



Report on Sexual Victimization in Prisons, Jails, and Juvenile Correctional Facilities

Review Panel on Prison Rape

April 2016

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Review Panel on Prison Rape
Report on Sexual Victimization in Prisons, Jails, and Juvenile Correctional Facilities

Executive Summary

This Report presents the findings of the Review Panel on Prison Rape (Panel), along with its recommendations, that are the result of its 2014 hearings in Washington, District of Columbia, based on two national surveys of correctional facilities by the Bureau of Justice Statistics (BJS): *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12* (May 2013) and *Sexual Victimization in Juvenile Facilities Reported by Youth, 2012* (June 2013).

Under the Prison Rape Elimination Act of 2003 (PREA), the Panel is to hold annual public hearings, based on the data that BJS has collected from correctional facilities in three broad categories: (1) federal and state prisons, (2) jails, and (3) juvenile correctional facilities. In each of these three categories, the Panel is to solicit testimony on the operations of two correctional institutions with a low incidence of sexual victimization and three correctional institutions with a high incidence of sexual victimization. The purpose of the hearings is to identify the common characteristics of (1) sexual predators, (2) victims, (3) correctional institutions and systems with a low incidence of sexual victimization, and (4) correctional institutions and systems with a high incidence of sexual victimization.

Facilities

The following fifteen correctional facilities appeared at the Panel's 2014 hearings:

Prisons

- (1) *Low Incidence*: Lawtey Correctional Institution, Florida Department of Corrections (FDOC), Lawtey, Florida.
- (2) *Low Incidence*: Jackie Brannon Correctional Center, Oklahoma Department of Corrections (ODOC), McAlester, Oklahoma.
- (3) *High Incidence*: Montana State Prison, Montana Department of Corrections, Deer Lodge, Montana.
- (4) *High Incidence*: Santa Rosa Correctional Institution, FDOC, Milton, Florida.
- (5) *High Incidence*: Mabel Bassett Correctional Center, ODOC, McLoud, Oklahoma.

Jails

- (1) *Low Incidence*: Jefferson County Jail, Jefferson County Sheriff's Office, Golden, Colorado.
- (2) *Low Incidence*: Cameron County Carrizales-Rucker Detention Center, Cameron County Sheriff's Office, Brownsville, Texas.
- (3) *High Incidence*: Philadelphia City Riverside Correctional Facility, Philadelphia Prison System, Philadelphia, Pennsylvania.

- (4) *High Incidence*: Harris County Jail—1200 Baker Street, Harris County Sheriff’s Office, Houston, Texas.
- (5) *High Incidence*: Baltimore City Detention Center, Maryland Department of Public Safety and Correctional Services, Baltimore, Maryland.

Juvenile Correctional Facilities

- (1) *Low Incidence*: Owensboro Treatment Center, Kentucky Department of Juvenile Justice, Owensboro, Kentucky.
- (2) *Low Incidence*: Grand Mesa Youth Services Center, Colorado Division of Youth Corrections, Grand Junction, Colorado.
- (3) *High Incidence*: Paulding Regional Youth Detention Center, Georgia Department of Juvenile Justice (GDJJ), Dallas, Georgia.
- (4) *High Incidence*: Eastman Youth Development Campus, GDJJ, Eastman, Georgia.
- (5) *High Incidence*: Circleville Juvenile Correctional Facility, Ohio Department of Youth Services, Circleville, Ohio.

Observations

Consistent with the Panel’s prior reports, the Panel identified institutional practices that either prevent the sexual victimization of inmates and juveniles or place them at risk. To assist the reader in quickly comparing the factors associated with high- and low-incidence prisons, jails, and juvenile correctional facilities, the Panel prepared three tables that summarize this information.¹

Recommendations

Although the Panel received testimony during its hearings that focused on the operations of prisons, jails, and juvenile correctional facilities, the Panel offers the following recommendations that apply to all correctional institutions, regardless of type:

- Collaborate with community-based organizations to provide services to offenders who experience sexual violence while in custody;
- Establish protocols, such as an objective risk classification system that includes factors common to victims or perpetrators of a sexual offense to protect adult and juvenile inmates who are most vulnerable to sexual predation, especially those with mental illness or developmental disabilities and those who identify as non-heterosexual;
- Work with local district attorneys’ offices to prosecute sex crimes that target both adult and juvenile offenders;
- Comply with PREA standards, even if the sanctions may not apply;

¹ See *infra* pp. viii-x.

- Adopt or construct, as practicable, correctional facilities with direct supervision designs to enhance visibility and access to correctional staff;
- Provide effective, mandatory PREA-compliant training for staff and offenders;
- Maintain a low staff-to-offender ratio;
- Install effective electronic monitoring systems;
- Adopt effective procedures for investigating sexual violence targeting offenders;
- Attract a competent, educated, direct-care workforce by improving compensation, working conditions, and benefits;
- Provide support systems for direct-care staff in managing professional boundaries and addressing the trauma associated with witnessing improper sexual behavior;
- Create and reinforce through organizational action a professional culture that encourages staff to report sexual victimization;
- Record, track, and hold accountable, which may include prosecution, employees who have a history of sexual misconduct while working in correctional facilities;
- Review cross-gender pat-down procedures; and
- Apply evidence-based policies and practices to reduce, as practicable, the size of the correctional facility.

Based on expert testimony, the Panel also has the following additional recommendations:

- BJS should review its data-collection instrument in surveying the sexual victimization of offenders in custody to ensure that it is capturing accurate information on transgender inmates.
- The U.S. Department of Justice, other governmental agencies, professional organizations serving members in law and corrections, research institutions, scholars, and advocacy groups should
 - develop programs and best practices to encourage full and consistent cooperation between corrections administrators and prosecutors' offices in pursuing criminal cases involving the sexual victimization of adults and youth in correctional facilities;
 - undertake additional research on the factors that lead female correctional staff to engage in sexual misconduct with males in custody, particularly in juvenile facilities; and
 - conduct research on male sexual victimization in correctional institutions, particularly juvenile facilities, and develop related training materials.

TABLE A PRISONS: REASONS FOR LOW AND HIGH INCIDENCE OF REPORTED SEXUAL VICTIMIZATION	
1. LOW-INCIDENCE FACILITIES	REASONS FOR LOW INCIDENCE
a. Lawtey Correctional Institution Florida Department of Corrections Lawtey, Florida	<ul style="list-style-type: none"> • Faith-and-character-based program • Voluntary nature of program • Internal PREA procedures • Training for staff and inmates • Electronic early reporting system • Procedures to respond to reported victimization • Procedures to respond to victim's needs • Independent Office of Inspector General investigations • Types of inmates (medium custody, few behavior problems, within ten years of release) • Extensive programming; large volunteer corps • Supervisory staff's creation of positive environment • Facility's ability to remove inmates who undermine the facility's culture
b. Jackie Brannon Correctional Center Oklahoma Department of Corrections McAlester, Oklahoma	<ul style="list-style-type: none"> • Types of inmates (less violent, more educated) • Effective inmate orientation and training on PREA • Housing based on inmates' mental health, vulnerability to sexual assault, propensity to sexual aggression • Inmate participation in programming • Supervisor's management style (i.e., "management by walking around") • Pre-service and annual in-service training on PREA for staff • System-wide PREA policy*
2. HIGH-INCIDENCE FACILITIES	REASONS FOR HIGH INCIDENCE
a. Montana State Prison Montana Department of Corrections Deer Lodge, Montana	<ul style="list-style-type: none"> • Age of the facility (lack of video cameras) • Staffing shortage • Insufficient funds (unable to expand Investigative Unit or provide more staff training on PREA) • Inmates' lack of familiarity with PREA policies and protocols • Contested survey findings, attributing inmate complaints to two correctional officers' pat-down searches, which MSP investigated and found no wrongdoing
b. Santa Rosa Correctional Institution Florida Department of Corrections Milton, Florida	<ul style="list-style-type: none"> • Types of inmates (difficult-to-manage, high security, mental health needs) • Discipline and management issues
c. Mabel Bassett Correctional Center Oklahoma Department of Corrections McCloud, Oklahoma (Female Facility)	<ul style="list-style-type: none"> • Victimization occurred most often in inmates' cells thirty days after being in residence and during the second shift (6:00 pm to midnight) when fewer staff members were working • Types of inmates (slightly less educated, non-heterosexual, violent and sexual offenders, sexual assault prior to arriving at facility, higher rates of serious mental illness) • Failure to separate sexual assault victims from perpetrators • Difficulty finding appropriate housing for offenders with mental health needs

*The same PREA Policy for the Oklahoma Department of Corrections applied to both a low-incident facility, Jackie Brannon Correctional Center, and a high-incident facility, Mabel Bassett Correctional Center.

TABLE B JAILS: REASONS FOR LOW AND HIGH INCIDENCE OF REPORTED SEXUAL VICTIMIZATION	
1. LOW-INCIDENCE FACILITIES	REASONS FOR LOW INCIDENCE
a. Jefferson County Jail Jefferson County Sheriff's Office Golden, Colorado	<ul style="list-style-type: none"> • Zero-tolerance policy toward inmate-on-inmate sexual victimization and staff sexual misconduct • Aggressive prosecution of sexual crimes • Effective procedures for reporting sexual assault • Mandatory in-service staff training on PREA
b. Cameron County Carrizales-Rucker Detention Center Cameron County Sheriff's Office Brownsville, Texas	<ul style="list-style-type: none"> • Collaborative relationship with District Attorney's Office • Assignment of criminal investigator to facility • Direct-supervision design • Housing assignments based on intake and classification process, assessing risk of victimization and predation • Leadership culture • Vigilant staff, reporting suspicious activities and monitoring changes in inmate behavior
2. HIGH-INCIDENCE FACILITIES	REASONS FOR HIGH INCIDENCE
a. Philadelphia City Riverside Correctional Facility Philadelphia Prison System Philadelphia, Pennsylvania (Female Facility)	<ul style="list-style-type: none"> • Types of inmates (female, in psychological distress, violent offenders) • Hiring staff with social or familial relationships with inmates
b. Harris County Jail—1200 Baker Street Harris County Sheriff's Office Houston, Texas	<ul style="list-style-type: none"> • Contesting reliability of anonymous inmate surveys • Types of inmates (female, in psychological distress, non-heterosexual)
c. Baltimore City Detention Center Maryland Department of Public Safety and Correctional Services Baltimore, Maryland	<ul style="list-style-type: none"> • Outdated facility design (no clear sightlines) • Multiple serious staffing problems (failing to control placement of inmates and to identify threats, hiring eighteen-year-old correctional officers, hiring unknowingly staff members who were members of a street gang and who knew the inmates they supervised) • Street gang's operation of a criminal organization in the facility • Street gang's recruitment of correctional officers through personal and sexual relationships

TABLE C JUVENILE CORRECTIONAL FACILITIES: REASONS FOR LOW AND HIGH INCIDENCE OF REPORTED SEXUAL VICTIMIZATION	
1. LOW-INCIDENCE FACILITIES	REASONS FOR LOW INCIDENCE
a. Owensboro Treatment Center Kentucky Department of Juvenile Justice Owensboro, Kentucky	<ul style="list-style-type: none"> • Research on sexual victimization in confinement • PREA training for youth and staff • Zero-tolerance policy on sexual victimization • The high caliber of the management staff • The quality and nature of staff interactions with youth • The low staff-to-youth ratio • Video monitoring system
b. Grand Mesa Youth Services Center Colorado Division of Youth Corrections Grand Junction, Colorado	<ul style="list-style-type: none"> • Self-assessment of compliance with PREA standards • Hiring PREA coordinator • Creation of culture with zero tolerance of sexual victimization of youth, developing procedures to prevent sexual victimization and report sexual misconduct • Policies tracking youth who are vulnerable to sexual victimization and youth who have a propensity to sexual aggression • Mandatory training programs for employees, contractors, volunteers, and service providers on recognizing and responding to sexual abuse • Annual training for staff on PREA standards and practices, including information on establishing professional boundaries • Shift assignments balancing male and female staffing to ensure appropriate coverage in co-ed units • Housing and program assignments for youth based on intake assessment and classification of risk levels • Ongoing assessment of procedures' effectiveness in addressing sexual victimization
2. HIGH-INCIDENCE FACILITIES	REASONS FOR HIGH INCIDENCE
a. Paulding Regional Youth Detention Center Georgia Department of Juvenile Justice Dallas, Georgia	<ul style="list-style-type: none"> • Facility closed before independent assessment of the causes of the problem • The facility's large size • 60% female staff • Significant number of older males for lengthy periods of time • Inadequate staff screening, hiring, and training practices
b. Eastman Youth Development Campus Georgia Department of Juvenile Justice Eastman, Georgia	<ul style="list-style-type: none"> • Large facility • Insufficient staffing • Inadequate PREA-specific curriculum for youth • Limited ways to report sexual misconduct
c. Circleville Juvenile Correctional Facility Ohio Department of Youth Services Circleville, Ohio	<ul style="list-style-type: none"> • Unmonitored areas within the facility, including restrooms, showers, and staff offices • An indifferent staff lacking a sense of cohesion and a sense of purpose • Culture that discouraged addressing sexual misconduct

Review Panel on Prison Rape

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This Report presents the findings of the Review Panel on Prison Rape (Panel) based on its January and August 2014 hearings in Washington, District of Columbia. Relying on two surveys of correctional institutions from the Bureau of Justice Statistics (BJS), *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12*² and *Sexual Victimization in Juvenile Facilities Reported by Youth, 2012*,³ the Panel gathered information on the practices of selected correctional institutions that had either a low or a high prevalence of inmate sexual victimization. The Panel hopes this Report will assist correctional practitioners, as well as others in the field of corrections and allied professions, by identifying common themes and making recommendations that will eliminate sexual victimization in prisons, jails, and juvenile correctional facilities.

I. Overview

A. Background

The Prison Rape Elimination Act (PREA) of 2003⁴ created the Panel and directed it to assist BJS by conducting public hearings based on data that BJS collected on the incidence of sexual victimization in correctional facilities in the United States.⁵ Under PREA, BJS must survey sexual victimization in three categories of correctional facilities.⁶ One category must be federal and state prisons.⁷ The Attorney General has the authority to select the other two categories.⁸ Through BJS, the Attorney General identified jails and juvenile facilities as the two categories of correctional facilities that warranted national surveys under PREA. For each of these categories of correctional institutions, PREA directs the Panel to obtain testimony from two facilities that have a low incidence of sexual victimization and from three facilities with a high incidence of sexual victimization.⁹ The purpose of the hearings is to identify the common characteristics of (1) sexual predators, (2) victims, (3) correctional institutions and systems with a low incidence of sexual victimization, and (4) correctional institutions and systems with a high incidence of sexual victimization.¹⁰

In accordance with PREA, the Panel requested the attendance of fifteen correctional facilities at its 2014 hearings: five institutions (i.e., two facilities with low rates of sexual victimization and three with high rates) from each of three categories of correctional facilities (i.e., prisons, jails,

² Allen J. Beck et al., *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12*, BJS (May 2013), <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf> [hereinafter *BJS Prisons and Jails Report*].

³ Allen J. Beck et al., *Sexual Victimization in Juvenile Facilities Reported by Youth, 2012*, BJS (June 2013), <http://www.bjs.gov/content/pub/pdf/svjfry12.pdf> [hereinafter *BJS Juvenile Report*].

⁴ Prison Rape Elimination Act of 2003, 42 U.S.C. §§ 15601-15609 (2012).

⁵ *Id.* § 15603(b).

⁶ *Id.* § 15603(c)(4).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* § 15603(b)(3)(A).

¹⁰ *Id.*

and juvenile correctional facilities).¹¹ The Panel held two rounds of hearings in Washington, District of Columbia. The first hearings, which occurred on January 8-9, 2014, included participants from three prisons, four jails, and five juvenile correctional facilities. The second round of hearings, which occurred on August 28, 2014, supplemented the record of the January hearings, accommodating the schedules of two selected prisons and one selected jail that could not appear at the earlier hearings.

B. BJS Prisons and Jails Report

Between February 2011 and May 2012, through RTI International, an independent nonprofit research institute, BJS administered the third National Inmate Survey (NIS-3) in 233 federal and state prisons and 358 local jails.¹² The survey was part of BJS' National Prison Rape Statistics Program, which collects data on sexual victimization from surveys of inmates in prisons and jails, surveys of youth held in juvenile correctional facilities, and administrative records.¹³ The NIS-3 gathered data from 92,449 inmates age eighteen and older; included in this number are 38,251 inmates in state and federal prisons and 52,926 inmates in jails.¹⁴

The NIS-3 is a sample survey, which applies weights to selected facilities and the inmates within the selected facilities to produce national-level and facility-level estimates of sexual victimization.¹⁵ Of the 91,177 adult prison and jail inmates who participated in the survey, 3381 reported experiencing one or more incidents of sexual victimization in the past twelve months or since admission to the facility, if they had been in the facility for less than twelve months.¹⁶ Based on the NIS-3, BJS estimated 80,600 inmates throughout the country (4.0% of prison inmates and 3.2% of jail inmates) experienced sexual victimization.¹⁷

Among state and federal prison inmates, 2.0% reported an incident of sexual victimization involving another inmate; 2.4% reported an incident involving facility staff; and 0.4% reported sexual victimization by both another inmate and staff.¹⁸

Among jail inmates, 1.6% reported an incident of sexual victimization involving another inmate; 1.8% reported an incident involving facility staff; and 0.2% reported sexual victimization by both another inmate and staff.¹⁹

¹¹ *Id.*

¹² *BJS Prisons and Jails Report*, *supra* note 2, at 8. RTI International also administered the survey in fifteen special confinement facilities operated by Immigration and Customs Enforcement, the U.S. Military, and correctional authorities in Indian Country. *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 8, 9 tbl.1.

¹⁸ *Id.* at 8, 9 tbl.1.

¹⁹ *Id.* at 8, 9 tbl.1.

The NIS-3 also measured the rates of sexual victimization among various groups of prison and jail inmates. The rate of inmate-on-inmate sexual victimization among prison inmates was higher for females (6.9%) than for males (1.7%), higher for whites (2.9%) or inmates of two or more races (4.0%) than for blacks (1.3%), higher for inmates with a college degree (2.7%) than for inmates who did not complete high school (1.9%), and higher for inmates who never married (2.1%) than for currently married inmates (1.4%).²⁰

Jail inmates reported similar patterns of inmate-on-inmate sexual victimization. Female jail inmates (3.6%), white inmates (2.0%), and inmates with a college degree (3.0%) reported higher rates of sexual victimization than male inmates (1.4%), black inmates (1.1%), and inmates who did not complete high school (1.4%).²¹

Staff sexual misconduct against inmates also differed by the inmates' sex and race. Black inmates experienced a higher victimization rate in prisons (2.6%) and jails (2.1%) than white inmates in prisons (1.6%) and jails (1.4%); male inmates experienced a higher victimization rate in prisons (2.4%) and jails (1.9%) than female inmates in prisons (2.3%) and jails (1.4%).²²

According to the *BJS Prisons and Jails Report*, prison and jail inmates were especially susceptible to sexual victimization in confinement based on their (1) sexual orientation, (2) history of sexual victimization before coming to the facility, and (3) mental health status.²³

Inmates who identified as gay, lesbian, bisexual, or "other" reported higher rates of inmate-on-inmate sexual victimization and staff sexual misconduct than heterosexual inmates.²⁴ In state and federal prisons, 1.2% of heterosexual inmates reported inmate-on-inmate sexual victimization, and 2.1% of heterosexual inmates reported being victimized by staff.²⁵ Among non-heterosexual prison inmates, 12.2% reported inmate-on-inmate sexual victimization, and 5.4% reported staff sexual misconduct.²⁶ In jails, heterosexual inmates also reported lower rates of inmate-on-inmate sexual victimization (1.2%) and staff sexual misconduct (1.7%), while non-heterosexual inmates reported higher rates of inmate-on-inmate sexual victimization (8.5%) and staff sexual misconduct (4.3%).²⁷

Inmates who experienced sexual victimization before coming to a facility were especially likely to report high rates of sexual victimization involving other inmates and staff.²⁸ Among these inmates, 12.0% of prisoners and 8.3% of jail inmates reported inmate-on-inmate sexual

²⁰ *Id.* at 17 & tbl.7.

²¹ *Id.* at 17 tbl.7, 18.

²² *Id.* at 17 tbl.7, 18.

²³ *Id.* at 18, 19, 25.

²⁴ *Id.* at 18 & tbl.8, 19.

²⁵ *Id.* at 18 & tbl.8.

²⁶ *Id.*

²⁷ *Id.* at 18 tbl.8, 19.

²⁸ *Id.* at 18 tbl.8, 19.

victimization,²⁹ and 6.7% of prisoners and 5.1% of jail inmates reported staff sexual misconduct.³⁰

Inmates with a history of mental health problems were more likely than other inmates to report being sexually victimized while in prison or jail.³¹ An estimated 36.6% of prison inmates and 43.7% of jail inmates reported receiving information from a healthcare professional that they had a mental health disorder in accordance with the *Diagnostic and Statistical Manual of Mental Disorders*.³² Among inmates with mental health disorders, 3.8% of prison inmates and 2.9% of jail inmates reported inmate-on-inmate sexual victimization, and 3.4% of prison inmates and 2.5% of jail inmates reported staff sexual misconduct.³³ Among inmates with no mental health disorders, 0.8% of prison inmates and 0.6% of jail inmates reported inmate-on-inmate sexual victimization, and 1.3% of prison inmates and 1.2% of jail inmates reported staff sexual misconduct.³⁴

Sexual victimization was higher among inmates who had stayed overnight in a hospital or other treatment facility because of a mental health problem than among inmates who had no prior hospital admission for a mental health problem.³⁵ Of those inmates who had stayed overnight in a hospital for a mental health problem, 5.7% of prison inmates and 4.4% of jail inmates were victimized by another inmate, and 4.9% of prison inmates and 3.4% of jail inmates were victimized by facility staff.³⁶ Among inmates who had not been admitted to a hospital for a mental health problem, 1.5% of prison inmates and 1.2% of jail inmates reported inmate-on-inmate sexual victimization, and 1.8% of prison inmates and 1.5% of jail inmates reported staff sexual misconduct.³⁷

C. BJS Juvenile Report

Between February and September 2012, BJS, through Westat, a statistical survey research corporation, administered the second National Survey of Youth in Custody (NSYC-2) in 273 state-owned or -operated juvenile facilities and fifty-three local or private facilities holding adjudicated youth under state contract.³⁸ The NSYC-2 gathered data from 8707 youth, including youth from at least one facility in every state and the District of Columbia.³⁹

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 25.

³² *Id.* at 24 tbl.14.

³³ *Id.* at 24 tbl.14, 25.

³⁴ *Id.* at 24 tbl.14.

³⁵ *Id.* at 25.

³⁶ *Id.* at 24 tbl.14, 25.

³⁷ *Id.* at 24 tbl.14.

³⁸ *BJS Juvenile Report*, *supra* note 3, at 6.

³⁹ *Id.*

Like the NIS-3, the NSYC-2 is a sample survey that applies weights to selected facilities to produce national-level and facility-level estimates of sexual victimization.⁴⁰ Among the youth participating in the survey, 833 reported experiencing one or more incidents of sexual victimization.⁴¹ Based on the survey response, BJS estimated that 1720 youth throughout the country (i.e., 9.5% of an estimated 18,138 adjudicated youth in the United States) experienced sexual violence.⁴²

Among adjudicated youth, 2.5% reported an incident of sexual victimization involving another youth, and 7.7% reported an incident involving facility staff.⁴³ Some youth (0.7%) reported sexual victimization by both another youth and facility staff.⁴⁴

The survey data identified a correlation between rates of sexual victimization and certain characteristics of juvenile correctional facilities.⁴⁵ There were significant differences in sexual victimization rates based on the type of entity that owned and operated the facility, whether the facility housed only males or females, and the size of the facility. Adjudicated youth held in state-owned or -operated facilities reported a higher rate of staff sexual misconduct (8.2%) than youth held in locally or privately operated facilities (4.5%).⁴⁶ Female-only facilities had a higher rate of youth-on-youth sexual victimization (5.7%), compared to male-only facilities, which had a rate of 2.0%; however, male-only facilities had a higher rate of staff sexual misconduct (8.2%), compared to female-only facilities, which had a staff sexual misconduct rate of 2.2%.⁴⁷ Small facilities (i.e., facilities with twenty-five or fewer adjudicated youth) had relatively low rates of staff sexual misconduct: 1.3% among facilities with one to nine youth and 2.9% among facilities with ten to twenty-five youth.⁴⁸ Larger facilities had higher rates of staff sexual misconduct: 5.4% for facilities with twenty-six to fifty youth, 6.7% for facilities with fifty-one to 100 youth, and 10.2% for facilities with more than 100 youth.⁴⁹

Rates of sexual victimization varied among youth based on their sex, age, race, sexual orientation, and prior history of victimization. Males in juvenile correctional facilities reported experiencing one or more incidents of sexual activity with staff at a higher rate (8.2%) than females in juvenile correctional facilities (2.8%).⁵⁰ Females (5.4%) reported experiencing forced sexual activity with another youth at the facility where they resided more often than males (2.2%).⁵¹ Staff sexual misconduct occurred more frequently with youth age seventeen (8.0%)

⁴⁰ *Id.* at 9.

⁴¹ *Id.*

⁴² *Id.* at 9 & tbl.1.

⁴³ *Id.*

⁴⁴ *Id.* at 9.

⁴⁵ *Id.* at 17.

⁴⁶ *Id.* at 17 & tbl.9.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 20 & tbl.11.

⁵¹ *Id.*

and eighteen or older (8.7%) than with youth age fifteen or younger (5.8%).⁵² White youth (4.0%) reported sexual victimization by another youth more frequently than either black (1.4%) or Hispanic (2.1%) youth.⁵³ Black youth, however, reported higher rates of sexual victimization by facility staff (9.6%) than white (6.4%) and Hispanic (6.4%) youth.⁵⁴ Youth who identified as non-heterosexual reported a significantly higher rate of youth-on-youth victimization (10.3%) than heterosexual youth (1.5%).⁵⁵ Youth who experienced a sexual assault before entering a facility were more than twice as likely to report experiencing one or more sexual assaults in the facility where they resided (17.4%) than youth who had no history of sexual assault (8.2%).⁵⁶

The *BJS Juvenile Report* concluded that “[m]ost perpetrators of staff sexual misconduct were female.”⁵⁷ An estimated 92.4% of all youth who reported staff sexual misconduct said that female facility staff victimized them.⁵⁸ Among the estimated 1390 adjudicated youth who reported being victims of staff sexual misconduct, 89.1% were males reporting sexual activity exclusively with female staff; 3.0% were males reporting sexual activity with both female and male staff; 5.2% were males reporting sexual activity exclusively with male staff; 0.2% were females reporting sexual activity exclusively with female staff; 0.1% were females reporting sexual activity with both female and male staff; and 2.4% were females reporting sexual activity exclusively with male staff.⁵⁹

D. Selection of Facilities for Public Hearings

Based on the *BJS Prisons and Jails Report* and the *BJS Juvenile Report*, the Panel selected fifteen correctional institutions to appear at public hearings in Washington, District of Columbia, in 2014.

One of the factors that the Panel considered in selecting prisons and juvenile correctional facilities was whether other facilities in the same state system had similar or contrasting records. Similar records might suggest that systemic practices contributed to the high or low rate of sexual victimization at a particular facility. Contrasting records might suggest that facility-specific practices might be responsible for either the high or low rate of sexual victimization. The Panel was particularly interested in exploring why two facilities in the same correctional system could have such different results, even though they shared the same senior management, a similar pool of prospective employees, and the same system-wide policies on preventing and responding to inmate sexual victimization.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 20 tbl.11, 21.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 23.

⁵⁸ *Id.*

⁵⁹ *Id.* at 23 & tbl.14. About 91% of all adjudicated youth in the sampled facilities were male, whereas about 44% of all staff and 34% of frontline staff in the participating facilities were female. *Id.* at 23 n.7.

1. Prisons

Relying on the *BJS Prisons and Jails Report*, the Panel selected the following two prisons with low rates of sexual victimization: (1) the Lawtey Correctional Institution (LCI), Florida Department of Corrections (FDOC), in Lawtey, Florida, and (2) the Jackie Brannon Correctional Center (JBCC), Oklahoma Department of Corrections (ODOC), in McAlester, Oklahoma. The Panel selected the following three prisons with high rates of sexual victimization: (1) the Montana State Prison (MSP), Montana Department of Corrections, in Deer Lodge, Montana; (2) the Santa Rosa Correctional Institution (SRCI), FDOC, in Milton, Florida; and (3) the Mabel Bassett Correctional Center (MBCC), ODOC, in McLoud, Oklahoma.⁶⁰

The Panel selected LCI because it had one of the lowest rates of sexual victimization (0.0%),⁶¹ while it was in a state prison system with other facilities with especially high rates of sexual victimization.⁶² The Panel selected JBCC because it had one of the lowest rates of sexual victimization (0.5%),⁶³ while it was in a state prison system that also had a facility with an especially high rate of sexual victimization (i.e., MBCC).⁶⁴

The Panel chose MSP because it had one of the highest rates of inmate-on-inmate sexual victimization (9.0%)⁶⁵ and staff sexual misconduct (9.9%).⁶⁶

The Panel selected MBCC because it had one of the highest rates of inmate-on-inmate sexual victimization (15.3%),⁶⁷ housed only female inmates,⁶⁸ and was in a prison system that had a facility with one of the lowest rates of sexual victimization (i.e., JBCC).⁶⁹ MBCC also had

⁶⁰ The Panel notes with disappointment that the *BJS Prisons and Jails Report* identified two prisons in the Texas Department of Criminal Justice, the Clements Unit in Amarillo, Texas, and the Coffield Unit in Tennessee Colony, Texas, as having high rates of sexual victimization (*Id.* at 12 tbl.3, 13 tbl.4) despite their appearance as high-incidence facilities at the Panel's hearing in Houston, Texas, in 2008. Transcript of Record: Panel Hearing on Rape and Staff Sexual Misconduct in U.S. Prisons (Mar. 28, 2008), http://ojp.gov/reviewpanel/pdfs_mar08/080328_prea_hearing.txt.

⁶¹ *BJS Prisons and Jails Report*, *supra* note 2, at 15 tbl.5.

⁶² In addition to SRCI, which the Panel selected to appear at the hearing, the *BJS Prisons and Jails Report* included four other entries for FDOC prisons with high rates of sexual victimization. The Northwest Florida Reception Center in Chipley, Florida, has a high rate of inmate-on-inmate sexual victimization. *Id.* at 12 tbl.3. The Broward Correctional Institution, a female facility in Pembroke Pines, Florida, has a high rate of staff sexual misconduct. *Id.* at 13 tbl.4. Reported as one entry in the *BJS Prisons and Jails Report*, the Apalachee Correctional Institution East and the Apalachee Correctional Institution West, both in Snead, Florida, and the River Junction Work Camp in Chattahoochee, Florida, have high rates of both inmate-on-inmate sexual victimization and staff sexual misconduct. *Id.* at 12 tbl.3, 13 tbl.4.

⁶³ *Id.* at 15 tbl.5.

⁶⁴ *See id.* at 12 tbl.3.

⁶⁵ *Id.*

⁶⁶ *Id.* at 13 tbl.4.

⁶⁷ *Id.* at 12 & tbl.3.

⁶⁸ *Id.* The Panel values the appearance of female institutions at its hearings, as the dynamics of sexual victimization are significantly different in female and male correctional facilities. *See Review Panel on Prison Rape, Sexual Victimization in Prisons and Jails* 22-25 (Apr. 2012), http://ojp.gov/reviewpanel/pdfs/prea_finalreport_2012.pdf.

⁶⁹ *BJS Prisons and Jails Report*, *supra* note 2, at 15 tbl.5.

significantly high rates of inmate-on-inmate sexual victimization involving physical force and pressure,⁷⁰ nonconsensual sexual acts,⁷¹ and abusive sexual contacts.⁷²

The Panel selected SRCI because it had one of the highest rates of staff-on-inmate sexual victimization (10.1%),⁷³ was in a prison system with other facilities that had especially high rates of sexual victimization,⁷⁴ and was in a state prison system that also had a facility with one of the lowest rates of sexual victimization (i.e., LCI).⁷⁵

2. Jails

Based on the *BJS Prisons and Jails Report*, the Panel selected the following two jails with low rates of sexual victimization: (1) the Jefferson County Jail (JCJ), Jefferson County Sheriff's Office, in Golden, Colorado, and (2) the Cameron County Carrizales-Rucker Detention Center (CRDC), Cameron County Sheriff's Office, in Brownsville, Texas. The Panel selected the following three jail facilities with high rates of sexual victimization: (1) the Philadelphia City Riverside Correctional Facility (PRCF), Philadelphia Prison System, in Philadelphia, Pennsylvania; (2) the Harris County Jail—1200 Baker Street (HCJ), Harris County Sheriff's Office, in Houston, Texas; and (3) the Baltimore City Detention Center (BCDC), Maryland Department of Public Safety and Correctional Services, in Baltimore, Maryland.

The Panel selected JCJ and CRDC because they had some of the lowest rates of sexual victimization (0.0% and 0.3%, respectively).⁷⁶

The Panel selected PRCF because it had one of the highest rates of inmate-on-inmate sexual victimization (6.7%),⁷⁷ housed only female inmates,⁷⁸ and was in a jail system that had another facility with an especially high rate of staff sexual misconduct.⁷⁹ The Panel chose HCJ because it had one of the highest rates of inmate-on-inmate sexual victimization (6.3%).⁸⁰ The Panel selected BCDC because it had one of the highest rates of staff sexual misconduct (6.7%).⁸¹

⁷⁰ *Id.* at 58 app. tbl.3.

⁷¹ *Id.* at 64 app. tbl.4.

⁷² *Id.*

⁷³ *Id.* at 13 & tbl.4.

⁷⁴ *See supra* note 62.

⁷⁵ *BJS Prisons and Jails Report*, *supra* note 2, at 15 tbl.5.

⁷⁶ *BJS Prisons and Jails Report*, *supra* note 2, at 15 tbl.5.

⁷⁷ *Id.* at 12 tbl.3, 13.

⁷⁸ *Id.* at 12 tbl.3, 13; *see supra* note 68.

⁷⁹ *BJS Prisons and Jails Report*, at 13 tbl.4 (Philadelphia City Industrial Correctional Center, Philadelphia, Pennsylvania).

⁸⁰ *Id.* at 12 tbl.3, 13.

⁸¹ *Id.* at 13 tbl.4.

3. Juvenile Correctional Facilities

Consulting the *BJS Juvenile Report*, the Panel identified the following two juvenile correctional facilities with low rates of sexual victimization: (1) the Owensboro Treatment Center (OTC), Kentucky Department of Juvenile Justice, in Owensboro, Kentucky, and (2) the Grand Mesa Youth Services Center (GMYSC), Colorado Division of Youth Corrections (CDYC), in Grand Junction, Colorado.⁸² The Panel identified the following three juvenile correctional facilities with high rates of sexual victimization: (1) the Paulding Regional Youth Detention Center (PRYDC), Georgia Department of Juvenile Justice (GDJJ), in Dallas, Georgia; (2) the Eastman Youth Development Campus (EYDC), GDJJ, in Eastman, Georgia; and (3) the Circleville Juvenile Correctional Facility (CJCF), Ohio Department of Youth Services, in Circleville, Ohio.

The Panel selected OTC because it had one of the lowest rates of sexual victimization (0.0%),⁸³ nonconsensual sexual acts (0.0%),⁸⁴ and staff sexual misconduct (0.0%).⁸⁵ This facility was also in a state system that had two other facilities with especially low rates of sexual victimization.⁸⁶ The Panel selected GMYSC because it had especially low rates of sexual victimization (0.0%),⁸⁷ nonconsensual sexual acts (0.0%),⁸⁸ and staff sexual misconduct (0.0%).⁸⁹ GMYSC was also in a state system that had another facility with an especially low rate of sexual victimization.⁹⁰

The Panel selected PRYDC and EYDC because they had two of the highest rates of sexual victimization (32.1% and 24.4%, respectively),⁹¹ nonconsensual sexual acts (25.9% and 21.3%, respectively),⁹² and staff sexual misconduct (31.0% and 23.5%, respectively),⁹³ and they were in a state system that had two other facilities with high rates of sexual victimization.⁹⁴ The Panel selected CJCF because it had one of the highest rates of sexual victimization (30.3%),⁹⁵

⁸² Although the *BJS Juvenile Report* identified the Ft. Bellefontaine Campus, Missouri Department of Social Services, Division of Youth Services, as one of the juvenile correctional facilities in the United States with one of the lowest incidence of youth sexual victimization (*see BJS Juvenile Report*, at 14 & tbl.5), the Panel did not invite the Ft. Bellefontaine Campus to the 2014 hearings, as the facility previously appeared at a Panel hearing in 2010. *See Review Panel on Prison Rape, Report on Sexual Victimization in Juvenile Correctional Facilities* 6-12 (Oct. 2010), http://ojp.gov/reviewpanel/pdfs/panel_report_101014.pdf.

⁸³ *BJS Juvenile Report*, at 14 & tbl.5, 45 app. tbl.2.

⁸⁴ *Id.* at 49 app. tbl.3.

⁸⁵ *Id.* at 54 app. tbl.4.

⁸⁶ *Id.* at 14 tbl.5 (Cadet Leadership and Education Center, Jackson, Kentucky, and Green River Youth Development Center, Cromwell, Kentucky).

⁸⁷ *Id.* at 14 & tbl.5, 44 app. tbl.2.

⁸⁸ *Id.* at 48 app. tbl.3.

⁸⁹ *Id.* at 53 app. tbl.4.

⁹⁰ *Id.* at 14 tbl.5 (Mount View Youth Services Center, Denver, Colorado).

⁹¹ *Id.* at 12 tbl.4.

⁹² *Id.* at 15 tbl.6.

⁹³ *Id.* at 16 tbl.7.

⁹⁴ *Id.* at 15 tbl.6 (Sumter Youth Development Campus, Americus, Georgia, and Augusta Youth Development Campus, Augusta, Georgia).

⁹⁵ *Id.* at 12 tbl.4, 13.

nonconsensual sexual acts (28.8%),⁹⁶ and staff sexual misconduct (28.8%),⁹⁷ and it was in a state system that had two other facilities with high rates of sexual victimization.⁹⁸

⁹⁶ *Id.* at 15 & tbl.6.

⁹⁷ *Id.* at 16 tbl.7.

⁹⁸ *Id.* at 15 tbl.6 (Cuyahoga Hills Juvenile Correctional Facility, Highland Hills, Ohio, and Scioto Juvenile Correctional Facility, Delaware, Ohio (closed)).

II. Review of Facilities

This Report relies on the testimony and other evidence that the Panel collected during its 2014 hearings. The review of facilities has three parts. The first part addresses prisons; the second part addresses jails; and the third part addresses juvenile correctional facilities.⁹⁹ Each part first discusses the low-incidence facilities and then the high-incidence facilities. At the end of each part, the Panel offers observations and recommendations.

A. Prisons

1. Low-Incidence Prisons

a. Lawtey Correctional Institution

i. Facility Description

Since 2004, Lawtey Correctional Institution (LCI) has administered a faith-and-character-based residential program, which seeks to reduce recidivism and disciplinary infractions among its inmates.¹⁰⁰ LCI has 800 medium- and minimum-custody inmates, housed in eight barracks-style, open-bay dormitories and in one housing unit consisting of double-occupancy rooms with a capacity for about 200 inmates.¹⁰¹ LCI houses neither inmates requiring inpatient mental health services nor inmates in close custody.¹⁰²

Between December 2009 and June 2011, the Florida Department of Corrections (FDOC) received no reports from inmates at LCI about inmate-on-inmate or staff-on-inmate sexual harassment or assault.¹⁰³

ii. Explanation for Reported Low Incidence of Sexual Victimization

FDOC attributes its success at addressing staff sexual misconduct and inmate-on-inmate sexual victimization to its multi-faceted, zero-tolerance approach.¹⁰⁴ According to Mr. Michael D. Crews, who was FDOC's secretary at the time of the Panel's hearings, FDOC has an internal PREA procedure, PREA training for staff and inmates, an electronic early reporting system (the Management Information Notification System (MINS)), and protocols to respond to and

⁹⁹ Within each part, the Panel's review of the facilities follows the order in which the Panel selected them to appear.

¹⁰⁰ Transcript of Record: Panel Hearings on Sexual Victimization in U.S. Prisons, Jails, and Juvenile Correctional Facilities, B. Reddish, 164:1-2 (Jan. 8-9, 2014), http://ojp.gov/reviewpanel/pdfs/transcript_01_08_2014.pdf [hereinafter Jan. 2014 Tr.]; see also FDOC, Faith and Character Based Residential Programs (last visited Mar. 1, 2016), <http://www.dc.state.fl.us/oth/faith/index.html>. FDOC describes the program, which is mandatory for all inmates, as an innovative effort to reduce recidivism by offering inmates numerous activities and classes (both religious and secular) focused on personal growth and character development.

¹⁰¹ Jan. 2014 Tr., B. Reddish, 164:6-9, 166:8.

¹⁰² *Id.* at 166:6-7.

¹⁰³ Crews Test. at 5 (Jan. 8, 2014), <http://ojp.gov/reviewpanel/pdfs/SubmissionofMichaelCrews.pdf>.

¹⁰⁴ *Id.* at 1. Secretary Crews announced his resignation on November 24, 2014. Dara Kam, *Florida Corrections Chief Stepping Down*, SUN SENTINEL, Nov. 24, 2014, <http://www.sun-sentinel.com/news/florida/fl-nsf-prisons-chief-resigns-20141124-story.html>.

investigate alleged sexual victimization.¹⁰⁵ The MINS reporting process allows FDOC to document investigations, follow up on them, and make appropriate management changes.¹⁰⁶ In addition, FDOC relies on the Office of the Inspector General, which is the independent investigative arm of FDOC, to investigate reports of inmate sexual victimization.¹⁰⁷

Another factor that FDOC cites for LCI's low incidence of sexual victimization is the type of inmates at the facility. LCI Warden Barry Reddish testified that inmates at LCI have security classifications that are no higher than medium custody, have few behavioral problems, and are within ten years of completing their sentences.¹⁰⁸ There are also no inmates who have a current or prior sex offense.¹⁰⁹

Inmates voluntarily choose to reside at LCI; however, they must participate in mandatory programming.¹¹⁰ Because admission is voluntary, inmates may also voluntarily request removal.¹¹¹ Consequently, as Warden Reddish testified, "typical inmate-manipulation behavior to secure transfers [is] virtually nonexistent."¹¹² Under these circumstances, inmates are less inclined to report false allegations of inappropriate sexual misconduct by staff, even when given the opportunity to do so anonymously.¹¹³ If an inmate no longer wants to participate in LCI's programming, he can ask FDOC to transfer him to another facility.¹¹⁴

Inmates at LCI must attend approximately 3200 hours of programming.¹¹⁵ The facility divides its programs into learning domains that include curricula on inmate attitudes, healthy choices, mentoring, re-entry, faith, and community functioning.¹¹⁶ In each domain, inmates can attend many different activities.¹¹⁷ LCI has over 400 civilian volunteers—one for every two inmates, who provide approximately 10,000 hours of programming annually.¹¹⁸ Warden Reddish stated that the corps of volunteers is the "backbone of our facility," enabling LCI to offer programming that it would not otherwise be able to offer.¹¹⁹

¹⁰⁵ Crews Test. at 1.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Jan. 2014 Tr., B. Reddish, 166:11-16.

¹⁰⁹ *Id.* at 166:16-17.

¹¹⁰ *Id.* at 166:18-20.

¹¹¹ *Id.* at 167:9-13.

¹¹² *Id.* at 167:12-13.

¹¹³ *Id.* at 168:2-5.

¹¹⁴ Crews Test. at 4.

¹¹⁵ Jan. 2014 Tr., B. Reddish, 178:21-179:1.

¹¹⁶ *Id.* at 179:2-8.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 167:2-3.

¹¹⁹ *Id.* at 181:8-12.

To remain at FCI, inmates must satisfy its behavioral requirements.¹²⁰ Facility administrators continually evaluate inmates at FCI, and they remove those who undermine the facility's culture.¹²¹

Warden Reddish said that the low incidence of sexual victimization at LCI may also be attributable to an approachable management style. "I think communication is a critical thing. Being visible among your staff and your inmate population will pay dividends, no doubt, no[t] only in the PREA area but other areas that are challenging your facility as well."¹²²

b. Jackie Brannon Correctional Center
i. Facility Description

The Jackie Brannon Correctional Center (JBCC) is a male, minimum-security prison that houses 737 offenders.¹²³ The average daily population is 702 offenders, and an inmate's average length of stay is two years.¹²⁴ The offenders' ages range from nineteen to seventy-eight; their average age is thirty-seven.¹²⁵ JBCC has three general population housing units. The first housing unit, A-unit, is a single-level, open-dormitory building with bed space for 149 offenders.¹²⁶ Most of the offenders living in A-unit work in the maintenance shop.¹²⁷ The second housing unit, B-unit, has the capacity for 304 offenders and is an open-bay design, which provides correctional staff a 360-degree view of the building's interior.¹²⁸ B-unit offenders participate in the facility's "agri-services" program, meat-cutting apprenticeship program, full-time education program, and food services program.¹²⁹ The third housing unit, C-unit, houses 284 offenders, who participate in the facility's Prisoner Public Works Program, substance-abuse treatment program, and Victory Bible College programs.¹³⁰ When RTI International administered the survey at JBCC, it received one report of sexual victimization: an abusive sexual contact.¹³¹

¹²⁰ *Id.* at 166:8-13.

¹²¹ *Id.* at 185:16-186:3.

¹²² *Id.* at 187:18-22.

¹²³ Transcript of Record: Supplemental Panel Hearings on Sexual Victimization in U.S. Prisons, Jails, and Juvenile Correctional Facilities, R. Patton, 13:10-11, 15 (Aug. 28, 2014), http://ojp.gov/reviewpanel/pdfs/transcript_08_28_2014.pdf [hereinafter Aug. 2014 Tr.].

¹²⁴ *Id.*, E. Watts, 69:7-9.

¹²⁵ *Id.* at 69:10-12.

¹²⁶ *Id.* at 69:14-19.

¹²⁷ *Id.* at 69:14-21.

¹²⁸ *Id.* at 70:2-6.

¹²⁹ *Id.* at 70:15-19.

¹³⁰ *Id.* at 71:2-8. Victory Bible College, Tulsa, Oklahoma, is an independent, Christian, interdenominational, three-year Bible school.

¹³¹ Jan. 2014 Tr., A. Beck, 170:1-4.

ii. Explanation for Reported Low Incidence of Sexual Victimization

Dr. Allen Beck, senior statistical advisor at BJS, testified about the NIS-3 findings related to JBCC.¹³² In considering JBCC's low incidence of sexual victimization, Dr. Beck compared the characteristics of the facility's inmates to male inmates at other prisons.¹³³

According to Dr. Beck, on some measures, JBCC's inmates are different than those at other prisons. The facility's inmates are less violent than those at the average prison.¹³⁴ Thirty-nine percent of inmates at JBCC received sentences for violent offenses, compared to 49% at other facilities.¹³⁵ JBCC's inmates are also somewhat more educated than inmates at other facilities.¹³⁶ A third of the facility's inmates have more than a high school education, some college, or a college degree, compared to 20% of male inmates with similar educational backgrounds at other facilities.¹³⁷

On mental health measures, however, Dr. Beck testified that there is no difference between JBCC's inmates and those at other prisons. In discussing inmates' mental health status, Dr. Beck noted that inmates at JBCC display the same distribution and levels of serious mental illness and serious psychological distress as males in other facilities.¹³⁸ There was also no difference between the inmate population at JBCC and other prisons as to the rates of inmates who received a diagnosis from a medical professional of a mental health disorder or who were held overnight at a hospital for a mental health or emotional problem before being incarcerated.¹³⁹

On balance, Dr. Beck testified that JBCC's profile is similar to that of other male prisons.¹⁴⁰ To understand why JBCC is a low-incidence facility, he encouraged the Panel to consider JBCC's management structure and institutional climate.¹⁴¹

According to then-Director Robert Patton of the Oklahoma Department of Corrections (ODOC), JBCC has been successful in reducing inmate sexual victimization because it implemented an effective inmate orientation program. The facility provides an initial orientation on PREA to each offender soon after he arrives at the facility.¹⁴² In addition, within seven days of an

¹³² Representatives from JBCC were unable to testify at the Panel's hearing on low-incidence prisons in January 2014. As a result, the Panel asked Dr. Beck to testify about the facility.

¹³³ Jan. 2014 Tr., A. Beck, 171:1-3.

¹³⁴ *Id.* at 171:5-6.

¹³⁵ *Id.* at 171:11-13.

¹³⁶ *Id.* at 171:19-20.

¹³⁷ *Id.* at 171:21-172:1.

¹³⁸ *Id.* at 172:9-12.

¹³⁹ *Id.* at 172:15-20.

¹⁴⁰ *Id.* at 171:3-4, 173:5-7.

¹⁴¹ *Id.* at 173:8-9.

¹⁴² Patton Test. at 2 (Aug. 28, 2014), <http://ojp.gov/reviewpanel/pdfs/TestimonyofRobertPatton.pdf>. Director Patton announced that he will resign as director of ODOC on January 31, 2016; Samantha Vicent, *Oklahoma Department of Corrections Director Announces Resignation*, TULSA WORLD, Dec. 8, 2015, <http://www.tulsaworld.com/news/>

inmate's arrival at the facility, the staff shows him a video on PREA.¹⁴³ During this second orientation session, the facility staff also provides detailed information on issues involving sexual assault, sexual abuse, and sexual threats by staff and other offenders.¹⁴⁴ JBCC provides materials to inmates on sexual assault prevention, including information on how to protect oneself from sexual assault, how to report an incident, and how to identify and report retaliation after making a complaint.¹⁴⁵

According to Director Patton and JBCC Warden Emma Watts, JBCC also protects inmates from harm by making housing assignments based on information from mental health and security assessments. Director Patton testified that as part of JBCC's initial reception and assessment process, trained professionals give offenders mental health screenings when they arrive at the facility.¹⁴⁶ Warden Watts explained that through this screening, the staff evaluates whether an inmate is potentially vulnerable to sexual victimization and whether an inmate might engage in sexually aggressive behavior.¹⁴⁷ At the end of the assessment, mental health professionals document any housing concerns they have related to the offender's history.¹⁴⁸ Security personnel consider this information in assigning an inmate to a unit.¹⁴⁹ Within forty-eight hours of an inmate's assignment to a unit, the staff reviews the offender's file to ensure that he is not at heightened risk of harm based on sexual orientation, history of being a sexual predator, or history of prior sexual victimization.¹⁵⁰

JBCC's leadership also cited inmate participation in programs as a factor in the facility's low prevalence of sexual victimization. According to Warden Watts, JBCC's staff encourages inmates to participate in various programs, including work assignments, substance-abuse treatment programs, and educational programs.¹⁵¹ Officers ensure that offenders participate in these activities by conducting unit checks periodically throughout the day.¹⁵² From Warden Watts' perspective, these programs reduce inmate idleness, lowering the incidence of sexual victimization at the facility.¹⁵³

Director Patton attributed JBCC's success in preventing sexual victimization to Warden Watts' management style, which he described as "management by walking around."¹⁵⁴ The Warden, the

state/oklahoma-department-of-corrections-director-announces-resignation/article_1e64830d-5a16-5c68-b27b-8e88b0be5bb9.html.

¹⁴³ Patton Test. at 2.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 3.

¹⁴⁷ Aug. 2014 Tr., E. Watts, 76:2-7.

¹⁴⁸ *Id.* at 76:7-9.

¹⁴⁹ *Id.* at 76:13-15.

¹⁵⁰ *Id.* at 76:15-20.

¹⁵¹ *Id.* at 72:7-14.

¹⁵² *Id.* at 73:12-15.

¹⁵³ *Id.* at 72:7-14.

¹⁵⁴ *Id.*, R. Patton, at 79:19-22.

Chief of Security, and the Deputy Warden regularly tour the units and yards, talk to the offenders, and observe interactions between offenders and staff.¹⁵⁵ By walking around the facility and being more visible to staff and offenders, staff and offenders become more familiar with JBCC's leaders and are more likely to raise concerns with them.¹⁵⁶ According to Warden Watts, this management approach helps prevent PREA violations at the facility.¹⁵⁷

JBCC's leadership also regularly provides information to personnel on PREA issues. Warden Watts and department heads discuss PREA topics, including appropriate interactions between staff and offenders, during staff meetings.¹⁵⁸ In addition, ODOC developed and implemented a PREA policy,¹⁵⁹ which requires staff to participate in PREA training programs as part of their pre-service training and annual in-service training.¹⁶⁰ The training emphasizes the importance of protecting offenders from sexual assault and highlights sexual victimization's negative impact on prisons.¹⁶¹ Director Patton noted that the curriculum for staff training on preventing sexual victimization is the same at all Oklahoma prisons; the difference at JBCC is that Warden Watts "got personally involved with the training program and then followed it up out on the yard with her staff."¹⁶²

2. High-Incidence Prisons

a. Montana State Prison

i. Facility Description

The Montana State Prison (MSP) is the only facility in Montana that provides sex offender treatment.¹⁶³ It houses 2400 offenders at all custody levels, ranging from a low-security classification to a maximum-security classification for inmates serving death sentences.¹⁶⁴ Six-hundred staff members supervise MSP inmates.¹⁶⁵

ii. Explanation for Reported High Incidence of Sexual Victimization

The Montana Department of Corrections' (MDOC) leadership attributed MSP's high incidence of sexual victimization to the following four factors: (1) the facility's physical limitations; (2) the shortage of staff; (3) insufficient funds; and (4) to a certain extent, its effective PREA policies, which allow inmates to report sexual victimization in multiple ways. According to MDOC Director Mike Batista, the facility's age and lack of modern infrastructure make it difficult for

¹⁵⁵ *Id.*, E. Watts, at 73:15-19.

¹⁵⁶ *Id.* at 82:10-18.

¹⁵⁷ *Id.* at 83:5.

¹⁵⁸ *Id.* at 73:20-22.

¹⁵⁹ *Id.*; Patton Test. at 2 (describing ODOC's "Oklahoma State Prison Rape Elimination Act Policy").

¹⁶⁰ *Id.*

¹⁶¹ Aug. 2014 Tr., R. Patton, 74:10-14.

¹⁶² *Id.* 84:17-85:10.

¹⁶³ Kirkegard Test. at 1 (Nov. 7, 2013), <http://ojp.gov/reviewpanel/pdfs/WrittenTestimonyofLeroyKirkegard.pdf>.

¹⁶⁴ *Id.*

¹⁶⁵ Jan. 2014 Tr., M. Batista, 87:6-8.

management to use video cameras for inmate surveillance.¹⁶⁶ The facility also has an inadequate level of staffing.¹⁶⁷ As of December 2013, MSP was operating with forty-eight vacant correctional officer positions out of 344 authorized positions, representing a 14% vacancy rate.¹⁶⁸ In addition, Director Batista said the facility lacks adequate funding.¹⁶⁹ In 2011, MDOC applied to the Justice Department for funding to support a million-dollar PREA-implementation project.¹⁷⁰ Although MDOC did receive partial funding from the Justice Department, the initial award was reduced substantially because of federal budget cuts.¹⁷¹ With the funding it did receive, MDOC hired a PREA coordinator to oversee PREA implementation efforts throughout the state prison system.¹⁷² Without the full amount of the requested funding, Director Batista said that MDOC could neither expand its Investigations Unit nor provide more PREA training to staff.¹⁷³ Finally, Director Batista contended that the reported high rate of sexual victimization at MSP on the NIS-3 may actually be evidence of MDOC's success in implementing PREA, indicating inmates' familiarity with PREA policies and reporting mechanisms.¹⁷⁴ He said the high incidence of reported sexual victimization at MSP may not reflect an actual increase in the number of assaults; rather, inmates were aware of the protections available and were taking advantage of them.¹⁷⁵

Director Batista minimized the gravity of the sexual misconduct complaints that inmates filed against staff at MSP. From February 2011 through May 2012, which is when RTI International administered BJS' survey, MDOC received twelve staff sexual misconduct complaints.¹⁷⁶ Director Batista suggested that inmates filed these complaints in response to the way two correctional officers conducted clothed pat-down searches.¹⁷⁷ MSP reportedly investigated these allegations and found no evidence of wrongdoing.¹⁷⁸

iii. Measures Taken to Reduce Sexual Victimization

In his written testimony, MSP Warden Leroy Kirkegard acknowledged that “[t]he Montana Department of Corrections recognizes that there have been gaps in our policies and processes, and we have worked diligently to fill those gaps.”¹⁷⁹ As part of a concerted effort to comply with PREA, MDOC and MSP have clarified the protocols for reporting sexual misconduct,

¹⁶⁶ *Id.* at 88:12-16.

¹⁶⁷ *Id.* at 89:2.

¹⁶⁸ *Id.* at 89:5-9.

¹⁶⁹ *Id.* at 89:2.

¹⁷⁰ *Id.* at 89:12-18.

¹⁷¹ *Id.* at 89:19-22.

¹⁷² *Id.* at 90:1-7.

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 91:18-22.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 94:1-5. During this time period, MDOC also received nine inmate-on-inmate sexual misconduct complaints involving MSP. *Id.*

¹⁷⁷ *Id.* at 94:8-12.

¹⁷⁸ *Id.* at 94:9-14.

¹⁷⁹ Kirkegard Test. at 2.

strengthened their education programs on preventing sexual victimization for both inmates and staff, improved the process for classifying and housing inmates, and hired staff to oversee the implementation of PREA.¹⁸⁰

To improve its system for handling inmate complaints of sexual victimization and to establish consistent reporting procedures throughout MDOC, including at MSP, MDOC established a PREA working group.¹⁸¹ This group includes division administrators and meets monthly.¹⁸² The working group developed a new process for handling inmate PREA complaints, requiring personnel to forward complaints, on a confidential basis, to the command post.¹⁸³ To apprise employees of these new protocols, MSP distributed information to staff members on what they must do when an inmate reports a PREA incident.¹⁸⁴ Inmates can also report sexual misconduct allegations by submitting medical requests, communicating directly with staff, contacting family members, and accessing an anonymous telephone hotline staffed by the YWCA.¹⁸⁵

MSP provides training and information to inmates on PREA topics. During the intake process, the staff discusses the facility's zero-tolerance stance towards sexual victimization, the facility's PREA policy, and the importance of adhering to the policy.¹⁸⁶ Employees also show a PREA video and give inmates a copy of MSP's PREA procedure.¹⁸⁷ The procedure outlines the responsibilities that both staff and inmates have in preventing, reporting, and addressing sexual misconduct; it also provides information on the services that MSP offers to victims.¹⁸⁸ A staff member reads and explains the procedure to inmates who cannot read it for themselves.¹⁸⁹ At the end of the training, all inmates must sign a form acknowledging that (1) they completed MSP's PREA orientation program; (2) they are aware of the PREA policy's "terms and directives;" (3) they understand that they have the right to be free of sexual victimization; and (4) and they know how to report incidents of sexual abuse or harassment.¹⁹⁰

MSP also enhanced the training it provides to staff on PREA issues. All new employees must attend an orientation program, which includes a five-hour segment on PREA compliance.¹⁹¹ Security staff must also attend a four-week course at the Montana Law Enforcement Academy, which includes a two-hour session on PREA awareness and compliance.¹⁹²

¹⁸⁰ See *id.* at 2-4, app. B.

¹⁸¹ *Id.* at 2.

¹⁸² *Id.*

¹⁸³ Jan. 2014 Tr., L. Kirkegard, 99:8-10.

¹⁸⁴ *Id.* at 99:11-13.

¹⁸⁵ Kirkegard Test. at 2.

¹⁸⁶ Jan. 2014 Tr., M. Batista, 92:1-7.

¹⁸⁷ *Id.* at 92:10-18.

¹⁸⁸ MDOC Policy No. 1.1.17, Prison Rape Elimination Act of 2003 (PREA) (July 27, 2015), <http://cor.mt.gov/Portals/104/Resources/Policy/MSPprocedures/1-1-17%20PREA.pdf> (superseding MDOC, MSP Procedure No. 1.3.14, Prison Rape Elimination Act of 2003 (PREA) (July 29, 2014)) [hereinafter MDOC PREA Policy].

¹⁸⁹ Jan. 2014 Tr., M. Batista, 92:12-14.

¹⁹⁰ *Id.* 92:15-20; MDOC PREA Policy (Offender PREA Acknowledgement Form).

¹⁹¹ Jan. 2014 Tr., L. Kirkegard, 100:4-7.

¹⁹² *Id.* at 100:7-11.

To reduce the prevalence of inmate sexual victimization, MSP also identifies inmates' risk of sexual victimization and considers that information in assigning them to particular housing units. During intake, case managers administer a comprehensive risk assessment that elicits information from inmates about their medical condition and mental health status, sexual victimization history, and sexual orientation.¹⁹³ Based on this information, personnel make classification decisions for the inmates.¹⁹⁴ On a weekly basis, case managers follow up with offenders who are at risk of victimization and revisit, if appropriate, their housing placements.¹⁹⁵ MSP also created a program called Cell Compatibility, which allows supervisors, managers, and officers to identify more readily offenders who might have housing conflicts with other inmates.¹⁹⁶

To manage MSP's PREA compliance efforts, Warden Kirkegard created a PREA policy specialist position at the facility.¹⁹⁷ The incumbent in this position "is responsible for all the policies at the facilities, but is primarily focused on tracking PREA incidents, investigatory results, and standard compliance."¹⁹⁸ The PREA policy specialist at MSP also serves as a liaison to the MDOC's PREA coordinator, tracks and reports statistical data, and ensures compliance with training requirements.¹⁹⁹

b. Santa Rosa Correctional Institution

i. Facility Description

The Santa Rosa Correctional Institution (SRCI) is a male, close-custody facility with a capacity for 2827 inmates and an average daily population of about 2800.²⁰⁰ SRCI includes the Santa Rosa Main Unit and the Santa Rosa Annex.²⁰¹

The Santa Rosa Main Unit consists of two open-bay-style dormitories and six secure-cell units; together they house an average of 1364 inmates.²⁰² The cells house up to 1280 close management (CM) inmates. The CM designation means that inmates are confined apart from the general prison population in a restrictive, highly secured setting.²⁰³ FDOC applies this designation to inmates who have a demonstrated inability to live in the general inmate population without violating the rights of others and disrupting institutional order.²⁰⁴ According to Secretary Crews, FDOC uses the CM status to ensure that its institutions remain secure, orderly,

¹⁹³ *Id.*, M. Batista, 92:21-93:3.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 93:4-7.

¹⁹⁶ *Id.*, L. Kirkegard, 101:3-7.

¹⁹⁷ *Id.* at 101:9-10.

¹⁹⁸ *Id.* at 101:10-14.

¹⁹⁹ See MDOC PREA Policy para. IV.A.3.

²⁰⁰ Jan. 2014 Tr., R. Comerford, 128:22-129:3.

²⁰¹ Crews Test. at 2.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

and effectively managed.²⁰⁵ Each CM housing unit has constant video surveillance of its residents.²⁰⁶ Thirty-eight percent of the inmates at SRCI are CM inmates.²⁰⁷

The Santa Rosa Annex consists of four open-bay-style dormitories and four secure-cell units; together they house an average of 1336 inmates.²⁰⁸ One secure-cell unit houses inmates who need inpatient mental health treatment; another houses inmates in administrative and disciplinary confinement.²⁰⁹ Each secure-cell unit has constant video surveillance of its residents.²¹⁰

SRCI's inpatient mental health facility has two units.²¹¹ The first unit, the Crisis Stabilization Unit (CSU), provides inmates mental health evaluation and treatment services.²¹² The CSU is for inmates who experience debilitating symptoms of acute mental impairments but who are not eligible for evaluation or treatment in an outpatient setting.²¹³ The second unit, the Transitional Care Unit (TCU), provides a level of care that is more intensive than outpatient and infirmary care but less intensive than CSU services.²¹⁴ The TCU is for inmates with chronic or residual mental health symptoms whose impairments render them incapable of adaptive functioning while incarcerated.²¹⁵

Between December 2009 and June 2011, FDOC received 115 allegations of staff sexual misconduct from both inmates and family members of inmates.²¹⁶ In addition, FDOC received twenty-nine complaints from SRCI inmates alleging inmate-on-inmate sexual abuse or harassment.²¹⁷ FDOC substantiated only one claim against a former staff member for an unprofessional relationship with an inmate.²¹⁸

ii. Explanation for Reported High Incidence of Sexual Victimization

In his written testimony, Secretary Crews cited the type of inmates housed at SRCI as the primary factor leading to the facility's high incidence of staff sexual misconduct as reported in the *BJS Prisons and Jails Report*.²¹⁹ He explained that SRCI mainly houses difficult-to-manage inmates who are confined at higher security levels, who commit more disciplinary infractions,

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ Jan. 2014 Tr., R. Comerford, 145:3-6.

²⁰⁸ Crews Test. at 2.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ Jan. 2014 Tr., R. Comerford, 130:1-2.

²¹² *Id.* at 130:3-6.

²¹³ *Id.* at 130:6-10.

²¹⁴ *Id.* at 130:13-16.

²¹⁵ *Id.* at 130:19-131:1.

²¹⁶ Crews Test. at 3.

²¹⁷ *Id.*; 2014 Jan. Tr., R. Comerford, 150:11-17.

²¹⁸ 2014 Jan. Tr., R. Comerford, 150:18-20.

²¹⁹ Crews Test. at 3.

and who have significant mental health needs.²²⁰ Secretary Crews also challenged the significance of the high rate of reported staff sexual misconduct at SRCI, arguing that given the profile of the inmates at the facility, one would expect them to use the anonymous NIS-3 to make false, retaliatory allegations against the corrections staff.²²¹ While SRCI Warden Richard Comerford generally agreed with Secretary Crews on this point, he also suggested that SRCI's mission and the discipline and management issues at the facility contribute to inmates' allegations of staff sexual misconduct, although he did not elaborate on these points in his testimony before the Panel.²²²

iii. Measures Taken to Reduce Sexual Victimization

According to Secretary Crews, FDOC places a high priority on responding to allegations of sexual misconduct, and it maintains a zero-tolerance policy toward sexual abuse in its institutions.²²³ FDOC recently revised its procedures on all matters related to sexual victimization.²²⁴ FDOC also designated the assistant warden of programs at each facility to serve as the facility's PREA coordinator.²²⁵ Secretary Crews testified that FDOC's PREA program authorizes facility PREA coordinators to handle PREA-related issues, requires accountability for PREA implementation at each facility, and establishes a multidisciplinary team at each facility to address all inmate complaints of sexual victimization.²²⁶ According to Warden Comerford, SRCI reports all allegations of sexual abuse, battery, and harassment to the Office of the Inspector General (OIG), which is a unit within FDOC, and OIG conducts investigations, as needed.²²⁷

Warden Comerford testified that FDOC implemented an Inmate Behavioral Assessment Scale/Sexual Risk Indicator System (IBAS/SRI) to identify aggressive, dangerous inmates, as well as inmates who are especially vulnerable to victimization.²²⁸ SRCI uses the IBAS/SRI to make housing assignments within the large CM population.²²⁹ FDOC conducts this assessment within seventy-two hours of an inmate's transfer to SRCI and periodically revisits its initial assessment during the inmate's confinement at the facility.²³⁰

According to Warden Comerford, SRCI updated and enhanced its training program for inmates on preventing and reporting sexual victimization.²³¹ All inmates participate in PREA training

²²⁰ *Id.*

²²¹ *Id.* at 4.

²²² Jan. 2014 Tr., R. Comerford, 132:20-133:1-3.

²²³ Crews Test. at 5.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ Jan. 2014 Tr., R. Comerford, 137:14-19.

²²⁸ *Id.* at 136:17-22.

²²⁹ *Id.* at 137:1-3.

²³⁰ *Id.* at 137:1-6.

²³¹ *Id.* at 135:7-8.

during the reception process.²³² The training program includes a video presentation, a fact sheet, and details on preventing and reporting sexual abuse and harassment.²³³

Warden Comerford also explained that FDOC updated and expanded its in-service PREA training for staff, contractors, and volunteers; the training program includes information on the dynamics of sexual abuse and harassment, FDOC's zero-tolerance PREA policy, the rights of inmates and staff to be free from retaliation for reporting sexual victimization, and strategies for effective communication with inmates.²³⁴

iv. Comparison to Low-Incidence Facility in the Same State System

Secretary Crews stated that the difference between FDOC's high-incidence facility, SRCI, and FDOC's low-incidence facility, LCI, may be attributable to the significant difference between the types of inmates housed at each facility.²³⁵ Unlike SRCI, "LCI does not house close management, inpatient mental health, close custody or confinement inmates."²³⁶

As previously noted, Secretary Crews contended, without substantiation, that the reported high incidence of sexual victimization at SRCI may be the result of inmates' turning BJS' anonymous survey instrument into a weapon to attack the corrections staff by making false claims of sexual misconduct.²³⁷ Warden Reddish agreed with this assessment and the premise that the incidence of sexual victimization at SRCI and LCI differ because of their significantly different inmate populations: "[t]he bottom line is the inmates at Lawtey are significantly less inclined to falsely allege inappropriate sexual misconduct by staff when given anonymous opportunity to do so."²³⁸

Warden Comerford suggested that contrary to the assumption that a CM facility, like SRCI, would have fewer opportunities for inmates to allege staff sexual misconduct than in lower security prisons, the opposite may be true, as there may be more close interactions between inmates and staff, including more frequent searches.²³⁹

In response to an inquiry from the Panel suggesting that the types of inmates housed in a prison may not determine whether a facility has a high or low rate of sexual victimization, Warden Reddish acknowledged that prison leadership and organizational culture are also significant factors that affect the prevalence of inmate sexual victimization.²⁴⁰

²³² *Id.* at 135:13-15.

²³³ *Id.* at 135:16-19.

²³⁴ *Id.* at 135:20-136:1-5.

²³⁵ Crews Test. at 4; Jan. 2014 Tr., B. Reddish, 166:2-7 (concurring that LCI's population is significantly different than SRCI).

²³⁶ Crews Test. at 4.

²³⁷ *See id.*

²³⁸ Jan. 2014 Tr., B. Reddish, 168:2-5.

²³⁹ *Id.*, R. Comerford, 146:3-12.

²⁴⁰ *Id.*, B. Reddish, 176:21-177:4.

c. Mabel Bassett Correctional Center
i. Facility Description

The Mabel Bassett Correctional Center (MBCC) is the initial assessment and reception center for all female offenders in the Oklahoma prison system.²⁴¹ It has a capacity of 1194 offenders²⁴² and consists of five units.²⁴³ The first unit houses minimum-security inmates; the second unit handles the assessment and reception of offenders and houses medium-security inmates.²⁴⁴ The third unit houses offenders with medical and mental health conditions.²⁴⁵ The fourth unit houses medium-security inmates in the general population, and the fifth unit houses inmates in administrative segregation and inmates on death row.²⁴⁶ Approximately 63% of the offenders confined at MBCC receive mental health services.²⁴⁷

ii. Explanation for Reported High Incidence of Sexual Victimization

Dr. Allen Beck, senior statistical advisor at BJS, testified about BJS' findings related to MBCC.²⁴⁸ MBCC was the only female facility in the United States that BJS classified as a high-rate facility.²⁴⁹ Fifteen percent of the inmate respondents at MBCC reported some form of inmate-on-inmate sexual victimization.²⁵⁰ This rate is double the national average and higher than any rate that BJS observed at male facilities.²⁵¹

Dr. Beck described when and where victimization occurred at MBCC. He testified that victimization often occurred after an inmate had been at the facility for about thirty days.²⁵² Inmate victims experienced some degree of risk of sexual victimization within the first thirty days, but most victims reported that perpetrators victimized them after thirty days.²⁵³ The second work shift, between 6:00 p.m. and midnight, is the most common time when perpetrators sexually victimize inmates.²⁵⁴ Inmates are especially susceptible to predation during this time period because fewer staff work the second shift, and inmates can walk throughout much of the facility.²⁵⁵ The most common place for sexual victimization is in the inmate's cell.²⁵⁶

²⁴¹ Aug. 2014 Tr., R. Patton, 11:16-20.

²⁴² *Id.*, R. Moham, 27:22.

²⁴³ *Id.* at 28:11.

²⁴⁴ *Id.* at 28:11-13.

²⁴⁵ *Id.* at 28:14-15.

²⁴⁶ *Id.* at 28:15-17.

²⁴⁷ *Id.* at 28:18-19.

²⁴⁸ Representatives from MBCC were unable to testify at the Panel's hearing on high-incidence prisons in January 2014. As a result, the Panel asked Dr. Beck to testify about the facility at that hearing.

²⁴⁹ Jan. 2014 Tr., A. Beck, 117:18-20.

²⁵⁰ *Id.* at 117:20-22.

²⁵¹ *Id.* at 118:1, 5-6.

²⁵² *Id.* at 120:7-8.

²⁵³ *Id.* at 120:9-12.

²⁵⁴ *Id.* at 120:14-16.

²⁵⁵ *Id.* at 120:16-17.

²⁵⁶ *Id.* at 120:20-21.

According to Dr. Beck, the risk of sexual victimization at MBCC is significantly greater than at other prisons because of the characteristics of its inmates.²⁵⁷ The population at MBCC is slightly less educated, with 59% of the women having less than a high school education, compared to approximately 50% of women confined at other prisons.²⁵⁸ In comparison to other women's prisons throughout the country, the facility has a higher rate of inmates who are non-heterosexual; at least a third of the inmates reported being bisexual, and 10% reported being lesbian or another sexual orientation.²⁵⁹ MBCC has a violent inmate population.²⁶⁰ Approximately 44% of the women are either violent or sexual offenders, which is double the rate at other women's prisons.²⁶¹ MBCC has a higher number of inmates who were previously incarcerated and who were sexually assaulted before arriving at the facility.²⁶² Inmates at the facility also reported higher levels of serious mental illness and severe psychological distress than inmates at other prisons.²⁶³ Compared to female inmates at other prisons, higher percentages of MBCC inmates reported that they had a diagnosed mental health disorder and had stayed in a mental health hospital.²⁶⁴

ODOC Director Robert Patton, who assumed his position after the NIS-3,²⁶⁵ attributed the high incidence of sexual victimization at MBCC to a number of factors, including "intake procedures, security controls within the facility, separation of minimum-, medium- and maximum-security offenders, narrowly defining sexual assault and harassment, and ineffective training for staff and offenders when PREA was first implemented."²⁶⁶

In explaining BJS' survey results for MBCC, Director Patton said that, at one time, personnel could not completely separate sexual assault victims from their perpetrators.²⁶⁷ Unless MBCC discharged the perpetrator or moved her to a lower security level, there was a risk that the victim and perpetrator would continue to interact with each other.²⁶⁸ MBCC also had difficulty finding appropriate housing for offenders with mental health needs, which increased their risk of victimization.²⁶⁹

²⁵⁷ *Id.* at 123:14-17.

²⁵⁸ *Id.* at 121:20-122:2.

²⁵⁹ *Id.* at 122:3-7.

²⁶⁰ *Id.* at 122:8-11.

²⁶¹ *Id.* at 122:11-14.

²⁶² *Id.* at 122:15-18.

²⁶³ *Id.* at 122:22-123:2.

²⁶⁴ *Id.* at 123:9-13.

²⁶⁵ *See* Aug. 2014 Tr., R. Patton, 8:9-12.

²⁶⁶ *Id.* at 14:14-21.

²⁶⁷ Patton Test. at 1.

²⁶⁸ *Id.*

²⁶⁹ *Id.*

iii. Measures Taken to Reduce Sexual Victimization

Mr. Rickey Moham, who was warden at MBCC at the time of the hearings,²⁷⁰ previously served as deputy warden at JBCC and came to MBCC after the administration of the NIS-3.²⁷¹ He provided information on the measures MBCC has taken to address sexual victimization.²⁷² He said the most important first step in reducing sexual victimization at MBCC was to create an institutional climate that has zero tolerance for unhealthy relationships and sexual assaults.²⁷³

The corrective measures at MBCC have included training for both staff and inmates. ODOC requires all staff and volunteers, as part of their pre-service and annual in-service training, to attend a program on preventing sexual assault.²⁷⁴ Within seven days after inmates arrive at MBCC, staff provide an orientation on preventing sexual victimization.²⁷⁵ The orientation gives offenders information on how to report sexual assaults.²⁷⁶ MBCC also has various self-development programs for inmates, including programs on healthy relationships and anger management.²⁷⁷

MBCC established a PREA hotline that offenders can use to report incidents of sexual victimization.²⁷⁸ Inmates can use any telephone in their housing units to report their concerns to qualified staff outside the facility.²⁷⁹

Warden Moham detailed the measures that MBCC takes to protect inmates who have mental health problems or histories of prior sexual victimization.²⁸⁰ During the intake process, mental health staff assess offenders to determine if they are victims of prior sexual assault or at risk of sexual victimization.²⁸¹ If the mental health team concludes that an offender is at high risk for sexual victimization, it makes a housing assignment recommendation to the unit team, which the warden must approve.²⁸²

²⁷⁰ The current warden of MBCC is Debbie Aldridge. *Mabel Bassett Correctional Center*, OKLA. DEP'T OF CORR., https://www.ok.gov/doc/Organization/Field_Operations/East_Institutions/Mabel_Bassett_Correctional_Center.html.

²⁷¹ Aug. 2014 Tr., R. Moham, 26:10-17.

²⁷² *Id.* at 29:5-7.

²⁷³ *Id.* at 29:12-16.

²⁷⁴ *Id.* at 29:19-30:4.

²⁷⁵ *Id.* at 30:5-7.

²⁷⁶ *Id.* at 30:7-12.

²⁷⁷ *Id.* at 30:16-18.

²⁷⁸ *Id.* at 31:19-20.

²⁷⁹ *Id.* at 31: 21-32:1.

²⁸⁰ *Id.* at 32:2-4.

²⁸¹ *Id.* at 32:5-9.

²⁸² *Id.* at 32:13-18.

iv. Comparison to Low-Incidence Facility in the Same State System

Director Patton acknowledged that on becoming Director of ODOC, he was puzzled by having in the same state system one prison, JBCC, with one of the lowest rates of sexual victimization in the country, while having yet another prison, MBCC, with one of the highest rates.²⁸³ He said that a number of factors may explain the disparity, including the differences between male (i.e., JBCC) and female (i.e., MBCC) facilities.²⁸⁴ He also suggested that prison design may explain the different outcomes, as MBCC at the time of the inmate survey did not allow for the appropriate separation of victims and predators.²⁸⁵ The key difference, however, may be effective management, the important institutional role a warden plays in creating a safe environment based on “employee and offender engagement.”²⁸⁶ Highlighting the impact management style has on a facility’s culture, Director Patton observed, “You got to be out on your yard walking and talking.”²⁸⁷

3. Collaborations Between Prisons and Community-Based Organizations

The Panel invited Ms. Joyce Lukima, vice president of services for the Pennsylvania Coalition Against Rape (PCAR), to discuss how prisons can collaborate effectively with community-based organizations to serve inmates who are victims of sexual assault.²⁸⁸ PCAR is one of the oldest coalitions against sexual violence in the United States,²⁸⁹ with a membership of fifty rape crisis centers that provide services to sixty-seven counties in Pennsylvania.²⁹⁰ Ms. Lukima noted that victim advocates have long recognized that sexual violence occurring in correctional institutions has been often overlooked, and it presents “unique barriers” not only for the victims but also for those who want to help them.²⁹¹ Rape crisis centers provide community-based prevention and intervention services.²⁹² “Frequently these services include organizing communities to prevent sexual violence, as well as providing counseling and advocacy services to help victims of sexual violence.”²⁹³ PCAR is also involved in a national project, the National Sexual Violence Resource, which focuses on preventing sexual violence.²⁹⁴

²⁸³ *Id.*, R. Patton, 43:20-44:2.

²⁸⁴ *Id.* at 44:2-3; *id.*, R. Moham, 61:1-2 (noting that the needs of female offenders are “drastically different” than male offenders; Review Panel on Prison Rape, *Report on Sexual Victimization in Prisons and Jails* 22-25 (Apr. 2012), http://ojp.gov/reviewpanel/pdfs/prea_finalreport_2012.pdf. (“The Distinctive Dynamics of Women’s Prisons”).

²⁸⁵ 2014 Aug. Tr., R. Patton, 44:3-7.

²⁸⁶ *See id.* at 44:8-16.

²⁸⁷ *Id.* at 44:14-16; *see also id.*, R. Moham, 61:11-22.

²⁸⁸ 42 U.S.C. § 15603(b)(3)(B) (permitting the Panel to elicit testimony from policy experts).

²⁸⁹ Jan. 2014 Tr., J. Lukima, 59:17-19.

²⁹⁰ *Id.* at 59:19-21.

²⁹¹ *Id.* at 60:11-14.

²⁹² *Id.* at 60:15-16.

²⁹³ *Id.* at 60:16-20.

²⁹⁴ *Id.* at 60:1-2.

According to Ms. Lukima, prisons need to collaborate with community-based organizations to prevent and respond to sexual violence.²⁹⁵ Prisons should coordinate the services that they provide to inmate victims of sexual violence with sexual violence advocates, members of state sexual-assault coalitions, and representatives from local rape crisis centers.²⁹⁶ For example, PCAR is working with the Pennsylvania Department of Corrections (PDOC) as it implements the PREA standards.²⁹⁷ Through this partnership, PCAR and PDOC cross-trained corrections and advocacy staff; PDOC established policies that address sexual violence; and PDOC established a response process that includes corrections and community responders.²⁹⁸

Ms. Lukima testified that by working together, prisons and community-based organizations can leverage their unique skills to improve services to inmates who are victims of sexual violence.²⁹⁹ She observed, “Corrections staff bring knowledge related to the workings of the prison system, and the community-based sexual-violence advocates bring tremendous experience regarding the dynamics, impacts, and responses to sexual violence, as well as cultural factors which need to change to create a safer environment.”³⁰⁰

4. Protecting Inmates with Mental Health Conditions

The Panel invited Mr. Robert W. Dumond, senior program director for Just Detention International (JDI), to testify about the heightened vulnerability of inmates with mental health needs to sexual victimization and effective ways to protect them from harm. JDI is a health and human rights organization that seeks to end sexual abuse in all forms of detention.³⁰¹ In his testimony, Mr. Dumond highlighted four interrelated issues: (1) the epidemiology of mental illness in detention settings; (2) the challenges of inmates with developmental disabilities; (3) the specific problem of suicide; and (4) the elevated risks faced by inmates, particularly female inmates, with histories of sexual abuse.³⁰²

According to Mr. Dumond, “U.S. prisons and jails have become de facto psychiatric facilities,”³⁰³ and serve as “the country’s front-line mental health providers.”³⁰⁴ This development is especially alarming because correctional institutions are ill equipped to provide care for individuals with mental illness.³⁰⁵ In correctional settings, the prevalence of severe

²⁹⁵ See *id.* at 64:13-21.

²⁹⁶ *Id.* at 69:16-21.

²⁹⁷ *Id.* at 63:11-13. The U.S. Department of Justice published PREA standards for prisons, jails, and juvenile correctional facilities. See 28 C.F.R. pt. 115 (2015).

²⁹⁸ Jan. 2014 Tr., J. Lukima, 63:22-64:4.

²⁹⁹ See *id.* at 65:5-9.

³⁰⁰ *Id.* at 65:9-15.

³⁰¹ Dumond Test. at 1 (Jan. 8, 2014), <http://ojp.gov/reviewpanel/pdfs/WrittenTestimonyofRobertDumond.pdf>.

³⁰² *Id.* at 2.

³⁰³ *Id.* at 4.

³⁰⁴ *Id.* (quoting Human Rights Watch, ILL-EQUIPPED: U.S. PRISONS AND OFFENDERS WITH MENTAL ILLNESS 16 (2003), <https://www.hrw.org/reports/2003/usa1003/usa1003.pdf>).

³⁰⁵ Dumond Test. at 4.

mental health disorders ranges from 6% to 20%.³⁰⁶ More than half of all prison and jail inmates have mental health problems,³⁰⁷ and female, white, and young inmates are especially likely to face these challenges.³⁰⁸ The prevalence of severe mental illness is significantly higher in correctional environments than in the community. For instance, major depression and psychotic disorders are four to eight times more common in the correctional setting than in the general population.³⁰⁹ Despite the significant numbers of mentally ill inmates, prisons and jails only provide mental health treatment to 22% of state prisoners and 7% of jail inmates who are mentally ill.³¹⁰

Mr. Dumond noted that there is no consensus among experts on whether developmental disabilities, including mental retardation, are more prevalent in correctional settings than in the general population.³¹¹ Nonetheless, inmates with mental retardation and other developmental disabilities are particularly vulnerable to sexual victimization because they face the following challenges in adjusting to and remaining safe in confinement:

- *Cognitive limitations*, such as difficulty understanding and following rules;
- *Adaptive skill deficits*, including difficulty following guidelines, routines, and social norms . . . ; and
- *Learned compliance*, often manifested in difficulty in asserting rights to personal space and bodily integrity.³¹²

Prisoners with developmental disabilities are more vulnerable to mistreatment than other inmates.³¹³ These inmates usually have a diminished ability to recognize, react, and respond to threats and abuse, and they cannot adequately defend themselves.³¹⁴ Because of these cognitive limitations, perpetrators often sexually victimize, abuse, exploit, and manipulate inmates with mental and developmental disabilities.³¹⁵ Predators often assume that even if inmates with developmental disabilities can defend themselves, the correctional staff members will not provide adequate protection because they either do not understand or automatically discount the inmates' pleas for help.³¹⁶

Mr. Dumond also highlighted the suicide risk for inmate survivors of sexual violence, especially for female and for lesbian, gay, bisexual, and transgender (LGBT) inmates.³¹⁷ Sexual abuse is a

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.* at 5.

³¹⁰ *Id.* at 4.

³¹¹ *Id.* at 5.

³¹² *Id.*

³¹³ *Id.*

³¹⁴ *Id.* at 5-6.

³¹⁵ *Id.* at 5.

³¹⁶ *Id.* at 6.

³¹⁷ *Id.*

significant precursor for suicidal behavior.³¹⁸ According to one study, rape victims were more than four times more likely than non-crime victims to contemplate suicide, and they were thirteen times more likely than non-crime victims to attempt suicide.³¹⁹ Similar to the dynamic in the larger community, LGBT inmates have a higher risk of contemplating and attempting suicide than other inmates because they disproportionately face violence and discrimination.³²⁰ The research of BJS, along with other private organizations, similarly shows that LGBT inmates, including juveniles, experience higher rates of sexual abuse than other inmates.³²¹

Mr. Dumond also agreed with BJS' research that inmates with histories of sexual abuse experience relatively high rates of sexual victimization while incarcerated, mainly by other inmates.³²² Although this problem affects both male and female inmates, prior sexual abuse disproportionately affects female inmates.³²³ Before arriving at a correctional facility, many female inmates have histories as survivors of physical abuse, sexual abuse, and exploitation.³²⁴ Because of this exposure to trauma, these women have higher rates of post-traumatic stress disorder than men.³²⁵

Mr. Dumond made several recommendations to the Panel on how to protect these vulnerable inmates, including the following:

- All facilities must have enough properly trained and carefully vetted correctional staff.³²⁶
- Facilities must give all correctional staff adequate and appropriate medical and mental health training. This training should provide guidance to staff on recognizing prisoners with mental illness, managing them with care, and responding appropriately to threats or incidents of sexual abuse against them.³²⁷
- Correctional agencies should develop a full range of supportive programs and services for prisoners with mental illness and developmental and intellectual disabilities.³²⁸
- Prisons should provide trauma-informed and gender-responsive mental health services to female prisoners. Through this approach, facilities can acknowledge the nature of previous trauma, mental illness, and addiction.³²⁹

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Id.* at 6-7.

³²¹ *Id.* at 7.

³²² *Id.* at 7.

³²³ *Id.*

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ *Id.* at 8.

³²⁷ *Id.*

³²⁸ *Id.* at 9.

³²⁹ *Id.*

- Correctional facilities must increase the number of their specialized housing units to protect mentally compromised prisoners, especially inmates who have serious, persistent mental illnesses and substantial developmental and intellectual disabilities.³³⁰
- Correctional facilities must implement PREA standards on identifying and treating inmates who have histories of sexual abuse.³³¹
- The United States must decrease the overall number of inmates, without compromising public safety. According to Mr. Dumond, it is economically untenable to continue to confine so many people in correctional facilities. To address this over-incarceration problem, criminal justice systems should emphasize diversion programs, such as drug courts and mental health courts, and alternatives to traditional correctional environments, such as administrative home confinement and community corrections programs.³³²

5. Challenges and Strategies for Prosecuting Cases of Sexual Assault in Confinement

a. A District Attorney's Perspective

The Panel elicited oral and written testimony from Mr. Richard Smothermon, district attorney for the Twenty-Third Judicial District of Oklahoma, about the challenges of prosecuting cases of sexual assault in confinement, based on his experience handling such cases involving ODOC inmates and staff.³³³

Mr. Smothermon highlighted several effective ways to address sexual assault in confinement. As an initial matter, Mr. Smothermon said that ODOC and the District Attorney's Office need to convey to victims and perpetrators that they have zero tolerance for sexual assault.³³⁴ His office advances this goal by prosecuting offenders and correctional staff who sexually assault inmates, holding them accountable for their criminal misconduct.³³⁵ Ultimately, however, his office can only achieve this goal if everyone involved in the criminal investigation and prosecution cooperates with one another.³³⁶

Mr. Smothermon explained that sexual assaults are difficult to prosecute because victims face significant obstacles that can discourage them from cooperating with the District Attorney's

³³⁰ *Id.*

³³¹ *Id.* at 10.

³³² *Id.* at 10-11.

³³³ Smothermon Test. at 1 (Aug. 28, 2014), <http://ojp.gov/reviewpanel/pdfs/TestimonyofRichardSmothermon.pdf>.

³³⁴ *Id.* at 3.

³³⁵ *Id.* at 1.

³³⁶ *Id.*

Office.³³⁷ In addition, sexual assault cases require more resources during the investigation than most other types of cases.³³⁸

Poor evidence-collection and preservation practices can also hamper prosecutions involving sexual assault in confinement. Prompt collection and preservation of evidence is important.³³⁹ At ODOC, investigators are not based at MBCC but work at regional offices throughout Oklahoma.³⁴⁰ As a result, when a sexual assault occurs at MBCC, investigators usually do not arrive on the scene until at least twenty-four hours after the assault.³⁴¹ While staff members at the facility can take steps to collect and preserve evidence, without proper training, they may miss critical items and allow a crime scene to become contaminated.³⁴² To address this challenge, Mr. Smothermon offered the assistance of his office's Violent Crime Task Force, which includes highly trained law enforcement officers.³⁴³ ODOC can utilize the task force's resources in responding to and investigating a sexual assault at MBCC.³⁴⁴

While Mr. Smothermon acknowledged having some difficulty in working with ODOC prior to Director Patton's tenure, his recent interactions with ODOC have improved. Under the administration of Director Patton's predecessor, Mr. Smothermon encountered some challenges in prosecuting a case involving a correctional officer who allegedly sexually assaulted an inmate at MBCC.³⁴⁵ The victim repeatedly recanted her account of the assault to investigators and the District Attorney's Office, because correctional officers and other inmates allegedly subjected her to verbal and physical harassment.³⁴⁶ In the past, ODOC investigators tended to treat inmate sexual assault victims as criminals.³⁴⁷ The interactions made it difficult for victims to assist in prosecuting their cases and prevented other victims from disclosing sexual assault claims.³⁴⁸ Since Director Patton assumed leadership over ODOC, it has been easier for Mr. Smothermon to cooperate and communicate with ODOC and MBCC personnel.³⁴⁹

b. An Advocacy Organization's Perspective

The Panel received testimony from Ms. Viktoria Kristiansson, an attorney advisor for Æquitas, about the challenges and strategies associated with successfully prosecuting cases of sexual assault in confinement settings. Æquitas is a nonprofit organization that seeks to improve the

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ *Id.* at 1-2.

³⁴⁰ *Id.*

³⁴¹ *Id.* at 2.

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.* at 3.

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.* at 4.

way the criminal justice system responds to all cases involving violence against women.³⁵⁰ Ms. Kristiansson focused on the following challenges that prosecutors face in handling sexual assault cases involving inmates:³⁵¹

- Many victims are unable or unwilling to report a sexual assault. As a result, a facility may not receive timely information about an assault, making it difficult to preserve physical evidence and interview witnesses.³⁵²
- Jurors may be reluctant to find the testimony of an inmate credible.³⁵³
- When the defendant is a correctional officer, jurors may find the defendant more intrinsically trustworthy or feel that the defendant has “too much to lose” to be convicted based on the word of an offender.³⁵⁴
- Investigators, prosecutors, and those who provide support services to victims may not understand the dynamics of sexual victimization in confinement because they have not received adequate training or lack experience.³⁵⁵
- Some state statutes classify “consensual sexual contact” between correctional staff and inmates as a misdemeanor. As a result, prosecutors in these jurisdictions may charge or resolve cases in ways that do not recognize the seriousness of the employee’s exploitation of an inmate.³⁵⁶
- Prosecutors may place greater priority on other cases, believing that what happens within a prison or jail does not concern the public.³⁵⁷

Ms. Kristiansson also highlighted eight strategies for successfully prosecuting cases of sexual assault in correctional institutions: (1) taking a collaborative, multidisciplinary approach; (2) emphasizing education and training; (3) providing a trauma-informed response; (4) recognizing, preventing, and responding to witness intimidation; (5) making appropriate charging decisions; (6) conducting sufficient pretrial preparation, including meeting with the victim and filing pretrial motions; (7) pursuing offender-focused trials; and (8) appropriately considering various post-trial factors.³⁵⁸

First, when systems work together to provide a coordinated, multidisciplinary response to sexual assault, they allow more victims to access services and participate in the criminal justice process; they hold more offenders accountable; and they enhance both community and victim safety.³⁵⁹

³⁵⁰ Aug. 2014 Tr., V. Kristiansson, 118:20-119:2; Kristiansson Test. 1-4 (Aug. 28, 2014), <http://ojp.gov/reviewpanel/pdfs/TestimonyofViktoriaKristiansson.pdf>.

³⁵¹ See Aug. 2014 Tr., V. Kristiansson, 99:9-12.

³⁵² *Id.* at 99:14-18.

³⁵³ *Id.* at 99:19-21.

³⁵⁴ *Id.* at 99:22-100:4.

³⁵⁵ *Id.* at 100:5-10.

³⁵⁶ *Id.* at 100:13-19.

³⁵⁷ *Id.* at 100:20-101:2.

³⁵⁸ Kristiansson Test. 1-4.

³⁵⁹ Aug. 2014 Tr., V. Kristiansson, 101:10-17.

This approach calls for collaboration among various stakeholders, including the corrections, law enforcement, prosecutorial, advocacy, and medical communities.³⁶⁰ Ms. Kristiansson explained that as part of this collaboration, a sexual assault response team should be available to address the unique needs of inmates, such as being able to communicate with advocates on a confidential basis.³⁶¹

Second, professionals responding to sexual assaults should receive training that enables them to understand the dynamics of sexual assault in confinement³⁶² so that they can conduct effective investigations and prosecutions.³⁶³ Ms. Kristiansson stated that without this knowledge, many professionals may not properly assess cases because bias clouds their evaluations.³⁶⁴ First-responders should receive training on proper interview and report-writing techniques, with an emphasis on using appropriate tone and language; this is important because the first-responder's role is to support the victim and to document statements and observations.³⁶⁵ According to Ms. Kristiansson, if the inmate-victim receives no support during the initial reporting phase of a matter, then the inmate may not want to participate further in the investigation or prosecution of the case.³⁶⁶ A poorly handled first response can undermine the investigation by impeding access to important evidence from the inmate-victim that might bolster the prosecution's case.³⁶⁷

Third, Ms. Kristiansson stated that those who handle sexual assault investigations must adopt a victim-centered, trauma-informed approach, especially when they conduct victim interviews.³⁶⁸ Being trauma informed means recognizing that a victim's experience of trauma is not only related to the recent sexual assault but to the history of trauma in the person's life; this awareness should lead investigators to treat victims in a thoughtful way, taking into account physical, emotional, and psychological safety.³⁶⁹ Ms. Kristiansson cautioned that without this approach, inmate victims can be re-traumatized.³⁷⁰

Fourth, investigators and prosecutors must confront witness intimidation throughout a sexual assault case.³⁷¹ According to Ms. Kristiansson, witness intimidation not only causes additional trauma and injury to the victim, but it also makes it more difficult to investigate and prosecute

³⁶⁰ *Id.* at 101:18-20.

³⁶¹ *Id.* at 102:3-8.

³⁶² *Id.* at 102:18-20.

³⁶³ *Id.* at 102:13-17.

³⁶⁴ *Id.* at 102:20-103:1.

³⁶⁵ *Id.* at 103:8-13.

³⁶⁶ *Id.* at 103:13-17.

³⁶⁷ *Id.* at 103:18-20.

³⁶⁸ *Id.* at 104:19-22.

³⁶⁹ *Id.* at 104:22-105:4.

³⁷⁰ *Id.* at 105:5-6.

³⁷¹ *Id.* at 105:18-22.

the matter.³⁷² She suggested that prosecutors work with law enforcement and corrections personnel to ensure that victims and witnesses can identify and safely report intimidation.³⁷³

Fifth, Ms. Kristiansson stated that prosecutors must make appropriate charging decisions in cases involving sexual assault in correctional institutions, mindful of holding offenders accountable for their criminal misconduct, keeping facilities and communities safe, and supporting victims.³⁷⁴

Sixth, Ms. Kristiansson recommended that prosecutors adequately prepare for trial.³⁷⁵ As part of this preparation, they should meet with the victim early in the case-development process, which allows prosecutors to show that they support the victim.³⁷⁶ These early interactions also allow the prosecutor and the victim to establish a positive rapport; the prosecutor can also answer the victim's questions and describe what will happen at trial and during the case's sentencing phase.³⁷⁷ Prosecutors should also file pretrial motions to exclude irrelevant and prejudicial information, as well as arguments that could otherwise undermine the victim's credibility.³⁷⁸

Seventh, Ms. Kristiansson stated that trials need to focus on offenders, an approach that emphasizes that perpetrators purposefully target inmates who are vulnerable to sexual assault.³⁷⁹ Prosecutors should develop and employ strategies that rest on an accurate and unbiased analysis of a case and a thorough understanding of the applicable law.³⁸⁰

Finally, Ms. Kristiansson noted that support and protection of a victim should not end with the trial.³⁸¹ If there is a conviction, victims can submit to the court impact statements and request restitution.³⁸² Even in the absence of a conviction, victims can request a no-contact order and seek long-term counseling.³⁸³

6. Observations

A summary of the reasons that selected prison administrators offered for having either a low or high incidence of sexual victimization in their facilities appears in Table A.³⁸⁴

³⁷² *Id.* at 105:22-106:3.

³⁷³ *Id.* at 106:5-8.

³⁷⁴ *Id.* at 106:20-107:2.

³⁷⁵ *Id.* at 108:1-3.

³⁷⁶ *Id.* at 108:6-8.

³⁷⁷ *Id.* at 108:8-13.

³⁷⁸ *Id.* at 108:14-19.

³⁷⁹ *Id.* at 109:9-15.

³⁸⁰ *Id.* at 109:22-110:4.

³⁸¹ *Id.* at 111:1-3.

³⁸² *Id.* at 111:4-6.

³⁸³ *Id.* at 111:7-10.

³⁸⁴ *See supra* p. viii.

One of the most commonly proffered explanations for the differences between low- and high-incidence facilities is that the type of inmate makes a significant difference. The representatives of facilities with a low incidence of sexual victimization that appeared at the hearings acknowledged that the inmates in their facilities were significantly different from the general prison populations in their state systems. In the case of LCI, the prison population consists of highly motivated, medium-security prisoners within ten years of release, who posed no behavior problems and voluntarily chose to participate in the prison's signature faith-and-character-based program. In contrast, the prison population at SRCI, which is within the same Florida state prison system as LCI, has many of the common characteristics of sexual predators (e.g., hard-to-manage, high security inmates, convicted of violent crimes) and victims of sexual assault (e.g., inmates who have mental health needs).³⁸⁵ The differences between the low-incidence and high-incidence prisons in Oklahoma follow the same pattern. The low-incident facility, JBCC, has inmates who are less violent and more educated, whereas the high-incident facility, MBCC, has more inmates with the traits of both predators (e.g., violent and sexual offenders) and victims (e.g., non-heterosexuals, inmates previously the target of sexual assaults, and inmates with serious mental illness).

The Panel acknowledges that the challenges that prisons face are significantly different based on the characteristics of their inmate populations. Nonetheless, many low-security facilities have relatively high rates of inmate sexual victimization, whereas many high-security facilities are able to achieve relatively low rates. Mindful of the concerns that administrators of CM and high-security prisons have raised in complying with PREA, the Panel may focus future hearings on the particular needs of these correctional institutions.

Appropriate screening, classification, and housing of inmates keep vulnerable inmates safe. For example, JBCC, a low-incident facility, was able to assign inmates' housing based on their mental health condition as well as their vulnerability to sexual assault or propensity to sexual aggression. In comparison, MBCC, a high-incidence facility, acknowledged that even though it has currently taken steps to correct the problem, it was previously unable to ensure the separation of victims and perpetrators of sexual assaults.

Training of both inmates and staff is a significant factor in preventing sexual victimization in prisons. Effective inmate orientation programs provide information on preventing and reporting sexual victimization. Both pre-service and annual in-service training programs for staff provide them with the tools to create a safe, PREA-compliant environment.

Management style is also an important factor in creating institutional cultures that do not tolerate the sexual mistreatment of inmates. Leadership makes a difference. Effective management may take various forms; one form that both LCI and JBCC highlighted was "management by walking around." When senior prison administrators are visible by regularly touring their facilities and interacting with both staff and inmates, they may be able to identify otherwise unknown problems and address them.

³⁸⁵ See Jan. 2014 Tr., B. Reddish, 166:2-7, 168:6-12.

7. Recommendations

The Panel endorses the recommendations of the experts it invited to testify on three important issues related to sexual victimization of inmates: (1) collaboration with community-based organizations to provide services to inmates who have experienced sexual victimization; (2) protection of inmates who are most vulnerable to sexual predation, especially inmates with mental health conditions, inmates with developmental disabilities, and inmates who identify as other than heterosexual; and (3) the prosecution of sexual crimes that target inmates.

The Panel encourages prisons to work closely with community service providers to serve inmates who are victims of sexual violence.³⁸⁶ In particular, prisons should collaborate with victim advocates, state sexual-assault coalitions, local rape crisis centers, and local healthcare providers.

The Panel encourages prisons to develop protocols that protect inmates who are most vulnerable to sexual predation.³⁸⁷ As part of this initiative, prisons should have effective staff training to respond to the needs of inmates with mental illness, inmates with developmental disabilities, and inmates who are non-heterosexual. Prisons should also review all of their interactions with inmates to ensure they are trauma informed and gender specific.

The Panel encourages prisons and prosecutors to work together to bring charges against anyone who sexually assaults an inmate.³⁸⁸ The Panel encourages the U.S. Department of Justice, along with other governmental agencies, professional and advocacy organizations, and educational institutions to sponsor opportunities for continuing education to help prosecutors and prison administrators develop effective strategies for pursuing criminal cases against sexual predators who target inmates.

³⁸⁶ See *supra* Part II.A.3.

³⁸⁷ See *supra* Part II.A.4.

³⁸⁸ See *supra* Part II.A.5.

B. Jails

1. Low-Incidence Jails

a. Jefferson County Jail

i. Facility Description

The Jefferson County Jail (JCJ) has both direct-supervision and modular-style housing.³⁸⁹ JCJ has a fixed bed capacity of 1326, and it can add 284 additional temporary sled beds to reach a total capacity of 1610.³⁹⁰ In 2012, the average daily inmate population at the facility was about 1250.³⁹¹ The Jefferson County Sheriff's Office (JCSO) staffs the facility with 371 employees.³⁹²

In 2012, JCJ received five reports alleging inmate-on-inmate nonconsensual sexual acts.³⁹³ After JCSO investigated the reports, it concluded that three of the allegations were unfounded, meaning the events did not occur.³⁹⁴ As to the two remaining reports, JCSO concluded that the allegations were unsubstantiated, meaning there was insufficient evidence to determine whether the events occurred.³⁹⁵

In 2012, JCJ received two allegations of inmate-on-inmate abusive sexual contact.³⁹⁶ JCSO investigated both reports, substantiating one but concluding that the other was unfounded.³⁹⁷ In the same time period, JCJ received no reports alleging staff sexual misconduct or sexual harassment.³⁹⁸

ii. Explanation for Reported Low Incidence of Sexual Victimization

JCJ's Chief of Detention Services Division Patricia Mundell attributed the facility's low incidence of sexual victimization to a variety of factors, including a zero-tolerance policy, mandatory reporting requirements, and staff training.

Chief Mundell testified that JCSO "is committed to the establishment of a zero-tolerance standard of inmate sexual assault; sexual violence; sexual misconduct; and sexual contact by other inmates, staff, or other non-inmate persons."³⁹⁹ She testified that JCSO aggressively seeks the prosecution of all substantiated violations of state statutes pertaining to sexual crimes.⁴⁰⁰ She noted that JCSO's zero-tolerance approach also includes efforts to provide a safe environment

³⁸⁹ Jan. 2014 Tr., P. Mundell, 319:4-6.

³⁹⁰ *Id.* at 319:6-10.

³⁹¹ *Id.* at 319:11-12.

³⁹² *Id.* at 319:12-14.

³⁹³ *Id.* at 319:15-17.

³⁹⁴ *Id.* at 319:17-20.

³⁹⁵ *Id.* at 319:20-22.

³⁹⁶ *Id.* at 320:1-2.

³⁹⁷ *Id.* at 320:2-7.

³⁹⁸ *Id.* at 320:8-9.

³⁹⁹ *Id.* at 321:1-6.

⁴⁰⁰ *Id.* at 321:7-9.

for inmates and to ensure that staff can appropriately respond to all allegations of inmate-on-inmate sexual victimization.⁴⁰¹

According to Chief Mundell, a jail must have effective reporting requirements to prevent sexual victimization of inmates.⁴⁰² Inmates at JCJ have several ways to report sexual victimization.⁴⁰³ They can contact employees, contractors, vendors, and volunteers either orally or in writing.⁴⁰⁴ The facility also has a tip line that inmates can use to relay information about sexual misconduct.⁴⁰⁵ When personnel at JCJ receive any information about an actual or threatened incident of sexual assault, sexual misconduct, or sexual contact, whether the alleged perpetrator is another inmate, an employee, or someone else, they should immediately notify an on-duty Detention Services Division supervisor of the alleged incident.⁴⁰⁶ JCSO may discipline employees who do not satisfy this reporting duty.⁴⁰⁷

Chief Mundell credited the JCJ's low incidence of sexual victimization to the facility's training programs for new and existing personnel.⁴⁰⁸ All newly hired Detention Services Division employees attend a training session that addresses issues involving sexual victimization.⁴⁰⁹ As part of in-service training, JCJ requires all existing employees to participate in at least one hour of training on sexual victimization issues.⁴¹⁰

b. Carrizales-Rucker Detention Center

i. Facility Description

The Carrizales-Rucker Detention Center (CRDC) is a direct-supervision facility with a capacity for 1700 inmates.⁴¹¹ Among the jails participating in the NIS-3, it is the facility with the highest proportion of Hispanic inmates; over 90% of the inmates at CRDC are of Hispanic origin.⁴¹² For the most part, CRDC holds nonviolent offenders who committed property and public-order offenses;⁴¹³ 89% of its inmates are classified as nonviolent, compared to 78% of inmates in jails nationwide.⁴¹⁴

⁴⁰¹ *Id.* at 321:12-16.

⁴⁰² *Id.* at 322:22-323:3.

⁴⁰³ *Id.* at 324:8-19.

⁴⁰⁴ *Id.* at 324:12-18.

⁴⁰⁵ *Id.* at 324:18-19.

⁴⁰⁶ *Id.* at 323:3-8.

⁴⁰⁷ *Id.* at 323:11-15.

⁴⁰⁸ *Id.* at 320:16-19, 325:22-326:13.

⁴⁰⁹ *Id.* at 326:1-4.

⁴¹⁰ *Id.* at 326:5-9.

⁴¹¹ Aug. 2014 Tr., C. Garza, 156:10-15.

⁴¹² Jan. 2014 Tr., A. Beck, 336:1-4.

⁴¹³ *Id.* at 339:8-10.

⁴¹⁴ *See id.* at 339:1-4.

ii. Explanation for Reported Low Incidence of Sexual Victimization

Cameron County Sheriff's Office (CCSO) Captain Carlos Garza attributed CRDC's low incidence of sexual victimization to the following factors: (1) the collaborative relationship between CRDC and the Cameron County District Attorney's Office, (2) the practice of assigning a criminal investigator to CRDC, (3) the facility's direct-supervision design, (4) the facility's leadership culture, and (5) a vigilant staff.⁴¹⁵

Captain Garza testified that CCSO communicates well with the local District Attorney's Office and has a good relationship with it.⁴¹⁶ He said that he had previously worked for the District Attorney's Office, and the experience was especially valuable because he learned how the District Attorney's Office operated and what it needed to prosecute a criminal case successfully.⁴¹⁷

Based on his tenure with the District Attorney's Office, Captain Garza assigned an investigator to CRDC and arranged for the District Attorney's Office to train him.⁴¹⁸ The investigator is responsible for overseeing criminal investigations.⁴¹⁹ When staff or inmates report a sexual assault, the investigator immediately launches the investigative process, interviewing witnesses, collecting evidence, and ensuring that CRDC staff protect the victim.⁴²⁰

Captain Garza attributed CRDC's low incidence of sexual victimization, at least in part, to the physical layout of the facility.⁴²¹ The jail has a new wing that consists of direct-supervision pods, which provide uninterrupted lines of sight for staff.⁴²²

CRDC also relies on its intake and classification processes to identify and make housing assignments for inmates who are at risk for either sexual victimization or sexual predation.⁴²³ The facility may place in administrative segregation inmates who pose a risk to other inmates.⁴²⁴

Captain Garza testified that the jail's administrators contributed to CRDC's record as a low-incidence facility.⁴²⁵ From his perspective, it is important for facility leadership to interact regularly with front-line staff and to provide them adequate training.⁴²⁶

⁴¹⁵ Aug. 2014 Tr., C. Garza, 157:14-158:10.

⁴¹⁶ *Id.* at 158:3-5.

⁴¹⁷ *Id.* at 158:5-15.

⁴¹⁸ *Id.* at 158:15-17.

⁴¹⁹ *Id.* at 157:14-15.

⁴²⁰ *Id.* at 157:18-158:2.

⁴²¹ *Id.* at 161:7-162:3.

⁴²² *Id.* at 161:12-19, 171:12-17; Lucio Test. at 1 (Aug. 28, 2014), <http://ojp.gov/reviewpanel/pdfs/SubmissionofOmarLucio.pdf>.

⁴²³ Lucio Test. at 1.

⁴²⁴ *Id.*

⁴²⁵ Aug. 2014 Tr., C. Garza, 170:14-16.

⁴²⁶ *Id.* at 170:16-171:6.

Captain Garza said that it is important for staff to be aware of their surroundings and to report any suspected sexual victimization.⁴²⁷ While inmates do have ways to report incidents, he said that he still relies on CRDC staff to flag any suspicious activity, including any changes in inmate behavior.⁴²⁸

2. High-Incidence Jails

a. Philadelphia City Riverside Correctional Facility

i. Facility Description

The Philadelphia City Riverside Correctional Facility (PRCF) is the Philadelphia Prison System's (PPS) female intake facility.⁴²⁹ The facility, which PPS opened in 2004, has a capacity of 768 inmates; its average daily population is approximately 800.⁴³⁰ PRCF has separate housing units for minimum, medium, and close-custody classifications.⁴³¹ The population at PRCF consists of pre-trial detainees and inmates whose sentences range from one day to two years.⁴³² Twelve percent of PRCF's inmates are seriously mentally ill, and nearly 30% of the facility's inmates have a behavioral health problem.⁴³³

PRCF is a direct-supervision facility⁴³⁴ and includes the following security staff: 205 officers, eighteen sergeants, eight lieutenants, three captains, two deputy wardens, and a warden.⁴³⁵ PRCF also has seven social work service managers and two social work supervisors.⁴³⁶

During calendar years 2011 and 2012, PRCF received twenty-five reports of sexual assault against twenty individual inmates.⁴³⁷ Multiple sources provided information about these reports, including inmates, security staff, and healthcare professionals.⁴³⁸ The facility identified five of the reports as having occurred before an inmate's admission; twelve reports alleged staff misconduct; and seven reports alleged inmate misconduct.⁴³⁹ One report did not identify the perpetrator.⁴⁴⁰ Eighteen of the twenty alleged victims received behavioral health services at the time they filed a report.⁴⁴¹ PRCF referred all of the cases to the Philadelphia Police Department

⁴²⁷ *Id.* at 171:20-172:1.

⁴²⁸ *Id.* at 172:1-8.

⁴²⁹ Giorla Test. at 1 (Jan. 8, 2014), <http://ojp.gov/reviewpanel/pdfs/WrittenTestimonyofLouisGiorlaandTerenceClark.pdf>.

⁴³⁰ *Id.*

⁴³¹ *Id.*

⁴³² *Id.*

⁴³³ *Id.*

⁴³⁴ *Id.*

⁴³⁵ *Id.*

⁴³⁶ *Id.*

⁴³⁷ *Id.* at 2.

⁴³⁸ *Id.*

⁴³⁹ *Id.*

⁴⁴⁰ *Id.*

⁴⁴¹ *Id.*

for criminal investigation.⁴⁴² Following these assault investigations, PRCF terminated the employment of one correctional officer.⁴⁴³ In addition, PRCF disciplined three correctional officers for fraternizing with inmates; two were dismissed while the third was reprimanded and reassigned to another facility.⁴⁴⁴

ii. Explanation for Reported High Incidence of Sexual Victimization

PRCF's leadership attributed the high incidence of sexual victimization to the type of inmates housed there. Mr. Louis Giorla, commissioner of PPS, testified that consistent with the *BJS Prisons and Jails Report*, the inmates at PRCF have characteristics that make them more susceptible to sexual victimization: all are female, many are violent offenders, and many experience psychological distress.⁴⁴⁵ He stated that during the NIS-3 survey period, the percentage of inmates at PRCF suffering a serious mental illness increased by more than one-third, and the number of inmates held for violent offenses increased significantly.⁴⁴⁶

Commissioner Giorla also commented on another facility within PPS, the Philadelphia City Industrial Correctional Center, which had a high rate of staff sexual misconduct,⁴⁴⁷ whereas PRCF had a high rate of inmate-on-inmate sexual victimization.⁴⁴⁸ Commissioner Giorla said that many staff members at the Philadelphia City Industrial Correctional Center share social or familial relationships with the inmates they supervise.⁴⁴⁹ Having so much in common with the inmates makes it difficult for the staff to maintain appropriate professional boundaries:

When you come to work and you look at a holding cell at people who came in overnight and one of those individuals may be the person who stole your car or somebody you went to high school with or somebody you even dated, it creates an uncomfortable situation for the officer. Sometimes it places them in an area of temptation that we don't like to acknowledge, and of course, our regulations prohibit.⁴⁵⁰

iii. Measures Taken to Reduce Sexual Victimization

Commissioner Giorla listed the measures PPS and PRCF have taken to reduce sexual victimization of inmates at PRCF. PPS added extensive video surveillance throughout the

⁴⁴² *Id.*

⁴⁴³ *Id.*

⁴⁴⁴ *Id.*

⁴⁴⁵ Jan. 2014 Tr., L. Giorla, 241:7-17.

⁴⁴⁶ *Id.* at 241:13-17.

⁴⁴⁷ *BJS Prisons and Jails Report*, at 13 tbl.4.

⁴⁴⁸ *Id.* at 12 tbl.3.

⁴⁴⁹ Jan. 2014 Tr., L. Giorla, 257:9-10.

⁴⁵⁰ *Id.* at 257:13-20.

facility, except in cells and shower areas.⁴⁵¹ Officers must tour all housing areas every thirty minutes.⁴⁵² Housing unit officers must keep all cells locked to prevent unauthorized persons from accessing them.⁴⁵³ PRCF has also developed a staffing schedule for housing areas to ensure that no male correctional officer works a shift without a female partner.⁴⁵⁴

Commissioner Giorla noted the steps that PRCF has taken to protect inmates with mental health problems. Behavioral health providers at the facility closely monitor inmates with diagnosed mental illness.⁴⁵⁵ The facility has an interdisciplinary treatment team that monitors, prepares, supervises, and enforces treatment plans for all seriously mentally ill inmates, and the team reviews each plan every thirty days.⁴⁵⁶ PRCF also has a behavioral health transition unit where licensed clinical social workers frequently meet with inmates and hold group sessions.⁴⁵⁷

Commissioner Giorla highlighted the changes that PRCF has made to comply with PREA's jail standards. The facility refers all sexual assault complaints to the local police for criminal investigation; it trains sexual assault nurse examiners, who are always either on duty or on call; and it refers all inmate victims of sexual assault to healthcare providers for emergency and follow-up mental health treatment.⁴⁵⁸

Under the emergency treatment model, a practicing clinician, a licensed clinical social worker, a psychologist, or a psychiatrist must meet with the inmate within four hours.⁴⁵⁹ While the inmate awaits this meeting, the facility places her under constant one-on-one supervision to mitigate the risk of suicide.⁴⁶⁰

Commissioner Giorla testified that PRCF is also revising its policies to include PREA-compliant language, conducting background investigations for volunteers, and adding PREA provisions in contracts with providers.⁴⁶¹ PRCF is requiring contractors to adhere to PREA's requirements by either amending existing contracts or entering new ones.⁴⁶²

⁴⁵¹ *Id.* at 241:18-22.

⁴⁵² *Id.* at 242:1-2.

⁴⁵³ *Id.* at 242:4-6.

⁴⁵⁴ *Id.* at 242:8-10.

⁴⁵⁵ *Id.* at 242:18-19.

⁴⁵⁶ *Id.* at 242:20-243:1.

⁴⁵⁷ Giorla Test. 3.

⁴⁵⁸ Jan. 2014 Tr., L. Giorla, 244:21-245:6.

⁴⁵⁹ *Id.* at 245:7-10.

⁴⁶⁰ *Id.* at 245:11-13.

⁴⁶¹ *Id.* at 246:6-11.

⁴⁶² *Id.* at 246:16-20.

b. Harris County Jail—1200 Baker Street Jail
i. Facility Description

With a capacity of 4253 inmates, the Harris County Jail (HCJ)—1200 Baker Street Jail is a six-story, maximum-security facility, which primarily serves male and female inmates with special needs.⁴⁶³ The population includes inmates with significant medical and mental health issues, as well as inmates requiring administrative separation, inmates participating in substance-abuse treatment programs, and inmates needing protective housing.⁴⁶⁴ HCSO may offer protective housing at the 1200 Baker Street Jail to inmates who are involved in a high-publicity case, inmates who are non-heterosexual, or inmates who face sex-offense charges involving a child.⁴⁶⁵

The 1200 Baker Street Jail includes a main medical clinic with six full-time employees, seven full-time contractors, five full-time nurse practitioners, thirteen psychiatrists, and more than 400 health service staff.⁴⁶⁶ The facility also operates a 100-bed infirmary.⁴⁶⁷

In 2012, the HCSO Office of Inspector General, Internal Affairs Division (IAD) completed an investigation that revealed that jail staff members had engaged in inappropriate sexual contact with female inmates in the laundry area of two HCJ facilities, including the 1200 Baker Street Jail.⁴⁶⁸ During the investigation, one employee resigned and another chose to retire; after the investigation, HCSO terminated the employment of five employees, including four civilian detention officers and a supervising deputy.⁴⁶⁹ IAD presented its investigative findings to the Harris County District Attorney's Office, which charged a former deputy with improper sexual activity with a person in custody.⁴⁷⁰

ii. Explanation for Reported High Incidence of Sexual Victimization

In his testimony, then-Sheriff Adrian Garcia⁴⁷¹ took exception to BJS' findings that HCJ had a high incidence of sexual victimization.⁴⁷² Sheriff Garcia suggested that BJS made the assumption that at least 65% of the inmates at the 1200 Baker Street Jail would participate in the

⁴⁶³ Jan. 2014 Tr., A. Garcia, 275:17-21.

⁴⁶⁴ *Id.* at 275:22-276:3.

⁴⁶⁵ *See id.* at 276:3-5.

⁴⁶⁶ *Id.* at 276:12-17.

⁴⁶⁷ *Id.* at 277:11-13.

⁴⁶⁸ Mike Glenn, *Deputy, Detention Officers Fired in Sex Probe at County Jail*, HOUSTON CHRON. (Oct. 6, 2012), <http://www.chron.com/news/houston-texas/article/Deputy-detention-officers-fired-in-sex-probe-at-3923526.php>.

⁴⁶⁹ *Id.*

⁴⁷⁰ *Id.*

⁴⁷¹ Sheriff Garcia announced his resignation on May 6, 2015. Dennis Spellman, *Adrian Garcia Resigns as Harris County Sheriff to Run for Houston Mayor*, COVERING KATY (May 6, 2015), <http://coveringkaty.com/2015/05/06/adrian-garcia-resigns-harris-county-sheriff-running-houston-mayor/>.

⁴⁷² Garcia Test. at 1 (Nov. 8, 2013), <http://ojp.gov/reviewpanel/pdfs/HCSOsResponsestoPanelQuestions.pdf>.

survey; however, only 58.3% of the inmates took the survey, which could have skewed the results.⁴⁷³

Sheriff Garcia also challenged the reliability of the anonymous inmate survey, as well as the validity of the survey's results.⁴⁷⁴ He asserted that inmates often make false claims and that BJS made no effort to test the accuracy of inmate responses to the survey.⁴⁷⁵ To support this position, Sheriff Garcia quoted the following excerpt from the *BJS Prisons and Jails Report*:

“Since participation in the survey is anonymous and reports are confidential, the survey does not permit any follow-up investigation or substantiation of reported incidents through review. Some allegations in the NIS-3 may be untrue. At the same time, some inmates may not report sexual victimization experienced in the facility, despite efforts of survey staff to assure inmates that their responses would be kept confidential. Although the effects may be offsetting, the relative extent of under reporting and false reporting in the NIS-3 is unknown.”⁴⁷⁶

Sheriff Garcia also asserted that the unique inmate demographics at the facility distorted the survey results.⁴⁷⁷ He noted that the *BJS Prisons and Jails Report* found that certain jail inmates reported higher rates of inmate-on-inmate sexual victimization than others.⁴⁷⁸ In particular, BJS identified women, inmates with serious psychological distress, and inmates who identified as other than heterosexual as being especially vulnerable.⁴⁷⁹ According to Sheriff Garcia, HCSO houses a significant number of these at-risk inmates at the 1200 Baker Street Jail.⁴⁸⁰ The facility houses approximately 93% of HCSO's female inmates, 75% of HCSO's non-heterosexual inmates, and all of HCSO's seriously mentally ill inmates.⁴⁸¹

iii. Measures Taken to Reduce Sexual Victimization

Sheriff Garcia provided information on HCSO's efforts to educate inmates and employees about PREA-related issues. HCSO developed an orientation video for inmates that addresses issues

⁴⁷³ Jan. 2014 Tr., A. Garcia, 283:6-11.

⁴⁷⁴ Garcia Test. at 2.

⁴⁷⁵ *Id.*

⁴⁷⁶ *Id.* (citing *BJS Prisons and Jails Report*, at 8). During the Panel's previous hearings on jails in September 2011, Dr. Beck acknowledged that the methodology that BJS uses in conducting inmate surveys cannot determine whether an inmate is lying, but it can determine whether an inmate's responses are consistent. Transcript of Record: Panel Hearings on Rape and Sexual Misconduct in U.S. Jails, A. Beck, 51:6-52:3 (Sept. 15, 2011), http://ojp.gov/reviewpanel/pdfs_sept11/transcript_091511.pdf. Given that BJS follows the same survey protocols in all facilities, Dr. Beck said, “[A]dministrators who come out with high rates should ask the question, why are their inmates more likely to lie than inmates elsewhere? And to ask themselves why those inmates may be lying while others are not.” *Id.* 52:4-8.

⁴⁷⁷ *See* Garcia Test. at 3.

⁴⁷⁸ *Id.*

⁴⁷⁹ *Id.* & nn.4-6 (citing *BJS Prisons and Jails Report*, at 6-7).

⁴⁸⁰ Garcia Test. at 3.

⁴⁸¹ *Id.*

regarding sexual assaults of inmates and inmate sexual activity, including its zero-tolerance approach to sexual conduct between inmates.⁴⁸² HCJ revised the section on sexual assault in its inmate handbook to add information on inmate rights, safety, criminal consequences, reporting sexual victimization, and health services.⁴⁸³

As part of its orientation training program for new employees, HCSO provides a two-hour overview on PREA, which includes a training video.⁴⁸⁴ Sheriff Garcia suggested that this video helped HCSO create a culture of PREA awareness by addressing PREA before employees even begin to work at HCJ.⁴⁸⁵ HCSO also requires all new detention officers to sign a form acknowledging they received the PREA policy.⁴⁸⁶

According to Sheriff Garcia, HCSO established a PREA compliance committee, which meets monthly to help HCSO come into full compliance with PREA's jail standards.⁴⁸⁷ As part of its PREA compliance efforts, HCSO created and implemented a staff sexual misconduct policy and a PREA policy. The staff sexual misconduct policy includes procedures for preventing, detecting, responding to, and investigating staff sexual misconduct.⁴⁸⁸ The purpose of the PREA policy is to demonstrate that HCSO is committed to complying fully with PREA's jail standards.⁴⁸⁹

The Bureau of Justice Assistance awarded HCSO a grant under its PREA demonstration projects program for \$237,000.⁴⁹⁰ HCSO plans to use the grant to collect data for a process-and-outcome evaluation of HCSO's PREA policy⁴⁹¹ and to fund victim advocates and counseling for LGBT inmates.⁴⁹²

HCJ created a toll-free telephone line for inmates to report sexual abuse, and it installed additional inmate surveillance cameras in the laundry, commissary, and kitchen areas.⁴⁹³

Sheriff Garcia testified that HCSO developed policies to ensure the safety of lesbian, gay, bisexual, transgender, and intersex (LGBTI) inmates, who are especially vulnerable to

⁴⁸² Jan. 2014 Tr., A. Garcia, 278:18-279:1.

⁴⁸³ *Id.* at 281:3-7.

⁴⁸⁴ *Id.* at 279:20-280:1.

⁴⁸⁵ *Id.* at 279:7-10.

⁴⁸⁶ *Id.* at 279:20-280:1.

⁴⁸⁷ *Id.* at 280:20-281:2.

⁴⁸⁸ *Id.*; HCSO Detention Command, *Staff Sexual Misconduct D-115* (2012), http://www.harriscountysoc.org/documents/PREA/HCSO_Staff_Sexual_Misconduct_Policy.pdf.

⁴⁸⁹ *Id.* 281: 11-16; HCSO Criminal Justice Command, *PREA-Prison Rape Elimination Act CJC-116* (2014), http://www.harriscountysoc.org/documents/PREA/HCSO_PREA_Policy.pdf.

⁴⁹⁰ *BJA Demonstration Sites*, NAT'L PREA RES. CTR., <http://www.prearesourcecenter.org/training-and-technical-assistance/bureau-of-justice-assistance-demonstration-sites> (last visited Mar. 1, 2016).

⁴⁹¹ Jan. 2014 Tr., A. Garcia, 281:17-19.

⁴⁹² *Id.* at 281:20-21.

⁴⁹³ *Id.* at 280:1-5.

victimization in correctional settings.⁴⁹⁴ HCSO's LGBTI policy describes how employees should interact with LGBTI inmates and emphasizes that HCSO has zero tolerance for staff mistreatment of LGBTI inmates or detainees.⁴⁹⁵ The policy instructs employees on how to conduct respectful strip searches of LGBTI inmates, and it provides guidance on developing appropriate training materials on LGBTI topics for HCSO employees, volunteers, and contractors.⁴⁹⁶

c. Baltimore City Detention Center
i. Facility Description

The Baltimore City Detention Center (BCDC) closed after the hearings.⁴⁹⁷ It was a state-run facility that had the capacity for approximately 3000 detainees and inmates.⁴⁹⁸ Males comprised most of the BCDC's detainee population, and approximately 600 correctional officers and staff worked at the facility.⁴⁹⁹

Between 2011 and 2012, MDPS' internal investigative unit (IIU) received reports of six sexual assaults at the facility.⁵⁰⁰ Two of these reports involved allegations of staff-on-inmate sexual assault. In one report, IIU sustained the allegations.⁵⁰¹ In the second report, IIU could not corroborate the allegations because neither party acknowledged the relationship, although IIU issued an administrative finding that the employee fraternized with the inmate.⁵⁰² The other four incidents involved alleged inmate-on-inmate sexual assaults.⁵⁰³ IIU classified two as unsubstantiated and two as unfounded.⁵⁰⁴

ii. Explanation for Reported High Incidence of Sexual Victimization

In his written testimony to the Panel, Mr. Gary Maynard, who was secretary of the Maryland Department of Public Safety and Correctional Services (MDPS) when the Panel selected BCDC

⁴⁹⁴ *Id.* at 265:11-16.

⁴⁹⁵ HCSO, Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) No. 413 (Nov. 13, 2013), http://www.harriscountysoc.org/documents/PREA/HCSO_LGBTI_Policy.pdf

⁴⁹⁶ *Id.*

⁴⁹⁷ On July 30, 2015, Maryland Governor Lawrence J. Hogan, Jr., announced the closure of BCDC. Justin Fenton, *Gov. Hogan Announces Immediate Closure of Baltimore Jail*, BALTIMORE SUN, July 30, 2015, <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-hogan-city-jail-20150730-story.html>. Since the announcement, MDPS moved all the inmates at BCDC to other facilities. Luke Broadwater, *Hogan Administration Moves Last Detainees out of Closed Baltimore Jail*, BALTIMORE SUN, Aug. 25, 2015, <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-bcdc-20150825-story.html>.

⁴⁹⁸ Jan. 2014 Tr., G. Hershberger, 295:1-4, 7-8.

⁴⁹⁹ *Id.* at 295:4, 13-14.

⁵⁰⁰ *Id.* at 295:20-22.

⁵⁰¹ *Id.* at 296:1-4.

⁵⁰² *Id.* at 296:4-8.

⁵⁰³ *Id.* at 296:9-10.

⁵⁰⁴ *Id.* at 296:10-11.

for its hearings on high-incidence jails,⁵⁰⁵ attributed BCDC's elevated rate of sexual victimization to the facility's physical layout.⁵⁰⁶ The facility dated back to 1859, and its architecture did not allow effective supervision of inmates based on modern correctional principles.⁵⁰⁷ Correctional officers did not have clear sightlines of inmates.⁵⁰⁸ According to Secretary Maynard, these design flaws led "to increased opportunity for sexual assaults."⁵⁰⁹ Secretary Maynard also explained that BCDC was one of the busiest metropolitan jails in the United States, with thousands of individuals entering and leaving the facility each year.⁵¹⁰ As a result, employees could not control where they placed inmates and could not readily identify threats; both of these factors heightened inmates' risk of harm.⁵¹¹

In his oral testimony to the Panel, Mr. Gregg Hershberger, who was secretary of MDPS when the Panel held hearings on BCDC,⁵¹² stated that BCDC had various staffing challenges. Many of the employees at BCDC knew the detainees they supervised.⁵¹³ The facility also unknowingly hired gang members who did not have a criminal record.⁵¹⁴ For four years, BCDC also hired entry-level correctional officers who were eighteen-years old.⁵¹⁵ From Secretary Hershberger's perspective, given a correctional officer's duties, the facility should not have hired candidates who were so young.⁵¹⁶

Secretary Hershberger discussed the work of the Maryland Prison Task Force,⁵¹⁷ which resulted in federal indictments of thirty-two MDPS correctional officers.⁵¹⁸ The United States charged these defendants with conspiring to operate the Black Guerilla Family (BGF) street gang from inside correctional facilities, including BCDC.⁵¹⁹ According to a search warrant affidavit in the

⁵⁰⁵ Secretary Maynard announced his resignation on December 10, 2013. John Wagner, *O'Malley's Corrections Secretary stepping down after seven years to take private job*, WASH. POST, Dec. 10, 2013, http://www.washingtonpost.com/local/md-politics/omalley-s-corrections-secretary-stepping-down-after-seven-years-to-take-private-job/2013/12/10/7714d64e-61ea-11e3-bf45-61f69f54fc5f_story.html.

⁵⁰⁶ Maynard Test. at 2 (Oct. 7, 2013), <http://ojp.gov/reviewpanel/pdfs/WrittenTestimonyofMDPSCS.pdf>.

⁵⁰⁷ *Id.*

⁵⁰⁸ *Id.*

⁵⁰⁹ *Id.*

⁵¹⁰ *Id.*

⁵¹¹ *Id.*

⁵¹² On December 5, 2014, Secretary Hershberger retired as Secretary of MDPS. *Gregg Hershberger*, CORR. NEWS, Dec. 9, 2014, <http://www.correctionalnews.com/articles/2014/12/9/gregg-hershberger>.

⁵¹³ Jan. 2014 Tr., G. Hershberger, 302:21-303:1.

⁵¹⁴ *Id.* at 302:22-303:3.

⁵¹⁵ *Id.* at 305:2-4.

⁵¹⁶ *Id.* at 305:7-8.

⁵¹⁷ The Maryland Prison Task Force is a collaboration between the Maryland Department of Public Safety and Correctional Services and the U.S. Attorney for the District of Maryland, the FBI, the Maryland State Police, the Baltimore City Police Department, and other federal, state, and local partners. *Id.* at 300:11-15.

⁵¹⁸ *Id.* at 300:7-11; *see also* Hershberger Test. at 4 (Jan. 8, 2014), <http://ojp.gov/reviewpanel/pdfs/WrittenTestimonyofGreggHershberger.pdf>.

⁵¹⁹ Press Release, Federal Bureau of Investigation, Baltimore Division, Nineteen New Defendants, Including Fourteen Correctional Officers, Indicted on Charges of Federal Racketeering in Baltimore City Jail Investigations (Nov. 21, 2013), <https://www.fbi.gov/baltimore/press-releases/2013/nineteen-new-defendants-including-14-correctional-officers-indicted-on-charges-of-federal-racketeering-in-baltimore-city-jail-investigation>.

case, the BGF inmates and correctional officers operated a criminal organization within the facility, enabling them to make large amounts of money through drug trafficking, robbery, assault, extortion, bribery, witness retaliation, money laundering, and obstruction of justice.⁵²⁰ BGF members and associates used the money to bribe correctional officers and other employees at BCDC to smuggle into the facility drugs, cell phones, and other contraband.⁵²¹ BGF members recruited correctional officers through personal and often sexual relationships.⁵²²

iii. Measures Taken to Reduce Sexual Victimization

Secretary Hershberger identified several measures MDPS has taken to reduce inmate sexual victimization, including progress in implementing PREA's jail standards.⁵²³ According to the Secretary, MDPS has achieved compliance with most of the PREA standards.⁵²⁴ For instance, MDPS created a PREA telephone hotline for inmates, where they can leave a message for an external rape crisis center.⁵²⁵ MDPS also relies on its IIU to investigate any report of alleged sexual assault by a staff member or an inmate.⁵²⁶ IIU consists of police officers and detectives who received specialized training on how to respond to sexual assaults.⁵²⁷ When detectives join IIU and during in-service training, they also receive training on PREA.⁵²⁸

Secretary Hershberger spoke about the steps MDPS took to protect inmates from harm at BCDC prior to its closing. MDPS made changes to BCDC's camera system.⁵²⁹ Under the updated system, the facility could record and maintain for at least forty-five days high definition digital surveillance.⁵³⁰ Secretary Hershberger reported that at the time of the hearing, BCDC had more than 280 cameras monitoring the facility.⁵³¹ BCDC also sought to improve its ability to detect contraband and to identify visitors who should not enter the facility. Each day, correctional officers performed random searches of thirty staff and thirty cells.⁵³² To avoid undue familiarity among staff members, MDPS regularly rotated from one institution to another the staff members at the front entrance who are responsible for searching employees as they come into the facility.⁵³³ MDPS also appointed new leadership for BCDC and deployed live-scan fingerprint devices to identify any visitors with pending warrants.⁵³⁴

⁵²⁰ *Id.*

⁵²¹ *Id.*

⁵²² *Id.*

⁵²³ Jan. 2014 Tr., G. Hershberger, 298:20-22.

⁵²⁴ *Id.* at 299:1-2.

⁵²⁵ *Id.* at 296:18-22.

⁵²⁶ *Id.* at 297:16-19.

⁵²⁷ *Id.* at 297:19-22.

⁵²⁸ *Id.* at 298:1-3.

⁵²⁹ *Id.* at 300:21-22.

⁵³⁰ *Id.* at 300:22-301:2.

⁵³¹ *Id.* at 301:2-3.

⁵³² *Id.* at 301:7-8.

⁵³³ *Id.* at 301:11-13.

⁵³⁴ *Id.* at 301:14-18.

3. Supporting Jails in Complying with PREA

The Panel invited Chief Custody Deputy Estéban Gonzalez from the Onondaga County, New York, Sheriff's Office, who was president of the American Jail Association (AJA) at the time of the hearings, to discuss how AJA supports jail administrators and correctional officers in their efforts to implement PREA.⁵³⁵ AJA is a national nonprofit organization that supports professionals who operate jails in the United States,⁵³⁶ and it focuses on issues specific to the operations of local correctional facilities.⁵³⁷ It carries out its mission through training, which it provides at conferences and workshops, and through its magazine, *American Jails*.⁵³⁸

Chief Gonzalez summarized AJA's efforts to support jails as they implement PREA's jail standards. After the Justice Department published the standards, AJA sponsored a free webinar about them.⁵³⁹ AJA has also sponsored seminars and training workshops on PREA.⁵⁴⁰ In 2013, for instance, AJA sponsored six regional PREA-related workshops.⁵⁴¹ At AJA's annual training conference, it co-sponsored a two-day session on PREA with the PREA Resource Center.⁵⁴² AJA's website also seeks to provide timely information to the jail community about PREA's jail standards.⁵⁴³

Chief Gonzalez said there were a number of effective ways for jails to protect inmates who may either have mental health problems or identify as non-heterosexual.⁵⁴⁴ He said that jails should use a behavior-based, objective classification system to determine where to house inmates.⁵⁴⁵ Under such a system, intake personnel ask inmates questions that seek to measure their susceptibility to harm, based on several risk factors.⁵⁴⁶ If an inmate's responses to the questions suggest the inmate may become a victim, based on the weight the objective system places on those responses,⁵⁴⁷ then the jail could place the inmate in protective custody, recognizing that it should continue to give the inmate the same rights and opportunities it extends to other inmates.⁵⁴⁸ Once it makes an initial classification decision, a jail should periodically revisit the issue of whether the inmate is housed in the most appropriate location.⁵⁴⁹ To protect especially vulnerable inmates from harm, Chief Gonzalez also encouraged jails to use a direct-supervision

⁵³⁵ See Jan. 2014 Tr., E. Gonzalez, 191:6-8.

⁵³⁶ *Id.* at 190:10-12.

⁵³⁷ *Id.* at 190:12-15.

⁵³⁸ *Id.* at 190:16-22.

⁵³⁹ *Id.* at 191:9-13.

⁵⁴⁰ *Id.* at 193:10-13.

⁵⁴¹ *Id.* at 193:11.

⁵⁴² *Id.* at 194:1-3.

⁵⁴³ *Id.* at 194:7-9.

⁵⁴⁴ *Id.* at 195:20-22.

⁵⁴⁵ *Id.* at 196:1-2.

⁵⁴⁶ *Id.* at 196:2-5, 196:21-197:9.

⁵⁴⁷ *Id.* at 197:16-198:4.

⁵⁴⁸ *Id.* at 196:6-17.

⁵⁴⁹ *Id.* at 196:18-20.

model of inmate monitoring, which means that correctional officers are always present in inmate housing areas and can readily observe inmate behavior.⁵⁵⁰

4. Protecting LGBTI Inmates

The Panel invited Professor Giovanna Shay to testify on how prisons and jails can protect LGBTI inmates from sexual victimization. Professor Shay is a professor of law at Western New England School of Law in Springfield, Massachusetts, where she teaches criminal law and post-conviction rights.⁵⁵¹ She was also co-chair of the American Bar Association's Corrections Committee.⁵⁵²

In testifying about protecting non-heterosexual inmates, Professor Shay discussed (1) some of the limitations of the NIS-3 in collecting data on transgender inmates, (2) PREA jail standards,⁵⁵³ and (3) the implementation of those standards.⁵⁵⁴

First, Professor Shay discussed BJS' efforts to evaluate the sexual victimization of transgender inmates. Although relatively few transgender inmates are in prisons and jails, they are uniquely vulnerable to sexual abuse.⁵⁵⁵ While the *BJS Prisons and Jails Report* included statistics on non-heterosexual inmates (i.e., those who were gay and bisexual), it did not provide data on the victimization of transgender inmates.⁵⁵⁶ The NIS-3 asked inmates the question, "Are you male, female, or transgender?"⁵⁵⁷ Only a few individuals selected "transgender" in response to this question, which prevented BJS from being able to draw statistically significant conclusions about the vulnerability of transgender inmates.⁵⁵⁸ Professor Shay encouraged BJS to take steps to avoid undercounting transgender inmates in administering the next national inmate survey.⁵⁵⁹ She recommended that BJS include two questions that elicit information about transgender inmates: one question would focus on an inmate's gender identity (i.e., male, female, or other), while the second question would specifically ask about an inmate's transgender or intersex status.⁵⁶⁰

Next, Professor Shay discussed how PREA standards protect non-heterosexual inmates. Many of the standards protect all inmates, and as a result, they protect non-heterosexual inmates, who

⁵⁵⁰ *Id.* at 198:5-19.

⁵⁵¹ Shay Test. at 1 (Nov. 7, 2013), <http://ojp.gov/reviewpanel/pdfs/Written%20TestimonyofGiovannaShay.pdf>.

⁵⁵² Jan. 2014 Tr., G. Shay, 203:3-7.

⁵⁵³ 28 C.F.R. pt. 115, subpt. A (2015) (Standards for Adult Prisons and Jails).

⁵⁵⁴ Jan. 2014 Tr., G. Shay, 204:15-19, 205:3-14.

⁵⁵⁵ *Id.* at 206:14-17.

⁵⁵⁶ *Id.* at 206:2-5.

⁵⁵⁷ *Id.* at 206:11-12 (quoting the NIS-3 questionnaire); see BJS, NIS-3 para. D2 (Feb. 26, 2013), http://www.bjs.gov/content/pub/pdf/nis_acasi_spec_12.pdf.

⁵⁵⁸ Jan. 2014 Tr., G. Shay, 206:6-10.

⁵⁵⁹ *Id.* at 207:13-20.

⁵⁶⁰ Shay Test. at 3-4.

are at higher risk for sexual victimization than other inmates.⁵⁶¹ The standards require agencies to adopt a zero-tolerance policy toward all forms of sexual abuse and harassment, to investigate allegations of prison sexual violence, to train staff on the PREA standards, to discipline wrongdoers, and to provide medical and mental healthcare for survivors of sexual abuse.⁵⁶² The standards also include provisions that specifically protect non-heterosexual inmates from harm. The standards address screening non-heterosexual inmates based on vulnerability to sexual violence, assessing the use of LGBT-dedicated units, avoiding isolation, making case-by-case housing determinations for transgender and intersex inmates, and conducting appropriate strip and body-cavity searches.⁵⁶³

The PREA standards require correctional institutions to screen inmates upon intake for heightened risk of sexual abuse.⁵⁶⁴ As part of this initial assessment, intake personnel should consider whether the inmate is or is perceived to be LGBTI or gender nonconforming.⁵⁶⁵ They should use this information in making housing, work, education, and program assignments, with the goal of preventing victimization; the staff should also periodically reassess these assignments.⁵⁶⁶

The PREA standards prohibit facilities from housing LGBT inmates in separate, dedicated units unless there is a “consent decree, a legal settlement, or a legal judgment for the purpose of protecting such inmates.”⁵⁶⁷ Professor Shay testified that this safeguard is important because “gay” units sometimes have been used to stigmatize prisoners who are or who are perceived to be gay or gender nonconforming.⁵⁶⁸

Professor Shay explained that jails cannot rely solely on holding non-heterosexual inmates in long-term isolation to “protect” them.⁵⁶⁹ The PREA standards require that facilities use involuntary segregated housing to protect an inmate “only when there are ‘no available alternative means’ of separating the inmate from likely abusers.”⁵⁷⁰ The standards further provide that facilities cannot involuntarily segregate inmates for more than thirty days without reassessing the inmate’s placement, and prisoners in segregation must have access to programs, work, and educational opportunities.⁵⁷¹

The PREA standards provide that “correctional personnel should make ‘case-by-case’ decisions about whether a transgender inmate will be housed in a facility designated for men or women,

⁵⁶¹ *Id.* at 4.

⁵⁶² *Id.* at 5 (citing 28 C.F.R. § 115.21-22, .31, .71-73, .76-78, .81-83).

⁵⁶³ *Id.* at 5-6.

⁵⁶⁴ *Id.* at 5.

⁵⁶⁵ *Id.* at 5 (citing 28 C.F.R. § 115.41(d)(7)).

⁵⁶⁶ *Id.* (citing 28 C.F.R. §§ 115.41(f)-(g), .42(a)).

⁵⁶⁷ *Id.* (citing 28 C.F.R. § 115.42(g)).

⁵⁶⁸ *Id.*

⁵⁶⁹ *Id.* at 6.

⁵⁷⁰ *Id.* (citing 28 C.F.R. § 115.43(a)).

⁵⁷¹ *Id.* (citing 28 C.F.R. § 115.43(b), (c)).

taking into account whether the ‘placement would ensure the inmate’s health and safety and whether the placement would present management and security problems.’”⁵⁷² Under the standards, staff should seriously consider an inmate’s views about safety in deciding whether to house the inmate in a male or female facility,⁵⁷³ and staff should reassess the inmate’s housing arrangements at least twice a year.⁵⁷⁴ The standards also instruct facilities to permit transgender and intersex prisoners to shower separately from other inmates.⁵⁷⁵

The standards also place limits on correctional staff in conducting strip and body cavity searches. In particular, they forbid searches of transgender and intersex inmates for the “‘sole purpose of determining an inmate’s genital status,’ and require that all searches of trans[gender] prisoners be conducted in a ‘professional and respectful’ manner, and in the ‘least intrusive manner possible.’”⁵⁷⁶ The standards further forbid personnel from conducting cross-gender strip and body-cavity searches, except in exigent circumstances, and they provide a phased-in ban on cross-gender pat searches of adult female inmates in prisons and jails.⁵⁷⁷

Professor Shay concluded her testimony by discussing system and facility implementation of the PREA standards. She stated that, although the standards are “an important tool to end sexual victimization,” they will only be effective if prisons and jails properly implement them.⁵⁷⁸ From her perspective, implementing the standards in jails can be challenging, in part because local jails, unlike state prisons, may not face the prospect of losing federal funding if they fail to comply with the standards.⁵⁷⁹ To achieve PREA compliance, jails must focus on changing the culture at their facilities.⁵⁸⁰ Jail leaders should educate staff about the need to ensure safety and respect for LGBT inmates.⁵⁸¹ “Using detainees’ and prisoners’ preferred names and pronouns, as well as speaking and referring to LGBT inmates with respect, can contribute to a safer culture in a correctional facility.”⁵⁸²

5. Observations

A summary of the reasons that selected jail administrators offered for having either a low or a high incidence of sexual victimization in their facilities appears in Table B.⁵⁸³

⁵⁷² *Id.* (citing 28 C.F.R. § 115.42(c)).

⁵⁷³ *Id.* (citing 28 C.F.R. § 115.42(e)).

⁵⁷⁴ *Id.* (citing 28 C.F.R. § 115.42(d)).

⁵⁷⁵ *Id.* (citing 28 C.F.R. § 115.42(f)).

⁵⁷⁶ *Id.* (citing 28 C.F.R. § 115.15(e), (f)).

⁵⁷⁷ *Id.* at 6-7 (citing 28 C.F.R. § 115.15(a), (b)).

⁵⁷⁸ *Id.* at 7.

⁵⁷⁹ *Id.*; Jan. 2014 Tr., G. Shay, 213:22-214:9.

⁵⁸⁰ Shay Test. at 7.

⁵⁸¹ *Id.*

⁵⁸² *Id.*

⁵⁸³ *See supra* p. ix.

Similar to the prisons, the testimony concerning the selected jails supported certain practices that prevent or reduce sexual victimization, including strong PREA-compliant policies, in-house procedures for reporting improper or potentially improper behavior, effective training programs for both inmates and staff on preventing sexual victimization, and leadership that promotes an institutional culture of zero tolerance toward sexual mistreatment of inmates.

Jails that house high-risk populations (e.g., women, inmates with psychological disorders, non-heterosexuals) are also particularly prone to having higher rates of inmate sexual victimization.

As the Panel has heard from many other administrators of correctional facilities, the design of a facility can have a significant impact on inmate safety.⁵⁸⁴ CRDC administrators noted that the facility, which allows for direct supervision of inmates, was an important factor in preventing sexual victimization. From another perspective, BCDC administrators confirmed the relationship between jail design and the rate of inmate sexual victimization. They testified that the outdated jail, built more than a century ago with no clear sight lines, contributed to the culture of sexual misconduct that pervaded the facility.

A notable practice that the low-incidence jails shared was their vigorous prosecution of sex crimes that targeted jail inmates, regardless of whether the perpetrators were staff or other inmates. CRDC, one of the low-incidence facilities, developed a close working relationship with a local district attorney's office, even having a trained investigator within the jail.

A problem that both PRCF and PPS acknowledged was having staff members who struggled to maintain professional boundaries in supervising inmates who came from their communities and shared a common background. Although rigorous staff training may address part of the problem, jail administrators acknowledged that the geographic constraints for recruitment are among the factors that make it difficult for staff to maintain professional boundaries.

6. Recommendations

The Panel encourages all jail administrators, even those who may not be subject to the sanctions of PREA, to comply with PREA standards.

The Panel supports the AJA's efforts to assist jail administrators in protecting vulnerable inmates, especially by encouraging jails to implement an objective classification system that identifies inmates who are particularly at risk, such as inmates who have a mental illness or inmates who identify as other than heterosexual. Consistent with the Panel's past reports and the AJA's perspective, the Panel encourages all who are responsible for the design and supervision of jails to adopt, to the extent that it is practicable, a direct-supervision model.

The Panel encourages jail administrators and local prosecutors to work more closely with each other in investigating sexual assaults against jail inmates and then bringing the cases to trial. The

⁵⁸⁴ See Review Panel on Prison Rape, *Report on Sexual Victimization in Prisons and Jails* 84 (Apr. 2012), http://ojp.gov/reviewpanel/pdfs/prea_finalreport_2012.pdf; but see *supra* p. 40 & note 435 (having a direct-supervision facility alone does not prevent a high rate of inmate sexual victimization).

example of CRDC provides one model that other jails might consider: placing a criminal investigator in the jail who has received appropriate training from the local prosecutor's office to conduct sound investigations of inmate sexual victimization.

The Panel recommends that BJS consider Professor Shay's testimony and revise its instrument for future data collection under PREA to capture more accurate information on transgender inmates.

C. Juvenile Correctional Facilities

1. Low-Incidence Facilities

a. Owensboro Treatment Center

i. Facility Description

The Kentucky Department of Juvenile Justice (DJJ) administers the Owensboro Treatment Center (OTC), located in Owensboro, Kentucky. OTC is a thirty-bed, secure, residential, sex-offender treatment facility with forty full-time staff members.⁵⁸⁵ The facility serves boys ages fourteen to twenty who have been adjudicated delinquent.⁵⁸⁶ The treatment program lasts one year and six months.⁵⁸⁷ The Davis County, Kentucky, Public School system runs a school program that the youth attend daily.⁵⁸⁸

ii. Explanation for Reported Low Incidence of Sexual Victimization

In his testimony, then-Commissioner A. Hasan Davis⁵⁸⁹ said that PREA has been a catalyst for improving DJJ's operations and the level of care it provides to youth in its custody.⁵⁹⁰ From his perspective, PREA has enabled him to examine how the youth coming into DJJ have been harmed and how the agency could better serve them.⁵⁹¹

In written and oral testimony to the Panel, Commissioner Davis identified several factors that contributed to the low incidence of sexual victimization at OTC. In particular, Commissioner Davis highlighted DJJ's and OTC's contributions to research on sexual victimization in confinement, the PREA training they provide to staff and youth, their zero-tolerance policy on sexual victimization, the caliber of their personnel, and the number and nature of staff interactions with youth; he also noted OTC's low staff-to-youth ratio and its video monitoring system.

On a system-wide level, Commissioner Davis emphasized DJJ's participation in PREA-related research and training since 2003.⁵⁹² In 2005, juvenile justice staff from Kentucky, West Virginia, and Indiana participated in a study that the National Institute of Corrections (NIC) and Dr. James Wells, professor in the Department of Criminal Justice at Eastern Kentucky University, Richmond, Kentucky, conducted on staff perspectives on sexual violence in the workplace.⁵⁹³ Also in 2005, NIC provided technical assistance on PREA to all superintendents of DJJ facilities.⁵⁹⁴ In 2005, the Washington College of Law at American University provided training on management and operational practices that address staff sexual misconduct involving

⁵⁸⁵ G. Peter Zeegers, *Final Owensboro Treatment Center PREA Audit Report 2* (May 23, 2015), <http://djj.ky.gov/PREA%20Facility%20Reports/Owensboro%20Treatment%20Center.pdf>.

⁵⁸⁶ *Id.*

⁵⁸⁷ *Id.*

⁵⁸⁸ *Id.*

⁵⁸⁹ The current commissioner of DJJ is Mr. Bob D. Hayter. *Commissioner Bob D. Hayter*, KY. DEP'T OF JUV. JUST., <http://djj.ky.gov/Pages/default.aspx> (last visited Mar. 1, 2016).

⁵⁹⁰ See Jan. 2014 Tr., A. H. Davis, 538:5-7.

⁵⁹¹ *Id.* at 538:7-18.

⁵⁹² *Id.* at 532:4-11.

⁵⁹³ *Id.* at 532:11-16.

⁵⁹⁴ *Id.* at 532:17-19.

youth in custody.⁵⁹⁵ In 2006, NIC conducted a forum for all DJJ private providers of juvenile care services; Commissioner Davis believes this was the first PREA-specific training for private providers of juvenile care services in the nation.⁵⁹⁶ DJJ also began consulting with the Ohio Department of Youth Services, which many recognized at the time as being the most proactive state juvenile justice agency in PREA implementation.⁵⁹⁷ From 2005 through 2013, DJJ staff conducted and participated in numerous additional PREA-related training programs.⁵⁹⁸ In 2013, DJJ developed and implemented a vulnerability assessment that it administers to each adjudicated youth entering a DJJ residential facility.⁵⁹⁹

In 2013, DJJ contracted with The Moss Group, Inc., an independent consulting firm with expertise in implementing PREA standards, to obtain an “in-depth assessment” of DJJ that will allow DJJ to produce a strategic plan.⁶⁰⁰ The plan will focus on DJJ’s continued implementation of PREA, including the development of a curriculum for agency-wide specialized PREA training.⁶⁰¹

According to Commissioner Davis, an especially effective component of OTC’s training program provides information to facility managers about how to assist front-line staff establish appropriate boundaries with youth.⁶⁰² Through this training, managers learn how to identify and assist staff members who may have difficulty establishing professional relationships and appropriate boundaries with residents.⁶⁰³ As part of this training, the trainers discuss national statistics on the sexual victimization of youth in custody and DJJ’s experiences with misconduct by female staff against youth.⁶⁰⁴

Commissioner Davis cited DJJ’s zero-tolerance policy as an important factor in the low rate of sexual victimization at OTC.⁶⁰⁵ Facility leadership continuously reinforces the importance of this policy to staff and youth.⁶⁰⁶ DJJ created an integrated system of communication, which enables DJJ to emphasize its zero-tolerance policy in numerous settings—to staff during regular meetings, to youth during intake and in weekly individual and group counseling sessions, and to staff and youth in monthly treatment team meetings.⁶⁰⁷

Commissioner Davis identified OTC’s experienced staff as being another key to the facility’s low incidence of sexual victimization.⁶⁰⁸ He said that a “[h]igh-caliber management staff” plays

⁵⁹⁵ *Id.* at 532:19-533:1.

⁵⁹⁶ *Id.* at 533:16-19.

⁵⁹⁷ *Id.* at 533:19-534:1.

⁵⁹⁸ See Davis Test. at 2-3 (Jan. 9, 2014), <http://ojp.gov/reviewpanel/pdfs/WrittenTestimonyofAHasanDavis.pdf>.

⁵⁹⁹ Jan. 2014 Tr., A. H. Davis, 535:20, 536:6-8.

⁶⁰⁰ Davis Test. at 3; Jan. 2014 Tr., A. H. Davis, 537:9-16.

⁶⁰¹ Davis Test. at 3; Jan. 2014 Tr., A. H. Davis, 532:9-16.

⁶⁰² Davis Test. at 5.

⁶⁰³ *Id.*

⁶⁰⁴ *Id.*

⁶⁰⁵ *Id.* at 4.

⁶⁰⁶ *Id.*

⁶⁰⁷ *Id.* at 4-5.

⁶⁰⁸ *Id.* at 4.

a crucial role in creating and maintaining a professional environment at OTC.⁶⁰⁹ This management staff provides the “leadership, guidance, and accountability” essential to a PREA-compliant facility and work environment.⁶¹⁰

In his oral testimony, then-Superintendent Tim A. Corder⁶¹¹ explained that when he became superintendent in 2004, he realized he had to overhaul the culture of the institution.⁶¹² He set about changing the culture of the facility by setting a clear example that the facility would address, rather than ignore, problems that arise.⁶¹³ As part of this realigned management approach, he let go some staff members, while others resigned.⁶¹⁴ Several experienced supervisors remained at OTC and adopted his management philosophy of transparency.⁶¹⁵ Ultimately, this philosophy trickled down from the facility’s senior leadership to the front-line staff who work directly with youth.⁶¹⁶

OTC also improved the number of interactions between staff and youth and the quality of staff supervision of youth. Superintendent Corder told the Panel that OTC had three cottages, each of which had a glass-walled room where front-line staff stationed themselves.⁶¹⁷ When in these rooms, the staff had a limited ability to see or hear what was happening beyond the glass walls.⁶¹⁸ Superintendent Corder moved the staff from these isolated rooms to other areas of the cottages where they could interact directly with the youth and gain a better sense of what was occurring.⁶¹⁹ Superintendent Corder said he also found that staff spent a lot of time “sitting around,” so he instructed supervisors and front-line staff to make rounds at different times and at irregular intervals; the change increased staff interactions with youth, eliminated predictable monitoring schedules, and decreased opportunities for sexual victimization.⁶²⁰

In his written testimony, Commissioner Davis cited the low staff-to-youth ratio as a “major contributor” to the low incidence of sexual victimization at the facility.⁶²¹

Finally, Commissioner Davis noted that the facility’s video monitoring equipment is a crucial tool to combat sexual victimization at OTC.⁶²² The facility’s use of video monitoring allows personnel to review all youth and staff movement and activity.⁶²³ Commissioner Davis stated

⁶⁰⁹ *Id.*

⁶¹⁰ *Id.*

⁶¹¹ The current superintendent of OTC is Mr. Curtis Fincher. *DJJ Organizational Chart*, KY. DEP’T OF JUV. JUST., <http://djj.ky.gov/Pages/Our-Staff.aspx> (last visited Mar. 1, 2016).

⁶¹² Jan. 2014 Tr., T. Corder, 541:2-18.

⁶¹³ *See id.* at 541:19-22.

⁶¹⁴ *Id.* at 541:18-19.

⁶¹⁵ *See id.* at 542:3-8.

⁶¹⁶ *See id.* at 541:22-542:2.

⁶¹⁷ *Id.* at 542:8-11.

⁶¹⁸ *Id.* at 542:11-12.

⁶¹⁹ *Id.* at 542:12-15.

⁶²⁰ *Id.* at 542:16-543:6; Davis Test. at 5.

⁶²¹ Davis Test. at 5.

⁶²² *Id.*

⁶²³ *Id.*

that monitoring and resolving minor problems that occur at OTC prevent them from worsening.⁶²⁴

b. Grand Mesa Youth Services Center
i. Facility Description

The Colorado Division of Youth Corrections' (CDYC) Grand Mesa Youth Services Center (GMYSC) is a sixty-seven bed, co-ed, secure facility.⁶²⁵ It provides detention, commitment, and regional assessment services for six of Colorado's twenty-two judicial districts.⁶²⁶ The facility's detention unit includes youth who are awaiting court appearances and youth who are serving short-term, court-imposed sentences.⁶²⁷

In his written testimony, Mr. Jon Gomez, director of CDYC, described some of the services GMYSC provides to detained and committed youth. Youth can access education programs, clinical services, recreational activities, healthy living programs, and transition services.⁶²⁸ Youth participate in cognitive behavioral programs designed to teach various social skills, including positive thinking, anger management, improved decision making, and empathy.⁶²⁹ They also participate in psycho-educational groups that seek to promote victim empathy, independent living, and goal setting.⁶³⁰ The facility staff also administers mental health assessments to youth and provides crisis management counseling to them.⁶³¹

ii. Explanation for Reported Low Incidence of Sexual Victimization

Director Gomez stated that after DOJ issued the PREA standards for juvenile correctional facilities, CDYC conducted an assessment to determine which standards it did and did not satisfy.⁶³² In response to that assessment, CDYC created and filled a coordinator position that is responsible for statewide compliance with PREA standards.⁶³³ CDYC also continues to assess, develop, and implement practices for the PREA standards that it has not yet adopted.⁶³⁴

CDYC Associate Director Anders Jacobson attributed the low incidence of victimization at GMYSC to the facility's implementation of a state law governing sexual assault prevention and its ongoing efforts to develop a culture that does not tolerate sexual victimization of youth.⁶³⁵

⁶²⁴ *Id.*

⁶²⁵ Jan. 2014 Tr., A. Jacobson, 553:21-22.

⁶²⁶ *Id.* at 554:1-6.

⁶²⁷ Gomez Test. at 2 (Jan. 9, 2014), <http://ojp.gov/reviewpanel/pdfs/WrittenTestimonyofJohnGomez.pdf>.

⁶²⁸ *Id.*

⁶²⁹ *Id.*

⁶³⁰ *Id.*

⁶³¹ *Id.*

⁶³² *Id.* at 5.

⁶³³ *Id.*

⁶³⁴ *Id.*

⁶³⁵ Jan. 2014 Tr., A. Jacobson, 554:11-16, 556:14-21.

In response to PREA, the Colorado General Assembly enacted the Detention Sexual Assault Prevention Program,⁶³⁶ which required CDYC to design its own sexual assault prevention program.⁶³⁷ In response to this mandate, CDYC created a workgroup to research, develop, and implement policies and procedures to prevent sexual assault of confined youth.⁶³⁸ As part of its sexual assault prevention program, the CDYC issued policies to identify, monitor, counsel, and track juveniles who may have a “propensity to perpetuate sexual abuse or who may be vulnerable to sexual victimization.”⁶³⁹ CDYC also developed a training program for CDYC employees, contractors, volunteers, and individuals providing services at the facility on recognizing abuse and responding appropriately to it.⁶⁴⁰

Associate Director Anderson noted that a significant element of CDYC’s culture is its attention to a “continuum of care.”⁶⁴¹ “This continuum is an integrated approach providing a complete range of programs and services that are matched to [an] individual youth[’s] and famil[y’s] need[s] at every phase, and from commitment to the point of discharge from parole.”⁶⁴²

According to Associate Director Jacobson, CDYC and GMYSC established and actively promoted a culture where youth are not fearful of being assaulted, victimized, or abused by either those in positions of authority or their peers.⁶⁴³ The system and the facility took several steps to pursue this goal. For instance, CDYC developed a zero-tolerance policy on sexual victimization, as well as procedures to prevent sexual victimization and to report sexual misconduct.⁶⁴⁴

When youth arrive at the facility, the staff assesses them and assigns them risk levels based on their potential sexual aggressiveness, tendency to violence, and vulnerability to victimization.⁶⁴⁵ According to Associate Director Jacobson, the staff uses the assessments to make room assignments and to place youth in cognitive behavioral programs and psycho-educational groups.⁶⁴⁶

As part of a youth’s orientation to the facility, the staff provides information on PREA topics.⁶⁴⁷ Employees also encourage youth to report any concerns, emphasizing that the staff’s role is to support residents and take their concerns seriously.⁶⁴⁸

⁶³⁶ *Id.* at 556:14-18; see Detention Center Sexual Assault Prevention Program, COLO. REV. STAT. ANN. § 19-2-214 (2015).

⁶³⁷ Jan. 2014 Tr., A. Jacobson, 556:18-21.

⁶³⁸ *Id.* at 561:1-9.

⁶³⁹ *Colorado Department of Human Services Divisions of Youth Corrections*, NAT’L PREA RES. CTR., <http://www.prearesourcecenter.org/training-technical-assistance/prea-in-action/embracing-the-standards/codyc-profile-page>.

⁶⁴⁰ *Id.*

⁶⁴¹ Jan. 2014 Tr., A. Jacobson, 558:9-13.

⁶⁴² *Id.* at 558:13-17.

⁶⁴³ *Id.* at 555:17-20.

⁶⁴⁴ *Id.* at 562:3-7.

⁶⁴⁵ *Id.* at 554:20-555:1.

⁶⁴⁶ *Id.* at 555:1-3.

⁶⁴⁷ *Id.* at 554:17-20.

⁶⁴⁸ *Id.* at 556:1-4.

To inculcate an organizational culture that does not tolerate sexual victimization, Associate Director Jacobson described CDYC's efforts to hire, train, and assign qualified staff. To prevent staff sexual misconduct, CDYC works with the Colorado Department of Human Resources to ensure that its hiring practices meet all state regulations.⁶⁴⁹ CDYC provides orientation and in-service training to personnel.⁶⁵⁰ According to Associate Director Jacobson, CDYC developed a working group to ensure that all staff members receive adequate training on PREA-related topics so that they can effectively implement PREA standards.⁶⁵¹ All newly hired staff at GMYSC attend a three-week training at CDYC's Office of Staff Development Academy.⁶⁵² The training educates staff on safety, professional boundaries, evidence-based practices for interacting with at-risk youth, PREA standards and practices, and CDYC's values.⁶⁵³ GMYSC also conducts annual training for staff on PREA standards and practices.⁶⁵⁴ In making shift assignments, GMYSC balances male and female staffing to ensure appropriate coverage of co-ed units.⁶⁵⁵

Associate Director Jacobson emphasized that CDYC's approach to preventing sexual victimization of youth is an iterative process. The system actively assesses, monitors, and measures the effectiveness of its procedures and continues to design, develop, and implement new strategies for addressing sexual victimization based on best practices.⁶⁵⁶

2. High-Incidence Facilities

a. Paulding Regional Youth Detention Center

i. Facility Description

The Paulding Regional Youth Detention Center (PRYDC), which is now closed,⁶⁵⁷ was located in Dallas, Georgia, and was administered by Youth Services International (YSI), a private corporation.⁶⁵⁸ Generally, PRYDC confined male youth for less than one year while they awaited placement,⁶⁵⁹ but according to testimony that the Panel heard, juveniles would sometimes stay for a year or longer.⁶⁶⁰ PRYDC had the capacity for 100 beds.⁶⁶¹ According to

⁶⁴⁹ *Id.* at 564:15-19.

⁶⁵⁰ *Id.* at 555:9-16, 562:5-6, 565:6-17.

⁶⁵¹ *Id.* at 561:16-20.

⁶⁵² *Id.* at 565:6-8.

⁶⁵³ *Id.* at 565:8-11.

⁶⁵⁴ *Id.* at 565:16-17.

⁶⁵⁵ *Id.* at 555:3-5.

⁶⁵⁶ *Id.* at 561:20-562:1-2.

⁶⁵⁷ PRYDC closed on December 31, 2013. *Paulding Regional Youth Detention Center*, GA. DEP'T OF JUV. JUST., <http://www.djj.state.ga.us/FacilitiesPrograms/fpFacilityInclude.asp?F=25&CBy=1> (last visited Mar. 1, 2016).

⁶⁵⁸ Niles Test. at 1 (Jan. 9, 2014), <http://ojp.gov/reviewpanel/pdfs/WrittenTestimonyofAveryNiles.pdf>; *Youth Development: A System Priority*, GEORGIA DEPARTMENT OF JUVENILE JUSTICE ANNUAL REPORT FY 2009, 105, http://www.djj.state.ga.us/ResourceLibrary/_PDFfiles/FY2009AnnualReport.pdf (last visited Mar. 1, 2016); *Paulding RYDC Closure: The Facts from DJJ*, GA. DEP'T OF JUV. JUST. NEWS AND VIEWS, <http://www.djjnewsandviews.org/pauldingrydcclosure/> (last visited Mar. 1, 2016).

⁶⁵⁹ *Regional Youth Detention Centers*, GA. DEP'T OF JUV. JUST., <http://www.djj.state.ga.us/FacilitiesPrograms/fpRYDCAndYDC.shtml> (last visited Mar. 1, 2016); Niles Test. at 1.

⁶⁶⁰ Jan. 2014 Tr., J. Williams, 482:10-16.

⁶⁶¹ Jan. 2014 Tr., J. Williams, 482:8-9; Niles Test. at 1.

Mr. Jesse Williams, YSI's senior vice president, approximately 60% of staff members at PRYDC were female.⁶⁶²

ii. Explanation for Reported High Incidence of Sexual Victimization

According to Mr. Williams, in the summer of 2013, YSI retained The Moss Group to conduct a "Sexual Safety Assessment" to identify the causes of the high incidence of sexual victimization at PRYDC and to recommend changes to the facility's policies and procedures.⁶⁶³ He testified that before The Moss Group could conduct the assessment, the Georgia Department of Juvenile Justice (GDJJ) decided to close PRYDC as the result of a declining statewide population of incarcerated youth.⁶⁶⁴ Consequently, YSI did not ask The Moss Group to complete the assessment and never determined the root cause of the problem.⁶⁶⁵

Nonetheless, Mr. Williams attributed the high incidence of sexual victimization at PRYDC to the following factors: (1) the large size of the facility; (2) the relatively large number of female staff; and (3) the significant number of older male juveniles who were at PRYDC for lengthy periods of time.⁶⁶⁶ He testified that YSI could have reduced incidents of sexual victimization by changing its staff screening, hiring, and training practices.⁶⁶⁷

iii. Measures Taken to Reduce Sexual Victimization

In response to the reported high incidence of sexual victimization at PRYDC and other GDJJ facilities, GDJJ Commissioner Avery Niles testified that he created a Safety and Security Task Force that conducted unannounced inspections of all twenty-eight GDJJ facilities.⁶⁶⁸ Mr. Williams explained that administrative staff made periodic unannounced visits to PRYDC and that PRYDC's management team conducted weekly inspections of the facility.⁶⁶⁹ Commissioner Niles testified that GDJJ also established a PREA Oversight Committee, hired a statewide PREA coordinator, and appointed a PREA compliance officer at each facility.⁶⁷⁰ He also stated that he suspended twenty-one investigators who violated GDJJ policy by not addressing all PREA-related incidents within forty-five days of learning about them.⁶⁷¹ After suspending these investigators, GDJJ either terminated their employment or allowed them to remain in their positions because they improved their job performance.⁶⁷²

⁶⁶² Jan. 2014 Tr., J. Williams, 482:9-10.

⁶⁶³ *Id.* 480:22-481:3; Williams Test. at 3 (Jan. 9, 2014), <http://ojp.gov/reviewpanel/pdfs/WrittenTestimonyofJesseWilliams.pdf>.

⁶⁶⁴ Jan. 2014 Tr., J. Williams, 481:4-12; Williams Test. at 3.

⁶⁶⁵ Jan. 2014 Tr., J. Williams, 480:22-481:12.

⁶⁶⁶ *Id.* at 482:7-16.

⁶⁶⁷ *Id.* at 483:4-7; Williams Test. at 4.

⁶⁶⁸ Niles Test. at 1-2.

⁶⁶⁹ Jan. 2014 Tr., J. Williams, 486:5-6, 10-11.

⁶⁷⁰ Niles Test. at 2; Jan. 2014 Tr., A. Niles, 470:15-17.

⁶⁷¹ Jan. 2014 Tr., A. Niles, 474:5-13.

⁶⁷² *Id.* at 474:13-16.

GDJJ established the Office of the Ombudsman to support family members and advocates who wanted to report complaints on behalf of youth residents at PRYDC.⁶⁷³ Additionally, GDJJ created a PREA webpage that includes GDJJ's PREA policies, reports, statistics, and the educational posters and videos it uses in its facilities.⁶⁷⁴ The website also links to a web-based tip line and a toll-free phone number to report alleged incidents of sexual victimization that occur inside the facilities.⁶⁷⁵

Mr. Williams explained that when there is an allegation that a staff member engaged in sexual misconduct against a juvenile, YSI places the staff member on unpaid administrative leave.⁶⁷⁶ GDJJ then conducts a formal investigation of the allegations.⁶⁷⁷ Mr. Williams testified that while the investigation is underway, YSI also conducts an internal administrative review to determine if there is a sufficient basis to terminate the staff member's employment before GDJJ completes the full investigation.⁶⁷⁸ Depending on whether there is enough preliminary evidence to conclude that the employee violated company policy, YSI either terminates the person's employment or permits the employee to remain on leave until GDJJ completes the investigation.⁶⁷⁹

Commissioner Niles testified that to assist youth who are subjected to sexual assault and abuse by staff and other youth, each GDJJ facility has a memorandum of understanding with a local community service provider to provide victim services.⁶⁸⁰ He explained that GDJJ also reports its investigative findings of any illicit behavior to Georgia's Peace Officer Standards and Training Council, which enforces sexual victimization laws and refers cases for prosecution.⁶⁸¹ Commissioner Niles stated that he met with prosecutors to encourage them to pursue cases of staff sexual misconduct involving youth in GDJJ facilities.⁶⁸²

To strengthen GDJJ's efforts to prevent sexual victimization in its facilities, including at PRYDC, both Commissioner Niles and Mr. Williams testified that GDJJ and YSI changed their staff screening and PREA-training protocols.⁶⁸³ As to staff screening, Mr. Williams explained that YSI retained Abel Screening, a firm that develops assessment tools to evaluate whether

⁶⁷³ *Office of the Ombudsman*, GA. DEP'T OF JUV. JUST., <http://www.djjnewsandviews.org/djjombudsman/> (last visited Mar. 1, 2016); see Jan. 2014 Tr., A. Niles, 493:20-22.

⁶⁷⁴ *Prison Rape Elimination Act*, GA. DEP'T OF JUV. JUST., <http://www.djjnewsandviews.org/preageorgia/> (last visited Mar. 1, 2016); see Niles Test. at 2.

⁶⁷⁵ See Niles Test. at 2; *TIP Form*, GA. DEP'T OF JUV. JUST., <http://www.djj.state.ga.us/Employees/djrtipsformweb.aspx> (last visited Mar. 1, 2016); *Office of the Ombudsman*, GA. DEP'T OF JUV. JUST., <http://www.djjnewsandviews.org/djjombudsman/> (last visited Mar. 1, 2016).

⁶⁷⁶ Jan. 2014 Tr., J. Williams, 495:14-15.

⁶⁷⁷ *Id.* at 495:16-19.

⁶⁷⁸ *Id.* at 495:18-22.

⁶⁷⁹ *Id.* at 495:22-496:7.

⁶⁸⁰ Niles Test. at 3.

⁶⁸¹ Jan. 2014 Tr., A. Niles, 475:1-6.

⁶⁸² See *id.* at 497:21-498:3.

⁶⁸³ See generally Niles Test.; Jan. 2014 Tr., A. Niles; Williams Test.; Jan. 2014 Tr., J. Williams.

individuals pose a sexual risk to children, to implement the “Diana Screen” at PRYDC.⁶⁸⁴ This screening instrument seeks to exclude applicants for employment who have a proclivity to engage in sexual misconduct.⁶⁸⁵

GDJJ developed curricula on PREA matters for employees and others who interact with residents. New employees participated in an orientation training segment on PREA.⁶⁸⁶ GDJJ created a six-week training academy, during which officers and investigators receive a week of PREA-focused training.⁶⁸⁷ Commissioner Niles testified that all facility directors and mid-level facility staff participated in a one-day PREA training management course,⁶⁸⁸ and agency investigators attended a three-day training program on interview and interrogation techniques.⁶⁸⁹ Mr. Williams testified that all staff at PRYDC completed YSI’s on-the-job PREA training and that 98% of the staff completed GDJJ’s PREA online training.⁶⁹⁰ He noted that PRYDC’s administrator discussed with female officers how to avoid inappropriate relationships with male residents.⁶⁹¹ GDJJ also provided training to other individuals who have contact with juvenile residents, such as volunteers, contractors, and interns.⁶⁹² According to Commissioner Niles, these individuals completed GDJJ’s PREA online training.⁶⁹³ Medical staff participated in a training program entitled “Forensic Nursing and Sexual Abuse Education and Prevention.”⁶⁹⁴

GDJJ also created and distributed educational materials on PREA to youth at PRYDC.⁶⁹⁵ Commissioner Niles appears in a video that all incoming residents view that explains PREA and how to report sexual misconduct.⁶⁹⁶ GDJJ created PREA posters in English and Spanish with this same information,⁶⁹⁷ which GDJJ posts in the housing units, lobbies, and cafeterias of its facilities.⁶⁹⁸ PRYDC personnel, according to Commissioner Niles, also conducted Youth Education Sessions with all residents on how to report sexual victimization.⁶⁹⁹ Mr. Williams testified that the facility conducted a monthly survey to assess the residents’ perceptions of PREA-related issues.⁷⁰⁰

⁶⁸⁴ Williams Test. at 4; Jan 2014 Tr., J. Williams, 483:8-13.

⁶⁸⁵ Williams Test. at 4; Jan 2014 Tr., J. Williams, 483:8-13.

⁶⁸⁶ Jan. 2014 Tr., J. Williams, 486:6-7; Williams Test. at 5.

⁶⁸⁷ Jan. 2014 Tr., A. Niles, 492:21-493:7.

⁶⁸⁸ Niles Test. at 3; Jan. 2014 Tr., A. Niles, 475:16-19.

⁶⁸⁹ Niles Test. at 3.

⁶⁹⁰ Williams Test. at 4; Jan. 2014 Tr., J. Williams, 483:19-484:1.

⁶⁹¹ Jan. 2014 Tr., J. Williams, 485:22-486:5.

⁶⁹² Niles Test. at 3.

⁶⁹³ *Id.*

⁶⁹⁴ *Id.*

⁶⁹⁵ *Id.* at 2.

⁶⁹⁶ *Prison Rape Elimination Act*, GA. DEP’T OF JUV. JUST., <http://www.djjnewsandviews.org/preageorgia/videos.html> (last visited Mar. 1, 2016); *see also* Jan 2014 Tr., A. Niles, 473:10-14; Williams Test. at 4; Jan 2014 Tr., J. Williams, 484:13-15.

⁶⁹⁷ *Prison Rape Elimination Act*, GA. DEP’T OF JUV. JUST., <http://www.djjnewsandviews.org/preageorgia/> (last visited Mar. 1, 2016); *see also* Niles Test. at 2.

⁶⁹⁸ Williams Test. at 5; Jan 2014 Tr., J. Williams, 485:8-9.

⁶⁹⁹ Niles Test. 2.

⁷⁰⁰ Jan. 2014 Tr., J. Williams, 484:19-21.

Mr. Williams and Commissioner Niles also testified about several additional changes that GDJJ and YSI made to address sexual victimization of youth at PRYDC and at other GDJJ facilities. They stated that sexual misconduct could occur in areas where cameras do not monitor staff and youth.⁷⁰¹ To address some of these “blind spots” in shower areas, PRYDC installed “PREA-specific shower curtains . . . that allowed youth privacy but ensured proper monitoring for safety.”⁷⁰² Mr. Williams also testified that the facility reduced the number of residents that staff members supervised when they moved residents from one location to another.⁷⁰³ Under the revised system, PRYDC adopted a ten-to-one resident-to-staff ratio for daily, routine movement.⁷⁰⁴ Mr. Williams explained that during shower time, staff moved the residents from their individual rooms, rather than from the day room, to improve supervision.⁷⁰⁵ PRYDC also changed its search protocols, so female staff no longer search male residents.⁷⁰⁶ Finally, to limit the number of confined juveniles, Commissioner Niles announced that GDJJ created a \$6 million incentive grant program to encourage counties to reduce their populations of confined youth.⁷⁰⁷

b. Eastman Youth Development Campus

i. Facility Description

GDJJ’s Eastman Youth Development Campus (EYDC), in Dodge County, Georgia,⁷⁰⁸ is the largest juvenile campus in Georgia.⁷⁰⁹ With a capacity of 330, EYDC is a male facility that houses adjudicated youth between the ages of seventeen and twenty.⁷¹⁰ According to GDJJ Commissioner Avery Niles, GDJJ maintains EYDC’s population at about 200 youth.⁷¹¹

ii. Explanation for Reported High Incidence of Sexual Victimization

Large facilities, such as EYDC, tend to have higher rates of sexual victimization than facilities with fewer than 100 residents.⁷¹² Mr. Corey Butler, the regional administrator of the Division of Secure Facilities at GDJJ, suggested that EYDC’s population size, the large staff-to-youth ratio, and its diminished capacity for supervision were some of the factors that contributed to the high

⁷⁰¹ Jan. 2014 Tr., A. Niles, 470:8-14; Jan. 2014 Tr., J. Williams, 486:13-15. GDJJ also fixed various locks, including those on office doors, to ensure effective supervision. *See* Niles Test. at 2.

⁷⁰² Niles Test. at 2; *see also* Jan. 2014 Tr., J. Williams, 485:9-12.

⁷⁰³ Jan 2014 Tr., J. Williams, 484:3-8.

⁷⁰⁴ *Id.* at 484:8-12.

⁷⁰⁵ Williams Test. at 5; Jan. 2014 Tr., J. Williams, 484:21-485:5.

⁷⁰⁶ Jan 2014 Tr., J. Williams, 485:15-17; Williams Test. at 5.

⁷⁰⁷ Jan 2014 Tr., A. Niles, 502:7-9.

⁷⁰⁸ *Eastman Youth Development Campus*, GA. DEP’T OF JUV. JUST., <http://www.djj.state.ga.us/FacilitiesPrograms/fp/FacilityInclude.asp?F=1007&CBy=0> (last visited Mar. 1, 2016).

⁷⁰⁹ Jan. 2014 Tr., C. Butler, 489:11-12.

⁷¹⁰ *Eastman Youth Development Campus*, GA. DEP’T OF JUV. JUST., <http://www.djj.state.ga.us/FacilitiesPrograms/fp/FacilityInclude.asp?F=1007&CBy=0> (last visited Mar. 1, 2016).

⁷¹¹ Niles Test. at 1.

⁷¹² *BJS Juvenile Report*, at 10-11.

incidence of sexual victimization at EYDC, as he noted that GDJJ is currently taking steps to address these issues.⁷¹³

iii. Measures Taken to Reduce Sexual Victimization

Commissioner Niles testified about GDJJ's plan to implement further remedial measures going forward.⁷¹⁴ He stated that GDJJ was developing gender-specific training programs for staff and youth on PREA.⁷¹⁵ In addition, GDJJ was developing a PREA-specific curriculum that focused on providing support for residents with past trauma, educating youth about predatory behavior, and reducing the residents' risk of becoming a target for perpetrators.⁷¹⁶ He said that GDJJ would contract with a third-party organization to implement a telephone-based program for reporting sexual misconduct,⁷¹⁷ and GDJJ may place in its facilities a kiosk that will allow youth to report sexual victimization anonymously.⁷¹⁸

c. Circleville Correctional Facility

i. Facility Description

The Ohio Department of Youth Services (ODYS) administers the Circleville Juvenile Correctional Facility (CJCF), located in Circleville, Ohio.⁷¹⁹ CJCF is a close-security facility, housing general population male youth between the ages of twelve and twenty-one.⁷²⁰ The facility has the capacity to serve 144 youth, and as of March 1, 2013, it was at full capacity.⁷²¹

CJCF offers substance-abuse, victim-awareness, and sex-offender programming.⁷²² It also provides treatment to assist youth in dealing with anger, aggression, violence, depression, anxiety, self-injury, and sleep issues.⁷²³ To help youth develop career skills, it provides a job-readiness program and a Horticultural and Urban Agriculture Program.⁷²⁴

⁷¹³ Jan. 2014 Tr., C. Butler, 489:11-15.

⁷¹⁴ For information on the measures GDJJ has taken to reduce sexual victimization in its facilities, including EYDC, see Commissioner Niles' remarks on PRYDC. *See supra* Part II.C.2.a.iii.

⁷¹⁵ Niles Test. at 4.

⁷¹⁶ *Id.*

⁷¹⁷ *Id.*

⁷¹⁸ *Id.*

⁷¹⁹ *Circleville Juvenile Correctional Facility*, OHIO DEP'T OF YOUTH SERVS., <http://www.dys.ohio.gov/dnn/InsideDYS/JuvenileCorrectionalFacilities/CirclevilleJCF/tabid/63/Default.aspx> (last visited Mar. 1, 2016).

⁷²⁰ *See* CORRECTIONAL INSTITUTION INSPECTION COMMITTEE REPORT ON THE INSPECTION AND EVALUATION OF THE CIRCLEVILLE JUVENILE CORRECTIONAL FACILITY 2, http://ciic.state.oh.us/docs/circleville_juvenile_correctional_facility_2013.pdf.

⁷²¹ *Id.*

⁷²² *See Circleville Juvenile Correctional Facility*, OHIO DEP'T OF YOUTH SERVS., <http://www.dys.ohio.gov/dnn/InsideDYS/JuvenileCorrectionalFacilities/CirclevilleJCF/tabid/63/Default.aspx>.

⁷²³ *Id.*

⁷²⁴ *Id.*

ii. Explanation for Reported High Incidence of Sexual Victimization

In written and oral testimony, Mr. Harvey J. Reed, director of ODYS, and Mr. Ronald Edwards, superintendent of CJCF, identified factors that likely contributed to CJCF's high incidence of sexual victimization. These factors included unmonitored areas within the facility, an indifferent staff that suffered from a lack of cohesion and sense of purpose, and a culture within the facility where staff and youth did not discuss or acknowledge sexual misconduct.

Director Reed and Superintendent Edwards identified several "vulnerable areas" within CJCF where sexual victimization could occur in the absence of effective monitoring—places without camera surveillance or adequate staff supervision.⁷²⁵ Among the locations where CJCF could improve its monitoring efforts were staff offices, youth restrooms, and showers.⁷²⁶

Director Reed said that the staff culture at ODYS' juvenile detention facilities contributed to higher rates of sexual victimization of residents. He volunteered that staff members had an attitude of indifference; they did not exhibit the level of care needed to work with confined youth.⁷²⁷ This lack of professional commitment was especially troubling, given that 60% of the youth in ODYS facilities have mental health issues, and 55% have special education needs.⁷²⁸ Superintendent Edwards acknowledged a lack of both cohesion and a sense of mission among CJCF staff members.⁷²⁹

Director Reed suggested that a major contributing factor to the high rate of sexual victimization at CJCF was a "code of silence" among staff and youth, and a culture that discouraged any discussion about this issue.⁷³⁰ Director Reed stated that at one point, ODYS had eighteen experts evaluating the system, a federal monitor conducting site visits nearly every other month, and an inspection committee that reported on conditions of confinement.⁷³¹ Director Reed noted that despite the presence of all these individuals examining the system, as well as family members, community members, and volunteers, nobody mentioned or reported the issue of staff sexual misconduct.⁷³²

iii. Measures Taken by System to Reduce Sexual Victimization

Director Reed told the Panel that Ohio Governor John R. Kasich created an interagency task force to address the *BJS Juvenile Report's* findings and to implement appropriate reforms.⁷³³ The task force included ODYS, the Ohio Department of Rehabilitation and Correction, the Ohio

⁷²⁵ Reed and Edwards Test. 3, 6 (Jan. 9, 2014), <http://ojp.gov/reviewpanel/pdfs/WrittenTestimonyofHarveyReedandRonaldEdwards.pdf>.

⁷²⁶ *Id.* at 3.

⁷²⁷ Jan. 2014 Tr., H. Reed, 512:5-15.

⁷²⁸ *Id.* at 512:11-13.

⁷²⁹ *See id.*, R. Edwards, 523:19-524:17.

⁷³⁰ *Id.*, H. Reed, 510:3-6.

⁷³¹ *Id.* at 508:19-509:2.

⁷³² *Id.* at 508:19-509:7.

⁷³³ *Id.* at 506:8-10, 13-14.

Department of Public Safety, and the Ohio Department of Job and Family Services.⁷³⁴ To guide the work of the task force, Director Reed testified that ODYS asked BJS to provide additional information, based on the survey data, about why three of ODYS' juvenile correctional facilities had relatively high levels of sexual victimization.⁷³⁵

Director Reed said that after the initial shock of absorbing the contents of the *BJS Juvenile Report*, he sent "climate monitors" to visit each ODYS facility.⁷³⁶ During their visits, the monitors discussed the report with staff, explained PREA to youth, encouraged youth to report any sexual misconduct, and reassured youth that staff would not retaliate against them for reporting sexual misconduct.⁷³⁷

Director Reed said that in September 2013, ODYS appointed a full-time PREA coordinator.⁷³⁸

To improve ODYS' process for receiving reports of sexual victimization, Director Reed said that it created a tip line.⁷³⁹ The line has a six-digit number that resembles the numbers that residents dial to make outside telephone calls, and residents can access the tip line from telephones in various locations in ODYS facilities.⁷⁴⁰ Parents and families of youth whom ODYS supervises can also call the tip line.⁷⁴¹ Through this line, ODYS can receive information about PREA-related issues and any other topics that callers want to bring to its attention.⁷⁴² Staff check any messages left through the line five days a week, excluding holidays and weekends.⁷⁴³ Director Reed stated that ODYS' goal is to follow up on all complaints that callers leave through the tip line.⁷⁴⁴ If ODYS determines that a particular complaint merits a full investigation, ODYS refers the complaint to its chief inspector's office.⁷⁴⁵

According to Director Reed, ODYS assessed all of its facilities to identify areas where sexual victimization is more likely to occur.⁷⁴⁶ At the time of the hearing, ODYS had installed 130

⁷³⁴ *Id.* at 506:9-10.

⁷³⁵ *Id.* at 508:12-13, 15-19; *see supra* note 98. In November 2013, ODYS announced the closure of the Scioto Correctional Facility in Delaware County, which was one of the three ODYS facilities that BJS identified as having an especially high rate of sexual victimization. *Id.* at 507:9-11. At the time of the hearings, ODYS planned to close this facility on May 3, 2014. *Id.* at 508:6. Director Reed attributed the closure of this facility to the Reclaim Ohio initiative, which encourages and incentivizes courts to refer youth to community-based treatment close to home, as opposed to sending them to institutions. *Id.* at 507:13-15; *see also Ohio Department of Youth Services RECLAIM Ohio*, OHIO DEP'T OF YOUTH SERVS., <http://www.dys.ohio.gov/dnn/Community/RECLAIMOhio/tabid/131/Default.aspx> (last visited Mar. 1, 2016).

⁷³⁶ Jan. 2014 Tr., H. Reed, 505:15-21.

⁷³⁷ *Id.* at 505:21-506:6.

⁷³⁸ *Id.* at 514:3.

⁷³⁹ *Id.* at 510:21-22.

⁷⁴⁰ *Id.* at 510:21-511:4.

⁷⁴¹ *Id.* at 511:13-15.

⁷⁴² *Id.* at 511:5-6.

⁷⁴³ *Id.* at 511:7-8.

⁷⁴⁴ *Id.* at 511:8-10.

⁷⁴⁵ *Id.* at 511:8-13.

⁷⁴⁶ *Id.* at 514:15-17.

cameras throughout its facilities and planned to install more.⁷⁴⁷ ODYS also placed mirrors in facility hallways and stairways to improve visibility.⁷⁴⁸

Director Reed testified that ODYS also improved the security of its school system. It changed locks in restrooms to limit access.⁷⁴⁹ Now, teachers must open a restroom door for students to ensure they are alone when using it.⁷⁵⁰ ODYS also reassigned security staff who support school personnel to new locations so that they can better observe the school area.⁷⁵¹

Director Reed said that ODYS has instituted what it calls the “meaningful round,” which means that when staff members tour the facility on routine inspections, they speak with residents and co-workers.⁷⁵² As part of the meaningful round, staff must observe the units, ensure that doors are locked, confirm that items are properly stowed, and document any irregularities.⁷⁵³ ODYS discourages staff members from establishing a pattern in making rounds, urging them instead to vary their routes.⁷⁵⁴ Director Reed stated that this new method of conducting rounds has already fostered more dialogue between staff and youth.⁷⁵⁵

Finally, Director Reed told the Panel that ODYS added trauma counseling resources for staff members throughout its facilities. ODYS’ victim manager established a “peer team” to offer emotional support when traumatic events occur in a facility.⁷⁵⁶

iv. Measures Taken by Facility to Reduce Sexual Victimization

After BJS issued the *BJS Juvenile Report*, CJCF implemented many of the system-wide reforms that Director Reed described to the Panel. Superintendent Edwards told the Panel that the facility increased mandatory, four-hour PREA training for all staff, contractors, and residents.⁷⁵⁷ The facility provided “very extensive” training on sexual misconduct, which covered warning signs, reporting requirements, and behavioral indicators of residents who experienced sexual victimization.⁷⁵⁸ CJCF also provided training to behavioral health staff members on identifying actual or potential sexual misconduct and mandatory reporting of sexual victimization.⁷⁵⁹ Additionally, the unit staff began holding bi-monthly town hall meetings with residents, where the staff explains PREA and reminds residents how to file complaints of sexual victimization.⁷⁶⁰

⁷⁴⁷ *Id.* at 514:17-18, 515:3-4.

⁷⁴⁸ *Id.* at 514:18-20.

⁷⁴⁹ *Id.* at 515:5-6.

⁷⁵⁰ *Id.* at 515:6-9.

⁷⁵¹ *Id.* at 515:12-16.

⁷⁵² *Id.* at 515:22-516:4.

⁷⁵³ *Id.* at 516:5-7.

⁷⁵⁴ *Id.* at 516:11-17.

⁷⁵⁵ *Id.* at 516:7-11.

⁷⁵⁶ *Id.* at 517:19-518:2.

⁷⁵⁷ *Id.*, R. Edwards, 522:5-8.

⁷⁵⁸ *Id.* at 522:16-20.

⁷⁵⁹ Reed and Edwards Test. at 5-6.

⁷⁶⁰ Jan. 2014 Tr., R. Edwards, 522:13-16.

Superintendent Edwards testified that CJCF made changes to improve its supervision of residents. CJCF has now stationed youth specialists in every day room, so no resident is ever in an unmonitored day room.⁷⁶¹ CJCF also added cameras throughout the facility.⁷⁶²

Superintendent Edwards said that ODYS' cultural assessment⁷⁶³ identified the following three areas for improvement: (1) staff victimization, (2) staff identity and cohesion, and (3) the facility's youth mentorship program.⁷⁶⁴ The facility established committees to address each issue.⁷⁶⁵

First, the assessment acknowledged that staff were also victimized by residents who exposed themselves.⁷⁶⁶ Superintendent Edwards referred to these interactions between staff and youth as the "normalization of victimization."⁷⁶⁷ He observed, "Just because we work in a correctional facility doesn't mean that that's the normal way that we do business."⁷⁶⁸ To address this dynamic, the Normalization of Staff Victimization Committee identified organizations to meet with staff and to support them when they experience victimization by residents at the facility.⁷⁶⁹

Second, the assessment determined that facility staff lacked a cohesive identity. The Staff Identity Committee found that as a result of ODYS' recent closure of several facilities, the CJCF staff included two categories of employees: those who had worked at CJCF for some time and those who had worked at and identified with the culture of now-shuttered facilities.⁷⁷⁰ To address this challenge, the Committee planned team-building events for the CJCF staff.⁷⁷¹

Finally, the assessment encouraged CJCF to revamp its youth mentorship program. Superintendent Edwards testified that Committee members had concerns about mentors routinely meeting with youth inside private offices, presumably out of view of facility staff.⁷⁷² The facility has begun to restructure the program, and it planned to roll out the revised program soon after the Panel hearings.⁷⁷³

3. Victimization of Male Youth by Female Staff

a. Overview

Given that nearly 90% of the adjudicated youth who reported staff sexual misconduct in juvenile correctional facilities were male and the perpetrators were female,⁷⁷⁴ the Panel convened a panel

⁷⁶¹ Reed and Edwards Test. at 6.

⁷⁶² Jan. 2014 Tr., R. Edwards, 521:16-522:1.

⁷⁶³ *Id.* at 521:7-11.

⁷⁶⁴ *See* Reed and Edwards Test. at 6.

⁷⁶⁵ Jan 2014 Tr., R. Edwards, 523:2-4, 523:19, 525:3.

⁷⁶⁶ Reed and Edwards Test. at 6.

⁷⁶⁷ Jan. 2014 Tr., R. Edwards, 523:7.

⁷⁶⁸ *Id.* at 523:10-11.

⁷⁶⁹ *Id.* at 523:12-18.

⁷⁷⁰ *Id.* at 523:19-524:14.

⁷⁷¹ *Id.* at 524:14-21.

⁷⁷² *Id.* at 525:3-8.

⁷⁷³ *Id.* at 525:8-9.

⁷⁷⁴ *BJS Juvenile Report*, at 5.

of experts to address this issue.⁷⁷⁵ The panel consisted of Dr. Mary L. Livers, deputy secretary, Louisiana Office of Juvenile Justice (LOJJ); Professor Brenda V. Smith, professor of law, American University Washington College of Law, Washington, District of Columbia; and Professor Kim Shayo Buchanan, associate professor of law and gender studies, University of Southern California Gould School of Law, Los Angeles, California.

The data on the victimization of male youth in custody is alarming. According to the NSYC-2, approximately 7.7% of youth in juvenile correctional facilities reported an incident of staff sexual victimization.⁷⁷⁶ Among these youth, 20.3% reported that the sexual misconduct involved force or the threat of force; 21.5% reported that staff provided drugs or alcohol in exchange for the youth's engaging in sexual activity; and 12.3% reported that staff offered favors or protection to youth.⁷⁷⁷ Among male victims of forcible sexual assault, 84.8% reported that at least one of the perpetrators was a female staff member.⁷⁷⁸ Among male victims of non-forcible and non-coercive sexual misconduct by a staff member, 94.6% reported that the perpetrator was a female staff member.⁷⁷⁹

To learn more about the dynamics of male youth victimization and female staff sexual misconduct, the Panel turned to the panel of experts for perspective.

**b. Factors Contributing to the High Rate of Female Staff Sexual Misconduct
with Male Youth in Juvenile Correctional Facilities**
i. Prevalence of Direct-Care Female Staff
(a) Background

Dr. Livers and Professor Smith addressed the representation of women among direct-care staff in juvenile correctional facilities. A large percentage of the direct-care staff in juvenile correctional facilities is female.⁷⁸⁰ For example, in LOJJ, the direct-care staff is 61% female.⁷⁸¹ Professor Smith attributed the increase in female staff in juvenile correctional facilities to men's lower educational attainment and their inability to pass background checks.⁷⁸² Dr. Livers testified that

⁷⁷⁵ See Review Panel on Prison Rape, *Report on Sexual Victimization in Juvenile Correctional Facilities* 35 (Oct. 2010), http://ojp.gov/reviewpanel/pdfs/panel_report_101014.pdf.

⁷⁷⁶ *BJS Juvenile Report*, at 4; Livers Test. at 1 (Jan. 8, 2014), <http://ojp.gov/reviewpanel/pdfs/WrittenTestimonyofMaryLivers.pdf>.

⁷⁷⁷ Buchanan Test., 3-4 & n.7 (Jan. 8, 2014), <http://ojp.gov/reviewpanel/pdfs/WrittenTestimonyofKimBuchanan.pdf> (citing *BJS Juvenile Report*, at 24 tbl.15).

⁷⁷⁸ Buchanan Test. at 4 & n.8 (citing *BJS Juvenile Report*, at 23 tbl.14).

⁷⁷⁹ Buchanan Test. at 4 n.14; *BJS Juvenile Report*, at 23 tbl.14; Jan. 2014 Tr., K. Buchanan, 427:16-18.

⁷⁸⁰ Jan. 2014 Tr., M. Livers, 417:18-418:1. Even with such a relatively high employment rate for women, female staff members still sexually victimize male youth at a rate that exceeds their representation in the correctional workforce. Jan. 2014 Tr., B. Smith, 444:14-19.

⁷⁸¹ Livers Test. at 3; Jan. 2014 Tr., M. Livers, 417:18-20.

⁷⁸² Smith Test. at 6 (Jan. 8, 2014), <http://ojp.gov/reviewpanel/pdfs/WrittenTestimonyofBrendaSmith.pdf>.

compared to men, women are more available and eligible for direct-care jobs in correctional facilities and more willing to accept a lower salary.⁷⁸³

(b) Recommendations

From Dr. Livers' perspective, to minimize the risk of female staff victimization of male youth, juvenile correctional systems should lengthen the tenure and improve the quality of their direct-care workforce.

She explained that facilities have especially low retention rates in direct-care staff positions because of low salaries, a lack of adequate training, poor monetary incentives, weekend and holiday work schedules, and the challenges of managing difficult youth.⁷⁸⁴

Dr. Livers stated that LOJJ's efforts to improve the caliber of its direct-care staff included raising the starting salary for juvenile justice specialists by \$1500.⁷⁸⁵ LOJJ also increased, by a dollar, the hourly rate of employees who work on weekends and holidays and provided incentives, such as a 5% pay increase, to staff who obtain a college degree.⁷⁸⁶ Following this strategy since 2012, LOJJ reduced the turnover rates for juvenile justice specialists by 5% and for all staff by 6%.⁷⁸⁷ LOJJ also increased the number of staff with degrees by 10%.⁷⁸⁸

Dr. Livers suggested that hiring applicants with a college degree for direct-care positions may make a significant difference in raising the caliber of the staff.⁷⁸⁹ She cited evidence that college-educated correctional officers have the problem-solving, critical-thinking, and interpersonal skills that allow them to deal with difficult situations.⁷⁹⁰

Dr. Livers emphasized that in implementing the employment practices she recommends, systems and facilities should nonetheless take care not to limit equal employment opportunities for women.⁷⁹¹

⁷⁸³ Livers Test. at 1; Jan. 2014 Tr., M. Livers, 418:6-14.

⁷⁸⁴ Livers Test. at 2, 4.

⁷⁸⁵ *Id.* at 4; Jan 2014 Tr., M. Livers, 424:10-12.

⁷⁸⁶ Livers Test. at 4.

⁷⁸⁷ *Id.*

⁷⁸⁸ *Id.*

⁷⁸⁹ Jan. 2014 Tr., M. Livers, 423:20-424:9.

⁷⁹⁰ Livers Test. at 4; Jan. 2014 Tr., M. Livers, 423:20-424:9.

⁷⁹¹ Jan. 2014 Tr., M. Livers, 417:6-17, 462:12-15.

ii. Inappropriate Relationships Between Female Staff and Male Youth

(a) Background

The expert panel discussed some of the dynamics in juvenile correctional facilities that can lead to inappropriate relationships between female staff and male youth.

Staff and residents may not differ significantly in age or background. Dr. Livers explained that applicants for direct-care staff positions are usually between eighteen and thirty years old with no previous employment.⁷⁹² In Louisiana, for example, 63% of all newly hired, entry-level, direct-care staff members are under age thirty.⁷⁹³ According to Dr. Livers, while the average age of youth in confinement is between sixteen and seventeen, confined youth can be as old as twenty-one.⁷⁹⁴ In some instances, there may only be a small age gap between staff and youth.⁷⁹⁵ Additionally, many staff members and youth come from the same communities.⁷⁹⁶ Given these similarities in age and backgrounds, staff and youth may often have similar interests in music and popular culture.⁷⁹⁷ As a result, Dr. Livers explained, they can easily form friendships that lead to intimate relationships.⁷⁹⁸ She also observed that male youth who grew up in single-mother households often view older female staff members as mother figures.⁷⁹⁹ Consequently, female staff members face the challenge of interacting with youth with the appropriate balance of compassion and professionalism.⁸⁰⁰

Dr. Livers also discussed the shift in the field of juvenile corrections from a punitive model to a treatment model, which emphasizes and relies on relationships of trust between staff and youth.⁸⁰¹ Under the treatment model, juvenile correctional systems encourage staff to form relationships with youth, to engage with them in making positive changes.⁸⁰² According to Dr. Livers, this approach creates a significant problem: these relationships can easily develop into inappropriate sexual relationships.⁸⁰³ The risk heightens when the staff does not have the emotional maturity to distinguish between an appropriate trusting relationship and an inappropriate intimate one.⁸⁰⁴ Staff must have a sufficient level of emotional maturity, for example, to avoid sexual conversations with youth.⁸⁰⁵

⁷⁹² Livers Test. at 2; Jan. 2014 Tr., M. Livers, 420:7-9.

⁷⁹³ Livers Test. at 2; Jan. 2014 Tr., M. Livers, 420:9-11.

⁷⁹⁴ Livers Test. at 2.

⁷⁹⁵ *Id.*; Jan. 2014 Tr., M. Livers, 420:17-20.

⁷⁹⁶ Livers Test. at 2; Jan. 2014 Tr., M. Livers, 421:1-5.

⁷⁹⁷ Livers Test. at 2; Jan. 2014 Tr., M. Livers, 420:20-22.

⁷⁹⁸ Livers Test. at 2; Jan. 2014 Tr., M. Livers, 421:8-12; *see supra* Part II.B.2.a.iii. (noting similarities between staff and inmates at the Philadelphia City Industrial Correctional Center) & Part II.B.2.c.iii. (noting similarities between staff and inmates at BCDC).

⁷⁹⁹ Livers Test. at 1-2; Jan. 2014 Tr., M. Livers, 418:14-419:8.

⁸⁰⁰ Livers Test. at 2; Jan. 2014 Tr., M. Livers, 418:14-419:8.

⁸⁰¹ Jan. 2014 Tr., M. Livers, 419:9-21.

⁸⁰² *Id.*

⁸⁰³ Livers Test. at 2; Jan. 2014 Tr., M. Livers, 421:8-12.

⁸⁰⁴ *See* Livers Test. at 3.

⁸⁰⁵ Jan 2014 Tr., M. Livers, 422:8-17.

Dr. Livers also testified that staff members who witness behavior that might be evidence of sexual victimization often do not report this information; they may be afraid or feel that the information they have is insufficient to establish misconduct.⁸⁰⁶ Dr. Livers and Professor Smith referred to this phenomenon as the “code of silence.”⁸⁰⁷

(b) Recommendations

Dr. Livers recommended that juvenile correctional systems and facilities provide more robust training and training materials on appropriate professional boundaries, PREA reporting standards, and sexual safety.⁸⁰⁸ She explained that, when staff and juveniles become too involved in relationships with each other, it can be difficult to halt those relationships, even with the prospect of sanctions.⁸⁰⁹ The training for staff should cover mandatory reporting requirements under PREA and emphasize that front-line employees should report what they see, even if they do not have all the evidence about an improper relationship.⁸¹⁰

In discussing her recommendation, Dr. Livers cited aspects of LOJJ’s PREA training for executives and supervisory staff. LOJJ executives participate in trainings on healthy leadership, organizational culture, and team dynamics.⁸¹¹ LOJJ supervisory staff participate in trainings on leadership, ethics, the “code of silence,” guiding positive youth transitions in confinement, and improving communication and collaboration.⁸¹² As part of this training program, LOJJ developed a video of a female former juvenile correctional officer, who is incarcerated, who discusses her sexual victimization of a youth in her care.⁸¹³ LOJJ also hosted an executive leadership summit for five other states that focused on how to encourage staff to report incidents of sexual victimization.⁸¹⁴ Through this summit, LOJJ received materials from Kentucky that LOJJ used to develop its own scenario-based training materials.⁸¹⁵

Dr. Livers encouraged systems and facilities to designate someone outside the employees’ chain of command with whom they can discuss the challenges of managing their relationships with youth.⁸¹⁶

Professor Buchanan recommended that juvenile correctional facilities look at how school districts prevent sexual misconduct between students and teachers.⁸¹⁷ She compared the

⁸⁰⁶ *Id.* at 459:2-460:6.

⁸⁰⁷ *Id.*; Smith Test. at 7 n.27.

⁸⁰⁸ Livers Test. at 4-5.

⁸⁰⁹ *See* Jan 2014 Tr., M. Livers, 461:10-19.

⁸¹⁰ *Id.* at 459:19-460:20.

⁸¹¹ Livers Test. at 5.

⁸¹² *Id.*

⁸¹³ *Id.* at 4.

⁸¹⁴ *Id.* at 5; Jan 2014 Tr., M. Livers 426:7-13, 449:18-450:5.

⁸¹⁵ Jan. 2014 Tr., M. Livers, 450:5-14.

⁸¹⁶ *Id.* at 424:17-425:12.

⁸¹⁷ Jan. 2014 Tr., K. Buchanan, 434:19-435:6.

relationship between a female staff member and a confined youth to a teacher-student relationship.⁸¹⁸ A teacher-student relationship and a staff-youth relationship are similar in that both are examples of relationships with significant power imbalances, but, as Professor Buchanan noted, a correctional employee has even more power over an adjudicated youth than a high school teacher has over a student.⁸¹⁹ In a juvenile correctional facility, a female staff member may control a male youth's living space, his ability to contact his family, and the number of infractions he receives; she can also use some measure of physical force against him to ensure his compliance with facility rules.⁸²⁰ By researching effective strategies for preventing sexual misconduct in schools, juvenile justice facilities could learn from schools about how to train employees and youth on how to handle feelings that could lead to inappropriate relationships.⁸²¹

Professor Buchanan also analogized the relationship of a staff member and youth to that of a psychiatrist and patient, because correctional personnel and psychiatrists both provide emotional support.⁸²² If a psychiatrist has sexual relations with a patient, the licensing board revokes the psychiatrist's license.⁸²³ Moreover, the psychiatric profession has created a culture in which psychiatrists are shocked when a colleague engages in inappropriate relations with a patient, and they report such encounters when they discover them.⁸²⁴ Professor Buchanan encouraged juvenile justice facilities to create a similar culture, in which coworkers find sexual misconduct appalling and immediately report it.⁸²⁵

iii. Stereotypical Views on Dynamics of Female Staff's Sexual Victimization of Male Youth

(a) Background

According to Professors Smith and Buchanan, the NSYC-2 data on the prevalence of female staff sexual victimization of male youth counter the prevailing stereotypic attitude that male youth who have a sexual experience with female staff are "lucky" and that staff sexual misconduct against boys is somehow "less serious" than similar misconduct against girls.⁸²⁶ According to Professor Smith, the stigma of victimization, along with the stereotypical notions of masculinity, lead males to believe that sex with older women is not abusive, which makes it less likely that they will report such activity.⁸²⁷ She observed that our society has significantly different attitudes about male and female sexuality. She posited that it is more socially

⁸¹⁸ *Id.* at 434:4-8.

⁸¹⁹ *Id.* at 429:1-430:7.

⁸²⁰ Buchanan Test. at 3.

⁸²¹ *Id.*

⁸²² Jan. 2014 Tr., K. Buchanan, 437:6-22.

⁸²³ *Id.* at 437:5-6.

⁸²⁴ *Id.* at 436:20-437:6.

⁸²⁵ *Id.* at 437:22-438:3.

⁸²⁶ Smith Test. at 9.

⁸²⁷ *Id.* at 11.

acceptable for boys to have sex with older women than for girls to have sex with older men.⁸²⁸ She suggested that our society is less concerned with the age at which a boy loses his virginity, compared to when a girl loses hers.⁸²⁹ She also cited the example of the popular musician Chris Brown, who reportedly had his first sexual encounter when he was eight.⁸³⁰ From Professor Smith's perspective, our society views this type of sexual encounter as somewhat normal when, in fact, it is a felony.⁸³¹ Professor Smith contends that gender stereotypes about masculinity are so pervasive that there is a lack of funding, materials, and information for male victims of sexual misconduct.⁸³²

Professor Buchanan echoed Professor Smith's remarks. She testified that society assumes that boys, but not girls, are in a constant state of sexual desire;⁸³³ under this false assumption, every sexual encounter of a boy is presumptively consensual, and every sexual encounter of a girl is presumptively coercive.⁸³⁴

Professors Smith and Buchanan also discussed the stereotype that male youth manipulate female staff into having improper sexual contact with them. Professor Smith testified that according to conventional wisdom, male youth manipulate female staff, who are "really the victims."⁸³⁵ But, according to Professor Smith, males do not typically develop full decision-making abilities until they are twenty-five or twenty-six years old.⁸³⁶ Professor Buchanan observed that black male youth, in particular, are subject to the racial stereotype that they are sexual predators and not victims.⁸³⁷

Professor Buchanan highlighted the danger of unconscious reliance on the gender stereotype that boys are unharmed by sexual contact with female staff, especially when evidence suggests that the sexual misconduct was most often coercive.⁸³⁸ She argued that encounters between female staff and male youth do not, in fact, show that youth want to engage in sexual relationships with staff, and she cautioned against relying on this rationale to excuse inappropriate behavior.⁸³⁹ Rather, the data suggest that male youth generally do not want female staff to touch them sexually.⁸⁴⁰ Professor Buchanan warned that one should never assume that a youth seduced a

⁸²⁸ Jan. 2014 Tr., B. Smith, 440:13-441:3.

⁸²⁹ *Id.* at 440:16-20.

⁸³⁰ *Id.* at 440:1-11.

⁸³¹ *Id.* at 440:13-441:3.

⁸³² Smith Test. at 10.

⁸³³ Buchanan Test. at 3.

⁸³⁴ See Jan. 2014 Tr., K. Buchanan, 429:4-9.

⁸³⁵ Smith Test. at 9.

⁸³⁶ Jan. 2014 Tr., B. Smith, 443:8-15.

⁸³⁷ Buchanan Test. at 1.

⁸³⁸ *Id.* at 2.

⁸³⁹ *Id.* at 4-5; Jan. 2014 Tr., K. Buchanan, 432:1-3.

⁸⁴⁰ Buchanan Test. at 3. Professor Buchanan criticized BJS' inclusion of the phrase "inappropriate relationships" in the NSYC-1 and NSYC-2 surveys. She asserted that there are two problems with this term. First, it improperly suggests that instances of sexual victimization are relationships. Buchanan Test. at 2. Second, it is not possible for researchers to distinguish between abusive sex and consensual sex within this category. *Id.*

female staff member, even if the youth was big, tall, and handsome, because he was likely the victim of past trauma and was vulnerable.⁸⁴¹

(b) Recommendations

Professor Smith testified that the best way to address stereotypes and misperceptions involving female staff sexual victimization of male youth is to conduct appropriate training for staff and youth.⁸⁴² The staff training should discuss female staff sexual abuse of male youth, emphasizing that employees are responsible for their own decisions and are accountable for any inappropriate encounters.⁸⁴³ Professor Smith also implicitly encouraged juvenile correctional systems and facilities to develop better training for male youth on the issue of female staff sexual misconduct, stating that there are not enough training materials on this topic.⁸⁴⁴ In discussing the materials that are available, she referred to a series of graphic novels that The Project on Addressing Prison Rape published on staff and inmate sexual assault in adult and juvenile correctional facilities.⁸⁴⁵

Professor Buchanan testified that to understand inappropriate sexual relationships between female staff and male youth better, researchers should conduct a comprehensive qualitative investigation of coercion and force in this context.⁸⁴⁶ As part of this research, researchers should elicit the perspectives of female staff and male youth on these interactions.⁸⁴⁷ In designing the survey instrument, she would include space for open-ended answers that would allow survey participants to explain these encounters in their own terms.⁸⁴⁸

iv. Lack of Prosecution and Discipline

(a) Background

Professors Smith and Buchanan testified that juvenile correctional systems and facilities should improve their efforts to refer for prosecution matters involving female staff sexual misconduct with male youth. Professor Smith observed that while the number of substantiated incidents of sexual abuse of youth by staff has increased, there has not been a commensurate increase in prosecutions of staff.⁸⁴⁹ In reviewing 300 cases of sexual victimization in confinement involving female staff, Professor Smith found that prosecutors rarely filed criminal charges against female

⁸⁴¹ Jan. 2014 Tr., K. Buchanan, 431:3-13.

⁸⁴² Smith Test. at 9.

⁸⁴³ *Id.*

⁸⁴⁴ *Id.* at 10.

⁸⁴⁵ *Id.* at 10 & n.38; see End to Silence: The Project on Addressing Prison Rape, *End Silence: Youth Speaking Up About Sexual Abuse in Custody* (2012, 2014), AM. U. WASH. C. L., https://www.wcl.american.edu/endsilence/inmate_edu.cfm.

⁸⁴⁶ Buchanan Test. at 5.

⁸⁴⁷ *Id.*; Jan. 2014 Tr., K. Buchanan, 427:22-428:8.

⁸⁴⁸ Jan. 2014 Tr., K. Buchanan, 428:1-6.

⁸⁴⁹ Smith Test. at 8.

staff perpetrators.⁸⁵⁰ Even when prosecutors did pursue criminal charges, the female defendants often pled guilty to a less serious offense.⁸⁵¹ Rather than referring a matter for prosecution, or even subjecting a female staff perpetrator to administrative sanctions, Professor Smith testified that an agency often terminates the staff member's employment or simply allows her to resign.⁸⁵² By allowing a female staff perpetrator to resign, the system and facility allow her to obtain a job at another correctional facility, where she might have access to other vulnerable populations because the new employer lacks information about her prior criminal misconduct.⁸⁵³

(b) Recommendations

Professor Smith encouraged facilities to enter into a memorandum of understanding with prosecutors' offices to increase the number of prosecutions of correctional officers for sexual abuse.⁸⁵⁴ She recommended that juvenile correctional facilities have prosecutors provide training to staff on mandatory reporting of sexual victimization.⁸⁵⁵ She also recommended the creation of a national do-not-hire list that would allow agencies that provide services to vulnerable populations to access information about job applicants' previous misconduct.⁸⁵⁶

Professor Buchanan emphasized that facilities should have a process that allows youth to report incidents of sexual victimization in a way that does not identify them to the general juvenile population or public; she said that facilities should also provide youth victims with supportive counseling.⁸⁵⁷

v. Facility Size

As previously noted, rates of sexual victimization of youth in custody are two-to-three-times higher in facilities with over 100 residents than in facilities with ten to twenty-five residents.⁸⁵⁸ Dr. Livers testified that most states are reducing the number of incarcerated juveniles in their custody, recognizing that only youth who pose the highest risk to public safety should be incarcerated in juvenile correctional facilities.⁸⁵⁹ By reducing incarceration levels for low-risk youth, facilities can conserve resources while protecting more youth from harm.⁸⁶⁰

⁸⁵⁰ *Id.*

⁸⁵¹ *Id.*

⁸⁵² Jan. 2014 Tr., B. Smith, 448:2-6; Smith Test. at 8.

⁸⁵³ Smith Test. at 8-9.

⁸⁵⁴ Jan. 2014 Tr., B. Smith, 456:3-21.

⁸⁵⁵ *Id.* at 456:3-21, citing *State Mandatory Reporting Laws*, NAT'L PREA RES. CTR., <http://www.prearesourcecenter.org/sites/default/files/library/statemandatoryreportinglaws.pdf>.

⁸⁵⁶ Smith Test. at 8.

⁸⁵⁷ Buchanan Test. at 3.

⁸⁵⁸ *BJS Juvenile Report*, at 11.

⁸⁵⁹ Jan. 2014 Tr., M. Livers, 451:11-16.

⁸⁶⁰ *Id.* at 451:17-20; see also Review Panel on Prison Rape, *Report on Sexual Victimization in Juvenile Correctional Facilities* 34-35 & n.315 (Oct. 2010), http://ojp.gov/reviewpanel/pdfs/panel_report_101014.pdf.

vi. Cross-Gender Searches

Professor Smith discussed the role that invasive searches may play in impairing interactions between female staff and male youth. PREA prohibits cross-gender searches, including pat downs, except in exigent circumstances.⁸⁶¹ In practice, however, many jurisdictions still permit cross-gender searches and supervision.⁸⁶² She recommended that facilities limit the extent to which female staff search and view male and transgender youth in a state of undress.⁸⁶³

4. Observations

A summary of the reasons that administrators of selected juvenile correctional facilities offered for having either a low or a high incidence of sexual victimization in their facilities appears in Table C.⁸⁶⁴

Testimony concerning juvenile correctional facilities with either a low or a high prevalence of sexual victimization supports what many practitioners in the field of corrections already know. Institutions that invest in research and mandatory training for staff and residents on preventing sexual victimization are often successful in preventing inappropriate sexual behavior, not only in regard to staff misconduct but also among juvenile residents. Moreover, certain institutional practices create a culture that protects young people from sexual harm. Among these practices are maintaining a low staff-to-youth ratio, housing youth in small facilities, installing video monitoring systems, developing a high-caliber staff, encouraging healthy interactions between staff and youth, hiring a PREA coordinator, classifying and housing vulnerable youth and youth with a propensity for aggression, having effective procedures for reporting and investigating sexual abuse or potential sexual abuse, and adopting self-assessment and self-monitoring procedures to create an environment that does not tolerate sexual victimization.

Juvenile correctional facilities with a high incidence of sexual victimization confirm the prevailing views on the optimal practices to safeguard youth. The information, unfortunately, comes in a different form, from practices that contributed to higher rates of sexual victimization. Among the practices with this negative effect are housing youth in large, unmonitored facilities; failing to provide appropriate orientation on complying with PREA for both residents and staff; having limited ways to report sexual abuse; departing from established professional practices in recruiting, screening, and training employees; having an insufficient number of staff to supervise youth; and having employees who lack cohesion and are indifferent to protecting youth from sexual violence. One of the juvenile correctional facilities with a high incidence of sexual victimization admitted that before taking corrective action, it had to confront an institutional culture in which the staff could not even discuss sexual misconduct.

⁸⁶¹ See Smith Test. at 4 (*citing* 28 C.F.R. § 115.315(b) (2012)); Jan. 2014 Tr., B. Smith, 447:5-10.

⁸⁶² Smith Test. at 5.

⁸⁶³ *Id.*

⁸⁶⁴ See *supra* p. x.

5. Recommendations

The Panel endorses the recommendations from the panel of experts who testified at the hearing. In particular, the Panel encourages juvenile correctional facilities to provide substantive training to staff, particularly female staff, on maintaining professional boundaries; to improve the compensation and working conditions for direct-care staff to attract a more educated workforce; to provide support systems for direct-care staff where an employee may safely go to discuss challenges involved in maintaining professional boundaries or to process witnessing improper sexual behavior; to create a professional working environment in which employees would be able to resist a “code of silence” to report staff sexual misconduct; to provide effective training to youth in custody on preventing sexual victimization, especially addressing female staff sexual misconduct involving male youth; to work with prosecutors’ offices to inform staff on mandatory reporting requirements involving the sexual abuse of minors; to create systems that maintain records of staff sexual misconduct to prevent correctional institutions from hiring potentially dangerous employees; and to review the use of cross-gender pat-down searches. The Panel also encourages local jurisdictions to expand diversion programs and reduce the size of juvenile correctional institutions as ways to keep adjudicated youth safer.

The Panel encourages the U.S. Department of Justice, other governmental agencies, professional organizations serving members in law and corrections, research institutions, scholars, and advocacy groups to undertake further studies on the dynamics that lead female staff members to engage in sexual misconduct with male youth in custody. Understanding the factors that give rise to this phenomenon will help practitioners implement more effective prevention programs.

Conclusion

The Panel values the contributions of the witnesses who appeared at its hearings and submitted written testimony, and it applauds the remedial steps that many correctional institutions have made to make their facilities safer. The Panel hopes that this Report, based on the information provided, highlights a growing consensus among advocates, scholars, and practitioners on the work that still lies ahead in protecting from sexual victimization those who are serving sentences in the United States criminal and juvenile justice systems. Eliminating sexual violence in the nation's correctional institutions is an ongoing effort, which requires clarifying and implementing the PREA standards, developing operational procedures to prevent and investigate sexual assaults, creating effective training programs for both staff and inmates, and building alliances with community partners to serve victims and prosecute predators.

Review Panel on Prison Rape

Dr. Reginald A. Wilkinson is the president and CEO of the Ohio College Access Network. He was the executive director of the Business Alliance on Higher Education and the Economy. From 1973, he worked for the State of Ohio Department of Rehabilitation and Correction, serving in a variety of positions, including as director from 1991 to his retirement in 2006. Dr. Wilkinson is past president of the nation's oldest and largest corrections organization, the American Correctional Association (ACA). Dr. Wilkinson has authored numerous articles on a variety of correctional topics. Dr. Wilkinson has received awards from the National Governors' Association, the ACA, the Association of State Correctional Administrators, the International Community Corrections Association, the National Association of Blacks in Criminal Justice, the Volunteers of America, the Ohio Community Corrections Organization, and the Ohio Correctional and Court Services Association. 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 D.Ed. from the University of Cincinnati.

Dr. Gary Christensen has worked within the correctional field for the past thirty-eight 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, New York, 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 a jail administrator, Dr. Christensen served in an advisory capacity to the executive and legislative branches of county government as chair of the Dutchess County Criminal Justice Council, and he authored legislation to counter the effects of police racial profiling. He also coordinated criminal justice system master planning and the implementation of system-wide, evidence-based criminal justice practices. 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 in the criminal justice field to enhance the implementation of evidence-based practices. He has developed the Applied Correctional Transition Strategy, a comprehensive software suite designed to enhance all aspects of daily jail management and to provide policymakers with information to ensure that resources lead to the most productive and cost-efficient outcomes. Dr. Christensen continues to serve on several national advisory boards that seek innovative responses to pressing corrections issues. Among his publications is 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 for the State of New York.

Ms. Anne Seymour has been a national crime victim advocate for thirty-two 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 the criminal and juvenile justice systems, 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 that benefits 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.