Report on Sexual Victimization in Prisons and Jails

Review Panel
on Prison Rape

April 2012

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G. J. Mazza, Editor

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Review Panel on Prison Rape, U.S. Department of Justice, Washington, DC (April 2012)

Review Panel on Prison Rape

Dr. Reginald A. Wilkinson is currently the president and chief executive officer of the Ohio College Access Network. He is the former executive director of the Business Alliance on Higher Education and the Economy. He worked with the State of Ohio Department of Rehabilitation since 1973, and prior to his retirement, he served as its director for sixteen years. Dr. Wilkinson is also a past president of the American Correctional Association (ACA) and the Association of State Correctional Administrators (ASCA). He is a past chairperson of the National Institute of Corrections Advisory Board on which he still serves as a member. Dr. Wilkinson has authored numerous articles on a variety of correctional topics, and he has received awards from many organizations, including the National Governors Association, the ACA, the ASCA, the International Community Corrections Association, the National Association of Blacks in Criminal Justice, and the Volunteers of America. Dr. Wilkinson's academic background includes a bachelor's degree in political science and a master's degree in higher education administration, both from The Ohio State University. He earned a doctorate in education from the University of Cincinnati.

Dr. Gary E. Christensen has worked within the correctional field for the past thirty-three years. He has researched extensively the premise of evidence-based or outcome-driven practice within a correctional milieu and initiated several innovative correctional programs, including the Dutchess County Jail Transition Program, which has been recognized nationally for significant recidivism reduction and the enhancement of general public safety. In addition to his responsibilities as jail administrator, Dr. Christensen also served in an advisory capacity to the executive and legislative branches of county government as chair of the Dutchess County Criminal Justice Council. He authored legislation to counter the effects of police racial profiling, and he coordinated master planning for the criminal justice system, implementing system-wide, evidence-based, criminal justice practice. For his many contributions to the field of corrections, Dr. Christensen has received recognition from numerous local and state entities. In 2007, he received national acclaim by being named the Jail Administrator of the Year by the American Jail Association**.** Since his retirement from public service, Dr. Christensen, as president of Corrections Partners, Inc., continues to work with leaders throughout the field of criminal justice to enhance the implementation of evidence-based practice. He has developed the Applied Correctional Transition Strategy, a comprehensive software suite designed to enhance all aspects of daily jail transition as well as to provide policymakers with essential information to ensure that allocated resources lead to the most productive, cost-efficient outcomes. Dr. Christensen continues to serve on several national advisory boards investigating innovative responses to pressing issues within corrections and to author publications for the field at large, including the Transition from Jail to the Community Implementation Toolkit**.** Dr. Christensen is a professor of management, leadership, and organizational psychology at the University of Phoenix, School of Advanced Studies; an adjunct professor at Marist College; and a qualified master police/peace instructor with the State of New York.

Anne Seymour has been a national crime victim advocate for twenty-seven years, specializing in corrections-based victim services. She has authored or contributed to many texts and curricula that address improving victims' rights and services throughout criminal and juvenile justice processes, including the 2008 Victim Issues Related to Prison Rape and Sexual Assault curriculum sponsored by the Bureau of Justice Assistance, U.S. Department of Justice. She has received numerous honors for her work to benefit crime victims and the field of corrections, including the 1992 Outstanding Service to Victims of Crime Award from President George H.W. Bush and the 2007 U.S. Congressional Victims' Rights Caucus Ed Stout Memorial Award for Outstanding Victim Advocacy.

Executive Summary

This Report presents the findings of the Review Panel on Prison Rape (Panel), resulting from the hearings it held in Washington, DC, in the spring and fall of 2011, based on the national survey that the Bureau of Justice Statistics (BJS) published in August 2010, *Sexual Victimization in Prisons and Jails, Reported by Inmates, 2008-09*. Under the Prison Rape Elimination Act of 2003, the Panel is responsible for holding public hearings to which it invites, relying on data from the BJS, two correctional institutions with a low prevalence of sexual victimization and three institutions with a high prevalence of sexual victimization. The purpose of the hearings is to identify the common characteristics of (1) sexual predators and victims, (2) correctional institutions with a low prevalence of sexual victimization, and (3) correctional institutions with a high prevalence of sexual victimization.

In 2011, the Panel held two sets of hearings. In April of 2011, the hearings addressed federal and state prisons; in September of 2011, the hearings addressed local jails.

Hearings on Prisons

For the April 2011 hearings on prisons, the Panel invited the following five prisons to appear:

(1) *Low Incidence*: Elkton Federal Correctional Institution, Federal Bureau of Prisons, Elkton, Ohio.

(2) *Low Incidence*: Bridgeport Pre-Parole Transfer Facility, operated by Corrections Corporation of America for the Texas Department of Criminal Justice (TDCJ), Bridgeport, Texas.

(3) *High Incidence*: James V. Allred Unit, TDCJ, Wichita Falls, Texas.

(4) *High Incidence*: Fluvanna Correctional Center for Women, Virginia Department of Corrections, Troy, Virginia.

(5) *High Incidence*: Elmira Correctional Facility, Department of Corrections and Community Supervision, Elmira, New York.

Based on the prison hearings, the Panel identified the following **common themes** requiring careful consideration:

- Recognizing Common Characteristics of Inmates Who are Vulnerable to Sexual Abuse
- Understanding Common Differences between Male and Female Facilities
- Understanding the Importance of Professional Language in Establishing a Safe Environment
- Recognizing the Vulnerability of Non-Heterosexual Inmates and Their Need for Proper Treatment
- Strengthening the Integrity of the Entire Complaint Process
- Providing Effective Victim Services
- Equipping Staff to Respond Effectively to Inmate Sexual Victimization

The Panel identified the following **topics for further study**:

- Why are Homosexuality and Prior Victimization Significant Indicators of Inmate Victims of Sexual Abuse?
- What are the Distinctive Needs of Female Facilities in Preventing Sexual Victimization?

Hearings on Jails

For the September 2011 hearings on jails, the Panel invited the following five jails to appear:

(1) *Low Incidence*: Hinds County Work Center, Hinds County Sheriff's Department, Raymond, Mississippi.

(2) *Low Incidence*: David L. Moss Criminal Justice Center, Tulsa County Sheriff's Office, Tulsa, Oklahoma.

(3) *High Incidence*: Clallam County Corrections Facility, Clallam County Sheriff's Office, Port Angeles, Washington.

(4) *High Incidence*: Pre-Trial Detention Center, Miami-Dade County Corrections and Rehabilitation Department, Miami, Florida.

(5) *High Incidence*: Orleans Parish Prison, Orleans Parish Sheriff's Office, New Orleans, Louisiana.

Based on the jail hearings, the Panel identified the following **common themes** requiring careful consideration:

- Acknowledging the Importance of Facility Design
- Appreciating the Value of Outside Oversight
- Noting the Reluctance to Prosecute Sexual Victimization Cases Involving Inmates
- Recognizing the Resource Challenges that Jails Face
- Employing Well-Trained, Professional Staff

The Panel identified the following **topics for further study**:

- What are the Specific Challenges of Big-City and Rural Jails in Preventing Inmate Sexual Victimization?
- What are the Best Practices in Classifying and Housing LGBTQ Inmates?
- What Would Encourage the Prosecution of Crimes Involving Inmate Sexual Victimization?
- What are the Policies and Practices that Contribute to a Jail Culture that Has Zero Tolerance for Sexual Victimization?
- What are the Best Practices for Monitoring Compliance with a Jail's Zero-Tolerance Policy for Sexual Victimization?
- What are the Best Practices for Reliably Reporting Sexual Abuse in Jails?

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As the appendices are lengthy, they are accessible only from the Panel's website at http://www.ojp.usdoj.gov/reviewpanel/reviewpanel.htm. Online readers may also access the appendices by clicking on the title for each appendix, which will then direct the reader to the corresponding document posted online.

Review Panel on Prison Rape
Report on Sexual Victimization in Prisons and Jails

This Report presents the findings of the Review Panel on Prison Rape (Panel) related to the hearings it held in Washington, DC, in the spring and fall of 2011. Based on the national survey that the Bureau of Justice Statistics (BJS) published in August 2010, *Sexual Victimization in Prisons and Jails, Reported by Inmates, 2008-09*,[1] the Panel's hearings focused on the experiences of selected correctional institutions that had either a high or low prevalence of inmate sexual victimization. The Panel's goal in issuing this Report is to assist correctional practitioners by identifying common themes and making recommendations for further research that will lead to effective practices that prevent sexual victimization in prisons and jails.

I. Overview

A. Background

The Prison Rape Elimination Act (PREA) of 2003[2] created the Panel and commissioned it to assist the BJS by holding public hearings based on data that the BJS collected on the incidence of sexual victimization in correctional institutions in the United States.[3] According to PREA, the BJS is to survey state and federal prisons as well as other categories of correctional facilities that the Attorney General designates.[4] Through BJS, the Attorney General identified jails as one of the categories of correctional institutions that merited a national survey under PREA. The purpose of the Panel's hearings is to identify the common characteristics of (1) victims and perpetrators of prison rape, (2) prisons and prison systems with a low incidence of prison rape, and (3) prisons and prison systems with a high incidence of prison rape.[5]

In 2011, the Panel held two sets of hearings in Washington, DC.[6] The first hearings, on April 26-27, 2011, addressed state and federal prisons; the second hearings, on September 15-16, 2011, addressed jails. At each of these hearings, the Panel requested the appearance of five correctional institutions, two representing facilities with the lowest incidence of sexual victimization and three representing the highest.[7]

PREA created both the Panel and the Commission on Prison Rape (Commission).[8] In June of 2009, after issuing proposed institutional standards for reducing prison rape, the Commission

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[1] BJS, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09* (Jan. 2010) (A. Beck et al.), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/svpjri0809.pdf [hereinafter *BJS Report*].
[2] 42 U.S.C. §§ 15601-15609 (2006) (Pub. L. No. 108-79, 117 Stat. 972).
[3] *Id.* § 15603(b).
[4] *Id.* § 15603(c)(4).
[5] *Id.* § 15603(b)(3)(A).
[6] The members of the Panel in 2011 were Dr. Reginald A. Wilkinson, Chairperson; Dr. Gary E. Christensen; and Ms. Anne Seymour. The Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice provided the Panel with professional staffing and support services. OCR staff persons assisting the Panel in 2011 included Mr. George Mazza, Senior Counsel; Mr. Christopher Zubowicz, Attorney Advisor; Ms. Kimberly Scheckner, Attorney Advisor; Mr. Joseph Swiderski, Program Analyst; and Ms. Anna Offit, Law Clerk.
[7] 42 U.S.C. § 15603(b)(3)(A).
[8] *Id.* § 15606(a).

disbanded.[9] The process for issuing national standards is still moving forward at the Justice Department and the Panel anticipates that the standards may appear in the near future.[10] The Panel's work complements the work of the Commission in issuing national standards, but it is independent of it. Through its hearings, the Panel intends to assist both prison administrators and victim advocates by identifying administrative practices that either contribute to or prevent sexual victimization of individuals in custody.

B. *BJS Report*

The *BJS Report* analyzed data on sexual victimization in prisons and jails from October of 2008 until December 2009 based on computer-assisted self-interviews of 81,566 inmates, age eighteen or older, in 167 state and federal prisons and 286 jails in the United States.[11] The survey of inmates is not a complete enumeration of all prison and jail inmates in the United States; rather, as PREA permits,[12] it relies on sampling techniques that allow the BJS to add weights to the collected data to produce estimates at both the national and facility level.[13] Following this methodology, the BJS was able to identify prisons and jails in the United States that have high rates of inmate-on-inmate sexual victimization[14] and staff sexual misconduct.[15] The report was also able to identify prisons and jails with low rates of any type of sexual victimization.[16]

According to the estimates in the *BJS Report*, 4.4% of prison inmates and 3.1% of jail inmates experienced sexual victimization within a period of twelve months or since admission to a correctional facility, if the admission took place within less than twelve months.[17] "Nationwide, these percentages suggest that approximately 88,500 adults held in prisons and jails at the time of the survey had been sexually victimized."[18]

Approximately 2.1% of prison inmates and 1.5% of jail inmates reported inmate-on-inmate sexual victimization, whereas approximately 2.8% of prison inmates and 2.0% of jail inmates reported staff sexual misconduct.[19]

In comparison to male inmates in prisons and jails, the *BJS Report* found that female inmates were more than twice as likely to report inmate-on-inmate sexual victimization.[20]

Reported sexual activity with facility staff involved 2.9% of male prisoners, 2.1% of male jail inmates, 2.1% of female prisoners, and 1.5% of female jail inmates.[21]

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[9] National Prison Rape Elimination Commission Report (June 2009), *available at* http://www.cybercemetery.unt.edu/archive/nprec/20090820154816/http://nprec.us/publication/.
[10] National Standards To Prevent, Detect, and Respond to Prison Rape, 76 Fed. Reg. 6248 (proposed Feb. 3, 2011) (to be codified at 28 C.F.R. pt. 115) [hereinafter Nat'l Standards].
[11] *BJS Report* 6.
[12] 42 U.S.C. § 15603(a)(1)(4).
[13] *BJS Report* 6.
[14] *Id.* 8 tbl.2.
[15] *Id.* 9 tbl.3.
[16] *Id.* 10 tbl.4.
[17] *Id.* 5, 6.
[18] *Id.* 5.
[19] *Id.*
[20] *Id.*

The *BJS Report* identified risk factors for both inmate-on-inmate and staff-on-inmate sexual victimization.[22] The rates of reported inmate-on-inmate sexual victimization were significantly higher for inmates who had the following characteristics:

- Being white or multi-racial,
- Having a college education,
- Having a sexual orientation other than heterosexual, and
- Experiencing sexual victimization prior to coming to the facility.[23]

The rates of reported staff sexual misconduct were lower among inmates who were white and twenty-five years old or older, whereas the rates were higher among inmates who had a college education and who experienced sexual victimization before coming to the facility.[24]

Among inmates reporting inmate-on-inmate sexual victimization, 13% of male prisoners, 19% of male jail inmates, and 4% of female inmates in both prisons and jails said they were victimized within the first twenty-four hours of admission to a facility.[25] Among inmates reporting staff-on-inmate sexual victimization, 16% of male prisoners, 30% of male jail inmates, 5% of female prisoners, and 4% of female jail inmates said they were victimized within the first twenty-four hours of admission to a facility.[26]

Significantly, most perpetrators of staff sexual misconduct were female and most victims were male: among male victims of staff sexual misconduct, 69% of prisoners and 64% of jail inmates reported sexual activity with female staff.[27]

C. Selection of Facilities for the Public Hearings

Relying on the *BJS Report*, the Panel selected a total of ten correctional institutions to appear at public hearings in Washington, DC, in 2011.

For the April hearings on prisons, the Panel identified two institutions representing low-incidence facilities: (1) the Elkton Federal Correctional Institution (FCI Elkton), Federal Bureau of Prisons (BOP), in Elkton, Ohio, and (2) the Bridgeport Pre-Parole Transfer Facility (Bridgeport), operated by Corrections Corporation of America (CCA) for the Texas Department of Criminal Justice (TDCJ), in Bridgeport, Texas; and three institutions representing high-incidence facilities: (1) the James V. Allred Unit (Allred), TDCJ, in Wichita Falls, Texas; (2) the Fluvanna Correctional Center for Women (Fluvanna), Virginia Department of Corrections

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[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*

(VADOC), in Troy, Virginia; and (3) the Elmira Correctional Facility (Elmira), New York Department of Corrections and Community Supervision (DOCCS),[28] in Elmira, New York.

One of the factors influencing the Panel's selection of facilities in 2011 was its interest in gathering more information on the experiences of women who have been the target of sexual victimization in prisons and jails and to understand the dynamics of correctional facilities that serve women. Accordingly, for the prison hearings, the Panel chose Fluvanna, a women's facility that the *BJS Report* identified as having not only one of the highest rates of inmate-on-inmate sexual victimization but also one of the highest rates of staff sexual misconduct.[29] Seeking to learn from a female prison with a low incidence of sexual victimization, the Panel chose Bridgeport, which had no incidents of sexual victimization during the time period of the BJS survey.[30]

The Panel selected FCI Elkton based on its having a low incidence of any type of sexual victimization,[31] and the Panel wanted at least one representative of a federal prison at the hearings.

The Panel chose Allred not only because the *BJS Report* identified it as having one of the highest rates of inmate-on-inmate sexual victimization[32] but also because the Panel had previously identified Allred, as well as other prisons in the TDCJ, as having a high rate of sexual victimization, and the Panel was interested in learning why the prison had not improved its performance despite having appeared at a prior hearing.[33] The Panel chose Elmira based on its having the highest rate of male offenders reporting staff sexual misconduct that involved pressure.[34]

For the September hearings on jails, the Panel again identified two institutions representing low-incidence facilities: (1) the Hinds County Work Center (Hinds County),[35] Hinds County Sheriff's Department (HCSD), in Raymond, Mississippi, and (2) the David L. Moss Criminal Justice Center (Moss Center), Tulsa County Sheriff's Office (TCSO), in Tulsa, Oklahoma; and three institutions representing high-incidence facilities: (1) the Clallam County Corrections Facility (Clallam County), Clallam County Sheriff's Office (CCSO), in Port Angeles, Washington; (2) the Pre-Trial Detention Center (PTDC), Miami-Dade County Corrections and Rehabilitation Department (MDCR), in Miami, Florida; and (3) the Orleans Parish Prison (OPP), Orleans Parish Sheriff's Office (OPSO), in New Orleans, Louisiana.

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[28] In April of 2011, the New York State Department of Correctional Services merged with the New York State Division of Parole to become the New York State Department of Corrections and Community Supervision or DOCCS.
[29] *BJS Report* 8 tbl.2, 9 tbl.3.
[30] *Id.* 10 tbl.4.
[31] *Id.*
[32] *Id.* 8 tbl.2.
[33] *See* BJS, *Sexual Victimization in State and Federal Prisons Reported by Inmates, 2007*, at 2 tbl.1 (Apr. 2008) *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/svsfpri07.pdf [hereinafter *BJS Report 2007*]; Transcript of Record: Panel Hearing on Rape and Staff Sexual Misconduct in U.S. Prisons, E. Williams, 190 *passim* (Mar. 28, 2008), *available at* http://www.ojp.usdoj.gov/reviewpanel/pdfs_mar08/080328_prea_hearing.txt.
[34] *BJS Report* 9 tbl.3, 10.
[35] Since the publication of the *BJS Report*, the name of the Hinds County Penal Farm has changed to the Hinds County Work Station. *Id.* 10 tbl.4, 11.

The Panel chose Hinds County and the Moss Center because the *BJS Report* identified each of them, in comparison to other surveyed jails, as having among the lowest rates of sexual victimization of any type.[36]

Consistent with its intent to highlight female facilities during the 2011 hearings, the Panel initially selected the South White Street Jail, a female facility associated with the OPP, which the *BJS Report* identified as having one of the highest rates of inmate-on-inmate sexual victimization.[37] Since the publication of the *BJS Report*, however, the OPSO closed the South White Street Jail, prompting the Panel to broaden its inquiry to the OPP as a whole.

Based on the survey results in the *BJS Report*, the Panel also chose Clallam County, which had a high rate of reported staff sexual misconduct,[38] and the PTDC, which had a high rate of reported inmate-on-inmate sexual victimization.[39]

II. Review of Facilities

In reviewing the correctional facilities that the Panel invited to appear at its hearings in 2011, a Panel Member or one of its staff members visited each of the facilities, touring the buildings and grounds and meeting informally not only with facility representatives but also at times with inmates. The Panel also issued tailored Data Requests to both prisons and jails,[40] and each facility provided a response.[41] The Panel engaged the services of Creative Corrections, a private contractor, to summarize the strengths and weaknesses of each of the selected facilities.[42] At the Panel's request, Creative Corrections also produced a chart summarizing reported incidents of both inmate-on-inmate and staff-on-inmate sexual victimization at the selected facilities.[43]

The Panel has organized this Report to correspond to its inquiry at the public hearings. The first half of the Report presents the prisons the Panel invited to the April 2011 hearings, treating first the low-incidence facilities and then the high-incidence facilities. Based on the data collected, the Panel offers facility-specific recommendations, identifies common themes, and proposes topics for further study. The second half of the Report presents the jails the Panel invited to the September 2011 hearings, again addressing first the low-incidence facilities before turning to the high-incidence facilities. With the focus on jails, the Panel also offers facility-specific recommendations, identifies common themes, and proposes topics for additional research.

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[36] *Id.* 10 tbl.4.
[37] *Id.* 8 tbl.2.
[38] *Id.* 9 tbl.3.
[39] *Id.* 8 tbl.2.
[40] App. A.
[41] The responses to the Data Request are on file with the Panel.
[42] App. B.
[43] App. C.

A. Prisons

1. Low-Incidence Prisons

a. FCI Elkton

i. Facility Description

FCI Elkton, located in Elkton, Ohio, is a low-to-medium-security facility,[44] which had a rated capacity in both January 2008 and January 2009 of 1536 male inmates.[45] In January of 2008, the actual number of inmates at FCI Elkton was 1797.[46] In calendar year 2008, 3045 inmates spent any time at FCI Elkton; the average length of stay was 539 days; and the longest stay of any inmate was 3501 days.[47] In January of 2009, the actual number of inmates was 1925.[48] In calendar year 2009, 2855 inmates spent any time at FCI Elkton; the average length of stay was 555 days; and the longest stay of any inmate was 3704 days.[49]

The ethnic and racial composition of the inmates in FCI Elkton in 2008 was 44.6% White, 54.1% African American, 13.9% Hispanic, 0.8% Asian or Pacific Islander, and 0.5% Alaska Native or American Indian.[50] In 2009, the ethnic and racial composition of the inmates in FCI Elkton was 45.1% White, 53.6% African American, 1.7% Hispanic, 0.7% Asian or Pacific Islander, 0.5% Alaska Native or American Indian.[51]

FCI Elkton reported no suicides or attempted suicides in 2008.[52] In 2009, there were no suicides, but there were two suicide attempts—neither was connected to sexual victimization.[53]

On January 1, 2008, FCI Elkton employed 149 correctional officers; the inmate-to-correctional officer ratio was 16.6 to 1.0; FCI Elkton employed 185 other correctional workers; the inmate-to-other-correctional-worker ratio was 13.3 to 1.0; the total onboard staff was 334, with an inmate-to-total-staff ratio of 7.4 to 1.0.[54] On January 1, 2009, FCI Elkton employed 152 correctional officers; the inmate-to-correctional-officer ratio was 16.6 to 1.0; FCI Elkton employed 183 other correctional workers; the inmate-to-other-correctional-worker ratio was 13.8 to 1.0; the total onboard staff was 335, with an inmate-to-total-staff ratio of 7.5 to 1.0.[55]

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[44] Transcript of Record: Panel Hearings on Rape and Staff Sexual Misconduct in U.S. Prisons, H. Lappin, 279:7-8 (Apr. 26-27, 2011), *available at* http://www.ojp.usdoj.gov/reviewpanel/transcript_04_2011.htm [hereinafter Tr.].
[45] FCI Elkton Resp. 9(a), 10(a) (on file with the Panel).
[46] *Id.* 9(b).
[47] *Id.* 9(f)-(h).
[48] *Id* 10(b).
[49] *Id.* 10(f)-(h).
[50] *Id.* 11. In reporting national origin and racial data for inmates, FCI Elkton used the category of Asian and Pacific Islander rather than the two separate categories that the U.S. Census Bureau employs: (1) Asian and (2) Native Hawaiian and Other Pacific Islanders. FCI Elkton did not provide an explanation for the total exceeding 100%.
[51] *Id.* 12. FCI Elkton did not provide an explanation for the total exceeding 100%.
[52] *Id.* 13.
[53] *Id.* 15, 16.
[54] *Id.* 25.
[55] *Id.*

In 2008 and 2009, FCI Elkton terminated no staff members for sexual misconduct.[56] In 2009, FCI Elkton permitted one staff member to resign in a matter related to sexual misconduct.[57] There was one instance in each of the calendar years 2008 and 2009 when a staff member received either discipline or a warning for sexual misconduct, but the investigations sustained neither charge.[58]

During calendar years 2008 and 2009, there were two investigations of staff-on-inmate sexual misconduct.[59] One investigation found that the evidence did not substantiate the allegations; the other investigation concluded that the evidence did support the following charges: unprofessional conduct of a sexual nature, preferential treatment of an inmate, breach of security, introduction of contraband, and soliciting or accepting anything of value.[60] Subsequently the staff member resigned.[61] During the same time period there were three investigations of inmate-on-inmate sexual victimization.[62] In all three instances the investigations did not sustain the charges.[63]

ii. Facility's Explanation for Reported Low Incidence of Sexual Victimization

In his written statement to the Panel, Director of BOP Harley G. Lappin testified that the BOP's management approach is the basis for preventing sexual victimization in its facilities, including FCI Elkton.[64] He noted in particular that BOP employs numerous oversight strategies, as well as an internal system of checks and balances, to ensure compliance with the applicable laws, regulations, policies, and procedures that exist to prevent sexual victimization of inmates.[65] In addition, the BOP has a written policy that specifically addresses sexual abuse in its facilities.[66] According to Mr. Lappin, for security, the BOP relies on a combination of approaches, including direct-management supervision, facility design, cameras and other enhanced technology, and the use of the unit-management concept.[67] In addition, the BOP uses an inmate-classification system based on a variety of risk factors, which allows facilities to assign housing based on the needs of each inmate for security and targeted programming.[68]

Mr. Lappin noted that inmate participation in programming, which may include prison industries as well as vocational and educational training, is an important aspect of the operations of BOP

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[56] *Id.* 22(a).
[57] *Id.* 22(b).
[58] *Id.* 22(c).
[59] App. C (FCI Elkton Staff-on-Inmate Assaults).
[60] *Id.*
[61] *Id.* (Incident 2).
[62] *Id.* (FCI Elkton Inmate-on-Inmate Assaults).
[63] *Id.*
[64] Lappin Test. 2 (Apr. 26, 2011), *available at* http://www.ojp.usdoj.gov/reviewpanel/pdfs_apr11/Lappin_Statement.pdf. Mr. Lappin's testimony also appears in the Transcript of Record. *See* Tr., H. Lappin, 227:8-233:10.
[65] Lappin Test. 2.
[66] *Id.* (citing Sexually Abusive Behavior Prevention and Intervention Program, P5324.06 (Apr. 27, 2005)).
[67] *Id.* 3.
[68] *Id.*

facilities.[69] Inmate programming plays an important role in reducing inmate idleness and the stresses associated with prison life.[70]

Mr. Lappin also testified, "Qualified and trained staff are essential for effective inmate management."[71] He stated, "All staff are expected to be vigilant and attentive to inmate accountability and security issues."[72]

In regard to discouraging staff misconduct, Mr. Lappin testified that the BOP's approach is multidimensional, which begins with employees clearly understanding BOP's zero-tolerance policy and continues with staff training on the shared responsibility to report incidents of misconduct.[73] BOP expects staff to report incidents of staff sexual misconduct to the U.S. Department of Justice's Office of the Inspector General (OIG), which then refers the matter back to BOP's independent Office of Internal Affairs.[74] The OIG has a hotline available to the public for reporting employees of the Justice Department who have violated a person's civil rights or civil liberties; this hotline is available to BOP inmates for reporting the sexual misconduct of BOP staff.[75]

Mr. Lappin said that the BOP also takes allegations of inmate-on-inmate sexual assaults seriously, referring all allegations to BOP staff.[76] If the matter potentially involves a crime, Mr. Lappin explained, BOP staff will promptly refer the case to the Federal Bureau of Investigation (FBI).[77]

The BOP's policy for preventing sexually abusive behavior, Mr. Lappin noted, contains the following elements: (1) fostering awareness of the BOP's zero-tolerance policy, (2) following standardized procedures to detect and prevent sexually abusive behavior, (3) responding effectively to the various needs of victims, (4) intervening and promptly investigating reported sexually abusive behavior, and (5) disciplining and prosecuting perpetrators.[78]

Mr. Lappin observed, "Staff are required to assume all reports of victimization are credible, regardless of the source."[79] Mr. Lappin stressed that BOP staff needs to be mindful of inmates who are at risk, either as victims or predators; he stated that prevention of sexual abuse relies on following basic correctional practices, which include observing inmates' interactions, communicating with inmates effectively, noting behavior changes, and monitoring the institutional environment.[80]

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[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.* 4.
[74] *Id.*
[75] *Id.* 5.
[76] *Id.*
[77] *Id.*
[78] *Id.* 6.
[79] *Id.*
[80] *Id.*

Inmates learn about their rights and responsibilities in preventing sexually abusive behavior during orientation; they learn about prevention strategies, methods for reporting incidents, treatment, and the consequences for perpetrators.[81] They also receive this information in written form.[82]

In elaborating on his prepared remarks, Mr. Lappin noted the importance at BOP of having separate oversight teams to keep individual facilities accountable:

> We're blessed in the Bureau of Prisons as large as we are that we can have a separate oversight group. So the warden, even though he's practicing this [sexual-abuse prevention] policy every day, he also knows in the back of his mind that several times a year, a team of people are going to come in there and they're going to look at the policy. They're going to look at the incidents where there is a sexual, physical or verbal assault, or an escape or whatever, and somebody's going to critique what occurred . . . [and] make some recommendations as to what you need to do to improve upon the adherence of that policy in the future.[83]

In his testimony before the Panel, Mr. John Shartle, Warden of the Federal Correctional Institution in Fairton, New Jersey, and former Warden of FCI Elkton, noted in particular the importance of creating a prison culture that treats seriously every allegation related to sexual victimization of an inmate.[84] Mr. Shartle said, "Every allegation is taken extremely seriously. Whether you think this inmate is manipulative or not, that's not your decision to make."[85] Mr. Shartle said that the key word in creating a prison culture that does not tolerate the sexual abuse of inmates is "buy-in" from staff members at every level of the organization:

> [W]hat you need is buy-in, not just from the management staff and the executive staff, but from the correctional officer who is walking through the unit and just sort of senses that something is wrong or the case manager who's talking to the inmate and they seem a little distracted and they have that sixth sense to sort of pursue that and find out if something is going on. And once they have that awareness that something is going on, again, the protocols kick in . . . it has been my experience, in my twenty-plus years of experience with the Bureau of Prisons, that I have not been witness to one case where somebody just said, "You know what, that was nothing." When there's even the slightest sense of it, it kicks in.[86]

In responding to questions from the Panel about the protocols FCI Elkton employs to respond to an allegation of sexual victimization, Mr. Kevin Schwinn, Chief of Intelligence for the Central Office of the BOP, stated that the procedures are similar regardless of whether the alleged assault involves another inmate or a staff member.[87] When a staff member initially receives a report of sexual victimization, regardless of what form it may take, the notice triggers an institutional

[81] *Id.* 8.
[82] *Id.*
[83] Tr., H. Lappin, 241:19-242:9.
[84] *Id.*, J. Shartle, 237:2-19.
[85] *Id.* 237:14-16, 266:2-20.
[86] *Id.* 237:21-238:14.
[87] *Id.*, K. Schwinn, 243:2-5.

response.[88] The staff member notifies the operations lieutenant, the chief of correctional services, the local investigator, and the Special Investigative Support office, which then immediately launches an investigation.[89] Also within minutes of a reported sexual incident, staff members notify the warden.[90] The institution then reassigns the alleged victim to a safe area while the investigation proceeds.[91] Departing from its past practices and in keeping with the recommendations of the Commission,[92] the BOP advises wardens to consider thoughtfully the reassignment of alleged victims, to weigh other options other than automatically placing the alleged victim in segregation.[93] Staff members collect as much evidence as possible at the scene in accordance with FBI procedures.[94] The facility sends the alleged victim to the medical unit for an initial evaluation; once that is complete, the warden will authorize the inmate's transfer to a local hospital for the administration of a rape kit.[95] The facility maintains the rape kit as evidence in the event of future prosecution.[96]

Mr. Lappin noted that BOP investigators are already relying on the Commission's work, using a PREA checklist in the investigative process.[97] According to Mr. Lappin, having local PREA coordinators in facilities, along with coordinators in regional offices and at the central office, contributes to the BOP's ability to audit the investigative process.[98]

Dr. Paul Clifford, Chief Psychologist at FCI Elkton, stated that following an alleged sexual assault, mental health workers receive notification as soon as possible so that they can make an immediate assessment of the effects of trauma on the alleged victim—this assessment takes place, in accordance with established policy, within twenty-four hours of the alleged incident.[99] The psychological assessment includes an evaluation of the alleged victim's suicide risk.[100] Psychological services quickly identify the treatment needs of the alleged victim, ranging from immediate care to long-term follow up.[101]

If an alleged sexual assault comes to the attention of FCI Elkton staff a significant time after the alleged incident, staff members who learn of the allegation still immediately contact psychological services.[102] In dealing with an incident that occurred after a lapse of time, the facility follows the same protocols it does in dealing with an alleged sexual assault that had just

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[88] *Id.* 243:6-8.
[89] *Id.* 243:10-14.
[90] *Id.* 251:17.
[91] *Id.* 244:6-7.
[92] Nat'l Standards, 76 Fed. Reg. at 6282 (§ 115.66).
[93] Tr., H. Lappin, 260:15-261:7; *see* app. D (Memorandum from D. Scott Dodrill, Assistant Director, Correctional Program Division (CPD), BOP, to Chief Executive Officers (Oct. 12, 2011) (Inmate Sexual Abuse Follow-up) (citing Memorandum from D. Scott Dodrill, Assistant Director, CPD, BOP, to Chief Executive Officers (Oct. 16, 2009) and Sexual Abusive Behavior Prevention Intervention Program, P5324.06 (Apr. 27, 2005))).
[94] Tr., K. Schwinn, 244:11-16.
[95] *Id.* 245:2-7.
[96] *Id.* 245:8-9.
[97] *Id.*, H. Lappin, 260:1-6.
[98] *Id.* 260:7-14.
[99] *Id.*, P. Clifford, 247:3-19.
[100] *Id.* 247:15.
[101] *Id.* 247:16-19.
[102] *Id.*, K. Schwinn, 254:3-17.

taken place; the only difference is that investigators will be less able to collect physical evidence.[103] Whether the lapse of time would make the administration of a rape kit unproductive is a question that the BOP defers to the FBI.[104]

Dr. Clifford testified that the low incidence of reported sexual victimization at FCI Elkton may be attributed to "culture and continuum," meaning that the institutional environment is based on good correctional practices, which extend not only to recruiting and training staff but also to fostering professional behavior that may not be directly related to implementing PREA.[105] According to Dr. Clifford, among those good correctional practices are the maintenance of professional boundaries between staff and inmates, which includes taking care to keep desks and bulletin boards free of inappropriate materials and avoiding abusive language in dealing with inmates.[106] Dr. Clifford said that a proactive approach was key, noting that the phrase repairing "broken windows" captures this idea: when an institution tends to minor infractions, similar to fixing a broken window, it communicates to staff and inmates a commitment, along a continuum, to address larger, more serious issues.[107]

iii. Observations

In reviewing the testimony from administrators from FCI Elkton, its response to the Data Request, and the information that the Panel gathered through an onsite visit to the facility, the Panel would like to underscore three general principles that appear to have contributed to the low incidence of sexual victimization at the prison.

First, BOP has implemented managerial practices that promote facility oversight. The BOP has more than just a policy that addresses sexual victimization of inmates; it has put into place procedures that evaluate whether a facility has put the policy into practice. A review team periodically visits each facility to examine how it deals with allegations of sexual victimization and how the staff has responded. The BOP not only has PREA coordinators at the facility level, but it also has PREA coordinators at the regional and central-office levels to serve as a check and balance on the work of the facility coordinator. If there were a break-down in a facility's response to incidents of sexual victimization, the BOP has put into place a system designed to identify the problem and correct it.

Second, the BOP takes seriously the issue of developing an institutional culture that prevents sexual victimization. This is apparent through a number of institutional practices, which include treating every allegation of sexual victimization as being important rather than dismissing some claims based on a prejudgment of the complainant's credibility or motives, avoiding abusive language in interactions with inmates, cultivating in the staff an attentiveness to subtle warnings

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[103] *Id.*
[104] *Id.*, H. Lappin, 257:19-158:1.
[105] Tr., P. Clifford, 262:2-15.
[106] *Id.* 262:9-15, 262:17-263:5.
[107] *Id.* 263:6-14. Although Dr. Clifford did not cite the work of George L. Kelling and James Q. Wilson in his testimony, he was referring to the broken-windows theory of community policing that they formulated. *See* George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC MONTHLY, Mar. 1982 at 29-38, *available at* http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/4465/.

that may indicate sexually abuse behavior, and encouraging the staff at all organizational levels to buy in to the shared responsibility to identify and report sexual victimization.

Third, consistent with the draft PREA standards, the BOP's policy to consider alternatives to administrative segregation in housing inmates alleging sexual victimization avoids a practice that has often resulted in punishing victims. Consequently, inmates may be more likely to report incidents of sexual victimization.

b. Bridgeport

i. Facility Description

Bridgeport, located in Bridgeport, Texas, is a minimum security female facility operated by the CCA under a contract with the TDCJ. The facility at its full rated capacity houses 200 inmates, and on January 1, 2008, and on January 1, 2009, the facility was at full capacity.[108] The average length of stay for inmates at Bridgeport in calendar year 2008 was 190 days;[109] the average length of stay in calendar year 2009 was 191 days.[110] The longest length of stay of any inmate at Bridgeport in calendar year 2008 was 1761 days;[111] the longest length of stay in calendar year 2009 was 1476 days.[112] The total number of inmates who spent any time at Bridgeport in calendar year 2008 was 588,[113] consisting of 289 Whites, 160 African Americans, 136 Hispanics, 1 Asian, and 1 Alaska Native or American Indian.[114] The total number of inmates who spent any time at Bridgeport in 2009 was 565,[115] consisting of 286 Whites, 141 African Americans, 136 Hispanics, 1 Asian, and 1 Native Hawaiian or Other Pacific Islander.[116]

The total number of authorized staff positions at Bridgeport at full capacity on January 1, 2008, and on January 1, 2009, was sixty-one.[117] On January 1, 2008, Bridgeport staffing consisted of fourteen custody staff members and three non-custody staff members.[118] On January 1, 2009, Bridgeport staff consisted of fifteen custody staff members and five non-custody staff members.[119] The ratio of custody staff members to offenders on January 1, 2008, and on January 1, 2009, was one to eleven.[120]

In calendar years 2008 and 2009, no Bridgeport inmates either attempted or committed suicide.[121] There were also no allegations of sexual abuse of any type at Bridgeport in calendar years 2008 and 2009.[122]

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[108] Bridgeport Resp. 9(a)-(b), 10(a)-(b) (on file with the Panel).
[109] *Id.* 9(g).
[110] *Id.* 10(g).
[111] *Id.* 9(h).
[112] *Id.* 10(h).
[113] *Id.* 9(f).
[114] *Id.* 11. Bridgeport did not account for the racial and ethnic background of one inmate.
[115] *Id.* 10(f).
[116] *Id.* 12.
[117] *Id.* 23(a), 24(a).
[118] *Id.* 23(d)(i).
[119] *Id.* 24(d)(i).
[120] *Id.* 25(a), (e).
[121] *Id.* 13(a)-(b), 15(a)-(b).

ii. Facility's Explanation for Reported Low Incidence of Sexual Victimization

Mr. Steven Conry, who serves as the PREA coordinator for CCA, linked the low incidence of sexual victimization at Bridgeport to three broader strategies that the CCA has adopted to eliminate sexual abuse in its correctional facilities: (1) working on prevention, (2) exceeding contract requirements with government partners related to the current draft of the national PREA standards, and (3) improving policies and practices.[123] Mr. Conry noted that CCA has taken a number of steps to prevent sexual victimization of inmates in its facilities. The CCA has appointed a corporate PREA committee, and each time the CCA learns about an allegation of sexual abuse at one of its facilities, the committee convenes within forty-eight hours of the incident and holds a conference call with administrators at the facility to discuss the incident and make sure that the facility is adhering to the CCA's PREA policy in regard to the investigative process and the treatment of the alleged victim.[124] The CCA has also worked to install at most of its facilities a digital platform for the telephone system that will alert a warden if an inmate calls a staff member's home or mobile telephone.[125] The CCA is conducting a PREA vulnerability assessment of all of its facilities nationwide; it has already completed an assessment of its female facilities and it is in the process of completing an assessment of its male facilities.[126] The CCA is investing in recording systems, cameras, and signage to prevent sexual abuse at its facilities.[127] Although it has not as yet been successful, the CCA is also sponsoring psychological research to develop a screening instrument for prospective employees that would identify individuals with predatory tendencies.[128] The CCA has also retained independent outside groups to audit its facilities and to make recommendations on how it could improve its operations to prevent the sexual victimization of inmates.[129]

Ms. Mary Brandin, Warden of Bridgeport, testified that the hard work of her staff, combined with the support of the CCA and TDCJ, contributed to the low incidence of sexual victimization at her facility.[130] She said that even though there is a sound program in place at Bridgeport, the biggest challenge is not to become complacent.[131] She noted that it is important for administrators to guard against thinking that there are no problems on their units: "[t]o do so would mean that you are not looking at the situation with an open mind."[132] Warden Brandin volunteered that to be effective, prison officials have to be willing to be open to information from staff that she categorized as "hard to hear."[133]

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[122] *Id.* 29(a).
[123] Tr., S. Conry, 283:3-14.
[124] *Id.* 284:6-22; *see also id.*, M. Brandin, 303:1-13.
[125] *Id.*, S. Conry, 285:7-12.
[126] *Id.* 285:12-19.
[127] *Id.* 285:20-286:5.
[128] *Id.* 286:21-287:6.
[129] *Id.* 287:7-14.
[130] *Id.*, M. Brandin, 288:12-18.
[131] *Id.* 288:19-289:3.
[132] *Id.* 293:15-21.
[133] *Id.* 293:21-294:3.

Warden Brandin testified that based on her prior experience working for almost twenty years in male facilities, she would characterize female correctional institutions as significantly different.[134] She said that one has to be aware in working with a female population that "everything that they do is emotion-based . . . ."[135] Consequently, Warden Brandin said that it is important to have programming that keeps the inmates busy and focused on what is important to them, which means having them keep in mind not only their upcoming release dates but also the lives they will lead beyond the release dates:

> [W]hat we preach to them is who you are. It's not so much what you are. You are an inmate, but it's who you are. You are a mother, a sister, a daughter, a grandmother, and you need to focus on that and you need to better yourself on that.[136]

Warden Brandin said that in male facilities inmates may join groups that pose a security threat, whereas in female facilities the inmates tend to form family cliques.[137] Bridgeport administrators have let inmates know that creating in-house surrogate families is an unacceptable way to obtain the attention and affection that many crave.[138] Warden Brandin noted that one of the ways in which Bridgeport discourages family cliques is through programming that gives inmates unit-wide recognition; one example of such programming is the production of a talent show.[139] The intent of these programs is to boost an inmate's sense of self-respect with the hope that there will be less need to seek one-on-one attention.[140]

Echoing the testimony of Mr. Shartle, the former warden at FCI Elkton, Warden Brandin observed that it was important to have staff members who are attentive to the needs of inmates:

> It's very important that your staff are able to recognize a change or a sway in behavior or attitude, and I think that we have excellent staff who have been able to recognize any type of immediate mood, physical/emotional/behavioral change and openly report . . . that to the administration and to their supervisors, and then from there, we pull in the offender and express to them our concern for their well-being.[141]

Warden Brandin said that Bridgeport had an excellent education system for both staff members and offenders so that both would know the consequences of violating the facility's policies related to sexual misconduct.[142] She also said that there is a great need to train new staff members who come to Bridgeport whose only prior experience was working in male facilities.[143] Warden Brandin said that she will often have a one-on-one briefing with these new staff

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[134] *Id.* 313:16-21.
[135] *Id.* 292:14-15.
[136] *Id.* 294:17-22.
[137] *Id.* 311:21-312:3.
[138] *Id.* 312:3-14.
[139] *Id.* 312:15-20, 313:1-4.
[140] *Id.* 312:20-313:4.
[141] *Id.* 292:18-293:4.
[142] *Id.* 292:7-11.
[143] *Id.* 314:6-11.

members to discuss their experience in working at a women's facility, where, according to Warden Brandin, the inmates, in comparison with men, tend to be more emotional, self-involved, and unwilling to let an issue drop.[144] She said that she will often sit down with the new staff members every two weeks to see how they are adjusting to the new environment.[145]

Warden Brandin said that she will also often counsel staff members to use the facility's surveillance cameras to their advantage, instructing them to interact with inmates in view of the cameras so as to protect themselves from any possible future allegations of misconduct.[146]

One of the distinctive features of Bridgeport, contributing to its low incidence of sexual victimization, is its no-touch policy.[147] Warden Brandin explained that Bridgeport does not allow any form of touching among inmates:

> [T]here are no handshakes. There is no hugging. There is no patting on the back. There is no sitting there at the dayroom table with your hand on her knee. It is not acceptable and we approach it [as] a manner of professionalism. You're here to go to school. You're here to meet goals. You're here to meet a certain parole presumptive date. You have a job to do. You do your job. We'll do our job. If you don't do so well in your job, then we will follow through with our job.[148]

Warden Brandin said that in one of her quarterly discussions with inmates, the topic was PREA and the prevention of sexual abuse.[149] During the discussion, the inmates agreed that if she as the warden gave them an inch, they would take a mile; so when it comes to touching, having a clear boundary prevents any confusion about what is appropriate behavior.[150] Warden Brandin said, "[I]t starts with a handshake. It starts with a hug. It starts with a hand on the knee, and . . . it progresses into something that could create a violation or is a violation."[151]

iii. Observations

In reflecting on the testimony and the data response from Bridgeport, as well as the onsite visit, the Panel takes note of five broad issues that may relate to Bridgeport's success in having a low incidence of inmate sexual victimization: (1) the culture of the women's facility, (2) the relatively small size of the institution, (3) the rapport between the warden and her staff, (4) the select population and the effectiveness of incentives, and (5) the challenge of the no-touch policy.

Women's prisons appear to have interpersonal dynamics that are significantly different than male facilities.[152] To their credit, the warden and administration of Bridgeport are mindful of this

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[144] *Id.* 314:11-16.
[145] *Id.* 314:17-315:3.
[146] *Id.* 315:4-10.
[147] *Id.* 308:19.
[148] *Id.* 310:4-13.
[149] *Id.* 310:14-21.
[150] *Id.* 310:21-311:3.
[151] *Id.* 311:5-9.
[152] *See infra* Part II.A.2.a.iii.(a).

difference, which has far-reaching effects, from the training provided to staff to the daily interactions with inmates.

Given Bridgeport's relatively small size, the Panel anticipates that other facilities may dismiss its success as difficult to replicate in prisons that may be ten or more times larger. Without in any way diminishing Bridgeport's achievement—as few other facilities of the same size and security level were able to match its no-incident results, the Panel notes that prison size in itself may be a significant factor in reducing the incidence of inmate sexual victimization. This conclusion is consistent with the Panel's previous report on juvenile justice facilities, in which it found a correlation between small facilities and reduced incidents of sexual victimization.[153]

Based on the onsite visit and the warden's testimony, the Panel found that one of the distinguishing characteristics of Bridgeport was the rapport that the warden had with her staff. In addition to meeting with the staff regularly, she has one-on-one debriefings with new hires to guide them in adjusting to the unique dynamics of a women's facility. To her credit, the warden is also open to listening to the staff, knowing that the most important information is often the most difficult to hear.

Bridgeport is undoubtedly unlike many other prisons in the BJS survey in that its inmates are screened for its programming based on their success at other state facilities and a release date within six months. Given that inmate misconduct risks a delayed release date as well as transfer back to another state facility, inmates have clear incentives to comply with the rules of the institution. While these particular dynamics might not be replicable in other institutions, the Panel notes that tailored incentives to discourage sexual impropriety may play a key role in controlling inmate behavior that contributes to sexual victimization.

Bridgeport's no-touch policy invites further consideration. Although the Panel was at first inclined to view the policy as too restrictive, it is unaware of alternative approaches at other female facilities that have been able to match Bridgeport's level of success in eliminating inmate sexual victimization.[154] There is a need, however, for a careful study of Bridgeport's "no-touch policy" to determine its correlation with reported reduced rates of inmate sexual victimization.

2. High-Incidence Prisons

a. Fluvanna

i. Facility Description

Fluvanna, located in Troy, Virginia, and operated by VADOC, is Virginia's maximum-security prison for women.[155] The number of inmates at Fluvanna at its full rated capacity on January 1,

[153] Review Panel on Prison Rape, *Report on Sexual Victimization in Juvenile Correctional Facilities* 34-35 (Oct. 2010), *available at* http://www.ojp.usdoj.gov/reviewpanel/pdfs/panel_report_101014.pdf [hereinafter *Juvenile Justice Report*].
[154] *See infra* Part II.A.2.a.iii.(a).
[155] Tr., J. Jabe, 120:5-7.

2008, and on January 1, 2009, was 1257.[156] The actual number of inmates housed at Fluvanna on January 1, 2008, was 1190.[157] In calendar year 2008, the total number of inmates who spent any time at Fluvanna was 1568;[158] the average length of stay was 30 months;[159] and the longest stay of any inmate was 309.6 months.[160] On January 1, 2009, the actual number of inmates housed at Fluvanna was 1212.[161] In calendar year 2009, the total number of inmates who spent any time at Fluvanna was 1352;[162] the average length of stay was 31.7 months;[163] and the longest stay of any inmate was 217.6 months.[164]

In 2008, the racial and ethnic composition of the total inmate population at Fluvanna was 802 Whites, 750 African Americans, 8 Hispanics, 4 Asians, and 3 unknown.[165] In 2009, the racial and ethnic composition of the total inmate population at Fluvanna was 695 Whites, 644 African Americans, 9 Hispanics, 2 Asians, and 2 unknown.[166]

On January 1, 2008, the total number of authorized positions at Fluvanna was 372 (318 filled and 54 vacant), which included 285 security staff (239 filled and 46 vacant) and 87 non-security staff (80 filled and 7 vacant).[167] The actual staffing level on January 1, 2008, was 318 (238 sworn and 80 non-sworn).[168] On January 1, 2009, the total number of authorized positions at Fluvanna was 372 (329 filled and 43 vacant), which included 285 security staff (247 filled and 38 vacant) and 87 non-security staff (83 filled and 4 vacant).[169] The actual staffing level on January 1, 2009, was 329 (246 sworn and 83 non-sworn).[170] On January 1, 2008, and on January 1, 2009, the staff-to-inmate ratio was one to five.[171]

In calendar years 2008 and 2009, Fluvanna did not designate a PREA coordinator.[172]

In 2008 and 2009, there were no suicides at Fluvanna, but in each year there were three suicide attempts.[173] There was no evidence to connect the six suicide attempts to sexual victimization.[174]

In calendar years 2008 and 2009, there were nine inmate grievances alleging inmate-on-inmate sexual victimization.[175] The charges included sexual assault and rape.[176] Of the nine charges,

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[156] Fluvanna Resp. 9(a), 10(a) (on file with the Panel).
[157] *Id.* 9(b).
[158] *Id.* 9(f).
[159] *Id.* 9(g).
[160] *Id.* 9(h).
[161] *Id.* 10(b).
[162] *Id.* 10(f).
[163] *Id.* 10(g).
[164] *Id.* 10(h).
[165] *Id.* 11. Fluvanna did not account for the racial and ethnic background of one inmate.
[166] *Id.* 12.
[167] *Id.* 23(a)-(c).
[168] *Id.* 23(d)-(f).
[169] *Id.* 24(a)-(b).
[170] *Id.* 24(d)-(f).
[171] *Id.* 24(d)-(f), 25(a).
[172] *Id.* (noting that the institutional investigator coordinated PREA-related issues in the absence of a designated PREA coordinator).
[173] *Id.* 13(a)-(b), 15(a)-(b).
[174] *Id.* 14, 16.

five were not sustained; one investigation was inconclusive; one rape charge was sustained, resulting in the perpetrator receiving ten days in isolated confinement and referral to the Commonwealth's Attorney for prosecution; in one charge involving unwanted touching, both inmates received discipline of ten days in isolated confinement; and in one charge against a fellow inmate for making sexual advances, the charge was sustained and the perpetrator received fifteen days of disciplinary segregation.[177]

In 2008 and 2009, there were six inmate grievances alleging staff-on-inmate sexual victimization.[178] All of the charges alleged sexual assault.[179] Of the six charges, all but one were not sustained, inconclusive, or unfounded.[180] One grievance resulted in a finding of fraternization between a male staff member and a female inmate, but the more serious charge of carnal knowledge was not sustained.[181]

ii. Facility's Explanation for Reported High Incidence of Sexual Victimization

In written testimony, Mr. Harold W. Clarke, Director of the VADOC, stated that the reported high incidence of staff-on-inmate sexual victimization that the *BJS Report* identified at Fluvanna should be understood in light of allegations that surfaced in 2007 involving the facility's former chief of security.[182] Ultimately, the chief of security stood trial in 2008 and was convicted of engaging in sexual acts with female offenders at Fluvanna.[183] Mr. Clarke noted that VADOC investigated these incidents and the perpetrator was disciplined, terminated, and charged under Virginia law.[184] Mr. Clarke observed, "Due to his high position in [Fluvanna's] management, confidence in the leadership and management of the facility was lost. Therefore, when the surveys were completed the offenders based their responses on issues which occurred during 2007."[185]

Mr. Clarke conceded that there were a number of factors that led to the former chief of security's sexual misconduct, including the lack of supervision, the distance of the chief of security's office from his supervisor's office, the chief of security's office having an unmonitored entrance, inadequate procedures for tracking the movement of inmates, the lack of strategically located surveillance cameras, the chief of security's work schedule extending beyond business hours, his working behind closed doors, no protocols for male staff working alone with female offenders, a staff who feared retaliation for reporting the sexual misconduct of a supervisor, inadequate

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[175] App. C (Fluvanna Inmate-on-Inmate Assaults).
[176] *Id.*
[177] *Id.*
[178] *Id.* (Fluvanna Staff-on-Inmate Assaults).
[179] *Id.*
[180] *Id.*
[181] *Id.* (Incident 3).
[182] As Mr. Clarke was unable to appear before the Panel, he provided a sworn, written response to questions that the Panel sent to him in writing. *See* Clarke Test. 1(a) (Apr. 18, 2011), *available at* http://www.ojp.usdoj.gov/reviewpanel/pdfs_apr11/testimony_clarke.pdf.
[183] *Id.*
[184] *Id.*
[185] *Id.*

training for staff, the dismissal of complaints from offenders, and poor communication at various levels within the organization.[186]

Mr. Clarke also testified that the following factors related to offenders may have contributed to the high incidence of inmate-on-inmate sexual victimization that the *BJS Report* identified at Fluvanna:

- Lack of knowledge of PREA and the process for reporting incidents,
- Fear of retaliation for reporting sexual victimization,
- Fear of being placed in administrative segregation during the investigation of a reported incident,
- Lack of trust in the staff to handle properly allegations of sexual victimization, and
- Fear of the staff's labeling an offender as a consenting participant in a sexual relationship with another inmate.[187]

Mr. Clarke also stated that short staffing during the early morning and late evening hours, when most incidents occur, may have contributed to the high incidence of reported inmate-on-inmate sexual victimization at Fluvanna.[188] He asserted that VADOC believes that some consensual sexual relationships among inmates were improperly classified as PREA violations.[189]

The Panel notes that in the wake of the sexual scandal at Fluvanna, VADOC took action to address the problem, replacing both the warden, who retired, and the chief of security, who was sent to prison, and appointing a committee in July of 2009 to investigate the facility and make recommendations for improving its management.[190] When the committee ultimately released its report, among other issues, it addressed management styles and practices at Fluvanna and reviewed whether inmate housing assignments were related to sexual orientation.[191]

The committee found that the chief of security at the time[192] had tried to enhance security measures at the facility, but the committee had concerns with his management style, noting his use of inappropriate language with offenders and low staff morale:

> Interviews revealed that the [chief of security] and key administrators were ineffective in their communication of changes to operational procedures. Input

[186] *Id.*
[187] *Id.* 1(b).
[188] *Id.*
[189] *Id.*
[190] *See Fluvanna Managerial Review Final Report* (Jan. 4, 2010) (on file with the Panel) [hereinafter Fluvanna Report].
[191] Fluvanna Report 1.
[192] The Panel learned after the April 2011 hearings that the security chief at Fluvanna at the time of the Panel's onsite visit and hearings subsequently left this position. This chief of security should not be confused with his predecessor who was convicted of sexual misconduct.

> from impacted staff and others was not obtained before the implementation of changes which has led to low morale of staff, offenders, and volunteers. According to staff . . . [the chief of security's] management practices lack a contemporary participatory style and staff feels uncomfortable in approaching the [chief of security]. There were multiple complaints concerning the [chief of security's] use of inappropriate language in some of his interactions with staff and volunteers.[193]

In testimony before the Panel, Mr. John Jabe, Deputy Director of Operations at VADOC, stated that he doubted the accuracy of the Fluvanna Report as it pertained to the alleged complaints against the chief of security.[194] He sensed that the former warden and her staff did not like the way the new chief of security implemented VADOC policies; consequently, Mr. Jabe believed that the negative comments about the chief of security that appeared in the Fluvanna Report were inaccurate.[195]

Based on an article published by the Associated Press claiming that Building 5D at Fluvanna was a "butch wing," where the facility allegedly segregated offenders based on their masculine physical appearance and sexual orientation,[196] the committee investigated housing practices at Fluvanna and concluded that there was no factual evidence to support this news story.[197]

Among the recommendations that the committee made were the following:

- Staff should have additional training on working with female offenders;
- Administrators needed training on effective communication and leadership;
- Staff should be consulted before the facility implemented policy changes;
- The administration should develop facility expectations and communicate them to all staffing levels;
- The facility should clarify staff roles in the operation of the facility;
- The administration should apply policies consistently, and
- The facility should implement an equitable system to make special programming available to all offenders.[198]

Ms. Wendy Hobbs, the current warden at Fluvanna, who took leadership of the facility in December of 2009,[199] stated that problems at Fluvanna were the result of poor security

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[193] *Id.* 4.
[194] Tr., J. Jabe, 204:10-205:3; *but see infra* notes 251 and 274.
[195] Tr., J. Jabe, 205:7-10, 12.
[196] Dena Potter, *Women's Prison Said to Have Segregated Lesbians, Others*, WASH. TIMES, June 11, 2009, *available at* http://www.washingtontimes.com.
[197] Fluvanna Report 6-7.
[198] *Id.* 9.
[199] Tr., W. Hobbs, 133:1.

measures.[200] When she was the warden at the Virginia Correctional Center for Women in Goochland, Virginia, Warden Hobbs served on the committee that investigated Fluvanna.[201] Warden Hobbs assured the Panel that the administration at Fluvanna takes incidents of sexual victimization at the facility seriously, investigating any allegations, taking statements from both the alleged victim and alleged perpetrator, and providing medical services as needed.[202]

Warden Hobbs said that one of her priorities at Fluvanna is to increase the number of female security staff, which is not as high as she would like.[203] She said that she would like to increase the percentage of female security officers from the current percentage, which is fifty-three, to at least seventy.[204] She said that there is no cross-gender supervision at Fluvanna.[205]

Warden Hobbs said that she is trying to create a culture at Fluvanna where inmates would feel free to report sexual victimization and where the staff understands its professional obligation to report sexual victimization.[206] She testified that in investigating an allegation of inmate-on-inmate sexual assault, "both inmates are put into investigative hold . . . ."[207] She said that even though this is a form of segregation, she cautioned that one should distinguish between protective segregation during an investigation and segregation as punishment.[208] Still, Warden Hobbs acknowledged that alleged victims may spend weeks in segregation during an investigation.[209] She said that even though placement in segregation during an investigation is not punishment, inmates understandably perceive it as so because they are removed from the general population.[210]

Warden Hobbs said that Fluvanna places the alleged victim of staff sexual misconduct in segregation during an investigation to control the communication between the staff person and the inmate, to make sure that they are not coordinating their stories to undermine the integrity of the investigation.[211] In the coming year, Warden Hobbs said that she plans to provide training to staff on working with female inmates and revamping a master pass list so that women do not miss participation in programming.[212]

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[200] *Id.* 131:16-18.
[201] *Id.* 130:10-11, 131:7-13.
[202] *Id.* 132:12-21.
[203] *Id.* 133:15-17.
[204] *Id.* 133:19-20, 133:22-134:1.
[205] *Id.* 134:8-14.
[206] *Id.* 135:9-21.
[207] *Id.* 136:1.
[208] *Id.* 136:2-10.
[209] *Id.* 136:11-16.
[210] *Id.* 139:20-140:4.
[211] *Id.* 142:3-19.
[212] *Id.* 191:9-11, 14-21.

iii. Observations

(a) The Distinctive Dynamics of Women's Prisons

The Panel invited testimony from Dr. Barbara Owen, Professor of Criminology at the California State University at Fresno, to provide perspective on the unique dynamics of female correctional institutions, such as Bridgeport and Fluvanna.[213] She stated, "[Y]ou have to pay separate attention to the issues of women or they get lost in the discussion of men."[214] Dr. Owen noted that consistent with the *BJS Report*, prior victimization contributes to the cycle of violence among women.[215] Using an ecological model suggested by the Centers for Disease Control and Prevention, Dr. Owen stated that "[m]ultiple organizational, environmental and individual factors contribute to violence in women's facilities . . . the dynamic interplay between individual, relational, community, facility and societal factors create and sustain violence potentials in women's jails and prisons."[216]

Dr. Owen observed that women who come from dysfunctional families, where emotional support is not available or where the primary caregivers may be violent or exploitative, may struggle with developing healthy relationships in adulthood.[217] "One of the most consistent findings has been that female offenders are more likely than male offenders to have experienced violent victimization in childhood, and much more likely to have experienced violent victimization than non-incarcerated women."[218] A prison sentence may trigger earlier trauma, aggravating the symptoms of Post-Traumatic Stress Disorder (PTSD).[219] Although it is unclear why women who have been prior victims of sexual abuse are more likely to be targets for recurrent victimization, for "incarcerated women, it is most probably due to a variety of risky behaviors and their tendency to become involved with abusive partners and engage in high-risk sexual behavior."[220]

According to Dr. Owen, one of the key concepts in understanding women's prisons is "that the primary motivation for women throughout life is not separation, but connection. Women's emotional development is dependent upon relationships and when women feel disconnected from others, they experience disempowerment, confusion, and anxiety."[221] Dr. Owen confirmed prior testimony that the cultures in men's and women's prisons differ significantly.[222] She observed, "Women's sexual relationships are described as usually consensual rather than coercive; unlike men, women sometimes develop pseudo-families as a result of these relationships."[223] Dr Owen noted that "some of the inmate-inmate violence that we see in the prisons can be thought of as interpersonal violence . . . replicating domestic violence."[224]

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[213] Owen Test. (Apr. 26, 2011), *available at* http://www.ojp.usdoj.gov/reviewpanel/pdfs_apr11/testimony_owen.pdf
[214] Tr., B. Owen, 90:8-10.
[215] Owen Test. 1.
[216] *Id.* 2.
[217] *Id.*
[218] *Id.* 3.
[219] *Id.* 4.
[220] *Id.*
[221] *Id.* 3.
[222] *Id.*
[223] *Id.* 4.
[224] Tr., B. Owen, 98:2-5.

Dr. Owen noted female offenders are not all the same, and the reasons for their engaging in sexual activity while in prison vary considerably:

> [F]emale inmates are not a homogenous group of passive victims. Some do fall in love with correctional officers, some actively exploit male or female officers who fall in love with them, and some willingly participate in sexual banter. If it is true that female inmates actively seek out sexual relationships with male staff members, it may be the case that such relationships are truly consensual; or it may be that such relationships can be understood as the tactics of the oppressed, a result of sexualized identity and low self image because of childhood sexual abuse, or a result of gender socialization.[225]

In any case, Dr. Owen testified that any official reports of sexual victimization of female inmates are certain to be lower than the actual numbers, as the consequences for reporting a sexual assault are too high for both the inmate and the staff member.[226]

To improve the safety of women inmates, Dr. Owen asserts that it is important to consider both the individual as well as the place of confinement in analyzing the factors that increase the risk of sexual victimization, noting that "safety and violence have different meanings for female and male inmates."[227] Dr. Owen suggests that correctional institutions should broaden the definition of safety in considering female inmates to include "physical, psychological, social, moral, and ethical safety."[228] She writes, "Expanding on these broader components of safety for female offenders directs our attention not only to improving safety in women's facilities, but also supports successful re-integration and rehabilitation."[229]

In fashioning recommendations to reduce institutional violence, Dr. Owen, referring again to the ecological model, offered suggestions for improvement in three broad categories: individual factors, relationship factors, and community and facility factors.[230]

In regard to individual factors, she suggests that correctional facilities should provide training to staff on trauma and responding to trauma, including PTSD, and understanding the impact domestic and intimate-partner violence may have on offenders.[231] Correctional institutions should have the capacity to provide treatment to inmates who experienced violence prior to incarceration as well as to inmates who experience violence while incarcerated.[232]

In regard to relationship factors, Dr. Owen encourages correctional institutions to have frank discussions with inmates during orientation about the benefits and consequences of developing relationships with other inmates.[233] The orientation should touch on alternative ways for women to develop healthy relationships with each other and to identify and develop healthy relationship

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[225] Owen Test. 5-6.
[226] *Id.* 6.
[227] *Id.*
[228] *Id.*
[229] *Id.*
[230] *Id.* 7-8.
[231] *Id.* 7.
[232] *Id.*
[233] *Id.* 8.

boundaries.[234] Correctional facilities should also provide constructive programming for inmates, which may include education on conflict management, the warning signs and components of domestic and intimate-partner violence, the mechanisms to promote personal safety, and the ways to break the cycle of violence.[235]

In regard to community and facility factors, Dr. Owen wrote that it is important for correctional institutions to evaluate the level of violence tolerated in the facility, which includes whether the staff sexually harasses inmates, whether the management has a rehabilitative or custodial approach, and whether verbal and nonverbal interactions with female inmates are either respectful or degrading.[236] Dr. Owen wrote that it is important for correctional facilities to have clear policies against verbal, physical, or sexual misconduct.[237] Among other recommendations, she suggested that correctional facilities implement processes for reporting and investigating sexual victimization that protect confidentiality, provide treatment to victims, and refer them to appropriate services.[238] She wrote that prisons should require staff training on "gender-appropriate ways to manage female offenders, with a particular emphasis on respecting female inmates, understanding the role of trauma and victimization as a pathway to prison/jail, sexual harassment, and staff sexual misconduct."[239] She also noted that staff training should address negative attitudes toward women, especially stereotypes about women in the criminal justice system.[240] Finally, Dr. Owen recommended that correctional institutions develop committees that include the participation of female inmates, as well as the custody and treatment staffs, to "implement innovative ideas to reduce institutional violence."[241]

In elaborating on her written testimony, Dr. Owen observed that verbal harassment in prison is a key indicator of the level of violence a correctional institution may tolerate:

> Our findings show that both inmate-inmate victimization and staff sexual misconduct occurs on a continuum, and when we take this prevention or intervention approach, it's almost like the broken windows philosophy of stop the small stuff, and I think probably the most single indicator of that is staff verbal harassment. When we hear the reports, again nationwide, of the terms that are allowed to be used in addressing women, and I just want to footnote they're often used to address female staff as well, there's a tolerance for that type of language.[242]

Dr. Owen also suggested that there are two terms that are often part of the discussion of the sexual victimization of women in prisons that require closer examination.[243] She said that thinking of women as "sexual predators" tends to be confusing, because based on her research,

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[234] *Id.*
[235] *Id.*
[236] *Id.*
[237] *Id.*
[238] *Id.* 9.
[239] *Id.*
[240] *Id.*
[241] *Id.*
[242] Tr., B. Owen, 92:16-93:4; *see also supra* note 107.
[243] Tr., B. Owen, 99:2-3.

the roles of predator and victim are often interchangeable for women on an individual level.[244] Dr. Owen also said that the term "manipulation" is an ill-fitting term in describing the relationship between women offenders and staff members; she said that this language requires more careful thought, otherwise it suggests that women are "magical creatures" who can make people do things they might not otherwise want to do.[245] Dr. Owen also observed that a common term in discussing women's prison is "drama," which she believes is a stereotypical way of dismissing women's issues.[246]

Dr. Owen testified that violence in women's prisons is rarely stranger violence; instead, it often takes place within the context of a relationship with staff or with other inmates.[247]

(b) Onsite Visit

In preparation for the hearings, the Panel toured Fluvanna on April 21, 2011. In listening to inmates in the general population, the Panel heard a number of comments questioning the wisdom of reporting sexual victimization to prison officials, as many perceived that reporting an incident invariably led to segregation, which they saw as a form of punishment.[248] One inmate commented, "If you dial the PREA number, it's a ticket to SEG."[249] Several inmates also alleged that the correctional staff mistreated them.[250] Some stated that the chief of security at the time of the onsite visit used derogatory language in referring to them.[251] Some of the inmates also alleged that despite VADOC's efforts to change the environment at Fluvanna, at least one male officer in a supervisory position was still having sex with female inmates.[252]

The Panel learned that inmates receive training on PREA that lasts between thirty and forty-five minutes.[253] One inmate said, however, that she had not been to a PREA orientation in nine years.[254]

The Panel witnessed one inmate in segregation who was being moved with what inmates called a "dog leash" or "dog collar," or what correctional officers referred to as a "tether strap" or "control strap."[255] The tether strap is a restraining device that encircles an inmate's waist, which

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[244] *Id.* 99:4-9.
[245] *Id.* 99:10-16.
[246] *Id.* 101:17-21.
[247] *Id.* 103:20-104:3.
[248] Interview with Wendy Hobbs, Warden, Fluvanna, et al. in Troy, Va. 1 (Apr. 21, 2011) (on file with the Panel) [hereinafter Fluvanna Interview].
[249] *Id.*
[250] *Id.*
[251] *Id.* 5.
[252] *Id.*; *see also* Andrews Test. 2 (Apr. 26, 2011), *available at* http://www.ojp.usdoj.gov/reviewpanel/pdfs_apr11/testimony_andrews.pdf. Ms. Andrews' testimony also appears in the Transcript of Record. *See* Tr., M. Andrews, 36:20-50:7. During the onsite visit, the Panel heard inmate allegations of sexual misconduct involving a lieutenant at Fluvanna. At the time of the visit, the Panel conveyed these inmate complaints to Warden Hobbs. Since the Panel's hearings on Fluvanna in April of 2011, the lieutenant who was the subject of the inmates' complaints has been arrested on three charges of carnal knowledge with a prisoner. *Crime Scene: Former Va. Guard Accused of Repeated Sex with Female Inmate*, WASH. POST, Mar. 9, 2012, http://www.washingtonpost.com/blogs/crime-scene/.
[253] Fluvanna Interview 5.
[254] *Id.*
[255] *Id.* 1; Tr., M. Andrews, 52:2-4; *id.*, D. Ratliffe-Walker, 156:1-3.

correctional staff use, along with hand and foot shackles, when moving inmates located in segregated housing.[256]

During the hearing, in response to the Panel's questions about the necessity of using the tether strap in dealing with inmates in segregation, especially in balancing its usefulness relative to the negative message it communicates to inmates, Mr. Jabe stated that VADOC will reevaluate its policy on the use of the tether strap.[257]

During the onsite visit, the Panel learned about Fluvanna's "honor wing," housing that allows inmates more privileges based on their good behavior.[258]

The Panel found that the investigators at Fluvanna had limited training in dealing with sexual assault.[259]

(c) Inmates and Trauma

Mr. Wayne Reed, the mental health director at Fluvanna, noted that at least half of the women at Fluvanna have trauma histories and the facility has programming that works with women to control symptoms associated with trauma.[260] Mr. Nathan Young, the assistant director for mental health at Fluvanna, said that all staff members receive annual training on mental health issues.[261] One of the elements of this training program is to remind staff members that PTSD is a mental health diagnosis and that they need to be aware of the symptoms of this disorder, especially in the way that female inmates may respond to correctional officers:[262]

> [We] underscore that an offender's response to an officer, if it's negative or disproportionate, . . . may not have anything to do with that situation or that particular officer or those officers personally, but that the situation . . . or something related to it may be triggering that response, which security staff may interpret as being manipulative, [or] antisocial.[263]

Mr. Young said that eighty percent of the women at Fluvanna meet the diagnostic criteria for PTSD or have symptoms of it; he noted that "basically the institution is a big trauma wing."[264]

(d) Testimony from Former Inmate and Inmate Advocate

The Panel heard testimony from Ms. Melissa Andrews, who served eight-and-half years as an inmate in the custody of VADOC.[265] She was incarcerated in 2002 and spent over a year at Fluvanna from 2003 to 2004 before she was transferred to another facility.[266] She returned to

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[256] *Id.*, M. Frame, 156:17-21.
[257] *Id.*, J. Jabe, 163:13-19.
[258] Fluvanna Interview 4.
[259] *Id.*, S. Horn, 181:22.
[260] *Id.*, W. Reed, 173:17-174:9; *see supra* note 219 (Owen Test.).
[261] Tr., N. Young, 187:19-22.
[262] *Id.* 188:2-4.
[263] *Id.* 188:5-12.
[264] *Id.*189:3-7.
[265] *Id.*, M. Andrews, 37:15-16.
[266] *Id.* 37:18-20.

Fluvanna in November of 2007, where she spent the last three years of her sentence before her release in July of 2010.[267] Ms. Andrews testified as a survivor of an inmate-on-inmate sexual assault at another VADOC facility, but she nonetheless provided first-hand observations about the culture of Fluvanna. Ms. Andrews testified that the sexual encounters between female inmates and male correctional staff were not violent; instead they were often the result of an agreement between the parties:

> I've never heard or seen a violent sexual exchange between officers and inmates because it is more of an exchange of services between the two. Women would allow these officers to have sexual relations with them because they were lonely, wanted a better job, wanted more privileges, wanted less consequences for infractions or just for something to do.[268]

Ms. Andrews said that incarcerated women are especially vulnerable to staff members who show an interest in them, as the women come to prison with poor self-esteem and welcome attention that would give them an advantage over other inmates.[269]

Commenting on her own experience at another facility where she said that she was the target of a fellow inmate's sexual assault, Ms. Andrews said that the investigation was significantly wanting: she was not sent to the medical unit; she was not provided counseling services; no pictures were taken; and the inquiry was limited.[270] She asserted that Fluvanna would similarly not take inmate-on-inmate allegations of sexual assault seriously unless there were physical signs to prove the allegation.[271] Ms. Andrews said that what she learned from her experience was that "never, ever to tell any authority anything that was going on."[272]

Ms. Andrews said that when she returned to Fluvanna in 2007, the warden at that time repeatedly told the inmates that "if she took anything and everything from us, including our humanity, maybe we would not return to prison."[273] Consistent with the Fluvanna Report, but contrary to Mr. Jabe's testimony, Ms. Andrews testified that the chief of security, who replaced his convicted predecessor, took a hard line, often referring to women inmates in a derogatory way.[274] She said that if inmates felt mistreated under the harsh, new policies, they could only appeal to the very people who were implementing them.[275] She said that as part of this new regime, women could not use makeup and had to cut their hair above the collar of their shirts.[276] If the women did not comply with these requirements, they were denied access not only to religious, educational, and vocational programming but also to family visits.[277] One aspect of the new

[267] *Id*. 37:20-22.
[268] *Id.* 38:16-39:1.
[269] *Id.* 39:2-9.
[270] *Id.* 41:8-16.
[271] *Id.* 41:16-21.
[272] *Id.* 42:12-14.
[273] *Id.* 42:22-43:2.
[274] *Id.* 43:3-7.
[275] *Id.* 43:7-12.
[276] *Id.* 43:20-22.
[277] *Id.* 43:22-44:4.

policies was an absolute ban on physical contact between inmates, not permitting hand-holding or hugging even during religious services.[278]

Ms. Andrews attested to the serious problem that women inmates had in accessing the toilet, not only during the night but also especially during weekly shakedowns.[279] As the cells do not have toilets, the staff would allow women to access the restroom only one at a time.[280] Women would often have to wait hours to use the toilet, forcing many to urinate on themselves, an infraction that resulted in disciplinary segregation.[281]

Contrary to the Fluvanna Report's conclusion, Ms. Andrews corroborated the Associated Press' story regarding the segregation of lesbians and masculine-appearing women at Fluvanna.[282] She stated that Fluvanna created a "butch wing" in Building 5D:[283]

> They segregated all the butch inmates into D wing . . . They segregated all the butch girls that had short hair or sagged their pants or looked like boys, grew facial hair, whatever the case may be. Put them all in one wing thinking that it would stomp down relationships between them and their girlfriends, and the truth of the matter is, is they just continued relationships and then they wrote about it because they were segregated.[284]

Ms. Andrews reported that during her time at Fluvanna she was aware of officers and inmates having sex in a windowless bathroom and supply closet; both were free of monitoring cameras installed at the facility in the wake of PREA.[285]

With Ms. Hobbs' appointment at Fluvanna, Ms. Andrews said that the atmosphere changed for the better, but still, based on her correspondence with former inmates at Fluvanna, the usage of the "dog collar" and the problem of access to toilets remain.[286]

Ms. Helen Trainor, the former director of the Virginia Institutionalized Persons Project for the Legal Aid Justice Center of Charlottesville, Virginia, testified that she worked as an advocate for inmates in Virginia prisons from 2007 to 2010.[287] She said that the primary focus of her contact with inmates at Fluvanna was civil rights work.[288] Ms. Trainor said that based on her interactions with inmates at Fluvanna, the complaints of staff sexual misconduct significantly outnumbered complaints of inmate-on-inmate sexual victimization.[289] She stated that the policies and practices at Fluvanna served a dual purpose: to foster the illusion that inmate-on-inmate sexual victimization is a problem, which deflects attention away from the recent sex

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[278] *Id.* 44:5-14.
[279] *Id.* 45:6-19, 46:8-12.
[280] *Id.* 45:6-19.
[281] *Id.*
[282] *Id.* 47:11-21.
[283] *Id.* 66:13-15, 67:2-3.
[284] *Id.* 67:2-11.
[285] *Id.* 46:20-47:10.
[286] *Id.* 48:5-8, 49:7-21.
[287] *Id.*, H. Trainor, 70:4-7.
[288] *Id.* 71:5-6.
[289] *Id.* 71:15-19.

scandal at the prison involving the former chief of security, and to create a "a culture of degradation, shame, and intimidation" that allows officers to victimize inmates unchallenged.[290]

Ms. Trainor testified that she had evidence of the current chief of security using derogatory language in dealing with female offenders.[291] She also corroborated Ms. Andrews' testimony regarding the existence of a "butch wing" at Fluvanna,[292] the distress inmates encountered in accessing toilets,[293] the policy of restricting any physical contact inmates had with each other,[294] and the use of the "dog leash" in moving inmates in segregation.[295]

Commenting on Fluvanna's alleged practice, at least at one time, of segregating masculine-appearing women, Ms. Trainor observed, "Unit managers were authorized to identify . . . women who looked butch on the basis solely of their appearance, notably a preference for wearing baggy clothes and having short hair. The assumption, I assume, was that women who looked butch were, in fact, sexual predators and should therefore be punished."[296]

Ms. Trainor said that "correctional officers routinely referred to the wing in which butch women were housed as 'the locker room' and to the women there as 'little boys.'"[297] She also testified that Fluvanna mistreated inmates by failing to provide sufficient privacy during consultations with medical staff.[298]

iv. Facility-Specific Recommendations

In light of Fluvanna's response to the Data Request, the Panel's site visit, and the testimony that the Panel received regarding Fluvanna, the Panel recommends that the VADOC revisit the Fluvanna Report and determine whether it has been effective in implementing the recommendations contained in it, particularly in regard to staff training, effective communication, and the investigation of alleged sexual victimization. The Panel also recommends that the facility revisit its policy of holding alleged victims of sexual misconduct in administrative segregation during an investigation. Consistent with the recommendations of the proposed regulations, the Panel encourages Fluvanna to explore other alternatives before placing an alleged victim of sexual assault in segregation. The Panel found the use of tether straps at Fluvanna disturbing, failing to understand their value in enhancing security while recognizing the dehumanizing message their use sends to inmates at the facility. The Panel welcomed Mr. Jabe's offer to revisit VADOC's policy on the use of tether straps. The question as to whether Fluvanna segregated inmates based on sexual orientation or masculine physical appearance is beyond the purview of these hearings. Still, the Panel received credible testimony that women at Fluvanna may have been subject to discrimination based on sexual orientation or physical

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[290] *Id.* 72:9-12.
[291] *Id.* 75:13-19. The Panel requested documentation of the e-mails that Ms. Trainor claimed to have in her files showing the usage of offensive language (*see id.*, G. Christensen, 85:13-16; *id.*, H. Trainor, 85:17-21); however, Ms. Trainor was unable to produce these documents.
[292] *Id.* 76:10-21.
[293] *Id.* 77:7-22.
[294] *Id.* 76:22-77:6.
[295] *Id.* 79:18-21.
[296] *Id.* 76:11-17.
[297] *Id.* 75:20-76:1.
[298] *Id.* 79:22-81:8.

appearance. Given these allegations, it may make sense to invest in staff training on the obligation to respect inmates, regardless of sexual orientation or physical appearance. The staff training might include a segment on the importance of appropriate professional language in creating a positive institutional culture. Consistently speaking to inmates with respect plays a key role in creating a prison culture that does not tolerate any form of sexual victimization. In practice, implementing zero tolerance for inmate sexual victimization might begin with insisting on zero tolerance for verbal harassment of inmates in any form. The Panel encourages Warden Hobbs to strengthen staff training programs, particularly for male staff, on the dynamics of working in a female facility and on the importance of maintaining appropriate professional boundaries.

b. Allred

i. Facility Description

Allred is a maximum-security prison for men operated by the TDCJ, in Wichita Falls, Texas. On January 1, 2008, and January 1, 2009, the facility's capacity was 3682; on January 1, 2008, the actual inmate population was 3646; and on January 1, 2009, the actual inmate population was 3636.[299] In 2008, 5866 inmates spent any time at Allred; the average length of stay was 1302 days; and the longest stay was 4941 days.[300] In 2009, 4693 spent any time at Allred; the average length of stay was 1682 days; and the longest stay was 5306 days.[301] In 2008, out of a total of 5866 inmates, the racial and ethnic breakdown was as follows: 2290 African Americans, 1727 Hispanics, 1818 Whites, 3 Asians, 1 American Indian, and 27 others.[302] In 2009, out of a total of 4693 inmates, the racial and ethnic breakdown was as follows: 1814 African Americans, 1401 Hispanics, 1415 Whites, 2 Asians, 1 American Indian, and 24 others.[303]

In 2008, Allred had one suicide, fifty-eight attempted suicides, no homicides, and six attempted homicides.[304] In 2009, Allred had four suicides, forty-eight attempted suicides, no homicides, and five attempted homicides.[305] In 2008 and 2009, none of the suicides or attempted homicides was related to sexual victimization.[306] In 2008, of the fifty-eight suicide attempts, seven inmates alleged prior inmate-on-inmate sexual victimization;[307] in 2009, of the forty-eight suicide attempts, two inmates alleged prior inmate-on-inmate sexual victimization.[308]

In 2008 and 2009, no employees at Allred were terminated, disciplined, or received a warning for sexual misconduct;[309] however, in the same time period, eighteen staff members were

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[299] Allred Resp. 9-12 (on file with the Panel).
[300] *Id.*
[301] *Id.*
[302] *Id.*
[303] *Id.* Allred did not account for the racial and ethnic backgrounds of thirty-six inmates.
[304] *Id.* 13-16. The TDCJ explained that in reporting the number of attempted homicides at Allred, it relied on data from the OIG, which characterizes attempted homicide as aggravated assault.
[305] *Id.*
[306] *Id.* 14, 16.
[307] *Id.* 14.
[308] *Id.* 16.
[309] *Id.* 22(a), (c).

investigated for improper conduct involving an inmate and resigned prior to receiving discipline.[310] According to the investigative summaries that the Panel received from the TDCJ, about half of these cases involved female staff members who developed inappropriate relationships with male offenders.[311] Of the eighteen staff members who resigned following an investigation in 2008-09, one resigned based on a "Failure to Provide Notification of Offender Relationship;" and seventeen resigned based on "Establishment of Offender Relationship that Jeopardizes Security or Compromises the Employee (other than cohabitation or sexual misconduct)."[312]

On January 1, 2008, Allred had 973 authorized staff positions, including 842 security positions and 131 non-security positions.[313] On January 1, 2008, Allred had in actuality 850 staff persons, 721 in security positions and 129 in non-security positions.[314] On January 1, 2009, Allred had 974 authorized staff positions, including 842 security positions and 132 non-security positions.[315] On January 1, 2009, Allred had in actuality 896 staff persons, 748 in security positions and 121 in non-security positions.[316] On January 1, 2008, and on January 1, 2009, the Office of the Inspector General (OIG) assigned three sworn officers to Allred.[317] As the security staff in Texas is not sworn, the only sworn officers at Allred in 2008 and 2009 were from the OIG; consequently, the TDCJ did not provide data on the ratio of security staff to inmates during this time period.[318]

At Allred the staffing plan provided for a Unit Safe Prisons Program Coordinator in 2008-09; this position would include many of the duties of a PREA coordinator.[319] This position was vacant from January of 2008 to March 15, 2008; then it was assigned to a sergeant on staff.[320]

For the period under review, there were sixty-six investigations at Allred responding to complaints of inmate-on-inmate sexual victimization.[321] In all instances, the charges were not sustained.[322]

During the same time period, there were twenty-five investigations of staff sexual misconduct involving inmates.[323] The investigations involved staff members of both sexes and included a range of charges from establishing a relationship with an inmate to rape.[324] None of the charges were sustained except for eight incidents, as previously noted, involving female staff members who either wrote romantic letters to inmates or established inappropriate relationships with

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[310] *Id.* 22(b) & electronic file supp.
[311] *Id.*
[312] *Id.* 22(b).
[313] *Id.* 23(a).
[314] *Id.* 23(d)(i).
[315] *Id.* 24(a).
[316] *Id.* 24(d)(i). These figures do not total 896; the discrepancy is a reporting error attributable to Allred.
[317] *Id.* 23(b), 24(b).
[318] *Id.* 23-25.
[319] *Id.* 2.
[320] *Id.*
[321] App. C (Allred Inmate-on-Inmate Assaults).
[322] *Id.*
[323] *Id.* (Allred Staff-on-Inmate Assaults).
[324] *Id.*

them.[325] The investigative reports indicated that when the charge was sustained against a female staff member, she was either escorted from the facility or allowed to resign without facing discipline or criminal prosecution.[326]

In reviewing the complete investigative files from Allred, there were instances in which the Panel could not determine from the produced documents what happened either to the complainant or the alleged perpetrator.[327] On reviewing the investigative files, the Panel noted that there were a significant number of complainants who self-identified as homosexual.[328]

ii. Facility's Explanation for Reported High Incidence of Sexual Victimization

Neither the written nor oral testimony to the Panel from representatives from the TDCJ provided a sufficient explanation for the sustained high level of sexual victimization at Allred in 2008 and 2009. In responding to the Panel's Data Request,[329] the TDCJ stated that the high level of reported sexual victimization at Allred may be related to the classification of inmates at the facility, but the TDCJ did not explain how inmate classification led to the high prevalence of sexual victimization:

> Due to Allred's maximum security profile, it houses various custody levels ranging from general population offenders that are housed in accordance with the agency's Classification Plan to various levels of administrative segregation. Additionally, the unit houses a significant number of *Safekeeping* offenders. *Safekeeping* is a classification status utilized for housing offenders who have been identified as vulnerable and in some cases have been victimized in the past. These custody levels are contributing factors in the allegations of sexual victimization.[330]

Mr. Brad Livingston, Executive Director, TDCJ, explained in his written testimony that the Texas Board of Criminal Justice (TBCJ), comprised of nine members appointed by the governor

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[325] *Id.* (Incidents 1-3, 21-25); *see supra* note 311.
[326] App. C (Allred Staff-on-Inmate Assaults) (Incidents 1-3, 21-25).
[327] *Id.* (Incidents 27, 28); *see also* Tr., R. Taler, 427:1-3 ("I can't even tell from the documentation any additional actions taken against the offender.").
[328] Based on the Panel's review of Allred's investigative files of inmate complaints alleging inmate-on-inmate sexual victimization, the Panel found that a significant number of the complainants self-identified as being other than heterosexual. In 2008, out of thirty-four inmate complaints alleging inmate-on-inmate sexual victimization, fourteen complainants (41%) self-identified as other than heterosexual. In 2009, out of thirty-two inmate complaints alleging inmate-on-inmate sexual victimization, seventeen complainants (53%) self-identified as being other than heterosexual.
[329] Question forty-six in the Data Request that the Panel sent to the TDCJ is "What are the key factors that led to the high incidence of sexual victimization at the Allred Unit in calendar years 2008 and 2009?" *See* app. A (Letter and Data Request from Michael L. Alston, Attorney Advisor, Panel, to Brad Livingston, Executive Director, TDCJ (Feb. 2, 2011)).
[330] Allred Resp. 46 (italics in original).

of Texas, is the policy-making and oversight body for the TDCJ.[331] The OIG, the Internal Audit Division, the PREA Ombudsman, and the Special Prosecution Unit are independent agencies that report directly to the TBCJ.[332] Mr. Livingston noted that prior to the enactment of PREA, the Texas Legislature mandated that TDCJ implement a safe prisons program to address offender assault.[333] Moreover, in 2007, the Texas Legislature codified into law the TDCJ's zero-tolerance policy toward sexual assault in Texas prisons and created the position of PREA Ombudsman within the TDCJ.[334] Mr. Livingston stated, "From the time an offender enters our system and an individual accepts employment with our agency, we communicate our expectations for behavior and our mechanisms for reporting behavior in violation of our standards of conduct."[335] He said that the offender population receives orientation and a handbook that addresses the issue of sexual assault, and during intake and prior to permanent assignment to a unit, the Safe Prisons Program Coordinator interviews each inmate and provides information on the TDCJ Safe Prisons Program.[336] The Safe Prisons Program is "a coordinated effort to integrate education, training, classification, security, monitoring medical and investigative functions in a manner which promotes offender safety."[337] The TDCJ displays posters on its zero-tolerance policy in prominent locations in each unit.[338] TDCJ employees also receive written standards of conduct and an ethics policy, and they must acknowledge receipt of these documents in writing.[339] All employees receive a toll-free telephone number for the OIG to report any criminal violations, including sexual assault.[340] Mr. Livingston noted that avenues for reporting sexual victimization include grievance procedures, the agency's ombudsman, the PREA Ombudsman, the administrative monitor for the use of force, and direct reports to the OIG.[341] Mr. Livingston noted that none of these administrative functions report to the division responsible for prison operations.[342]

iii. Observations

Mr. Wayne Krause, the legal director of the Texas Civil Rights Project (TCRP), provided testimony to the Panel on the culture at Allred.[343] He stated that the TCRP has an active prisoner rights program, which receives hundreds of complaints from inmates throughout the State of Texas, but his organization represents less than one percent of the inmates who contact it.[344] Mr. Krause provided two examples of inmates whom the TCRP represents who have alleged sexual victimization at Allred in 2008; he referred to one as John and to the other as Jane, a transgender

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[331] Livingston Test. 2 (Apr. 26-27, 2011), *available at* http://www.ojp.usdoj.gov/reviewpanel/pdfs_apr11/testimony_livingston.pdf. Mr. Livingston's testimony also appears in the Transcript of Record. *See* Tr., B. Livingston, 351:2-372:17.
[332] Livingston Test. 2.
[333] *Id.*
[334] *Id.* 3; *see* TEX. GOV'T CODE ANN. §§ 501.011 (zero-tolerance policy), 501.172 (ombudsperson) (2011).
[335] Livingston Test. 4-5.
[336] *Id.* 5.
[337] *Id.* 6.
[338] *Id.* 5.
[339] *Id.*
[340] *Id.*
[341] *Id.*
[342] *Id.*
[343] Tr., W. Krause, 324:18-22.
[344] *Id.* 325:1-8.

inmate.[345] Producing a redacted sworn statement from John, who is still housed at TDCJ, Mr. Krause stated that on October 5, 2008, a correctional officer came to John's cell and forced him to perform oral sex.[346] Mr. Krause contended that there were two good reasons to believe John's version of this event: first, there is an official report that shows that the semen sample that John produced matched the DNA of the accused correctional officer; and second, the correctional officer confessed to prison authorities that John performed oral sex on him.[347] Mr. Krause said that according to Jane's sworn statement, which Mr. Krause produced, the same correctional officer who victimized John used the same techniques of intimidation to force Jane to perform oral sex on him, too.[348]

Mr. Krause said that one of the saddest aspects of this story is that at the time of the alleged sexual victimization of John, the administrators of Allred were already aware that the facility had one of the nation's highest rates of sexual victimization, by both correctional staff and other inmates.[349] Moreover, according to Mr. Krause, John told Allred's Safe Prisons Program Officer that the same correctional officer had sexually assaulted him twice previously and the program officer allegedly did nothing to protect him.[350] Most significantly, Mr. Krause claims that the Safe Prisons Program Officer refuted John's allegations without investigation.[351] Citing the documents he produced, Mr. Krause stated that when John gave the semen sample to the Safe Prisons Program Officer she threatened him, allegedly telling him that if the semen sample did not match the accused correctional officer, she would charge him with assaulting her with a bodily fluid.[352] She also allegedly warned him not to file another grievance.[353]

Mr. Krause noted that the TDCJ has some good policies on paper that try to prevent and respond to sexual victimization, but based on the experiences of John and Jane, the practice does not appear to conform to the policies.[354] He said that the culture at Allred is one that blames and punishes the victim.[355] Mr. Krause contended that the grievance procedures are inherently flawed when it comes to reporting sexual victimization because the TDCJ allows an inmate only fifteen days after an incident to file a grievance.[356] Mr. Krause said that based on his experience, some victims of sexual assault may need more than fifteen days to process what happened to them.[357] He said that one should contrast this fifteen-day period to criminal sexual assault

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[345] *Id.* 325:9-10, 328:7.
[346] *Id.* 326:7-20. The sworn statements and other documents related to Mr. Krause's testimony are on file with the Panel.
[347] *Id.* 327:4-8.
[348] *Id.* 328:5-12.
[349] *Id.* 327:15-19; *see supra* note 33.
[350] Tr., W. Krause, 327:20-328:1.
[351] *Id.* 329:4-5.
[352] *Id.* 329:9-14.
[353] *Id.* 329:14-15.
[354] *Id.* 328:16-21.
[355] *Id.* 329:20-21.
[356] *Id.* 331:14-17.
[357] *Id.* 331:17-20. The proposed national standards state that an inmate should have a minimum of twenty days to file a grievance following an incident of sexual abuse. Nat'l Standards, 76 Fed. Reg. at 6298 (§ 115.352(a)(1)). The proposed national standards also state that a correctional institution should grant an extension of no less than ninety days for filing a grievance when an inmate can provide documentation that the normal time limit for filing a grievance was impractical because of either physical or psychological trauma. *Id.* (§ 115.352(a)(2)).

statutes, which in most states extend the reporting period to five years or more after the incident.[358] Mr. Krause also commented on the lack of services for victims of sexual assault at Allred and a culture that follows rules at the expense of people.[359]

Mr. Krause offered four recommendations for improving Allred: (1) providing consistent, effective education on preventing and responding to sexual victimization for both correctional staff and inmates; (2) having correctional officials take every complaint of sexual victimization seriously; (3) collaborating with organizations outside the prison to provide services to inmate victims; and (4) expanding the staff of TDCJ's PREA Ombudsman (currently there is just one ombudsman and one assistant) and improving communication between the PREA Ombudsman's Office and inmates who have complained of sexual victimization, especially when it comes to informing them of the disposition of the charges made against sexual predators.[360]

In reflecting on Mr. Krause's testimony regarding the alleged treatment of both John and Jane, the Panel noted that during its onsite visit of Allred, staff members referred to homosexual inmates as "queens."[361]

At the request of the Panel, the BJS prepared a short summary comparing the incidence of sexual victimization at Allred between its last appearance before the Panel, based on 2007 data, and the data collected in the most recent *BJS Report*. The summary, Trends in Sexual Victimization at Allred, appears in the following chart:[362]

Trends in Sexual Victimization at Allred	**2007**	**2008-09**
Total	9.9%	10.9%
Inmate-on-Inmate	4.8	7.6
Nonconsensual Sexual Acts	4.0	2.5
Staff Sexual Misconduct	6.7	5.6
Nonconsensual Sexual Acts	4.9	3.6
Nonconsensual Sexual Acts	8.0	6.5
Abusive Sexual Contacts Only	1.9	4.4
Physically Forced		
Inmate-on-Inmate	3.6	6.8
Staff	3.2	3.2
Pressured		
Inmate-on-Inmate	2.8	3.9
Staff	3.2	3.7
No Force/Pressure	2.3	3.2
Injured	3.3	1.9
Inmate-on-Inmate	3.3	0.6
Staff	0.9	1.9

[358] Tr., W. Krause, 332:6-9.
[359] *Id.* 332:12-13, 333:7-9.
[360] *Id.* 335:1-337:10.
[361] Interview with Eddie Williams, Senior Warden, Allred, et al. in Wichita Falls, Tex. (Apr. 19, 2011) (on file with Panel).
[362] The BJS relied on data that appears in the *BJS Report* and the *BJS Report 2007* in preparing the chart.

Based on the chart that the BJS prepared, the Panel expressed concern that the data indicated that abusive sexual contact at Allred more than doubled since the *BJS Report 2007*.[363] Mr. Livingston said that the data from BJS significantly differs from the number of reported incidents that the TDCJ has.[364] He said that he could not offer an explanation for why the incidence of sexual victimization at Allred increased, nor could he make sense of the discrepancy between the BJS' data and the TDCJ's data on the reported incidence of sexual victimization at Allred, as TDCJ's numbers are roughly ten times less than the numbers reported in the *BJS Report*.[365] Mr. Livingston stated that contrary to the trend suggested by the BJS data in the above chart, the TDCJ as a whole actually had a decrease in the incidence of sexual victimization from 261 in 2007 to 168 in 2009.[366] Mr. Livingston testified that during the same three-year period, Allred also experienced a slight decrease in the incidence of sexual victimization.[367] Mr. Livingston noted that Allred has an inmate population with many of the characteristics that the *BJS Report* identified as being overrepresented among inmates who have experienced sexual victimization, including inmates convicted of violent offenses, inmates with mental illness, inmates who identify as being other than heterosexual, and inmates in safekeeping status.[368]

In reviewing reports of both inmate-on-inmate sexual victimization and staff-on-inmate sexual victimization that Allred provided to the Panel, the Panel chose one report involving the investigation of an inmate's sexual assault on a cellmate to examine more closely with the assistance of representatives of the TDCJ.[369] The Panel noted that the record showed that the perpetrator had a history of being disciplined repeatedly for sexual misconduct,[370] and the facility had identified the perpetrator as a sexual predator.[371] In reviewing the report, TDCJ officials noted that some of the previous disciplinary actions against the perpetrator were most likely based on his masturbating in front of female staff members, but the inmate's disciplinary record attached to the report lacked sufficient detail to determine whether the other incidents prompting discipline for sexual misconduct were limited to masturbation or involved sexual activity with other inmates.[372] In this instance, the investigative report noted that the perpetrator admitted to the sexual assault on his cellmate.[373] Despite this admission, the investigator checked a box on the standard investigative report form, indicating that the investigator was "Unable to Substantiate Subject's Allegation."[374]

After reviewing the investigative report, Mr. Eddie Williams, Senior Warden of Allred, said that he was unable to explain the investigator's action.[375] The report showed that the victim was placed in transient housing pending the outcome of the investigation,[376] but the report was silent

[363] Tr., G. Christensen, 369:14-17.
[364] *Id.*, B. Livingston, 370:3-12.
[365] *Id.* 372:7-12, 373:2-4; *see also id.*, R. Thaler, 374:22-375:3.
[366] *Id.*, B. Livingston, 377:18-22.
[367] *Id.* 378:4-5.
[368] *Id.* 380:5-21, 381:4-13.
[369] *Id.*, G. Christensen, 410:1-4.
[370] *Id.*, G. Christensen & E. Williams, 414:13-415:5.
[371] *Id.*, E. Williams, 416:18-19.
[372] *Id.* 414:22, 417:7-8, 420:7; *id.*, J. Moriarty, 423:9-14.
[373] *Id.*, E. Williams, 418:22-419:2.
[374] *Id.* 419:19-21.
[375] *Id.*
[376] *Id.* 415:17-21.

as to whether Allred took any actions against the alleged perpetrator.[377] Sgt. Lisa James, Safe Prisons Program Coordinator, testified that even though the report that the TDCJ provided did not contain this information, Allred did place the perpetrator in maximum security.[378]

Mr. Livingston acknowledged that in a system as large as the TDCJ, there is always a challenge in trying to close the gap between stated policy and actual practice.[379] In dealing with this challenge in the context of addressing inmate sexual victimization, the TDCJ has emphasized the significance of staff training.[380] To augment existing in-service training programs for staff, Mr. Livingston said that the TDCJ has in the last few years strengthened its training department and created special training programs for both newly promoted sergeants and captains.[381]

In discussing the prosecution of serious cases involving inmate-on-inmate sexual assault, Mr. John Moriarty, Inspector General, TDCJ, stated that even when there is overwhelming evidence, grand juries are often reluctant to move forward with the cases because they often lack sympathy for victims of prison sexual assault.[382] Ms. Gina DeBottis, Special Prosecution Unit, OIG, agreed with this assessment, noting the number of sound cases that her office presented to grand juries that chose not to issue indictments.[383] Mr. Moriarty noted that prosecutors often face the same prospect at trial, citing a particularly disturbing case in which a jury ignored aggravated sexual assault charges against an inmate despite convincing DNA evidence supporting a conviction.[384]

Ms. DeBottis stated to the Panel's surprise that in prosecuting cases, her office cannot use the evidence gathered for administrative discipline.[385]

Ms. Charma Blount, Sexual Assault Nurse Examiner at TDCJ, testified that Allred does take measures to provide services to inmates who are victims of sexual assault, which takes the form of giving a pamphlet to an inmate at the beginning of a sexual assault investigation to explain the inmate's rights, providing the inmate a forensic examination, and referring the inmate to mental health services.[386] The institution also provides inmates with an "offender victim representative," a trained advocate who is to be the "eyes and ears" of an inmate during the forensic medical examination process.[387]

iv. Facility-Specific Recommendations

The Panel finds disturbing that Allred, which the Panel identified previously as a facility with a high incidence of sexual victimization, does not appear to have made significant improvements since the same administrators from the facility and TDCJ appeared before the Panel in 2008.[388]

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[377] *Id.*, R. Thaler, 427:1-3.
[378] *Id.*, L. James, 433:1-10.
[379] *Id*., B. Livingston, 385:8-12.
[380] *Id.* 385:20-386:1.
[381] *Id.* 386:1-22.
[382] *Id.*, J. Moriarty, 449:14-16.
[383] *Id.*, G. DeBottis, 450:1-15.
[384] *Id*. 451:12-21.
[385] *Id.* 448:6-8.
[386] *Id.*, C. Blount, 464:15-465:8.
[387] *Id.* 461:11, 21-22.
[388] *See supra* note 33.

The Panel strongly recommends that TDCJ and Allred develop a comprehensive management plan that identifies the factors contributing to the high incidence of sexual victimization at Allred, including measurable goals that an outside observer can track to ensure demonstrable progress. The plan should include an evaluation of Allred's compliance with directives, policies, and common practices that TDCJ has promulgated to eliminate sexual misconduct.[389] The Panel also urges TDCJ and Allred to review administrative investigations into allegations of sexual abuse, which might involve having TDCJ or OIG conduct quarterly reviews of all investigations, strengthening the training for investigative staff, improving documentation of investigative outcomes, and ensuring better coordination of administrative and OIG investigations. The Panel also encourages the prosecutor's office to review its stated practice of not relying on evidence gathered during administrative investigations. The TDCJ should also review the services it provides to inmates who have been the target of sexual abuse. In light of the high number of grievances from self-identified homosexual inmates at Allred, the Panel encourages the Allred administrators to provide training to staff on the vulnerability of homosexual inmates and to take steps to protect them from sexual assault. Given the significant number of female staff members who were forced to resign from Allred in the wake of investigations finding that they established inappropriate relationships with male inmates, Allred should provide staff training, especially for newly hired female staff, on how to maintain proper professional boundaries. The training should include information for both staff members and supervisors on how to identify early warning signs that a staff member's professional relationship with an inmate may be headed in the wrong direction.

c. Elmira

i. Facility Description

Elmira, located in Upstate New York, is a maximum-security prison for men. On January 1, 2008, and on January 1, 2009, the full rated capacity at Elmira was 1680; in addition there were fifty-four beds in the Special Housing Unit (SHU) and thirty-four beds in the infirmary.[390] The actual number of inmates on January 1, 2008, was 1718 in the general population, 51 in the SHU, 15 inmates in the infirmary, and 16 inmates out of the count, making a total of 1800 inmates.[391] The total number of inmates who spent any time at Elmira in 2008 was 9464.[392] In 2008, the average length of stay for an inmate was 161 days; the longest length of stay was 6463 days.[393] The actual number of inmates at Elmira on January 1, 2009, was 1750 in the general population, 54 in the SHU, 17 in the infirmary, and 11 out of the count, making a total of 1832 inmates.[394] The total number of inmates who spent any time at Elmira in 2009 was 9396.[395] In 2009, the average length of stay for an inmate was 168 days; the longest length of stay was 6776 days.[396]

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[389] *See* Livingston Test. 3-6.
[390] Elmira Resp. 9(a), 10(a) (on file with the Panel).
[391] *Id.* 9(b).
[392] *Id.* 9(f).
[393] *Id.* 9(g), (h).
[394] *Id.* 10(b).
[395] *Id.* 10(f).
[396] *Id.* 10(g), (h).

In 2008, among the 9464 inmates who spent any time at Elmira, the racial and ethnic composition was as follows: 3260 Whites, 4782 African Americans, 1249 Hispanics, 18 Asians, 95 Alaska Natives or American Indians, 40 others, and 20 unknown.[397]
In 2009, among the 9396 inmates who spent any time at Elmira, the racial and ethnic composition was as follows: 3384 Whites, 4612 African Americans, 1226 Hispanics, 15 Asians, 100 Alaska Natives or American Indians, 53 others, and 6 unknown.[398] In 2008 and 2009, Elmira did not collect inmate data either for the category of Native Hawaiian or Other Pacific Islander or for the category of Two or More Races.[399]

At Elmira in 2008, one inmate committed suicide, and ten inmates attempted suicide.[400] The suicide and attempted suicides in 2008 were not related to sexual victimization.[401] In 2009, two inmates committed suicide, and eleven attempted suicide.[402] One of the inmates who attempted suicide in 2009 had alleged that he was the victim of inmate-on-inmate sexual abuse about three months earlier at another correctional facility, but the charge was not substantiated and the inmate had a well-documented history of mental illness.[403] There were no homicides at Elmira in 2008 and 2009, and Elmira does not gather data on attempted homicides.[404]

On January 1, 2008, there were 727 staff positions at Elmira at full capacity (523 sworn and 204 non-sworn).[405] On January 1, 2008, however, there were 232 sworn staff members and twenty-six non-sworn staff members actually present.[406] DOCCS does not require a minimum mandatory number of daily staff at each of its facilities; rather it employs a "plot-plan approach" to determine the staffing pattern.[407] In 2008, the plot-plan for Elmira entailed 266 security and sixteen non-uniform positions.[408]

On January 1, 2009, Elmira at full capacity had 741 staff positions (544 sworn and 197 non-sworn).[409] On January 1, 2009, there were, however, 235 sworn staff and nineteen non-sworn staff actually present.[410] In 2009 the staffing plot-plan for Elmira entailed 269 security and sixteen non-uniform positions.[411]

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[397] *Id.* 11(a)-(g).
[398] *Id.* 12(a)-(g).
[399] *Id.* 11(g), 12(g).
[400] *Id.* 13(a)-(b).
[401] *Id.* 14.
[402] *Id.* 15(a)-(b).
[403] *Id.* 16.
[404] *Id.* 13(c)-(d), 14(c)-(d).
[405] *Id.* 23(a)-(c).
[406] *Id.* 23(e)(i), (f)(i). These numbers refer to individuals and do not account for staff members who may have worked more than one shift.
[407] *Id.* 23(g).
[408] *Id.*
[409] *Id.* 24(a)-(c).
[410] *Id.* 24(e)(i), (f)(i). These numbers refer to individuals and do not account for staff members who may have worked more than one shift.
[411] *Id.* 24(g).

On January 1, 2008, and on January 1, 2009, the ratio of uniformed staff to inmates was one to 3.49.[412]

In 2008 and 2009, Elmira did not have a PREA coordinator.[413]
For the period under review, calendar years 2008 and 2009, there were four investigations into inmate-on-inmate charges of sexual assault at Elmira.[414] In each case, the charge was not sustained.[415] During the same period, there were twenty-two investigations into staff sexual misconduct at Elmira.[416] In all but one of these cases the charges were not substantiated.[417] In one instance, the investigation substantiated a charge of unwanted touching against a contract phlebotomist; Elmira referred the matter for prosecution, but at trial the accused was found not guilty.[418]

In reviewing the complaint files that Elmira produced, the Panel found them unorganized, incomplete, and difficult to follow, hindering an independent review of the facility's complaint process.

ii. Facility Explanation for Reported High Incidence of Sexual Victimization

After reviewing the data in the *BJS Report* showing a high incidence of staff-on-inmate sexual victimization at Elmira, Brian Fischer, Commissioner of DOCCS, made two observations: (1) the results of the recent BJS survey differ significantly from a comparable BJS survey of Elmira in 2007 that showed a significantly lower rate of staff-on-inmate sexual victimization, and (2) the inmate-reported incidents of staff sexual misconduct may reflect the inmates' objection to Elmira's thorough pat-frisk procedures.[419]

Mr. Fischer noted that the BJS survey in 2007 found that the reported rate of staff-on-inmate sexual victimization at Elmira was 3.3%, which is less than half the 7.7% rate of staff-on-inmate sexual victimization for Elmira in the recent *BJS Report*.[420] Mr. Fischer said that DOCCS has undertaken its own analysis of sexual victimization at Elmira, which includes reviewing reported incidents and having discussions with offenders, but the analysis is not yet complete.[421]

Mr. Fischer stated that it was the belief of DOCCS that the majority of the reported staff-on-inmate incidents at Elmira are related to "necessary and thorough pat frisks."[422] Mr. Fischer stated that anecdotal evidence suggests that Elmira inmates were surprised by the reported high

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[412] *Id.* 25(a), (e).
[413] *Id.* 2.
[414] App. C (Elmira Inmate-on-Inmate Sexual Assaults).
[415] *Id.*
[416] *Id.* (Elmira Staff-on-Inmate Assaults).
[417] *Id.* Two of the unsubstantiated charges involved allegations of staff sexual misconduct during the pat frisk of an inmate (Incidents 7, 22).
[418] *Id.* (Incident 2).
[419] Fischer Test. 8 (Apr. 27, 2011), *available at* http://www.ojp.usdoj.gov/reviewpanel/pdfs_apr11/testimony_fischer.pdf.
[420] *Id. Compare BJS Report 2007*, at 26 (app. tbl.4) *with BJS Report* 43 (app. tbl.2).
[421] Fischer Test. 8.
[422] *Id.*

incidence of staff-on-inmate sexual victimization, whereas those same offenders considered pat frisks a form of sexual assault:

> Anecdotally, when asked about the results of the [*BJS Report*], offenders housed at Elmira expressed shock that their facility would be rated as a facility with high incidence of staff-on-inmate sexual abuse. They reported never having experienced any such abuse, nor even knowing of any staff-on-inmate sexual contact at the facility. What is relevant is that a number of these same offenders, when asked about pat frisks, responded that they felt they were being conducted inappropriately by a small number of employees. Those offenders stated that they consider a thorough pat frisk to constitute a sexual assault. We believe that the perception that a good pat frisk constitutes a sexual assault is the major fact influencing the results of the [*BJS Report*].[423]

iii. Observations

At the request of the Panel, two experts provided testimony and sworn, written statements on the conditions of confinement at Elmira: Mr. Jack Beck, Director of the Prison Visiting Project (PVP) for the Correctional Association (CA) of New York, and Ms. Betsy Hutchings, Managing Attorney of the Ithaca Office of Prisoners' Legal Services (PLS) of New York.

In his sworn, written statement, Mr. Beck explained that the New York State Legislature created the CA to inspect prisons operated by DOCCS and then report its findings to the Legislature.[424] "The CA uses this unique mandate to advocate for improved prison conditions and to issue comprehensive reports to policymakers and the public."[425] The CA's PVP conducts onsite assessments of DOCCS' sixty-two male facilities, visiting six to eleven facilities each year.[426] In the past six years, the PVP has gathered extensive data from the prison population in DOCCS, surveying inmates on a variety of issues, including general prison conditions, substance abuse and other treatment programs, medical health services, disciplinary confinement, reentry programs, and inmates' experience with prison violence and staff abuse.[427]

Mr. Beck stated that the PVP's survey of Elmira in March of 2010 is consistent with the finding in the *BJS Report* of elevated levels of staff sexual misconduct at the facility:[428]

> Eleven percent of the 176 Elmira general population inmates who responded to our survey reported that they frequently or very frequently hear about staff sexual abuse occurring in the prison, suggesting that sexual abuse is more prevalent at Elmira than at approximately two-thirds of the state prisons we have visited. Similarly, 11% of Elmira survey participants said that staff sexual abuse was

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[423] *Id.*
[424] Beck Test. 2 (Apr. 27, 2011), *available at* http://www.ojp.usdoj.gov/reviewpanel/pdfs_apr11/testimony_beck.pdf. Mr. Beck's testimony also appears in the Transcript of Record. *See* Tr., J. Beck, 476:11-505:2.
[425] Beck Test. 2.
[426] *Id.*
[427] *Id.*
[428] *Id.* 3.

> common in the prison, a rate that is higher than the response from survey participants at approximately two-thirds of the CA-visited prisons.[429]

Mr. Beck stated that CA also analyzed complaints of sexual abuse at Elmira and found that in the three-year period from 2008 to 2010, Elmira averaged seventeen complaints of staff sexual abuse per year per 1000 inmates, a rate five times higher than the median rate at all DOCCS facilities.[430] The CA also found that even though inmates at Elmira did not express "strongly negative views of the prison's staff," the survey found that the "rate of Elmira inmates' grievances about staff conduct for the period 2007-09 was 67% higher than the median rate for all state prisons."[431]

Addressing the DOCCS' contention that the high rate of reported staff sexual misconduct at Elmira in the *BJS Report* may be attributable to inmates' dissatisfaction with thorough but proper pat frisks, Mr. Beck acknowledged that aggressive pat frisks may be "highly charged encounters" that some inmates perceive to be "sexually offensive," but he cautioned that the "persistence of inmates' complaints of aggressive pat-frisking procedures . . . should not be use[d] to dismiss or minimize the existence of other staff conduct that involves sexual abuse."[432] Moreover, Mr. Beck testified that based on the data CA collected from Elmira in 2010, aggressive pat-frisk procedures may account for some of the inmates' sexual misconduct complaints against staff; however, inmate discomfort with aggressive pat frisks does not account for the reported high levels of staff sexual misconduct at the prison:

> The CA 2010 survey of Elmira inmates specifically asked whether the survey respondent experienced abus[ive] pat frisks; how frequently the individual heard about abusive pat frisks of others at the prison; and how common such activity was in the prison. Elmira survey participants' responses support the conclusion that abusive pat frisks occurred at Elmira at rates that were about average for all CA-visited prisons. A review of inmates' comments included in the survey responses did not reveal any particular expression of heightened concern about sexually abus[ive] pat frisks compared to other prisons we have visited.[433]

Mr. Beck said that it would be difficult to assess all of the factors at Elmira that may contribute to staff sexual abuse, but based on previous conversations with inmates and the CA's recent visit to the facility, he identified three causes of concern.[434] First, he asserted that Elmira's physical plant is not conducive to safety.[435] Mr. Beck observed that cells in housing areas run along long tiers, making it difficult for inmates to view activity outside their cells.[436] In addition, the facility has few video cameras, allowing staff members, who routinely escort inmates, to isolate them from the observation of other inmates.[437] Second, Mr. Beck noted that an analysis of incident reports suggests that "violence is a significant issue at the prison, both between inmates and staff

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[429] *Id.* 3-4 (citation omitted).
[430] *Id.* 4.
[431] *Id.*
[432] *Id.* 5.
[433] *Id.* (citation omitted).
[434] *Id.* 6.
[435] *Id.*
[436] *Id.*
[437] *Id.*

and among inmates."[438] Mr. Beck observed that there were a large number of inmate grievances at Elmira alleging staff misconduct, which may include any allegations of mistreatment by staff; the CA found a high correlation between allegations of staff misconduct and sexual abuse.[439] According to the CA, "[t]he rate of such grievances was substantially higher for Elmira than at most other state prisons."[440] Finally, Mr. Beck stated that Elmira inmates are particularly vulnerable during the work shift from 3:00 pm to 11:00 pm when most reported staff misconduct occurs, which is after the executive staff has left for the day.[441]

In viewing DOCCS from a system-wide perspective, Mr. Beck made additional observations related to the incidence of sexual victimization. He noted that in analyzing DOCCS prisons with high rates of staff sexual abuse, "the common factors at these prisons were high levels of violence and staff-inmate confrontations, and an intimidating atmosphere where threats by staff with retaliation were common."[442] He also stated that in comparing the rates of sexual abuse allegations between maximum-security prisons and medium-security prisons within DOCCS, the characteristics of inmates, including whether they received convictions for violent offenses, do not account for the higher rates.[443] Mr. Beck stated that another factor influencing the high rate of sexual victimization in DOCCS facilities is the relative unavailability of protective custody for vulnerable inmates.[444] He reported that CA estimates that the total prison population in protective custody in New York State prisons is significantly less than 1000 beds or less than two percent of the prisons' capacity.[445]

According to Mr. Beck, the CA frequently receives complaints from prisoners who are unable to obtain protective custody because they cannot meet the requirement of demonstrating a specific threat from identified individuals.[446]

Based on data that it has collected, the CA is also concerned that inmates under-report staff sexual abuse, especially at maximum-security prisons, because they are justifiably concerned that they risk staff intimidation and retaliation.[447] In light of the Panel's interest in the treatment of women inmates, it noted in particular Mr. Beck's reporting that all of the women's facilities in DOCCS have high rates of staff-on-inmate sexual abuse.[448]

Mr. Beck noted that tracking allegations of staff sexual misconduct in DOCCS is difficult because the available data from DOCCS is confusing; although apparently at odds with his earlier statement about the under-reporting of staff sexual misconduct, he noted, for example, that the *BJS Report* contains only forty-six percent of the allegations of staff sexual misconduct that the DOCCS reported to CA.[449]

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[438] *Id.*
[439] *Id.* 6-7.
[440] *Id.* 7.
[441] *Id.*
[442] *Id.* 8.
[443] *Id.*
[444] *Id.*
[445] *Id.*
[446] *Id.*
[447] *Id.* 9.
[448] *Id.*
[449] *Id.* 11.

Finally, Mr. Beck identified the DOCCS' low rate of substantiating inmate complaints alleging staff sexual misconduct as a factor that discourages inmates from reporting sexual abuse.[450] Mr. Beck stated that at best, DOCCS substantiated only six percent of all inmate complaints alleging staff sexual misconduct.[451] In contrast, Mr. Beck noted that about ninety-five percent of all disciplinary charges against inmates result in a guilty finding.[452] In view of facing potential retaliation and further abuse from corrections staff, Mr. Beck stated that it is understandable that an inmate would be reluctant to file a complaint, as "[i]t is difficult to justify undertaking these risks given such limited possibilities for success."[453]

The Panel also received information on the conditions of confinement at Elmira from Ms. Hutchings, who explained that the PLS is a statewide civil legal service program that provides advocacy services to indigent inmates in DOCCS facilities.[454] The Ithaca Office of PLS, where Ms. Hutchings serves as the managing attorney, receives requests for assistance from inmates at Elmira as well as other DOCCS prisons.[455] In 2010, Ms. Hutchings' office received seventeen letters from Elmira inmates who requested legal assistance related to allegations of staff physical misconduct.[456] Twelve letters concerned excessive force, and five involved claims of sexual misconduct.[457] None of the complaints that PLS received from Elmira inmates alleging staff-on-inmate sexual misconduct occurred during pat frisks.[458] Concurring with Mr. Beck, Ms. Hutchings stated that the discrepancy between the high rate of reported staff sexual misconduct at Elmira in the *BJS Report* and the low number of complaints involving staff sexual misconduct that the PLS has received can be attributed to "the reluctance of inmates to report such conduct due to shame, fear of retaliation and the belief that . . . their reports will be found untrue."[459] Ms. Hutchings observed, "These factors are inherent in the prison culture and are the result of the power disparity between staff and inmates, the solidarity of the security staff, and insularity of prison culture."[460] Ms. Hutchings stated that a further disincentive that inmates have in reporting staff sexual misconduct is DOCCS' written policy warning inmates that making a false claim of staff-on-inmate sexual misconduct may lead to discipline, including prosecution.[461]

To illustrate the deterrent effect of DOCCS' policy, Ms. Hutchings presented a case study of an inmate whom PLS represented in 2010 who complained of staff excessive force.[462] According to Ms. Hutchings, prior to contacting PLS, the inmate filed a grievance concerning a staff physical assault, including a report to the superintendent of the facility where the assault allegedly occurred.[463] After an initial interview with a PLS staff attorney, the inmate confided that he had

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[450] *Id.* 12.
[451] *Id.*
[452] *Id.* 13.
[453] *Id.* 12.
[454] Hutchings Test. 1 (Apr. 22, 2011), *available at* http://www.ojp.usdoj.gov/reviewpanel/pdfs_apr11/testimony_hutchings.pdf. A portion of Ms. Hutchings testimony appears in the Transcript of Record. *See*, Tr., K. Scheckner, 520:16-528:16.
[455] Hutchings Test. 1.
[456] *Id.*
[457] *Id.*
[458] *Id.*
[459] *Id.* 2 (citation omitted).
[460] *Id.*
[461] *Id.* & n.2 (citing Directive No. 4028A).
[462] *Id.* 2. Ms. Hutchings did not identify the DOCCS facility.
[463] *Id.* 2-3.

also been sexually assaulted during the alleged excessive use of force, but he was afraid to include the sexual misconduct claim in his grievance "out of 'personal pride' and because he thought he would not be believed and would suffer retaliation."[464] Ms. Hutchings testified that after speaking to the PLS attorney, the inmate felt sufficiently safe to amend his grievance to include the sexual assault charge.[465] After investigating the inmate's grievance and dismissing it, investigators instituted charges against the inmate, claiming that he lied based on the inconsistencies in his grievances and the lack of medical evidence to prove his claim.[466] At the subsequent disciplinary hearing, despite the inmate's explanation that he did not include the sexual assault charge in the initial grievance because he feared retaliation and despite his citing another DOCCS written policy that prohibits reprisal against an inmate who reports staff sexual misconduct (and despite contesting the investigators' understanding of the medical reports), the hearing officer found the inmate guilty and imposed a penalty of nine months in isolated confinement.[467] Ms. Hutchings stated that on appeal the Director of Inmate Disciplinary Programs affirmed the determination of guilt.[468] Ultimately the PLS contacted the Commissioner of DOCCS on the inmate's behalf and obtained a reversal of the decision, but only after the inmate had spent four months confined to the SHU.[469]

Ms. Hutchings stated that the details of this case study are important because it shows that the very people entrusted with protecting inmates from reprisal failed to protect an inmate when he made a charge of sexual misconduct against a staff member.[470] Significantly, Ms. Hutchings noted that the inmate's initial fears about filing a sexual-misconduct grievance against a staff member were justified; she contends that other inmates will cite his experience to confirm their belief that reporting incidents of staff sexual misconduct results in retaliation.[471]

Similar to Mr. Krause's concerns with the limited timeframe for filing grievances with TDCJ, Ms. Hutchings criticized the grievance procedures at DOCCS because she believes there is insufficient time to make claims of staff sexual misconduct.[472] She cited a twenty-one day deadline for filing a grievance, which may be extended to forty-five days for good cause.[473] She contended that these time limits do not sufficiently take into account the reluctance that many inmates must overcome to file a sexual misconduct grievance against a staff member.[474]

Ms. Hutchings stated that based on her interviews with civilian victim advocates, who come to local hospitals to assist inmates who are victims of sexual assault, she learned that prison security staff routinely remain in the room during the meetings between victims and advocates.[475] The advocates reported that the presence of the security staff had a chilling effect, discouraging

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[464] *Id.* 3.
[465] *Id.*
[466] *Id.*
[467] *Id.*
[468] *Id.* 4.
[469] *Id.* 5.
[470] *Id.*
[471] *Id.*
[472] *Id.* 6.
[473] *Id.*
[474] *Id.*; *see supra* note 357.
[475] Hutchings Test. 7.

inmates from speaking about staff perpetrators because they feared retaliation from the security staff.[476]

Ms. Hutchings also dismissed the assertion that aggressive pat frisks could account for the high level of reported staff sexual misconduct at Elmira. She wrote, "The notion that inmate reports of staff-on-inmate sexual misconduct during pat frisks is based on the inmates' misunderstanding of invasiveness of a properly conducted pat frisk is misguided."[477] She said that an otherwise proper pat frisk can become improper when it includes sexual taunts, when it is "unduly rough, or when it involves unnecessary touching."[478] [479]

Ms. Hutchings offered five recommendations to reduce sexual victimization in DOCCS facilities: (1) to revise disciplinary policies so that inmates need not fear retaliation based on filing a complaint alleging staff sexual misconduct; (2) to transfer the responsibility for processing inmate complaints alleging staff sexual misconduct to an agency outside DOCCS so as to encourage inmates to file complaints; (3) to amend DOCCS written policies to give additional time to inmates to file staff sexual misconduct complaints; (4) to ensure that meetings between civilian victim advocates and victims of staff sexual misconduct can take place outside the earshot of security staff; and (5) to develop a policy that would allow DOCCS to videotape and review pat frisks.[480]

iv. Facility-Specific Recommendations

In light of the testimony from Mr. Beck and Ms. Hutchings and other data relating to Elmira, the Panel recommends that the administrators of Elmira look beyond the explanation of inmate dissatisfaction with aggressive pat-frisk procedures as the cause for the high rate that the *BJS Report* found of staff-on-inmate sexual victimization at the facility.[481] To minimize any inmate allegations of staff sexual misconduct associated with legitimate pat frisks, the Panel also counsels the DOCCS to provide corrections staff with a refresher course on the proper procedures for conducting a pat frisk. DOCCS should also appoint a PREA coordinator not only for the system as a whole but for Elmira and each of the facilities in the New York prison system. The PREA coordinators should track inmate complaints of sexual misconduct to ensure that inmates are protected from reprisal when they make charges of sexual misconduct against staff members.[482] The PREA coordinators should also ensure that staff members who are

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[476] *Id.*
[477] *Id.*
[478] *Id.* 7-8.
[479] Apart from her testimony, Ms. Hutchings drew the Panel's attention to an article in the *New York Post* that reported that an inmate at a state prison other than Elmira won a $300,000 settlement for an incident in 2007 when a corrections officer roughly groped the inmate's genitals during a pat frisk. Janon Fisher, *Inmate Scores $300k for Prison Grope*, N.Y. POST, June 10, 2010, *available at* http://www.nypost.com. The trial judge in this matter said that there was a clear, systemic problem in the management at the state prison facility where this incident occurred, contributing "'to an environment that allows the abuse of inmates to go unpunished.'" *Id.*
[480] Hutchings Test. 8-9.
[481] Given the lack of meaningful data related to Elmira complaint investigations, the Panel has concerns that the current DOCCS investigation into the causes of the reported high rate of sexual victimization at Elmira (*see* Fischer Test. 8) will yield information that prompts a significant change in policy or practice.
[482] Nat'l Standards, 76 Fed. Reg. at 6299 (§ 115.365(a)).

involved in all aspects of an investigation into inmate sexual victimization are aware of their roles and responsibilities.

DOCCS may also want to reconsider the rationale for its written policies that caution inmates that they may face severe penalties for making a false charge of sexual misconduct against staff. The proposed national standards note that as long as an inmate makes a report of sexual abuse in good faith, the inmate should be protected from disciplinary sanctions even if the investigation does not substantiate the allegation.[483]

The Panel strongly encourages Elmira administrators to undertake a careful review of the documentation of complaint investigations. Without records that easily show the course of an investigation and the results, neither managers nor outside observers can monitor the integrity of the complaint process.

DOCCS should also revisit its procedures in providing appropriate support services to inmates who have been targets of sexual assault. Victim advocates at local hospitals may be able to offer support to traumatized inmates outside the earshot of security staff so that the inmates need not fear staff retaliation.

3. Common Themes

The Panel is mindful of the inherent limitations in drawing generalizations based on the experiences of the five prisons it selected to appear at the April 2011 hearings. Nonetheless, in carrying out its statutory mission to identify similarities and differences among low- and high-incidence prisons, the Panel approached the testimony as illustrative case studies that help to identify common themes. The Panel has previously written about the significance of institutional culture in creating environments that either prevent or permit sexual victimization.[484] Each of the common themes that the Panel has identified below profoundly affects a prison's culture.

a. Recognizing Common Characteristics of Inmates Who are Vulnerable to Sexual Abuse

The *BJS Report* emphasized that two groups of inmates are particularly vulnerable as targets of sexual victimization: inmates who have had a prior history of being victims of sexual abuse and inmates who identify as being other than heterosexual.[485] The Panel's review of sample investigative records and the hearing testimony supports this finding.[486]

b. Understanding Common Differences between Male and Female Facilities

The Panel heard testimony that stressed understanding the differences in operating male and female facilities.[487] Of particular importance in female prisons is recognizing the relationship

[483] *Id.* at 6300 (§ 115.377(f)).
[484] *Juvenile Justice Report* 33.
[485] *BJS Report* 14 & tbl.8, 15.
[486] Owen Test. 4.
[487] *Id.*; Tr., M. Brandin, 313:16-21.

needs of women inmates.[488] In creating prison cultures that protect women from sexual abuse, it is important to recognize that self-esteem is a significant criminogenic factor for female offenders.

c. Understanding the Importance of Professional Language in Establishing a Safe Environment

The importance of language in creating an institutional culture is an issue that the Panel heard previously in its hearings on juvenile justice facilities;[489] so it is not surprising that the Panel received corroborative testimony at its prison hearings that the language that correctional officers use in referring to inmates under their supervision, particularly female inmates, serves as an indicator of whether an institution is committed to creating an environment that has zero tolerance for sexual victimization of inmates.[490] In prisons where inmates must bear verbal harassment from the staff, the question arises as to whether other forms of mistreatment are tolerated in the facility, including sexual abuse. This question is particularly significant in light of the testimony the Panel heard from Fluvanna, which may be a case study in the linkage between the alleged demeaning terms that the staff used to refer to the women in custody and the reported high incidence of both inmate-on-inmate and staff-on-inmate sexual victimization.[491]

d. Recognizing the Vulnerability of Non-Heterosexual Inmates and Their Need for Proper Treatment

Given that inmates who identify as being other than heterosexual are more likely to be targets of sexual abuse while in custody,[492] the way a prison treats non-heterosexual inmates may also be a marker that indicates its commitment to preventing sexual victimization. The experience at Fluvanna may again be instructive. If it is true, as alleged, that Fluvanna segregated lesbians and masculine-appearing women into separate housing units and it also allowed its staff to refer to these women in demeaning ways, then one would expect to find, as the *BJS Report* did, a facility with a high rate of reported sexual victimization.[493]

A similar dynamic may also have been work at Allred in the context of responding to and investigating grievances alleging sexual victimization from homosexual inmates, whom staff referred to as "queens." As mentioned previously, the Panel noted in its review of sample investigative files that a significant number of complainants self-identified as homosexual. Given Allred's history of being a prison with a high rate of sexual victimization while having no records substantiating sexual abuse—other than inappropriate relationships between female staff members and male inmates, a question remains as to whether complaints from homosexual inmates are treated as seriously as they deserve.[494]

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[488] Owen Test. 3.
[489] *Juvenile Justice Report* 6 (citing Transcript of Record: Panel Hearings on Sexual Victimization in Juvenile Correctional Facilities, T. Decker, 54:10-15 (June 3-4, 2010), *available at* http://www.ojp.usdoj.gov//reviewpanel/pdfs_june10/transcript_060410.pdf).
[490] Tr., B. Owen, 92:16-93:4.
[491] *BJS Report* 8 tbl.2, 9 tbl.3.
[492] *Id.* 14.
[493] *Id.* 8 tbl.2.
[494] National studies have found that a significant number of correctional officers believe that homosexual inmates should not be protected from rape or that if homosexual inmates are raped, they got what they deserved. *See*

e. Strengthening the Integrity of the Entire Complaint Process

An institution's treatment of an inmate who alleges sexual abuse, either against another inmate or a staff member, is a telling indicator of its culture. As the Panel learned from FCI Elkton, a facility with a low incidence of sexual victimization, the prison takes every complaint seriously; it is not up to staff members to decide whether an inmate is being manipulative or abusing the grievance process. Complainants at FCI Elkton are also not immediately moved to segregation, which inmates view understandably as punishment. In contrast, facilities with a high incidence of sexual victimization appeared to have had a different approach. At Fluvanna, complainants are placed in administrative segregation while the charge is being investigated, which may be a number of weeks; at Elmira, the Panel heard testimony that inmates feared retaliation for coming forward to make a complaint; and at Allred, despite more than sixty complaints of inmate-on-inmate sexual victimization, the subsequent investigations did not substantiate even one claim.

Institutions with faulty documentation of investigative procedures may have a higher incidence of sexual victimization. The Panel found that missing information from the investigative files at Allred and Elmira—including such important information as an alleged perpetrator's prior history of predatory behavior and the ultimate disposition of an investigation—may suggest a correspondence between lax investigative procedures and an institutional culture that permits the sexual victimization of inmates.

There may be a correlation between outside oversight of investigations and the incidence of sexual victimization. Notably, the Panel heard testimony that the BOP has management controls that allow for periodic review of adherence to all institutional policies and procedures, including investigations. The Panel also heard that the CCA's central office carefully monitors investigations into allegations of sexual abuse at all of its facilities. These approaches may explain, at least in part, the relative successes of both FCI Elkton and Bridgeport. The Panel saw no evidence that similar, regular outside monitoring of investigations was present at the institutions with a reported high incidence of sexual victimization. The lack of such outside oversight was also evident in the incomplete investigative files that these institutions sent to the Panel to review.

The Panel also heard from victim advocates that prisons should consider enlarging the time period that an inmate has for making a complaint. Given the trauma that a victim of sexual assault endures, an inmate alleging sexual abuse may need more than a few weeks before he or she may be in a position to make the charge.

The specter of retaliation may be a significant deterrent, pressuring inmates to be quiet when they should come forward with a legitimate complaint against a staff member. Prisons that fail to take reasonable steps to protect inmates from retaliation for filing a sexual abuse charge, regardless of whether the investigation ultimately substantiates the charge, risk undermining the entire complaint process.

Katherine Robb, *What We Don't Know Might Hurt Us: Subjective Knowledge and the Eighth Amendment's Deliberate Indifference Standard for Sexual Abuse in Prisons*, 65 N.Y.U. ANN. SURV. AM. L. 705, 719 nn.69 & 70 (2010) (citing Peter L. Nacci & Thomas R. Kane, *Sex and Sexual Aggression in Federal Prisons: Inmate Involvement and Employee Impact*, 48 FED. PROBATION 46, 48 (1984); Helen Eigenberg, *Correctional Officers' Definition of Rape in Male Prisons*, 28 J. CRIM. JUST. 435, 442 (2000)).

When inmates lose confidence in the grievance process and the resultant investigations, victims of sexual abuse are unlikely to come forward.

f. Providing Effective Victim Services

The services a prison provides to an inmate after a sexual assault demonstrate how seriously it takes the issue of sexual victimization. The failure to provide comprehensive victim services to an inmate alleging sexual abuse devalues the significance not only of the claim but also of the individual making the claim.

Institutions that are relatively isolated from outside services may tend to have closed environments that invite deviant behavior.[495] When outside victim advocates are not available or when their interactions with victims are not confidential, inmates may be less inclined to take advantage of the support they need or report staff sexual misconduct.

There is a need for correctional institutions to collaborate with victim service providers. In many states, victim advocates and, in particular, statewide sexual assault coalitions and rape crisis centers seek to partner with correctional agencies in both preventing and responding to sexual victimization.

g. Equipping Staff to Respond Effectively to Inmate Sexual Victimization

The Panel noted that institutions that either lacked a PREA coordinator or had an ineffective one risked having a higher incidence of sexual abuse.

Many of the wardens who appeared at the hearings stressed the importance of providing their staffs with appropriate training to deal with the particular challenges their facilities encounter in dealing with sexual victimization. Notably, at Bridgeport and Fluvanna, the wardens stressed the need to provide training to staff in operating a female facility and understanding the importance of maintaining professional boundaries. The need for this training is no less needed at male facilities such as Allred, where female staff members entered into inappropriate relationships with male inmates. With each staff training program, however, it is important to identify the desired outcome and then measure the staff's progress toward achieving it.

4. Topics for Further Study

The Panel encourages academics and practitioners to conduct additional research on the following topics.

a. Why are Homosexuality and Prior Victimization Significant Indicators of Inmate Victims of Sexual Abuse?

The Panel is interested in understanding more precisely the dynamics that make homosexual inmates and inmates with a history of sexual victimization prior to coming to prison particularly vulnerable to sexual aggression. There are a number of questions related to this issue. If having a history of victimization attracts predators, how do inmates who have internalized this identity

[495] *See* Nat'l Standards, 76 Fed. Reg. at 6282 (§ 115.53).

convey this message? Are there effective tools that prior victims can access to protect themselves in prison? Do negative attitudes of prison staff toward homosexual inmates play a significant role in making the inmates particularly vulnerable to sexual assaults? If so, is there effective training that engages these attitudes in a constructive way to create an environment that protects homosexual inmates?

b. What are the Distinctive Needs of Female Facilities in Preventing Sexual Victimization?

The Panel is aware of the paucity of resources that are available to female correctional facilities when it comes to serving the particular needs of female offenders. The Panel encourages additional research into ways of creating healthy female prisons based on data that show the relationship between institutional practices (e.g., policies on touching between inmates) and the incidence of sexual victimization. The Panel also encourages the development of training tools especially tailored to helping staff who work in female facilities in addressing such issues as maintaining proper professional boundaries and creating an environment free of verbal harassment.

B. Jails

1. Low-Incidence Jails

a. Hinds County

i. Facility Description

Located in Raymond, Mississippi, Hinds County, which opened in 2009, is a joint county and state facility for men, which housed on August 9, 2011, 156 state inmates convicted of felonies and fifty-six county inmates convicted of misdemeanors.[496]

The state inmates and the jail inmates occupy separate sections or "zones" of the jail, and they do not interact with each other.[497] Each zone can house up to 200 inmates at a time.[498] The facility consists of open bays, which afford correctional officers a clear line of sight to observe the inmates at all times.[499] All of the inmates are convicted on nonviolent charges; some are at the facility for a few months, whereas others are at the facility for as long as five to eight years.[500] None of the inmates has a sex-crime conviction, and state inmates have an incentive to abide by the jail's rules or they risk being sent back to state prisons where they would not have the same level of freedom and variety of work assignments.[501] The work assignments include such

[496] Interview with John Hulsebosch, Deputy, HCSD, in Raymond, Miss. (Aug. 9, 2011) (on file with the Panel) [hereinafter Hinds County Interview]. In response to the Panel's Data Request, Hinds County provided no data related to the capacity of the facility, the number and composition of inmates, and the number and composition of staff. Hinds County Resp. 9-12, 23-27 (on file with the Panel).
[497] Hinds County Interview 1.
[498] *Id.* 3.
[499] *Id.* 1, 4.
[500] *Id.* 1.
[501] *Id.* 3, 4.

projects as cutting grass on state and county roads, assisting nonprofit organizations, and serving on the facility's volunteer fire department that serves the local community.[502]

The facility has eighty-seven staff members.[503] All are sworn deputies, but only two or three are certified deputies, which means that they completed training at a law-enforcement academy.[504] The staff is male except for four females: two nurses, one kitchen worker, and one state caseworker.[505] During each shift, three staff members work in each zone.[506]

There were no suicides, attempted suicides, homicides, or attempted homicides at the facility in 2008 and 2009.[507] There were also no reported allegations of sexual abuse of any kind at the facility in either 2008 or 2009.[508] Consequently, during the time period under review, there were no investigations into allegations of sexual abuse, and no employees received discipline or were terminated for sexual misconduct.[509]

Hinds County does not have a specific policy on preventing or responding to sexual victimization.[510] On touring the facility, the Panel did not observe any posters or other materials that educate inmates on how to prevent or report sexual assault.[511] In 2008 and 2009, Hinds County did not have a PREA coordinator.[512]

ii. Facility's Explanation for Reported Low Incidence of Sexual Victimization

Mr. Malcom McMillin, Sheriff of Hinds County, who is responsible for the operation of the Hinds County facility, testified that the low incidence of sexual victimization at the work center may be attributable to a number of factors, including the caliber and training of the correctional officers, the design of the facility, the inmate population, and the work center's community-service programming.[513]

Sheriff McMillin noted that Hinds County deputies assigned to detention must complete eighty hours of training to be certified, and there are no uncertified jailers at Hinds County.[514] In referring to his staff, Sheriff McMillin said, "They are trained to be fair but firm with those individuals who are incarcerated in our facility, allowing them to be observant towards

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[502] *Id.* 2.
[503] *Id.*
[504] *Id.*
[505] *Id.*
[506] *Id.* 3.
[507] Hinds County Resp. 13, 15.
[508] *Id.* 29-33.
[509] *Id.* 22.
[510] Hinds County Interview 2.
[511] *Id.*
[512] Hinds County Resp. 2.
[513] Tr., M. McMillin, 440:20-445:3. As he was not re-elected, at the end of calendar year 2011, Sheriff McMillin's term of office ended.
[514] *Id.* 442:6-10; *but see supra* note 504.

conditions that might lead to possible sexual assault, and trusting enough for inmates to confide in them should such an incident occur."[515]

Sherriff McMillin said that the work center's open-bay design, which allows for direct supervision, deters sexual assault because it minimizes places where they could occur.[516] He also noted that the jail has a modern video surveillance system that detention officers monitor twenty-four hours a day.[517]

According to Sheriff McMillin, the composition of the inmate population at Hinds County may also be a factor in its low incidence of sexual assault, because all of the state inmates are carefully selected as to their suitability in taking advantage of the programming provided by the work center.[518]

Finally, Sheriff McMillin testified that the fact that Hinds County is a work center minimizes the opportunities for sexual assault.[519] He said there is constant supervision of inmates as they work thirty hours each week at jobs in the facility and community.[520] The assignments may include working for nonprofit organizations such as the Mississippi Food Network and Habitat for Humanity, serving in the facility-operated volunteer fire department, collecting litter, and eradicating graffiti.[521]

Chief Deputy Steven Pickett observed that the inmates' work in the community has a positive impact on the culture of Hinds County, which has a low number of assaults, aggravated assaults, and sexual assaults.[522] He said that the community service that the inmates perform leads to a greater sense of respect not only for themselves but for each other.[523]

iii. Observations

Based on Hinds County's response to the Data Request, the onsite visit, and the testimony that the Panel received on Hinds County, the Panel notes that the low incidence of sexual victimization in the jail may be attributable to many of the factors that Sheriff McMillin cited, including the inmate population, which does not have any violent offenders. There are, however, three factors that Sheriff McMillin identified that the Panel would like to underscore: prison design, community service, and the caliber and training of the correctional officers. First, although building design alone does not reduce sexual victimization of inmates, a correctional facility that has a design that promotes direct supervision, eliminates hidden areas, and includes monitored surveillance cameras can make the work of corrections administrators significantly easier in preventing sexual abuse. Second, when inmates work on community-service projects, their efforts not only benefit the neighboring communities they serve, but they also have a

[515] Tr., M. McMillin, 442:12-18.
[516] *Id.* 442:19-21, 443.
[517] *Id.* 443:10-13.
[518] *Id.* 443:2-7.
[519] *Id.* 443:18-19.
[520] *Id.* 443:20-444:1, 21.
[521] *Id.* 444:1-3, 7-9, 22.
[522] *Id.*, S. Pickett, 449:20-450:2.
[523] *Id.* 450:1-5.

rehabilitative effect. Through community service, inmates have an opportunity to develop greater self-respect, which then extends to the respectful treatment of other inmates in the facilities where they live. Lastly, when corrections staff members are "firm but fair," acting with professional integrity in keeping with the organization's mission, inmates will find them not only approachable but also trusted to take necessary actions to address sexual impropriety.

b. The Moss Center

i. Facility Description

The Moss Center, located in Tulsa, Oklahoma, and completed in 1999, provides for direct supervision of inmates; the facility is bright, light, and airy.[524] The Moss Center houses both male and female inmates at all custody levels, including a small number of juveniles.[525] In addition to inmates from Tulsa County, the Moss Center houses inmates detained by the U.S. Marshals Service and the U.S. Immigration and Customs Enforcement (ICE).[526]

On January 1, 2008, and on January 1, 2009, the rated capacity of the jail was 1714.[527] On January 1, 2008, there were 1390 inmates in the jail.[528] In calendar year 2008, the total number of inmates who spent any time at the Moss Center was 30,312; the average length of stay was eighteen days; and the longest length of stay was 204 days.[529] On January 1, 2009, there were 1359 inmates in the jail.[530] Although the jail ordinarily functioned well below its rated capacity in 2008 and 2009, on June 1, 2009, there were 1717 inmates present in the jail.[531] In calendar year 2009, the total number of inmates who spent any time at the Moss Center was 30,879; the average length of stay was eighteen days; and the longest length of stay was 365 days.[532]

In calendar year 2008, the inmate composition at the Moss Center was as follows: 12,222 White males; 4126 White females; 7414 African American males; 2274 African American females; 2586 Hispanic males; 200 Hispanic females; 894 Alaska Native or American Indian males; 383 Alaska Native or American Indian females; 189 males or other or unknown ancestry; and 24 females of other or unknown ancestry.[533] In calendar year 2009, the inmate composition at the Moss Center was as follows: 12,122 White males; 4414 White females; 6952 African American males; 2074 African American females; 3681 Hispanic males; 257 Hispanic females; 863 Alaska Native or American Indian males; 353 Alaska Native or American Indian females; 135 males of other or unknown ancestry; and 28 females of other or unknown ancestry.[534] The Moss Center did not use the following three categories in tracking the racial or ethnic backgrounds of inmates

[524] Interview with Stanley Glanz, Sheriff, TCSO, et al. in Tulsa, Okla. 1 (Aug. 17, 2011) (on file with the Panel).
[525] *Id.*
[526] *Id.*
[527] Moss Center Resp. 9(a), 10(a) (on file with the Panel).
[528] *Id.* 9(b).
[529] *Id.* 9(f)-(h).
[530] *Id.* 10(b).
[531] *Id.* 10(d).
[532] *Id.* 10(f)-(h).
[533] *Id.* 11(a)-(c), (e), (g).
[534] *Id.* 12(d), (f), (g).

in 2008 and 2009: (1) Asian, (2) Native Hawaiian or Other Pacific Islander, and (3) two or more races.[535]

The Moss Center reported that in 2008, there was one inmate suicide, twenty-five attempted suicides, no homicides, and no attempted homicides.[536] The suicide and attempted suicides in 2008 were not related to sexual victimization.[537] The Moss Center reported that in 2009, there was one suicide, nineteen attempted suicides, no homicides, and no attempted homicides.[538] The suicide and attempted suicides in 2009 were not related to sexual victimization.[539]

On January 1, 2008, the total number of authorized staff positions at the Moss Center was 340 (forty-three sworn and 297 non-sworn).[540] The staffing level on January 1, 2008, was 333 (forty-three sworn and 297 non-sworn).[541] On January 1, 2009, the total number of authorized staff positions at the Moss Center was 339 (sixty-two sworn and 277 non-sworn).[542] The staffing level on January 1, 2008, was 339 (sixty-two sworn and 277 non-sworn).[543]

The Moss Center does not distinguish between sworn and non-sworn staff members.[544] On January 1, 2008, the ratio of staff members to inmates was one staff person per 4.17 inmates; on January 1, 2009, the ratio of staff members to inmates was one staff person per 4.01 inmates.[545]

In calendar year 2008, one staff person was terminated from employment for sexual misconduct.[546] In calendar year 2009, on the basis of sexual misconduct, the Moss Center terminated three staff members and allowed one to resign.[547]

There was one investigation of staff-on-inmate sexual misconduct in 2008 at the Moss Center and another investigation in 2009.[548] In the first incident, a male nurse allegedly observed a female juvenile while she was showering.[549] The investigation produced sufficient evidence to present the charge to the district attorney, who then declined to prosecute.[550] In the second incident, a male detention officer allegedly used coercion to perform oral sex on a male inmate.[551] The investigation produced sufficient evidence to present the charge to the district attorney, who then prosecuted the case and obtained a conviction.[552]

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[535] *Id.* 11(d), (f), (g); *id.* 12(d), (f), (g).
[536] *Id.* 13.
[537] *Id.* 14.
[538] *Id.* 15.
[539] *Id.* 16.
[540] *Id.* 23(a)-(c).
[541] *Id.* 23(d)(i), (e)(i), (f)(i). There appears to be a computing error in the data supplied by the Moss Center. If on January 1, 2008, there were forty-three sworn and 297 non-sworn staff members actually present, the total would be 340 instead of the reported 333.
[542] *Id*. 24(a)-(c).
[543] *Id.* 24(d)(i), (e)(i), (f)(i).
[544] *Id.* 25(m)-(n).
[545] *Id.* 25(a), (e).
[546] *Id.* 22(a) (2008).
[547] *Id.* 22(a)-(b) (2009).
[548] App. C (Moss Center Staff-on-Inmate Assaults); Moss Center Resp. 35.
[549] *Id.* 35(g) (2008).
[550] *Id.* 35(h), (j) (2008).
[551] *Id.* 35(b), (g) (2009).
[552] *Id.* 35(h), (j) (2009).

In 2008 and 2009, there were a total of six investigations into inmate-on-inmate sexual victimization.[553] The charges included forcible sodomy, sexual misconduct, sexual battery, and attempted rape.[554] Three of the charges involved unwanted touching that resulted in the perpetrators receiving in-house discipline.[555] The Moss Center presented two charges of sexual victimization to the district attorney, who declined prosecution; one of the charges was sexual assault, and the other was attempted rape.[556] The facility also presented a charge of forcible oral sodomy to the district attorney, who accepted the matter for prosecution.[557]

ii. Facility's Explanation for Reported Low Incidence of Sexual Victimization

Mr. Stanley Glanz, Sheriff of Tulsa County, identified a number of factors that contributed to the low incidence of sexual victimization at the Moss Center, but he particularly emphasized the importance of staff training and the accreditation of the facility.[558]

Beginning in 2005, all employees who attended basic jail training received a four-hour session on harassment, sexual awareness, and prison rape.[559] Since 2008, the Moss Center's training division has also presented to new staff members information and resources related to PREA, which were made available by the National Institute of Corrections (NIC).[560]

Through module training programs, which allow all employees who work in security areas to receive from eighty to a hundred hours of in-service training annually by attending daily thirty-minute squad meetings, the Moss Center is able to provide continuing education courses to its staff.[561] One of these courses, entitled Sexual Harassment, includes the following materials: Cross Gender Supervision; Sexual Harassment: An Innovative Perspective; Men, Women and Respect; and Correctional Workplace Issues, Sexual Harassment in Corrections.[562]

Sheriff Glanz testified that there is a benefit that comes from having outside monitors; he noted that the Moss Center and the TCSO have welcomed inspections, often related to meeting accreditation standards, from the American Correctional Association (ACA), the National Commission on Correctional Health Care, the Commission on Accreditation for Law Enforcement Agencies, the U.S. Department of Justice, and the U.S. Department of Homeland

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[553] *Id.* 36. The Moss Center's response to the Panel's Data Request and the chart prepared by Creative Corrections both agree that there were six investigations into inmate-on-inmate sexual victimization in calendar years 2008 and 2009; however, there is a discrepancy in the reported incidents. The second incident in 2009 described in the Moss Center's Response does not appear in the chart that Creative Corrections prepared based on the files that the facility produced; also, the Moss Center does not account for incident five in Creative Corrections' chart (*see* app. C (Moss Center Inmate-on-Inmate Assaults)). The analysis here follows the Moss Center's Response. *See* Tr., S. Glanz, 410:12.
[554] App. C (Moss Center Inmate-on-Inmate Assaults).
[555] Moss Center Resp. 36 (Incidents 2 & 3 in 2008; Incident 2 in 2009).
[556] *Id.* (Incidents 1 & 3 in 2009).
[557] *Id.* (Incident 1 in 2008).
[558] Tr., S. Glanz, 429:1-2.
[559] Moss Center Resp. 43(a).
[560] *Id.*
[561] *Id.* 43(b).
[562] *Id.*

Security.[563] Sheriff Glanz observed that being open to outside inspection prevents sexual assaults at the Moss Center.[564] He noted that another deterrent to sexual victimization at the facility, consistent with this openness, is the daily presence of hundreds of community volunteers who work with inmates.[565]

According to the testimony that the Panel heard, other factors that contributed to the low incidence of sexual victimization at the Moss Center are a corrections philosophy and a facility design that promote direct supervision,[566] a rapid response to and in-depth investigation of sexual assaults,[567] inmate programming that develops life skills,[568] and an inmate classification system based on behavior.[569]

In the written response to the Panel's Data Request, Sheriff Glanz summarized the reasons for the Moss Center's success:

> It is my belief that employees of this facility are proactive with sexual assault due to their professionalism, the training that is given on a continual basis that addresses such issues, the thoroughness of the investigations into every complaint or allegation and that the management style is such that inmates are treated as people.[570]

iii. Observations

Sheriff Glanz noted that he has found reluctance on the part of prosecutors to pursue cases involving female staff members who have entered into inappropriate relationships with male inmates; however, prosecutors appear to be more inclined to take sexual misconduct cases involving a male staff member and a male inmate.[571] Sheriff Glanz said that he has found that both federal and local authorities often decline to prosecute female staff members.[572]

In reviewing the reported incidents of sexual victimization at the Moss Center, the Panel found documentation that a rape kit was provided in one instance to the complainant; however in two instances the perpetrator was a repeat offender.[573] Also, a review of the incidents showed that even though the Moss Center had a contract with an outside vendor to provide mental health services, the contract did not address specifically counseling for sexual assault victims.[574] In none of the reviewed cases was there documentation that the facility provided an advocate or

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[563] Tr., S. Glanz, 425:15-426:15.
[564] *Id.* 427:21-428:4.
[565] *Id.* 428:4-10.
[566] *Id.* 412:4-413:7.
[567] *Id.* 415:5-7.
[568] *Id.*, M. Robinette, 416:15-417:1, 417:13-418:2.
[569] *Id.* 432:18-434:6.
[570] Moss Center Resp. 46.
[571] Tr., S. Glanz, 420:14-21.
[572] *Id.* 421:8-18.
[573] App. B 18, 19 (Strengths and Weaknesses of Each Facility (Jails)).
[574] *Id.* 20.

counseling services to victims of sexual assault.[575] The Moss Center may want to review its practices in making available victim services to inmates who have been sexually assaulted.

Like Hinds County, the Moss Center is a modern building designed to support the philosophy of direct supervision of inmates. Despite the significant differences between Hinds County and the Moss Center, it may be no coincidence that the two jails that the Panel identified as having a low incidence of sexual victimization share this common commitment. The Panel supports Sheriff Glanz's assessment that providing ongoing staff training and welcoming outside inspection—whether through the accreditation process of professional organizations or the constant presence of community volunteers—are invaluable tools in creating a jail culture that prevents sexual victimization.

2. High-Incidence Jails

a. Clallam County

i. Facility Description

Clallam County is located in Port Angeles, Washington. On January 1, 2008, and on January 1, 2009, the full rated capacity of Clallam County was 120.[576] The actual number of inmates present in the facility on January 1, 2008, was 125.[577] In calendar year 2008, the total number of inmates who spent any time at the jail was 44,544; the average length of stay was sixteen days; and the longest stay of any inmate was 339 days.[578] The actual number of inmates present in the facility on January 1, 2009, was 126.[579] In calendar year 2009, the total number of inmates who spent any time at the jail was 43,781; the average length of stay was fourteen days; and the longest stay of any inmate was 342 days.[580]

In calendar year 2008, the racial and ethnic composition of the total number of inmates at Clallam County was as follows: 37,781 Whites, 1205 African Americans, 1574 Hispanics, 47 Asians, 3902 Alaska Natives or American Indians, no Native Hawaiians or Other Pacific Islanders, and 45 inmates classified as other or unknown.[581] In calendar year 2009, the racial and ethnic composition of the total number of inmates at Clallam County was as follows: 36,827 Whites, 1736 African Americans, 886 Hispanics, 22 Asians, 4295 Alaska Natives or American Indians, no Native Hawaiians or Other Pacific Islanders, and 15 inmates classified as other or unknown.[582]

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[575] *Id.*
[576] Clallam County Resp. 9(a), 10(a) (on file with the Panel).
[577] *Id.* 9(b).
[578] *Id.* 9(f)-(h).
[579] *Id.* 10(b).
[580] *Id.* 10(f)-(h).
[581] *Id.* 11(a)-(g). These figures total 44,554 instead of 44,544; the discrepancy is a reporting error attributable to Clallam County. Clallam County does not collect inmate data under the category of two or more races.
[582] *Id.* 12(a)-(g).

In 2008, there were no inmate suicides, homicides, or attempted homicides at Clallam County; but there was a single attempted suicide.[583] Clallam County provided no information on whether the suicide attempt in 2008 had any connection with sexual victimization.[584] In 2009, there were no inmate suicides, homicides, or attempted homicides; however, there were nine suicide attempts.[585] None of the suicide attempts in 2009 involved sexual victimization.[586]

On January 1, 2008, and on January 1, 2009, the total number of authorized staff positions at Clallam County was forty-one (forty-one sworn and no non-sworn).[587] The staffing level on January 1, 2008, was thirty-nine (thirty-nine sworn and no non-sworn).[588] The staffing level on January 1, 2009, was forty (forty sworn and no non-sworn).[589] The ratio of sworn staff members to inmates on January 1, 2008, was one staff person per 3.13 inmates; the ratio of sworn staff members to inmates on January 1, 2009, was one staff person per 3.15 inmates.[590]

Clallam County reported that in 2008 and 2009, there were no allegations of sexual abuse involving either inmates or staff.[591]

In 2008 and 2009, the jail did have a PREA coordinator.[592] When inmates pick up telephones in the facility they receive information on PREA and how to report sexual victimization.[593]

ii. Facility's Explanation for Reported High Incidence of Sexual Victimization

Mr. William L. Benedict, Sheriff of Clallam County, contended that the *BJS Report* was in error for reporting a high incidence of sexual victimization at Clallam County, because the jail simply did not have any incidents of sexual abuse.[594] He testified that shortly after he received the results of the survey he went to the FBI to request an investigation and he went on a local radio station to request anyone who was a victim at Clallam County to come forward.[595] Sheriff Benedict said he respected the confidentiality and anonymity of those inmates who participated in the BJS survey, but by requesting victims to contact his office he wanted information.[596] Sheriff Benedict said that he broadcast the PREA hotline number to the public so that it could report instances of sexual abuse at the jail, and he also contacted the public defenders and requested any information regarding clients who might be victims.[597] Despite all of these efforts, Sheriff Benedict testified that no one has ever come forward to claim being a victim of sexual

[583] *Id.* 13.
[584] *Id.* 14.
[585] *Id.* 15.
[586] *Id.* 16.
[587] *Id.* 23(a)-(c), 24(a)-(c).
[588] *Id.* 23(d)(i), (e)(i), (f)(i).
[589] *Id.* 24(d)(i), (e)(i), (f)(i).
[590] *Id.* 25(a), (e).
[591] *Id.* 22, 30-33.
[592] *Id.* 2.
[593] Tr., G. Christensen, 263:7-10.
[594] *Id.*, W. Benedict, 221:11-13.
[595] *Id.* 221:14-15, 221:22-222:3.
[596] *Id.* 222:5-6, 11.
[597] *Id.* 222:20-21, 223:2-5.

abuse while housed at Clallam County.[598] Sheriff Benedict said that he also received a letter from the head of the public defenders, who concurred with him in questioning whether any sexual abuse occurred in the jail; Sheriff Benedict noted that the head of the public defenders would know about sexual abuse in the jail because he interviews every inmate.[599] Sheriff Benedict also said that the FBI reported to him that there was no evidence that his staff was abusing inmates and until it could find a victim there was nothing the FBI could do.[600] Sheriff Benedict pointedly observed, "[T]here are no victims."[601]

Sheriff Benedict stated that he did not question the methodology of the BJS survey, its accuracy, its internal safeguards to identify dissemblers, or the veracity of inmates.[602] He also said that he also understood that prison rape happens and that it needs to be eliminated.[603] He did, however, question what the survey actually measures; he contended that in addition to gathering data on sexual misconduct, the survey may reflect a "cultural delusion."[604] Sheriff Benedict argued that the survey results may be understood in reference to the fantasy that a significant number of people sincerely believe that they have been abducted and sexually molested by aliens:

> I think there is, for lack of a better term—and I've done some research on this—there is a factor that I'll call cultural delusion. And it is very prevalent in our society, and I'll give you an example. You may think it's far off, but it is very true.
>
> Many surveys have been done, and it shows that between fifty and seventy percent of our population believe in UFOs. . . . Does that prove that they exist? No. But there is a subset of that which says two percent of the general population that believe—and survey after survey concludes this—that believe that they have been abducted by aliens, have gone to the mother ship. Some of them have been sexually abused in the mother ship.[605]

Sheriff Benedict said that the frequency of reported alien abductions is unlikely, yet he infers that this cultural phenomenon may be a useful reference in thinking about inmate responses to the BJS survey.[606] He noted that many inmates suffer from PTSD as well as mental illness; and so, despite facts to the contrary, they may sincerely believe that they have been the victims of sexual abuse by another inmate or a staff member.[607] He suggested that the survey should filter out these self-deluded responses; the survey's current capacity to screen out inconsistent responses is insufficient because it does not eliminate responses from inmates who are convinced that their

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[598] *Id.* 222:22-223:2. Sheriff Benedict stated that there was one reported incident of an attorney who engaged in sexual misconduct while visiting a client in a sealed attorney-client booth at the jail, a place the jail cannot observe; the attorney was not a staff member. Sheriff Benedict immediately suspended the attorney from the jail and took measures to have him disbarred. *Id.* 223:6-17.
[599] *Id.* 223:18-22.
[600] *Id.* 262:10-15.
[601] *Id.* 224:15; *see also id.* 266:7-8, 274:15-16.
[602] *Id.* 227:22-228:3, 230:17-18, 268:20-21, 270:12-18.
[603] *Id.* 226:4-6.
[604] *Id.* 227:18-21, 228:12-17.
[605] *Id.* 228:12-229:4.
[606] *Id.* 229:11-13.
[607] *Id.* 229:17-22.

delusions of sexual abuse are real.[608] Sheriff Benedict observed, "[W]ith human beings, belief is often as powerful as experience."[609]

Sheriff Benedict also questioned the results in the *BJS Report* based on extrapolating the survey results to the yearly population size at Clallam County.[610] He said that if as the *BJS Report* showed, eight percent of the daily population at the jail experienced sexual victimization, the Sheriff speculated that with roughly 4000 bookings per year, which the Sheriff then halved to take into account repeat offenders, there would be approximately 160 people who have experienced sexual abuse in the jail every year (i.e., eight percent of 2000).[611] He noted that if these numbers were true, then there would be 800 victims since he took office five years ago.[612] Contesting these results, Sheriff Benedict said, "Now surely one of them would have come forward to say, 'I'm one of those victims.' I didn't get that."[613] He also noted that he receives 400 inmate complaints each year, and none of them had to do even with sexual harassment.[614]

iii. Observations

The Panel appreciates that given the absence of any in-house records of sexual abuse and the reluctance of any victims to come forward, Sheriff Benedict sincerely questions the validity of the *BJS Report* as it pertains to Clallam County. Nonetheless, the Panel relies on the science and integrity of the BJS survey and defers to the BJS to address any of Sheriff Benedict's lingering concerns. As previously noted, during the reporting period of the *BJS Report*, there were instances in which an attorney, who was not an employee of Clallam County, allegedly exposed himself to inmates.[615] Reference to these instances might have contributed, at least in part, to the BJS' findings.

iv. Facility-Specific Recommendations

Based on its site visit, the Panel found that the design of Clallam County is quite dated; it uses a holding tank with double bunks to house most of its inmates. Clallam County is also in varying states of disrepair, lacking cleanliness. The facility operates in a manner that limits direct observation of inmates.[616] While touring the facility, the Panel observed that the windows of every unit were covered completely with magnetic covers, which were designed to prevent inmates from looking outward.[617] These covers, however, also prevented correctional officers from looking in on the inmates on a routine basis; consequently, inmates perceived that they were not being watched at any time other than during security tours.[618] To remedy what the Panel identified as a safety issue, Sheriff Benedict reported that he took this observation to heart

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[608] *Id.* 230:1-5.
[609] *Id.* 271:10-11.
[610] *Id.* 232:1-11.
[611] *Id.*
[612] *Id.*; *id.* 235:15-16.
[613] *Id.* 232:12-13.
[614] *Id.* 235:10-12.
[615] *See supra* note 598.
[616] Tr., W. Benedict, 237:18-20.
[617] *Id.*, G. Christensen, 236:11-15.
[618] *Id.* 236:10-21.

and was in the process of replacing the film on the windows with a one-way coating that would still prevent inmates from looking outward but would allow correctional officers to see into units where inmates are.[619] The Panel also observed that there was a lack of privacy in the boxes used for collecting grievance forms from inmates, and the Panel suggested that Clallam County might consider ways to guarantee the confidentiality of the grievance process.[620] Sheriff Benedict noted the concern and said that he would address it.[621] The Panel also observed that even though the facility's telephones advised inmates about PREA, there were no posted placards that informed them of the jail's policies on the prevention of sexual victimization.[622] The Panel recommends placing in the jail posters that inmates can readily view that have information on reporting sexual victimization.

b. Miami-Dade PTDC

i. Facility Description

The PTDC, located in Miami, Florida, and opened in 1961, is a high-rise facility, just one of six housing units of the MDCR.[623] It was originally designed to process through its receiving area eighty inmates per day or 30,000 inmates per year.[624] Today the PTDC processes 300 inmates per day or 110,000 per year.[625] The PTDC houses only male inmates, and many are classified as among the most violent offenders in the MDCR jail system.[626]

On January 1, 2008, and on January 1, 2009, the number of inmates at the PTDC at its full rated capacity was 1400.[627] The actual number of inmates present at PTDC on January 1, 2008, was 1556.[628] The number of inmates at PTDC frequently exceeded the full rated capacity in 2008 (e.g., on March 1, 2008, there were 1767 inmates; on June 1, 2008, there were 1570 inmates; and on September 1, 2008, there were 1659 inmates).[629] In 2008, the total number of inmates who spent any time at the facility was 118,080; the average length of an inmate's stay was just over twenty-two days; and the longest length of stay of any inmate was 3884 days.[630] On January 1, 2009, the actual number of inmates present at PTDC was 1365.[631] Although the number of inmates at PTDC in 2009 at times exceeded its capacity, the inmate population was significantly closer to the rated capacity and at times even less (e.g., on March 1, 2009, there were 1436 inmates; on June 1, 2009, there were 1432 inmates; and on September 1, 2009, there were 1341

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[619] *Id.*, W. Benedict, 237:8-15.
[620] *Id.*, G. Christensen, 260:9-17.
[621] *Id.*, W. Benedict, 260:18-20.
[622] *Id.*, G. Christensen, 263:10-11.
[623] Ryan Test. 2 (Apr. 15, 2011), *available at* http://www.ojp.usdoj.gov/reviewpanel/pdfs_sept11/testimony_ryan.pdf. Director Ryan's testimony also appears in the Transcript of Record. *See* Tr., T. Ryan, 284:12-301:6.
[624] Ryan Test. 2.
[625] *Id.*
[626] *Id.*
[627] PTDC Resp. 9(a), 10(a) (on file with the Panel).
[628] *Id.* 9(b).
[629] *Id.* 9(c)-(e).
[630] *Id.* 9(f)-(h).
[631] *Id.* 10(b).

inmates).[632] In 2009, the total number of inmates who spent any time at the PTDC was 109,899; the average length of an inmate's stay was over twenty-one days; and the longest stay of any inmate was 4249 days.[633]

In 2008, for the total number of inmates at PTDC, the racial and ethnic composition was as follows: 14,784 Whites; 49,800 African Americans; 53,452 Hispanics; 25 Asians; 13 Alaska Natives or American Indians; no Native Hawaiians or Other Pacific Islanders; no inmates identifying as belonging to two or more races; and 6 inmates of unknown racial or ethnic heritage.[634] In 2009, for the total number of inmates at PTDC, the racial and ethnic composition was as follows: 13,363 Whites; 45,943 African Americans; 50,537 Hispanics; 34 Asians; 17 Alaska Natives or American Indians; no Native Hawaiians or Other Pacific Islanders; no inmates identifying as belonging to two or more races; and 5 inmates of unknown racial or ethnic heritage.[635]

In 2008, at PTDC there were no suicides, homicides, or attempted homicides; there were, however, six attempted suicides.[636] In 2009, at PTDC there were no suicides, homicides, or attempted homicides; there were again, however, eight attempted suicides.[637] The PTDC reported that the attempted suicides in 2008 and 2009 were not related to staff-on-inmate or inmate-on-inmate sexual victimization.[638]

On January 1, 2008, the total number of authorized staff positions at PTDC was 429 (397 sworn and thirty-two non-sworn).[639] The staffing level at PTDC on January 1, 2008, was 342 (294 sworn and forty-eight non-sworn).[640] On January 1, 2009, the total number of authorized staff positions at PTDC was 378 (350 sworn and twenty-eight non-sworn).[641] The staffing level at PTDC on January 1, 2009, was 340 (296 sworn and forty-four non-sworn).[642]

On January 1, 2008, the ratio of sworn staff to inmates was one to sixteen; on January 1, 2009, the ratio of sworn staff to inmates was one to fourteen.[643]

In 2008 and 2009, the PTDC initiated nine investigations into inmate-on-inmate sexual assaults.[644] The charges included rape and sexual assault.[645] In each case, either the complainant

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[632] *Id.* 10(c)-(e).
[633] *Id.* 10(f)-(h).
[634] *Id.* 11.
[635] *Id.* 12. The PTDC reported that the total number of inmates in 2009 was 109,899, but the data it provided to the Panel on the racial and ethnic composition of the total inmate population accounted for only 109,865.
[636] *Id.* 13.
[637] *Id.* 15.
[638] *Id.* 14, 16.
[639] *Id.* 23(a).
[640] *Id.* 23(d)(i), (e)(i), (f)(i). The numbers do not include staff members on scheduled leave.
[641] *Id.* 24(a).
[642] *Id.* 24(d)(i), (e)(i), (f)(i). The numbers do not include staff members on scheduled leave.
[643] *Id.* 25(a), (e).
[644] App. C (PTDC Inmate-on-Inmate Assaults). Lt. Eric Garcia, Special Victims Bureau, Miami-Dade Police Department (MDPD), testified that his unit investigated eleven sexual assault cases in 2008 and 2009, but it is unclear from his testimony whether these investigations were limited to the PTDC or involved other MDCR units. Tr., E. Garcia, 328:17-19. Lt. Garcia testified that out of the eleven cases that his unit investigated, one resulted in

rescinded the charge or the evidence did not support the allegation.[646] In 2008 and 2009, the PTDC conducted three investigations into staff-on-inmate sexual misconduct.[647] The charges included sexual misconduct and an inappropriate relationship with an inmate.[648] In the first case, the investigation did not substantiate the underlying charge, but it found that staff members failed to report the matter immediately to the appropriate supervisor.[649] In the second case, the investigation substantiated the charges against a female officer, finding that she had an inappropriate relationship with a male inmate and that she introduced contraband into the jail; PTDC terminated her employment.[650] In the third case, the investigation found insufficient evidence to support the charge.[651]

In 2008 and 2009, based on sexual misconduct, the PTDC terminated three staff members and disciplined one staff member.[652]

ii. Facility's Explanation for Reported High Incidence of Sexual Victimization

The MDCR did not provide an explanation for the high incidence of sexual victimization at the PTDC, contending that its own internal review did not support the findings of the *BJS Report*: "MDCR respectfully disputes the characterization of a high incidence of sexual victimization at the PTDC facility during the years 2008 and 2009. An analysis of empirical data by MDCR and MDPD do not corroborate such a finding."[653]

Mr. Timothy P. Ryan, Director, MDCR, reminded the Panel in his testimony that few jails in the United States have undergone the level of scrutiny his has, which has included a recent investigation by the Civil Rights Division of the U.S. Department of Justice, which resulted in adverse findings based on the MDCR's noncompliance with the Civil Rights of Institutionalized Persons Act (CRIPA).[654]

For the Panel to understand the MDCR, Mr. Ryan offered basic information about the jail system in Miami-Dade County.[655] A sheriff does not oversee the system; instead, MDCR reports to the Mayor of Miami-Dade County and the Board of County Commissioners.[656] The MDCR is the

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an arrest and prosecution; one was unfounded; and as to the remaining nine cases, either the victim chose not to continue with the investigation or the State Attorney's Office declined to prosecute. *Id.* 330:4-16.
[645] App. C (PTDC Inmate-on-Inmate Assaults).
[646] *Id.*
[647] *Id.*
[648] *Id.*
[649] *Id.* (Incident 1).
[650] *Id.* (Incident 2).
[651] *Id.* (Incident 3).
[652] PTDC Resp. 22.
[653] PTDC Resp. 46.
[654] Ryan Test. 1; *see also* Letter of Finding from Thomas E. Perez, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Carlos E. Gimenez, Mayor, Miami-Dade County (Aug. 24, 2011), *available at* http://www.justice.gov/crt/about/spl/documents/Miami-Dade_findlet_8-24-11.pdf [hereinafter MDCR Letter of Finding].
[655] Ryan Test. 1.
[656] *Id.*

eighth largest jail system in the United States.[657] The jail system operates under Florida rules that require correctional certification, not law enforcement certification; this means that the Miami-Dade Police Department investigates criminal matters involving PREA in the jail system.[658] Mr. Ryan stated that the MDCR is not a single jail facility, but is comprised of six housing units, serving at the time of the hearing 6000 inmates.[659] Mr. Ryan noted that the current inmate population is significantly smaller than the inmate population at the time of the BJS survey in 2008 when the inmate population was 7400.[660] He stated that the inmate population is 8% female and 92% male, whereas the custodial staff is 53% female and 47% male.[661]

Mr. Ryan noted that the prison system receives arrestees from thirty-seven jurisdictions at the rate of one every four minutes, and one in five of these arrestees is mentally ill.[662] The inmate population of the MDCR is 84% pre-sentence, while 16% are sentenced.[663]

Mr. Ryan said that to become a correctional officer at MDCR requires passing a rigorous written test, a background check, psychological screening, and a medical examination.[664] He said that in his department's last recruitment effort, there were 1700 applicants but only 150 received offers of employment.[665] Once selected, a recruit must successfully pass a twenty-two-week academy, which includes training on PREA; on completion of the academy, the recruit must successfully pass a state-certification examination, receive thirty days of intensive orientation, and serve a one-year probationary period.[666] All correctional officers must be recertified every four years, which requires retraining on such topics as PREA.[667] Mr. Ryan said that NIC's online training on PREA is being provided to all staff, and at the time of promotion as well as at other times, supervisors and managers receive in-service training, which includes information on PREA.[668] He said that at the time of the hearing 2800 MDCR staff members (95%) have completed the NIC's online PREA course.[669]

In describing the PTDC, Mr. Ryan observed, "This facility is considered a first generation jail with indirect supervision as its model which means that inmates are not under constant observation by staff."[670] Mr. Ryan said, "Like most of the urban jails designed and built in the 1950s and 1960s, it was not anticipated that it would incarcerate the numbers and types of violent inmates it has been called upon to house today."[671]

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[657] *Id.*
[658] *Id.*
[659] *Id.*
[660] *Id.*
[661] *Id.* 2.
[662] *Id.* 2.
[663] *Id.* 2-3.
[664] *Id.* 2.
[665] *Id.*
[666] *Id.*
[667] *Id.*
[668] *Id.*
[669] *Id.* 4.
[670] *Id.* 3 (underscoring omitted).
[671] *Id.*

Mr. Ryan reported, "Since taking the leadership role at Miami-Dade County, I did discover that even though there had long been policies and procedures addressing sexual misconduct, the PREA initiative had not been fully embraced."[672] To remedy this situation, Mr. Ryan said that he took the following steps: distributing videos to the staff that conveyed the institution's zero tolerance for fraternization with inmates; developing and updating the institutional policy addressing PREA; revising the inmate handbook to include a reference to the institution's intolerance of sexual misconduct; posting PREA placards in three languages in all six housing units; incorporating information on PREA into annual and in-service training programs for staff; including information on PREA in new-employee orientation; improving intake, medical, and classification procedures to identify potential victims of sexual assault and predators; installing a rape-crisis hotline that is available from every inmate telephone; contracting with outside organizations (e.g., Just Detention International (JDI), The Moss Group, Inc.) to provide technical assistance to assess institutional needs and provide specialized training on investigating sexual assaults; installing surveillance cameras in housing units; and implementing word-recognition software that will identify incident reports with sexually related language.[673] Mr. Ryan also said that he also strongly believes in meeting national professional standards for correctional facilities, which has meant obtaining accreditation from the ACA for some of the units at the MDCR; the MDCR is in the process of obtaining ACA accreditation for its other units, including the PTDC.[674]

Mr. Ryan noted that since 2007, the incidence of inmate-on-inmate violence dropped 54%, from 162 incidents in March 2007 to seventy-five in 2011.[675] He also reported that use-of-force reports have dropped 78% since 2008, from fifty-four events in March 2008 to twelve events in March 2011.[676]

Mr. Ryan mentioned that the British Broadcasting Corporation (BBC) produced a troubling documentary on MDCR operations that was useful in facing the "age old problem between policy and practice."[677] One of the problems that the BBC documentary highlighted, especially for female staff, is male inmates masturbating in their presence.[678] Mr. Ryan said that this is an issue in which the MDCR is still seeking answers.[679] He noted that the MDCR has been unsuccessful in having the State Attorney's Office prosecute inmates for this behavior, which means that the only available response is administrative discipline.[680] Mr. Ryan said that recently the MDCR has provided staff members who have encountered this situation with counseling services from in-house psychologists.[681]

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[672] *Id.*
[673] *Id.* 3-4.
[674] *Id.* 4-5.
[675] *Id.* 5-6.
[676] *Id.* 6.
[677] *Id.* 5.
[678] *Id.* 6.
[679] *Id.*
[680] *Id.*
[681] *Id.*

iii. Observations

During the Panel's onsite tour of the PTDC, the Panel saw that there were numerous posters providing information to inmates on reporting and preventing sexual victimization.[682] The tour also raised for the Panel a number of concerns. The Panel observed black sheets enclosing the shower area and recognized them as a potential security risk.[683] Responding to the Panel's concern, Captain John W. Johnson of the MDCR said that the PTDC was in the process of replacing the black shower curtains with opaque ones.[684]

Although the Panel commends the MDCR's installation of additional surveillance cameras in housing units, the Panel found during its tour of the PTDC that staff members assigned to monitoring the cameras were not properly trained; they could not use the cameras to pan an area or focus on a particular inmate.[685] Again, Captain Johnson reported that the MDCR has taken steps to remedy this problem; one of those steps has been issuing a post order for the monitoring station, which explains the responsibilities of the correctional officers assigned to this task.[686]

The Panel was troubled during the tour of the PTDC's mental health unit to encounter an unclothed inmate.[687] Dr. Eloisa C. Montoya, Mental Health Services Manager, MDCR, and Dr. Mercy Mary Gonzales, Interim Associate Medical Director, MDCR, explained that this was an unusual occurrence, as the inmate had been issued a Ferguson gown and blanket in accordance with standard procedures, but he disrobed just before the Panel's visit.[688]

The discussion that the Panel had with Director Ryan during the hearing highlighted a number of broader issues that may warrant further exploration. Among the topics that might benefit the corrections field as a whole are the difficulties that district attorneys have in accepting for prosecution inmate sexual abuse cases,[689] the different challenges of urban and rural jails,[690] the impact that facility architecture has on keeping inmates safe,[691] and the vulnerability that some female staff members have in developing inappropriate relationships with male inmates.[692]

The Panel concurs with Director Ryan's assessment of the challenges in implementing PREA standards in a large urban jail, which include having committed leadership at the top,[693] having in place good policies,[694] and having effective, comprehensive training for all staff members.[695] The Panel also agrees with Director Ryan's assessment of the need to advocate for cultural

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[682] Tr., R. Wilkinson, 311:18-21.
[683] *Id.* 304:6-9.
[684] *Id.*, J. Johnson, 304:10-15.
[685] *Id.*, R. Wilkinson, 307:10-13, 17-19.
[686] *Id.*, J. Johnson, 308:4-13.
[687] *Id.*, R. Wilkinson, 308:18-309:4.
[688] *Id.*, E. Montoya, 309:14-17, 19-22; *id.*, M. Gonzales, 310:8-11.
[689] *Id.*, T. Ryan, 317:2-8, 322:1-323:1.
[690] *Id.* 342:18-343:1.
[691] *Id.* 343:2-18.
[692] *Id.* 345:3-16.
[693] *Id.* 319:13-14.
[694] *Id.* 319:20-21.
[695] *Id.* 320:4-15.

change, not only in an America in which joking about sexual assaults in prisons and jails remains pervasive, but also among the people who work in the field of corrections:[696]

> [W]e have a cultural change to make as well, to recognize that our jails and prisons should not have [sexual assaults] going on; that as a profession, we do not tolerate those things.
>
> And that message, I don't think has gotten out, that we have not done a good job of marketing ourselves as to what we really do believe in.[697]

iv. Facility-Specific Recommendations

In reviewing the section in the handbook for inmates on reporting and preventing sexual abuse, the Panel found that the information could be more accessible to inmates. In particular, the Panel found the printing was small and that some of the language was too technical (e.g., a reference to carnal knowledge), making the information difficult for inmates with limited education to understand.[698] The Panel recommends reviewing this section in the inmate handbook, as well as other educational materials, to make sure that the information on reporting and preventing sexual victimization is readily accessible to inmates.

The Panel remains troubled by the August 2011 CRIPA findings of the U.S. Department of Justice and encourages the MDCR to work closely with the Special Litigation Section of the Civil Rights Division in implementing all of the recommendations in the Letter of Finding, particularly those dealing with prisoner violence.[699] Toward this end, the Panel also encourages the MDCR to continue seeking the assistance of outside advocacy and professional organizations to create a jail environment in which inmates are protected from sexual victimization.

c. OPP

i. Facility Description

The South White Street Jail in New Orleans, Louisiana, is one of a number of housing units at the OPP, which also include Old Parish Prison, the House of Detention (HOD), the Tents, Conchetta, and Templeman V.[700] In response to the Panel's initial Data Request for the South White Street Jail, the OPP stated that this housing unit at its full rated capacity on January 1, 2008, and on January 1, 2009, was 288.[701] The actual number of inmates present in the facility on January 1, 2008, was 176.[702] In 2008, the total number of inmates who spent any time at the South White Street Jail was 5089; the average length of stay was almost fifteen days; and the

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[696] *Id.* 320:17-321:6.
[697] *Id.* 321:3-9.
[698] *Id.*, R. Wilkinson, 323:2-22.
[699] MDCR Letter of Finding 36-37.
[700] Cumming Test. 1 (Apr. 15, 2011), *available at* http://www.ojp.usdoj.gov/reviewpanel/pdfs_sept11/testimony_cumming.pdf. Ms. Cumming's testimony also appears in the Transcript of Record. *See* Tr., E. Cumming, 83:9-94:10.
[701] OPP Resp. 9(a), 10(a) (on file with the Panel).
[702] *Id.* 9(b).

longest length of stay of any inmate was 365 days.[703] The actual number of inmates present in the facility on January 1, 2009, was 185.[704] In 2009, the total number of inmates who spent any time at the South White Street Jail was 5371; the average length of stay was a little over eighteen days; and the longest length of stay of any inmate was 364 days.[705]

In 2008, for the total number of inmates at the South White Street Jail, the racial and ethnic composition was as follows: 1149 Whites, 3716 African Americans, 172 Hispanics, and 52 Asians.[706] In 2009, for the total number of inmates at the South White Street Jail, the racial and ethnic composition was as follows: 1169 Whites, 4167 African Americans, 11 Hispanics, and 24 Asians.[707] The OPP reported that in both 2008 and 2009, there were no inmates who identified as Alaska Native or American Indian, as Native Hawaiian or Other Pacific Islander, or as belonging to two or more races.[708]

In 2008, the OPP reported that at the South White Street Jail, there were no suicides, no attempted suicides, no homicides, and the number of attempted homicides was unknown.[709] In 2009, the OPP reported that at the South White Street Jail, there were no suicides, no homicides, two attempted suicides, and the number of attempted homicides was unknown.[710] The OPP stated that neither of the attempted suicides in 2009 was related to sexual victimization or interactions with either staff members or other inmates.[711]

In response to the Panel's Supplemental Data Request after the closure of the South White Street Jail, the OPP stated that the total inmate population was "3,279, [i]f you mean the female population, they are located in Templeman V, and the House of Detention & the Intake and Processing Center . . . ."[712] [713]

The OPP explained that it hired staff for all of the OPP units, not just for the South White Street Jail.[714] Nonetheless, the OPP provided the Panel with information on the number of staff assigned to the South White Street Jail for each month in 2008 and 2009.[715] Based on the staffing pattern that the OPP supplied to the Panel, in 2008, the average number of staff members working each month at the facility was 34; in 2009, the average number of staff members working each month at the facility was 30.[716] Despite this reported information, the OPP also stated that the total number of staff positions at the South White Street Jail, whether filled or vacant, at full capacity on January 1, 2008, was twenty-six, with nineteen being sworn staff

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[703] *Id.* 9(f)-(h).
[704] *Id.* 10(b).
[705] *Id.* 10(f)-(h).
[706] *Id.* 11(a)-(d).
[707] *Id.* 12(a)-(d).
[708] *Id.* 11(e)-(g), 12(e)-(g).
[709] *Id.* 13.
[710] *Id.* 15.
[711] *Id.* 16.
[712] OPP Supp. Resp. 4 (on file with the Panel).
[713] The Panel received testimony that at the time of the hearing, the total capacity of the OPP was 3563 beds. Tr., J. Ursin, 190:7.
[714] OPP Resp. 20, 21.
[715] *Id.*
[716] *Id.*

members.[717] In response to the Panel's request for staffing information in 2009 at the South White Street Jail, the OPP directed the Panel to "refer to the above question for the year 2009;" but the referenced question was about staffing in 2008.[718] The Panel construed the OPP's response to mean that the staffing levels at the South White Street Jail in 2008 and 2009 were the same. In 2008, the daily ratio of sworn staff to inmates at the South White Street Jail was 1 to 5.5 (thirty-two sworn staff to 176 inmates); in 2009, the daily ratio of sworn staff to inmates was 1 to 5.2 (thirty-five sworn staff to 185 inmates).[719]

The OPP reported that in 2008 and 2009, it did not discipline or terminate any employees based on sexual misconduct, nor did it allow any employees to resign for similar misbehavior.[720]

The OPP's Special Operations Division (SOD) investigates all criminal matters, whereas its Internal Affairs Division investigates administrative violations of policies and procedures.[721] The SOD has jurisdiction over allegations of sexual abuse because "[a]ll incidents alleging sexual misconduct are considered criminal violations."[722] The SOD reported that it did not conduct any investigations involving sexual abuse at the South White Street Jail in either 2008 or 2009.[723] Moreover, SOD reported that it did not have "any incident reports pertaining to sexual abuse from the South White Street Facility in 2008 or 2009;"[724] it did not have "any disciplinary records pertaining to female inmate(s) for sexual abuse in 2008 or 2009;"[725] it did not have "any grievance(s) from any female inmate regarding alleged sexual abuse in 2008 or 2009;"[726] and "[t]here were no reported allegations of sexual assault from the South White Street Facility in 2008 or 2009 . . . ."[727]

After the Panel expanded its inquiry beyond the South White Street Jail, it received investigative files from OPP relating not only to the two inmates whom the Panel named in its Supplemental Data Request but also to fourteen inmate-on-inmate sexual assaults in calendar years 2008 and 2009.[728] Of those incidents, only two were substantiated.[729] Both substantiated incidents were sexual assaults that occurred in 2009, one involving digital penetration and another involving a broomstick.[730] In both instances, the perpetrators were arrested.[731] In the case involving digital penetration, the district attorney declined to prosecute; in the case involving the broomstick, the

[717] *Id.* 23(a)-(b).
[718] *Id.* 24; *see id.* 23.
[719] *Id.* 24(a), (e).
[720] *Id.* 22; *see also id.* 31.
[721] OPP Supp. Resp. 10.
[722] *Id.*
[723] OPP Resp. 29.
[724] *Id.* 30.
[725] *Id.* 32.
[726] *Id.* 33.
[727] *Id.* 35.
[728] OPP Supp. Resp. (rape investigations 2008 and 2009). Aside from the investigations involving the named inmates in the Supplemental Data Request, OPP submitted to the Panel fourteen cases with one electronic file that the Panel could not open.
[729] *Id.*
[730] *Id.*
[731] *Id.*

investigative file did not have information on the outcome of the case.[732] In one investigation into an inmate-on-inmate sexual assault, despite the inmate's allegation of rape, the investigative team concluded that the sexual encounter was consensual.[733] The investigative files showed that in more than half of the cases, the OPP provided the complainants with a medical examination.[734]

ii. Facility's Explanation of Reported High Incidence of Sexual Victimization

Elected in 2004, Orleans Parish Sheriff Marlin N. Gusman provided the Panel with a notarized written statement dated September 15, 2011.[735] Sheriff Gusman reminded the Panel that the OPSO was still recovering from the effects of Hurricane Katrina.[736] As to the South White Street Jail, the original focus of the Panel's inquiry, which was closed since the publication of the *BJS Report*, Sheriff Gusman reported that there were no substantiated inmate grievances in 2008 and 2009 alleging either staff-on-inmate or inmate-on-inmate sexual victimization.[737] The Sheriff said that according to the jail's records there was a single inmate complaint alleging that a civilian maintenance worker used a sexually derogatory remark in addressing a female inmate.[738] The OPP investigated the matter and found it to be unsubstantiated.[739] Sheriff Gusman stated that the South White Street Jail's physical design deterred incidents of inmate victimization because it was a large open dormitory with a deputy station and a surveillance camera focused on the housing unit.[740] Sheriff Gusman noted that the OPP submitted affidavits to the Panel attesting that no persons working at the South White Street Jail, whether staff members, chaplains, medical professionals, elected officials, or volunteers, ever received a complaint from an inmate alleging sexual victimization.[741]

Sheriff Gusman stated that in 2009, female inmates were housed in other locations at OPP in addition to the South White Street Jail, including the HOD and the Intake and Processing Center (IPC).[742] Sheriff Gusman faulted the *BJS Report* because it failed to recognize that the South White Street Jail was just one component of the OPP, because it unfairly selected the South White Street Jail as only one of two female jails surveyed, and because it wrongly compared the information from the South White Street Jail to predominantly male jails:

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[732] *Id.*
[733] *Id.*
[734] *Id.*
[735] Gusman Test. (Apr. 15, 2011), *available at* http://www.ojp.usdoj.gov/reviewpanel/pdfs_sept11/Gusman_Statement.pdf. Sheriff Gusman regretted that he was unable to appear at the Panel's hearing in person as he had previously accepted an invitation for the same date to make a presentation at a conference of the International Corrections and Prisons Association in Singapore. Sheriff Gusman's testimony also appears in the Transcript of Record. *See* Tr., J. Ursin, 129:4-140:13.
[736] Gusman Test. 1.
[737] *Id.*
[738] *Id.*
[739] *Id.*
[740] *Id.* 2.
[741] *Id.*; *see* OPP Supp. Resp. (apps.).
[742] Gusman Test. 2.

> The survey analysis seems to treat the South White Street building as a stand-alone jail while it should really be viewed as part of the entire Orleans Parish Prison. While many female prisons were included in the study, our female population was only one of two female-only jails surveyed. . . . OPP's female South White Street population was then compared to all the other male-predominant jails in the nation, resulting in an inappropriate comparison and misleading conclusions. If the entire population of the Orleans Parish Prison had been reported together, as done with most jails in the study, our results would have been more in keeping with the national average.[743]

Sheriff Gusman claimed that the rate of reported sexual victimization at the South White Street Jail was comparable to the rate at the other female-only jail that appeared in the *BJS Report*.[744] Sheriff Gusman further criticized the methodology of the inmate survey because it offered a reward for obtaining responses: "I want to emphasize that these were anonymous responses on computers after being promised a bag of cookies by the [technicians] for completing the questionnaire."[745] Based on the problems with the BJS survey, Sheriff Gusman concluded, "I don't think there is a high incidence of sexual victimization at the South White Street building."[746] Sheriff Gusman stated, "[W]e have a strong, committed and dedicated staff as well as policies, procedures and protocols with management systems and employee training that focuses on sexual victimization."[747] He noted that OPP shows videos each day to inmates on how to report and prevent sexual victimization.[748]

Sheriff Gusman also stated that the OPP has an electronic database, the Justice Management System (JMS), which contains files of all inmate grievances, including formal and informal statements not only from staff members but also from inmates, as well as their family members and attorneys.[749]

Sheriff Gusman explained that the SOD, under the command of Major Michael Laughlin, investigates all allegations of sexual assault at OPP.[750] According to Sheriff Gusman, when OPP receives notice of an incident, the detective team conducts a preliminary interview of the alleged victim and then OPP tends to the alleged victim's medical needs, which includes an examination by the in-house medical staff, before transporting the alleged victim to University Hospital, less than a mile away, for evaluation by a Sexual Assault Nurse Examiner.[751] Sheriff Gusman stated that in the wake of an incident, the SOD follows standard procedures in gathering evidence, and the OPP's medical staff intervenes only to ensure that the inmate has not sustained life-

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[743] *Id.* 2 (emphasis omitted).
[744] *Id.*
[745] *Id.* Dr. Allen Beck, the principal author of the *BJS Report*, testified that in some jails cookies were offered as an incentive to encourage inmates to participate in the survey, but the incentive was only offered when jail administrators agreed. Dr. Beck reported that the incentive had no impact on reported victimization, but it did produce a higher response rate, resulting in greater precision in those facilities that used the incentive. Tr., A. Beck, 53:16-17.
[746] Gusman Test. 2.
[747] *Id.*
[748] *Id.* 2-3.
[749] *Id.*
[750] *Id.* 3.
[751] *Id.*

threatening injuries before sending the inmate to the hospital.[752] According to Sheriff Gusman, on release of the inmate from the hospital, the OPP houses the inmate in OPP's Acute Psychiatric Unit to provide both protection and mental health services.[753] Sheriff Gusman wrote that a psychiatrist evaluates the needs of the victim, ensuring the provision of proper medical care and the counseling services of a social worker, if warranted.[754] He said that only when the victim is psychiatrically stable would the victim leave the protective custody of the psychiatric unit.[755]

Sheriff Gusman wrote that every warden of a housing unit "responds immediately to all reports of sexual victimization and then contacts the SOD."[756] He assured the Panel, "Wardens also review all grievances and incident reports filed in the JMS and respond to the inmate either in person or in writing."[757]

Acknowledging that the OPP can improve its operations, Sheriff Gusman said that the OPP plans to use a new checklist in the inmate-classification process that will better identify potential victims and predators, assign an assistant to the designated PREA coordinator to monitor compliance with PREA standards, and build a new direct-supervision facility.[758]

iii. Observations

Four factors influenced the Panel to shift the scope of its inquiry, which began with a focus on the South White Street Jail, to the OPP as a whole. First, with the closing of the South White Street Jail, the Panel could no longer observe the operations of the housing unit at the OPP that exclusively served female inmates. Second, in light of the serious findings of the Special Litigation Section of the Civil Rights Division at the U.S. Department of Justice that the OPP was in violation of CRIPA, the Panel recognized the need to broaden its inquiry beyond the South White Street Jail.[759] Third, JDI, an independent, prisoner-advocacy organization, identified an individual who provided a compelling account of alleged sexual victimization while incarcerated at the OPP during the time period of the BJS survey. Finally, the OPP itself urged the Panel to think of the OPP as a whole rather than limiting its view to the South White Street Jail.[760]

The Panel found the following testimony particularly useful in framing its understanding of the OPP: (1) testimony from Ms. Elizabeth Cumming, a New Orleans civil rights attorney; (2) testimony from A.A., a former inmate at OPP; (3) the OPP's response to A.A.'s testimony; and

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[752] *Id.*
[753] *Id.* 4.
[754] *Id.*
[755] *Id.*
[756] *Id.*
[757] *Id.*
[758] *Id.* According to the OPP, construction started on a new facility on September 1, 2011, and the completion date is March 2014. OPP Supp. Resp. 1.
[759] Letter of Finding from Loretta King, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Marlin N. Gusman, Sheriff, OPSO (Sept. 11, 2009), *available at* http://www.justice.gov/crt/about/spl/documents/parish_findlet.pdf [hereinafter OPP Letter of Finding].
[760] *See, e.g.*, Gusman Test. 2.

(4) testimony from Mr. Wesley Ware, Director of *BreakOUT!*, an advocacy group working with juveniles formerly housed at the OPP who identify as being other than heterosexual.

(a) Testimony of Civil Rights Attorney

Ms. Cumming stated that although she is currently in private practice, she began working with the Orleans Parish Prison Reform Coalition (OPPRC) in 2006.[761] She explained that the OPPRC was "dedicated to reducing the massive size of the jail, improving jail conditions and practices to make it a safer place for those who are held there and working there."[762] In her work with the OPPRC, Ms. Cumming said that she gathered data on the OPP's funding, the demographics of its population, and the number of deaths that occurred in the jail.[763] In 2008, Ms. Cumming stated that she received an Equal Justice Works Fellowship.[764] At first, she used the fellowship to advocate for OPP inmates' access to health care, especially for inmates with infectious diseases; however, in light of the "horrific conditions at the jail," Ms. Cumming expanded her advocacy work to include access to medical care in general for all OPP inmates.[765] Ms. Cumming testified that in the course of her work, she received hundreds of letters from people at OPP who confided in her that either they had been victims of sexual assault or they witnessed other inmates who were victims of sexual assault.[766] Ms. Cumming stated that she forwarded the reports on sexual assaults to the Special Litigation Section of the Civil Rights Division at the U.S. Department of Justice.[767]

Ms. Cumming stated that the problems at the OPP may be attributable to four contributing factors. First, the OPP receives funding in a way that encourages a large prison population, as the OPP charges the City of New Orleans for each day an inmate is held in custody.[768] Ms. Cumming stated, "The per diem funding structure, and the enormous jail population that flows from it, all create the foundation for the jail's rampant sexual assault and violence rate."[769] According to Ms. Cumming, given the jail's method of funding, there is an incentive for the OPP to keep the inmate population rate high.[770] Consequently, as Ms. Cumming noted, "New Orleans can boast the highest per-capita jail detention rate in the country."[771]

Second, Ms. Cumming wrote that despite the large inmate population, the OPP is significantly understaffed.[772] Quoting an NIC 2008 report on the OPP, Ms. Cumming stated, "'staffing issues were pervasive and most serious . . . actual staffing levels are so far below planned staffing levels that required and critical important duties such as inmate welfare or security rounds cannot be

[761] Cumming Test. 1.
[762] *Id.*
[763] *Id.*
[764] *Id.*
[765] *Id.*
[766] *Id.*
[767] *Id.*
[768] *Id.* 2.
[769] *Id.*
[770] *Id.*
[771] *Id.*
[772] *Id.*

completed in many cases.'"[773] Ms. Cumming contended that nothing has changed since the publication of the NIC's 2008 report.[774]

Third, Ms. Cumming stated that the current classification system at OPP fails to identify likely predators and likely victims of sexual assault.[775] Ms. Cumming claimed that lack of space at OPP, compounded by an inadequate classification system, often lead to housing decisions that fail to protect vulnerable inmates:

> The current classification system fails to take into account previous convictions, previous histories of violence, age, residence, or body mass index. Instead, the classification system is reliant almost entirely on bond amount. However, even this rudimentary classification is often ignored because of space constraints in the various facilities. Inmates are placed wherever space can be found, even if it is a mattress on the floor of HOD.[776]

Fourth, Ms. Cumming stated that the barriers to reporting sexual assault contribute to the high level of sexual victimization at OPP.[777] She said, "OPP's grievance system is essentially nonexistent."[778] She contended that "[f]ew grievances are ever even acknowledged and even fewer are responded to appropriately."[779] Ms. Cumming noted that when rapes do occur, "the failures of the grievance system and the lack of staff supervision can mean that the rape will go unreported for days, even when the survivor is looking for a way to report the rape or to be moved to protective custody."[780]

Ms. Cumming offered recommendations for improving OPP based on her analysis of the contributing factors to sexual victimization at the jail.[781] She recommended that the OPP reduce its inmate population. She observed, "Preventing sexual assaults in a corrections setting is significantly easier if fewer people are in jail."[782] She also recommended that the OPP implement a classification system that takes into account relevant criteria to protect vulnerable inmates. Finally, she recommended that the OPP adopt "appropriate staffing at levels commensurate with the number of people held at OPP."[783]

Ms. Cumming concluded her testimony by appealing to the Justice Department to intervene in a corrections system that she regards as severely dysfunctional:

> OPP is in such a state of crisis that we, in New Orleans, are forced to rely on the Department of Justice Civil Rights Division to help us rebuild a fundamentally

[773] *Id.* (citation omitted in original).
[774] *Id.*
[775] *Id.*
[776] *Id.*
[777] *Id.*
[778] *Id.*
[779] *Id.*
[780] *Id.*
[781] *Id.* 4.
[782] *Id.*
[783] *Id.*

> broken system. The level of sexual assaults and violence present in the jail are symptoms of this system's profound dysfunction.[784]

(b) Statement of Former Inmate

JDI brought to the Panel's attention the experience of a former inmate at OPP, A.A.,[785] who at the time of the hearing was serving a sentence in the Mississippi Department of Corrections. Although he could not appear before the Panel in person, counsel for the Panel interviewed him prior to the hearing, and A.A. submitted a statement about his experience at OPP that a representative of JDI read into the record.[786] Here follow excerpts from his statement, in which he claims that he was brutally assaulted at the OPP multiple times, and despite his seeking assistance through the jail's grievance process and other avenues, he received no help:

> When I was arrested in 2008 in New Orleans, I was on a 72-hour pass from [a work center] in Mississippi. . . . Because I didn't return to the Work Center within 72-hours, I was considered an escapee and arrested on October 31, 2008. I went to the Central Lock-[U]p at the OPP's House of Detention. I was thirty years old at the time.
>
> In January 2009, I was moved from Central Lock-[U]p to the general population at the OPP's House of Detention (HOD). Before assigning me to the general population, the facility officials didn't do a screening process. For instance, no one asked me if I was gay. No one asked me if I had ever been sexually assaulted before, either. The fact is that I had been—prior to my incarceration. Because I was afraid for my safety, I told them I was gay and that I wanted to be put on a tier for gay men. . . . When they said they didn't have that tier anymore, I asked if I could just stay in Central Lock-Up. They said no and that I had to go to general population.
>
> They put me in an overcrowded cell that should have been used for ten inmates maximum, but had fifteen or sixteen in it when I got there. The other inmates were all between eighteen and twenty-one years old. From the moment I arrived, they were sizing me up. They asked me whether I was gay. I was scared to lie to them so I said "yes." I didn't have a bed so I took a mat to lay on. I was so depressed and exhausted that I put it on the floor next to the cell bars and took a nap.
>
> I woke up all of a sudden when some of my cellmates threw a chest of ice on me that was kept in the cell for drinks. One of the inmates told me to give him a blow job. This man was very scary, and I felt extremely afraid. I called for help, but there were no guards around and no one responded to my screams. At first, I

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[784] *Id.*
[785] To the extent that it is possible, the Panel protects the identities of individuals who allege to have been victims of sexual abuse.
[786] A.A. Test. (Apr. 15, 2011), *available at* http://www.ojp.usdoj.gov/reviewpanel/pdfs_sept11/AA_Statement.pdf; *see also* Tr., C. Totten, 70:16-82:14.

> refused to do what the inmate was telling me to do, but then he grabbed me by my hair and kicked me while another inmate held a knife to my back. I decided that I had better do what he wanted in order to save my life—I was already bleeding from the knife.
>
> Later that night, several of these inmates tied me down to the frame of a bed in the cell with strips of a blue towel. I tried to fight them off at first, but a large inmate choked me until I passed out. When I came to, I was choked again. There were at least a dozen inmates around who saw what was happening. Three of the men said they wanted me to give them oral sex, but they were afraid that I would bite them, so they masturbated onto me instead. This nightmare only ended when an inmate kicked me off the bed I was tied to because he wanted to go to sleep.
>
> During my assault, there were no guards around. I quickly realized that the guards at OPP did not do rounds of the tiers on a regular basis, so there was no one to protect me. . . . And there were no cameras around, so the attacks weren't recorded or seen by guards in another part of the jail. . . .
>
> The morning after that first night at OPP, I couldn't go to the showers so I washed up as best I could using the small sink in the cell. I tried to be friendly to the other inmates just so I could try to keep from being attacked again. But, I was on the lookout for an officer who I could ask for help. The whole day passed and I never had a chance to talk to a guard or any other staff members.
>
> As the next night came, I was really anxious. I had not been able to speak with any jail officials, and I was so afraid that my cellmates would attack me again. That night, three of the inmates—all large men—anally raped me. With no one to help me, I laid down on the floor, bleeding from my injuries, and terrified about what would happen next. My cellmates continued to orally and anally gang-rape me . . . the whole time I was at OPP sometimes in the cell, but often in the showers.
>
> It happened so many times I lost count.[787]

A.A. stated that despite filing at least six grievances and trying to approach correctional officers, he never received a response from OPP.[788] He stated that on one occasion he tried to give a grievance to a correctional officer, and the correctional officer allegedly responded, "'a faggot raped in prison—imagine that!'"[789]

A.A. also wrote that he had requested medical help from correctional officers two or three times a week from February to April of 2009 because he was afraid of contracting a sexually transmitted disease.[790] He said that he must have filled out over twenty-five slips requesting

[787] A.A. Test. 1-2.
[788] *Id.* 2.
[789] *Id.*
[790] *Id.* 3.

medical care, but he said that he never received a response.[791] A.A. said that the only time he saw a doctor at A.A. was by accident: when he happened to pass the medical unit on the way to the "rec yard" he asked to see the doctor on duty.[792] A.A. reported that after waiting for two hours, the doctor examined him and did blood work to see whether he had Hepatitis C or HIV, but the medical staff did not administer a rape kit.[793] A.A. stated that "[t]he doctor told me that I had herpes, which he thinks I got from the rapes."[794] A.A. also reported that despite telling the doctor about the sexual assaults, the doctor took no action: "The doctor told me that he couldn't do anything about the rapes and beatings, because that was a security issue, not a medical one."[795]

A.A. claimed that while at OPP there were also no available support services to help him as a victim of sexual assault: "There was no one I could talk with to help me with how I was feeling emotionally. I don't think OPP had a chaplain or counselor, and there were no religious services or any other type of support that I could find."[796] He said, "I would say without a doubt that the whole time I was at OPP, I had to deal with all this stuff on my own. Not one person there tried to help me in any way."[797]

A.A. wrote that he was not the only one at OPP who was a victim of sexual assault.[798] During his tenure at OPP, he claimed to have witnessed between five and seven other male inmates who were sexually assaulted; one transgender woman was so severely beaten that she was sent to the hospital.[799]

Appealing to the Panel, A.A. wrote, "I think that what I went through and what I saw happening to some of the other people at OPP could have been prevented if OPP had done something to keep inmates like me—guys who are gay or who are going to be targeted by other inmates—safe."[800]

(c) OPP's Response to the Former Inmate's Testimony

Following up on the testimony from A.A., which the Panel received prior to the hearing, the Panel requested that OPP produce any documentation that might be related to A.A.'s confinement at OPP, including whether he filed any grievances and whether the OPP responded to the grievances.[801]

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[791] *Id.*
[792] *Id.*
[793] *Id.*
[794] *Id.*
[795] *Id.*
[796] *Id.*
[797] *Id.*
[798] *Id.*
[799] *Id.* 3-4.
[800] *Id.* 4.
[801] App. A (Letter from Michael L. Alston, Attorney Advisor, Panel, to Marlin N. Gusman, Sheriff, OPSO 3 (Aug. 3, 2011)) [hereinafter Supp. Data Request].

Based on the documentation that the OPP submitted to the Panel regarding the history of A.A.'s grievances while he was in custody, the Panel closely questioned Major Michael Laughlin, Commander of SOD, about OPP's response to A.A.'s alleged sexual assaults. Major Laughlin testified that at the Panel's request he undertook a review of A.A.'s grievance record at OPP and found that of the ten grievances that A.A. filed during his tenure at OPP, six went unanswered.[802] Among the unanswered grievances, was the first one that A.A. filed on February 3, 2009, which claimed that he was sexually assaulted.[803] According to the record of A.A.'s grievances in the JMS that the OPP submitted to the Panel,[804] A.A.'s February 3, 2009, grievance contained the following question and answer: "What is your complaint? I'm a homosexual and have been forced to have sex 3 times, and assaulted."[805] The standard electronic grievance form also asked A.A. whether the grievance was an emergency.[806] A.A.'s response was "yes" because "my life's in danger and I'm scared."[807]

Major Laughlin explained what happened to A.A.'s first grievance: the staff picked up A.A.'s complaint on February 3, 2009, and entered it into the OPP's computer system, which immediately sent the grievance to the electronic inbox of the warden of HOD, where it remained unanswered.[808]

Speaking for the OPP, Colonel Jerry Ursin, Commander, IPC, admitted that in regard to A.A.'s first grievance, "we dropped the ball on that case as an organization."[809]

The OPP does not appear to have done much better in handling the other grievances that A.A. filed. According to the record that OPP provided the Panel, on February 10, 2009, A.A. filed a second grievance in which he complained that a correctional officer removed clippers from the tier before A.A. had the chance to finish cutting his hair.[810] In the grievance, A.A. stated that the officer "'called me a faggot and cracker and told me he would beat my ass. He works up here every day and I fear for my life.'"[811] Major Laughlin testified that after the second grievance, OPP transferred A.A. to another floor at the HOD, but there was no evidence that the decision to transfer him was in response to the grievance.[812] A.A. also filed grievances on March 3, 2009 (requesting access to clippers), and March 4, 2009 (claiming assault).[813] In the March 4, 2009, grievance, A.A. complained, "'I got jumped by four other inmates and I'm scared to be on this side.'"[814] The warden of the HOD did respond to this grievance by transferring A.A. to a different wing,[815] but there was no documentation indicating that the warden investigated A.A.'s

[802] Tr., M. Laughlin, 158:8.
[803] *Id.* 155:1-3.
[804] OPP Supp. Resp. (A.A.'s grievances) [hereinafter exh. B]; *see* Tr., G. Christensen, 153:21 (referring to exh. B).
[805] Exh. B 10.
[806] *Id.* 11.
[807] *Id.*; *see also* Tr., G. Christensen, 160:14-15.
[808] *Id.*, M. Laughlin, 155:1-3, 6-12, 15-18, 156:1-3, 17.
[809] *Id.*, J. Ursin, 180:7; *see also id.* 149:7-8.
[810] *Id.*, M. Laughlin, 159:3, 159:20-160:1.
[811] *Id.* 160:1-3 (citing grievance form); *see also* exh. B 14.
[812] Tr., M. Laughlin, 161:5-8, 17-20.
[813] *Id.* 162:1-2, 10-12, 163:6-10.
[814] *Id.* 163:7-8 (quoting grievance form); *see also* exh. B 22.
[815] Tr., M. Laughlin, 164:3-4, 7-8.

claim that he was assaulted by four other inmates.[816] On March 10, 2009, A.A. filed another grievance in which he stated, "'I am having problems with the guys here, I don't feel safe. The guys are having a problem with me being a homosexual. I'm scared to live over here.'"[817] Major Laughlin testified that by the time A.A. filed the March 10, 2009, complaint, OPP already moved him, but the OPP did not undertake any investigation into A.A.'s allegation of sexual harassment.[818] Given that the March 10, 2009, grievance could be a criminal offense, the Panel asked why the warden would not have documented an investigation.[819] Colonel Ursin admitted, "We have no paper trail that he documented it."[820] Again, Colonel Ursin said, "[W]e dropped the ball on this."[821]

(d) Testimony of Youth Advocate

Mr. Wesley Ware, the director of *BreakOUT!*, provided testimony to the Panel on the treatment of young people who have served time at OPP who identify as being other than heterosexual.[822] Mr. Ware explained that "*BreakOUT!* is a project of the Juvenile Justice Project of Louisiana (JJPL) that focuses on working with LGBTQ [lesbian, gay, bisexual, transgender, and queer or questioning] young people to help reform the criminal justice system in New Orleans."[823] Prior to founding *BreakOUT!* in 2011, Mr. Ware, in his capacity as an advocate and investigator for the JJPL, visited youth in state and local facilities throughout Louisiana, focusing from 2007 to 2010 on the needs of LGBTQ young people.[824]

Mr. Ware stated that in the summer of 2011, youth members of *BreakOUT!*, most of whom are formerly incarcerated African American transgender women aged sixteen to twenty-four, conducted an informal, person-to-person survey of sixteen peers.[825] All but one of the surveyed young people were African Americans; all were homeless or "marginally housed;" and most had previously engaged in sex work.[826] Mr. Ware reported that of the 90% who had been detained, 80% had experienced some form of sexual victimization at the OPP.[827] Mr. Ware stated that "[t]he majority of the violence was considered 'inmate versus inmate' in areas with little staff or guard supervision."[828]

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[816] *Id.* 164:12, 16-20.
[817] *Id.*, G. Christensen, 165:3-6 (quoting grievance form); *see also* exh. B 26.
[818] *Id.*, M. Laughlin, 165:10-11, 15.
[819] *Id.*, G. Christensen, 167:11-13, 15-16.
[820] *Id.*, J. Ursin, 167:17-18.
[821] *Id.* 168:3-4.
[822] Ware Test. (Apr. 15, 2011), *available at* http://www.ojp.usdoj.gov/reviewpanel/pdfs_sept11/Ware_Statement.pdf. Mr. Ware's testimony also appears in the Transcript of Record. *See* Tr., W. Ware, 95:4-111:4.
[823] *Id.* 1.
[824] *Id.* 1, 2.
[825] *Id.* 2.
[826] *Id.*
[827] *Id.*
[828] *Id.*

Citing a 2009 public letter from the American Civil Liberties Union to Sheriff Gusman, Mr. Ware noted that it is well known to the members of the transgender community in New Orleans that if they are detained at OPP, they should post bond as soon as possible or risk being raped.[829]

Mr. Ware cited a number of examples of gay men and transgender women who experienced sexual victimization at the OPP.[830] He read into the record a short statement from one young man, "Robert," a "twenty-two year old gender-nonconforming, gay white male" who claimed to have experienced sexual victimization during his custody at OPP from December 2010 to February 2011.[831] Robert's statement is similar in many ways to A.A.'s: he claimed that during the classification process the OPP did ask him if he had any concerns for his safety; that the OPP housed him in HOD; that in the night, a larger inmate in the same housing unit overpowered him and raped him; that he screamed for help but no correctional officer responded; and that despite sustaining serious injuries, no correctional officer checked on him throughout the night.[832]

On the morning after his alleged attack, Robert stated that he reported the assault to a correctional officer, and then two investigators from SOD interviewed him.[833] Robert stated, "During the interview, one of the SOD investigators accused me of lying and called me a 'faggot.' He accused me of wanting to have anal sex because I was a 'faggot.'"[834] Robert said that after the interview, OPP placed him in a holding cell for two to three hours and then took him to the hospital where a rape kit was completed.[835] Robert questioned whether the rape kit was ever given to the Orleans Police Department.[836] Robert said that when he was released from the hospital, the OPP placed him back in the same cell at HOD, next to the inmate who allegedly raped him.[837]

Consistent with A.A.'s account, Robert stated that the OPP did not provide any follow-up medical or psychological support, nor did the OPP respond to any of his written grievances:

> The OPP never provided me with any additional medical or psychological treatment while I was in custody.

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[829] *Id.* 2-3 & n.1 (citing ACLU Seeks to End Rapes in New Orleans Parish Prison (Apr. 4, 2009), *available at* https://laaclu.org/newsArchive.php?id=330#n330; Letter from Marjorie R. Esman, Executive Director, ACLU of Louisiana, to Marlin N. Gusman, Sheriff, OPSO (Apr. 28, 2009), *available at* https://www.laaclu.org/PDF_documents/Letter_Gusman_042809.pdf).
[830] Ware Test. 3. The Panel met informally with youth members of *BreakOUT!* on August 22, 2011, in New Orleans, Louisiana, and listened to first-hand accounts from young transgender women and gay men who claimed to have been mistreated at the OPP. They stated that their filed grievances at the OPP received no responses. They said that before Hurricane Katrina there was a separate, "protective custody" unit for LGBTQ inmates, which is now no longer an option. They stated that there is only one social worker who serves all of the OPP; they claimed that they did not have access to counselors or chaplains.
[831] *Id.*
[832] *Id.* 3-4.
[833] *Id.* 4.
[834] *Id.*
[835] *Id.*
[836] *Id.* 4-5.
[837] *Id.* 5.

> I filed a number of written grievances while I was at OPP, including an emergency grievance complaining about the rape as well as one complaining about being physically abuse[d] by an OPP guard. I never received a response to my grievances.[838]

Mr. Ware offered recommendations for improving the OPP based on consultations that *BreakOUT!* conducted with the local LGBTQ community, youth members of *BreakOUT!*, and criminal justice reform advocates in New Orleans.[839] Echoing three of Ms. Cumming's recommendations, Mr. Ware advised the OPP (1) to revamp its inmate-classification system to protect vulnerable inmates, noting in particular the needs of transgender inmates; (2) to strengthen its grievance and investigation procedures to respond more effectively to complaints of sexual victimization; and (3) to increase the staff-to-inmate ratio at the jail by decoupling funding of the jail from the size of the inmate population.[840]

In addition, Mr. Ware suggested that staff at every level of the OPP should receive training on LGBTQ issues in consultation with national experts and local, formerly incarcerated LGBTQ individuals.[841] Mr. Ware stated that OPP "should ensure proper medical care and follow-up for those in need of medical attention," including victims of sexual assault, people with pre-existing conditions, and people living with HIV or AIDS.[842] Mr. Ware said that OPP "should increase its accountability mechanisms to the community."[843] He suggested that the OPP convene regular meetings to listen to the concerns of community members, which may include attorneys, family members of inmates, and LGBTQ young people.[844]

Along with Ms. Cumming, Mr. Ware appealed to the Panel as a part of the U.S. Department of Justice, to intervene with the OPP: "It is apparent that in addition to the recommendations already stated, we need federal oversight of our jail to realize full reform."[845]

iv. Facility-Specific Recommendations

Based on the investigative record and the Panel's onsite visit to the jail,[846] the Panel is deeply disturbed by the apparent culture of violence at the OPP.[847] [848] During the tour of the OPP,

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[838] *Id.*
[839] *Id.* 5-6.
[840] *Id.*
[841] *Id.* 7.
[842] *Id.*
[843] *Id.*
[844] *Id.*
[845] *Id.* 8.
[846] Although the Panel compliments the OPP in undertaking the construction of a new, direct-supervision facility, the Panel found that many of the deplorable conditions of the jail have not changed significantly since the issuance of the OPP Letter of Finding. *See* OPP Letter of Finding 21-22.
[847] On September 22, 2011, the Panel sent a letter of concern to Assistant Attorney General Thomas E. Perez, to bring to his attention the OPP's admission that it failed to respond to inmate grievances alleging sexual assault. Letter from Dr. Reginald A. Wilkinson, Chairperson, Panel, to Thomas E. Perez, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice (Sept. 22, 2011) (on file with the Panel). In light of the absence of a negotiated resolution agreement between the OPP and the Justice Department, despite the issuance of the OPP Letter of Finding in September of 2009, the Panel wrote, "Two years is too long for the OPP to still operate as it does

inmates approached the Panel privately, stating that their grievances went unanswered. These appeals are a particular cause for concern, given that the OPP admitted its failure in responding to A.A.'s grievances, that the Panel heard similar complaints from *BreakOUT!* youth members, and that the Panel heard testimony from both Ms. Cumming and Mr. Ware about the OPP's dysfunctional grievance and investigation system.[849] The Panel urges the OPP, consistent with the OPP Letter of Finding, to conduct a thorough review of its grievance process, making sure that all inmates receive a fair, timely response to every grievance, and that any investigation, no matter how minor, has sufficient documentation that would allow an outside organization to review the investigative process and understand the outcome.

In its Letter of Finding, the Civil Rights Division concluded, "Staffing levels at OPP are inadequate to protect inmates from harm."[850] As a remedial measure, the Civil Rights Division recommended that the OPP should implement, "in accordance with generally accepted professional standards of correctional practice,"[851] a program for safety and supervision to "[e]sure that correctional officer staffing and supervision levels are appropriate to adequately supervise inmates."[852] Noting that the testimony from Ms. Cumming and Mr. Ware support this assessment, the Panel concurs with the Civil Rights Division and urges the OPP to review its current staffing plan.

The Panel, consistent with the recommendations of Ms. Cumming, Mr. Ware, and the Civil Rights Division,[853] urges the OPP to implement an objective classification system that protects vulnerable inmates from sexual assault.[854] At the hearing, Colonel Ursin agreed that the OPP needed to put into place an *objective* classification system that would better serve vulnerable inmates.[855] The Panel encourages the OPP to improve the classification system as soon as possible.

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without court enforceable federal oversight." *Id.* 2. On December 20, 2011, the chief of the Special Litigation Section of the Civil Rights Division responded. Letter from Jonathan M. Smith, Chief, Special Litigation Section, Civil Rights Division, U.S. Department of Justice, to Dr. Reginald A. Wilkinson, Chairperson, Panel (Dec. 20, 2011) (on file with the Panel). Chief Smith wrote, "Attorneys from the Section are actively engaged with OPP leadership in settlement discussions. We continue to be hopeful that the parties will agree upon a court-enforceable settlement." *Id.* 1.

[848] Just prior to the release of this Report, the Panel read with alarm a letter that the Southern Poverty Law Center (SPLC) of New Orleans sent to the OPP to seek protection for a transgender woman who was allegedly raped multiple times in February and March of 2012 while in OPP's custody. Letter from Katie Schwartzmann, Managing Attorney, SPLC, to Marlin N. Gusman, Sheriff, OPSO (Mar. 27, 2012), *available at* http://www.splcenter.org/sites/default/files/downloads/case/GusmanLetter03272012.pdf.

[849] The Panel acknowledges that it did review some investigations from SOD into allegations of sexual victimization that appeared to be thorough. For example, the Panel found that the SOD's investigation convincingly debunked the sexual assault claims of one of two named former inmates that the Panel identified in its letter to Sheriff Gusman on August 3, 2011. *See* Supp. Data Request 3.

[850] OPP Letter of Finding 13.

[851] *Id.* 23.

[852] *Id.* 25.

[853] *Id.* 11-12. "The classification system at OPP contributes to its deficiencies in safety and security. Generally accepted correctional practices for classification systems utilize a variety of objective, behavior-based factors to determine the appropriate level of custody." *Id.* 11.

[854] *See id.* 26.

[855] Tr., J. Ursin, 186:17-20, 187:2; *see also* Gusman Test. 4.

In light of the Panel's previous discussion on the importance of language in creating a correctional culture that has zero tolerance for sexual victimization,[856] the Panel recommends that the OPP provide training to its staff on treating LGBTQ people with proper respect.[857] The Panel supports Mr. Ware's recommendation for the OPP to work with the local LGBTQ community in New Orleans as part of this effort.

Although the OPP has protocols for providing victim services to inmates who may need them, the personal accounts from former inmates at OPP who claimed to be victims of sexual assault raise serious questions as to how accessible and effective the services actually are. The Panel strongly recommends that the OPP review the quality of the services it provides to victims of sexual assault, which should include collaboration with victim-service providers in the community.[858]

3. Common Themes

Cognizant of the inherent limitations in drawing generalizations from the data that the Panel has gathered on the five jails that appeared at the September 2011 hearings, the Panel has nonetheless identified the following recurrent themes: (1) the importance of jail design in deterring inmate sexual victimization, (2) the value of outside oversight, (3) the reluctance of prosecutors to pursue cases involving inmate sexual assault, (4) the challenges that jails encounter in creating safe environments with increasingly limited resources, and (5) the importance of employing well-trained, professional correctional staff.

a. Acknowledging the Importance of Facility Design

Among the jails that the Panel invited to the September hearing there was a notable correlation between incidence of sexual victimization and facility design. The two jails with low sexual victimization, Hinds County and the Moss Center, were both direct-supervision facilities, whereas two of the three jails with reported high sexual victimization, Clallam County and PTDC, were not. The single outlier was the South White Street Jail, which the OPP characterized as a direct-supervision facility, but as already noted, the facility closed before the Panel could observe its operation. For many local jurisdictions throughout the country, the Panel knows well that the construction of new, direct-supervision jails is a cost-prohibitive option to prevent the sexual victimization of inmates. Nonetheless, in communities where jail construction or remodeling is on the agenda, community leaders and jail administrators should consider the security benefits of a direct-supervision design.

b. Appreciating the Value of Outside Oversight

Two of the three high-incidence jails that the Panel selected to appear at the September hearings, the PTDC and the OPP, were also recently the subject of Justice Department investigations, which resulted in specific recommendations for improving facility management. The Panel contends that it is not a matter of coincidence that the *BJS Report* identified these facilities as

[856] *See supra* Part II.A.3.c.
[857] *See supra* Part II.A.3.d.
[858] *See supra* Part II.A.3.f.

problematic, a result that was completely independent of the Civil Rights Division's investigations and findings. Although the Justice Department has a key role in holding correctional institutions accountable, Sheriff Glanz of TCSO and Director Ryan of MDCR reminded the Panel of the benefits that come from working with outside organizations in helping jails improve their operations. Echoing their remarks, Director Arthur Wallenstein of the Montgomery County, Maryland, Department of Corrections and Rehabilitation, a jail administrator with significant experience in implementing PREA, also noted the importance of correctional institutions being open to outside oversight.[859] Sheriff Glanz, Director Ryan, and Director Wallenstein commented on the important role that accreditation organizations have in holding jails to professional standards. Jail administrators should consider what may prevent them from welcoming the opportunity of a neutral, outside organization's review of their operations.

c. Noting the Reluctance to Prosecute Sexual Victimization Cases Involving Inmates

The Panel heard the frustrated testimony of more than one jail administrator who complained that prosecutors are often reluctant to take criminal cases that involve sexual victimization of inmates. The Panel heard speculation that the reluctance may be attributable to a number of factors, including societal stereotypes about inmates, female staff members, and alternative sexual practices.

d. Recognizing the Resource Challenges that Jails Face

The Panel heard from jail administrators about the challenges that they face under current economic conditions to maintain safe correctional institutions. For smaller jails, notably in rural counties, it may be useful to identify off-the-shelf resources that may assist them in complying with the goals of PREA. The Justice Department and the PREA Resource Center may be able to link jails with relevant materials that are readily available, such as online staff training on PREA or an objective inmate-classification system.

e. Employing Well-Trained, Professional Staff

The Panel heard testimony from sheriffs, jail administrators, and jail officials espousing the importance of employing well-trained, professional security staff. Indeed, to prevent or at least limit the frequency of sexual assault, committed correctional professionals must work within a jail facility in which organizational culture does not permit language that gives the impression that any form of sexual impropriety is acceptable. Proper training and staff awareness of evidence-based policies that are designed to prevent and address sexual impropriety, as well as measures or practices that monitor the effectiveness of and adherence to prescribed processes, are essential to the realization of a correctional environment that is free of sexual victimization.

[859] Tr., A. Wallenstein, 19:8-22; *see also* Wallenstein Test. 11 (Apr. 15, 2011), *available at* http://www.ojp.usdoj.gov/reviewpanel/pdfs_sept11/testimony_wallenstein.pdf.

4. Topics for Further Study

The Panel encourages academics and practitioners to conduct additional research on the following topics:

a. What are the Specific Challenges of Big-City and Rural Jails in Preventing Inmate Sexual Victimization?

The Panel is aware that the challenges that big-city jails face, such as the MDCR and the OPP, are significantly different from jails with much smaller inmate populations, staffing, and financial resources. The Panel would like to encourage research that would provide practical tools not only to large jails but also to small, rural jails in implementing the goals of PREA.

b. What are the Best Practices in Classifying and Housing LGBTQ Inmates?

The Panel is aware of the directive in the proposed national standards that in considering housing and programming decisions for LGBTQ inmates, correctional institutions should "make individualized determinations about how to ensure the safety of each inmate."[860] The Panel heard testimony and received studies that both supported and criticized the practice of creating special units for LGBTQ inmates.[861] The Panel encourages further evidence-based research on correctional institutions' screening and housing practices that prevent the sexual victimization of gay and transgender women inmates.[862]

c. What Would Encourage the Prosecution of Crimes Involving Inmate Sexual Victimization?

The Panel encourages the Justice Department to fund research that would identify the factors that discourage local and federal prosecutors from pursuing criminal charges against either staff members or inmates when the victim of a sexual assault is an inmate. The research might include convening a task force composed of prosecutors, prison administrators, and inmate advocacy groups to address this issue.[863]

d. What are the Policies and Practices that Contribute to a Jail Culture that Has Zero Tolerance for Sexual Victimization?

Through its public hearings and the issuance of this Report, the Panel has attempted to highlight many of the issues that jails encounter in preventing the sexual victimization of inmates. When

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[860] Nat'l Standards, 76 Fed. Reg. at 6281 (§ 115.42(b)).
[861] Robinson Test. (Sept. 16, 2011), *available at* http://www.ojp.usdoj.gov/reviewpanel/pdfs_sept11/testimony_robinson.pdf; Russell K. Robinson, *Masculinity as Prison: Sexual Identity, Race, and Incarceration*, 99 CAL. L. REV. 1309 (2011); *see also* Susan Dolovich, *Strategic Segregation in the Modern Prison*, 48 AM. CRIM. L. REV. 1 (2011).
[862] *See* NIC, Lesbian, Gay, Bisexual, Transgender and Intersex Offenders, http://nicic.gov/LGBTI (last visited Mar. 1, 2012).
[863] *See* Tr., T. Ryan, 322:1-15.

it comes to the sexual abuse of inmates, almost all jail administrators affirm that their facilities have a zero-tolerance policy.[864] More important than stating a policy is knowing what actually works. Mindful of the proposed national standards, the Panel encourages evidenced-based research on the policies and practices that contribute to jail cultures that keep inmates safe from sexual victimization.

e. What are the Best Practices for Monitoring Compliance with a Jail's Zero-Tolerance Policy for Sexual Victimization?

The Panel has often found that the written policies on preventing sexual victimization in high- and low-incidence correctional facilities may not differ significantly. One of the distinguishing characteristics, however, between high- and low-incidence facilities is that the low-incidence facilities are often able to evaluate whether their practice complies with their stated policy. To help jails with the process of self-evaluation when it comes to preventing and responding to the sexual abuse of inmates, the Panel encourages the development of effective tools, based on best practices, that jails can readily access that will assist them to identify their shortcomings and then take appropriate corrective actions.

f. What are the Best Practices for Reliably Reporting Sexual Abuse in Jails?

In reviewing correctional facilities' investigative files, the Panel has found that some facilities still have significant problems when it comes to receiving, answering, and recording inmate complaints alleging sexual victimization; responding appropriately to a reported incident of sexual assault; conducting a well-documented investigation; taking warranted remedial actions; and providing proper medical and emotional support to victims. The Panel encourages the development of technical assistance materials for jails that would assist them in reliably tracking inmate complaints alleging sexual victimization and responding to them based on best practices from the field. In designing the materials, researchers should consider the needs of all jails, whether large or small, urban or rural.

III. Conclusion

The Panel takes the issues of sexual misconduct and sexual safety in correctional environments seriously. We recognize that when a person is sexually abused, that person becomes the victim of a violent crime. Our mission, especially in preparing for and during the hearings, is to help corrections practitioners and allied professionals achieve the spirit of PREA. While we believe that jails, juvenile institutions, and prisons are making significant advancements to abate sexual victimization, much more can be done to prevent sexual assaults and to punish sexual predators.

Through our hearings we have come to know and consequently document that many correctional jurisdictions deserve praise for their hard work. Creating a corrections culture that seeks to eliminate sexual abuse takes considerable energy on the part of many in leadership. We

[864] *See, e.g.*, *id.*, J. Ursin, 130:6-9; *id.*, W. Benedict, 235:15-19; *id.*, T. Ryan, 284:19-285:4.

congratulate them on their efforts and thank them for their contributions to the continued professionalization of the corrections field.

We realize that all correctional agencies want to reduce institutional assaults. Unfortunately, the attention given to eliminating sexual abuse is not the same throughout the nation. We know that sexual assaults can be reduced by changing attitudes toward potentially vulnerable populations, including female, LGBTQ, and physically frail inmates; paying close attention to institutional design and surveillance; providing offender education and staff training; improving operational policies and post orders; and monitoring adherence to established policies. Moreover, a reliable inmate-classification system; improved efforts on the part of first responders, investigators, and prosecutors; and timely victim assistance and healthcare services will help an agency reduce, if not eliminate, inmate sexual victimization.

With the goal of ending sexual violence in prisons and jails, we will continue to gather information that we hope will be helpful to correctional policymakers, administrators, line staff, and allied professionals.[865] Our mission is nothing less than to assist correctional institutions to become safer and more humane.

[865] In 2013, the BJS anticipates issuing the next surveys of sexual victimization in prisons, jails, and juvenile facilities based on inmate interviews. The Panel will schedule hearings related to the surveys shortly after their publication.