

# Prison Rape Elimination Act (PREA) Audit Report Adult Prisons & Jails

Interim       Final

Date of Report    February 27, 2019

## Auditor Information

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Company Name:    California Department of Corrections and Rehabilitation	
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Telephone:    (916) 324-6688	Date of Facility Visit:    August 22-24, 2018

## Agency Information

Name of Agency: Nevada Department of Corrections		Governing Authority or Parent Agency (If Applicable): State of Nevada	
Physical Address:    5500 Snyder Ave, Bld 17		City, State, Zip:    Carson City, NV 89701	
Mailing Address:    PO Box 7011		City, State, Zip:    Carson City, NV 86702	
Telephone:    (775) 887-3266		Is Agency accredited by any organization? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
The Agency Is:	<input type="checkbox"/> Military	<input type="checkbox"/> Private for Profit	<input type="checkbox"/> Private not for Profit
<input type="checkbox"/> Municipal	<input type="checkbox"/> County	<input checked="" type="checkbox"/> State	<input type="checkbox"/> Federal

**Agency mission:**    The Nevada Department of Corrections will improve public safety by ensuring a safe and humane environment that incorporates proven rehabilitation initiatives that prepare individuals for successful reintegration into our communities.

**Agency Website with PREA Information:**  
[http://doc.nv.gov/About/NDOC\\_Office\\_of\\_the\\_Inspector\\_General/Office\\_of\\_the\\_Inspector\\_General/](http://doc.nv.gov/About/NDOC_Office_of_the_Inspector_General/Office_of_the_Inspector_General/)

## Agency Chief Executive Officer

Name:    James Dzurenda	Title:    Director
Email:    jedzurenda@doc.nv.gov	Telephone:    (775) 887-3266

## Agency-Wide PREA Coordinator

Name:    Pamela Del Porto	Title:    Inspector General
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Email: pdelporto@doc.nv.gov	Telephone: (775) 887-3396
PREA Coordinator Reports to: Director	Number of Compliance Managers who report to the PREA Coordinator 7

**Facility Information**

Name of Facility:	Ely State Prison		
Physical Address:	4569 N. State Route 490, Ely, NV 89301		
Mailing Address (if different than above):	PO Box 1989, Ely, NV 89301		
Telephone Number:	(775) 289-8800		
The Facility Is:	<input type="checkbox"/> Military	<input type="checkbox"/> Private for profit	<input type="checkbox"/> Private not for profit
<input type="checkbox"/> Municipal	<input type="checkbox"/> County	<input checked="" type="checkbox"/> State	<input type="checkbox"/> Federal
Facility Type:	<input type="checkbox"/> Jail	<input type="checkbox"/> Prison	

**Facility Mission:** The Nevada Department of Corrections will improve public safety by ensuring a safe and humane environment that incorporates proven rehabilitation initiatives that prepare individuals for successful reintegration into our communities

**Facility Website with PREA Information:**  
[http://doc.nv.gov/About/NDOC\\_Office\\_of\\_the\\_Inspector\\_General/Office\\_of\\_the\\_Inspector\\_General/](http://doc.nv.gov/About/NDOC_Office_of_the_Inspector_General/Office_of_the_Inspector_General/)

**Warden/Superintendent**

Name: William Gittere	Title: Acting Warden
Email: wgittere@doc.nv.gov	Telephone: (775) 289-1202

**Facility PREA Compliance Manager**

Name: Tasheena Sandoval	Title: Correctional Casework Specialist III
Email: tsandoval@doc.nv.gov	Telephone: (775) 289-1202

**Facility Health Service Administrator**

Name: Gloria Carpenter	Title: Director of Nursing
Email: gcarpenter@doc.nv.gov	Telephone: (775) 289-1243

**Facility Characteristics**

Designated Facility Capacity: 1213	Current Population of Facility: 1105
Number of inmates admitted to facility during the past 12 months	1057

Number of inmates admitted to facility during the past 12 months whose length of stay in the facility was for 30 days or more:		1015	
Number of inmates admitted to facility during the past 12 months whose length of stay in the facility was for 72 hours or more:		1045	
Number of inmates on date of audit who were admitted to facility prior to August 20, 2012:		88	
Age Range of Population:	Youthful Inmates Under 18: N/A	Adults: 18-78	
Are youthful inmates housed separately from the adult population?		<input type="checkbox"/> Yes	<input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Number of youthful inmates housed at this facility during the past 12 months:		0	
Average length of stay or time under supervision:		71.22 mo	
Facility security level/inmate custody levels:		Max, Close and Min	
Number of staff currently employed by the facility who may have contact with inmates:		293	
Number of staff hired by the facility during the past 12 months who may have contact with inmates:		43	
Number of contracts in the past 12 months for services with contractors who may have contact with inmates:		291	
<b>Physical Plant</b>			
Number of Buildings: 12		Number of Single Cell Housing Units: 1.5	
Number of Multiple Occupancy Cell Housing Units:		6.5	
Number of Open Bay/Dorm Housing Units:		0	
Number of Segregation Cells (Administrative and Disciplinary):		144	
Description of any video or electronic monitoring technology (including any relevant information about where cameras are placed, where the control room is, retention of video, etc.):			
283 cameras with retention capability of 30 days			
<b>Medical</b>			
Type of Medical Facility:		Outpatient Clinic	
Forensic sexual assault medical exams are conducted at:		University Medical Center, Las Vegas, NV	
<b>Other</b>			
Number of volunteers and individual contractors, who may have contact with inmates, currently authorized to enter the facility:		1108	
Number of investigators the agency currently employs to investigate allegations of sexual abuse:		19	

# Audit Findings

## Audit Narrative

*The auditor's description of the audit methodology should include a detailed description of the following processes during the pre-onsite audit, onsite audit, and post-audit phases: documents and files reviewed, discussions and types of interviews conducted, number of days spent on-site, observations made during the site-review, and a detailed description of any follow-up work conducted during the post-audit phase. The narrative should describe the techniques the auditor used to sample documentation and select interviewees, and the auditor's process for the site review.*

Ely State Prison (ESP) is located at 4569 N. State Route 490, Ely, Nevada. ESP is participating in a Prison Rape Elimination Act (PREA) audit conducted by certified auditors from the California Department of Corrections and Rehabilitation (CDCR). The on-site portion of the audit was conducted at the address stated above during the period of August 22-24, 2018. Following coordination, preparatory work and collaboration with management staff at ESP, some pre-audit work was completed prior to traveling to the facility for the on-site review portion of the audit.

### PRE-AUDIT PHASE

On July 9, 2018, the CDCR provided the audit notice to Nevada Department of Corrections' (NDOC) PREA Coordinator (PC) with instructions to post copies in the housing units and other places deemed appropriate by facility staff. An e-mail received from the NDOC PC confirmed placement of the audit notice. Notices were to be posted in areas accessible to offenders, visitors and staff. CDCR received the pre-audit questionnaire, audit process map, checklist of policies/procedures and other documents from NDOC- ESP on July 16, 2018.

Pre-audit section of audit: On July 16, 2018, the State of Nevada PREA Coordinator provided the completed pre-audit questionnaire, including supporting documentation, to the audit team. This auditor started compiling pre-audit notes using the compliance tool as a guideline. This auditor reviewed information from the pre-audit questionnaire and from supporting documentation making notes of how the information was or was not in compliance with PREA. Policies and procedures were reviewed for compliance with the PREA. The auditor took notes to follow-up on any questions about policies that were unclear or did not appear to address the standard adequately. Supporting documentation was reviewed for relevance to the standards and notes were taken to request clarification or to verify the accuracy of the information during the on-site tour. This auditor received one letter from an inmate at the facility prior to arrival at the institution and one letter from an inmate while the audit team was at the facility.

Prior to the on-site visit, telephonic contact was made with Just Detention International (JDI) to ascertain if there had been any concerns reported to their organization. This auditor was informed by JDI that they have not received any correspondence related to Ely State Prison. The Rape Crisis Center in Las Vegas Nevada was also contacted to find out if there had been any allegations or complaints reported to them relative to ESP. The Rape Crisis Center Staff sent this auditor an e-mail with several concerns. This auditor responded to the Rape Crisis Center stating that their concerns were noted and would be looked into.

## ON-SITE PHASE

On August 22, 2018, the audit team comprised of Mr. R. Benton, certified auditor, Ms. N. Hardy, certified auditor and I arrived at ESP. The audit team met with the Warden, the PCM, the team leader for the Nevada PREA Coordinator and several support staff for greetings, introductions and information sharing. The meeting took place in a conference room which served as a home base for audit preparation and organization.

Upon arrival at ESP, the audit team requested and received a roster of all of the staff employed at ESP including the names of the employees assigned in the management and specialized staff positions that might be interviewed during the on-site portion of the audit. Also on this date, the audit team received a roster of all offenders at the facility with identification numbers and assigned bed numbers, sorted by housing unit. The auditor also requested and received a list of offenders classified into any of the following specialized categories:

- Disabled Inmates
- Limited English Proficient Inmates
- Transgender & Intersex Inmates
- Gay & Bisexual Inmates
- Inmates in Segregated Housing for Risk of Sexual Victimization
- Inmates who Reported Sexual Abuse
- Inmates who Disclosed Sexual Victimization During Risk Screening

The audit team also received a list of all custody staff scheduled to work on the days of the on-site review, sorted by shift. ESP custody staff work 12 hour shifts. The auditor explained that these rosters were required for the audit team to select random custody staff and offenders for interviews. The audit team selected the names of random and specialized staff, as well as random offenders and offenders who had been classified in special categories who would be interviewed. These lists were provided to the PCM so that the individuals could report to the offices that the interviews were taking place.

On-site Review: The audit team conducted a thorough site review of the facility. The audit team was provided a map of the facility. ESP is comprised of 12 buildings, 9 of which are housing units. ESP is three main units, Phase I, Phase II and the minimum yard. There is also a large administration building and several support buildings inside the secure perimeter. Because of the size of the facility, the team split up into two groups to tour the facility. One team was accompanied on the tour by the PCM and an Associate Warden. This team toured all of Phase I, including housing units 1 through 4, the Administration Building (visiting, religious services, education services, the infirmary, the library and administrative offices) and Building 10 (gym, food services, intake and industries). The other team was accompanied by an Associate Warden, and a Lieutenant. That team toured all of Phase II, including housing units 5-8, the minimum yard and the warehouse. As the tours moved through the facility, the teams would make a notation on the map indicating that that area had been visited. Additionally staffing levels were observed to insure that there was adequate security coverage and the offenders could not move around the facility unsupervised.

During the tour, we asked impromptu questions of staff and offenders. The audit team also noted the placement and coverage of surveillance cameras, identified potential blind spots, inspected bathrooms, showers and strip search areas to identify potential cross gender viewing concerns. The team also noted

the placement of PREA information posters in offender housing areas and placement of the PREA audit notice provided to the facility. The video monitors were reviewed to insure security coverage and confirm that offenders can change clothes, shower and toilet without being viewed on the monitors. Housing unit logs were reviewed as well as other on-site documentation that would be relevant to demonstrating compliance with the PREA Standards.

**PREA Management Interviews:** The audit team members split up the interviews of the Warden, PREA Coordinator, Director of the Nevada Department of Corrections, Contract Administrator and PCM. The auditors worked with facility staff to schedule a time for each of these interviews; audit team members were escorted to the office of the respective manager and conducted the interviews using the applicable interview protocols and recorded the responses by hand. If the manager was not at the facility, the interview was conducted over the telephone.

**Specialized Staff Interviews:** Using the list of specialized staff received from the PREA Compliance Manager, the audit team members utilized the conference room or private offices to conduct confidential interviews.

The audit team identified specialized staff to be interviewed. Interviews included the following:

- Medical and Mental Health
- Incident Review Team Members
- Staff who Conduct Intake Screening
- Classification Staff
- Case Workers
- Investigations and Intelligence Staff (facility level investigations)
- Sexual Assault Nurse Examiner
- Human Resources
- Person Responsible for Contractor, Volunteer and Vendor Clearances
- Person Responsible for Monitoring Retaliation
- Higher Level Supervisors
- Religious Volunteers
- First Responders
- Training Director
- Grievance Coordinator

During interviews with investigative staff, the team learned that offender grievances against staff are forwarded to the Associate Warden. If the grievance alleges PREA, the information is entered into Nevada Offender Tracking Information System (NOTIS) and forwarded to the Inspector General. The IG's Office then assigns it to an NDOC Investigator. The IG can assign it to a local investigator if the case is not criminal

in nature and does not involve staff. Investigations than investigates the allegation and completes a report. The members of the audit team interviewed the facility investigator's supervisor and questioned designated staff about the process for logging and tracking cases assigned, and offender grievances, received by the division. Most of the PREA allegations at ESP were reported via grievance.

Where the circumstances dictate, the interviewer would ask to review documentation, logs, computerized tracking, or other material necessary to make a determination of compliance with the standards. During these interviews, the audit team members based the line of questioning on the interview protocols and recorded responses by hand.

The Training Manager was interviewed and explained how he tracked and logged all of the training that staff, volunteers and contractors receive. Full time employees are scheduled for one week of training each year. The employee is pulled off post during their training week. The Training Manager is also responsible to insure that all volunteers and contractors have access to the training.

The Intake staff were interviewed and asked to explain the intake process for the offenders. The intake process happens the day of arrival and includes medical and mental health screening, PREA and Facility Orientation, PREA Risk Assessment and initial housing.

Random Staff Interviews: The audit team identified random staff to be interviewed. The random staff were selected from the shift rosters, considering a variety of work locations and various shifts. The random interviews included line staff, supervisory staff, managers and non-custody staff. The interviews were conducted in the privacy of the conference room or private offices. The auditors introduced themselves, communicated the advisory statements to the staff, proceeded to ask the line of questions from the interview protocols for random staff and recorded the answers by hand. Audit team members asked for clarifications when needed to ensure the responses were clear enough to make a determination of compliance with applicable standards. A total of 15 random staff interviews were conducted.

Random Offender Interviews: The auditor determined that at least one offender from each housing unit would be interviewed. Two audit team members were assigned responsibility for the various offender interviews. Audit team members used the alphabetical roster of offenders to randomly select offenders from each housing unit. The audit team members completed the interviews in private offices. During the interviews the audit team member introduced themselves, communicated the standard advisory statements to the offender before proceeding with the standard line of questions from the random offender interview protocols and recorded the offender answers by hand using the designated form. Clarification was requested, as needed to ensure the offender's responses were clear. A total of 20 offenders were interviewed as part of the random offender interviews.

PREA-Interest Offender Interviews: Three audit team members was assigned responsibility for interviewing specific categories of offenders identified for interviews based upon their relevance to specific PREA standards. These categories are:

- Disabled Inmates (one interviewees)
- Limited English Proficient Inmates (three interviewee)
- Transgender and Intersex Inmates (three interviewees)
- Gay & Bisexual Inmates (five interviewees)
- Inmates in Segregated Housing for Risk of Sexual Victimization (none)

- Inmates who Reported Sexual Abuse (four interviewees)
- Inmates who Disclosed Sexual Victimization during Risk Screening (three interviewees)
- Inmates who wrote letters (two)

The auditors were advised by the PCM that there were not any offenders that had been placed in segregation as a result of being classified as a risk for victimization. The audit team member selected offenders from the list received from the PREA Compliance Manager. The interviews were conducted in a private office. The auditors introduced themselves, communicated the standard advisory statement and asked the line of questions in the respective interview protocols. These offenders were also asked the same interview questions as the random offender interviewees. The audit team member also conducted these interviews if a random offender interviewee disclosed information suggesting that one of the above categories of PREA interest applied to him. A total of 21 offenders were interviewed based upon these interview categories.

**Document Reviews:** The document review process was completed by all three auditors. The auditors reviewed documents related to allegations of sexual abuse (including investigation files). A total of eleven investigation files were reviewed. One auditor made a list of random staff names and all three auditors reviewed all training, personnel, contractor and volunteer records for these staff members. 20 personnel files were reviewed. A list of offender names was generated using the list of selected and randomly interviewed inmates. These inmate's files were reviewed by the audit team. A total of 21 inmate files were reviewed, including the records maintained through the offender intake process, classification records and relevant medical documentation. The audit team was provided copies of the documents to support the audit findings.

All of the relevant information from the investigation, training, personnel and offender files was transferred to the PREA Audit Documentation Review Tracking Sheets.

The PREA Compliance Manager provided summary for all 35 allegations received during the past 12 months. The report included the report number, date of report, name of the victim, name of the suspect, and disposition or status of the case. There were a total of 10 inmate-on-inmate sexual harassment allegations, six inmate-on-inmate sexual abuse allegation, 13 staff-on-inmate sexual harassment allegations and seven staff-on-inmate sexual abuse allegations. The audit team selected eleven cases at random to review. These reports were reviewed using a PREA audit investigative records review tool to record the following information for the eleven investigative reports reviewed:

- Case#/ID
- Date of Allegation
- Date of Investigation
- Staff or Inmate on Inmate
- Sexual Abuse or Sexual Harassment
- Disposition
- Is Disposition Justified



- Investigating Officer
- Outcome Notification Given to Inmate
- How the information was reported
- Retaliation monitoring

The audit team recorded this information for the case reviewed and provided additional relevant information in the space provided for additional notes. There was one case that resulted in unfounded, 28 cases were unsubstantiated and seven are still under investigation.

Throughout the on-site review, the team had discussion about what was being observed and reviewed any discrepancies that were being identified. The team members would seek clarification, when discrepancies were identified to ensure that we were not missing pertinent information. The audit team held a close-out discussion with the Warden, PREA Coordinator and other administrative staff on August 28, 2018. During this close-out discussion, the facility staff and the PREA Coordinator were provided with an overview of what had been identified as areas of concern.

#### POST-AUDIT PHASE

Following the on-site portion of the audit, the team met and discussed the post audit phase and the next steps. This auditor gathered written information and feedback from the other team member and took responsibility for completing the interim report.

The auditor and PREA Compliance Manager agreed that any documents not received during the pre-audit phase or site review would be requested via e-mail and provided by the PREA Compliance Manager.

On-site audit notes: The auditor reviewed onsite documents and notes, staff and offender interview notes and site review notes and began the process of completing the interim audit report. This auditor used the audit section of the compliance tool and the PREA standards as a guide to determine which question(s) in which interview guide(s), which onsite document review notes and/or which facility tour site review notes should be reviewed in order to make a determination of compliance for each standard. After checking the notes for each applicable subsection of each standard, this auditor made an overall determination at the end of the standard indicating whether or not the facility's policies, procedures and practices exceeds, meets or does not meet standard. Where the auditor found the facilities policies and procedures did not meet the standard, the auditor entered appropriate comments explaining why the standard is not met and what specific corrective action(s) is/are needed for facility's policies and procedures to comply with the standard. The auditor entered this information in the designated field at the end of the standard in review.

Interim Audit Report: Following completion of the audit notes, this auditor started completing the interim report. The interim report identified which policies and other documentation were reviewed, which staff and/or offender interviews were conducted and what observations were made during the on-site review of the facility in order to make a determination of compliance for each standard provision. The auditor then provided an explanation of how evidence listed was used to draw a final conclusion of whether the facility's policies and procedures exceed, meet, or does not meet the standard.

The Interim Audit Report was provided to the Staff at ESP on September 21, 2018. A telephone conference was held with the Warden, the PCM and the NDOC PC on October 1, 2018, to discuss the corrective action that would be required to comply with the PREA standards. The Interim Audit Report identified nine standards that ESP was not compliant with. During the conference call these nine items were discussed and an agreement was made between the Management at ESP and this auditor of what action would be

taken to correct these deficiencies. Additionally it was determined how proof of these corrections and proof of practice would be demonstrated.

A detailed description of the nine standards and the corrections made are included in the Summary of Audit Findings section of this report.

On February 21, 2019, the final set of document to demonstrate compliance was received from the PCM via e-mail. These documents were reviewed and determined to comply with the standards that they addressed.

## Facility Characteristics

*The auditor's description of the audited facility should include details about the facility type, demographics and size of the inmate, resident or detainee population, numbers and type of staff positions, configuration and layout of the facility, numbers of housing units, description of housing units including any special housing units, a description of programs and services, including food service and recreation. The auditor should describe how these details are relevant to PREA implementation and compliance.*

Ely State Prison (ESP) is located at 4569 N. State Route 490, Ely, Nevada. Ely State Prison opened in July 1989 and is the designated maximum-security prison for the State of Nevada

The facility is located approximately nine miles north of Ely in White Pine County. The prison was built in two phases: Phase I was completed and opened in August, 1989 and Phase II was completed in November, 1990. The original design was for 1,054 inmates, but the capacity has subsequently been increased to 1,183 inmates.

The physical design of ESP consists of eight housing units, one administration building, and a support building located inside the secure perimeter. Outside the secure perimeter are the minimum yard and a warehouse. Each of the secure housing units are split down the middle by a solid wall. Each side of the housing unit has 24 cells on the top tier and 24 cells on the bottom tier. There is a central control room in each housing unit that operates the doors. There is a corridor that connects two building to each other. In the corridor are offices and exam rooms. The Administration Building contains administrative offices, visiting, the shift office, religious services, education, the libraries, and a 30 bed infirmary (with medical offices). The support building contains intake, the laundry, culinary, dining hall, industries and the gym. Outside the secure perimeter there is the warehouse and the minimum yard consisting of one building. This building contains 16 cells, a dayroom and staff offices.

The inmate population is composed of maximum, close and minimum custody inmates. Inmates who have a history of violent in custody behavior or are deemed program failures are housed at this facility. Nevada's death row as well as the execution chamber is located at ESP. ESP is also used to house inmates who have extensive enemy concerns.

There are a total of 406 authorized positions at ESP. ESP has a staffing package that includes 285 sworn staff. This includes 5 lieutenants, 14 sergeants, 39 senior correctional officers and 227 correctional officers. Additionally ESP has a full time medical and mental health department, food service department, and maintenance department.

## Summary of Audit Findings

The summary should include the number of standards exceeded, number of standards met, and number of standards not met, **along with a list of each of the standards in each category.** If relevant, provide a summarized description of the corrective action plan, including deficiencies observed, recommendations made, actions taken by the agency, relevant timelines, and methods used by the auditor to reassess compliance.

**Auditor Note:** No standard should be found to be “Not Applicable” or “NA”. A compliance determination must be made for each standard.

**Number of Standards Exceeded:** 0

Click or tap here to enter text.

**Number of Standards Met:** 45

115.11, 115.12, 115.13, 115.14, 115.15, 115.16, 115.17, 115.18, 115.21, 115.22, 115.31, 115.32, 115.33, 115.34, 115.35, 115.41, 115.42, 115.43, 115.51, 115.52, 115.53, 115.54, 115.61, 115.62, 115.63, 115.64, 115.65, 115.66, 115.67, 115.68, 115.71, 115.72, 115.73, 115.76, 115.77, 115.78, 115.81, 115.82, 115.83, 115.86, 115.87, 115.88, 115.89, 115.401 and 115.404

**Number of Standards Not Met:** 0

## Summary of Corrective Action (if any)

The on-site portion of the audit was a consistent paced review of all areas of the institution. Facility staff were very helpful and responsive to the questions and concerns expressed during this portion of the audit. Facility staff were attentive to the needs of the auditors and were extremely hospitable. The audit team thanks the Warden, PREA Compliance Manager and the entire staff at Ely State Prison.

Overall, it is evident that Ely State Prison’s staff have been working towards compliance with the PREA standards. Because of this hard work, the facility is in compliance with a significant number of the standards.

Some of the positives observed by the audit team included:

- The PREA Compliance Manager is extremely knowledgeable and committed to helping eliminate sexual abuse and sexual harassment of offenders at ESP.
- The management staff have already started working toward correcting the deficiencies identified during the pre-audit and onsite portion of this audit.

- PREA posters were in place in all housing units, and common areas.
- Supervisory and management staff have a clear understanding of the policy.
- Supervisory and management staff ensured the audit team had access to staff and offenders for interviewing. Any documentation requested was received promptly.

The following corrections were made, after the site visit and prior to the submission of the interim report, to come in compliance with the PREA standards:

#### **115.13 Supervision and Monitoring**

The boiler room is manned 24/7 by one inmate per eight hour shift. When he is there by himself it is not a concern, however, when that inmate is training another inmate, the two of them are in that room for hours without supervision. Operational Procedure 516.1 has been modified to include 30 minute checks on inmates if there are more than one inmate working in the boiler room.

As a result of this audit, there are nine standards that ESP did not meet compliance at the time that the Interim Report was authored:

#### **115.13 Supervision and Monitoring**

During the tour of the facility this auditor observed two locations that created victimization concerns:

Most of the staff restrooms were unlocked during the tour. The concern is that, since they lock from the inside, inmates could access these restrooms, lock them from the inside and nobody would know that they were in there. Additionally only a few staff members have the keys to these restrooms, complicating an emergency response. On February 21, 2019, this author received a memorandum, via e-mail, from the Warden stating that all staff key rings had the staff bathroom key added to them. The staff are required to keep the staff restrooms locked at all times.

In the laundry room there is a loft that is accessed by a ladder. Because of the depth of the loft, staff cannot easily see up there from the laundry floor. Access to this area needs to be restricted by a physical barrier.

On December 12, 2018, proof of correction was provided in the form of photographs. The facility maintenance staff installed a sheet metal cover over the ladder secured by a lock. The cover provides a barrier that restricts access, without a key, to the loft. Based on these corrective actions, ESP is in compliance with standard 115.13.

### **115.15 Limits to Cross Gender Viewing and Searches**

The video feed from the restraint bed cells allowed female staff to observe an offender changing clothes or toileting from a remote location. Even when monitoring the cell is not part of that female staff's duties. ESP needed to restrict access to the video feed from the restraint bed rooms to staff that have a direct work related reason to observe these beds.

On October 25, 2018, the Warden noticed the audit team, in writing that the video viewing had been removed from posts that are not directly related to monitoring the restraint beds.

A review of the training documentation indicates that only 50% of the staff have received the required Pat-Down Search Technique of a Transgender Inmate. The remainder of the staff that have not received the pat down search training must receive this training.

On October 25, 2018, an updated training list was provided to the audit team. The accompanying training documents showed that all custody staff that were not current in this training at the time of the interim report have been provided the proper training. After reviewing the updated information, it has been determined that ESP is compliant with standard 115.15.

### **115.17 Hiring and Promotional Decisions**

A review of the personnel files showed that most of the employees that have been employed for over five years have not had recent background checks. NDOC and ESP must conduct background checks on all employees no less than every five years.

On January 10, 2019, a list of all employees at Ely State Prison was provided to the audit team by the State of Nevada PREA Manager. The list contained the date of the last background check and who completed the check. All of the employees had their background checks completed in the past five years. After reviewing the updated information, it has been determined that ESP is compliant with standard 115.17.

### **115.31 Employee Training**

A review of the training documentation indicates that only 50% of the staff have received the required Pat-Down Search Technique of a Transgender Inmate. The remainder of the staff that have not received the pat down search training must receive this training.

On October 25, 2018, an updated training list was provided to the audit team. The accompanying training documents showed that all custody staff that were not current in this training at the time of the interim report have been provided the proper training. After reviewing the updated information, it has been determined that ESP is compliant with standard 115.31.

#### **115.41 Screening of Risk of Sexual Victimization and Abusiveness**

Six of the 21 inmate files that were reviewed did not reflect that the inmates were rescreened for victimization concerns within 30 days of arrival. ESP will need to be rescreened the inmates that have not received a second screening. ESP will also need to insure that inmates are rescreened within 30 days of intake.

On February 20, 2019, a list of 96 inmates who arrived at ESP during November and December was provided to the audit team. 10 inmate names were chosen at random by the audit team and proof of initial PREA screening and 30 day follow-up PREA screening was requested for these inmates. The audit team was provided screen shots of the NOTIS notes demonstrating that both screenings had been completed within the required time frames. After reviewing the updated information, it has been determined that ESP is compliant with standard 115.41.

#### **115.61 Staff and Agency Reporting Duties**

There were a large volume of grievances received by the Grievance Coordinator at ESP. Unless the inmate tags the grievance in a manner that makes it obvious that the grievance is about a PREA, it may be weeks before a grievance is processed. This delays the start of the investigation resulting in the loss of some evidence, such a video surveillance or crime scene evidence. For ESP to come in compliance with this standard, the Administration will need to provide a quicker way to responded to PREA grievances so as to initiate the investigation sooner.

The audit team received copies of four different grievances filed during the corrective action period from ESP that made allegations of PREA. All four were handled in four days or less. In each case an incident package (request for investigation) was initiated. After reviewing the updated information, it has been determined that ESP is compliant with standard 115.61.

#### **115.71 Criminal and Administrative Agency Investigations**

In general, the cases lacked completeness. Some of the cases did not include information such as when the investigation was initiated, or when it was concluded. None of the cases included interviews with the reporting employee or the third party, if the report was received in this manner. There were no attempts to find witnesses, such as the floor officer on the day of the event or inmates who live in the adjacent cells. None of the reports included the reliability of the victim, suspect or witness statements. Even though the conclusions were appropriate for the information that was available, there were no supporting statements on how the investigator came to this conclusion. Several of the cases' investigations were not initiated timely. This was based on the delay of reporting through the appeals process. To comply with this standard, ESP and NDOC will need to conduct more thorough investigations. This includes interviewing potential witnesses and reporting employees. The reports must include reliability statements of the victim, suspect or witnesses. The investigations need to document what evidence was used to reach the findings of the investigation. The investigation needs to be initiated timely so as not to lose access to relevant evidence.

The Inspector General's Office provided the audit team with eight different investigations that were conducted and concluded during the corrective action period. All of the investigations were thorough and complete. This included when the investigation was initiated and when it was concluded. The investigations included the descriptions of what steps were taken to collect evidence and find and interview witnesses. All of the evidence was evaluated for relevance. The reports contained information on the reliability of the victim, suspect and witnesses. The conclusions were supported by the evidence. The investigators explained in sufficient detail how they arrived at the findings of their investigation. After reviewing the updated information, it has been determined that ESP is compliant with standard 115.71.

### **115.83 Medical and Mental Health Screening; History of Sexual Abuse**

Further review of the medical files showed that inmates are not evaluated by a Mental Health clinician after reporting sexual abuse. Of the eight files reviewed, none of them had an initial or follow-up meeting with mental health noted in the medical file. One of the mental health staff was asked if they would ever offer treatment to a known inmate-on-inmate abuser and their reply was "we don't do that here". To come in compliance with this standard, ESP's Mental Health Department will have to offer an evaluation to all known victims and abusers of inmate-on-inmate sexual abuse. Additionally the Mental Health Department needs to offer treatment when appropriate.

On February 21, 2019, a list was received from ESP with the names of inmates and the dates that it was discovered that they were the victims or abusers of sexual abuse. Also included was the date that MH was offered to the inmate as a result of this disclosure or incident. In each case, MH was offered on the date of discovery. Only one of the five inmates requested a MH interview. This inmate was seen on the next day. After reviewing the updated information, it has been determined that ESP is compliant with standard 115.83.

### **115.86 Sexual Abuse Incident Review**

Meetings were not being held within 30 days of the conclusion of the investigation. This is partially due to the routing of the report once the investigation is concluded. Once the investigation completes his report, the supervisor then reviews the report. The report is then sent to the IG's Office for review and tracking. By the time the facility gets the report back, 30 days have elapsed.

For ESP to be compliant with this standard, the PREA Review Committee will need to be conducted within 30 of the conclusion of the investigation.

ESP provided the minutes from the PREA Review Committee for sexual abuse cases that were substantiated or unsubstantiated during the corrective action period. These minutes demonstrated that the committee was held within 30 days of the conclusion of the investigation. After reviewing the updated information, it has been determined that ESP is compliant with standard 115.86.

## PREVENTION PLANNING

### Standard 115.11: Zero tolerance of sexual abuse and sexual harassment; PREA coordinator

All Yes/No Questions Must Be Answered by The Auditor to Complete the Report

#### 115.11 (a)

- Does the agency have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment?  Yes  No
- Does the written policy outline the agency's approach to preventing, detecting, and responding to sexual abuse and sexual harassment?  Yes  No

#### 115.11 (b)

- Has the agency employed or designated an agency-wide PREA Coordinator?  Yes  No
- Is the PREA Coordinator position in the upper-level of the agency hierarchy?  Yes  No
- Does the PREA Coordinator have sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities?  
 Yes  No

#### 115.11 (c)

- If this agency operates more than one facility, has each facility designated a PREA compliance manager? (N/A if agency operates only one facility.)  Yes  No  NA
- Does the PREA compliance manager have sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards? (N/A if agency operates only one facility.)  
 Yes  No  NA

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)



## Instructions for Overall Compliance Determination Narrative

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Nevada Department of Corrections (NDOC) Administrative Regulation (AR) 421, Custodial Sexual Misconduct, Inmate Sexual Offenses and Prison Rape Elimination Act, section 421.01, states "The Department has a Zero Tolerance policy for any form of sexual misconduct to include staff/contractor/or volunteer on inmate or inmate on inmate sexual harassment, sexual assault, sexual abusive contact and consensual sex." Ely State Prison (ESP) has an additional policy (Operational Procedure 421) that reiterates AR 421. This policy outlines the institution's approach to preventing, detecting, and responding to sexual abuse and sexual harassment. This OP also reiterates the NDOC zero tolerance policy.

NDOC's PREA Coordinator is Pamela Del Porto, Inspector General. Ms. Del Porto was assigned on March 23, 2017, as the PREA Coordinator for the Nevada Department of Corrections. During this PREA Audit, Deborah Striplin represented the Inspector General's office and NDOC as the acting PREA Coordinator. Ms. Striplin assisted the Inspector General for the State of Nevada in developing, implementing, and overseeing the NDOC's efforts to comply with the PREA standards.

ESP's PREA Compliance Manager (PCM) is Tasheena Sandoval, Correctional Caseworker Specialist III. Ms. Sandoval has been assigned as the PREA compliance Manager at ESP for four years. Ms. Sandoval reports to an Associate Warden, however does have the authority to bring PREA issues directly to the Warden as disclosed by both Warden and Ms. Sandoval. According to Ms. Sandoval, she does feel that she has sufficient time to coordinate the facility's efforts to comply with PREA. During this audit she demonstrated significant knowledge in PREA. Ms. Sandoval and Warden Gittere both appear committed to insuring ESP's commitment to preventing, detecting, responding to and reporting sexual abuse of inmates.

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

**All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

### 115.12 (a)

- If this agency is public and it contracts for the confinement of its inmates with private agencies or other entities including other government agencies, has the agency included the entity's obligation to comply with the PREA standards in any new contract or contract renewal signed on or after August 20, 2012? (N/A if the agency does not contract with private agencies or other entities for the confinement of inmates.)  Yes  No  NA

## 115.12 (b)

- Does any new contract or contract renewal signed on or after August 20, 2012 provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards? (N/A if the agency does not contract with private agencies or other entities for the confinement of inmates OR the response to 115.12(a)-1 is "NO".)  Yes  No  NA

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

### Instructions for Overall Compliance Determination Narrative

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Nevada Department of Corrections (NDOC) entered a contract with CoreCivics to house 200 NDOC inmates in October 2017. This is the first contract that NDOC has had with an outside entity in recent years. A review of the contract language (section 2.55) requires that CoreCivics comply with the Prison Rape Elimination Act. A review of CoreCivics' website shows, in detail, their PREA Policy. The contract language details CoreCivics' plan to comply with PREA.

Section 2.56.1 of the contract between NDOC and CoreCivics states that the vendor shall be subject to PREA compliance monitoring per section 115.12(b) of PREA. The Contract Administrator for NDOC stated that a designated staff member that works in the Offender Management Division is responsible for monitoring PREA compliance of the CoreCivics facility.

Further questions were asked to see if the NDOC uses contracted facilities to house inmates for substance abuse programs or "half way houses" for paroled inmates and the auditor was told that NDOC does not use outside contractors for these types of programs. The NDOC PREA Coordinator stated that she would be involved if a contract were put in place for this function. She would insure that language in the contract is consistent with the requirements of PREA.

## Standard 115.13: Supervision and monitoring

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

### 115.13 (a)

- Does the agency ensure that each facility has developed a staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring, to protect inmates against sexual abuse?  Yes  No
- Does the agency ensure that each facility has documented a staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring, to protect inmates against sexual abuse?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration the generally accepted detention and correctional practices in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration any judicial findings of inadequacy in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration any findings of inadequacy from Federal investigative agencies in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration any findings of inadequacy from internal or external oversight bodies in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration all components of the facility's physical plant (including "blind-spots" or areas where staff or inmates may be isolated) in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration the composition of the inmate population in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration the number and placement of supervisory staff in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration the institution programs occurring on a particular shift in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No  NA

- Does the agency ensure that each facility's staffing plan takes into consideration any applicable State or local laws, regulations, or standards in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration the prevalence of substantiated and unsubstantiated incidents of sexual abuse in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No
- Does the agency ensure that each facility's staffing plan takes into consideration any other relevant factors in calculating adequate staffing levels and determining the need for video monitoring?  Yes  No

#### 115.13 (b)

- In circumstances where the staffing plan is not complied with, does the facility document and justify all deviations from the plan? (N/A if no deviations from staffing plan.)  
 Yes  No  NA

#### 115.13 (c)

- In the past 12 months, has the facility, in consultation with the agency PREA Coordinator, assessed, determined, and documented whether adjustments are needed to: The staffing plan established pursuant to paragraph (a) of this section?  Yes  No
- In the past 12 months, has the facility, in consultation with the agency PREA Coordinator, assessed, determined, and documented whether adjustments are needed to: The facility's deployment of video monitoring systems and other monitoring technologies?  Yes  No
- In the past 12 months, has the facility, in consultation with the agency PREA Coordinator, assessed, determined, and documented whether adjustments are needed to: The resources the facility has available to commit to ensure adherence to the staffing plan?  Yes  No

#### 115.13 (d)

- Has the facility/agency implemented a policy and practice of having intermediate-level or higher-level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment?  Yes  No
- Is this policy and practice implemented for night shifts as well as day shifts?  Yes  No
- Does the facility/agency have a policy prohibiting staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility?  Yes  No

## Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

## Instructions for Overall Compliance Determination Narrative

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Operational Procedure 326.2, Posting of Shifts, requires that at least once a year the PREA coordinator shall assess, determine, and document whether adjustments are needed to the staffing plan and or video monitoring system. This auditor was provided a copy of the 2017 Ely State Prison (ESP) staffing plan. According to the Staffing Plan, Nevada Department of Corrections' PREA Coordinator initiated a review and discussion of the staffing patterns for ESP with the Director of Corrections. ESP has a total of 285 custody positions including 5 Lieutenants, 14 Sergeants, 39 Senior Officers and 227 Correctional Officers authorized by the legislature. Currently ESP has a 21% vacancy rate. OP 326.2 defines three separate levels of staffing. Normal Staffing is when all posts are filled. There are no modifications to program during this staffing level. Limited Staffing is when there are not enough staff to fill every post but more than the Minimum Staffing level. When this occurs modifications to programs are made. The types of modifications are based on the number of staff available. Whenever a modification to program is made, due to lack of staff, an incident report is created in Nevada Offender Tracking Information System (NOTIS). The audit team was provided copies of these incidents for review. Minimum staffing requires at least twenty-five staff be on grounds during day light hours and twenty-seven staff be on grounds during night time hours. The facility utilizes overtime to insure compliance with this minimum. A memorandum signed by the Warden states that ESP has maintained minimum or above staffing levels during the past 12 months.

The physical design of ESP is two separate yards (phases) with four housing units on each phase. Each housing unit has two sides with 48 cells (24 on the top tier and 24 on the bottom tier). Between the housing units are offices and examination rooms. There is an administration building which contains administrative offices, the watch office, libraries, the chapel, a 30 bed infirmary, and the visiting area. There is a centralized building which contains the laundry, intake, culinary and the gym. Outside the secure perimeter is a minimum a 16 celled housing unit and a warehouse. ESP has 283 cameras to help augment security and provide evidence during an investigation.

During the interview with the Warden, he explained how the staffing plan is established, adjusted and enforced. The staffing plan is approved by the Nevada Legislature as part of the budget process. The plan is based on best practices, and the American Correctional Association's and National Institute of Correction's staffing models. Each year the plan is reviewed to see if adjustments need to be made based on mission changes, PREA and/or other serious incidents, program changes, legal challenges or legislative changes. According to the 2017 staffing plan, there are no findings of inadequacies by

judicial ruling, Federal Investigative Agencies, or internal or external oversight bodies. There are no state, or local laws that dictate staffing requirements. The staffing plan contains an analysis of the inmate population by ethnicity and security threat group.

Operational Procedure 403, Institutional Security Inspections, requires that supervisors make unannounced rounds to identify and deter staff sexual abuse and sexual harassment. The policy also prohibits staff from alerting other staff members that the supervisory rounds are occurring. When supervisors make these rounds they are required to document them in the housing unit log book and post an entry in NOTIS. During the tour of the facility, the audit team reviewed the housing unit log books and noted the supervisory entries. These entries were at random times during the shift. This auditor was provided copies of the PREA- Unannounced Supervisor Tours from the housing unit log book and the NOTIS entries. A review of the documentation demonstrated that supervisors complete random tours of the facility.

During the tour of the facility this auditor observed three locations that created victimization concerns:

The boiler room is manned 24/7 by one inmate per eight hour shift. When he is there by himself it is not a concern, however, when that inmate is training another inmate, the two of them are in that room for hours without supervision. This issue was corrected prior to submission of the interim report. Operational Procedure 516.1 includes the requirement for staff to check on inmates in the boiler room if there is ever more than one inmate in there.

Most of the staff restrooms were unlocked during the tour. The concern is that, since they lock from the inside, inmates could access these restrooms, lock them from the inside and nobody would know that they were in there. Additionally only a few staff members have the keys to these restrooms, complicating an emergency response. On February 21, 2019, this author received a memorandum, via e-mail, from the Warden stating that all staff key rings had the staff bathroom key added to them. The staff are required to keep the staff restrooms locked at all times.

In the laundry room there is a loft that is accessed by a ladder. Because of the depth of the loft, staff cannot easily see up there from the laundry floor.

On December 12, 2018, proof of correction was provided in the form of photographs. The facility maintenance staff installed a sheet metal cover over the ladder secured by a lock. The cover provides a barrier that restricts access, without a key, to the loft. Based on these corrective actions, ESP is in compliance with standard 115.13.

## Standard 115.14: Youthful inmates

**All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

### 115.14 (a)

- Does the facility place all youthful inmates in housing units that separate them from sight, sound, and physical contact with any adult inmates through use of a shared dayroom or other common space, shower area, or sleeping quarters? (N/A if facility does not have youthful inmates [inmates <18 years old].)  Yes  No  NA

### 115.14 (b)

- In areas outside of housing units does the agency maintain sight and sound separation between youthful inmates and adult inmates? (N/A if facility does not have youthful inmates [inmates <18 years old].)  Yes  No  NA
- In areas outside of housing units does the agency provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact? (N/A if facility does not have youthful inmates [inmates <18 years old].)  Yes  No  NA

### 115.14 (c)

- Does the agency make its best efforts to avoid placing youthful inmates in isolation to comply with this provision? (N/A if facility does not have youthful inmates [inmates <18 years old].)  Yes  No  NA
- Does the agency, while complying with this provision, allow youthful inmates daily large-muscle exercise and legally required special education services, except in exigent circumstances? (N/A if facility does not have youthful inmates [inmates <18 years old].)  Yes  No  NA
- Do youthful inmates have access to other programs and work opportunities to the extent possible? (N/A if facility does not have youthful inmates [inmates <18 years old].)  Yes  No  NA

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

### Instructions for Overall Compliance Determination Narrative

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Nevada Department of Corrections (NDOC) requires that any juvenile inmate housed at an adult correctional facility shall be housed in a location out of sight, sound and physical contact of the adult inmates. The youthful inmates are not to be placed in isolation for this purpose.

Ely State Prison does not house any inmates under the age of 18 years old.

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

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

### 115.15 (a)

- Does the facility always refrain from conducting any cross-gender strip or cross-gender visual body cavity searches, except in exigent circumstances or by medical practitioners?  
 Yes  No

### 115.15 (b)

- Does the facility always refrain from conducting cross-gender pat-down searches of female inmates in non-exigent circumstances? (N/A here for facilities with less than 50 inmates before August 20,2017.)  Yes  No  NA
- Does the facility always refrain from restricting female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision? (N/A here for facilities with less than 50 inmates before August 20, 2017.)  Yes  No  NA

### 115.15 (c)

- Does the facility document all cross-gender strip searches and cross-gender visual body cavity searches?  Yes  No
- Does the facility document all cross-gender pat-down searches of female inmates?  
 Yes  No

### 115.15 (d)

- Does the facility implement a policy and practice that enables inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks?  Yes  No
- Does the facility require staff of the opposite gender to announce their presence when entering an inmate housing unit?  Yes  No

### 115.15 (e)

- Does the facility always refrain from searching or physically examining transgender or intersex inmates for the sole purpose of determining the inmate's genital status?  Yes  No



- If an inmate's genital status is unknown, does the facility determine genital status during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner?  Yes  No

#### 115.15 (f)

- Does the facility/agency train security staff in how to conduct cross-gender pat down searches in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs?  Yes  No
- Does the facility/agency train security staff in how to conduct searches of transgender and intersex inmates in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs?  Yes  No

#### Auditor Overall Compliance Determination

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- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

#### Instructions for Overall Compliance Determination Narrative

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Operational Procedure 422, Searches and Seizure Procedures, page 2 and 3, section 422.03, states that the facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners. The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches. All cross-gender strip searches will be documented within the Nevada Offender Tracking Information System (NOTIS) as an "Informational Report". According to the staff and inmates interviewed, female staff have not conducted any strip searches on inmates at ESP during this audit period. Female staff stated that they would only do a strip search of a male inmate if it was an extreme emergency. These staff knew that in the event that they had to strip search an inmate, they would document it.

OP 421, Prison Rape Elimination Act, requires that inmates be allowed to shower, perform bodily functions and change clothing without opposite gender staff viewing their buttocks or genitalia. Additionally, the OP states that the presence of female staff members shall be announced every time they enter an inmate housing unit or unit control room. This will be done by the control room officer by utilizing the unit intercom system. If no intercom system is available (i.e., Building 12, Infirmary, Visiting

Holding, Property Holding) it will be announced by the custody staff present. The female staff member will only announce their presence when no custody staff is present. This notification is to be documented by entering a PREA-Female Entering a Male Housing Unit entry in the Daily Shift Log in NOTIS and an entry in the unit segregation log book or visitor record log. The female staff member shall not enter the unit until announcement has been made. During the inmate interviews, most of the inmates stated that female staff's presence is announced about 75-80% of the time. During the tour the announcements were always made in our presence. All staff stated that the announcements are routine and expected. These announcements were documented in the log books that were reviewed by the audit team.

When asked, all of the inmates stated that they are allowed to toilet, dress and shower without female staff watching them. The physical design of the housing units makes it difficult for a staff member to see into the shower or toilet area without moving the curtain. A review of the video monitors showed that of the 283 video cameras, two had view of where an inmate would likely have his genitalia or buttock exposed. These two cameras in the infirmary (observation cell cameras) allowed female staff to observe the male inmates unclothed while on the restraint bed. The beds that the cameras monitor are typically used for suicide watch. The concern is that main control has a view of these cameras. Main Control is not the primary respondent to incidents in this area and it is not a gender specific post. Therefore female staff can view an inmate who is without clothing or toileting. All of the other staff that have access to this video feed are Management, Medical and Investigators. All of which have a work duty related reason for access to this video feed. On October 25, 2018, the Warden noticed the audit team, in writing that the video viewing had been removed from Main Control.

OP 422.2, page 2, restricts staff from searching inmates for the sole purpose of determining their genital statuses. Information on an offender's genital statuses is to be obtained during routine conversation or a review of medical records. Inmates housed at ESP have already been classified as male inmates during the Reception Center processing. All of the staff interviewed stated that they do not search inmates to determine their genitalia statuses. None of the inmates claimed to have been strip searched for this reason.

The training that is provided to custody staff by NDOC is very thorough and comprehensive on searching methods. The training power point demonstrates, to staff, how to properly conduct a pat down search of transgender and intersex inmates. A review of the training documents showed that about 50% staff at ESP have been trained in these search techniques during 2017. The audit team was informed that, because of financial restraints, training was suspended for about 3 months, putting them behind schedule.

On October 25, 2018, an updated training list was provided to the audit team. The accompanying training documents showed that all custody staff that were not current in this training at the time of the interim report have been provided the proper training. After reviewing the updated information, it has been determined that ESP is compliant with standard 115.15.

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

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

### 115.16 (a)

- Does the agency take appropriate steps to ensure that inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: inmates who are deaf or hard of hearing?  Yes  No
- Does the agency take appropriate steps to ensure that inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: inmates who are blind or have low vision?  Yes  No
- Does the agency take appropriate steps to ensure that inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: inmates who have intellectual disabilities?  Yes  No
- Does the agency take appropriate steps to ensure that inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: inmates who have psychiatric disabilities?  Yes  No
- Does the agency take appropriate steps to ensure that inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: inmates who have speech disabilities?  Yes  No
- Does the agency take appropriate steps to ensure that inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: Other (if "other," please explain in overall determination notes)?  Yes  No
- Do such steps include, when necessary, ensuring effective communication with inmates who are deaf or hard of hearing?  Yes  No
- Do such steps include, when necessary, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary?  Yes  No
- Does the agency ensure that written materials are provided in formats or through methods that ensure effective communication with inmates with disabilities including inmates who: Have intellectual disabilities?  Yes  No

- Does the agency ensure that written materials are provided in formats or through methods that ensure effective communication with inmates with disabilities including inmates who: Have limited reading skills?  Yes  No
- Does the agency ensure that written materials are provided in formats or through methods that ensure effective communication with inmates with disabilities including inmates who: Are blind or have low vision?  Yes  No

#### 115.16 (b)

- Does the agency take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment to inmates who are limited English proficient?  Yes  No
- Do these steps include providing interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary?  Yes  No

#### 115.16 (c)

- Does the agency always refrain from relying on inmate interpreters, inmate readers, or other types of inmate assistance except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first-response duties under §115.64, or the investigation of the inmate's allegations?  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

#### Instructions for Overall Compliance Determination Narrative

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Operational Procedure 421 requires that ESP will provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills. The PREA resource Manual requires that the facility utilize the necessary resources that are available to assist inmates who have disabilities to insure those inmates have equal access to participate in or benefit from every aspect of the prevention, detection and response to sexual abuse and sexual harassment. The inmates receive the

PREA information in the Offender Handbook when they first arrive at the facility. All inmates are also required to watch a 3 minute video on NDOC's PREA policy. The video and handout are available in both English and Spanish. Copies of the video transcript are available in twelve different languages and in braille. Inmates are required to sign acknowledgement of receiving the information.

ESP has contracted with CTS Language Link to provide both spoken interpretation and written translation services. Information on how to access those services can be found in all Warden's offices, Lieutenants office, shift Sergeants desk, all Caseworker offices, medical administration area and mental health staff offices. The audit team was provided copies of the contract with CTS Language Link. This language link was used by this auditor to conduct interviews of inmates who did not speak English.

The audit team spoke with the supervising caseworker about the intake process. We were informed that if the caseworker doing the intake becomes aware, either through the interview process or the file review, that an inmate has a learning disability, physical handicap, or does not speak and understand English, reasonable accommodations are made. ESP has several methods for inmates with physical disabilities, such as vision and hearing impaired to receive the information. The policy states that staff are to read the information to inmates who cannot read. The policy is also available in brail format. The PCM showed the audit team a copy of the policy written in brail. Four inmates were interviewed that needed some form of assistance with effective communication (three English second language and one developmentally disabled). All four inmates were able to reiterate the PREA policy well enough to demonstrate comprehension.

Operational Procedure 421, Prison Rape Elimination Act, states that "ESP will prohibit the use of inmate interpreters, inmate readers, or other types of inmate assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first-responder duties, of the investigation of the inmate's allegations. The use of inmate interpreters in these limited circumstances will be documented. Staff interpretation will be conducted within a confidential office and the staff member will be responsible for documenting the interpretation in NOTIS. The interpreting staff member will maintain confidentiality regarding all information that was interpreted." All of the staff knew the limit of utilizing an inmate interpreter. Most of the staff were aware of the translation service that NDOC has a contract with. Currently ESP only has nine inmates identified that do not speak fluent English.

## Standard 115.17: Hiring and promotion decisions

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.17 (a)

- Does the agency prohibit the hiring or promotion of anyone who may have contact with inmates who has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997)?  Yes  No
- Does the agency prohibit the hiring or promotion of anyone who may have contact with inmates who has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse?  Yes  No

- Does the agency prohibit the hiring or promotion of anyone who may have contact with inmates who has been civilly or administratively adjudicated to have engaged in the activity described in the question immediately above?  Yes  No
- Does the agency prohibit the enlistment of services of any contractor who may have contact with inmates who has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997)?  Yes  No
- Does the agency prohibit the enlistment of services of any contractor who may have contact with inmates who has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse?  Yes  No
- Does the agency prohibit the enlistment of services of any contractor who may have contact with inmates who has been civilly or administratively adjudicated to have engaged in the activity described in the question immediately above?  Yes  No

#### 115.17 (b)

- Does the agency consider any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with inmates?  Yes  No

#### 115.17 (c)

- Before hiring new employees, who may have contact with inmates, does the agency: perform a criminal background records check?  Yes  No
- Before hiring new employees, who may have contact with inmates, does the agency: consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse?  Yes  No

#### 115.17 (d)

- Does the agency perform a criminal background records check before enlisting the services of any contractor who may have contact with inmates?  Yes  No

#### 115.17 (e)

- Does the agency either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates or have in place a system for otherwise capturing such information for current employees?  Yes  No

### 115.17 (f)

- Does the agency ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions?  Yes  No
- Does the agency ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph (a) of this section in any interviews or written self-evaluations conducted as part of reviews of current employees?  Yes  No
- Does the agency impose upon employees a continuing affirmative duty to disclose any such misconduct?  Yes  No

### 115.17 (g)

- Does the agency consider material omissions regarding such misconduct, or the provision of materially false information, grounds for termination?  Yes  No

### 115.17 (h)

- Does the agency provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work? (N/A if providing information on substantiated allegations of sexual abuse or sexual harassment involving a former employee is prohibited by law.)  Yes  No  NA

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

### Instructions for Overall Compliance Determination Narrative

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

Nevada Department of Corrections Prison Rape Elimination Act Manual, page 4, mandates that the Department shall not hire or promote an individual to a position that may have contact with offenders who meets any of the three criteria listed in section 115.17 (a). NDOC requires that every applicant/volunteer/contractor who may have contact with an inmate disclose the following information prior to entering into any NDOC facility:

Have they engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution, or have you been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse, or have they been civilly or administratively adjudicated to have engaged in the activity described in any part of this question.

Have they been adjudicated as having engaged in any type of inmate Sexual Harassment, which includes as a staff member, volunteer, contractor, or as any type of service provider coming in contact with an inmate in the facilities mentioned in question 1.

Answering affirmative to either of these questions can result in the denial of employment or, in the case of contractors and volunteers, denial of access into the facility. Providing false information is grounds for dismissal. Staff answer these questions during the initial interview process, during any promotional interview and annually during their training. A review of the personnel and volunteer's files demonstrated compliance with this policy.

NDOC Administrative Regulation 300 requires that NDOC complete a background check before hiring or promoting any staff member. NDOC uses National Crime Information Center (NCIC) and the Nevada Department of Public Safety, Records, communications and Compliance Division to complete background clearances. Additionally Human Resources must make its best effort to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse. Three examples of the information request were provided to the audit team with the pre-audit material. These requests included questions about if prospective employees were investigated for a PREA allegation. 20 personnel files were reviewed. All 20 of the personnel files showed that a background check had been completed upon initial hiring or during the last promotion. Of the 20 personnel files reviewed, two employees had disclosed prior employment in an institutional setting. Both files contained requests for information related prior sexual abuse or sexual harassment allegations on this employee. During the interview with the head of personnel, she explained the hiring process and how background checks are conducted. She explained what her staff would do if they discovered that an employee was dishonest during the application and hiring process.

A review of the personnel files showed that most of the employees that have been employed for over five years have not had recent background checks. In the interim report it was pointed out that NDOC and ESP must conduct background checks on all employees no less than every five years.

On January 10, 2019, a list of all employees at Ely State Prison was provided to the audit team by the State of Nevada PREA Manager. The list contained the date of the last background check and who completed the check. All of the employees had their background checks completed in the past five years. After reviewing the updated information, it has been determined that ESP is compliant with standard 115.17.



## Standard 115.18: Upgrades to facilities and technologies

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

### 115.18 (a)

- If the agency designed or acquired any new facility or planned any substantial expansion or modification of existing facilities, did the agency consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect inmates from sexual abuse? (N/A if agency/facility has not acquired a new facility or made a substantial expansion to existing facilities since August 20, 2012, or since the last PREA audit, whichever is later.)  
 Yes    No    NA

### 115.18 (b)

- If the agency installed or updated a video monitoring system, electronic surveillance system, or other monitoring technology, did the agency consider how such technology may enhance the agency's ability to protect inmates from sexual abuse? (N/A if agency/facility has not installed or updated a video monitoring system, electronic surveillance system, or other monitoring technology since August 20, 2012, or since the last PREA audit, whichever is later.)  
 Yes    No    NA

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

### Instructions for Overall Compliance Determination Narrative

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

ESP has done some minor remodeling since the last PREA audit in 2016. The remodeling took into account of any PREA related issues. One unit was converted from single cell to double cell. This resulted in a change of the staffing package for that building.

## RESPONSIVE PLANNING

### Standard 115.21: Evidence protocol and forensic medical examinations

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.21 (a)

- If the agency is responsible for investigating allegations of sexual abuse, does the agency follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions? (N/A if the agency/facility is not responsible for conducting any form of criminal OR administrative sexual abuse investigations.)  
 Yes  No  NA

#### 115.21 (b)

- Is this protocol developmentally appropriate for youth where applicable? (N/A if the agency/facility is not responsible for conducting any form of criminal OR administrative sexual abuse investigations.)  Yes  No  NA
- Is this protocol, as appropriate, adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011? (N/A if the agency/facility is not responsible for conducting any form of criminal OR administrative sexual abuse investigations.)  Yes  No  NA

#### 115.21 (c)

- Does the agency offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate?  Yes  No
- Are such examinations performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible?  Yes  No
- If SAFEs or SANEs cannot be made available, is the examination performed by other qualified medical practitioners (they must have been specifically trained to conduct sexual assault forensic exams)?  Yes  No
- Has the agency documented its efforts to provide SAFEs or SANEs?  Yes  No

#### 115.21 (d)

- Does the agency attempt to make available to the victim a victim advocate from a rape crisis center?  Yes  No
- If a rape crisis center is not available to provide victim advocate services, does the agency make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member?  Yes  No
- Has the agency documented its efforts to secure services from rape crisis centers?  Yes  No

#### 115.21 (e)

- As requested by the victim, does the victim advocate, qualified agency staff member, or qualified community-based organization staff member accompany and support the victim through the forensic medical examination process and investigatory interviews?  Yes  No
- As requested by the victim, does this person provide emotional support, crisis intervention, information, and referrals?  Yes  No

#### 115.21 (f)

- If the agency itself is not responsible for investigating allegations of sexual abuse, has the agency requested that the investigating entity follow the requirements of paragraphs (a) through (e) of this section? (N/A if the agency/facility is responsible for conducting criminal AND administrative sexual abuse investigations.)  Yes  No  NA

#### 115.21 (g)

- Auditor is not required to audit this provision.

#### 115.21 (h)

- If the agency uses a qualified agency staff member or a qualified community-based staff member for the purposes of this section, has the individual been screened for appropriateness to serve in this role and received education concerning sexual assault and forensic examination issues in general? [N/A if agency attempts to make a victim advocate from a rape crisis center available to victims per 115.21(d) above.]  Yes  No  NA

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

## Instructions for Overall Compliance Determination Narrative

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

Administrative Regulation 421, section 421.12, states that NDOC office of the Inspector General, will investigate all allegations of staff on inmate sexual abuse and sexual harassment and all inmate on inmate sexual abuse. Operational Procedure 421.1, Sexual Assault Response and Coordinated response, address the protocols for collection of evidence for use in an administrative proceedings and criminal prosecution. Combined with OP 458, Evidence/Contraband Collection, Storage and Disposal, the policies include discovery, handling, delivery, retrieval, logging, storage, retention and destruction of all evidence. NDOC and ESP utilize a local hospital's Sexual Assault Nurse Examiner (SANE) to conduct the forensic exams. Currently NDOC has an agreement with University Medical Center in Las Vegas, Nevada to conduct all forensic exams. The audit team confirmed with UMC that they conduct the forensic exams for ESP. If an inmate is taken to UMC for a SAFE/SANE exam, they report to the emergency room. A SAFE/SANE nurse is called in to perform the exam. If there is no SAFE/SANE nurse available, the physician on duty will perform the exam. The person that the team spoke to stated that all of certified SAFE/SANE nurses' training follows the National Protocol for Sexual Assault Medical Forensic Examinations as set forth by the Office of Violence Against Women.

NDOC policies mirror the National Protocol for Sexual Assault Medical Forensic Examinations as set forth by the Office of Violence Against Women. ESP uses a coordinated team approach to respond to reports of sexual assault. They provide access to a victim advocate, and provide immediate medical care. All allegations are investigated. ESP utilizes a qualified SAFE/SANE nurse from the community to conduct medical exams and the process is handled, keeping the victims confidentiality in mind. The policy states that the inmate will be provided medical and emotional support at no cost to the inmate.

NDOC has a contract in place with The Rape Crisis Center (RCC) in Las Vegas in the event of a sexual assault. RCC has either staff or volunteers answering the rape hotline 24 hours a day, seven days a week. All of the volunteers are required to take a 50 hour training course on crisis intervention. The RCC contract states that the Inspector General's Office will contact them in the event that a victim advocate is requested. Once the Crisis Call Center is contacted, either a staff member or a volunteer will respond to the institution to be a victim advocate. This auditor spoke with the representative of the RCC who explained the process. Because of the remote location of ESP, she stated that it can be difficult to send a victim advocate to the institution, however if the victim are transferred to the SAFE/SANE Nurse (in Las Vegas) a VA will meet the inmate at the hospital. RCC had received a total of three calls and one letter from three different inmates at ESP during the past year. There were no noted requests for a Victim Advocate, during this time frame.

## Standard 115.22: Policies to ensure referrals of allegations for investigations

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

### 115.22 (a)

- Does the agency ensure an administrative or criminal investigation is completed for all allegations of sexual abuse?  Yes  No
- Does the agency ensure an administrative or criminal investigation is completed for all allegations of sexual harassment?  Yes  No

### 115.22 (b)

- Does the agency have a policy and practice in place to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior?  Yes  No
- Has the agency published such policy on its website or, if it does not have one, made the policy available through other means?  Yes  No
- Does the agency document all such referrals?  Yes  No

### 115.22 (c)

- If a separate entity is responsible for conducting criminal investigations, does such publication describe the responsibilities of both the agency and the investigating entity? [N/A if the agency/facility is responsible for criminal investigations. See 115.21(a).]  Yes  No  NA

### 115.22 (d)

- Auditor is not required to audit this provision.

### 115.22 (e)

- Auditor is not required to audit this provision.

## Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

## Instructions for Overall Compliance Determination Narrative

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Administrative Regulation 421, Custodial Sexual Misconduct, Inmate Sexual Offenses and Prison Rape Elimination Act, section 421.12, states "NDOC Office of the Inspector General will investigate all allegations of staff on inmate sexual abuse, sexual harassment and inmate on inmate sexual abuse." Additionally the AR states that all substantiated criminal cases shall be referred to the applicable prosecutorial authority for review of prosecution. This information is on the NDOC website. AR 457, Investigations, states that all incidents shall be reported to the IG per the requirements of AR 332. The IG or designee shall be immediately notified of PREA related or serious incidents involving suspected criminal activity by inmates, staff, or outside parties; or serious violations of Department policy.

This auditor spoke with the Inspector General for the NDOC. She confirmed that it is the IG Office's responsibility to investigate PREA allegations in NDOC. The IG's office is notified via the Nevada Offender Tracking Information System (NOTIS), the electronic incident notice system used by NDOC. In emergency cases they are notified via telephone. Once the IG's office receives the notice, they will assign an investigator to the case. At the conclusion of the investigation, if it appears that a felony has taken place, the IG will refer the case to the Attorney General. The Nevada Department of Corrections Prison Rape Elimination Act Manual provides further direction on the Office of Inspector General's responsibility while conducting a criminal investigation.

This auditor spoke with two of the IG investigators regarding the investigation of PREA allegations. Both investigators stated that they investigate all PREA cases that may result in prosecution. If the incident does not appear to be a criminal act, or involve a staff member, the case may be assigned to a supervisor at the institution for fact finding and investigation.

During the audit the PREA incident log was reviewed. There were 35 cases reported during the audit period. All 35 were reported to the Inspector General. ESP did not have any concluded PREA cases that met the criteria to refer a case for prosecution during this audit period. There are still seven sexual assault cases under investigation that may result in referral for prosecution.

## TRAINING AND EDUCATION

### Standard 115.31: Employee training

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.31 (a)

- Does the agency train all employees who may have contact with inmates on its zero-tolerance policy for sexual abuse and sexual harassment?  Yes  No
- Does the agency train all employees who may have contact with inmates on how to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures?  Yes  No
- Does the agency train all employees who may have contact with inmates on inmates' right to be free from sexual abuse and sexual harassment  Yes  No
- Does the agency train all employees who may have contact with inmates on the right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment?  Yes  No
- Does the agency train all employees who may have contact with inmates on the dynamics of sexual abuse and sexual harassment in confinement?  Yes  No
- Does the agency train all employees who may have contact with inmates on the common reactions of sexual abuse and sexual harassment victims?  Yes  No
- Does the agency train all employees who may have contact with inmates on how to detect and respond to signs of threatened and actual sexual abuse?  Yes  No
- Does the agency train all employees who may have contact with inmates on how to avoid inappropriate relationships with inmates?  Yes  No
- Does the agency train all employees who may have contact with inmates on how to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates?  Yes  No
- Does the agency train all employees who may have contact with inmates on how to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities?  Yes  No

#### 115.31 (b)

- Is such training tailored to the gender of the inmates at the employee's facility?  Yes  No

- Have employees received additional training if reassigned from a facility that houses only male inmates to a facility that houses only female inmates, or vice versa?  Yes  No

#### 115.31 (c)

- Have all current employees who may have contact with inmates received such training?  
 Yes  No
- Does the agency provide each employee with refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures?  Yes  No
- In years in which an employee does not receive refresher training, does the agency provide refresher information on current sexual abuse and sexual harassment policies?  Yes  No

#### 115.31 (d)

- Does the agency document, through employee signature or electronic verification, that employees understand the training they have received?  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

#### Instructions for Overall Compliance Determination Narrative

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Operational Procedure 421, Custodial Sexual Misconduct, Inmate Sexual Offenses and Prison Rape Elimination Act, section 421.06, requires all employees who may have contact with inmates will receive instruction on PREA in pre-service training. The training will include the following:  
Zero Tolerance Policy

How to report, detect, prevent and respond to such allegations

Inmate's right to be free from sexual abuse/harassment

Inmate's right to be free from retaliation from reporting incidents

The dynamics of sexual abuse and harassment in confinement



- The common reactions of sexual abuse and harassment victims
- How to detect and respond to signs of threatened and actual abuse
- How to avoid inappropriate relationships with inmates
- How to communicate effectively and professionally with the LGBTI
- How to comply with relevant laws related to mandatory reporting

The staff are trained initially in PREA upon employment through the Correctional Employee/Officer Basic Pre-Service Training (PST). After the PST, the training is required every two years. In years which an employee does not receive PREA refresher training the employee, shall receive refresher information on current PREA policies. A review of the training module provided to this auditor demonstrates that the information provided to the staff at ESP is in compliance with 115,31,(a), (1-10).

During the interview with the training manager, he explained how he insures staff stay current on the training annually. Staff are pre-scheduled for annual training for one week a year and are assigned to training for that week. The PREA training is given during this off post training week. The training for all NDOC staff has a topic that is tailored toward the male inmate population and a topic that is tailored toward the female inmate population.

A review of the training records show that over 95% of the employees working at ESP have been trained in PREA in the past 24 months. The employees signed a document acknowledging that they understood the training. Of the 20 training files reviewed, 18 files contained a document signed by the employee stating that they understood the training that they received.

During the interviews with staff, all of the employees demonstrated knowledge in PREA. All of them knew about NDOC's zero tolerance policy and their responsibility to prevent, protect and report sexual abuse and sexual harassment.

In 2017, NDOC provided training to their staff on Pat-Down Searches of Transgender Inmates. The spread sheet provided to the audit team with the staff roster and the dates that staff took the training indicated that only about 50% of the staff received this training. 13 of the 20 training files reviewed had documentation showing that these staff had been trained. This year's training cycle is computer based. At the time of this audit not all of the staff had completed the training; however the Training Manager was able to articulate his plan to complete the training by years end.

On October 25, 2018, an updated training list was provided to the audit team. The accompanying training documents showed that all custody staff that were not current in this training at the time of the interim report have been provided the proper training. After reviewing the updated information, it has been determined that ESP is compliant with standard 115.31.

## Standard 115.32: Volunteer and contractor training

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

### 115.32 (a)

- Has the agency ensured that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection, and response policies and procedures?  Yes  No

### 115.32 (b)

- Have all volunteers and contractors who have contact with inmates been notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents (the level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with inmates)?  Yes  No

### 115.32 (c)

- Does the agency maintain documentation confirming that volunteers and contractors understand the training they have received?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

### Instructions for Overall Compliance Determination Narrative

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Operational Procedure 802, Community Volunteer Program, section 802.01, requires that all volunteers and contractual staff shall attend PREA training. The training covers the NDOC zero tolerance policy, and the volunteer/contractor's responsibility under the NDOC's sexual abuse and sexual harassment prevention, detection and response policies and procedures. An acknowledgment of receipt of training is then signed by the volunteer or contractual staff. This training is required prior to having contact with inmates and then every three years after that.

ESP provided copies of the sign training acknowledgement for several volunteers and contractors. All of the volunteers that visit this facility were trained within the past year.

ESP has approximately 64 volunteers on their Gatehouse list, however according to the PCM only about 10 actually come to the facility. A large portion of medical staff and the education staff are all contract staff performing their specific job duties at ESP. During the interviews with the volunteers and contractors, they were able to explain the NDOC zero tolerance policy. They all knew their responsibility to report sexual abuse/sexual harassment and they were able to adequately describe what they would do if an inmate disclosed to them that they had been sexually abused or harassed.

## Standard 115.33: Inmate education

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.33 (a)

- During intake, do inmates receive information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment?  Yes  No
- During intake, do inmates receive information explaining how to report incidents or suspicions of sexual abuse or sexual harassment?  Yes  No

#### 115.33 (b)

- Within 30 days of intake, does the agency provide comprehensive education to inmates either in person or through video regarding: Their rights to be free from sexual abuse and sexual harassment?  Yes  No
- Within 30 days of intake, does the agency provide comprehensive education to inmates either in person or through video regarding: Their rights to be free from retaliation for reporting such incidents?  Yes  No
- Within 30 days of intake, does the agency provide comprehensive education to inmates either in person or through video regarding: Agency policies and procedures for responding to such incidents?  Yes  No

#### 115.33 (c)

- Have all inmates received such education?  Yes  No
- Do inmates receive education upon transfer to a different facility to the extent that the policies and procedures of the inmate's new facility differ from those of the previous facility?  Yes  No

#### 115.33 (d)

- Does the agency provide inmate education in formats accessible to all inmates including those who are limited English proficient?  Yes  No

- Does the agency provide inmate education in formats accessible to all inmates including those who are deaf?  Yes  No
- Does the agency provide inmate education in formats accessible to all inmates including those who are visually impaired?  Yes  No
- Does the agency provide inmate education in formats accessible to all inmates including those who are otherwise disabled?  Yes  No
- Does the agency provide inmate education in formats accessible to all inmates including those who have limited reading skills?  Yes  No

### 115.33 (e)

- Does the agency maintain documentation of inmate participation in these education sessions?  Yes  No

### 115.33 (f)

- In addition to providing such education, does the agency ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

### Instructions for Overall Compliance Determination Narrative

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

Operational Procedure 573, PREA Screening and Classification, states that inmates are shown the NDOC Comprehensive PREA video upon arrival at ESP. Additionally the inmates receive an orientation handbook which contains the PREA policy and information. The inmates then sign a document acknowledging that they watched the video and understand the information.

The Offender Handbook contains the NDOC zero tolerance policy on sexual abuse and sexual harassment, that inmates have a right to be free from sexual abuse/harassment and how to report sexual abuse/harassment. This document is available in both English and Spanish. NDOC has a contract in place with CTS Language Link to provide interpretive services for offenders who do not understand English or Spanish. The policy is read to the offender, according to the PCM, if the offender cannot read. The video is shown on the inmate channel 33 with closed caption. ESP has the video transcripts available in twelve different languages. A copy of the Offender Handbook was provided to this auditor for review.

Documentation provided to this auditor, along with random reviews of 21 inmate files, confirmed that inmates received the PREA training. A review of inmate files revealed that copies of the signed acknowledgement form were in the files. Most of the inmates were provided the training on the day of arrival. Of the 21 files reviewed, only one did not have signed documents demonstrating compliance with the training policy.

All of the inmates interviewed, knew the NDOC Sexual Abuse/Harassment policy. Additionally, they knew how to report any violation of policy through the several different reporting methods. Most of the inmates that were interviewed during this audit acknowledged receiving the brochure and seeing the video. The inmates that stated they did not receive the information had signed acknowledgment forms in their files.

All of the common areas had posters explaining the NDOC PREA zero tolerance policy and how to report sexual abuse/sexual harassment visible to the inmate population. Additionally the telephone numbers to report sexual abuse to an outside agency are on posters near the inmate telephones.

## Standard 115.34: Specialized training: Investigations

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.34 (a)

- In addition to the general training provided to all employees pursuant to §115.31, does the agency ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings? (N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.21(a).)  Yes  No  NA

#### 115.34 (b)

- Does this specialized training include techniques for interviewing sexual abuse victims? [N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.21(a).]  Yes  No  NA
- Does this specialized training include proper use of Miranda and Garrity warnings? [N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.21(a).]  Yes  No  NA

- Does this specialized training include sexual abuse evidence collection in confinement settings? [N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.21(a).]  Yes  No  NA
- Does this specialized training include the criteria and evidence required to substantiate a case for administrative action or prosecution referral? [N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.21(a).]  Yes  No  NA

#### 115.34 (c)

- Does the agency maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations? [N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.21(a).]  Yes  No  NA

#### 115.34 (d)

- Auditor is not required to audit this provision.

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

#### Instructions for Overall Compliance Determination Narrative

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

NDOC utilizes investigators from the Inspector General's Office to conduct all PREA allegation investigations. The investigators are required to attend the same PREA training as all NDOC employees. Additionally they are required to take the National Institute of Corrections course on Investigating Sexual Abuse in a Confined Setting. This course covers techniques for interviewing sexual abuse victims, compelled interview warnings, sexual abuse evidence collection and criteria and evidence required to substantiate a case for administrative or criminal prosecution.

This auditor was provided a copy of the training syllabus and completion certificates of the investigators for the Inspector General's Office. The IG's Office has 19 PREA trained investigators. The audit team was provided copies of all 19 investigator's training certificates. During the interview with the

investigators, they demonstrated knowledge on how to conduct a PREA investigation. This knowledge included what evidence to look for during an investigation, how to interview the alleged victim, suspect and potential witnesses. The investigators were able to explain how and when they would refer a case for prosecution. Both of the investigators interviewed knew how to conduct compelled interviews.

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

### **All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### **115.35 (a)**

- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in how to detect and assess signs of sexual abuse and sexual harassment?  Yes  No
- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in how to preserve physical evidence of sexual abuse?  Yes  No
- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in how to respond effectively and professionally to victims of sexual abuse and sexual harassment?  Yes  No
- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in how and to whom to report allegations or suspicions of sexual abuse and sexual harassment?  Yes  No

#### **115.35 (b)**

- If medical staff employed by the agency conduct forensic examinations, do such medical staff receive appropriate training to conduct such examinations? (N/A if agency medical staff at the facility do not conduct forensic exams.)  Yes  No  NA

#### **115.35 (c)**

- Does the agency maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere?  Yes  No

#### **115.35 (d)**

- Do medical and mental health care practitioners employed by the agency also receive training mandated for employees by §115.31?  Yes  No

- Do medical and mental health care practitioners contracted by and volunteering for the agency also receive training mandated for contractors and volunteers by §115.32?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

### Instructions for Overall Compliance Determination Narrative

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NDOC policy on medical training requires that all full and part time medical and mental health care practitioners who work regularly in the facility receive specialized PREA training.

Operational Procedure 421 and Operational Procedure 670 states that all medical and mental health employees assigned to ESP will complete specialized training specifically in:

How to detect and assess signs of sexual abuse and sexual harassment

How to preserve physical evidence of sexual harassment

How to respond effectively and professionally to victims of sexual abuse and sexual harassment

How and to whom to report allegations or suspicions of sexual abuse and sexual harassment

This training is provided by the National Institute of Corrections on-line training facility. A printed certificate documenting the completion of the class is to be placed in the employee's supervisory file at the institution and within the Department's employee training file.

All medical and mental health care practitioners will receive the training mandated for employees in PREA standards 115.31 and 115.32.

Medical staff at ESP are not trained to conduct forensic exams. All forensic exams are conducted by a SAFE/SANE Nurse at University Medical Center in Las Vegas, Nevada.

The training provided to the Medical Staff is from the National Institute of Corrections on-line course. The audit team was provided signed acknowledgment forms showing that these staff had attended this specialized training during their annual training requirements. During the interviews with the medical staff they explained the specialized training that they receive relative to PREA.



# SCREENING FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS

## Standard 115.41: Screening for risk of victimization and abusiveness

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

### 115.41 (a)

- Are all inmates assessed during an intake screening for their risk of being sexually abused by other inmates or sexually abusive toward other inmates?  Yes  No
- Are all inmates assessed upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates?  Yes  No

### 115.41 (b)

- Do intake screenings ordinarily take place within 72 hours of arrival at the facility?  
 Yes  No

### 115.41 (c)

- Are all PREA screening assessments conducted using an objective screening instrument?  
 Yes  No

### 115.41 (d)

- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (1) Whether the inmate has a mental, physical, or developmental disability?  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (2) The age of the inmate?  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (3) The physical build of the inmate?  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (4) Whether the inmate has previously been incarcerated?  
 Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (5) Whether the inmate's criminal history is exclusively nonviolent?  
 Yes  No

- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (6) Whether the inmate has prior convictions for sex offenses against an adult or child?  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming (the facility affirmatively asks the inmate about his/her sexual orientation and gender identity AND makes a subjective determination based on the screener's perception whether the inmate is gender non-conforming or otherwise may be perceived to be LGBTI)?  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (8) Whether the inmate has previously experienced sexual victimization?  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (9) The inmate's own perception of vulnerability?  Yes  No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (10) Whether the inmate is detained solely for civil immigration purposes?  Yes  No

#### 115.41 (e)

- In assessing inmates for risk of being sexually abusive, does the initial PREA risk screening consider, when known to the agency: prior acts of sexual abuse?  Yes  No
- In assessing inmates for risk of being sexually abusive, does the initial PREA risk screening consider, when known to the agency: prior convictions for violent offenses?  Yes  No
- In assessing inmates for risk of being sexually abusive, does the initial PREA risk screening consider, when known to the agency: history of prior institutional violence or sexual abuse?  Yes  No

#### 115.41 (f)

- Within a set time period not more than 30 days from the inmate's arrival at the facility, does the facility reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening?  Yes  No

#### 115.41 (g)

- Does the facility reassess an inmate's risk level when warranted due to a: Referral?  
 Yes  No
- Does the facility reassess an inmate's risk level when warranted due to a: Request?  
 Yes  No
- Does the facility reassess an inmate's risk level when warranted due to a: Incident of sexual abuse?  Yes  No
- Does the facility reassess an inmate's risk level when warranted due to a: Receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness?  
 Yes  No

#### 115.41 (h)

- Is it the case that inmates are not ever disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (d)(1), (d)(7), (d)(8), or (d)(9) of this section?  Yes  No

#### 115.41 (i)

- Has the agency implemented appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates?  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

#### Instructions for Overall Compliance Determination Narrative

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

Administrative Regulation 573, PREA Screening and Classification, section 573.01, states that a transfer screening should take place as soon as possible, but shall be completed within 72 hours of arrival at a new facility. Ely State Prison Operational Procedure states that initial screening should take place as soon as possible, but shall be completed within 72 hours of arrival at the institution or facility, excluding holidays. Whenever possible, and consistent with the safety and security needs of the institution or facility, inmates are not to be housed together in two-man cells prior to PREA screening. A case note (PREA-Intake Assessment) will be generated to document said action.

The audit team reviewed the intake process during the on-site tour. When an Inmate arrives at ESP, A designated Correctional Casework Specialist (CCS) interviews the inmate in a confidential, secure location in the mailroom. Also in attendance during this intake are a Medical Clinician and a Mental Health Clinician. The CCS completes the objective screening assessment with the input of the inmate, and determines housing based on the results of the assessment tool and other relevant case factors. A case note is entered in NOTIS to document that the assessment tool was completed and note if any alerts were added. All data will be entered into the Microsoft Access PREA tracking database. Once the assessment tool is completed, it will be placed in the I-file. A CCS shall be available to process reception of inmates within 24 hours of arrival.

The PREA Risk Assessment Tool (DOC 2097) utilized by NDOC has 10 questions to assess the inmate's vulnerability toward victimization and 4 questions to assess his potential toward predatory behavior.

The PREA Risk Assessment will be used for all screenings and assessments includes the following factors:

Possible Victim Factors:

Whether the inmate has a mental, physical or developmental disability.

The age of the inmate.

The physical build of the inmate.

Whether the inmate has previously been incarcerated.

Whether the inmate's criminal history is exclusively nonviolent.

Whether the inmate has prior convictions for sex offenses.

Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming.

Whether the inmate has previously experienced sexual victimization.

The inmate's own perception of vulnerability.

A transgender and/or intersex inmate's own views with respect to his/her safety shall be given serious consideration.

Possible Aggressor Factors:

History of institutional violent behavior.

Any history of sexual abuse.

History of convictions for violent offenses.

History of correctional facility sexual abuse, which may include violations contained in AR 707 that are of a sexual nature.

A corresponding alert in NOTIS will be entered on all known victims (PREA-High Risk of Sexual Victimization) and all known predators (PREA-High Risk of Sexual Abusiveness).

The inmate is personally interviewed again within 30 days. If there are no additional concerns, a case note (PREA 30 Day Follow Up) is generated to reflect that there have been no changes to the PREA Intake Assessment. If, upon interview, additional information is received, a PREA Risk Assessment is completed. A corresponding Alert in NOTIS is entered on all known victims (PREA High Risk of Sexual Victimization) and all known predators (PREA High Risk of Sexual Abusiveness). An internal audit was conducted one month before this PREA Audit. The internal audit showed that 157 of 1058 inmates that arrived during the past year had not been rescreened within 30 days. Six of the 21 files reviewed by the audit team did not have a 30 day follow-up session documented in the inmate's file.

Inmates are reassessed at each 12 month regular review and a PREA Regular Review Assessment case note will be entered to document said action. Transgender or Intersex inmates are rescreened every 6 months per policy. Inmates will also be reassessed if; the inmate requests it, a staff member refers an inmate for reassessment, if additional information is received or if the inmate is involved in an incident of sexual abuse. According to the Operational Procedure, Inmates cannot be disciplined for refusing to answer these questions.

A review of 21 random inmate files showed that all inmates were assessed for victimization/predatory concerns within 24 hours of arrival or upon their semi-annual review for the inmates who were at ESP prior to implementation of PREA.

During random interviews with a sample of the inmate population, most of the inmates recalled being asked questions about their criminal history and their sexual safety.

Only staff have access to the files. The results of the risk assessment are not shared with any other inmates.

Because of the inconsistencies of conducting the 30 day follow-up PREA screening, this issue was included in corrective action.

On February 20, 2019, a list of 96 inmates who arrived at ESP during November and December was provided to the audit team. 10 inmate names were chosen at random by the audit team and proof of initial PREA screening and 30 day follow-up PREA screening was requested for these inmates. The audit team was provided screen shots of the NOTIS notes demonstrating that both screenings had been completed within the required time frames. After reviewing the updated information, it has been determined that ESP is compliant with standard 115.41.

## Standard 115.42: Use of screening information

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.42 (a)

- Does the agency use information from the risk screening required by § 115.41, with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Housing Assignments?  Yes  No
- Does the agency use information from the risk screening required by § 115.41, with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Bed assignments?  Yes  No
- Does the agency use information from the risk screening required by § 115.41, with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Work Assignments?  Yes  No
- Does the agency use information from the risk screening required by § 115.41, with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Education Assignments?  Yes  No
- Does the agency use information from the risk screening required by § 115.41, with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Program Assignments?  Yes  No

#### 115.42 (b)

- Does the agency make individualized determinations about how to ensure the safety of each inmate?  Yes  No

#### 115.42 (c)

- When deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, does the agency consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether a placement would present management or security problems (NOTE: if an agency by policy or practice assigns inmates to a male or female facility on the basis of anatomy alone, that agency is not in compliance with this standard)?  Yes  No
- When making housing or other program assignments for transgender or intersex inmates, does the agency consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether a placement would present management or security problems?  Yes  No

#### 115.42 (d)

- Are placement and programming assignments for each transgender or intersex inmate reassessed at least twice each year to review any threats to safety experienced by the inmate?  
 Yes  No

#### 115.42 (e)

- Are each transgender or intersex inmate's own views with respect to his or her own safety given serious consideration when making facility and housing placement decisions and programming assignments?  Yes  No

#### 115.42 (f)

- Are transgender and intersex inmates given the opportunity to shower separately from other inmates?  Yes  No

#### 115.42 (g)

- Unless placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting lesbian, gay, bisexual, transgender, or intersex inmates, does the agency always refrain from placing: lesbian, gay, and bisexual inmates in dedicated facilities, units, or wings solely on the basis of such identification or status?  Yes  No
- Unless placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting lesbian, gay, bisexual, transgender, or intersex inmates, does the agency always refrain from placing: transgender inmates in dedicated facilities, units, or wings solely on the basis of such identification or status?  Yes  No
- Unless placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting lesbian, gay, bisexual, transgender, or intersex inmates, does the agency always refrain from placing: intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status?  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

## Instructions for Overall Compliance Determination Narrative

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Operational Procedure 573, Screening and Classification, section 1, states that staff shall use information from the risk assessment to make informed housing, bed, work, education and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive. Staff shall make individualized determinations about how to ensure the safety of each inmate on a case by case basis. Prior to initiating a bed move, the caseworker must check PREA Alerts for victimization and/or abusiveness. At no time will a known victim and a known aggressor be housed together in a 2 man cell. A possible victim and a possible aggressor should not be housed together unless necessary. Non-victims and non-aggressors may be housed with any other category, subject to individual case factors.

All program, education and work assignments shall be monitored and supervised by custody or free staff at all times to ensure safety and security of all inmates. During the interviews with the classification staff they explained what they review prior to housing an inmate or placing him in a work assignment. They stated that there are enough housing options available so that they do not house a possible victim and a possible aggressor in the same cell. None of the work assignments, within the secure perimeter, at ESP require two or more inmate to work together unsupervised.

The NDOC PREA handbook requires the NDOC Medical Department to determine where best to house transgender and intersex inmates, taking into account the individual inmate's health and safety needs verses whether or not the placement in a specific gender based institution may present management or security problems. NDOC does not house transgender, intersex, lesbian, gay or bisexual inmates in specific facilities. ESP does not house transgender or intersex inmates in specific housing units. At the time of the on-site portion of the audit, there were five inmates identified as transgender. These inmates were living in two different housing units. According to the PCM, the housing was based on their individual case factors.

All NDOC inmates' safety and program needs are reassessed every six months. Policy requires that the view of the transgender or intersex inmate toward their safety will be given serious consideration. Policy also requires that transgender and intersex inmates are given the opportunity to shower separately from the other inmates. The design of the showers at ESP allows all inmates to shower separately from each other. Three of the five transgender inmate files were reviewed by the audit team. All three had their housing and programing reassessed every six months since arriving at ESP.

During the interviews with the LBGTI inmate population, none of the inmates expressed concerns about their sexual safety.



## Standard 115.43: Protective Custody

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.43 (a)

- Does the facility always refrain from placing inmates at high risk for sexual victimization in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers?  Yes  No
- If a facility cannot conduct such an assessment immediately, does the facility hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment?  Yes  No

#### 115.43 (b)

- Do inmates who are placed in segregated housing because they are at high risk of sexual victimization have access to: Programs to the extent possible?  Yes  No
- Do inmates who are placed in segregated housing because they are at high risk of sexual victimization have access to: Privileges to the extent possible?  Yes  No
- Do inmates who are placed in segregated housing because they are at high risk of sexual victimization have access to: Education to the extent possible?  Yes  No
- Do inmates who are placed in segregated housing because they are at high risk of sexual victimization have access to: Work opportunities to the extent possible?  Yes  No
- If the facility restricts access to programs, privileges, education, or work opportunities, does the facility document: The opportunities that have been limited?  Yes  No
- If the facility restricts access to programs, privileges, education, or work opportunities, does the facility document: The duration of the limitation?  Yes  No
- If the facility restricts access to programs, privileges, education, or work opportunities, does the facility document: The reasons for such limitations?  Yes  No

#### 115.43 (c)

- Does the facility assign inmates at high risk of sexual victimization to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged?  Yes  No
- Does such an assignment not ordinarily exceed a period of 30 days?  Yes  No

### 115.43 (d)

- If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, does the facility clearly document: The basis for the facility's concern for the inmate's safety?  Yes  No
- If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, does the facility clearly document: The reason why no alternative means of separation can be arranged?  Yes  No

### 115.43 (e)

- In the case of each inmate who is placed in involuntary segregation because he/she is at high risk of sexual victimization, does the facility afford a review to determine whether there is a continuing need for separation from the general population EVERY 30 DAYS?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

### Instructions for Overall Compliance Determination Narrative

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NDOC does not allow inmates to be placed in involuntary segregated housing based solely on victimization concerns unless there are no other safe housing options. ESP Operational Procedure 573, section 3 states "Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made and it has been determined that there are no available alternative means of separation from likely abusers. If a facility cannot conduct such an assessment immediately, the facility may hold the inmate in involuntary segregated housing no more than 24 hours. During the weekends or holidays the on-duty Associate Warden must be notified to make appropriate arrangements. If the inmate voluntarily requests segregated housing, the inmate will be seen by classification within 72 hours of segregation. Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education or work opportunities, the facility shall document:

The opportunities that have been limited;

The duration of the limitation; and

The reasons for such limitations.

The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged and such assignment shall not ordinarily exceed a period of 30 days. If an involuntary segregated housing assignment is made the facility shall clearly document the basis for the facility's concern for the inmate's safety and the reason why no alternative means of separation can be arranged. Every 30 days the facility shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population."

According to a memorandum provided to the audit team, signed by the Warden, ESP has not had any inmates placed in segregation involuntarily based on victimization concerns during this audit period. The segregation housing supervisor stated that he does not remember any inmates being placed in segregation solely for victimization concerns. During the audit tour and document review, the audit team could not find any cases where this had occurred.

## REPORTING

### Standard 115.51: Inmate reporting

**All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### 115.51 (a)

- Does the agency provide multiple internal ways for inmates to privately report: Sexual abuse and sexual harassment?  Yes  No
- Does the agency provide multiple internal ways for inmates to privately report: Retaliation by other inmates or staff for reporting sexual abuse and sexual harassment?  Yes  No
- Does the agency provide multiple internal ways for inmates to privately report: Staff neglect or violation of responsibilities that may have contributed to such incidents?  Yes  No

#### 115.51 (b)

- Does the agency also provide at least one way for inmates to report sexual abuse or sexual harassment to a public or private entity or office that is not part of the agency?  Yes  No
- Is that private entity or office able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials?  Yes  No
- Does that private entity or office allow the inmate to remain anonymous upon request?  
 Yes  No

- Are inmates detained solely for civil immigration purposes provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security?  Yes  No

#### 115.51 (c)

- Does staff accept reports of sexual abuse and sexual harassment made verbally, in writing, anonymously, and from third parties?  Yes  No
- Does staff promptly document any verbal reports of sexual abuse and sexual harassment?  Yes  No

#### 115.51 (d)

- Does the agency provide a method for staff to privately report sexual abuse and sexual harassment of inmates?  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

#### Instructions for Overall Compliance Determination Narrative

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Operational Procedure 421, Prison Rape Elimination Act, section 10, states that ESP staff will accept reports from any and all sources to include but not limited to: inmates, visitors, inmate family members, associates, and other community members. These individuals can privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents. Such reporting can include, but not limited to:

Verbal complaints to any Departmental employee

Written complaints, which may be made through the following processes:

Inmate grievances

Grievances alleging staff on inmate sexual misconduct or inmate on inmate sexual abuse will be forwarded immediately to the PREA compliance manager and/or AW followed by a confidential report completed in NOTIS. A copy of the grievance will be forwarded to the PREA coordinator and Office of the Inspector General for review and investigation.

Inmate kites, written notes or letters to staff or administrators,

and letter directed to the PREA coordinator or any member of the Inspector General's Office.

NDOC Family Services Office by phone or email at [info@doc.nv.gov](mailto:info@doc.nv.gov).

Writing the Nevada Attorney General's Office

Calling the internal PREA Hotline telephone number at 775-887-3152

Written documentation received by custody staff will be forwarded to the PREA compliance manager for retention after the allegation has been handled appropriately.

The NDOC has an agreement with the New Mexico Department of Corrections to accept PREA allegations from NDOC inmates, family or public. This gives the inmates a chance to report PREA to another law enforcement agency that is not associated with NDOC. The contact information for the PREA Coordinator at New Mexico Department of Corrections is provided to the inmates via the PREA Information and FAQ Sheet and it is posted on the walls in common areas around the facility. Additionally the IG's PREA hotline is available on the inmate's phone and email kiosk. The inmates only need to enter a number to prompt a direct line to the IG's PREA hotline to report an incident. The inmates are not required to give their name to make a report. The access to the PREA hotline was checked by the audit team. We were able to contact the number and leave a message without providing any identifying information about ourselves. Shortly after testing the phone line we received confirmation from the IG's office that the message was received.

The information is provided to the inmate population via the Offender's Handbook postings on the wall and the inmate information channel. All of the inmates interviewed were aware of at least three different ways to report a PREA incident.

OP 421, section 9, requires that all staff report immediately any knowledge, suspicion, or information regarding any incidents of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency. Staff shall privately report sexual abuse and sexual harassment incidents with their on duty supervisor. Avenues of reporting can be either in person or by telephone. No other person shall be in the vicinity of hearing the reporting information. Staff is required to report known incidents involving both other staff and inmates. Staff is required to accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.

According to the representative of the IG's office that was present during the audit, staff can contact them and report confidentially. The random staff that were interviewed said that they felt that they could report confidentially to their supervisor or the PCM. Most of them said that they could also report it on the PREA hotline.

NDOC does not house any inmates solely for civil immigration purposes.

## Standard 115.52: Exhaustion of administrative remedies

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.52 (a)

- Is the agency exempt from this standard? NOTE: The agency is exempt ONLY if it does not have administrative procedures to address inmate grievances regarding sexual abuse. This does not mean the agency is exempt simply because an inmate does not have to or is not ordinarily expected to submit a grievance to report sexual abuse. This means that as a matter of explicit policy, the agency does not have an administrative remedies process to address sexual abuse.  Yes  No  NA

#### 115.52 (b)

- Does the agency permit inmates to submit a grievance regarding an allegation of sexual abuse without any type of time limits? (The agency may apply otherwise-applicable time limits to any portion of a grievance that does not allege an incident of sexual abuse.) (N/A if agency is exempt from this standard.)  Yes  No  NA
- Does the agency always refrain from requiring an inmate to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse? (N/A if agency is exempt from this standard.)  Yes  No  NA

#### 115.52 (c)

- Does the agency ensure that: An inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint? (N/A if agency is exempt from this standard.)  Yes  No  NA
- Does the agency ensure that: Such grievance is not referred to a staff member who is the subject of the complaint? (N/A if agency is exempt from this standard.)  Yes  No  NA

#### 115.52 (d)

- Does the agency issue a final agency decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance? (Computation of the 90-day time period does not include time consumed by inmates in preparing any administrative appeal.) (N/A if agency is exempt from this standard.)  Yes  No  NA
- If the agency claims the maximum allowable extension of time to respond of up to 70 days per 115.52(d)(3) when the normal time period for response is insufficient to make an appropriate decision, does the agency notify the inmate in writing of any such extension and provide a date by which a decision will be made? (N/A if agency is exempt from this standard.)  Yes  No  NA

- At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, may an inmate consider the absence of a response to be a denial at that level? (N/A if agency is exempt from this standard.)  Yes  No  NA

#### 115.52 (e)

- Are third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse? (N/A if agency is exempt from this standard.)  
 Yes  No  NA
- Are those third parties also permitted to file such requests on behalf of inmates? (If a third-party files such a request on behalf of an inmate, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.) (N/A if agency is exempt from this standard.)  Yes  No  NA
- If the inmate declines to have the request processed on his or her behalf, does the agency document the inmate's decision? (N/A if agency is exempt from this standard.)  
 Yes  No  NA

#### 115.52 (f)

- Has the agency established procedures for the filing of an emergency grievance alleging that an inmate is subject to a substantial risk of imminent sexual abuse? (N/A if agency is exempt from this standard.)  Yes  No  NA
- After receiving an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse, does the agency immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken? (N/A if agency is exempt from this standard.)  
 Yes  No  NA
- After receiving an emergency grievance described above, does the agency provide an initial response within 48 hours? (N/A if agency is exempt from this standard.)  Yes  No  NA
- After receiving an emergency grievance described above, does the agency issue a final agency decision within 5 calendar days? (N/A if agency is exempt from this standard.)  
 Yes  No  NA
- Does the initial response and final agency decision document the agency's determination whether the inmate is in substantial risk of imminent sexual abuse? (N/A if agency is exempt from this standard.)  Yes  No  NA
- Does the initial response document the agency's action(s) taken in response to the emergency grievance? (N/A if agency is exempt from this standard.)  Yes  No  NA

- Does the agency's final decision document the agency's action(s) taken in response to the emergency grievance? (N/A if agency is exempt from this standard.)  Yes  No  NA

### 115.52 (g)

- If the agency disciplines an inmate for filing a grievance related to alleged sexual abuse, does it do so ONLY where the agency demonstrates that the inmate filed the grievance in bad faith? (N/A if agency is exempt from this standard.)  Yes  No  NA

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

### Instructions for Overall Compliance Determination Narrative

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

Administrative Regulation 740, section 740.06, states that all grievances containing allegations of sexual abuse will be referred to the Inspector General's Office for investigation and they will be designated as "PARTIALLY GRANTED" indicating that it has been submitted for investigation by the Inspector General's Office. Operational Procedure 740, Inmate Grievance Procedure, section 740.04, removes all time frame restrictions for the filing of a grievance when the grievance alleges sexual abuse.

Section 740.04, allows an inmate to skip the informal grievance process when filing a sexual abuse grievance. If the grievance alleges sexual assault by a staff member, the inmate is not required to give the grievance to the staff member named in the grievance, nor is the inmate required to attempt to resolve the issue with that staff member. The grievance will not be forwarded to the named staff member to respond to the grievance.

Policy requires that all grievances alleging sexual abuse are forwarded to the Inspector General's (IG) Office. The IG's Office will render a decision of the outcome of the appeal within 90 days and initiate an investigation, if appropriate. In the event that more time is needed to resolve the grievance the IG's Office may ask for a 70 day extension. If an extension is needed, the IG's Office will notify the inmate of the extension and the expected date of the reply. Upon the completion of the investigation the IG's Office will notify the inmate of the results of the investigation. If the inmate does not receive a response within the allotted time limits, the inmate may consider this a denial.

NDOC and ESP's Operational Procedures do allow for third party reporting. Third party individuals could be a fellow inmate, staff member, family member, attorney or an outside advocate. If a grievance



is filed via third party, the inmate is to be interviewed. The inmate must confirm the allegation and agree to the administrative remedies. If the inmate declines to have the request processed, it shall be documented in the tracking log and on NOTIS (Nevada Offender Tracking Information System).

At any time an inmate may file an Emergency Grievance for issues involving substantial risk of imminent sexual abuse. All PREA Emergency Grievances alleging substantial risk of imminent sexual abuse shall be forwarded to the highest ranking staff member on duty so that corrective action may be taken immediately. A decision will be made immediately or within one (1) hour of receipt of the PREA Emergency Grievance. The person responding to the Emergency Grievance shall speak with the inmate and document any corrective action that was made or taken using the NOTIS reporting system. All actions should afford inmates access to medical/mental health services. Per policy, all PREA Emergency Grievances will be referred to the Associate Warden or PREA Compliance Manager for follow up within 2 days of receipt of the Emergency Grievance. The Associate Warden or PREA Compliance Manager will ensure that the incident has been referred for investigation and that the inmate has been afforded appropriate medical, mental health and safety considerations. An inmate may not be disciplined for filing a grievance related to alleged sexual abuse unless the Department has demonstrated that the inmate filed the grievance in bad faith.

The Grievance Coordinator for ESP explained how grievance process works when there is an allegation of PREA. The inmate drops the grievance in the locked box in the housing unit. The caseworker empties the grievance box once every weekday. The grievances are delivered to the coordinator's office. If the grievance alleges PREA, the coordinator scans the grievance and forwards a copy to the PCM and the IG's office. The information is entered in NOTIS. Even though ESP's grievance process is in compliance with this standard, the way some of the grievances are handled, results in a delay of reporting. There is a large volume of grievances received by the Grievance Coordinator at ESP. Unless the inmate tags the grievance in a manner that makes it obvious that the grievance is about a PREA, it may be weeks before a grievance is processed. This delays the start of the investigation resulting in the loss of some evidence, such a video surveillance or crime scene evidence. This was discussed with the Grievance Coordinator and he was already working on a solution to prevent this from happening in the future.

After reviewing the ESP investigation logs, there were 22 PREA allegations received through the appeal process. Grievances are the primary PREA reporting method that inmates use at ESP.

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

### **All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### **115.53 (a)**

- Does the facility provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations?  Yes  No
  
- Does the facility provide persons detained solely for civil immigration purposes mailing addresses and telephone numbers, including toll-free hotline numbers where available of local, State, or national immigrant services agencies?  Yes  No

- Does the facility enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible?  Yes  No

#### 115.53 (b)

- Does the facility inform inmates, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws?  Yes  No

#### 115.53 (c)

- Does the agency maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse?  Yes  No
- Does the agency maintain copies of agreements or documentation showing attempts to enter into such agreements?  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

#### Instructions for Overall Compliance Determination Narrative

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

NDOC has a Memorandum of Understanding (MOU) in place with Community Action Against Rape DBA the Rape Crisis Center (RCC) to provide inmates emotional support in the event of a sexual assault. Inmates are provided addresses and phone numbers for these services and Just Detention International when they first arrive at ESP via the Offender Handbook. The telephone number for the Rape Crisis Center is posted on the wall next to the inmate telephones.

All inmate phone calls are recorded; however, phone calls to the Rape Crisis Center and the IG's office are only reviewed or monitored by IG staff. Inmates are informed of this during orientation and it is included in the handbook and on the posters. Any mail to the RCC or IG's office is treated as legal mail and not read by the staff.

Copies of the MOU, the PREA Information and FAQ Sheet and the posters by the inmate telephones were all observed and reviewed during the audit. During the interviews, most of inmates stated that they were aware that emotional support was available for them via the RCC. The inmates that claimed that they were not aware of this service were provided the information by the auditor.

## Standard 115.54: Third-party reporting

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.54 (a)

- Has the agency established a method to receive third-party reports of sexual abuse and sexual harassment?  Yes  No
- Has the agency distributed publicly information on how to report sexual abuse and sexual harassment on behalf of an inmate?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

### Instructions for Overall Compliance Determination Narrative

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

The Offender Handbook provided to the inmates as they arrive at ESP explains that a PREA allegation can be reported to family or friends who can report on their behalf (third party reporting). This information is also on the posters in the housing units and visiting and on Inspector General's website also contains this information.

During the interviews with the inmates, they all knew that they could have somebody else (friend, family member or other inmate) report the allegation for them and that they could report a PREA allegation for another inmate.

Operational Procedure 421 states that ESP staff will accept reports from any and all sources to include but not limited to: inmates, visitors, inmate family members, associates, and other community members. These individuals can privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

Every staff member stated that they would accept a third party PREA report the same as a first party report when asked. Both investigators stated that they would investigate a third party report, just like any other.

## OFFICIAL RESPONSE FOLLOWING AN INMATE REPORT

### Standard 115.61: Staff and agency reporting duties

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.61 (a)

- Does the agency require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency?  Yes  No
- Does the agency require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding retaliation against inmates or staff who reported an incident of sexual abuse or sexual harassment?  Yes  No
- Does the agency require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding any staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse or sexual harassment or retaliation?  Yes  No

#### 115.61 (b)

- Apart from reporting to designated supervisors or officials, does staff always refrain from revealing any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions?  Yes  No

#### 115.61 (c)

- Unless otherwise precluded by Federal, State, or local law, are medical and mental health practitioners required to report sexual abuse pursuant to paragraph (a) of this section?  Yes  No
- Are medical and mental health practitioners required to inform inmates of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services?  Yes  No

#### 115.61 (d)

- If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, does the agency report the allegation to the designated State or local services agency under applicable mandatory reporting laws?  Yes  No

## 115.61 (e)

- Does the facility report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

### Instructions for Overall Compliance Determination Narrative

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

Administrative Regulation 421, section 421.05, requires that all staff must report immediately any knowledge, suspicion, or information regarding any incidents of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency. Staff is required to report known incidents involving both other staff and inmates. Policy also requires an employee to report any other employee's neglect or violation of responsibilities that may have contributed to an incident of sexual abuse, sexual harassment or retaliation. ESP prohibits retaliation against any person because of his/her involvement in the reporting or investigation of a complaint.

NDOC policy mandates that staff shall not reveal any information related to a sexual abuse report to anyone other than their immediate supervisor. All reports of sexual abuse to include inmates and staff are to be kept confidential. Section 421.17 states all case records associated with claims of staff sexual abuse, sexual harassment, inmate sexual abuse or any attempt thereof including written reports, investigation reports, evidence, inmate information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment and/or counseling are confidential.

NDOC policy requires that all allegations of sexual abuse and sexual harassment, including third party reports, be forwarded to the Inspector General's Office for review and possible investigation.

All of the staff interviewed knew their responsibility to report all allegations of sexual abuse and sexual harassment. They stated that they would report the information immediately to their supervisor or the PCM. They also explained that they would not share any information about a PREA incident with any other staff except of those that have a need to know (such as an investigator). The PCM stated that she make sure that all PREA allegations are entered into the Nevada Offender Tracking Information System (NOTIS). According to the Inspector General, their office receives all NOTIS entries. They would receive any PREA allegation entered in the system and immediately initiate a response by contacting the facility to provide direction or obtain additional information.

During the interview with medical staff, they explained to this auditor how they inform the inmates of their duty to report and the limits of their confidentiality. When they first meet with an inmate, it is part of their process to explain the clinician's legal obligation to report certain information to the proper authorities.

ESP does not house any offenders under the age of 18. 115.61(d) does not apply.

The one area of concern for timely reporting is through the grievance process. There is a large volume of grievances received by the Grievance Coordinator at ESP. Unless the inmate tags the grievance in a manner that makes it obvious that the grievance is about a PREA, it may be weeks before a grievance is processed. This delays the start of the investigation resulting in the loss of some evidence, such a video surveillance or crime scene evidence. This was discussed with the Grievance Coordinator and he was already working on a solution to prevent this from happening in the future.

The audit team received copies of four different grievances filed during the corrective action period from ESP that made allegations of PREA. All four were handled in four days or less. In each case an incident package (request for investigation) was initiated. After reviewing the updated information, it has been determined that ESP is compliant with standard 115.61.

## Standard 115.62: Agency protection duties

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.62 (a)

- When the agency learns that an inmate is subject to a substantial risk of imminent sexual abuse, does it take immediate action to protect the inmate?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

### Instructions for Overall Compliance Determination Narrative

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Operational Procedure 421, section 1, states that if any NDOC employee becomes aware that an inmate is subject to a substantial risk of imminent sexual abuse at ESP, they shall take immediate action to protect the inmate. If the knowledge is obtained by receiving a verbal/written report, the employee will immediately notify the on duty shift supervisor. If the knowledge is obtained by visual observance, the employee will initiate first responder duties in accordance with PREA guidelines. In the Sexual Assault Response procedure, it requires staff to separate the victim from the aggressor and keep the victim safe.

During the interviews, staff explained what they would do if they received information that an inmate was at imminent risk of being sexually assaulted. Based on how the information was received, they would interview the potential victim to insure his safety. They would separate the potential victim from the potential predator while arrangements were made to rehouse either or both inmates or to transfer to alternate institutions. All of the actions taken would be documented in NOTIS.

## Standard 115.63: Reporting to other confinement facilities

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.63 (a)

- Upon receiving an allegation that an inmate was sexually abused while confined at another facility, does the head of the facility that received the allegation notify the head of the facility or appropriate office of the agency where the alleged abuse occurred?  Yes  No

#### 115.63 (b)

- Is such notification provided as soon as possible, but no later than 72 hours after receiving the allegation?  Yes  No

#### 115.63 (c)

- Does the agency document that it has provided such notification?  Yes  No

#### 115.63 (d)

- Does the facility head or agency office that receives such notification ensure that the allegation is investigated in accordance with these standards?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

## Instructions for Overall Compliance Determination Narrative

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

Operational Procedure 421, Prison Rape Elimination Act, Section 12, states that if an inmate reports during his PREA assessment that he was sexual abused while confined at another institution/facility, the PREA compliance manager, Associate Warden, or Warden must be notified immediately. The PCM/AW/Warden will provide notification to the PREA Coordinator immediately. The Warden will notify the agency where the allegation occurred as soon as possible, but no later than 72 hours after receiving the allegation. The PCM/AW/Warden will initiate a report using NOTIS. The PCM will enter the proof of notification within the generated report. The PCM will also maintain a log of such notifications.

Upon receiving notification from another agency claiming that a possible PREA incident had occurred at ESP, the PREA Coordinator will notify ESP of the alleged incident. The PREA Coordinator will ensure the allegation is investigated.

According to the Warden, in the past 12 months, ESP has not had any inmates report sexual abuse at another facility while housed at ESP. ESP has had had three inmates make an allegation of sexual abuse that occurred at ESP when the inmate was received at another facility. All three incidents were reported to the IG's Office and investigations were initiated.

## Standard 115.64: Staff first responder duties

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.64 (a)

- Upon learning of an allegation that an inmate was sexually abused, is the first security staff member to respond to the report required to: Separate the alleged victim and abuser?  
 Yes  No
- Upon learning of an allegation that an inmate was sexually abused, is the first security staff member to respond to the report required to: Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence?  Yes  No
- Upon learning of an allegation that an inmate was sexually abused, is the first security staff member to respond to the report required to: Request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating, if the abuse occurred within a time period that still allows for the collection of physical evidence?  Yes  No



- Upon learning of an allegation that an inmate was sexually abused, is the first security staff member to respond to the report required to: Ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating, if the abuse occurred within a time period that still allows for the collection of physical evidence?  Yes  No

#### 115.64 (b)

- If the first staff responder is not a security staff member, is the responder required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff?  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

#### Instructions for Overall Compliance Determination Narrative

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

Operational Procedure 421, Prison Rape Elimination Act, Section 11, provides a detailed process for first responders to follow upon learning of a sexual assault. The OP states that upon learning of an allegation that an inmate was sexually abused, the first security staff member to respond to the report shall be required to: Separate the alleged victim and abuser; Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence; If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating. The victim is to be escorted to the medical department for assessment and to be prepared for transport to the outside medical facility SAFE/SANE Nurse if appropriate. Additionally the first responders will take steps to prevent the alleged suspect from destroying any physical evidence. At no time are the alleged victim and the alleged suspect to have contact with each other. The Shift Supervisor shall notify the Duty Warden as soon as practical and complete a detailed NOTIS entry and a 019 report for the Warden. The report should include all written reports related to the sexual assault or sexual activity. The incident area is secured and treated as a crime scene until released by the Warden, Inspector General or designee. If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.

During the interviews with staff they were able to explain their role in the response to a sexual assault. The general response was that the staff would separate the alleged victim from the alleged suspect (if known). They would contact their supervisor and medical (if needed). They would secure the cell or preserve the crime scene until the investigation team arrives to process the crime scene. They would discourage the alleged victim from washing their hands, change their clothes, shower, brush their teeth or use the toilet to preserve any possible evidence. They would prevent the alleged suspect from washing their hands, change their clothes, shower, brush their teeth or use the toilet. At no time do they let the alleged victim or the alleged suspect have communication with each other while awaiting transportation to University Medical Center. The alleged victim and the alleged suspect are kept in separate rooms out of sight and ear shot from each other. They are transported in separate vehicles.

Reviews of the incident reports and investigative reports reflect that staff at ESP do follow the established policies when responding to PREA incidents.

## Standard 115.65: Coordinated response

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.65 (a)

- Has the facility developed a written institutional plan to coordinate actions among staff first responders, medical and mental health practitioners, investigators, and facility leadership taken in response to an incident of sexual abuse?  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

#### Instructions for Overall Compliance Determination Narrative

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

Operational Procedure 421, Prison Rape Elimination Act, Section 11, provides a detailed process for a coordinated response to a sexual assault. The OP requires the involvement of the Shift Supervisor, the medical staff, management staff, and the Inspector General's Office. Each classification's responsibility for response to sexual assault is outlined in the Operational Procedure. This response includes protection of the victim, preservation of the evidence, reporting and investigation. Medical Directive 117, Sexual Assaults, directs the NDOC medical and mental health staff on what steps to take when

responding to a sexual assault; prior to sending the victim to the outside medical facility and upon returning to the institution.

Several different disciplines of staff were interviewed during the on-site portion of the audit. This included custody staff, medical staff, administrators, supervisors and investigators. Each of the staff interviewed knew their role when responding to a sexual assault. A review the PREA incident reports appears to support that staff respond appropriately to PREA incidents.

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

### **All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### **115.66 (a)**

- Are both the agency and any other governmental entities responsible for collective bargaining on the agency's behalf prohibited from entering into or renewing any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff sexual abusers from contact with any inmates pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted?  Yes  No

#### **115.66 (b)**

- Auditor is not required to audit this provision.

### **Auditor Overall Compliance Determination**

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

### **Instructions for Overall Compliance Determination Narrative**

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

NDOC does not have collective bargaining. This section does not apply.

## Standard 115.67: Agency protection against retaliation

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.67 (a)

- Has the agency established a policy to protect all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff?  Yes  No
- Has the agency designated which staff members or departments are charged with monitoring retaliation?  Yes  No

#### 115.67 (b)

- Does the agency employ multiple protection measures, such as housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations?  Yes  No

#### 115.67 (c)

- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor the conduct and treatment of inmates or staff who reported the sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff?  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor the conduct and treatment of inmates who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff?  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Act promptly to remedy any such retaliation?  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor any inmate disciplinary reports?  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor inmate housing changes?  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor inmate program changes?  Yes  No

- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor negative performance reviews of staff?  Yes  No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor reassignments of staff?  Yes  No
- Does the agency continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need?  Yes  No

#### 115.67 (d)

- In the case of inmates, does such monitoring also include periodic status checks?  Yes  No

#### 115.67 (e)

- If any other individual who cooperates with an investigation expresses a fear of retaliation, does the agency take appropriate measures to protect that individual against retaliation?  Yes  No

#### 115.67 (f)

- Auditor is not required to audit this provision.

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

#### Instructions for Overall Compliance Determination Narrative

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Operational Procedure 421, Prison Rape Elimination Act, Section 18, requires the PREA Compliance Manager (PCM) to monitor the conduct and treatment of inmates and staff who reported the sexual abuse and of inmates who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff for at least 90 days. The PCM will track all inmates

and staff who report sexual abuse, or sexual harassment, or cooperate with any investigation, from retaliation by both inmates and/or staff. The monitoring shall be conducted and documented by the PREA Compliance Manager (PCM). The Shift Commander will notify the Associate Warden or Warden of the PREA related incident report. All IR's in regards to PREA issues will be added to the PREA Incident tracking form by the PCM. The PREA Compliance Manager will review the retaliation tracking log weekly and complete the retaliation checks.

The policy further states that ESP shall employ protection measures for both victims and abusers, such as monitoring housing changes, transfers, job assignments, program assignments, negative work reviews, and custody status. If any facility staff member learns of or receives information that a person who cooperated with an investigation, other than an inmate or staff reporter, has expressed a fear of retaliation, the Inspector General's Office will be immediately notified. The matter will be immediately reviewed by PREA management staff of the Inspector General's Office and contact made with the person by the assigned staff member of the IG's Office. Appropriate measures will be taken by the assigned investigator, including, follow up with the person who expressed the fear and if applicable referral to an outside law enforcement body or advocacy group.

According to the PCM she tracks all inmate and staff allegations of sexual abuse/harassment using the PREA Incident Tracking Log. The PCM completes all periodic status checks a minimum of every 30 days to determine acts of retaliation have not occurred. She reviews the housing unit statues, the disciplinary logs, the job movement sheet and the grievance log. She attempts to make personnel contact with the inmate at least once, during the first month. She notes the dates of the statues checks and if any retaliation occurred in the incident log. The PCM continues to monitor beyond the 90 day time frame if the initial monitoring indicates a continuing need. The PCM terminates any monitoring if the agency determines the allegation is unfounded. If the inmate transfers to another facility during the monitoring period, she notifies the PCM at the next institution, via e-mail, and has them provide her with any data relative to retaliation of the inmate.

During an interview with an inmate that had reported a PREA at a different facility, he claimed that he was being retaliated against by being kept at Ely State Prison. He claimed that he should not be housed at a maximum security prison and they are only doing this because he claimed that staff had raped him. This auditor reviewed the inmates file and the PREA allegation. Documentation in his file indicated that he was housed at ESP due to a violent custody history. The PREA allegation that he alleged is still under investigation. When this auditor asked him about his violent history, he admitted that that is probably why he is at ESP. I received permission from him to discuss his case with management and he agreed that that would be OK. The PCM did talk to him while the audit team was still at the institution. It should be noted that this inmate wrote a letter to this auditor during the pre-site audit portion of the audit.

## Standard 115.68: Post-allegation protective custody

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.68 (a)

- Is any and all use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse subject to the requirements of § 115.43?  Yes  No

## Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

## Instructions for Overall Compliance Determination Narrative

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NDOC does not allow inmates to be placed in involuntary segregated housing based solely on being a victim of sexual assault unless there is no other safe housing options. ESP Operational Procedure 573, section 3 states "Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made and it has been determined that there are no available alternative means of separation from likely abusers. If a facility cannot conduct such an assessment immediately, the facility may hold the inmate in involuntary segregated housing no more than 24 hours. During the weekends or holidays the on duty Associate Warden must be notified to make appropriate arrangements. If the inmate voluntarily requests segregated housing, the inmate will be seen by classification within 72 hours of segregation. Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education or work opportunities, the facility shall document:

The opportunities that have been limited;

The duration of the limitation; and

The reasons for such limitations.

The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged and such assignment shall not ordinarily exceed a period of 30 days. If an involuntary segregated housing assignment is made the facility shall clearly document the basis for the facility's concern for the inmate's safety and the reason why no alternative means of separation can be arranged. Every 30 days the facility shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population."

According to a memorandum provided to the audit team, signed by the Warden, ESP has not had any inmates placed in segregation involuntarily based on making the allegation that they were a victim of sexual assault during this audit period. During the audit tour and document review, the audit team could not find any cases where this had occurred.

# INVESTIGATIONS

## Standard 115.71: Criminal and administrative agency investigations

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

### 115.71 (a)

- When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, does it do so promptly, thoroughly, and objectively? [N/A if the agency/facility is not responsible for conducting any form of criminal OR administrative sexual abuse investigations. See 115.21(a).]  Yes  No  NA
- Does the agency conduct such investigations for all allegations, including third party and anonymous reports? [N/A if the agency/facility is not responsible for conducting any form of criminal OR administrative sexual abuse investigations. See 115.21(a).]  Yes  No  NA

### 115.71 (b)

- Where sexual abuse is alleged, does the agency use investigators who have received specialized training in sexual abuse investigations as required by 115.34?  Yes  No

### 115.71 (c)

- Do investigators gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data?  Yes  No
- Do investigators interview alleged victims, suspected perpetrators, and witnesses?  
 Yes  No
- Do investigators review prior reports and complaints of sexual abuse involving the suspected perpetrator?  Yes  No

### 115.71 (d)

- When the quality of evidence appears to support criminal prosecution, does the agency conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution?  Yes  No

### 115.71 (e)

- Do agency investigators assess the credibility of an alleged victim, suspect, or witness on an individual basis and not on the basis of that individual's status as inmate or staff?  Yes  No



- Does the agency investigate allegations of sexual abuse without requiring an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding?  Yes  No

#### 115.71 (f)

- Do administrative investigations include an effort to determine whether staff actions or failures to act contributed to the abuse?  Yes  No
- Are administrative investigations documented in written reports that include a description of the physical evidence and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings?  Yes  No

#### 115.71 (g)

- Are criminal investigations documented in a written report that contains a thorough description of the physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible?  Yes  No

#### 115.71 (h)

- Are all substantiated allegations of conduct that appears to be criminal referred for prosecution?  Yes  No

#### 115.71 (i)

- Does the agency retain all written reports referenced in 115.71(f) and (g) for as long as the alleged abuser is incarcerated or employed by the agency, plus five years?  Yes  No

#### 115.71 (j)

- Does the agency ensure that the departure of an alleged abuser or victim from the employment or control of the agency does not provide a basis for terminating an investigation?  Yes  No

#### 115.71 (k)

- Auditor is not required to audit this provision.

#### 115.71 (l)

- When an outside entity investigates sexual abuse, does the facility cooperate with outside investigators and endeavor to remain informed about the progress of the investigation? (N/A if an outside agency does not conduct administrative or criminal sexual abuse investigations. See 115.21(a).)  Yes  No  NA

## Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

## Instructions for Overall Compliance Determination Narrative

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Administrative Regulation 421, Custodial Sexual Misconduct, Inmate Sexual Offenses and Prison Rape Elimination Act, mandates that the NDOC, Office of the Inspector General (IG), will investigate all allegations of staff on inmate sexual abuse, sexual harassment and inmate on inmate sexual abuse within the NDOC. This includes third party and anonymous reporting of a PREA allegation. Investigators are assigned to cases via the IG's Office as soon as a complaint is received. The investigators are trained in how to do criminal and sexual assault investigations. This includes a thorough, complete and objective investigation. Investigators assigned to investigate allegations of sexual abuse or sexual assault shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. If the case is determined to be none criminal, and does not involve staff, the IG's Office may assign it to an investigator from the facility.

The IG's Office has a team of 19 investigators trained in investigating sexual assault cases. The training includes conducting sexual assault investigations in a confinement setting, interviewing victims of sexual assault, proper use of Maranda and Garrity warnings, sexual abuse evidence collection, and preparing a case for referral for prosecution. Reviewing the training record confirmed that the investigation team had all received the proper training. Local investigators who work at the institution, not assigned to the IG's Office, receive the same training. These local investigators typically investigate inmate on inmate sexual harassment or other non-criminal cases that do not involve staff.

The investigators that were interviewed for this audit were able to explain the investigation process. When they are first assigned to a case, they make sure that the alleged victim is safe and receiving medical attention, including a forensic exam if needed. They report to the crime scene and collect any evidence. They also collect the evidence from the forensic exam. They review staff reports and interview the victim. They then interview the suspect (if known) and any witnesses. The investigators stated that they also review any video tapes, phone calls, documents or other relevant evidence. Once all of the interviews are completed and evidence has been reviewed, they write a report stating the facts of the case. The investigator then submits the case to the Attorney General's for possible

prosecution. The Warden of the facility is provided all of the reports. The evidentiary standard to substantiate a case is preponderance of evidence.

Policy requires that all substantiated criminal cases shall be referred to the applicable prosecutorial authority for review of prosecution. This is done by the Attorney General's Office.

During interviews and discussion with investigative staff, each of them stated that the creditability of the individual being interviewed is not based on their status as an employee or offender, it is based on an individual bases. Reviewing the cases did not demonstrate that staff testimony was given more credibility than offender testimony. NDOC policy forbids the use of any form of lie detector test when interviewing the victim. Prior to conducting a compelled interview, the investigator will consult with the Attorney General's Office for advice and direction.

According to the IG, all completed investigations are retained in her office for at least five years after the alleged abuser is no longer in the control of NDOC or separated from state service.

Policy states that the departure of the alleged abuser or victim from the employment of the Department or control of the institution/facility shall not provide a basis for terminating an investigation. Both investigators that were interviewed stated that they would continue with the case, even if the victim or suspect was released to the community or, in the case of an employee, the suspect resigns from the Department.

There are a total of thirty five cases on the PREA case log for this audit period. Thirteen of these cases are sexual abuse, including seven staff-on-inmate allegations. The other twenty two are sexual harassment, thirteen of which are staff-on-inmate. Seven of the thirty five cases are still pending investigation. Eleven cases were reviewed for this audit. In general the cases lack completeness. Some of the cases did not include information such as when the investigation was initiated, or when it was concluded. None of the cases included interviews with the reporting employee or the third party, if the report was received in this manner. There were no attempts to find witnesses, such as the floor officer on the day of the event or inmates who live in the adjacent cells. None of the reports included the reliability of the victim, suspect or witness statements. Even though the conclusions were appropriate for the information that was available, there were no supporting statements on how the investigator came to this conclusion.

There were no substantiated cases for criminal acts. One case was unsubstantiated for PREA however was substantiated for a non-PREA felony. This case was referred to the Attorney General for possible prosecution. Six of the cases that are still under investigation are potential felonies.

Several of the cases' investigations were not initiated timely. This was based on the delay of reporting through the appeals process. There is a large volume of grievances received by the Grievance Coordinator at ESP. Unless the inmate tags the grievance in a manner that makes it obvious that the grievance is about a PREA, it may be weeks before a grievance is processed. This delays the start of the investigation resulting in the loss of some evidence, such a video surveillance or crime scene evidence. This was discussed with the Grievance Coordinator and he was already working on a solution to prevent this from happening in the future.

In general, the cases lacked completeness. Some of the cases did not include information such as when the investigation was initiated, or when it was concluded. None of the cases included interviews with the reporting employee or the third party, if the report was received in this manner. There were no attempts to find witnesses, such as the floor officer on the day of the event or inmates who live in the

adjacent cells. None of the reports included the reliability of the victim, suspect or witness statements. Even though the conclusions were appropriate for the information that was available, there were no supporting statements on how the investigator came to this conclusion. Several of the cases' investigations were not initiated timely. This was based on the delay of reporting through the appeals process. To comply with this standard, ESP and NDOC will need to conduct more thorough investigations. This includes interviewing potential witnesses and reporting employees. The reports must include reliability statements of the victim, suspect or witnesses. The investigations need to document what evidence was used to reach the findings of the investigation. The investigation needs to be initiated timely so as not to lose access to relevant evidence.

The Inspector General's Office provided the audit team with eight different investigations that were conducted and concluded during the corrective action period. All of the investigations were thorough and complete. This included when the investigation was initiated and when it was concluded. The investigations included the descriptions of what steps were taken to collect evidence and find and interview witnesses. All of the evidence was evaluated for relevance. The reports contained information on the reliability of the victim, suspect and witnesses. The conclusions were supported by the evidence. The investigators explained in sufficient detail how they arrived at the findings of their investigation. After reviewing the updated information, it has been determined that ESP is compliant with standard 115.71.

## Standard 115.72: Evidentiary standard for administrative investigations

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.72 (a)

- Is it true that the agency does not impose a standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated?  Yes  No

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

#### Instructions for Overall Compliance Determination Narrative

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The NDOC PREA Manual states that the Department shall impose no standard higher than a preponderance of the evidence in determining whether an allegation(s) of sexual abuse is substantiated.

During the interviews with the investigators, they knew what level of evidence was required to substantiate a case. The Warden was also aware of these criteria. All three expressed that preponderance of evidence means that incident was more likely to have happened than not to have happened.

## Standard 115.73: Reporting to inmates

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.73 (a)

- Following an investigation into an inmate's allegation that he or she suffered sexual abuse in an agency facility, does the agency inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded?  Yes  No

#### 115.73 (b)

- If the agency did not conduct the investigation into an inmate's allegation of sexual abuse in an agency facility, does the agency request the relevant information from the investigative agency in order to inform the inmate? (N/A if the agency/facility is responsible for conducting administrative and criminal investigations.)  Yes  No  NA

#### 115.73 (c)

- Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, unless the agency has determined that the allegation is unfounded, or unless the inmate has been released from custody, does the agency subsequently inform the inmate whenever: The staff member is no longer posted within the inmate's unit?  Yes  No
- Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, unless the agency has determined that the allegation is unfounded, or unless the inmate has been released from custody, does the agency subsequently inform the inmate whenever: The staff member is no longer employed at the facility?  Yes  No
- Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, unless the agency has determined that the allegation is unfounded, or unless the inmate has been released from custody, does the agency subsequently inform the inmate whenever: The agency learns that the staff member has been indicted on a charge related to sexual abuse in the facility?  Yes  No

- Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, unless the agency has determined that the allegation is unfounded, or unless the inmate has been released from custody, does the agency subsequently inform the inmate whenever: The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility?  Yes  No

#### 115.73 (d)

- Following an inmate's allegation that he or she has been sexually abused by another inmate, does the agency subsequently inform the alleged victim whenever: The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility?  
 Yes  No
- Following an inmate's allegation that he or she has been sexually abused by another inmate, does the agency subsequently inform the alleged victim whenever: The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility?  
 Yes  No

#### 115.73 (e)

- Does the agency document all such notifications or attempted notifications?  Yes  No

#### 115.73 (f)

- Auditor is not required to audit this provision.

#### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

#### Instructions for Overall Compliance Determination Narrative

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Administrative Regulation 421, Custodial Sexual Misconduct Inmates Sexual Offences and Prison Rape Elimination Act, requires that, at the conclusion of an investigation, the inmate be informed on whether the allegation has been substantiated, unsubstantiated or unfounded. Additionally, if the allegation is against a staff member, the department will inform the offender when the staff member no longer works in the unit, when the staff member no longer works at the facility, if the staff member is

indicted on charges related to sexual abuse within the facility or if the staff member is convicted of a charge related to sexual abuse within the facility. If the allegation is against another offender, the departmental policy requires the victim be notified if the perpetrator has been indicted or convicted on a charge related to sexual abuse.

Operational Procedure 457, Investigations, section 6, states that if the Inspector General's office did not conduct the investigation, the PREA Coordinator will request the investigation outcome from the agency that had completed the investigation. The PREA Coordinator will notify the PCM of the outside agencies findings. The PCM will notify the inmate and enter a case note within the NOTIS system indicating that the inmate had been notified. The PCM will also append the NOTIS IR with the date that the inmate was notified of the outcome.

The PCM provided this auditor with copies of emails showing that the investigation was complete and the outcome of the investigation. For each of these, copies of the NOTIS entries, showing that the inmate was informed of the outcome of the investigation, were provided to the audit team. These documents demonstrate compliance with this policy.

## DISCIPLINE

### Standard 115.76: Disciplinary sanctions for staff

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.76 (a)

- Are staff subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies?  Yes  No

#### 115.76 (b)

- Is termination the presumptive disciplinary sanction for staff who have engaged in sexual abuse?  Yes  No

#### 115.76 (c)

- Are disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories?  Yes  No

#### 115.76 (d)

- Are all terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, reported to: Law enforcement agencies (unless the activity was clearly not criminal)?  Yes  No

- Are all terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, reported to: Relevant licensing bodies?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
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### Instructions for Overall Compliance Determination Narrative

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The State of Nevada defines sexual abuse of a prisoner as a class D Felony. Administrative Regulation 421, Custodial Sexual Misconduct, Inmate Sexual Offenses and Prison Rape Elimination Act, section 421.14, states that NDOC staff shall be subject to disciplinary sanctions up to and including termination for violating Departmental sexual abuse or sexual harassment policies. All terminations for violations of Departmental sexual abuse or sexual harassment policies, or resignations by staff that would have been terminated if not for their resignation, shall be reported to law enforcement agencies and to any relevant licensing bodies, by the Inspector General’s office.

Administrative Regulation 339, Code of Conduct, defined sexual abuse as a Class 5 disciplinary offence for employees. The AR requires that all Class 5 disciplinary actions result in termination, even for the first offence.

During the interview with the Warden, he stated that it is the expectation that staff be terminated if they sexually assault an inmate, even if the inmate gives consent. There were six sexual abuse allegations against NDOC employees at ESP during this audit period. One was unsubstantiated, while the other five are still under investigation.

## Standard 115.77: Corrective action for contractors and volunteers

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.77 (a)

- Is any contractor or volunteer who engages in sexual abuse prohibited from contact with inmates?  Yes  No



- Is any contractor or volunteer who engages in sexual abuse reported to: Law enforcement agencies (unless the activity was clearly not criminal)?  Yes  No
- Is any contractor or volunteer who engages in sexual abuse reported to: Relevant licensing bodies?  Yes  No

### 115.77 (b)

- In the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer, does the facility take appropriate remedial measures, and consider whether to prohibit further contact with inmates?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

### Instructions for Overall Compliance Determination Narrative

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Administrative Regulation 421, Custodial Sexual Misconduct, Inmate Sexual Offenses and Prison Rape Elimination Act, section 421.15, states that any contractor or volunteer who engages in an activity that could be interpreted as sexual abuse shall be prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies. The institution/facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with inmates, in the case of any other violation of Departmental sexual abuse or sexual harassment policies by a contractor or volunteer.

The Warden stated that he would restrict a volunteer or contractor from grounds (gate stop) if they sexually assaulted or harassed an inmate. Additionally the volunteer or contractor would be removed from the clearance list and no longer allowed in any NDOC facility.

According to the Warden, ESP has not had any volunteers or contractors restricted from grounds due to sexual assault or sexual harassment. A review of investigations did not contain any allegations against a volunteer or contractor.

## Standard 115.78: Disciplinary sanctions for inmates

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

### 115.78 (a)

- Following an administrative finding that an inmate engaged in inmate-on-inmate sexual abuse, or following a criminal finding of guilt for inmate-on-inmate sexual abuse, are inmates subject to disciplinary sanctions pursuant to a formal disciplinary process?  Yes  No

### 115.78 (b)

- Are sanctions commensurate with the nature and circumstances of the abuse committed, the inmate's disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories?  Yes  No

### 115.78 (c)

- When determining what types of sanction, if any, should be imposed, does the disciplinary process consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior?  Yes  No

### 115.78 (d)

- If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, does the facility consider whether to require the offending inmate to participate in such interventions as a condition of access to programming and other benefits?  Yes  No

### 115.78 (e)

- Does the agency discipline an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact?  Yes  No

### 115.78 (f)

- For the purpose of disciplinary action does a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred NOT constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation?  Yes  No

### 115.78 (g)

- Does the agency always refrain from considering non-coercive sexual activity between inmates to be sexual abuse? (N/A if the agency does not prohibit all sexual activity between inmates.)  
 Yes  No  NA

## Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

## Instructions for Overall Compliance Determination Narrative

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

Administrative Regulation 421, Custodial Sexual Misconduct, Inmate Sexual Offenses and Prison Rape Elimination Act, section 421.16, addresses the discipline process for inmates that are charged with sexual abuse/harassment of another inmate. The policy states that inmates shall be subject to disciplinary sanctions pursuant to Administrative Regulation 707, Inmate Disciplinary Process, following a finding that the inmate engaged in inmate-on-inmate sexual abuse, sexual harassment or consensual sexual activity. Inmates shall be subject to administrative disciplinary sanctions. Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the inmate's disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories. The disciplinary process shall consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed. ESP may discipline an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact. For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

During the interview with the Warden, he stated that the inmate disciplinary process is an objective process that takes all factors into account when determining guilt or innocence of an inmate. Additionally any penalty administrated as a result of a guilty finding is within established policy. All factors, including the inmate's mental health concerns are considered during the disciplinary process.

ESP has not had any substantiated allegations of inmate-on-inmate sexual abuse/harassment during this audit period.

## MEDICAL AND MENTAL CARE

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

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.81 (a)

- If the screening pursuant to § 115.41 indicates that a prison inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, do staff ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening? (N/A if the facility is not a prison.)  
 Yes  No  NA

#### 115.81 (b)

- If the screening pursuant to § 115.41 indicates that a prison inmate has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, do staff ensure that the inmate is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening? (N/A if the facility is not a prison.)  Yes  No  NA

#### 115.81 (c)

- If the screening pursuant to § 115.41 indicates that a jail inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, do staff ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening?  Yes  No

#### 115.81 (d)

- Is any information related to sexual victimization or abusiveness that occurred in an institutional setting strictly limited to medical and mental health practitioners and other staff as necessary to inform treatment plans and security management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law?  
 Yes  No

#### 115.81 (e)

- Do medical and mental health practitioners obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18?  Yes  No

## Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

## Instructions for Overall Compliance Determination Narrative

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ESP has two different methods to refer inmates for mental health evaluations if the inmate has experienced prior sexual victimization or previously perpetrated sexual abuse. The first method is done when the inmate is initially screened by mental health upon intake. The second method is completed by classification staff upon risk assessment screening.

Medical INP 200, Health Care Services, section II, address how NDOC will provide medical and mental health treatment to an inmate who discloses prior victimization or predatory sexual abuse. The policy reads "All inmates will receive screenings upon initial intake (reception) and upon arrival at each institution the inmate may be transferred to during his or her incarceration. This includes adjacent camp inmates. The Inmate will be asked if he or she has experienced prior sexual abuse, whether it occurred in an institutional setting, jail, or in the community. If the inmate answers yes, staff will ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within "14 days" of the intake screening. A specialized binder will be located and maintained in the medical and mental health areas to identify the inmates in need of this follow-up.

Operational Procedure 670, Medical Standards for PREA, section 3, describes the referral process as..."A case note will be made to indicate that the inmate either submitted a medical/mental health kite, or that the inmate declined to submit a medical/mental health kite. All kites will be given directly to the medical/mental health staff member(s) present during intake or hand delivered to the medical department. All kites received by the medical department will be date stamped and entered into a "PREA Kite" database for tracking purposes. The request will then be forwarded to the appropriate department (medical or mental health) to ensure that the inmate is seen within the 14 day time frame.

Any information obtained from the inmate related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State or local law.

Medical and mental health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18.

Operational Procedure 670, Medical Standards for PREA, states that, if the PREA Risk Assessment screening done by the classification committee at intake indicates that an inmate has experienced prior sexual victimization and/or has previously perpetrated sexual abuse, whether it occurred in an institutional or jail setting or in the community, staff shall ensure that inmate is offered follow-up medical and/or mental health meeting within 14 days of the intake screening.

Inmate will complete a medical/mental health kite at intake, with the assistance of the intake caseworker if needed, if they are requesting a follow-up medical and/or mental health meeting. At the time of the kite submissions the caseworker must annotate at the top that the inmate must be seen within 14 days.

A list of inmates who claimed prior victimization was provided to the audit team. There was documentation in the inmate's files that showed that the inmates were seen, or refused to be seen, by the Mental Health clinician within 14 days of arrival. Usually the Mental Health clinician saw the inmate within 5 days.

During the interview with the Mental Health Clinicians, they stated that, when an inmate arrives at ESP and answer affirmatively to the questions of prior victimization or perpetration, the caseworker will ask the inmate if they want to see a Mental Health Clinician. If the inmate states yes, then the caseworker refers the inmate to the Mental Health Department. MH then sets up an appointment with the inmate to discuss his situation and set up a treatment plan. The Mental Health Clinicians was able to explain when inform consent would be required for disclosure of previous victimization.

Two of the inmates that were interviewed claimed that they were not offered MH upon arrival. A review of their medical files showed that they were initially seen and are currently being treated by MH.

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

### **All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

#### **115.82 (a)**

- Do inmate victims of sexual abuse receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment?  
 Yes  No

#### **115.82 (b)**

- If no qualified medical or mental health practitioners are on duty at the time a report of recent sexual abuse is made, do security staff first responders take preliminary steps to protect the victim pursuant to § 115.62?  Yes  No
- Do security staff first responders immediately notify the appropriate medical and mental health practitioners?  Yes  No

### 115.82 (c)

- Are inmate victims of sexual abuse offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate?  Yes  No

### 115.82 (d)

- Are treatment services provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

### Instructions for Overall Compliance Determination Narrative

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

ESP has medical staff on duty 24 hours a day seven days a week. Medical INP 200, Health Care Services, states that all inmate victims of sexual abuse will receive timely unimpeded access to emergency medical/mental health treatment which will be determined by the health practitioner's professional judgment.

When an incident is of an Emergent Nature, medical staff will:

Perform a cursory, visual exam for any signs of injury, without manipulating any of the victims' body parts.

Injuries will be documented by camera and utilizing NDOC Form 2514 (Unusual Occurrence).

Victims will be offered immediate medical attention for any injuries that require treatment.

If SANE exam is requested, treatment can be deferred if it appears it will affect evidence, and the injuries are not life threatening.

Medical staff may assist in the collection of evidence, except for obtaining specimens.

When an incident is of an Emergent Nature, Mental Health staff will:

During normal working hours, mental health staff will provide an immediate consultation with the victim if requested.

After hours, in the absence of mental health personnel, medical staff can provide basic counseling and support until the victim can be seen by mental health personnel.

Victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency sexually transmitted infections, prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate

All services provided for the above related treatments, shall be free of charge regardless whether the victim names the abuser or cooperates with any investigation arising out of the incident.

During the interview with the medical staff, they stated that in the event of PREA, they would do an initial assessment of the inmate and stabilize him to make sure that he is safe for transport to the SANE/SANE Nurse at University Medical Center (UMC) in Las Vegas (if appropriate). Once the inmate is returned to ESP, the medical staff would offer education on, and provide emergency contraception, sexually transmitted infection prophylaxis if this was not completed by the SAFE/SANE Nurse. Additionally the medical staff would review any notes that were completed by UMC staff for medical follow-up.

The mental health clinician at ESP informed the auditors that they evaluate the inmate's mental health upon return from the hospital. Based on their assessment they would set up a treatment plan and assist the inmate through the process.

One PREA incident resulted in an inmate being sent to UMC for a forensic exam. This inmate declined to be seen by medical upon his return to ESP. In each of the other sexual assault cases, the victim reported it several days or weeks after it allegedly happened.

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

**All Yes/No Questions Must Be Answered by the Auditor to Complete the Report**

### **115.83 (a)**

- Does the facility offer medical and mental health evaluation and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility?  Yes  No

### **115.83 (b)**

- Does the evaluation and treatment of such victims include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody?  Yes  No



**115.83 (c)**

- Does the facility provide such victims with medical and mental health services consistent with the community level of care?  Yes  No

**115.83 (d)**

- Are inmate victims of sexually abusive vaginal penetration while incarcerated offered pregnancy tests? (N/A if all-male facility.)  Yes  No  NA

**115.83 (e)**

- If pregnancy results from the conduct described in paragraph § 115.83(d), do such victims receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services? (N/A if all-male facility.)  Yes  No  NA

**115.83 (f)**

- Are inmate victims of sexual abuse while incarcerated offered tests for sexually transmitted infections as medically appropriate?  Yes  No

**115.83 (g)**

- Are treatment services provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident?  Yes  No

**115.83 (h)**

- If the facility is a prison, does it attempt to conduct a mental health evaluation of all known inmate-on-inmate abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners? (NA if the facility is a jail.)  Yes  No  NA

**Auditor Overall Compliance Determination**

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

## Instructions for Overall Compliance Determination Narrative

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

NDOC policy requires that inmates who have been victims of sexual abuse receive medical and mental health treatment as prescribed by a physician. Medical INP 200, PREA, requires that the follow-up treatment provided will be consistent with the community standard level of care. Sexual abuse victims will be offered tests for sexually transmitted infections as deemed medically appropriate. Mental health will attempt to conduct mental health evaluations of all known inmate-on-inmate abusers within 60 days of learning of the known abuse.

According to the medical staff interviewed, all inmates who report sexual assault while at ESP are seen by medical staff for evaluation and treatment. The inmates are offered test for sexually transmitted infections when appropriate. The medical files were reviewed and there was documentation that the inmates were seen by medical after they reported sexual abuse. The medical file transfers with the inmate. If the inmate was in a treatment plan at a different prison, that treatment plan would be continued at ESP.

All services provided for the above related treatments, shall be free of charge regardless whether the victim names the abuser or cooperates with any investigation arising out of the incident.

Further review of the medical files showed that inmates are not evaluated by a Mental Health clinician after reporting sexual abuse. Of the eight files reviewed, none of them had an initial or follow-up meeting with mental health noted in the medical file. One of the mental health staff was asked if they would ever offer treatment to a known inmate-on-inmate abuser and their reply was "we don't do that here". This standard was initially found out of compliance and included in corrective action.

On February 21, 2019, a list was received from ESP with the names of inmates and the dates that it was discovered that they were the victims or abusers of sexual abuse. Also included was the date that MH was offered to the inmate as a result of this disclosure or incident. In each case, MH was offered on the date of discovery. Only one of the five inmates requested a MH interview. This inmate was seen on the next day. After reviewing the updated information, it has been determined that ESP is compliant with standard 115.83.

## DATA COLLECTION AND REVIEW

### Standard 115.86: Sexual abuse incident reviews

#### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

##### 115.86 (a)

- Does the facility conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded?  Yes  No

##### 115.86 (b)

- Does such review ordinarily occur within 30 days of the conclusion of the investigation?  Yes  No

##### 115.86 (c)

- Does the review team include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners?  Yes  No

##### 115.86 (d)

- Does the review team: Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse?  Yes  No
- Does the review team: Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; gang affiliation; or other group dynamics at the facility?  Yes  No
- Does the review team: Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse?  Yes  No
- Does the review team: Assess the adequacy of staffing levels in that area during different shifts?  Yes  No
- Does the review team: Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff?  Yes  No
- Does the review team: Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to §§ 115.86(d)(1) - (d)(5), and any recommendations for improvement and submit such report to the facility head and PREA compliance manager?  Yes  No

## 115.86 (e)

- Does the facility implement the recommendations for improvement, or document its reasons for not doing so?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

### Instructions for Overall Compliance Determination Narrative

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

Operational Procedure 421, Prison Rape Elimination Act, section 19, state that Ely State Prison shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded. The PREA compliance manager will track and notify the review team upon learning of the completion of any sexual abuse investigation.

Such review shall ordinarily occur within 30 days of the conclusion of the investigation and will be documented using the Committee Review for Sexual Abuse Investigation form located in NOTIS (under the incident IR number). The review team shall be selected by the Warden and should include preferably the Associate Warden, CCSIII, Lieutenant and medical and/or mental health care practitioners as needed. The investigative staff member from the IG's office will also participate in the incident review team. The review team shall document their findings on the Committee Review for Sexual Abuse Investigation form. The review team shall:

Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse.

Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility.

Examine the area in the facility where the alleged incident occurred to assess whether physical barriers in the area may enable abuse.

Assess the adequacy of staffing levels in that area during different shifts.

Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff.

Prepare a report of its findings, including but not limited to determinations made pursuant to the above paragraphs of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager.

The Review Team shall implement the recommendations for improvement or shall document the reasons for not doing so.

A review of the committee notes show that the committee is comprised of management staff, supervisors, investigators and medical or mental health staff. The committee addresses all of the factors that may have contributed to the incident and makes recommendations for changes, if appropriate. The one concern that this audit team discovered is that the meetings are not being held within 30 days of the conclusion of the investigation. This is partially due to the routing of the report once the investigation is concluded. Once the investigation completes his report, the supervisor then reviews the report. The report is then sent to the IG's Office for review and tracking. By the time the facility gets the report back, 30 days have elapsed.

ESP provided the minutes from the PREA Review Committee for sexual abuse cases that were substantiated or unsubstantiated during the corrective action period. These minutes demonstrated that the committee was held within 30 days of the conclusion of the investigation. After reviewing the updated information, it has been determined that ESP is compliant with standard 115.86.

## Standard 115.87: Data collection

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.87 (a)

- Does the agency collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions?  Yes  No

#### 115.87 (b)

- Does the agency aggregate the incident-based sexual abuse data at least annually?  Yes  No

#### 115.87 (c)

- Does the incident-based data include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice?  Yes  No

### 115.87 (d)

- Does the agency maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews?  
 Yes  No

### 115.87 (e)

- Does the agency also obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates? (N/A if agency does not contract for the confinement of its inmates.)  Yes  No  NA

### 115.87 (f)

- Does the agency, upon request, provide all such data from the previous calendar year to the Department of Justice no later than June 30? (N/A if DOJ has not requested agency data.)  
 Yes  No  NA

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

### Instructions for Overall Compliance Determination Narrative

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

The NDOC PREA handbook requires that the Inspector General (IG), PREA Management Team (PMT), is responsible to collect accurate, uniform data for every allegation of sexual abuse at every institution and facility using a standardized instrument and set of definitions. The incident-based sexual abuse data shall be aggregated, at a minimum, annually. The data shall include all of the data necessary to answer all questions from the most recent version of the Survey of Sexual Victimization (SSV-IA) conducted by the Department of Justice. The IG PMT shall maintain, review, and collect data as needed from all incident based documents including reports, investigation files and sexual abuse reviews. The PREA Compliance Manager maintains a record of all reports of sexual abuse at the facility.

The PREA Coordinator was present during this audit and she explained her agencies role in collecting, reviewing and maintaining the data. A review of the documents provided demonstrated compliance with this standard. The Inspector General's PREA Unit receives all of the PREA incident reports within the NDOC via the Nevada Offender Tracking Information System (NOTIS). This allows for the NDOC to insure that all reports are consistent. The information provided to the PC is sufficient to complete the

Department of Justice' Survey of Sexual Violence form. Each Prison within the NDOC uses the same set of definitions when documenting sexual assault and sexual harassment within the corrections system.

## Standard 115.88: Data review for corrective action

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.88 (a)

- Does the agency review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by: Identifying problem areas?  Yes  No
- Does the agency review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by: Taking corrective action on an ongoing basis?  Yes  No
- Does the agency review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by: Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole?  Yes  No

#### 115.88 (b)

- Does the agency's annual report include a comparison of the current year's data and corrective actions with those from prior years and provide an assessment of the agency's progress in addressing sexual abuse?  Yes  No

#### 115.88 (c)

- Is the agency's annual report approved by the agency head and made readily available to the public through its website or, if it does not have one, through other means?  Yes  No

#### 115.88 (d)

- Does the agency indicate the nature of the material redacted where it redacts specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility?  Yes  No

## Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

## Instructions for Overall Compliance Determination Narrative

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

The NDOC PREA Manual requires that the Director, or designee, Deputy Director of Operations, and the IG PREA Coordinator review the data in order to assess and improve, if necessary, the effectiveness of its sexual abuse prevention, detection and response policies practices and training. This review includes identifying problem areas, taking corrective action on an ongoing basis and preparing an annual report of its findings and corrective actions for each facility and the department where inmates may be present.

The report shall include a comparison of the current year's data and corrective action with those from prior years and shall provide an assessment of the department's progress in addressing sexual abuse. The Department's report must be approved by the Director and made readily available to the public through the Department's public website. Prior to placing any reports on the Department's website, all personal information of the victims and subjects are redacted.

The 2015 and 2016 report was reviewed by this auditor. The report contained the PREA data on each of the NDOC facilities, identifying problem areas, any corrective action taken and the effectiveness of the sexual abuse prevention program. The report did not contain any confidential information such as victim's information. The 2015 and 2016 reports are posted on the NDOC, Inspector General's website.

## Standard 115.89: Data storage, publication, and destruction

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.89 (a)

- Does the agency ensure that data collected pursuant to § 115.87 are securely retained?  
 Yes  No



### 115.89 (b)

- Does the agency make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its website or, if it does not have one, through other means?  Yes  No

### 115.89 (c)

- Does the agency remove all personal identifiers before making aggregated sexual abuse data publicly available?  Yes  No

### 115.89 (d)

- Does the agency maintain sexual abuse data collected pursuant to § 115.87 for at least 10 years after the date of the initial collection, unless Federal, State, or local law requires otherwise?  Yes  No

### Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

### Instructions for Overall Compliance Determination Narrative

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All of the PREA data is maintained in the Inspector General's Office. According to policy the data is maintained 10 years. The aggregated data is maintained on the NDOC website. There are no personal identifiers included in the information posted.

According to the PREA Coordinator, they maintain the documents in their headquarters for over ten years. A review of the data available to the public, there were no personal identifier included in the information.

## AUDITING AND CORRECTIVE ACTION

### Standard 115.401: Frequency and scope of audits

#### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

##### 115.401 (a)

- During the prior three-year audit period, did the agency ensure that each facility operated by the agency, or by a private organization on behalf of the agency, was audited at least once? (*Note: The response here is purely informational. A "no" response does not impact overall compliance with this standard.*)  Yes  No

##### 115.401 (b)

- Is this the first year of the current audit cycle? (*Note: a "no" response does not impact overall compliance with this standard.*)  Yes  No
- If this is the second year of the current audit cycle, did the agency ensure that at least one-third of each facility type operated by the agency, or by a private organization on behalf of the agency, was audited during the first year of the current audit cycle? (N/A if this is **not** the *second* year of the current audit cycle.)  Yes  No  NA
- If this is the third year of the current audit cycle, did the agency ensure that at least two-thirds of each facility type operated by the agency, or by a private organization on behalf of the agency, were audited during the first two years of the current audit cycle? (N/A if this is **not** the *third* year of the current audit cycle.)  Yes  No  NA

##### 115.401 (h)

- Did the auditor have access to, and the ability to observe, all areas of the audited facility?  Yes  No

##### 115.401 (i)

- Was the auditor permitted to request and receive copies of any relevant documents (including electronically stored information)?  Yes  No

##### 115.401 (m)

- Was the auditor permitted to conduct private interviews with inmates, residents, and detainees?  Yes  No

##### 115.401 (n)

- Were inmates permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel?  Yes  No

## Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

## Instructions for Overall Compliance Determination Narrative

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

The NDOC website contains the results of all of the PREA audits conducted since 2013. A review of these audits appears to show that all of the facilities operated by NDOC were audited in a three year period starting in August 2013. The number of audits conducted was approximately one third of their facilities each of the three years.

During this audit, the auditor had access to, and toured, the entire facility. This auditor had access to every inmate, staff member, volunteer and contractor that this auditor requested to interview. The interviews were all conducted in the privacy of a staff office either in person or telephonically. Each document that was requested was received, including sensitive documents, such as investigation reports, personnel information and inmate files. Inmates were allowed to send confidential correspondence to this auditor, if they wished. One letter was received from inmates prior to the audit and three letters were received while at Ely State Prison.

## Standard 115.403: Audit contents and findings

### All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

#### 115.403 (f)

- The agency has published on its agency website, if it has one, or has otherwise made publicly available, all Final Audit Reports within 90 days of issuance by auditor. The review period is for prior audits completed during the past three years PRECEDING THIS AGENCY AUDIT. In the case of single facility agencies, the auditor shall ensure that the facility's last audit report was published. The pendency of any agency appeal pursuant to 28 C.F.R. § 115.405 does not excuse noncompliance with this provision. (N/A if there have been no Final Audit Reports issued in the past three years, or in the case of single facility agencies that there has never been a Final Audit Report issued.)  Yes  No  NA

## Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

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The NDOC website contains a copy of the previous audit conducted at ESP. The audit was completed on July 1, 2016 and posted on the website on July 7, 2016.

## AUDITOR CERTIFICATION

I certify that:

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

### Auditor Instructions:

Type your full name in the text box below for Auditor Signature. This will function as your official electronic signature. Auditors must deliver their final report to the PREA Resource Center as a searchable PDF format to ensure accessibility to people with disabilities. Save this report document into a PDF format prior to submission.<sup>1</sup> Auditors are not permitted to submit audit reports that have been scanned.<sup>2</sup> See the PREA Auditor Handbook for a full discussion of audit report formatting requirements.

John Katavich

February 27, 2019

**Auditor Signature**

**Date**

<sup>1</sup> See additional instructions here: <https://support.office.com/en-us/article/Save-or-convert-to-PDF-d85416c5-7d77-4fd6-a216-6f4bf7c7c110>.

<sup>2</sup> See *PREA Auditor Handbook*, Version 1.0, August 2017; Pages 68-69.