

**NYC Department of Correction
NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum
Standards 5-40 Assessment Report**

INTRODUCTION

The Prison Rape Elimination Act of 2003 (PREA Public Law 108-79) established federal mandates to identify and prevent prison rape in correctional facilities within the jurisdictions of federal, state, local, and native territories across the United States. Public Law 108-79 was signed into law on September 4, 2003.

The United States Department of Justice adopted the National Standards to Prevent, Detect, and Respond to Prison Rape (the PREA Standards) effective August 20, 2012. In addition to establishing mandatory standards for prevention, detection and response to prison sexual abuse and sexual harassment, the PREA Standards require all correctional facilities to conduct sexual abuse incident reviews and collect uniform data using standardized definitions. Agencies must ensure that data collection includes allegations of sexual abuse and sexual harassment at facilities under its direct control. This incident-based sexual abuse information must be aggregated and made readily available to the public at least annually.

In 2016, the NYC Board of Correction implemented Sexual Abuse and Sexual Harassment Minimum Standards that are equivalent to the PREA Standards. Pursuant to the Board's Minimum Standards §5-40 "Data Collection and Review", the NYC Department of Correction is posting this assessment report which provides a comparison of allegations of sexual abuse and sexual harassment for calendar years 2016 & 2017, preliminary trend analysis, and corrective action contemplated and/or initiated at the facility level and department-wide. It is important to note that allegations of sexual abuse and sexual harassment are preliminary and subject to change as these cases develop. The allegation categories are not final for cases that are ongoing or pending resolution. Data used in this report reflects the most current information available at the time of publication.

Allegations of sexual abuse and sexual harassment are based on the definitions provided by the Department of Justice and reporting requirements as specified in the National Standards to Prevent, Detect, and Respond to Prison Rape, under 28 CFR part 115 (see Appendix A). While only limited trend data are currently available, future reports will continue to include broader trend analysis and comparisons of previous years' data where appropriate.

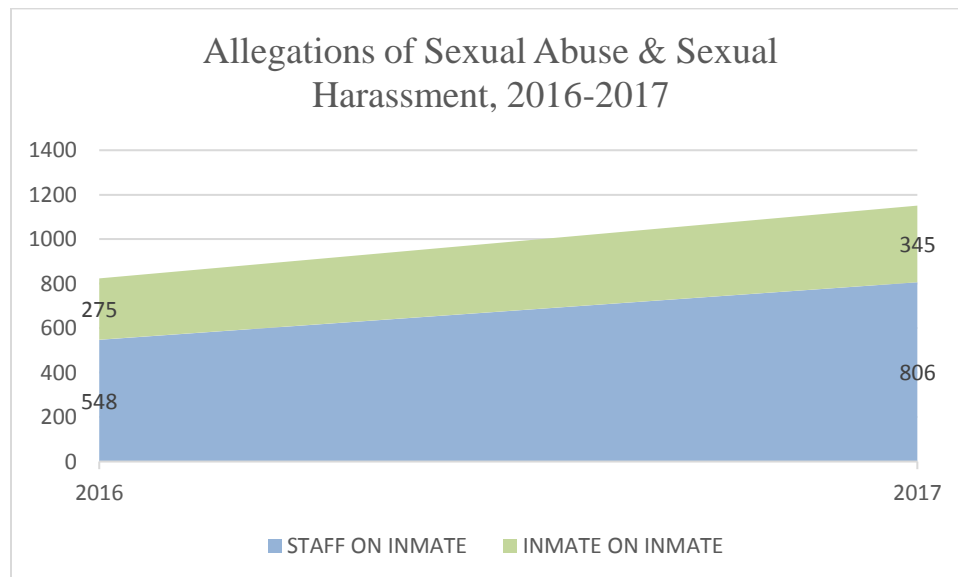
Section One

ALLEGATIONS OF SEXUAL ABUSE AND SEXUAL HARASSMENT

These allegations represent complaints which became investigative cases from January 2016 through December 2017. This section is intended to provide an informed overview of these allegations Department-wide. In accordance with the National PREA Standards, the DOC reviews the 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 in an effort to understand and eliminate sexual abuse and sexual harassment within our facilities.

Type of Allegation

Uniform definitions provided by the Prison Rape Elimination Act of 2003 are used in order to categorize allegations of sexual abuse and sexual harassment within DOC correctional facilities. These categories separate allegations by perpetrator type (staff or inmate) as shown in Figure 1.



**NYC Department of Correction
 NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum
 Standards 5-40 Assessment Report**

Overview




The total number of sexual abuse and sexual harassment allegations increased by 39.85% from 2016 to 2017 (823 and 1151 respectively) (see Table 1). Increased reporting was expected resulting from the implementation of a series of new PREA-based initiatives in 2017. In 2017, the Department instituted a new comprehensive inmate education program that includes an in-person orientation for new admission inmates; the placement of PREA pamphlets, with information on how to report, in all inmate handbooks; PREA posters posted in key locations within all facilities with protocols in place to ensure that damaged posters are promptly removed and replaced with new ones; staff assignment to PREA Hotline calls, enhanced communications between the Department’s Grievance unit and the Investigations Division and/or the Department of Investigations to ensure PREA allegations are routed to the appropriate entity for review; and the assignment of uniform staff as PREA Ambassadors in every facility to assist with PREA Compliance. In addition, DOC introduced PREA training to all recruits as part of the Academy curriculum.

Staff Sexual Misconduct

Staff sexual misconduct includes a wide-range of behaviors such as attempted or requested sexual acts, indecent exposure, invasion of privacy and staff voyeurism, as well as completed sexual acts and unwanted touching for sexual gratification. This category represents about 30.15% of all allegations reported annually. There were 374 staff sexual misconduct allegations reported in 2017, up from 322 in 2016 (see Table 1).

Staff Sexual Harassment

Staff sexual harassment includes repeated verbal statements, and comments or gestures of a sexual nature to an inmate by a staff member. Staff sexual harassment allegations represent approximately one-third of all allegations reported each year. Total allegations of staff sexual harassment increased by 86.21% between 2016 (232 allegations) and 2017 (432 allegations) (see Table 1).

Staff-Inmate Sexual Harassment			
	2016	2017	% Increase
	232	432	86.21% 
PREA	129	119	7.75% 
Non PREA ¹	103	313	203.88% 

¹ Non-PREA incidents, include but are not limited to, one time gestures, derogatory comments, profane and obscene language. They may also encompass allegations stemming from a proper pat frisk or safety or security related search.

**NYC Department of Correction
 NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum
 Standards 5-40 Assessment Report**

Inmate Nonconsensual Acts

Nonconsensual acts include inmate-on-inmate sexual penetration without consent or of an inmate who is unable to consent or refuse. This category represents approximately 20% (2016) & 13% (2017) of all inmate-on inmate allegations reported in both 2016 and 2017 (see Table 1).

In 2017, out of 45 Non Consensual Sex Act in 2017, 89% fall in the category ‘Crimes under New York State Penal law 130’. Of these 40 Crimes 12.5% was related to a weapon and 7.5% was contraband.

NON-CONSENSUAL SEX ACT	# Of ALLEGATIONS	PERCENTAGE
Crimes under New York State Penal law 130	40	89%
INAPPROPRIATE TOUCH	3	7%
CONSENSUAL PUBLIC DISPLAY	2	4%
Grand Total	45	100%

Inmate Abusive Acts

Inmate abusive acts are defined as unwanted intentional touching of an inmate without his or her consent, or of an inmate who is unable to consent or refuse, by another inmate. Inmate abusive acts represent approximately 12.03% (2016) & 8.51% (2017) percent of total allegations reported to DOC annually. The number of allegations of inmate abusive sexual contact remained relatively stable from 2016 to 2017 (99 and 98, respectively) (see Table 1).

Inmate Sexual Harassment

In 2013, the Bureau of Justice Statistics added *Inmate Sexual Harassment* to the definitions of sexual victimization. This new definition was included in the data collection and is reflected in this report. Inmate sexual harassment is defined as 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. The number of allegations increased from 122 in 2016 to 202 in 2017 (see Table 1).

**NYC Department of Correction
 NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum
 Standards 5-40 Assessment Report**




Inmate-Inmate Sexual Harassment			
	2016	2017	% Increase
	122	202	65.57% 
PREA	86	79	8.14% 
Non PREA ²	36	123	241.67% 

TABLE 1

Allegations of sexual victimization, by type of incident, 2016 - 2017

Category Type	2016	2017	2016	2017
Total	823	1151	100.0%	100.0%
Staff sexual misconduct	322	374	39.1%	32.5%
Staff sexual harassment	232	432	28.2%	37.5%
Inmate-on-inmate nonconsensual act	55	45	6.7%	3.9%
Inmate-on-inmate abusive sexual contacts	99	98	12.0%	8.5%
Inmate-on-inmate sexual harassment	122	202	14.7%	17.5%

The rate of reported allegations of sexual victimization increased from 13.70 per 1,000 inmates in 2016 to 19.20 per 1,000 inmates in 2017. The rate of staff allegations increased from 9.12 per 1,000 inmates in 2016 to 13.43 per 1,000 inmates in 2017. The rate of inmate-on-inmate allegations increased slightly from 4.58 per 1,000 in 2016 to 5.75 per 1,000 in 2017 (see Table 2).

TABLE 2

Total allegations of sexual victimization, by type of incident, 2016 – 2017; rate per 1,000 inmate population

Category Type	2016	2017	2016	2017
Total	823	1151	13.70	19.20
Staff Type				
Staff sexual misconduct	322	374	5.36	6.23

² Non PREA incidents, include but are not limited to, one time gestures, derogatory comments, profane and obscene language. They may also encompass allegations stemming from a proper pat frisk or safety or security related search.

**NYC Department of Correction
 NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum
 Standards 5-40 Assessment Report**

Staff sexual harassment	226	432	3.76	7.20
Subtotal	548	806	9.12	13.43
Inmate Type				
Inmate-on-inmate nonconsensual act	55	45	0.92	0.75
Inmate-on-inmate abusive sexual contacts	99	98	1.65	1.63
Inmate-on-inmate sexual harassment	121	202	2.01	3.37
Subtotal	275	345	4.58	5.75

Section Two

SUBSTANTIATED, UNSUBSTANTIATED & UNFOUNDED ALLEGATIONS

Allegations of sexual abuse or sexual harassment are substantiated after an event is investigated and determined to have occurred based on a preponderance of evidence. This report reflects the number of determinations at the time of this report.

Of the 823 allegations of sexual abuse and sexual harassment reported in 2016, 3 incidents (0.36%) was substantiated, 42 incidents (5.10%) were determined to be unsubstantiated, 39 incidents (4.74%) were unfounded, and 739 are still pending. In 2017, 1 incident (0.09%) was deemed substantiated, 20 (1.74%) were deemed unsubstantiated, 18 (1.56%) were determined to be unfounded, and (1112) are pending out of the 1151 allegations (see Table 3). In each year, the number and rate of unfounded determinations exceeds the number and rate of substantiated determinations. For a full description of resulting determinations, see Section Three.

TABLE 3

Substantiated, Unsubstantiated, Unfounded, and Pending allegations of sexual victimization Department-wide, 2016 - 2017

	2016	2017
Total Allegations	823	1151
Substantiated	3	1
Unsubstantiated	42	20
Unfounded	39	18
Pending	739	1112
rate per 1,000 inmates	12.30	18.53

**NYC Department of Correction
 NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum
 Standards 5-40 Assessment Report**

The rate of sexual victimization is the ratio of the number of incidents to the average number of inmates in DOC custody between January and December of the calendar year. The inmate population includes both detainees and sentenced inmates. The rates used in this report represent the number of allegations or substantiated incidents per year per 1,000 inmates and it allows for comparison between facilities with different population levels during the same 12-month period. Although rate information is provided in statistical tables, there are too few substantiated incidents to provide reliable rate comparisons. *Unsubstantiated allegation* means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred. Unfounded determinations are reports submitted by inmates that are proved to be false. All inmate allegations of sexual abuse and sexual harassment are taken seriously and investigated thoroughly.

TABLE 3A

Substantiated, Unsubstantiated and Unfounded allegations of sexual victimization, by facility, rate per 1,000 inmates

2016

Facility Name	Substantiated			Unsubstantiated			Unfounded	
	Total Allegations	Number	Rate	Number	Rate	Number	Rate	
AMKC	154	1	0.02	31	0.52	11	0.18	
BKDC	75	0	0	10	0.17	5	0.08	
EMTC	78	1	0.02	18	0.30	2	0.03	
GMDC	58	0	0	13	0.22	5	0.08	
GRVC	94	1	0.02	10	0.17	20	0.33	
MDC	86	2	0.03	11	0.18	4	0.07	
NIC	5	0	0	0	0	1	0.02	
OBCC	64	1	0.02	12	0.20	6	0.1	
RMSC	109	1	0.02	16	0.27	22	0.37	
RNDC	44	1	0.02	7	0.12	10	0.17	
VCBC	13	0	0	4	0.07	0	0	
WF	22	0	0	5	0.08	1	0.02	

**NYC Department of Correction
 NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum
 Standards 5-40 Assessment Report**

2017

Facility Name	Substantiated			Unsubstantiated			Unfounded	
	Total Allegations	Number	Rate	Number	Rate	Number	Rate	
AMKC	166	0	0	2	0.03	2	0.03	
BKDC	149	0	0	4	0.07	2	0.03	
EMTC	73	0	0	1	0.02	0	0	
GMDC	30	0	0	0	0	0	0	
GRVC	141	0	0	1	0.02	2	0.03	
MDC	73	0	0	0	0	0	0	
NIC	14	0	0	0	0	0	0	
OBCC	76	0	0	0	0	1	0.02	
RMSC	198	0	0	3	0.05	3	0.05	
RNDC	92	1	0.02	2	0.03	5	0.08	
VCBC	22	0	0	2	0.03	2	0.03	
WF	94	0	0	4	0.07	0	0	

Section Three

RESULTING DETERMINATIONS

Resulting determinations from completed investigations are classified as Substantiated, Unsubstantiated, or Unfounded as defined by the PREA Standards. Resulting determinations are fully defined in Appendix B (p.15).

Of the 823 sexual abuse and sexual harassment allegations reported in 2016, thirty nine (39) (4.74%) were determined to be *unfounded*. In these cases, the Investigation Division determined that the event did not occur by, for example, the presence of evidence contradictory to the allegation or an inmate’s self-admission to falsifying the allegation. There were eighteen (18) (1.56%) unfounded determinations in CY 2017.

Among completed investigations between 2016 and 2017, most resulting determinations concluded that evidence was insufficient to determine whether or not the event occurred. These cases are referred to as *unsubstantiated*.

**NYC Department of Correction
NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum
Standards 5-40 Assessment Report**

PENDING ALLEGATIONS

As the NYC Department of Correction in coordination with its Investigation Division moved towards PREA Compliance, several barriers were identified related to the timeliness of case investigations. Due to staffing reductions, either through resignation, retirement, or promotion, the resulting personnel attrition combined with the significant increase in allegations related to PREA, has caused a backlog.

PREA Standards require interviews of witnesses, which includes Department of Correction Staff. Therefore, the Division has seen an increase in extensive investigative work including MEO 16 interviews as related to PREA. Lastly, the process of completing lengthy Investigation Division closing reports has affected the timeliness of case closures.

The increase in allegations coincides with an ongoing effort made by the Department to become PREA Compliant and our collaboration with the Moss Group. The Department has established a zero tolerance policy with regard to sexual abuse and sexual harassment; advanced measures to improve the ability for victims to report these type of allegations through the creation of a dedicated hotline. The Department has also entered into a Memorandum of Understanding with Safe Horizons to provide victim services, access to assistance, and an additional avenue to report allegations of a sexual nature.

Section Four

CORRECTIVE ACTION

Staffing

The Department strives to ensure that inmate awareness of resources, opportunities to report and overall victim services continually expand. Simultaneously, the Department is engaging in a solution oriented approach eared towards addressing the current staffing and associated case backlog. The Division has begun to advance impactful changes. The adoption of new procedures is founded upon staff expansion.

In May 2016, the Investigation Division established a dedicated team of investigators to address allegations of sexual abuse and sexual harassment. As the number of allegations has increased the Department and the Investigation Division has responded by enhancing the staffing levels of the ID PREA Team by fifty seven percent (57%). As the allegations continued to rise the PREA team was subject to further staff expansion by an additional 59%. Current staffing levels for investigators has been supplemented by two hundred fourteen percent (214%). To that end, the Investigation Division anticipates an additional increase to four hundred percent (400%) of its original staffing levels to ensure through and timely investigations.

NYC Department of Correction NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum Standards 5-40 Assessment Report

In 2016, DOC also implemented a number of enhancements to combat sexual abuse. The Department has PREA Compliance Managers (PCM) at four (4) facilities. In 2017, two (2) additional individuals were hired for a total of six (6) Compliance Managers to cover six (6) facilities. In addition, Deputy Wardens were tasked with implementing PREA and acting as interim PCM's while the Department continued to identify qualified individuals to fill the civilian position of PCM. In 2017, the facilities were directed to assign PREA Ambassadors to work with each PCM and to assist with PREA implementation. PREA Ambassadors are uniform staff designated as the PREA Point Person in each facility that does not have its own PCM. These staff members are responsible for PREA compliance matters within those facilities.

Improvement to Overall Process

The Investigation Division established a Corstat process with time-triggered supervisory case reviews in order to improve efficiency. Additionally, the Investigation Division is streamlining its closing report to further improve efficiencies without compromising the investigation. The Division is considering work reallocation: training facility captains to assist in investigating sexual harassment cases that do not fall within PREA, which will enable the Division to focus more attention and resources to PREA cases. In addition, we are designing and implementing a rapid review process whereby the Department can expedite the closure of cases that are deemed not to be a PREA allegation. This will assist in processing cases faster and reduce the current backlog.

The Division has recently combined with the Trials and Litigation Division; one anticipated result of this merger is that Department attorneys will be able to provide their knowledge and expertise in the evaluation of PREA claims, facilitating an expedited decision-making process.

**NYC Department of Correction
 NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum
 Standards 5-40 Assessment Report**

PRELIMINARY TREND OVERVIEW

During CY 2017, the Department experienced a rise in allegations that do not meet the criteria for PREA reporting. There were five hundred twenty-eight (528) Non – PREA allegations during 2017 compared to two hundred and six (206) Non- PREA allegations during 2016, representing an increase of 156%. These incidents, include but are not limited to, one time gestures, derogatory comments, profane and obscene language. They may also encompass allegations stemming from a proper pat frisk or safety or security related search. Although these allegations are Non-PREA reportable, the Investigation Division is required to investigate these allegations of misconduct.

	2017	2016	% Increase
Non PREA	528	206	156%
Staff-Inmate	382	147	160%
Inmate-Inmate	146	59	148%
Staff-Inmate Abuse	69	44	59%
Staff-Inmate Harassment	313	103	204%
Inmate-Inmate Abusive Sexual Contact	23	16	44%
Inmate-Inmate Sexual Harassment	123	36	242%
Inmate-Inmate Non Consensual Sex Act	0	7	0%

Out of 1151 allegations, only 623 (54.13%) met the standard as PREA reportable incidents. The remaining 528 (45.87%) were Non-PREA reportable incidents. Of these 528 Non-PREA reportable allegations, 59.28% allegations were Staff-Inmate Sexual Harassment, 13.07% were Staff-Inmate Sexual Abuse, 23.30% were Inmate-Inmate Sexual Harassment & 4.36% were Inmate-Inmate Sexual Abuse.

**NYC Department of Correction
 NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum
 Standards 5-40 Assessment Report**

Non PREA		
INMATE ON INMATE	146	27.65%
STAFF ON INMATE	382	72.35%
Grand Total	528	100.00%
INMATE ON INMATE		
ABUSIVE SEXUAL CONTACT	23	4.36%
SEXUAL HARASSMENT	123	23.30%
STAFF ON INMATE		
SEXUAL ABUSE	69	13.07%
SEXUAL HARASSMENT	313	59.28%

A majority (almost 56%) of Non PREA Staff-Inmate Sexual Abuse falls into the category of Inappropriate Touch and Voyeurism. (See table below)

STAFF-INMATE SEXUAL ABUSE		
Inappropriate Touch	27	39.13%
Non PREA	16	23.19%
Voyeurism	11	15.94%
Non-Cooperative	4	5.80%
Sexual Threat	4	5.80%
Unknown	3	4.35%
Undue	2	2.90%
Out of Custody	1	1.45%
UOF	1	1.45%
Total	69	100.00%

**NYC Department of Correction
 NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum
 Standards 5-40 Assessment Report**

Almost 70% of Non PREA Inmate-Inmate Sexual Abuse falls into the category of Consensual public Display and Inappropriate Touch.

INMATE-INMATE SEXUAL ABUSE		
Consensual Public Display	10	43.48%
Inappropriate Touch	6	26.09%
Non-PREA	5	21.74%
Sexual Favors	1	4.35%
Unknown	1	4.35%
Total	23	100.00%

INAPPROPRIATE TOUCH	# OF ALLEGATIONS	PERCENTAGE
UOF	58	31.35%
Pat Frisk	41	22.16%
Other	19	10.27%
Strip Search	17	9.19%
Refused	15	8.11%
Escort	11	5.95%
Non-PREA	8	4.32%
DOI	3	1.62%
Threat With Weapon	2	1.08%
Duplicate	2	1.08%
Medical Exam	2	1.08%
Extraction	2	1.08%
Retaliation	2	1.08%
Verbal	1	0.54%
Contraband	1	0.54%
Recant	1	0.54%

The Department continues to review cases and each facility will track recommendations specific to their incident reviews, and implementation of those recommendations. With respect to system-wide efforts to end sexual victimization, we have implemented monthly action planning in all eleven (11) facilities. Emphasis has been placed on prevention, education, and victim support initiatives.

APPENDIX A

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.

**NYC Department of Correction
NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum
Standards 5-40 Assessment Report**

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.

APPENDIX B

GENERAL DEFINITIONS

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 make a final determination as to whether or not the event occurred.

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