



**Testimony by Jack Beck, Director, Prison Visiting Project  
The Correctional Association of New York  
Before the Review Panel on Prison Rape  
April 27, 2011**

I am Jack Beck, Director of the Prison Visiting Project of the Correctional Association of New York (CA), and I want to thank the Department of Justice and the Review Panel on Prison Rape for this opportunity to provide testimony about our observations and concerns about sexual abuse in the New York state prisons. I will comment on the findings in the Bureau of Justice Statistics' (BJS) report, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09*, as they relate to New York prisons, with a particular focus on Elmira Correctional Facility. I will also report on data the CA has analyzed about sexual abuse within other New York state prisons.

The data we have analyzed and the information we obtained during CA prison visits supports the conclusion that staff sexual abuse is a problem within New York prisons. Such abuse appears to be focused within all women's prisons and many of the male maximum security facilities. We support the BJS report that found higher rates of staff sexual abuse at New York's Elmira Correctional Facility, although this facility does not have the highest rate of allegations of staff sexual abuse of all New York prisons. Although abusive pat frisks are a serious issue within New York prisons, we do not believe it explains the high rates of allegations of staff sexual abuse. Our data reveals a high correlation between allegations of staff sexual abuse and other indicia of inmate-staff violence and confrontations, such as incidents of inmate assaults on staff, and grievances about staff misconduct. It appears that many of the prisons with high rates of staff sexual abuse are institutions with elevated tension between staff and inmates and are known to have a violent prison environment. We also found the reporting of New York state prison sexual abuse data by DOCS to be confusing and at times inconsistent. Finally, and most disturbing, we believe there is significant under-reporting of sexual abuse by inmates and by DOCS, and grossly inadequate substantiation of inmates' complaints of sexual abuse by prison officials.

## **CA Legislative Authority to Visit NYS Prisons and Report on Conditions**

### ***Description of Visiting Process***

In 1846, New York passed a law granting the Correctional Association authority to inspect prisons operated by the NYS Department of Correctional Services (DOCS) and to report findings to the State Legislature. The CA uses this unique mandate to advocate for improved prison conditions and to issue comprehensive reports to policymakers and the public. Through prison monitoring, research, leadership development, coalition building, public education and policy analysis, the CA effectively addresses prison reform and prison-related issues by promoting constructive criminal justice reforms that ultimately save money and make for safer and healthier communities. The Prison Visiting Project (PVP) of the CA conducts on-site assessments of the 62 state male prisons, issues prison-specific reports to the State Legislature, prison officials, and the general public following each visit, and publishes detailed reports on key corrections issues, such as medical and mental health care and substance abuse services, and advocates for system-wide improvements. PVP goes on approximately six to 11 visits per year, some of which are for general prison monitoring and others of which are for specific issues such as substance abuse treatment or medical or mental health care.

### ***Description of Inmate Surveys***

PVP has compiled extensive data during the past six years concerning the prison population, the facilities we have visited, and the experiences of inmates at CA-visited facilities. Prior to each visit, we seek data from the prison about its population, work force, programs and significant facility events. During a prison visit, PVP asks inmates if they would like to receive a survey in the mail from us about their prison experience. We have more than 10 types of surveys. For example, we have surveys on: (1) general prison conditions; (2) inmates in a substance abuse treatment program; (3) inmates waiting for, or who have completed, a substance abuse treatment program; (4) inmates in disciplinary confinement; (5) inmates in various medical and mental health programs; (6) inmates in a sex offender program; (7) inmates in a shock incarceration program; (8) inmates' experience with reentry services within the prisons; and (9) inmates' experiences solely about prison violence and staff abuse.

We typically sign up between 40% and 60% of the entire inmate population. We receive responses from approximately 25% to 40% of the individuals to whom we send a survey. The data is entered into an Access database and then transferred to SPSS for analysis. In total, we have received about 9,500 surveys from 5,000 inmates during this almost six-year period. The largest groups of surveys include 4,100 surveys about general conditions from 28 prisons, 1,300 from inmates awaiting substance abuse treatment from 24 prisons, 1,230 from inmates in

substance abuse treatment programs from 24 prisons, 1,070 from inmates about prison violence (2005-07) from 12 prisons, and 1,150 surveys on prison reentry services.

### *Department-wide Data for All NYS Department of Correctional Services Facilities*

The New York State Department of Correctional Services operates 67 facilities throughout the state with a current population of 56,000 inmates. There are five women-only prisons, two facilities that house both men and women in separate sections of the prison and 60 male-only facilities. The CA has obtained department-wide data for each prison concerning several aspects of the prisons' operations, including: (1) prison census and population demographics; (2) annual summaries of the number of staff-on-inmate and inmate-on-inmate sexual abuse complaints for 2008-10 (hereinafter "DOCS PREA data"); (3) annual summaries of the number of grievances filled by inmates concerning staff misconduct by prison for 2007-09; (4) annual summaries of the number of Unusual Incident Reports prepared by the prisons for 2007-09; and (5) inmate disciplinary actions for 2008 as they related to sexual misconduct and inmate-on-staff and inmate-on-inmate disciplinary incidents. We have used this department-wide data in preparing this testimony.

### **Elmira Correctional Facility**

Our analysis of information about Elmira supports the BJS report concerning elevated levels of staff sexual abuse at Elmira Correctional Facility. The CA visited Elmira in March 2010 to assess general prison conditions.<sup>1</sup> Elmira is a maximum security prison that was opened in 1876 and consists primarily of cells in long blocks that are multi-storied. At the time of our visit, the facility was at capacity, with 1,796 inmates, including 429 beds in its reception center. Of these inmates, 1,323 were confined in general population areas. The facility also maintains a Special Housing Unit (SHU) for inmates in disciplinary confinement, which was at its capacity of 54 inmates at the time of our visit.

As part of our visiting process, we asked Elmira inmates about their interactions with prison staff and their observations of inmate-staff relations throughout the prison to assess the presence of staff abuse or mistreatment. Concerning staff behavior, we asked how frequently inmates hear about staff sexual abuse of inmates and how common staff sexual abuse is experienced in the prison. Eleven percent of the 176 Elmira general population inmates who responded to our survey reported that they frequently or very frequently hear about staff sexual abuse occurring in the prison, suggesting that sexual abuse is more prevalent at Elmira than at approximately two-thirds of the state prisons we have visited.<sup>2</sup> Similarly, 11% of Elmira survey participants said

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<sup>1</sup> The report is available at [http://www.correctionalassociation.org/publications/download/pvp/facility\\_reports/elimira\\_2010.pdf](http://www.correctionalassociation.org/publications/download/pvp/facility_reports/elimira_2010.pdf).

<sup>2</sup> We have similar data from inmates at 28 of the 67 prisons in the New York Department of Correctional Services as a result of CA prison visits from 2006 through 2010. These prisons are maximum, medium and minimum

that staff sexual abuse was common in the prison, a rate that is higher than the response from survey participants at approximately two-thirds of the CA-visited prisons.

We have also reviewed department-wide data for all state prisons, including data about Elmira, from the following sources: DOCS PREA data, summaries of inmate grievance reports, unusual incident reports and inmate disciplinary reports. Based upon this review and our prison visit, we draw the following conclusions and concerns:

### *Staff Sexual Abuse*

The department-wide DOCS PREA data and the responses from CA survey participants strongly support the conclusion that sexual abuse is occurring at Elmira at a rate that exceeds most of the other state prisons. An analysis of the PREA data for the three-year period 2008-10 reveals that Elmira had almost 17 complaints of staff sexual abuse per year per 1,000 inmates, a rate more than five times the median prison rate of three per year per 1,000 inmates for all DOCS facilities, resulting in Elmira having the eighth highest rate of PREA allegations of the 62 male prisons in the state.

The CA survey data previously noted also supports the conclusion of a higher rate of sexual abuse at Elmira than at most other New York prisons. In our prison report, we particularly noted that the rate of staff sexual abuse at Elmira was elevated in comparison to most other CA-visited prisons in part because Elmira survey respondents in general did not appear to perceive other forms of staff abuse as being significantly worse than other prisons we have visited. Elmira survey respondents assessed the level of staff-inmate physical confrontations at rates that were better than the responses from surveyed inmates at a majority of the CA-visited prisons. In contrast to the inmates' perception about inmate-staff physical confrontations, a review of DOCS Unusual Incident Reports (UIRs) about inmate-on-staff assaults for 2007 through 2009 actually reveals an elevated rate for such incidents within the prison, ranking it the 14<sup>th</sup> highest rate for assaults-on-staff of all 62 male prisons. Another indication that Elmira inmates were involved in violent conduct is the UIR rate for inmate assaults on other inmates; Elmira had the highest rate for such incidents for all state prisons during 2007-09.

Although Elmira inmates participating in our survey did not express strongly negative views of the prison's staff, DOCS data reveals that many Elmira inmates file grievances about staff conduct. The rate of Elmira inmates' grievances about staff conduct for the period 2007-09 was 67% higher than the median rate for all state prisons; Elmira's rate for staff misconduct was the 16th highest of the 62 male state prisons for this three-year period.

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security facilities, which we visited from 2006 through 2010, and represent approximately 60% of the entire prison population.

We believe the DOCS PREA data and the CA survey information strongly support the conclusion that sexual abuse is a persistent problem at Elmira.

### *Abusive Pat Frisks*

Abusive pat frisks are a common complaint of inmates throughout DOCS facilities, and these complaints can overlap with the issue of staff sexual abuse. We believe sexually abusive pat frisks are a problem that should be addressed by the PREA standards, and we do not accept the assertion that because staff have a right to touch an inmate's buttocks and groin area, such conduct should justify unnecessarily aggressive or probing actions to the extent that inmates perceive the search to be sexually offensive. Pat frisks can be highly charged encounters that can lead to staff-inmate confrontations and violence, and avoiding offensive touching serves both inmates and staff by avoiding potential conflicts. The persistence of inmates' complaints of aggressive pat-frisking procedures, however, should not be used to dismiss or minimize the existence of other staff conduct that involves sexual abuse.

Data we have received from other prisons supports the conclusion that abusive pat frisks are only one component of staff sexual abuse of inmates. During 2005-06, the CA also surveyed 1,068 inmates from 12 prisons throughout the state.<sup>3</sup> Twenty-seven percent of the inmates responding to the survey said they experienced staff sexual abuse in the prison where they were currently incarcerated. Of those who reported personally experiencing staff sexual abuse, 31% said the abuse they experienced was not limited to sexually abusive pat frisks. Overall, the individuals asserting sexual abuse beyond pat frisks represented 8% of all survey respondents, a rate much higher than the sexual abuse reported in the BJS report.

More importantly, the data we have reviewed from Elmira suggests that pat-frisking procedures at the prison do not explain the elevated levels of allegations of sexual abuse at the prison. The CA 2010 survey of Elmira inmates specifically asked whether the survey respondent experienced abuse pat frisks; how frequently the individual heard about abusive pat frisks of others at the prison; and how common such activity was in the prison. Elmira survey participants' responses support the conclusion that abusive pat frisks occurred at Elmira at rates that were about average for all CA-visited prisons.<sup>4</sup> A review of inmates' comments included in their survey responses did not reveal any particular expression of heightened concern about sexually abusive pat frisks compared to other prisons we have visited.

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<sup>3</sup> Elmira was not part of this group of surveyed prisons. The prisons we visited for the violence study included: Arthur Kill, Attica, Auburn, Bedford Hills, Clinton, Eastern, Fishkill, Gowanda, Southport, Sing Sing, Upstate and Woodbourne.

<sup>4</sup> For example, 58% of the Elmira inmates reported experiencing an abusive pat frisk within the prison, compared to 57% of inmates surveyed at all CA-visited prisons. Similarly, 44% of Elmira inmates reported abusive pat frisks were frequent in the prison, compared to 46% of survey participants at all prisons visited by the CA.

The CA also has reviewed department-wide data from 2003 through 2006, which it obtained as part of its investigation of prison violence and staff abuse, to assess the impact of abusive pat frisks on allegations of staff sexual abuse. Concerning Elmira, the CA obtained summaries of all grievances about staff conduct that were appealed to the DOCS's Central Office from January 2003 through August 2006. Of the 15 grievances from Elmira that referred to sexual abuse or harassment, seven referred to abusive pat frisks (47%) and the remaining grievances alleged more general sexual abuse or harassment.

This data suggests that sexually abusive pat frisks are a significant component of the sexual abuse reported at Elmira. However, other sexual abuse of inmates also occurs and should not be minimized by the pat frisk issue. We urge the Review Panel to take a strong stance on addressing both abusive pat frisks and other sexually abusive behavior.

### *Conditions within Elmira That May Contribute to Staff Sexual Abuse*

It is difficult to assess the factors within Elmira that may facilitate staff sexual abuse without having had extensive contact with inmates who have experienced this abuse. However, from our previous conversations with state inmates about staff sexual abuse and our recent visit to the prison, we can offer a few observations and comments:

The physical plant within the prison is not conducive to prison safety. There are almost no video cameras within the prison, and there are many areas where inmates can be isolated from the remaining inmate population while in contact with staff. Since inmates are escorted by staff for all movement, it is not difficult to isolate an individual from a group of inmates being moved within the prison. Additionally, the housing areas contain cells running down long tiers where it is difficult for inmates to observe activity outside their cells.

Although Elmira CA survey participants did not report a high level of physical confrontations between staff and inmates, the UIR data suggests violence is a significant issue at the prison, both between inmates and staff and among inmates. Prison disciplinary data for 2008 also reveals a high rate of misbehavior reports for assault-on-staff and inmate-on-inmate incidents. Overall, we have to conclude that there is a high level of violence at the prison, a factor that highly correlates with staff sexual abuse. In addition to inmate-staff confrontations, Elmira inmates have consistently submitted a large number of grievances about staff misconduct, as demonstrated in **Table A - NYS Prisons Data re Sexual Abuse by Staff and Inmates: 2008-10**, attached to this testimony.<sup>5</sup> Our analysis of the PREA data and inmate grievances reveals a

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<sup>5</sup> **Table A** contains a summary of the DOCS data concerning allegations of sexual abuse by staff and by inmates for 2008-10, computations of rate of such allegations for each prison per 1,000 inmates and the ranking of these rates for each prison from the lowest to highest rate. **Table A** includes rates of UIR incidents of inmate assault on staff for 2007-09 and the ranking of the prison for this data. Rates of inmates' grievances concerning allegations of staff

high correlation between allegations of staff sexual abuse and grievances related to staff conduct. The rate of such grievances was substantially higher for Elmira than at most other state prisons.

Elmira inmates have consistently asserted that more staff mistreatment occurs during the 3:00pm to 11:00pm shifts in the prison, when the executive staff are not present. This includes staff-inmate encounters that occur when inmates are going to and returning from recreation in the gym or yard. We urge the Review Panel to recommend that video cameras be installed at locations where inmates are searched or are with staff away from their housing or program areas.

### **Sexual Abuse in All DOCS Facilities**

In preparation for this hearing, we have analyzed department-wide data for all New York prisons concerning sexual abuse allegations, inmate grievances, Unusual Incident Reports and inmate disciplinary actions concerning sexual conduct. Based upon this review and information we have from CA prison visits, we offer the following observations:

#### ***NYS Male Prisons with High Rates of Allegations of Staff Sexual Abuse***

We recently received the annual number of allegations of staff-on-inmate and inmate-on-inmate incidents of sexual abuse for every New York prison for 2008 through 2010. This data is summarized in **Table A - NYS Prisons Data re Sexual Abuse by Staff and Inmates: 2008-10**. It reveals a disturbing pattern of significant complaints at nine male prisons and substantially lower incidents at many other facilities.<sup>6</sup>

For the 62 prisons containing male inmates, the median rate of staff-on-inmate complaints was approximately three per year per 1,000 inmates. In contrast, nine male prisons with large number of sexual abuse complaints had annual rates of 15 to 64 allegations, representing abuse claims that were five to more than 20 times greater than the median rate. Eight of these nine prisons were maximum security facilities, two of which (Upstate and Southport) house primarily disciplinary inmates who are confined to their cells 23 hours per day. These high-incident prisons generally also had high rates of allegations of inmate-on-inmate sexual abuse, although three of the prisons, Southport, Elmira and Cayuga, did not follow this trend. Overall, we found a high correlation between allegations of staff-on-inmate and allegations of inmate-on-inmate allegations of abuse for all DOCS facilities and disciplinary reports for inmate sexual misconduct. Similarly, the high-rate staff sexual abuse facilities also had very high rates of inmate grievance filed for staff misconduct, which includes any allegation of mistreatment by staff.

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misconduct for 2007-09 are reported and ranked. Finally, the rate and ranking of inmate violations of prison rules concerning improper sexual conduct is reported for 2008.

<sup>6</sup> The nine prisons with high rates of staff sexual abuse are: Upstate, Five Points, Southport, Sullivan, Wende, Shawangunk, Great Meadow, Elmira and Cayuga.

Of the nine male prisons identified from the DOCS PREA data with high staff sexual abuse rates, the CA visited seven of them and obtained surveys from their inmate population.<sup>7</sup> An analysis of that data reveals that there was not a significant correlation between high staff sexual abuse rates and general concerns about inmate-staff relations. But some specific allegations of staff abuse were more prevalent in several of these prisons. For example, there was a very strong correlation between the elevated rate of staff sexual abuse and UIRs for inmate-on-staff assaults and a strong correlation between staff sexual abuse and UIRs for inmate-on-inmate assaults. CA-survey participants recorded high rates of complaints of abusive pat frisks at four of the prisons, Five Points, Great Meadow, Sullivan and Wende, but not elevated rates of pat frisk abuse at Cayuga, Elmira and Shawangunk. Similarly, inmate survey respondents at Five Points, Great Meadow, Shawangunk and Wende reported high rates of retaliation for filing complaints, and Wende and Five Points inmates reported elevated rates of staff threats and intimidation. These later trends were not present for the other prisons. Overall, the common factors at these prisons were high levels of violence and staff-inmate confrontations, and an intimidating atmosphere where threats by staff with retaliation were common.

Although inmates in the eight maximum security prisons are primarily housed in cells, most of the prisons were built since the 1980s and therefore are more modern facilities. The inmate population at these prisons have longer sentences than at medium security prisons and more individuals have been convicted of violent offenses. But other maximum security prisons contain inmate populations with comparable prison and criminal histories, and these facilities do not exhibit as high a rate of staff sexual abuse allegations; consequently, inmates' characteristic do not necessarily explain the heightened rates.

### *Protective Custody*

The New York prison system does not have an aggressive program to identify vulnerable individuals. The total state protective custody (PC) population is relatively small. Although we do not have precise data, we believe it is significantly below 1,000 beds, representing less than 2% of prison capacity. We frequently receive complaints from inmates who are seeking PC but who are denied admission to a PC unit unless they can demonstrate specific threats from identified individuals. Moreover, PC inmates who are transferred to another facility are placed in general population at the next facility. Some inmates have told us that they intentionally violate prison rules just so that they can be removed from general population because they fear for their safety and were not assigned to PC.

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<sup>7</sup> These included Cayuga, Elmira, Five Points, Great Meadow, Shawangunk, Sullivan and Wende.



### *Inmate Under-Reporting of Sexual Abuse*

We are also concerned about under-reporting of sexual abuse at some of the other male maximum security prisons. Several of the much older and larger maximum security prisons, such as Attica, Auburn, Clinton, Sing Sing and Green Haven, have lower rates of allegations of staff sexual abuse for 2008-10 than the eight previously identified high rate of staff sexual abuse prisons, although the staff sexual abuse rates at these prisons is still significantly above the median value for all state prisons. CA staff visited several of these older maximum security prisons in 2005-06 during our investigation of prison violence and abuse. At that time, inmates at Attica, Auburn and Clinton reported rates of sexual abuse that were higher than the rates we have obtained from our more recent surveys. Moreover, inmates at these prisons reported higher rates of staff threats and intimidation, and asserted they were retaliated against by staff for filing complaints about staff conduct at rates that exceed figures for many of the prisons included in the high-incident rate identified by the 2008-10 DOCS PREA data. Finally, many of these older maximum security facilities have higher rates of inmate-staff violence and inmate-on-inmate incidents. Overall, we are concerned that inmates in these large maximum security facilities are fearful of raising allegations of staff sexual abuse due to justifiable concerns that they could be targeted by staff for making such allegations.

We believe the Review Panel should urge the Bureau of Justice to focus on the male maximum security facilities during its next review cycle. We also strongly support the proposal that an outside agency be assigned the responsibility to assess the level of abuse in the state prisons. Based upon our review of CA data from some of the prisons not reporting high levels of staff sexual abuse, we suspect that there has been significant under-reporting due to intimidation and threats and retaliation by staff against those who pursue complaints of staff misconduct of any kind.

### *New York Women's Prisons All Have High Rates of Staff-on-Inmate Incidents*

**Table A** demonstrates that the allegations of staff-on-inmate and inmate-on-inmate sexual abuse is very high at all the female prisons. Four of the five female-only prisons, Albion, Bayview, Bedford Hills and Taconic, are in the top six of all DOCS facilities for the highest rates of allegations of staff-on-inmate sexual abuse. These rates are 13 to 24 times higher than the median rate at the male prisons. The fifth women's prison, Beacon, is a minimum security facility, but its rate is still nearly three times the median male-facility rate. Grievances by women at these facilities about staff conduct are also relatively high. Similarly, the DOCS PREA data reveals that there also are very high levels of allegations of inmate-on-inmate sexual abuse at the women's prisons, with corresponding high rates for inmate discipline for sexual misconduct.

Although the Prison Visiting Project does not visit the female prisons, the Women in Prison Project of the CA has visited these prisons and is in the process of analyzing data from surveys they have obtained from women at these facilities. The project will be preparing a report about staff abuse at these prisons in the coming year. Based upon their initial observations and research on sexual abuse in the female prisons, several issues should be raised concerning sexual abuse of female inmates:

The high rate of staff sexual abuse in the women's prisons is a function of the greater vulnerability of this population to such abuse. Women comprise a disproportionate percentage of victims of sexual abuse and domestic violence in this country, and women in prison are more likely to report histories of abuse than men in prison. A 1999 study found that 82% of women at New York's Bedford Hills Correctional Facility had a childhood history of severe physical and/or sexual abuse and that 94% had suffered physical or sexual violence in their lifetimes.<sup>8</sup> Studies show that women with abuse histories are highly likely to be targeted for harassment and abuse, are statistically more likely to be re-victimized, and, when targeted, are especially prone to suffer symptoms of Post-Traumatic Stress Disorder. Because of the extraordinary rates of abuse histories among women in prison, women as a whole category are at particular risk of re-experiencing abuse in prison.

Power dynamics inside prison often mimic power dynamics of abusive relationships women may have experienced on the outside. Gender-based violence is disproportionately perpetrated by men against women. Many women are guarded by male officers. In addition, the fear of physical resistance or retaliation is less prevalent in most circumstances for men who sexually abuse women. Allowing unsupervised male correction officers to guard vulnerable women inmates is a problematic situation; studies conducted over the last 20 years have shown that a large proportion of non-criminal males in the general population would be prone to committing acts of sexual aggression if they were certain they would not be caught. There is no reason to believe that correction officers do not have a similar proportion of these so-called "opportunistic predators" among their ranks. Together, the extreme power disparity between correction officers and inmates, and the unique opportunities for assault inherent in a situation where men guard women unsupervised, can only increase an officer's perception that he is unlikely to be caught.

Another reason for higher rates of staff sexual abuse in women's prisons is that many women in prison report having engaged in sex work prior to their incarceration – either as a means of generating income, supporting a drug habit and/or as a result of an abusive and coercive relationship with a pimp. People in prison – particularly those who have engaged in sex work – may be more likely to accept using their bodies to survive in the prison environment – i.e., offering sexual favors for cigarettes, safety or other benefits and perks. Though this may appear

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<sup>8</sup> Browne, Miller and Maguin, *Prevalence and Severity of Lifetime Physical and Sexual Victimization Among Incarcerated Women*, in *International Journal of Law & Psychiatry* 22 (3-4) (1999).

“consensual,” there is no legal or ethical possibility for such relationships between inmates and staff in prison because of the skewed power dynamic; prison staff who engage in these acts are still guilty of sexual misconduct.

### *Inconsistent Reporting of Sexual Abuse Data for DOCS Facilities*

The data on sexual abuse in New York prisons is varied and difficult to reconcile. As previously noted, we received from DOCS annual reports by facility for 2008 through 2010 concerning allegations of staff sexual abuse of inmates and inmate sexual abuse of others (DOCS PREA data). The data is summarized in **Table A**. For staff sexual abuse, the annual numbers for the whole Department were 574, 566 and 583 incidents for 2008, 2009 and 2010, respectively. Allegations of inmate sexual abuse were reported as 116, 110 and 102 claims for 2008 through 2010, respectively. Comparing this data to the Bureau of Justice Statistics Special Report: *Sexual Victimization by Adult Correctional Authorities, 2007-2008* (hereinafter “BJS Victimization Report, 2007-08”), reveals significant differences between the BJS and DOCS sexual abuse data. Appendix Table 20 of the BJS report states that there were only 224 allegations in New York prisons of staff sexual misconduct and 39 cases of staff sexual harassment in 2008, and Appendix Table 19 states there were 23 inmate-on-inmate nonconsensual sexual acts and 18 inmate-on-inmate abusive sexual contacts in New York prisons. For staff sexual abuse allegations, the BJS report includes only 46% of the allegations contained in the DOCS staff sexual abuse report provided to the CA. The combination of the two inmate-on-inmate categories in the BJS report represents only 36% of the number of allegations of inmate sexual abuse allegations contained in the DOCS materials we received. We did not obtain any written materials about how the DOCS sexual abuse materials are tabulated, but we have reviewed the DOCS Directive 4028A, which appears to define staff-on-inmate sexual abuse: “...is when employee, volunteer, intern or outside contractor engages in sexual conduct, including sexual contact, with an inmate. Staff-on-Inmate Sexual Abuse is a form of ‘Prison Rape’ under the Prison Rape Elimination Act of 2003...”<sup>9</sup> We question how there could be such a discrepancy between the DOCS data and BJS materials, given this definition. We urge the Review Panel to question DOCS officials about these differences.

Other DOCS data also suggests further inconsistencies or confusion in reporting sexual abuse data. The CA obtained inmate disciplinary data for 2008. Improper sexual conduct by inmates is divided into four categories: (1) a sexual offense, which prohibits an inmate from engaging in or encouraging, soliciting or attempting to force another to engage in any sexual act; (2) a sexual touching offense, which prohibits inmates from intentionally and forcibly touching the sexual or intimate parts of an employee for the purpose of degrading or abusing the employee or gratifying the inmate’s sexual desire; (3) a stalking offense, which prohibits inmates from stalking an employee, visitor or other person; and (4) other sexual offenses, which prohibits (a) lewd

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<sup>9</sup> NYS Department of Correctional Services, Directive 4028A: Sexual Abuse Prevention & Intervention – Staff-on-Inmate, section III (c) (6/15/2005).

conduct, such as masturbation or exposing oneself, and (b) engaging in physical contact with another inmate, such as kissing, embracing or hand-holding. For 2008, there were 225 sex offense violations, 13 touching offenses, 129 stalking offenses and 752 other sexual offenses. Even if one discounts all the stalking and other sexual offenses, there were 238 disciplinary sexual violations. It is difficult to perceive how this number of incidents could be reduced to only 41 allegations of inmate-on-inmates sexual abuse.

Finally, DOCS has a UIR category for sexual misconduct, defined as: “Any sexual contact between any combination of inmates, staff, visitors or volunteers shall be considered a sexual misconduct incident. All sexual contact is reported in this category.”<sup>10</sup> DOCS reported that department-wide there were 83, 58 and 61 Sexual Misconduct UIRs in 2007, 2008 and 2009, respectively. In light of the previously noted data on allegations, discipline and BJS PREA reporting, it is unclear what this UIR category is intended to report. Moreover, many of the prisons with high allegations of staff sexual abuse and inmate sexual abuse had few if any UIRs in this category. Again, we urge the Review Panel to question prison officials about this reporting mechanism.

Overall, the data on sexual abuse leaves prison officials and the public unclear about what is happening inside New York prisons and how the Department is attempting to address staff and inmate abuse. Given the noted inconsistencies, efforts must be made to better define each category and then ensure that all responsible officials are properly reporting data from their prisons and that Department officials are accurately reporting these results to federal authorities.

### ***Inadequate Substantiation of Inmate Allegations of Sexual Abuse***

One of the most disturbing factors concerning staff sexual abuse is the limited number of cases that are substantiated by prison officials. As the BJS Victimization Report, 2007-08 reveals in Appendix Table 20, very few of the allegations of staff sexual abuse are substantiated by prison officials. The BJS report indicates that for New York prisons during 2007-08, only 29 cases from a total of 475 allegations of staff sexual abuse were substantiated, representing only 6% of all complaints. If all the additional allegations contained in the DOCS PREA data previously described were also included, the rate would be approximately 2.5%. The process for resolving inmates’ allegations of staff sexual abuse is similar to the very limited success inmates in New York experience when they file grievances alleging other staff misconduct.

In contrast to this paltry success rate, inmate complainants about staff sexual abuse face very real threats of isolation, retaliation and further abuse by the correction staff if they come forward to accuse one of the prison staff of sexual violence. It is difficult to justify undertaking these risks given such limited possibilities of success. The consequence of imposing such barriers to getting

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<sup>10</sup> NYS Department of Correctional Services, Directive 404: Unusual Incident Report, Appendix A, pg 9 (5/13/2009).

meaningful relief for sexual abuse is that many inmates will decide to endure the abuse and hope that they will leave prison or be transferred away from the harmful situation.

Inmates' frustration with the lack of substantiation of their sexual abuse claims is further heightened when the outcomes of inmate complaints are compared to the prison inmate disciplinary system. In New York, approximately 95% of inmates who are charged with a violation of prison rules are found guilty. Inmate testimony is almost never accepted when contradicted by staff testimony. Inmate assertions of mistreatment are validated only when they can present physical evidence or other objective facts to prove their claim.

Until the prison system implements a balanced and fair system to resolve these claims, it will be difficult for outside advocates to encourage inmates to come forward with their claims of staff sexual abuse.

### **Recommendations**

The BJS report is a useful beginning in raising awareness about sexual violence in the prisons. In order to realize more substantial progress in addressing this serious issue, we urge the Review Panel to recommend the following actions.

1. Urge BJS to improve collection and analysis of data about allegations of, and outcomes from, inmates' complaints of sexual abuse in prison, including comparing such data to grievances, unusual incident reports, and inmates and staff disciplinary actions.
2. Prior to sampling state prisons for the presence of sexual violence, review system-wide data to identify facilities where sexual abuse may be occurring at higher rates or where prison violence is more prevalent.
3. Undertake a pilot project at a limited number of prisons to investigate how to better evaluate the veracity of inmates' allegations of staff abuse. This project would greatly assist the outside auditing process that may be required by the new PREA Standards. This should identify what are the most effective documents to obtain and review in preparation for a prison visit, develop interview instruments to be used when speaking with alleged victims and implement mechanisms to get more comprehensive information from correctional staff about the nature and extent of sexual violence in the prison. The objective of this project would not be to prove specific cases, but rather to gain a better understanding of the factors within a prison that can foster or impede sexual violence.

**Table A - NYS Prisons Data re Sexual Abuse by Staff and Inmates - 2008-10**

Prison	Gender Security	Pop Sept 2010	DOCS Staff-on-Inmate Sexual Abuse				Yearly Rate Staff	Staff Abuse Rank	DOCS Inmate-on-Inmate Sexual Abuse				Inm Abuse Rate	Inm Abuse Rank	UIR Staff Rate*	UIR Staff Rank	Staff Griev Rate*	Staff Griev Rank	Sex Discp Rate*	Sex Discp Rank
			2008	2009	2010	Total			2008	2009	2010	Total								
Bayview	F-Med	150	9	12	12	33	73.33	55	2	3	1	6	13.33	49	2.12	14	152.87	52	57.32	55
Upstate	M-Max	1280	70	69	105	244	63.54	54	10	7	6	23	5.99	45	17.40	55	822.46	60	49.88	51
Taconic	F-Med	279	9	23	11	43	51.37	53	2	2	2	6	7.17	46	6.55	44	81.46	36	50.56	52
Bedford Hills	F-Max	711	41	35	33	109	51.10	52	5	4	8	17	7.97	48	15.48	54	125.10	48	45.23	49
Five Points	M-Max	1347	69	49	45	163	40.34	51	2	1	3	6	1.48	25	12.52	51	186.33	54	21.04	41
Albion	F-Med	853	22	31	47	100	39.08	50	5	10	4	19	7.42	47	4.43	35	68.63	27	56.93	54
Southport	M-Max	891	22	36	19	77	28.81	49	1	1	0	2	0.75	8	24.45	60	512.79	59	58.69	56
Sullivan	M-Max	512	9	18	14	41	26.69	48	1	4	2	7	4.56	43	22.63	57	151.00	51	35.25	48
Wende	M-Max	865	29	13	16	58	22.35	47	4	1	4	9	3.47	39	23.81	59	322.87	58	47.62	50
Shawangunk	M-Max	537	13	14	8	35	21.73	46	2	0	5	7	4.35	42	2.46	18	162.05	53	27.73	45
Great Meadow	M-Max	1644	21	27	35	83	16.83	45	3	2	3	8	1.62	27	38.20	62	138.47	49	51.55	53
Elmira	M-Max	1679	21	26	37	84	16.68	44	2	1	3	6	1.19	19	11.80	48	110.74	44	25.30	43
Cayuga	M-Med	982	18	21	7	46	15.61	43	0	1	0	1	0.34	2	1.31	9	82.35	37	5.91	13
Lakeview	MF-Mult	794	3	11	14	28	11.75	42	2	1	2	5	2.10	30	4.91	37			2.89	3
Downstate	M-Max	680	7	8	7	22	10.78	41	1	0	0	1	0.49	5	12.26	50	73.30	28	19.23	38
Coxsackie	M-Max	1040	11	12	6	29	9.29	40	2	0	1	3	0.96	13	22.98	58	254.37	57	19.42	39
Auburn	M-Max	1670	17	13	16	46	9.18	39	2	4	1	7	1.40	24	13.17	53	211.41	56	18.32	37
Beacon	F-Min	155	2	0	2	4	8.60	38	0	0	0	0	0.00	1	2.79	23	20.92	3	29.29	46

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**Table A - NYS Prisons Data re Sexual Abuse by Staff and Inmates - 2008-10**

Prison	Gender Security	Pop Sept 2010	DOCS Staff-on-Inmate Sexual Abuse				Yearly Rate Staff	Staff Abuse Rank	DOCS Inmate-on-Inmate Sexual Abuse				Inm Abuse Rate	Inm Abuse Rank	UIR Staff Rate*	UIR Staff Rank	Staff Griev Rate*	Staff Griev Rank	Sex Discp Rate*	Sex Discp Rank
			2008	2009	2010	Total			2008	2009	2010	Total								
Marcy	M-Med	1096	5	5	15	25	7.60	37	2	1	1	4	1.22	20	1.21	8	76.97	33	10.91	30
Bare Hill	M-Med	1593	12	12	12	36	7.53	36	2	3	0	5	1.05	16	2.34	16	121.88	46	5.84	11
Attica	M-Max	2181	19	16	14	49	7.49	35	6	0	4	10	1.53	26	25.58	61	83.45	38	16.45	34
Clinton	M-Max	2748	24	23	14	61	7.40	34	15	11	8	34	4.12	41	11.28	47	55.57	21	21.63	42
Gouverneur	M-Med	917	6	12	2	20	7.27	33	1	1	1	3	1.09	18	2.84	25	148.67	50	7.58	21
Sing Sing	M-Max	1720	19	11	6	36	6.98	32	4	1	2	7	1.36	22	18.77	56	98.08	42	27.59	44
Mid-State	M-Med	1457	10	12	8	30	6.86	31	6	8	4	18	4.12	40	4.54	36	66.38	26	13.61	33
Gowanda	M-Med	1563	9	8	9	26	5.54	30	3	4	5	12	2.56	33	2.47	19	61.76	25	17.67	36
Cape Vincent	M-Med	797	3	3	7	13	5.44	29	0	2	1	3	1.25	21	2.35	17	91.37	39	4.71	5
Groveland	M-Med	999	2	4	10	16	5.34	28	1	4	9	14	4.67	44	1.07	6	33.58	7	11.28	31
Washington	M-Med	703	3	5	2	10	4.74	27	0	2	2	4	1.90	29	4.08	33	43.90	16	6.59	17
Green Haven	M-Max	2075	13	4	12	29	4.66	26	0	0	3	3	0.48	4	13.14	52	97.97	41	10.45	29
Collins	M-Med	950	7	3	3	13	4.56	25	3	1	2	6	2.11	31	0.30	3	37.50	11	5.40	9
Willard	MF-Drug	330	2	0	2	4	4.04	24	0	1	0	1	1.01	15	11.85	49			5.88	12
Mt. McGregor	M-Med	417	4	1	0	5	4.00	23	1	2	1	4	3.20	38	4.33	34	60.61	24	5.57	10
Orleans	M-Med	950	8	1	2	11	3.86	22	2	2	1	5	1.75	28	3.36	28	112.79	45	9.06	26
Fishkill	M-Med	1698	2	9	6	17	3.34	21	0	5	2	7	1.37	23	6.55	43	193.37	55	8.93	25
Monterey	M-Min	106	0	1	0	1	3.14	20	0	0	0	0	0.00	1	6.49	41	0.00	1	0.00	1

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**Table A - NYS Prisons Data re Sexual Abuse by Staff and Inmates - 2008-10**

Prison	Gender Security	Pop Sept 2010	DOCS Staff-on-Inmate Sexual Abuse				Yearly Rate Staff	Staff Abuse Rank	DOCS Inmate-on-Inmate Sexual Abuse				Inm Abuse Rate	Inm Abuse Rank	UIR Staff Rate*	UIR Staff Rank	Staff Griev Rate*	Staff Griev Rank	Sex Discp Rate*	Sex Discp Rank
			2008	2009	2010	Total			2008	2009	2010	Total								
Livingston	M-Med	782	6	1	0	7	2.98	19	0	2	0	2	0.85	11	3.07	26	45.65	17	17.26	35
Ogdensburg	M-Med	350	1	0	2	3	2.86	18	0	0	0	0	0.00	1	1.14	7	31.39	6	5.14	8
Franklin	M-Med	1628	6	1	6	13	2.66	17	7	2	4	13	2.66	34	3.28	27	93.61	40	7.53	19
Riverview	M-Med	780	1	3	2	6	2.56	16	0	0	0	0	0.00	1	2.71	21	73.47	29	8.12	23
Altona	M-Med	411	1	2	0	3	2.43	15	0	0	0	0	0.00	1	2.78	22	76.55	32	4.18	4
Adirondack	M-Med	436	2	1	0	3	2.29	14	0	1	0	1	0.76	9	8.36	45	34.65	8	0.00	1
Greene	M-Med	1628	3	6	2	11	2.25	13	5	5	1	11	2.25	32	6.51	42	38.67	13	7.81	22
Oneida	M-Med	941	2	1	3	6	2.13	12	1	2	0	3	1.06	17	1.42	11	40.07	14	10.23	28
Otisville	M-Med	486	2	0	1	3	2.06	11	0	0	0	0	0.00	1	0.00	1	26.71	4	1.67	2
Walkkill	M-Med	581	3	0	0	3	1.72	10	1	0	0	1	0.57	7	2.82	24	104.17	43	8.45	24
Queensboro	M-Min	455	0	0	2	2	1.47	9	0	0	0	0	0.00	1	6.16	39	56.29	22	13.19	32
Mohawk	M-Med	1151	0	0	5	5	1.45	8	2	0	1	3	0.87	12	0.24	2	80.63	34	9.36	27
Hudson	M-Med	372	1	0	0	1	0.90	7	0	0	0	0	0.00	1	1.33	10	41.09	15	5.96	14
Woodbourne	M-Med	787	1	0	1	2	0.85	6	1	0	1	2	0.85	10	0.00	1	34.80	9	7.55	20
Arthur Kill	M-Med	910	0	1	1	2	0.73	5	2	4	2	8	2.93	37	8.78	46	59.71	23	32.67	47
Eastern	M-Max	1020	1	1	0	2	0.65	4	1	1	1	3	0.98	14	2.52	20	74.23	30	5.04	6
Wyoming	M-Med	1574	2	1	0	3	0.64	3	1	1	0	2	0.42	3	1.97	12	48.97	18	6.52	16
Mid-Orange	M-Med	662	1	0	0	1	0.50	2	1	0	0	1	0.50	6	0.93	5	29.80	5	6.98	18

*Rates are annual number of incidents per 1,000 inmates. The rankings go from lowest to highest rate and each prison with a zero rate is listed as a "1" ranking.*



**Table A - NYS Prisons Data re Sexual Abuse by Staff and Inmates - 2008-10**

Prison	Gender Security	Pop Sept 2010	DOCS Staff-on-Inmate Sexual Abuse				Yearly Rate Staff	Staff Abuse Rank	DOCS Inmate-on-Inmate Sexual Abuse				Inm Abuse Rate	Inm Abuse Rank	UIR Staff Rate*	UIR Staff Rank	Staff Griev Rate*	Staff Griev Rank	Sex Discp Rate*	Sex Discp Rank
			2008	2009	2010	Total			2008	2009	2010	Total								
Fulton	M-Min	140	0	0	0	0	0.00	1	0	0	0	0	0.00	1	0.00	1	11.30	2	0.00	1
Rochester	M-Min	67	0	0	0	0	0.00	1	0	0	0	0	0.00	1	0.00	1	0.00	1	0.00	1
Lincoln	M-Min	193	0	0	0	0	0.00	1	0	0	0	0	0.00	1	2.11	13	0.00	1	0.00	1
Ulster	M-Med	465	0	0	0	0	0.00	1	0	0	0	0	0.00	1	3.99	32	38.18	12	5.13	7
Hale Creek	M-Med	377	0	0	0	0	0.00	1	0	0	0	0	0.00	1	0.74	4	80.94	35	0.00	1
Chateaugay	M-Med	231	0	0	0	0	0.00	1	0	0	0	0	0.00	1	3.57	30	53.48	19	0.00	1
Buffalo	M-Min	123	0	0	0	0	0.00	1	0	0	0	0	0.00	1	0.00	1	0.00	1	0.00	1
Edgecombe	M-Min	30	0	0	0	0	0.00	1	0	0	0	0	0.00	1	5.33	38	0.00	1	0.00	1
Butler	M-Min	51	0	0	0	0	0.00	1	0	0	0	0	0.00	1	0.00	1	124.38	47	0.00	1
Lyon Mountain	M-Min	48	0	0	0	0	0.00	1	0	0	0	0	0.00	1	6.37	40	55.20	20	0.00	1
Watertown	M-Med	467	0	0	0	0	0.00	1	2	1	1	4	2.86	36	2.15	15	35.96	10	6.44	15
Summit	M-Min	123	0	0	0	0	0.00	1	0	1	0	1	2.71	35	3.44	29	75.60	31	20.62	40
Moriah	M-Min	129	0	0	0	0	0.00	1	0	0	0	0	0.00	1	3.57	31	0.00	1	0.00	1
		<b>55,767</b>	<b>574</b>	<b>566</b>	<b>583</b>	<b>1,723</b>	<b>10.30</b>		<b>116</b>	<b>110</b>	<b>102</b>	<b>328</b>	<b>1.96</b>		<b>6.67</b>		<b>97.33</b>		<b>14.94</b>	

\* "UIR Staff Rate" and its ranking refer to the annual number of Unusual Incident Reports about inmate-on-staff assaults issued per 1,000 inmates for each prison based upon all reports filed in 2007-09. "Staff Griev Rate" and its ranking refers to the annual number of grievances filed by inmates alleging staff misconduct per 1,000 inmates at each prison based upon grievances submitted in 2007-09. "Sex Discp Rate" and its ranking refers to the number of disciplinary charges issued per 1,000 inmates at each prison based upon disciplinary data for 2008. Blanks in any field represent missing data from DOCS.

Rates are annual number of incidents per 1,000 inmates. The rankings go from lowest to highest rate and each prison with a zero rate is listed as a "1" ranking.