

## Board of Correction Summary Department of Correction Minimum Standard 5-40(d) Data Submission

Chapter 5, Section 5-40(d) of the Board's Minimum Standards on the Elimination of Sexual Abuse and Sexual Harassment require that the Department of Correction (DOC) provide the Board of Correction (BOC) with data on each alleged incident of sexual abuse.<sup>1</sup> Data findings presented below are based on the allegation-level data file provided to the Board on March 12, 2019 which contained data on all sexual abuse and sexual harassment allegations from people in custody in calendar years 2017 and 2018.

### PREA Reportable vs. Non-Reportable Allegations

This summary report reviews allegations of sexual abuse and repeated sexual harassment ("PREA Allegations"), as defined by federal regulations.<sup>2</sup> In addition to PREA allegations, DOC's PREA ID team also receives allegations which they ultimately determine do not meet these definitional criteria (examples below). While these allegations are not under the jurisdiction of the federal regulations or the Board's Minimum Standards, they are important to understanding: (a) whether the Department is appropriately categorizing complaints as PREA allegations or not and (b) the DOC PREA ID team caseload, as these allegations are investigated by the same PREA investigators whether or not they are ultimately considered PREA reportable allegations.

Examples of allegations which may be referred to DOC's PREA ID team but not covered by the regulations include, for example:

- A one-time Staff-on-Person in Custody sexual harassment allegation which is the first sexual harassment allegation against the staff member. This would not meet the definition of "Staff Sexual Harassment" which requires that there be repeated verbal statements, comments or gestures of a sexual nature...<sup>3</sup>
- A DOC staff member refers an inmate-on-inmate fight report to ID's PREA team because it references one person being punched in the buttocks however, there is no sexual allegation.
- Allegations that as reported allege solely appropriate conduct during a search.<sup>4</sup>

DOC's first semi-annual report to the Board under Minimum Standard 5-40 included data on allegations that fall outside of the PREA definitions (referred to as "non-PREA" allegations). Subsequent reports do not include these data. The Board includes the basic, aggregate data in Table 1 below to put into perspective the overall volume of complaints handled by the PREA ID

---

<sup>1</sup> BOC appreciates that DOC has gone beyond the requirements to include all complaints related to sexual abuse and sexual harassment filed with the DOC's PREA Investigations Division (ID) team (both PREA and non-PREA allegations, as defined by federal regulations).

<sup>2</sup> See Appendix

<sup>3</sup> Id.

<sup>4</sup> Allegations of behavior outside the scope of a routine search procedure are considered PREA-reportable.

team, however, the detailed analysis that follows this section focuses primarily on PREA allegations made under the federal regulations and the Minimum Standards.

**Number and Type of Allegations Received by DOC’s PREA ID Team**

The PREA ID team received a total of 1,141 allegations in 2017 and 1,326 in 2018, representing a 16% increase in the ID team’s caseload.

Fifty-six percent (56%, n=643) of allegations made in 2017 were PREA-reportable. Forty percent (40% n=524) of 2018 allegations were PREA-reportable.

The number of PREA allegations decreased 19% from 643 allegations in 2017 to 524 allegations in 2018. This corresponds to an 11% decrease in the rate of allegations (from 69.9 allegations per 1,000 people in custody in 2017 to 62.3 in 2018).

The number of non-reportable allegations increased 61% from 498 in 2017 to 802 in 2018.

Table 1.

<b>Number of Allegations Made in 2017 &amp; 2018 Received by the PREA ID Team (PREA Reportable vs. Non-Reportable Allegations)</b>						
<b>Type of Allegation</b>	<b>2017</b>		<b>2018</b>		<b>2017 &amp; 2018</b>	
	Number	Percent	Number	Percent	Number	Percent
<b>PREA Reportable</b>	643	<b>56%</b>	524	<b>40%</b>	1,167	<b>47%</b>
<b>Non-Reportable</b>	498	<b>44%</b>	802	<b>60%</b>	1,300	<b>53%</b>
<b>Total Allegations Reported</b>	<b>1,141</b>	<b>100%</b>	<b>1,326</b>	<b>100%</b>	<b>2,467</b>	<b>100%</b>

In 2017 and 2018 combined, 65% of PREA allegations involved Staff on Persons in Custody (PIC) while 35% involved “Person in Custody on Person in Custody” allegations.

Table 2.

<b>PREA Reportable Allegations by Allegation Type</b>						
<b>Type of Allegation</b>	<b>2017</b>		<b>2018</b>		<b>2017 &amp; 2018</b>	
	Number	Percent	Number	Percent	Number	Percent
<b>Staff on Person in Custody (PIC)</b>	<b>432</b>	<b>67%</b>	<b>329</b>	<b>63%</b>	<b>761</b>	<b>65%</b>
<i>Sexual Abuse</i>	302		285		587	
<i>Sexual Harassment</i>	130		44		174	
<b>PIC on PIC</b>	<b>211</b>	<b>33%</b>	<b>195</b>	<b>37%</b>	<b>406</b>	<b>35%</b>
<i>Abusive Sexual Contact</i>	71		104		175	
<i>Nonconsensual Sex Act</i>	43		46		89	
<i>Sexual Harassment</i>	97		45		142	
<b>Total</b>	<b>643</b>	<b>100%</b>	<b>524</b>	<b>100%</b>	<b>1,167</b>	<b>100%</b>

AMKC and RMSC had the highest number of PREA complaints in both 2017 and 2018. West Facility and RMSC had the highest PREA complaint rates in both 2017 and 2018.

Table 3.

Number and Rate of PREA-Reportable Allegations by Facility						
	2017			2018		
	PREA	Average Daily Population	Rate of PREA-Reportable	PREA	Average Daily Population	Rate of PREA-Reportable
			Allegations per 1,000 People in Custody			Allegations per 1,000 People in Custody
AMKC	86	2,029	42.4	93	2,037	45.7
RMSC	138	595	231.9	88	504	174.6
BKDC <sup>1</sup>	85	549	154.8	70	595	117.6
GRVC	82	678	120.9	64	667	96.0
OBCC	46	944	48.7	45	949	47.4
MDC	40	721	55.5	36	698	51.6
EMTC	33	1,246	26.5	26	1,085	24.0
NIC/NIC Inf	4	140	28.6	26	276	94.2
RNDC	40	714	56.0	16	481	33.3
HOJC (opened 9/27/18)	N/A	N/A	N/A	14	76	184.2
WF	47	49	959.2	14	32	437.5
VCBC	12	787	15.2	12	692	17.3
BHPW	4	53	75.5	5	49	102.0
GMDC (closed 6/27/18)	16	590	27.1	3	198	15.2
EHPW <sup>2</sup>	1	7	142.9	1	9	111.1
Transportation	2	N/A	N/A	6	N/A	N/A
BKCT/BXCT	2	N/A	N/A	2	N/A	N/A
MNCT	3	N/A	N/A	2	N/A	N/A
QDC	2	N/A	N/A	0	N/A	N/A
Other	2	N/A	N/A	0	N/A	N/A
<b>Total<sup>3</sup></b>	<b>645</b>	<b>9,222</b>	<b>69.9</b>	<b>523</b>	<b>8,394</b>	<b>62.3</b>

<sup>1</sup> Note: this includes one allegation for 2018 which was labelled BKDC/RMSC and originated in BKDC

<sup>2</sup> Note: this includes one allegation for 2018 labelled EHPW/RMSC and originated in EHPW

<sup>3</sup> Note: 2017 and 2018 allegations do not include four total allegations which did not document an associated facility

### Case Disposition Status (Pending vs. Closed Cases) & Substantiation

Thirty-two percent (32% n=203) of PREA allegations made in 2017 and 78% (n=410) of PREA allegations made in 2018 still had pending investigations as of March 12<sup>th</sup>, 2019.

Sixty-eight percent (68% n=440) of PREA investigations for allegations made in 2017 and 22% (n=114) of PREA investigations for allegations made in 2018 were closed.

- For PREA allegations made in 2017, 66% (n=285) of “Staff on Person in Custody” allegations and 73% (n=155) of “Person in Custody on Person in Custody” cases were closed.
- For PREA allegations made in 2018, 23% (n=75) of “Staff on Person in Custody” allegations and 20% (n=39) of “Person in Custody on Person in Custody” allegations were closed.

From 2017 to 2018 the portion of closed PREA investigations determined to be unfounded increased. Of 2017 closed PREA cases, 80% (n=354) were unsubstantiated, 18% (n=81) were unfounded, and 1% (n=5) were substantiated. Of 2018 closed PREA cases, 46% (n=53) were unsubstantiated, 51% (n=58) were unfounded, and 3% (n=3) were substantiated.

Across all 554 PREA cases initiated in 2017 or 2018 and closed, only eight cases were substantiated, five allegations from 2017 and three allegations made in 2018.

Table 4.

Status of PREA-Reportable Investigations for Allegations Made in 2017 & 2018 by Allegation Type													
Year of Allegation	Investigation Status	Staff on Person in Custody (PIC)				PIC on PIC				Total			
		Sexual Abuse	Sexual Harassment	Total	Percent	Abusive Sexual Contact	Non-consensual Sex Act	Sexual Harassment	Total	Percent	Number	Percent	
2017	Total Pending*	113	34	147	34%	22	14	20	56	27%	203	32%	
	Total Closed	189	96	285	66%	49	29	77	155	73%	440	68%	
	Substantiated	3	0	3		1	1	0	2		5		
	Unsubstantiated	147	76	223		37	24	70	131		354		
	Unfounded	39	20	59		11	4	7	22		81		
Total Allegations in 2017		302	130	432	100%	71	43	97	211	100%	643	100%	
2018	Total Pending*	217	37	254	77%	77	41	38	156	80%	410	78%	
	Total Closed	68	7	75	23%	27	5	7	39	20%	114	22%	
	Substantiated	2	1	3		0	0	0	0		3		
	Unsubstantiated	31	4	35		14	1	3	18		53		
	Unfounded	35	2	37		13	4	4	21		58		
Total Allegations in 2018		285	44	329	100%	104	46	45	195	100%	524	100%	
2017 & 2018 Combined	Total Pending*	330	71	401	53%	99	55	58	212	52%	613	53%	
	Total Closed	257	103	360	47%	76	34	84	194	48%	554	47%	
	Substantiated	5	1	6		1	1	0	2		8		
	Unsubstantiated	178	80	258		51	25	73	149		407		
	Unfounded	74	22	96		24	8	11	43		139		
Total Allegations in 2017 & 2018		587	174	761	100%	175	89	142	406	100%	1,167	100%	

\*Pending as of March 12, 2019.

**Time to Case Closure**

For all closed PREA ID team investigations initiated in 2017 (PREA and non-PREA reportable), the average length of the investigation was 464 days, the median was 512 days, the minimum was less than one day, and the maximum was 773 days. For all closed PREA ID team investigations initiated in 2018 (PREA and non-PREA reportable), the average length of the investigation was 146 days, the median was 77 days, the minimum was less than one day, and a maximum was 414 days.

While the time to close investigations for allegations made in 2018 appears much shorter than for allegations made in 2017, only 17% of 2018 investigations have been closed compared to 53% of investigations initiated in 2017, making the sample of closed cases not comparable across years.

Twenty-seven percent (27% n=31) of closed 2018 PREA cases were closed in 90 days as required by 5-30(m) of the Minimum Standards, compared to 2% (n=7) of closed 2017 PREA cases.

Table 5.

Time to Case Closure (Days) Allegations Made in 2017 and 2018								
PREA Reportable Status	2017				2018			
	Mean	Median	Min	Max	Mean	Median	Min	Max
PREA Reportable	533	554	0	773	218	260	1	414
Non-Reportable	273	278	0	729	74	25	0	409
<b>Time to Case Closure All Closed PREA ID Cases</b>	<b>464</b>	<b>512</b>	<b>0</b>	<b>773</b>	<b>146</b>	<b>77</b>	<b>0</b>	<b>414</b>

**Next Steps for DOC Compliance with 5-40**

As noted in the Board’s October 2018 resolution<sup>5</sup>, the Department is not in full compliance with Minimum Standard 5-40 which requires the Department to collect accurate, uniform data for each alleged incident of sexual abuse at facilities using a standardized instrument and definitions. The Department is required to provide the Board with the data enumerated in 5-40(d) semiannually for all sexual abuse incidents reported to the Department.

Most of the challenges associated with providing the required elements are due to the fact that the Department does not have an adequate case management system in place and is doing much of the 5-40 data tracking manually on various spreadsheets, making the data difficult to update throughout the course of investigations.

The Department reports that it hopes to update its electronic case management system to track PREA Investigations by the summer of 2020. In the meantime, the Department has

<sup>5</sup> Board of Correction Resolution re Sexual Abuse and Harassment Investigations (October 2018), [https://www1.nyc.gov/assets/boc/downloads/pdf/october\\_2018\\_resolution\\_investigations\\_10\\_8\\_18.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/october_2018_resolution_investigations_10_8_18.pdf)

committed to the Board that it will report all required 5-40 data elements for all allegations made in 2019 and all cases closed in 2019 by the next 5-40 reporting deadline in August 2019.

The information listed below is required but has not yet been accurately reported to the Board in the Department's 5-40 data submissions. In January 2019, Board staff met with the Department to review these elements and the Department agreed to provide the Board with this missing but required information:

- Age of alleged perpetrator
- Whether the alleged victim is known to have any physical or developmental disabilities
- Who reported the incident, if known
- Whether the alleged perpetrator and alleged victim were separated during the investigation
- If the alleged perpetrator is a staff person, whether during the investigation, or after it was closed, the staff person was suspended, placed on modified duty, assigned to a no-inmate contact post, assigned to a restricted-inmate contact post, or placed on administrative leave;
- If the alleged perpetrator is a staff person, whether previous allegations of sexual abuse or sexual harassment were lodged against that person;
- If the alleged perpetrator is a staff person, whether the person declined an offer of use immunity pursuant to Mayor's Executive Order No. 16 and, if so, whether that person was subject to discipline as a result;
- Whether DOI assumed the investigation, and if so, the status of the investigation (e.g., pending; referral made to a DA's Office, referred back to the Department, etc.);
- Whether the allegation of staff-on-inmate or inmate-on-inmate sexual abuse was referred to a DA's Office, including whether that DA's Office declined to prosecute, and if the staff perpetrator was prosecuted, the outcome;
- Whether the allegation was referred for disciplinary action, including (a) whether the Department's Trials & Litigation Division declined to file disciplinary charges, or if disciplinary charges were filed, the outcome; and (b) whether the alleged staff-member perpetrator resigned in lieu of charges or as part of a negotiated plea.

Board and Department staff are committed to working together to improve the quality of future 5-40 data submissions.

## APPENDIX- Definitions

### Definitions of Sexual Victimization

The New York City Department of Correction (DOC) utilizes uniform definitions as provided by 28 C.F.R. §115.6 in the National Standards to Prevent, Detect, and Respond to Prison Rape (under the Prison Rape Elimination Act of 2003).

These definitions are used to categorize allegations of sexual abuse within New York State correctional facilities and to separate allegations by perpetrator type (staff or inmate) and type of abuse.

Similar to the Survey on Sexual Victimization (SSV), the following categories of sexual abuse have been disaggregated into five categories as indicated below.

**Inmate Nonconsensual Act** - sexual contact of any person without his or her consent, or of a person who is unable to consent or refuse; and

- Contact between the penis and the vulva or the penis and the anus including penetration, however slight; or
- Contact between the mouth and the penis, vulva or anus; or
- Penetration of the anal or genital opening of another person, however slight by a hand, finger, object, or other instrument.

**Inmate Abusive Act** - sexual contact with any person without his or her consent, or of a person who is unable to consent or refuse; and

- Intentional touching either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.

**Inmate Sexual Harassment** – Repeated and unwanted sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate directed toward another.

**Staff Sexual Misconduct** – any act or behavior of a sexual nature directed toward an inmate by an employee, volunteer, contractor or official visitor or other agency representative. Sexual relationships of a romantic nature between staff and inmates are included in this definition.

Consensual and nonconsensual acts include:

- Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks that is unrelated to official duties or with the intent to abuse, arouse or gratify sexual desire; or
- Completed, attempted, threatened, or requested sexual acts; or
- Occurrences of indecent exposure, invasion of privacy, or staff voyeurism for reasons unrelated to official duties or for sexual gratification.

**Staff Sexual Harassment** – Repeated verbal statements, comments or gestures of a sexual nature to an inmate by an employee, volunteer, contractor, official visitor, or other agency representative, including:

- Demeaning references to gender; or sexually suggestive or derogatory comments about body or clothing;
- Repeated profane or obscene language or gestures.

#### **Definitions of Disposition Statuses**

Resulting determinations from completed investigations are classified as outlined in the Code of Federal Regulations Title 28, Chapter 1, subpart A, section 115.5, General Definitions (28 C.F.R. § 115.5) as Substantiated, Unsubstantiated, or Unfounded.

This standard states that agencies shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

**Substantiated** – An allegation was investigated and determined to have occurred based on a preponderance of the evidence.

**Unsubstantiated** – An allegation was investigated and the investigation produced insufficient evidence to prove the event occurred.

**Unfounded** – An allegation was investigated and determined not to have occurred.