hour long and the lesson plan guides the instructor through all relevant points. There is audio available for blind inmates and subtitles for deaf inmates. If the need arises, staff will assist individual inmates to ensure their comprehension of the material. Behavioral health staff are charged with this duty. The inmate handbook is also available in Spanish. The agency employs a translation service, with which they have a contract, for any LEP inmates. The auditor reviewed the contract for service and an invoice for when the service was utilized.

Policy 3C-4 prohibits the use of inmate interpreters unless doing so compromises inmate safety, performance of first responder duties, or the investigation of the inmate's allegation. Staff articulated this very well throughout interviews. Staff were aware of the interpretive services. For LEP inmates, NDSP employs an English Proficiency Assessment, which assesses the level of assistance that will be needed, but there were no LEP inmates in custody for auditors to interview. The New Arrival Checklist accounts for all things a new inmate is oriented to including PREA and also has a PREA statement at the bottom. One way to enhance documentation, on the New Arrival Checklist, particularly for LEP inmates is to specifically account for watching the PREA video since the video contains Spanish subtitles. Two (2) low-functioning inmates were interviewed to assess level of comprehension of the PREA material; one relayed what PREA was and how to report and the other did not seem to comprehend or convey information throughout the interview.

Policy 3C-4 also refers to DOCR Directive, Limited English Proficiency and DOCR Directive, Case Planning, for additional information.

Due to the many resources available for disabled and LEP inmates that have been implemented, staff awareness of the existence and utilization of the resources, explicit policy language, and the effort given to individual inmates when needed to ensure their comprehension, auditors feel NDSP has exceeded this standard.

**Corrective Action:**

None.

**Standard 115.17 Hiring and promotion decisions**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

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## **corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Policy 1C-11 Criminal Record Check and Fingerprinting
- North Dakota Century Code 12-60-24 - Criminal history record checks
- Internal email from Human Resources
- Personnel Records and file review

### **Interviews, Document and Site Review:**

NDSP and the agency demonstrated well that they prohibit the hiring of anyone who (1) has engaged in sexual abuse of inmates in an institutional setting; (2) has been convicted of engaging in sexual activity in the community facilitated by force, the threat of force, or coercion, or (3) has been civilly or administratively adjudicated to have engaged in such activity. Policies 3C-4 and 1C-11 dictate this practice. PREA Policy 3C-4 addresses each provision of this standard beginning on page 10. Fingerprinting and expectations for criminal records checks are also found in Policy 1C-11 (which also cites this standard as well as other mandates in accordance with state and federal statutes, etc.) and North Dakota Century Code 12-60-24, which states in part, “The bureau of criminal investigation shall provide to each agency, official, or entity listed in this subsection who has requested a statewide and nationwide criminal history record check, the response of the federal bureau of investigation and any statewide criminal history record information that may lawfully be made available under this chapter:”

NDSP reported that there were 47 persons hired during the review period who received criminal records background checks, and 14 contractors. Human Resources staff was extremely knowledgeable about PREA standards as related to hiring and promoting and explained the process and practice of compliance with this standard and provided a sample of records for auditor review (selected at random by the auditor). The background checks consist of an extensive process that includes: Triple I (national), NCIC, CJIS (state and local), ND courts, Adult Abuse and Child Abuse Registries, sex offender check, and JPay and visitor log checks (for communications with inmates). All employees including volunteers and contractors go through this process and every 5 years every employee has another NCIC check completed. All records that were reviewed contained criminal records checks in accordance with this standard and agency policy. NCIC is conducted again for any staff up for promotion and examples of these records were also provided for review.

HR staff stated that incidents of sexual harassment would be considered most likely through an informal practice; HR’s knowledge of such incidents (for current or former employees) or by reference check. Applicants are also queried about prior institutional employers. In the event an applicant has a prior institutional employer, a release from is sent requesting a response in writing for information regarding their former employee’s involvement in substantiated sexual abuse or sexual harassment.

Regarding providing information, upon request from another institution, about a former employee’s involvement in substantiated allegations of sexual abuse or sexual harassment, HR staff articulated this requirement and provided documentation and the form letter that is used for this purpose. It was reported that the agency has received requests from other institutional employers inquiring about former DOCR employees in which responses are first approved and then sent.

Auditors reviewed employee files and documentation which all contained the required background checks, requests to prior institutional employers (when necessary), and employment applications that contained the required three questions of 115.17(f). Facility practice seemed to be congruent with policy which requires criminal background checks at least every five years. Documentation of background checks for employees that were promoted were reviewed for verification as well.

All the procedures in place, demonstration of practice, and the knowledge of the HR staff exceeds this standard.

**Corrective Action:**

None.

**Standard 115.18 Upgrades to facilities and technologies**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

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**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Documentation of funding request for cameras and additional staffing

**Interviews, Document and Site Review:**

There have been no substantial expansions or facility modifications during this review period. There have been cameras added to enhance supervision. The Director was interviewed and spoke knowledgeably about the requirements of PREA and the consideration that would be given to any expansion or facility modification such as: clean site lines, fewer nooks and crannies, many cameras, no group showering. The PREA Coordinator asserted that he would be involved with any expansion or modification, and such changes would also undergo a review process.

**Corrective Action:**

None.

**Standard 115.21 Evidence protocol and forensic medical examinations**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the**

**auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Preservation of Evidence Policy 3A-12
- North Dakota Sexual Assault Evidence Collection Protocol 5th Edition
- North Dakota Highway Patrol Criminal Investigation Policy 4.3
- North Dakota Century Code 12.1-34-07
- Agreement with AARC for Advocacy and SANE
- AARC MOU
- Correspondence with SANE
- Letter from AARC Director
- Advocate Memo

**Interviews, Document and Site Review:**

DOCR/NDSP conducts administrative investigations, while they have collaborated with the Highway Patrol for criminal investigations. PREA Policy 3C-4 outlines compliance with this standard as well as Policy 3A-12 which further outlines the uniform evidence protocol addressing the preservation of evidence, crime scene security, handling of evidence, location and storage requirements, documentation, disposition of evidence, etc. Through interviews and discussions with staff and leadership, policy and procedure was very well articulated. Auditors were very impressed with staff’s ability to articulate their responsibilities per this policy. Staff knowledge was at an advanced level. The Highway Patrol conducts criminal investigations using the North Dakota Sexual Assault Evidence Collection Protocol 5th edition congruent to the Sexual Assault Protocol developed by the United States Department of Justice, which was impressively thorough and detailed and covered the scope of all types of victims (i.e. child, adolescent, male, LBGT – lesbian, gay, bisexual, transgender). Policies 3C-4 and 3A-12 assert that forensic exams will be completed, without cost, at Sanford Health within 120 hours of the incident. Auditors were also provided an MOU between the agency and the Highway Patrol.

Alleged victims of sexual abuse are offered forensic exams at no cost from Sanford Health in Bismarck by a Sexual Assault Nurse Examiner. Auditors reviewed correspondence between the PREA Coordinator and the SANE Coordinator. In this reporting period, there were no forensic exams warranted.

In this reporting period, there were no forensic exams warranted. PREA Policy 3C-4 established procedures for victims of sexual abuse to be offered forensic medical exams, outside the facility at no cost. It was evident that the PREA Coordinator has established a good working relationship with the SANE nurse and had substantial communication with her, some of which was provided for review. In the event that an inmate arrives for a forensic exam, a victim advocate is offered to the victim. Policy 3C-4 states, “The DOCR medical staff will contact the designated medical provider, who will initiate the Sexual Assault Response Team and request a victim advocate.”

Since the previous PREA audit, the agency has been able to secure victim services from a community-based organization; from the Abused Adult Resource Center (AARC). Funding was obtained to enable a dedicated advocate from AARC, who attended the introduction and exit meetings of this audit as well as the site review of the facility. If an advocate is not available, behavioral health staff will be utilized. The auditor was provided with credentials for the designated behavioral health staff.

The agency has established a good working relationship with the Highway Patrol and receives timely services from

them when needed. Auditor was provided with the Highway Patrol's Criminal Investigation Policy 4.3 and, though it is not specific to sexual abuse, it outlines their uniform evidence protocol.

Not only has the agency requested that the Highway Patrol follow the requirements of this standard, the agency has included them in training provided by the Moss Group; the agency offered those training records for auditor review, also.

The effort that has been made to collaborate with these external stakeholders (Highway Patrol, SANE, rape crisis center) exceeds expectations and has truly been valuable and beneficial to the agency and thus, the inmate population. The extensive and detailed policy and documentation, efforts that have been made to collaborate with external stakeholders (Highway Patrol, SANE, AARC), and the articulation of said policy and documentation exceeds this standard.

**Corrective Action:**

None.

**Standard 115.22 Policies to ensure referrals of allegations for investigations**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- North Dakota Highway Patrol Criminal Investigation Policy 4.3
- Investigative records

**Interviews, Document and Site Review:**

The PREA Policy 3C-4 addresses this standard and states that all allegations will be investigated, that criminal investigations will be referred to the Highway Patrol, and the PREA investigator will document such referrals.

NDSP conducts administrative investigations, while the Highway Patrol conducts criminal investigations. Interviews with investigators and leadership indicated that PREA investigations are of the upmost importance and are acted upon immediately. It was evident that this was part of the culture of the agency.

There were 42 allegations of sexual abuse and sexual harassment reported on the Pre-Audit Questionnaire (PAQ) during the reporting period of 8/1/15-7/31/16; 35 of those resulted in an administrative investigation, and 0 were referred for criminal prosecution. This volume of allegations is consistent with the allegations and investigations from the previous PREA audit.

From review of the Investigation Log provided (looking at date range 8/1/15-7/31/16), the auditor noted a total 46 total allegations, which broke down in the following way:

- 21 Inmate-on-Inmate (2 sexual abuse, 18 sexual harassment): 5 substantiated, 5 were unsubstantiated, 9 were unfounded, 1 was “use of obscene language,” 1 was “horseplay, not PREA,” 0 were “declined”
- 15 Staff-on-Inmate (5 SA, 10 SH): 2 substantiated, 1 unsubstantiated, 1 “Not PREA”, 10 unfounded, 1 unfounded (IM refused to cooperate), 1 “IM asked the allegation be dropped”
- 10 third party reports (5 SA, 5 SH): 1 substantiated, 1 unfounded, 7 did not list dispositions (4 of those “declined investigation”)

Auditors had many discussions throughout the onsite and post audit regarding investigations. It was discovered that, because of a misinterpretation of the standard, there appeared to be a few allegations that were preliminarily investigated, but not fully investigated because the inmate opted not to have it investigated. NDSP documented these allegations on the log and provided the preliminary investigation documentation for auditor review, though clarification was provided by the auditors that an inmate cannot choose to not have an allegation investigated and it is still the agency’s obligation to follow through with an investigation. This was received openly and practice was immediately amended to comply. Despite this misinterpretation, auditors were confident that all allegations are taken extremely seriously. The DOCR and NDSP carry the genuine intent of ensuring sexual safety in their facility. The agency must continue to ensure that all allegations of sexual abuse and sexual harassment are investigated, regardless of whether the inmate wishes to have it investigated.

The PREA Policy is published on the DOCR’s website; it describes the investigative responsibilities of both the agency and the HP. Auditors were provided with the Highway Patrol’s Manual that guides their investigative process. It was very thorough and detailed. Again, the relationship between these two entities is strong and very beneficial.

**Corrective Action:**

None.

**Standard 115.31 Employee training**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- DOCR Staff PREA Training and Lesson Plan
- Online PREA Training

- Staff PREA Acknowledgement
- In Class PREA Training
- Training Records

**Interviews, Document and Site Review:**

Agency PREA Policy 3C-4 contains the requirements of this standard including the ten required training elements of 115.31(a). The training content and lesson plan was provided and reviewed by the auditor. The agency has a big emphasis on training and institutes quality training curricula that is generally delivered by the PREA Coordinator or PREA Compliance Manager. Different PREA topics are also covered regularly in shift briefings. This consists of PREA questions and dialogue with staff, and auditors reviewed some of the documentation in these briefings. Auditors gleaned that staff have an advanced knowledge of the PREA standards and generally how they intersect and effect other areas and departments of the facility. Moreover, staff exuded the zero tolerance policy for sexual abuse and harassment and were able to articulate their responsibilities under the agency policy and in prevention, detection, and response.

A record of PREA training for all staff was provided and training records were selected by the auditor at random and were provided for review. All staff are required to receive new hire PREA training in the classroom and then annual PREA training refreshers online. Employees sign a PREA Training Acknowledgement form for classroom training and there is an electronic acknowledgement for the online training. It states, “By signing this form, I acknowledge that I understand and will comply with all PREA requirements presented during training.”

The content, quality, and emphasis put into ensuring all staff receive and have a rich understanding of the PREA training elements and PREA standards, along with annual PREA training and the post test that is implemented, exceeds this standard.

**Corrective Action:**

None.

**Standard 115.32 Volunteer and contractor training**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- What to Volunteering in Jails and Prisons training curriculum
- In Class PREA Training
- What You Need to Know video

- PREA Acknowledgement form
- Unescorted Contractors/Volunteers Acknowledgement
- Policy 1G-1 Volunteer Program

**Interviews, Document and Site Review:**

The agency exceeds the training requirements in this standard and the PREA Policy 3C-4 thoroughly outlines this practice. The PREA Policy charges the facility PREA Compliance Manager with ensuring that all contractors and volunteers are properly trained per policy. Volunteers and contractors are categorized into two groups; escorted and unescorted. Escorted volunteers and contractors review and acknowledge the agency’s zero tolerance policy and how to report such incidents and they sign the PREA Acknowledgement form. Unescorted volunteers and contractors receive classroom PREA training that is generally conducted by the PREA Compliance Manager. This includes watching a video. The training is approved by the PREA Coordinator and is repeated every two years. NDSP reported 41 volunteers, 93 unescorted contractors, and 750 escorted contractors during the review period had been trained.

The auditor was provided the training and lesson plan used contractors and volunteers. PREA Policy 3C-4 further asserts, “Administrative services of the respective facility shall maintain documentation confirming volunteers and contractors understand the training they have received and document in ELITE each contractor or volunteer has completed the PREA training and signed the acknowledgement form, based on their level of contact with inmates.”

Interviews with 2 volunteers corroborated this to be practice. Both had been long-term volunteers and were very aware of PREA and their reporting requirements thereof.

The procedure for training contractors and volunteers; using classroom training, signed documentation, and training every two years exceeds this standard.

**Corrective Action:**

None.

**Standard 115.33 Inmate education**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- PREA postings
- PREA Inmate Video
- PREA Inmate Powerpoint

- Inmate Handbook
- New Arrival Checklist
- English Proficiency Assessment

**Interviews, Document and Site Review:**

Inmates receive initial PREA orientation at NDSP. They receive an Inmate Orientation PREA Information sheet as well as an Inmate Handbook in their property bag during orientation which contains information on definitions and how to report. Within 30 days, comprehensive education is provided by showing a PREA video titled, “PREA: What You Need to Know.” A verbal explanation of the video follows, as well as additional education on the following topics: zero tolerance policy, inmates’ right to be free from sexual abuse and harassment as well as retaliation, how to report incidents, and the agency’s policies and procedures for responding. Auditors reviewed the Inmate Handbook, which contains comprehensive information about sexual abuse and sexual harassment; definitions, methods of report, etc.

NDSP reported that during the review period, 1288 inmates were provided information at intake, and of those, 1282 received comprehensive education within 30 days. Thus, 6 did not receive comprehensive education within 30 days of intake, although, as of 10/19/16, it was provided. Inmates had a rich understanding of PREA and knew how to report incidents of sexual abuse and sexual harassment; in fact, they overwhelmingly asserted they would go to staff to report. Inmate interviews were indicative of trust and confidence in the staff and reporting system. There was no evidence that reports were being made and not investigated. All inmates interviewed felt like it was a sexually safe environment.

As explained in full in the comments of 115.16 above, inmate education is provided in formats accessible by LEP, disabled, deaf or hard of hearing, blind or visually impaired, as well as those with limited reading skills. There is audio available for blind inmates and subtitles for deaf inmates. If the need arises, staff will assist individual inmates to ensure their comprehension of the material. The agency employs a translation service, with which they have a contract, for any limited-English proficient inmates. Auditors were provided with an invoice as evidence of the service’s use. The Inmate Handbook is also available in Spanish. The Inmate Handbook contains a PREA section which outlines the definitions of sexual abuse and sexual harassment, as well as inmates’ rights to be free from sexual abuse, sexual harassment, and retaliation. It also contains grievance procedures which specifically outline sexual abuse grievances.

Auditors were provided with the inmate education videos and lesson plans to review. Inmates and intake staff were able to corroborate policy and practice. Inmates were versed in PREA; they knew how to report incidents of sexual abuse and sexual harassment, and they overwhelmingly asserted they would go to staff to report. Inmates sign an acknowledgement form for their PREA orientation. The agency maintains that documentation electronically. Auditors requested records of random inmates, which were pulled up electronically for review. All inmates reviewed contained the PREA acknowledgement form.

PREA information via posters in both Spanish and English are posted throughout the facility in abundance. Agency policy prohibits the use inmate interpreters and this was articulated in staff interviews.

The inmates’ advanced knowledge of PREA information and reporting, in addition to the trust and confidence they have in reporting, is indicative of an ideal reporting culture and exceeds this standard. The agency and facility ensure that inmates receive an abundance of PREA information and provide it in many different formats.

**Corrective Action:**

None.

## **Standard 115.34 Specialized training: Investigations**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Policy 1A-9 Professional Standards Investigations
- NDDOCR PREA Refresher and Overview

### **Interviews, Document and Site Review:**

The auditor feels the agency exceeded this standard. Agency investigators have participated in extensive specialized training delivered by The Moss Group, the online NIC specialized training for investigators, and have developed a comprehensive training curriculum for investigators. Modules of the training curriculum are: the PREA Standards, the Audit Process, Legal Issues and Agency Liability, Prosecutorial Collaboration, First Response Evidence Collection, Forensic Medical Exam, The Role of the Victim Advocate, Agency Culture, and Interviewing Victims of Sexual Abuse. The agency invites investigators from the Highway Patrol (responsible for criminal investigations) to attend training as well. The agency has built a valuable relationship with the Highway Patrol, which has resulted in the Highway Patrol being very receptive to agency needs and sharing of resources.

The auditor reviewed training materials, which addressed all required training elements of this standard as well as documentation of participation. The two (2) investigators at NDSP that were interviewed have extensive histories of conducting investigations inside and outside confinement settings. They articulated most elements of specialized training and explained the investigative process well. The agency has 36 investigators that have received this extensive training.

This training and the investigators' ability to articulate the training exceeds this standard.

### **Corrective Action:**

None.

## **Standard 115.35 Specialized training: Medical and mental health care**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- NIC Certificates of Completion

**Interviews, Document and Site Review:**

PREA Policy 3C-4 mandates specialized training for medical and behavioral health staff. NDSP employs forty-nine (49) medical and behavioral health staff and all have completed the respective online NIC course.

Medical staff employed by the agency do not conduct forensic exams. Certificates of completion were provided for review. The auditor interviewed a medical and a behavioral health staff member. Both articulated the elements of the specialized training.

**Corrective Action:**

None.

**Standard 115.41 Screening for risk of victimization and abusiveness**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Intake/Admission Screening
- PREA Assessment/Reassessment
- Temporary Leave/Transfer Screening form
- PREA Rating Assessment Manual – August 2016
- Mental Health Screening form
- Screening Records

### **Interviews, Document and Site Review:**

Beginning on page 18 of the PREA Policy, it thoroughly outlines the process for screening inmates for victimization and abusiveness. This screening process is also outlined in the PREA Rating Manual, which is used in training all staff that conduct the screening.

At NDSP, all inmates are screened using the Intake/Admission Screening form within 24 hours of admission. The Intake/Admission Screening considers all required elements of provision (d). Civil immigration is not considered since DOCR does not house for that purpose. Within 30 days, all inmates are screened again using the PREA Assessment/Reassessment Screening. Both culminate in a PREA Rating; KV (Known Victim), PV (Potential Victim), UN (Unrestricted), KA (Known Aggressor), or PA (Potential Aggressor). For transgender or intersex inmates, they shall be reassessed at least every six months per policy and the PREA Rating Manual. There is also an override process that can be used to request a PREA Rating that is higher or lower level in the event that it does not seem to reflect an inmate's risk accurately. The case manager staffs the override request with the unit team to determine whether it is warranted. NDSP reported that 1288 inmates were screened during the review period and that 1288 were reassessed within 30 days.

Anytime an inmate leaves the facility or is transferred back from another facility, all are screened again (generally by an intake case manager) using the Temporary Leave/Transfer Screening. The PREA Policy states, "This form is completed upon return from temporary leave and by the receiving facility upon transfer between DOCR facilities. This form is completed with input from the DOCR inmate. If either question on the form is marked as "yes", activate the facility coordinated response and refer to unit management."

The abbreviated Temporary Leave/Transfer Screening accounts for three dynamic factors that could change between facilities. This screening consists of three questions, as follows:

1. Does the inmate have a history of being a victim of predatory or aggressive sexual actions in an institutional setting since the last PREA Assessment?
2. Does the inmate have a history of institutional predatory behavior, including jail, since the last PREA Assessment?
3. Does the inmate verbalize fear for personal safety or sexual victimization?

The PREA Assessment/Reassessment Screening is also completed annually during reclassification and upon any triggering event such as involvement in an allegation of sexual abuse or sexual harassment. Case Managers are responsible for the completion of this, which is entered into ELITE. This practice is set forth in policy and in the PREA Rating Manual. The PREA Assessment/Reassessment Screening form is largely the same as the Intake/Admission Screening, though, it also considers institutional behavior and offenses. Both the Intake/Admission and Assessment/Reassessment Screenings are objective in that they contain a scoring mechanism that aids inter-rater reliability. In addition, staff receive training and reference the PREA Rating Manual, which also aids in inter-rater reliability.

As set forth in policy and iterated in interviews with staff that conduct the screening, inmates are not disciplined for refusing to answer questions pursuant to elements (1), (7), (8), or (9) of provision (d). Policy 3C-4 asserts, "DOCR maintains information within ELITE and FileNet that limits access to DOCR staff and ensures information is not exploited to the inmate's detriment by staff or other inmates. Staff are required to follow the DOCR confidentiality agreement."

Screening records were provided at the auditor's request, which all confirmed the process set forth in policy; were completed within the required timeframes. Many discussions and interviews were had with the PC, PCM, and screening staff which revealed a deep understanding of the purpose and process of the screening. The agency does a thorough job of screening, reassessing, and tracking the PREA Ratings of inmates. The system in place including the mandatory screening within 24 hours, the PREA Rating Alerts, training and the PREA Rating Manual, thorough

policy language, and staffs' understanding and ability to articulate the process and purpose of the screening exceeds this standard.

**Corrective Action:**

None.

**Standard 115.42 Use of screening information**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- PREA Rating Assessment Manual
- PREA Alerts
- PREA Intake Admission Screening
- PREA Assessment/Reassessment
- Policy 5A-1 Inmate Work and Correctional Industry Programs

**Interviews, Document and Site Review:**

PREA Policy 3C-4 asserts that, "Prior to housing and bed assignments, staff will review alerts within ELITE to keep separate inmates that have been identified as potential victims or known victims from known aggressors or potential aggressors."

NDSP has solid policy and practice in place to use screening information to inform housing, bed, program, and work assignments. Auditors interviewed many people regarding the screening process and use of that information. It was learned that Unit Managers make housing determinations after once an inmate completes orientation and, if an inmate is at risk, staff articulated that an inmate can be housed in a single room on the first floor of West unit. No potential or known aggressors are housed there. Interviews with a case manager and unit manager reiterated that when assessing or reassessing inmates for sexual risk, they review the case plan and reference ELITE for PREA ratings, "keep separates", incidents reports, offenses, etc. It was also reported that if, at any time, an inmate discloses victimization that would trigger a reassessment. Staff articulated that inmates with known or potential victimization ratings are not housed on the same tier as known or potential aggressors. NDSP utilizes "PREA Alerts" that are input into the electronic ELITE system in order to ensure the safety of inmates. Upon the completion of the PREA screening, any inmate identified as a potential or known victim or potential or known aggressor has a PREA Alert created. The PREA Alerts are widely and commonly used in daily operations and before placement is determined. The auditor was provided a printout of the PREA Alerts generated from iTAG. This list identified all inmates by their PREA rating, which identified most inmates to be Unrestricted (not deemed as high risk or potential risk). This list and other

documentation indicated that those inmates at high risk for victimization were in fact being kept separate from those inmates at high risk for being sexually aggressive. There are periods of time when tiers can mix such as in the dayroom on Saturdays and during meal times. Staff seem to be very aware of PREA ratings and incorporate that into supervision of inmates.

Upon review of the PREA Rating Manual, it was also noted that “rules” are outlined for housing according to PREA Ratings, as follows:

- A. Known Victims shall be housed only with other Known Victims, Potential Victims, or Unrestricted.*
- B. Potential Victims shall only be housed with other Potential Victims, Unrestricted, or Known Victims.*
- C. Unrestricted can be housed with any: Known Victims, Potential Victims, Unrestricted, Potential Aggressors, or Known Aggressors.*
- D. Potential Aggressors shall either be housed with other, Potential Aggressors Unrestricted or Known Aggressors.*
- E. Known Aggressors shall only be housed with other Known Aggressors, Potential Aggressors, or Unrestricted.*
- \*Known Victims and Potential Victims should never be housed with Potential Aggressors or Known Aggressors.*
- F. Known Victims and Potential Victims may participate in programming and work assignments with Known Aggressors and Potential Aggressors as long as there is adequate staff supervision.*

It was evident through staff interviews that individualized determinations are made for inmate safety. The iTAG alert system in ELITE is a key resource for doing so. For the placement and programming of transgender and intersex inmates, PREA Policy 3C-4 provides a detailed procedure for doing so. In deciding male or female facility, as well as housing and programming, a multi-disciplinary team consisting of staff from security, medical, unit management, behavioral health, and administration would make those determinations on a case-by-case basis. It is also mandated that reassessments will be completed at least twice per year by case management staff and documented in the case contact notes. Policy, practice, and staff interviews supported that an inmate’s own views would be taken into consideration.

Except for a few areas in the living units, showers are individual showers with curtains; thus, inmates can shower separately regardless of their gender identity or status. It was consistently reported by staff, in the event of the admittance of a transgender/intersex inmate, that a separate shower and/or shower time would be implemented.

The site review and reviewing of rosters and PREA ratings and other documentation along with staff and inmate interviews, the auditor concluded that gay, bisexual, or transgender inmates are not housed on a dedicated wing or unit.

In regard to work and program assignments, Policy 5A-1 Inmate Work and Correctional Industry Programs cites general language, as follows:

*A unit manager shall chair the Job Placement Committee and coordinate the assignment of inmates with the Chief of Security and work supervisors who will maintain a list of eligible qualified inmates, and assign the inmate to job assignments in their work area. The unit manager will make an effort to assign inmates to jobs appropriate to their aptitude and skills and to maintain the security and operational needs of the institution.*

While auditors believe that it is done in practice, making work and program assignments could be strengthened by ensuring (and/or including such policy language) that risk of sexual victimization and abusiveness be considered when making job and program assignments. The use of the Inmate Employment-Security Risk Assessment and practice that is used at the JRCC facility is a promising practice.

**Corrective Action:**

None.

**Standard 115.43 Protective custody**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Segregation Policy 3A-18
- Administrative Segregation Referral/Hearing/Review form

**Interviews, Document and Site Review:**

Through interviews of staff, administration, and inmates, auditors felt confident that it would be a rare occasion for NDSP to place an inmate at high risk of sexual victimization into isolation. During the review period, no inmates were placed in PC for risk of sexual victimization. If an inmate were to be placed into PC, a review period, as outlined in policy, would ensue. The agency has a strong practice of considering isolation only as a last resort.

PREA Policy contains the language of this standard and, in fact, exceeds the standard in stating, “Every seven days for the first two months and then 30 days thereafter, the Administrative Segregation review team shall afford each inmate a review to determine whether there is a continuing need for separation from the general population.”

PC inmates are afforded opportunities for programs, services, and privileges as outlined in policy 3A-18. There were no instances to review, but staff and inmates reported that these are available to inmates in isolation.

It was evident to auditors that NDSP goes to great lengths to explore every alternative placement before placing an alleged victim in involuntary isolation. In the rare instance this is done, an inmate is placed there for the shortest time possible. The Administrative Segregation Referral/Hearing/Review form captures the documentation, monitoring, and review of any inmate in segregation. The form designates by checkbox whether it is a referral, hearing, review, 7 day, or 30 day. It then captures the recommendations and rationale, chairmen, members, and wardens’ names and whether each agree or disagree. Finally, the warden has comments and signs off at the bottom.

**Standard 115.51 Inmate reporting**

- Exceeds Standard (substantially exceeds requirement of standard)

- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- PREA signage
- Inmate Handbook
- Highway Patrol MOU and email confirmation
- North Dakota Century Code 12-47.17
- Friends/Family Poster
- Staff Poster

**Interviews, Document and Site Review:**

Set forth in the PREA Policy 3C-4 and evident in practice, the agency/facility provides multiple avenues of inmate reporting: verbally or in writing to staff; the Highway Patrol form, internal and external hotlines, 3rd party. Inmates were very well versed in their knowledge of multiple reporting methods and were very comfortable in reporting to staff, which seemed to be their first and preferred method of report. This indicated a high level of trust and confidence in reporting to staff. There were no indications from inmate or staff interviews that inmates were reporting but receiving no response. Inmates and staff were aware of who serves as the PREA Coordinator and PREA Compliance Manager, and they reported that they would report to those entities if needed. Staff reported that they accept reports from inmates in writing and from third parties, and that they would treat all reports in the same manner and in accordance with policy.

Inmates have avenues to report external to the agency via the National Sexual Assault hotline and/or to the Highway Patrol (using a specified form available to inmates). This information is posted around the living units and is visible to inmates on an on-going basis. Tour staff and the PREA Coordinator reported that monthly checks are done to ensure that the information is still posted and visible.

Just Detention International is also listed on the PREA poster as a method of external report when this is an avenue of external emotional support, not for reporting, since JDI cannot refer a report back for investigation. It is recommended that the verbiage on the poster be changed to reflect this. This verbiage is also contained in the Inmate Handbook, therefore, it is also recommended that this be clarified in this document as well.

Reporting mechanisms and comprehensive PREA information is also found in the Inmate Handbook. Internal and external avenues of reporting is listed. The PREA Policy lists 5 ways of internal report including the hotline number and the address of the Highway Patrol. The agency has exceeded the standard in providing and conveying the methods of reporting in that it is so abundantly posted and repeatedly conveyed to staff and inmates as well as being available in the Inmate Handbook and being articulated so well by staff and inmates. In addition, the agency has established an MOU with the Highway Patrol for responding to inmate correspondence. The PREA Coordinator also provided the auditor with email confirmation from the HP that the MOU is still in place and effective.

Staff can also report sexual abuse or sexual harassment privately to their supervisor, PREA Coordinator, PCM, or any other leadership. Staff are informed in a variety of ways to include: Orientation, annual training, policy, staff posters, and annual performance appraisals.

**Corrective Action:**

None.

**Standard 115.52 Exhaustion of administrative remedies**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Inmate Handbook
- Grievance form
- Written Notification of Extensions

**Interviews, Document and Site Review:**

DOCR does have administrative procedures to address inmate grievances. Pages 22 & 23 of the PREA Policy 3C-4 cites each provision of this standard and the Inmate Handbook also has information congruent to the policy informing inmates that there is no time limit or informal resolution required for sexual abuse grievances. It contains grievance procedures which specifically outline sexual abuse grievances and emergency grievances.

Grievances are logged and tracked electronically, but NDSP had no sexual abuse grievance or emergency grievances filed during the review period.

Inmate interviews revealed that inmates were clearly aware of the grievance procedures and that it can be used for reporting sexual abuse or sexual harassment. The auditor was not made aware, by inmates, of any sexual abuse grievances that had been filed. NDSP also reported no inmate grievances that resulted in disciplinary actions for filing in bad faith.

**Corrective Action:**

None.

**Standard 115.53 Inmate access to outside confidential support services**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Inmate Handbook
- PREA signage
- AARC Agreement
- Email correspondence with AARC

**Interviews, Document and Site Review:**

PREA Policy 3C-4, page 23-24, outlines inmate access to emotional support services. NDSP has an abundance of PREA signage around the facility. The signage contains mailing addresses and phone numbers for Just Detention International and the National Sexual Assault hotline. Information regarding the level of confidentiality is on the PREA signage; specifying that that Internal hotline is a toll free recorded call, but that the external hotline to the National Sexual Assault hotline is “toll free, not recorded, confidential.”

The agency now has an agreement with a local rape crisis center; the Abused Adult Resource Center (AARC). The Agreement was provided for review as was written correspondence with the local provider. The Agreement states that if an inmate is brought to the local hospital, advocacy would be provided. The agreement does not state that emotional support will be offered after the forensic exam.

A representative from AARC was present during portions of the audit and corroborated the information provided to the auditor. Inmates could receive additional emotional support from a behavioral health staff at the facility or through JDI or the National Sexual Assault hotline.

Information on how to contact outside support services is also provided in the inmate handbook, which is given to each inmate as part of their inmate orientation. Inmates and staff were aware of this service, and almost all commented on the posters hung in the living unit areas which contained the instructions on how to make contact. Inmates are not held at NDSP solely for civil immigration purposes, therefore, information to immigrant services is not applicable.

The efforts to secure services through the local rape crisis center, which entailed securing funds and maintaining a good relationship, along with conveying the 2 other sources of emotional support services exceeds this standard. Having the representative attend a portion of the audit was indicative of the nature of the relationship between the entities.

**Corrective Action:**

None.

### **Standard 115.54 Third-party reporting**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Family and Friends PREA poster
- Agency website

#### **Interviews, Document and Site Review:**

PREA Policy states that the agency publishes third party reporting information on the agency website. Upon review of the website, this was confirmed. In addition, “Family and Friends” PREA signs are posted in the inmate visiting area which contains third party information. These posters are in English as well as Spanish. The posters provide contact information for the Warden, PCM, and PC.

Interviews with staff and inmates revealed an in-depth knowledge about how a person can make a report on someone else’s behalf.

#### **Corrective Action:**

None.

### **Standard 115.61 Staff and agency reporting duties**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific**

## **corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Limits to Confidentiality poster

### **Interviews, Document and Site Review:**

PREA Policy 3C-4 outlines that all staff are required to report immediately to their supervisor any knowledge, suspicion, or information regarding instances of sexual harassment or sexual abuse, and any cases of retaliation against staff or inmates who report. This includes any third-party or anonymous reports. The policy also prohibits staff from revealing information about such cases to anyone other than those with a need to know.

All staff interviewed were aware of the facility policy, their duty to report, and of the many ways available to report. Staff were aware that they are obligated to keep information about cases of sexual harassment and sexual abuse confidential. Mental Health and Medical staff interviewed said they informed inmates of their duty to report and the limitations of confidentiality. Inmates are provided with limitations to confidentiality upon intake, and the information is posted as well.

### **Corrective Action:**

None.

## **Standard 115.62 Agency protection duties**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4

### **Interviews, Document and Site Review:**

PREA Policy 3C-4 contains language from this standard. All staff interviewed, as well as the Agency Head, Warden, and Deputy Warden reported they would take immediate action if they learned an inmate was subject to a substantial risk of imminent sexual abuse. Interviews with staff including the Warden, shift supervisor, and the PCM, indicated that sexual safety for inmates is a high priority. Staff were able to articulate numerous options available that could be implemented to ensure inmate safety to include movement to another housing unit, or if needed separation by segregation, if no other options were available. It was clear that the use of segregation is not the first option, and when it is necessary, it is for the shortest period of time possible.

There were no instances of an inmate being at risk of imminent sexual abuse during the reporting period.

**Corrective Action:**

None.

**Standard 115.63 Reporting to other confinement facilities**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Risk Management Incident Report form

**Interviews, Document and Site Review:**

PREA Policy 3C-4 outlines clearly the steps to be taken upon receipt of an allegation that an inmate was sexually abused at another facility, including notifying the facility head where the alleged abuse occurred within 72 hours. It further states that this notification shall be documented using the Risk Management Incident Report form.

An interview with the Agency Head and PREA Compliance Manager revealed that they were fully aware of the requirements set forth by the PREA standards and their policy. There were 5 reports received from inmates during the reporting period of sexual abuse that allegedly occurred at other institutions. These instances are documented on the Investigation Log under a tab called “referrals from other confinement facilities.” These 5 instances were documented and reviewed by auditors and met the requirements of this standard and agency policy.

There were no reports received by the agency from other institutions about sexual abuse that occurred at one of the DOCR facilities.

**Corrective Action:**

None.

**Standard 115.64 Staff first responder duties**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the

standard for the relevant review period)

- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Coordinated Response document

**Interviews, Document and Site Review:**

PREA Policy 3C-4 does an exceptional job of outlining the duties of first responders, including the expectations for security staff, medical staff, behavioral health staff, the shift supervisor, the investigator, and PCM.

The facility has developed a flow chart, DOCR Coordinated Response, that illustrates what actions are required, and who is responsible to complete each task. Through interviews with security staff and the shift supervisors, it was evident they were well aware of their duties as first responders. Staff understood not just the needed actions, but why the actions were important. It was reiterated by staff that inmate sexual safety is of the utmost importance, and that they have been well trained to ensure victims and perpetrators are separated and kept safe, and to preserve evidence. Documentation that staff were trained on their duties as first responders was provided. The auditor felt like staff knowledge and their ability to articulate first responder duties exceeded this standard. They articulated an advanced knowledge not only of their duties but of other aspects of coordinated response and first responder duties.

NDSP reported 13 allegations of sexual abuse during the review period and 6 of those the staff first responder separated the alleged victim from the alleged abuser. One of those instances occurred within a time frame that still allowed for the collection of evidence and the first responder took actions to protect and preserve the evidence.

One instance the first responder was a non-security staff member (the PCM), in which the PCM requested that the victim not take actions that may destroy evidence and also notified the Warden and PC.

**Corrective Action:**

None.

**Standard 115.65 Coordinated response**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the**

**auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Coordinated Response document

**Interviews, Document and Site Review:**

The DOCR Coordinated Response document was provided for review and is Policy 3C-4 is a one-page handout/poster that outlines immediate response on the floor for first responders, supervisors, medical, mental health, investigators, PCM, and PREA Coordinator. This document was posted around the facility abundantly to be visible and redundant to staff and inmates as well.

The PREA Policy 3C-4 and PREA training lesson plan also outlines the coordinated response. Staff interviews conveyed that the coordinated response is well permeated throughout the facility. The abundant posting of the coordinated response, as well as it being in policy and training, and staff’s ability to articulate so well exceeds this standard. Staff understood not just the needed actions, but why the actions were important. Again, it was evident that staff take inmate sexual safety seriously, and that they have been well trained to insure victims and perpetrators are separated and kept safe, and to preserve evidence.

**Corrective Action:**

None.

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

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)
- Not Applicable

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Collective Bargaining document

**Interviews, Document and Site Review:**

This standard is not applicable as North Dakota state law does not allow collective bargaining in any fashion. A

document stating such was provided for review and was also confirmed through interviews with the Agency Head.

**Corrective Action:**

None.

**Standard 115.67 Agency protection against retaliation**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Retaliation log

**Interviews, Document and Site Review:**

The PREA Policy 3C-4 outlines compliance with this standard and charges the PREA Compliance Manager with the task of monitoring for retaliation. The retaliation language reads as follows:

*The DOCR PREA compliance manager at each DOCR facility protects all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff. The PREA compliance manager in conjunction with the warden of the facility shall ensure multiple protection measures are available, including housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff that fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations. For at least 90 days following a report of sexual abuse or sexual harassment, the PREA compliance manager shall monitor the conduct and treatment of inmates or staff who reported the sexual abuse or sexual harassment of inmates who were reported to have suffered sexual abuse or sexual harassment to determine if there are changes that may suggest possible retaliation by inmates or staff, and shall act promptly to remedy any such retaliation. Items the facility should monitor include inmate disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The DOCR shall continue monitoring beyond 90 days if the initial monitoring indicates a continuing need. In the case of inmates, monitoring shall also include monthly status checks documented in case notes in ELITE. If any other individual who cooperates with an investigation expresses a fear of retaliation, the warden shall take appropriate measures to protect that individual against retaliation. DOCR’s obligation to monitor terminates if the DOCR determines that the allegation is unfounded.*

As noted in the above policy excerpt and observed in practice, NDSP/DOCR exceeds this standard by monitoring retaliation of both sexual abuse and sexual harassment. The auditor reviewed investigative files which contained documentation for monitoring retaliation. The PREA Compliance Manager meets with the inmate periodically,

checks ELITE for Incident Reports, housing/job changes. The PCM inquires directly with the inmate about their feeling of safety; whether they feel they are being targeted, etc. At the conclusion of the monitoring it then accompanies the investigative file.

NDSP reported one allegation of retaliation occurred during the reporting period, which was documented and tracked on the Retaliation Log. Auditors were provided the documentation, which was reviewed and included the investigative report that resulted. The allegation of retaliation was substantiated and appropriate action was taken against the staff member that retaliated.

**Corrective Action:**

None.

**Standard 115.68 Post-allegation protective custody**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4

**Interviews, Document and Site Review:**

The PREA Policy 3C-4 addresses this standard. As noted in the comments of standard 115.43, staff and leadership exuded a strong practice of only using solation as a very last resort. If needed, an inmate could be separated by other means without the need to place an inmate into isolation. During the review period, no inmates were placed in isolation involuntarily after alleging sexual abuse. If an inmate were to be placed into isolation/PC, a review period, as outlined in policy, would ensue. The agency has a strong practice of considering isolation only as a last resort.

PREA Policy contains the language of this standard and, in fact, exceeds the standard in stating, “Every seven days for the first two months and then 30 days thereafter, the Administrative Segregation review team shall afford each inmate a review to determine whether there is a continuing need for separation from the general population.”

PC inmates are afforded opportunities for programs, services, and privileges as outlined in policy 3A-18. There were no instances to review, but staff and inmates reported that these are available to inmates in isolation.

It was evident to auditors that NDSP goes to great lengths to explore every alternative placement before placing an alleged victim in involuntary isolation. In the rare instance this is done, an inmate is placed there for the shortest time possible. The Administrative Segregation Referral/Hearing/Review form captures the documentation, monitoring, and review of any inmate in segregation. The form designates by checkbox whether it is a referral, hearing, review,

7 day, or 30 day. It then captures the recommendations and rationale, chairmen, members, and wardens' names and whether each agree or disagree. Finally, the warden has comments and signs off at the bottom.

**Corrective Action:**

None.

**Standard 115.71 Criminal and administrative agency investigations**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Professional Standards Investigations Policy 1A-9
- Criminal Intelligence and Investigations Policy 1A-27
- Correspondence: Referrals for Criminal Investigations Within the DOCR
- North Dakota Highway Patrol Policy 4.3
- HR correspondence
- Investigative files

**Interviews, Document and Site Review:**

The auditor received an abundance of documentation outlining practice regarding the conduct of administrative and criminal investigations in the agency. The agency conducts administrative investigations and does have the authority to conduct criminal investigations as well since some personnel and investigators are certified peace officers. The PREA Coordinator provided documentation that, in part, stated:

*In the last legislative session HB 1118 amended NDCC 12-59-20 authorizing DOCR Probation and Parole Officers to enforce the law, conduct investigations, and make arrests of violations of law on or within any premises under the control of the DOCR.*

*This amendment was proposed and passed in order to reduce the calls for service to the NDHP by using our own uniquely trained licensed peace officers to investigate criminal charges on DOCR grounds.*

Though DOCR has the authority to conduct criminal investigations, generally the Highway Patrol is called in for criminal investigations; in particular any high profile or sensitive investigations. Investigations are initiated and conducted promptly and thoroughly and investigators at DOCR and the Highway Patrol have been extensively trained on conducting sexual abuse investigations in confinement (see also 115.34). It was articulated by policy and practice (in interviews) that substantiated allegations are referred for prosecution, though, NDSP reported that there

were no substantiated investigations during the review period that appeared to be criminal and were referred for prosecution. The Director of Professional Standards was very impressive in his articulation of the elements of specialized training and investigative process. Investigations are documented in a standard format using the Investigative Report form. After completion, each report is reviewed for quality control and revised if needed. It was also articulated by investigative staff, leadership, and informal discussion that the departure of an alleged victim does not allow for the termination of an investigation. The agency has a good working relationship with the Highway Patrol and the prosecuting attorney which enables communication throughout the investigative process.

The agency has 36 trained investigators and are appropriately assigned on a case-by-case basis. Auditors were provided access to the PREA investigation log and investigative reports. Review of investigative files revealed thorough information in most reports such as the inmates' PREA Rating, current charges, prior PREA incidents, and placement of the inmate once the allegation was received. While most investigations contained very good documentation, this could be strengthened if all investigative files met the same high quality of content. The auditor recommends that all investigators ensure this information is included. The auditor requested some additional information and clarification on some investigations.

There were 42 allegations of sexual abuse and sexual harassment reported on the Pre-Audit Questionnaire (PAQ) during the reporting period of 8/1/15-7/31/16; 35 of those resulted in an administrative investigation, and 0 were referred for criminal prosecution. This volume of allegations is consistent with the allegations and investigations from the previous PREA audit.

From review of the Investigation Log provided (looking at date range 8/1/15-7/31/16), the auditor noted a total 46 total allegations, which broke down in the following way:

- 21 Inmate-on-Inmate (2 sexual abuse, 18 sexual harassment): 5 substantiated, 5 were unsubstantiated, 9 were unfounded, 1 was "use of obscene language," 1 was "horseplay, not PREA," 0 were "declined"
- 15 Staff-on-Inmate (5 SA, 10 SH): 2 substantiated, 1 unsubstantiated, 1 "Not PREA", 10 unfounded, 1 unfounded (IM refused to cooperate), 1 "IM asked the allegation be dropped"
- 10 third party reports (5 SA, 5 SH): 1 substantiated, 1 unfounded, 7 did not list dispositions (4 of those "declined investigation")

Auditors had many discussions throughout the onsite and post audit regarding investigations. It was discovered that, because of a misinterpretation of the standard, there appeared to be a few allegations that were preliminarily investigated, but not fully investigated because the inmate opted not to have it investigated. NDSP documented these allegations on the log and provided the preliminary investigation documentation for auditor review, though clarification was provided by the auditors that an inmate cannot choose to not have an allegation investigated and it is still the agency's obligation to follow through with an investigation. This was received openly and practice was immediately amended to comply. Despite this misinterpretation, auditors were confident that all allegations are taken extremely seriously. The DOCR and NDSP carry the genuine intent of ensuring sexual safety in their facility. The agency must continue to ensure that all allegations of sexual abuse and sexual harassment are investigated, regardless of whether the inmate wishes to have it investigated.

**Corrective Action:**

None.

**Standard 115.72 Evidentiary standard for administrative investigations**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the

standard for the relevant review period)

- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4

**Interviews, Document and Site Review:**

PREA Policy 3C-4 states, “The DOCR may not impose a standard higher than a preponderance (more than 50 percent) of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.”

Interviews with staff at all levels knew and understood the evidentiary standard. The investigator that was interviewed also explained the definition of the case dispositions; substantiated, unsubstantiated, and unfounded. Information about the evidentiary standard is also given to inmates during their orientation period at the facility.

**Corrective Action:**

None.

**Standard 115.73 Reporting to inmates**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period), and Site Tour:
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Notice of PREA Investigation Status
- Investigative files

**Interviews, Document and Site Review:**

The PREA Policy 3C-4 addresses each provision beginning on page 35 and outlines the method of compliance by stating that the PREA Investigator or staff designated by the PREA Investigator will inform the inmate. Then if the

Highway Patrol conducts the investigation, the information will be requested in order to inform the inmate. The policy further states that the investigator will deliver the findings in person and will obtain the inmate's signature. The facility provided the Notice of PREA Investigation Status, which is used to document this process.

On the Pre-Audit Questionnaire (PAQ), NDSP reported eight (8) investigations and of those, six (6) inmates were notified. Upon request, the auditor received clarification and additional documentation from the PCM. Notice of PREA Investigative Status forms were provided for the two (2) inmate-on-inmate sexual abuse allegations, for three (3) of the five (5) staff-on-inmate allegations (for the remaining two, documentation reflected that the inmates did not cooperate with the investigation), and for two (2) of the four (4) third party allegations. Interviews with inmates who had made a report indicated that they were aware of the outcome of the investigation. All notifications or attempted notifications of the final determination of the allegation are stored in FileNet. One thing to note is that NDSP shall now not allow an inmate (see 115.22 and 115.71), in any instance, to opt out of having an allegation investigated. Therefore, notifications will be provided, for example, for third party reports of sexual abuse notwithstanding whether the inmate wants the allegation investigated.

**Corrective Action:**

None.

**Standard 115.76 Disciplinary sanctions for staff**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Investigative files
- Investigation Log

**Interviews, Document and Site Review:**

The PREA Policy 3C-4 cites each provision of this standard, but goes further to state, "Employees shall cooperate fully by providing all pertinent information during the investigation. Failure of an employee to answer any inquiry fully will be grounds for disciplinary action. Employees make not make any attempt to contact that inmate victim from the time the allegation is first made, until the completion of the investigation."

During the review period there were 2 staff that were terminated for violating sexual abuse/harassment policy. One staff member was disciplined for violating PREA policy but was not terminated and one of the staff members that was terminated was also reported to licensing bodies. DOCR adheres strictly to their policies regarding sexual abuse and sexual harassment (among others). They are very vigilant of staff actions and failures that may contribute to

sexual abuse or sexual harassment.

**Corrective Action:**

None.

**Standard 115.77 Corrective action for contractors and volunteers**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Citizen Involvement and Volunteers Policy 1G-1

**Interviews, Document and Site Review:**

The PREA Policy 3C-4 states:

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

Additionally, Citizen Involvement and Volunteers Policy 1G-1 states:

*All DOCR institutions, departments and divisions shall have procedures in place to secure volunteers for involvement in programs which may include service as advisors, faith based interpreters and other similar direct service roles. Directive and expectations shall also govern the recruitment, screening, selection, orientation, training, official registration, identification and supervision of volunteers and interns that allows recruitment from all cultural and socioeconomic parts of the community.*

NDSP reported there to be no volunteers during the review period that violated, or were alleged to have violated, the PREA Policy.

**Corrective Action:**

None.

**Standard 115.78 Disciplinary sanctions for inmates**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Inmate Handbook

**Interviews, Document and Site Review:**

The PREA Policy 3C-4 cites each provision of this standard and asserts that behavioral health staff shall consider, as a condition of access to programming or other benefits, whether to require the offending inmate to participate in therapy, counseling or other interventions designed to address and correct underlying reasons or motivations for the abuse.

The auditor learned that inmates are subject to discipline following a formal process and discipline committee. This process is thoroughly outlined in the Inmate Handbook as well and appears to commensurate with the nature of the abuse committed. The Inmate Handbook (and policy) prohibits all sexual activity between inmates.

Interviews with staff indicated that sanctions are determined based on the severity of the violation and the inmate’s disciplinary history. In cases where the inmate has mental health issues, his disability is considered in determining his penalty. This was confirmed in interviews with the behavioral health director who further explained there is a system that places an inmate with severe or considerable mental health issues on the Special Needs list. If an inmate is on this list, the primary counselor and often their supervisor will be consulted to determine whether a sanction (or what sanction) is appropriate.

Review of investigations resulted in heavy discussion about one investigation in which inmate discipline resulted. The original investigative documentation given did not seem to demonstrate that the inmate made the report in bad faith. Auditors requested and were provided additional documentation. The PREA Coordinator and PCM recalled the report and explained they felt it was made in bad faith. The documentation did not necessarily capture that definitively and auditors recommend that documentation be enhanced when an inmate is disciplined for making an allegation of sexual abuse or sexual harassment. The agency should only discipline an inmate if the agency is able to demonstrate that the report was made in bad faith.

**Corrective Action:**

None.

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

- Exceeds Standard (substantially exceeds requirement of standard)

- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Sexual Risk Notification
- Authorization to Disclose Information
- Mental Health Screening

**Interviews, Document and Site Review:**

The PREA Policy 3C-4 cites this standard. Upon admission to NDSP, case managers review the inmate’s PREA Intake/Admission Screening complete the PREA Assessment/Reassessment. If it indicates a “yes” regarding sexual perpetration or victimization, the case manager is charged with notifying behavioral health. This was articulated by the case manager that was interviewed. A memo was provided pre-audit that explained that the follow-up meeting with a medical or mental health practitioner is recorded in ELITE case notes.

The auditor reviewed documentation of several inmates who had reported previous sexual victimization upon admission, which showed the referral to behavioral health. Mental Health Screening forms of several inmates showed that “yes” response to sexual victimization and on the same form it documents that a referral was sent to the treatment division. Reviewer notes at the bottom of the form address the inmate’s report, follow up, and state of mind. Very good documentation. NDSP reported that 100% of inmates that disclosed victimization upon admission were offered a follow up.

An authorization form was provided for auditor review which is used for disclosing inmate information.

Information related to sexual victimization and/or abusiveness seemed to be limited to staff with a need to know and that was well articulated throughout interviews with random and specialized staff.

**Corrective Action:**

None.

**Standard 115.82 Access to emergency medical and mental health services**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- North Dakota Century Code 12.1-34-07

**Interviews, Document and Site Review:**

The PREA Policy cites all provisions of this standard. Medical and behavioral health staff were aware of the requirements of this standard as indicated in interviews. It was clear that inmates would be offered timely and unimpeded access to emergency medical and behavioral health. North Dakota Century Code 12.1-34-07 was provided and states, “the costs incurred by a health care facility or health care professional for performing the acute forensic medical examination or any preliminary medical screening examination may not be charged, either directly or through a third-party payer, to the alleged victim.”

Providing access to emergency medical and behavioral health, and documenting such services, is a well institutionalized practice at this agency and at NDSP. Many mechanisms capture this documentation.

**Corrective Action:**

None.

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

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- North Dakota Century Code 12.1-34-07

**Interviews, Document and Site Review:**

The PREA Policy 3C-4 cites all provisions of this standard.

NDSP is responsive to medical and mental health needs of victims of sexual abuse. Behavioral health and medical staff at the facility meet on-going needs and medical treatment is obtained through the Sanford Hospital if needed. Interviews with medical and behavioral health staff indicated that inmates who report sexual abuse are treated and evaluated very quickly once staff become aware of the report. They reported that the level of care is likely better than that of the community due to the availability and promptness of services. NDSP does not house female inmates, so provisions (d) and (e) are not applicable. Inmate victims of sexual abuse would initially be offered tests and treatment for STI's as part of a forensic exam. Follow up would be offered at the facility by medical staff and in accordance with follow up instructions. As stated in policy and in North Dakota Century Code 12.1-34-07 (See 115.82), services are offered without cost to the victim. Regarding provision (h), the behavioral health supervisor reported that known inmate-on-inmate abusers are evaluated. It was further stated that sex offender treatment is offered at NDSP and that there is a process for determining eligibility. It was further stated that if an inmate has sexually perpetrated against another inmate, their treatment would be given priority.

**Corrective Action:**

None.

**Standard 115.86 Sexual abuse incident reviews**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Sexual Abuse Incident Response Team (SAIRT) documentation
- Investigative files memo
- Memo to Wardens and PCM's

**Interviews, Document and Site Review:**

The PREA Policy 3C-4 outlines the agency procedures for conducting sexual abuse incident reviews. It states, "The review team may include PREA coordinator, facility PREA compliance manager, behavioral health staff, investigator, and assigned facility staff. The results of the review will be provided to the warden."

Policy 3C-4 also states that the SAIRT report will be submitted to "the PREA compliance manager, PREA Coordinator, Warden, Director of Operations, and Director of DOCR" as well as the following: "The facility warden shall provide a written response to the Director of DOCR within 60 days of receiving the findings report of the review team. The warden's response must include an implementation plan of recommendations and the justification for not implementing recommendations. The report and response will be stored in the PREA drive." Thus, the

policy language exceeds the standard as does the practice of conducting incident reviews of both substantiated and unsubstantiated sexual abuse *and* sexual harassment.

All reviews conducted were provided for auditor review and supported the practice as set forth in policy. The facility conducts more than one review of each incident. Documentation provided showed that each incident was reviewed within 30 days after the completion of the investigation. Additionally, all six of the review requirements from the standard are considered during the review. All reviews are facilitated by the PREA Coordinator. Interviews and discussion with the PREA Coordinator and PREA Compliance Manager, as a member of the SAIRT, indicated that this is well institutionalized practice. Documentation of recommendations implemented as a result of SAIRT's was provided and were also pointed out during the site review.

A memo document summarizing SAIRT activity for the agency was provided. For NDSP it stated the following:

*NDSP-from 05/02/2015 to 11/01/2016 the NDSP SAIRT has reviewed a total of two incidents of inmate on inmate abusive sexual contact. One of which was substantiated, one of which was unsubstantiated. It is noted that one incident of substantiated staff sexual misconduct was indicated. While not required for review, every incident of sexual harassment is reviewed including one incident of substantiated staff sexual harassment. During the review, the SAIRT found no evidence of indicated need for any of the requirements of 115. 86 d.1-5 or 115. 86 e. A SAIRT review for each incident is available per 115.86 d-6. In addition, the NDSP SAIRT reviews all incidents of sexual harassment as well. These forms are available for auditor review.*

**Corrective Action:**

None.

**Standard 115.87 Data collection**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- Survey of Sexual Victimization
- Data collection form

**Interviews, Document and Site Review:**

The PREA Policy 3C-4 cites each provision of this standard.

DOCR collects data from every allegation of sexual abuse and sexual harassment using the definitions set forth in the PREA standards, which are also the definitions set forth in their policy. Data is collected, aggregated, and utilized

in many ways. It is compiled in the Investigation Log that is maintained on an on-going basis and for the Survey of Sexual Victimization (SSV) on an annual basis. The PREA Coordinator is responsible for collecting and aggregating department data on at least an annual basis.

DOCR also collects sexual abuse data from each of the contracted facilities who house inmates for the department. A monthly email reminder is sent out to the contract facilities, and it is reported on a specific form. The auditor reviewed the form, as well as examples of data that had been reported.

**Corrective Action:**

None.

**Standard 115.88 Data review for corrective action**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- 2014 Annual PREA Report
- 2015 Annual PREA Report
- Agency website
- Corrective action document

**Interviews, Document and Site Review:**

The PREA Policy cites each provision of this standard.

The auditor was provided with the agency’s Annual PREA Report. The report identifies problem areas, contains aggregated PREA data in graphs that illustrate comparative data from previous years. The report also identifies proposed corrective actions at the agency level and at the facility level. The report was written by the PREA Coordinator and was reviewed and approved by the agency director. Both the 2014 and 2015 Annual Reports are posted on the department’s public website: <http://www.nd.gov/docr/prea>

**Corrective Action:**

None.

**Standard 115.89 Data storage, publication, and destruction**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

**In order to make my determination, I reviewed the following policies and other documentation:**

- PREA Policy 3C-4
- North Dakota Century Code 25.03-3-04
- Agency Website

**Interviews, Document and Site Review:**

The PREA Policy 3C-4 addresses this standard. It states that data is securely retained in the FileNet system, that they will be retained for at least 10 years, and “All case records associated with claims of sexual abuse, including incident reports, investigation reports, inmate information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment and counseling will be retained in accordance with North Dakota statute.”

North Dakota Century Code 25.03-3-04 states that the records must be retained for 50 years.

Links to “PREA Information” for contracted facilities was also noted on the agency website. A review of the website was completed to ensure that no staff or inmate personal identifiers were posted. The website address is <http://www.nd.gov/docr/prea/>.

**Corrective Action:**

None.

**AUDITOR CERTIFICATION**

I certify that:

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

Talia Huff

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2/10/17

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Auditor Signature

Date