



Report on Sexual Victimization in Prisons and Jails

Review Panel
on Prison Rape

April 2012

Review Panel on Prison Rape
Report on Sexual Victimization in Prisons and Jails

G. J. Mazza, Editor

The Review Panel on Prison Rape's *Report on Sexual Victimization in Prisons and Jails* is available online at <http://www.ojp.usdoj.gov/reviewpanel/reviewpanel.htm>. Obtaining prior permission is not necessary for copying and distributing this report. To contact the Review Panel on Prison Rape, e-mail PREAReviewPanel@usdoj.gov or call (202) 307-0690.

Review Panel on Prison Rape, U.S. Department of Justice, Washington, DC (April 2012)

Review Panel on Prison Rape

Dr. Reginald A. Wilkinson is currently the president and chief executive officer of the Ohio College Access Network. He is the former executive director of the Business Alliance on Higher Education and the Economy. He worked with the State of Ohio Department of Rehabilitation since 1973, and prior to his retirement, he served as its director for sixteen years. Dr. Wilkinson is also a past president of the American Correctional Association (ACA) and the Association of State Correctional Administrators (ASCA). He is a past chairperson of the National Institute of Corrections Advisory Board on which he still serves as a member. Dr. Wilkinson has authored numerous articles on a variety of correctional topics, and he has received awards from many organizations, including the National Governors Association, the ACA, the ASCA, the International Community Corrections Association, the National Association of Blacks in Criminal Justice, and the Volunteers of America. Dr. Wilkinson's academic background includes a bachelor's degree in political science and a master's degree in higher education administration, both from The Ohio State University. He earned a doctorate in education from the University of Cincinnati.

Dr. Gary E. Christensen has worked within the correctional field for the past thirty-three years. He has researched extensively the premise of evidence-based or outcome-driven practice within a correctional milieu and initiated several innovative correctional programs, including the Dutchess County Jail Transition Program, which has been recognized nationally for significant recidivism reduction and the enhancement of general public safety. In addition to his responsibilities as jail administrator, Dr. Christensen also served in an advisory capacity to the executive and legislative branches of county government as chair of the Dutchess County Criminal Justice Council. He authored legislation to counter the effects of police racial profiling, and he coordinated master planning for the criminal justice system, implementing system-wide, evidence-based, criminal justice practice. For his many contributions to the field of corrections, Dr. Christensen has received recognition from numerous local and state entities. In

Executive Summary

This Report presents the findings of the Review Panel on Prison Rape (Panel), resulting from the hearings it held in Washington, DC, in the spring and fall of 2011, based on the national survey that the Bureau of Justice Statistics (BJS) published in August 2010, *Sexual Victimization in Prisons and Jails, Reported by Inmates, 2008-09*. Under the Prison Rape Elimination Act of 2003, the Panel is responsible for holding public hearings to which it invites, relying on data from the BJS, two correctional institutions with a low prevalence of sexual victimization and three institutions with a high prevalence of sexual victimization. The purpose of the hearings is to identify the common characteristics of (1) sexual predators and victims, (2) correctional institutions with a low prevalence of sexual victimization, and (3) correctional institutions with a high prevalence of sexual victimization.

In 2011, the Panel held two sets of hearings. In April of 2011, the hearings addressed federal and state prisons; in September of 2011, the hearings addressed local jails.

Hearings on Prisons

For the April 2011 hearings on prisons, the Panel invited the following five prisons to appear:

- (1) *Low Incidence*: Elkton Federal Correctional Institution, Federal Bureau of Prisons, Elkton, Ohio.
- (2) *Low Incidence*: Bridgeport Pre-Parole Transfer Facility, operated by Corrections Corporation of America for the Texas Department of Criminal Justice (TDCJ), Bridgeport, Texas.
- (3) *High Incidence*: James V. Allred Unit, TDCJ, Wichita Falls, Texas.
- (4) *High Incidence*: Fluvanna Correctional Center for Women, Virginia Department of Corrections, Troy, Virginia.
- (5) *High Incidence*: Elmira Correctional Facility, Department of Corrections and Community Supervision, Elmira, New York.

Based on the prison hearings, the Panel identified the following **common themes** Yn

The Panel identified the following **topics for further study**:

Why are Homosexuality and Prior Victimization Significant Indicators of Inmate Victims of Sexual Abuse?

What are the Distinctive Needs of Female Facilities in Preventing Sexual Victimization?

Hearings on Jails

For the September 2011 hearings on jails, the Panel invited the following five jails to appear:

- (1) *Low Incidence*: Hinds County Work Center, Hinds County Sheriff's Department, Raymond, Mississippi.
- (2) *Low Incidence*: David L. Moss Criminal Justice Center, Tulsa County Sheriff's Office, Tulsa, Oklahoma.
- (3) *High Incidence*: Clallam County Corrections Facility, Clallam County Sheriff's Office, Port Angeles, Washington.
- (4) *High Incidence*: Pre-Trial Detention Center, Miami-Dade County Corrections and Rehabilitation Department, Miami, Florida.
- (5) *High Incidence*: Orleans Parish Prison, Orleans Parish Sheriff's Office, New Orleans, Louisiana.

Based on the jail hearings, the Panel identified the following **common themes** requiring careful consideration:

Acknowledging the Importance of Facility Design

Appreciating the Value of Outside Oversight

Noting the Reluctance to Prosecute Sexual Victimization Cases Involving Inmates

Recognizing the Resource Challenges that Jails Face

Employing Well-Trained, Professional Staff

The Panel identified the following **topics for further study**:

What are the Specific Challenges of Big-City and Rural Jails in Preventing Inmate Sexual Victimization?

What are the Best Practices in Classifying and Housing LGBTQ Inmates?

What Would Encourage the Prosecution of Crimes Involving Inmate Sexual Victimization?

What are the Policies and Practices that Contribute to a Jail Culture that Has Zero Tolerance for Sexual Victimization?

What are the Best Practices for Monitoring Compliance with a Jail's Zero-Tolerance Policy for Sexual Victimization?

What are the Best Practices for Reliably Reporting Sexual Abuse in Jails?

Table of Contents

I. Overview.....	1
A. Background	1
B. <i>BJS Report</i>	2
C. Selection of Facilities for the Public Hearings.....	3
II. Review of Facilities.....	5
A. Prisons.....	6
1. Low-Incidence Prisons	6
a. FCI Elkton.....	6
i. Facility Description	6
ii. Facility’s Explanation for Reported Low Incidence of Sexual Victimization...	7
iii. Observations	11
b. Bridgeport.....	12
i. Facility Description	12
ii. Facility’s Explanation for Reported Low Incidence of Sexual Victimization.	13
iii. Observations	15
2. High-Incidence Prisons.....	16
a. Fluvanna.....	16
i. Facility Description	16
ii. Facility’s Explanation for Reported High Incidence of Sexual Victimization	18
iii. Observations	22
(a) The Distinctive Dynamics of Women’s Prisons	22
(b) Onsite Visit	25
(c) Inmates and Trauma	26
(d) Testimony from Former Inmate and Inmate Advocate	26
iv. Facility-Specific Recommendations	29
b. Allred	30
i. Facility Description	30
ii. Facility’s Explanation for Reported High Incidence of Sexual Victimization	32
iii. Observations	33
iv. Facility-Specific Recommendations	37
c. Elmira.....	38
i. Facility Description	38

ii. Facility Explanation for Reported High Incidence of Sexual Victimization ...	40
iii. Observations	41
iv. Facility-Specific Recommendations	46
3. Common Themes	47
a. Recognizing Common Characteristics of Inmates Who are Vulnerable to Sexual Abuse	47

iv. Facility-Specific Recommendations	61
b. Miami-Dade PTDC	62
i. Facility Description	62
ii. Facility’s Explanation for Reported High Incidence of Sexual Victimization	64
iii. Observations	67
iv. Facility-Specific Recommendations	68
c. OPP	68
i. Facility Description	68
ii. Facility’s Explanation of Reported High Incidence of Sexual Victimization	71
iii. Observations	73
(a) Testimony of Civil Rights Attorney	74
(b) Statement of Former Inmate.....	76
(c) OPP’s Response to the Former Inmate’s Testimony	78
(d) Testimony of Youth Advocate	80
iv. Facility-Specific Recommendations	82
3. Common Themes	84
a. Acknowledging the Importance of Facility Design	84
b. Appreciating the Value of Outside Oversight.....	84
c. Noting the Reluctance to Prosecute Sexual Victimization Cases Involving Inmates ...	85
d. Recognizing the Resource Challenges that Jails Face	85
e. Employing Well-Trained, Professional Staff	85
4. Topics for Further Study	86
a. What are the Specific Challenges of Big-City and Rural Jails in Preventing Inmate Sexual Victimization?	86
b. What are the Best Practices in Classifying and Housing LGBTQ Inmates?	86
c. What Would Encourage the Prosecution of Crimes Involving Inmate Sexual Victimization?.....	86
d. What are the Policies and Practices that Contribute to a Jail Culture that Has Zero Tolerance for Sexual Victimization?	86
e. What are the Best Practices for Monitoring Compliance with a Jail’s Zero-Tolerance	

Appendices

- Appendix A [Contact Letters and Data Requests to Selected Facilities](#)
- Appendix B [Chart Indicating Strengths and Weaknesses of Each Facility](#)
- Appendix C [Charts Summarizing Facility Investigations of Inmate-on-Inmate and Staff-on-Inmate Sexual Assaults](#)
- Appendix D [Memorandum from D. Scott Dodrill, Assistant Director, Correctional Program Division, Bureau of Prisons, to Chief Executive Officers \(Oct. 12, 2011\).](#)

As the appendices are lengthy, they are accessible only from the Panel's website at <http://www.ojp.usdoj.gov/reviewpanel/reviewpanel.htm>. Online readers may also access the appendices by clicking on the title for each appendix, which will then direct the reader to the corresponding document posted online.

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

disbanded.⁹ The process for issuing national standards is still moving forward at the Justice Department and the Panel anticipates that the standards may appear in the near future.¹⁰ The Panel's work complements the work of the Commission in issuing national standards, but it is independent of it. Through its hearings, the Panel intends to assist both prison administrators and victim advocates by identifying administrative practices that either contribute to or prevent sexual victimization of individuals in custody.

B. *BJS Report*

The *BJS Report* analyzed data on sexual victimization in prisons and jails from October of 2008 until December 2009 based on computer-assisted self-interviews of 81,566 inmates, age eighteen or older, in 167 state and federal pris

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

The *BJS Report* identified risk factors for both inmate-on-inmate and staff-on-inmate sexual victimization.²² The rates of reported inmate-on-inmate

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

(VADOC), in Troy, Virginia; and (3) the Elmira Correctional Facility (Elmira), New York Department of Corrections and Community Supervision (DOCCS),²⁸ in Elmira, New York.

One of the factors influencing the Panel's selection of facilities in 2011 was its interest in gathering more information on the experiences of women who have been the target of sexual victimization in prisons and jails and to understand the dynamics of correctional facilities that serve women. Accordingly, for the prison hearings, the Panel chose Fluvanna, a women's facility that the *BJS Report* identified as having not only one of the highest rates of inmate-on-inmate sexual victimization but also one of the highest rates of staff sexual misconduct.²⁹ Seeking to learn from a female prison with a low incidence of sexual victimization, the Panel chose Bridgeport, which had no incidents of sexual victimization during the time period of the BJS survey.³⁰

The Panel selected FCI Elkton based on its having a low incidence of any type of sexual victimization,³¹ and the Panel wanted at least one representative of a federal prison at the hearings.

The Panel chose Allred not only because the *BJS Report* identified it as having one of the highest rates of inmate-on-inmate sexual victimization³² but also because the Panel had previously identified Allred, as well as other prisons in the TDCJ, as having a high rate of sexual victimization, and the Panel was interested in learning why the prison had not improved its performance despite having appeared at a prior hearing.³³ The Panel chose Elmira based on its having the highest rate of male offenders reporting staff sexual misconduct that involved pressure.³⁴

For the September hearings on jails, the Panel again identified two institutions representing low-incidence facilities: (1

A. Prisons

1. Low-Incidence Prisons

a. FCI Elkton

i. Facility Description

FCI Elkton, located in Elkton, Ohio, is a low-to-medium-security facility,⁴⁴ which had a rated capacity in both January 2008 and January 2009 of 1536 male inmates.⁴⁵ In January of 2008, the actual number of inmates at FCI Elkton was 1797.⁴⁶ In calendar year 2008, 3045 inmates spent any time at FCI Elkton; the average length of stay was 539 days; and the longest stay of any inmate was 3501 days.⁴⁷ In January of 2009, the actual number of inmates was 1925.⁴⁸ In calendar year 2009, 2855 inmates spent any time at FCI Elkton; the average length of stay was 555 days; and the longest stay of any inmate was 3704 days.⁴⁹

The ethnic and racial composition of the inmates in FCI Elkton in 2008 was 44.6% White, 54.1% African American, 13.9% Hispanic, 0.8% Asian or Pacific Islander, and 0.5% Alaska Native or American Indian.⁵⁰ In 2009, the ethnic and racial composition of the inmates in FCI Elkton was 45.1% White, 53.6% African American, 1.7% Hispanic, 0.7% Asian or Pacific Islander, 0.5% Alaska Native or American Indian.⁵¹

FCI Elkton reported no suicides or attempted suicides in 2008.⁵² In 2009, there were no suicides, but there were two suicide attempts—neither was connected to sexual victimization.⁵³

On January 1, 2008, FCI Elkton employed 149 correctional officers; the inmate-to-correctional officer ratio was 16.6 to 1.0; FCI Elkton employed 185 other correctional workers; the inmate-to-other-correctional-worker ratio was 13.3 to 1.0; the total onboard staff was 334, with an inmate-to-total-staff ratio of 7.4 to 1.0.⁵⁴ On January 1, 2009, FCI Elkton employed 152 correctional officers; the inmate-to-correctional-officer ratio was 16.6 to 1.0; FCI Elkton employed 183 other correctional workers; the inmate-to-other-correctional-worker ratio was 13.8 to 1.0; the total onboard staff was 335, with an inmate-to-total-staff ratio of 7.5 to 1.0.⁵⁵

44

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

In 2008 and 2009, FCI Elkton terminated no staff members for sexual misconduct.⁵⁶ In 2009, FCI Elkton permitted one staff member to resign in a matter related to sexual misconduct.⁵⁷ There was one instance in each of the calendar years 2008 and 2009 when a staff member received either discipline or a warning for sexual misconduct, but the investigations sustained neither charge.⁵⁸

During calendar years 2008 and 2009, there were two investigations of staff-on-inmate sexual misconduct.⁵⁹ One investigation found that the evidence did not substantiate the allegations; the other investigation concluded that the evidence did support the following charges: unprofessional conduct of a sexual nature, preferential treatment of an inmate, breach of security, introduction of contraband, and soliciting or accepting anything of value.⁶⁰ Subsequently the staff member resigned.⁶¹ During the same time period there were three investigations of inmate-on-inmate

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

facilities.⁶⁹ Inmate programming plays an important role in reducing inmate idleness and the stresses associated with prison life.⁷⁰

Mr. Lappin also testified, “Qualified and trained staff are essential for effective inmate management.”⁷¹ He stated, “All staff are expected to be vigilant and attentive to inmate accountability and security issues.”⁷²

In regard to discouraging staff misconduct, Mr. Lappin testified that the BOP’s approach is multidimensional, which begins with employees clearly understanding BOP’s zero-tolerance policy and continues with staff training on the sh

Inmates learn about their rights and responsibilities in preventing sexually abusive behavior during orientation; they learn about prevention strategies, methods for reporting incidents, treatment, and the consequences for perpetrators.⁸¹ They also receive this information in written form.⁸²

In elaborating on his prepared remarks, Mr. Lappin noted the importance at BOP of having separate oversight teams to keep individual facilities accountable:

We're blessed in the Bureau of Prisons as large as we are that we can have a separate oversight group. So the warden, even though he's practicing this [sexual-abuse prevention] policy every day, he also knows in the back of his mind that several times a year, a team of people are going to come in there and they're going to look at the policy. They're going to look at the incidents where there is a sexual, physical or verbal assault, or an escape or whatever, and somebody's going to critique what occurred . . . [and] make some recommendations as to what you need to do to improve upon the adherence of that policy in the future.⁸³

In his testimony before the Panel, Mr. John Shartle, Warden of the Federal Correctional Institution in Fairton, New Jersey, and former Warden of FCI Elkton, noted in particular the importance of creating a prison culture that treats seriously every allegation related to sexual victimization of an inmate.⁸⁴ Mr. Shartle said, "Every allegation is taken extremely seriously. Whether you think this inmate is manipulative or not, that's not your decision to make."⁸⁵ Mr. Shartle said that the key word in creating a prison culture that does not tolerate the sexual abuse of inmates is "buy-in" from staff members at every level of the organization:

[W]hat you need is buy-in, not just from the management staff and the executive staff, but from the correctional officer who is walking through the unit and just sort of senses that something is wrong or the case manager who's talking to the inmate and they seem a little distracted and they have that sixth sense to sort of pursue that and find out if something is going on. And once they have that awareness that something is going on, again, the protocols kick in . . . it has been my experience, in my twenty-plus years of experience with the Bureau of Prisons, that I have not been witness to one case where somebody just said, "You know what, that was nothing." When there's even the slightest sense of it, it kicks in.⁸⁶

In responding to questions from the Panel about the protocols FCI Elkton employs to respond to an allegation of sexual victimization, Mr. Kevin Schwinn, Chief of Intelligence for the Central Office of the BOP, stated that the procedures are similar regardless of whether the alleged assault involves another inmate or a staff member.⁸⁷ When a staff member initially receives a report of sexual victimization, regardless of what form it may take, the notice triggers an institutional

⁸¹ *Id.* 8.

⁸² *Id.*

⁸³ Tr., H. Lappin, 241:19-242:9.

⁸⁴ *Id.*, J. Shartle, 237:2-19.

⁸⁵ *Id.* 237:14-16, 266:2-20.

⁸⁶ *Id.* 237:21-238:14.

⁸⁷ *Id.*, K. Schwinn, 243:2-5.

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

response.⁸⁸ The staff member notifies the operations lieutenant, the chief of correctional services, the local investigator, and the Special Investigative Support office, which then immediately launches an investigation.⁸⁹ Also within minutes of a reported sexual incident, staff members notify the warden.⁹⁰ The institution then reassigns the alleged victim to a safe area while the investigation proceeds.⁹¹ Departing from its past practices and in keeping with the recommendations of the Commission,⁹² the BOP advises wardens to consider thoughtfully the reassignment of alleged victims, to weigh other options other than automatically placing the alleged victim in segregation.⁹³ Staff members collect as much evidence as possible at the scene in accordance with FBI procedures.⁹⁴ The facility sends the alleged victim to the medical unit for an initial evaluation; once that is complete, the warden will authorize the inmate's transfer to a local hospital for the administration of a rape kit.⁹⁵ The facility maintains the rape kit as evidence in the event of future prosecution.⁹⁶

Mr. Lappin noted that BOP investigators are already relying on the Commission's work, using a PREA checklist in the investigative process.⁹⁷ According to Mr. Lappin, having local PREA coordinators in facilities, along with coordinators in regional offices and at the central office, contributes to the BOP's ability to audit the investigative process.⁹⁸

Dr. Paul Clifford, Chief Psychologist at FCI Elkton, stated that following an alleged sexual assault, mental health workers receive notification as soon as possible so that they can make an immediate assessment of the effects of trauma on the alleged victim—this assessment takes place, in accordance with established policy, within twenty-four hours of the alleged incident.⁹⁹ The psychological assessment includes an evaluation of the alleged victim's suicide risk.¹⁰⁰ Psychological services quickly identify the treatment needs of the alleged victim, ranging from immediate care to long-term follow up.¹⁰¹

If an alleged sexual assault comes to the attention of FCI Elkton staff a significant time after the alleged incident, staff members who learn of the allegation still immediately contact psychological services.¹⁰² In dealing with an incident that occurred after a lapse of time, the facility follows the same protocols it does in dealing with an alleged sexual assault that had just

⁸⁸ *Id.* 243:6-8.

⁸⁹ *Id.* 243:10-14.

⁹⁰ *Id.* 251:17.

⁹¹ *Id.* 244:6-7.

⁹² Nat'l Standards, 76 Fed. Reg. at 6282 (§ 115.66).

⁹³ Tr., H. Lappin, 260:15-261:7; *see app. D* (Memorandum from D. Scott Dodrill, Assistant Director, Correctional Program Division (CPD), BOP, to Chief Executive Officers (Oct. 12, 2011) (Inmate Sexual Abuse Follow-up) (citing Memorandum from D. Scott Dodrill, Assistant Director, CPD, BOP, to Chief Executive Officers (Oct. 16, 2009) and Sexual Abusive Behavior Prevention Intervention Program, P5324.06 (Apr. 27, 2005))).

⁹⁴ Tr., K. Schwinn, 244:11-16.

⁹⁵ *Id.* 245:2-7.

⁹⁶ *Id.* 245:8-9.

⁹⁷ *Id.*, H. Lappin, 260:1-6.

⁹⁸ *Id.* 260:7-14.

⁹⁹ *Id.*, P. Clifford, 247:3-19.

¹⁰⁰ *Id.* 247:15.

¹⁰¹ *Id.* 247:16-19.

¹⁰² *Id.*, K. Schwinn, 254:3-17.

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

Warden Brandin testified that based on her prior experience working for almost twenty years in male facilities, she would characterize female correctional institutions as significantly different.¹³⁴ She said that one has to be aware in working with a female population that “everything that they do is emotion-based”¹³⁵ Consequently, Warden Brandin said that it is important to have programming that keeps the in

members to discuss their experience in working at a women's facility, where, according to Warden Brandin, the inmates, in comparison with men, tend to be more emotional, self-involved, and unwilling to let an issue drop.¹⁴⁴ She said that she will often sit down with the new staff members every two weeks to see how they are adjusting to the new environment.¹⁴⁵

Warden Brandin said that she will also often counsel staff members to use the facility's surveillance cameras to their advantage, instructing them to interact with inmates in view of the cameras so as to protect themselves from any possible future allegations of misconduct.¹⁴⁶

One of the distinctive features of Bridgeport, contributing to its low incidence of sexual victimization, is its no-touch policy.¹⁴⁷ Warden Brandin explained that Bridgeport does not allow any form of touching among inmates:

[T]here are no handshakes. There is no hugging. There is no patting on the back. There is no sitting there at the dayroom table with your hand on her knee. It is not acceptable and we approach it [as] a manner of professionalism. You're here to go to school. You're here to meet goals. You're here to meet a certain parole presumptive date. You have a job to do. You do your job. We'll do our job. If you don't do so well in your job, then we will follow through with our job.¹⁴⁸

Warden Brandin said that in one of her quarterly discussions with inmates, the topic was PREA and the prevention of sexual abuse.¹⁴⁹ During the discussion, the inmates agreed that if she as the warden gave them an inch, they would take a mile; so when it comes to touching, having a clear boundary prevents any confusion about what is appropriate behavior.¹⁵⁰ Warden Brandin said, "[I]t starts with a handshake. It starts with a hug. It starts with a hand on the knee, and . . . it progresses into something that could create a violation or is a violation."¹⁵¹

iii. Observations

In reflecting on the testimony and the data response from Bridgeport, as well as the onsite visit, the Panel takes note of five broad issues that may relate to Bridgeport's success in having a low incidence of inmate sexual victimization: (1) the culture of the women's facility, (2) the relatively small size of the institution, (3) the rapport between the warden and her staff, (4) the select population and the effectiveness of incentives, and (5) the challenge of the no-touch policy.

Women's prisons appear to have interpersonal dynamics that are significantly different than male facilities.¹⁵² To their credit, the warden and administration of Bridgeport are mindful of this

¹⁴⁴ *Id.* 314:11-16.

¹⁴⁵ *Id.* 314:17-315:3.

¹⁴⁶ *Id.* 315:4-10.

¹⁴⁷ *Id.* 308:19.

¹⁴⁸ *Id.* 310:4-13.

¹⁴⁹ *Id.* 310:14-21.

¹⁵⁰ *Id.* 310:21-311:3.

¹⁵¹ *Id.* 311:5-9.

¹⁵² *See infra* Part II.A.2.a.iii.(a).

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

difference, which has far-reaching effects, from the training provided to staff to the daily interactions with inmates.

Given Bridgeport's relatively small size, the Panel anticipates that other facilities may dismiss its success as difficult to replicate in prisons that may be ten or more times larger. Without in any way diminishing Bridgeport's achievement—as few other facilities of the same size and security level were able to match its no-incident results, the Panel notes that prison size in itself may be a significant factor in reducing the incidence of inmate sexual victimization. This conclusion is consistent with the Panel's previous report on juvenile justice facilities, in which it found a correlation between small facilities and reduced incidents of sexual victimization.¹⁵³

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

2008, and on January 1, 2009, was 1257.¹⁵⁶ The actual number of inmates housed at Fluvanna on January 1, 2008, was 1190.¹⁵⁷ In calendar year 2008, the total number of inmates who spent any time at Fluvanna was 1568;¹⁵⁸ the average length of stay was 30 months;¹⁵⁹ and the longest stay of any inmate was 309.6 months.¹⁶⁰ On January 1, 2009, the actual number of inmates housed at Fluvanna was 1212.¹⁶¹ In calendar year 2009, the total number of inmates who spent any time at Fluvanna was 1352;¹⁶² the average length of stay was 31.7 months;¹⁶³ and the longest stay of any inmate was 217.6 months.¹⁶⁴

In 2008, the racial and ethnic composition of the total inmate population at Fluvanna was 802 Whites, 750 African Americans, 8 Hispanics, 4 Asians, and 3 unknown.¹⁶⁵ In 2009, the racial and ethnic composition of the total inmate population at Fluvanna was 695 Whites, 644 African Americans, 9 Hispanics, 2 Asians, and 2 unknown.¹⁶⁶

On January 1, 2008, the total number of authorized positions at Fluvanna was 372 (318 filled and 54 vacant), which included 285 security staff (239 filled and 46 vacant) and 87 non-security staff (80 filled and 7 vacant).¹⁶⁷ The actual staffing level on January 1, 2008, was 318 (238 sworn and 80 non-sworn).¹⁶⁸ On January 1, 2009, the total number of authorized positions at Fluvanna was 372 (329 filled and 43 vacant), which included 285 security staff (247 filled and 38 vacant) and 87 non-security staff (83 filled and 4 vacant).¹⁶⁹ The actual staffing level on January 1, 2009, was 329 (246 sworn and 83 non-sworn).¹⁷⁰ On January 1, 2008, and on January 1, 2009, the staff-to-inmate ratio was one to five.¹⁷¹

In calendar years 2008 and 2009, Fluvanna did not designate a PREA coordinator.¹⁷²

In 2008 and 2009, there were no suicides at Fluvanna, but in each year there were three suicide attempts.¹⁷³ There was no evidence to connect the six suicide attempts to sexual victimization.¹⁷⁴

In calendar years 2008 and 2009, there were nine inmate grievances alleging inmate-on-inmate sexual victimization.¹⁷⁵ The charges included sexual assault and rape.¹⁷⁶ Of the nine charges,

¹⁵⁶ Fluvanna Resp. 9(a), 10(a) (on file with the Panel).

¹⁵⁷ *Id.* 9(b).

¹⁵⁸ *Id.* 9(f).

¹⁵⁹ *Id.* 9(g).

¹⁶⁰ *Id.* 9(h).

¹⁶¹ *Id.* 10(b).

¹⁶² *Id.* 10(f).

¹⁶³ *Id.* 10(g).

¹⁶⁴ *Id.* 10(h).

¹⁶⁵ *Id.* 11. Fluvanna did not account for the racial and ethnic background of one inmate.

¹⁶⁶ *Id.* 12.

¹⁶⁷ *Id.* 23(a)-(c).

¹⁶⁸ *Id.* 23(d)-(f).

¹⁶⁹ *Id.* 24(a)-(b).

¹⁷⁰ *Id.* 24(d)-(f).

¹⁷¹ *Id.* 24(d)-(f), 25(a).

¹⁷² *Id.* (noting that the institutional investigator coordinated PREA-related issues in the absence of a designated PREA coordinator).

¹⁷³ *Id.* 13(a)-(b), 15(a)-(b).

¹⁷⁴ *Id.* 14, 16.

five were not sustained; one investigation was inconclusive; one rape charge was sustained, resulting in the perpetrator receiving ten days in isolated confinement and referral to the Commonwealth's Attorney for prosecution; in one charge involving unwanted touching, both inmates received discipline of ten days in isolated confinement; and in one charge against a fellow inmate for making sexual advances, the charge was sustained and the perpetrator received fifteen days of disciplinary segregation.¹⁷⁷

In 2008 and 2009, there were six inmate grievances alleging staff-on-inmate sexual victimization.¹⁷⁸ All of the charges alleged sexual assault.¹⁷⁹ Of the six charges, all but one were not sustained, inconclusive, or unfounded.¹⁸⁰ One grievance resulted in a finding of fraternization between a male staff member and a female inmate, but the more serious charge of carnal knowledge was not sustained.¹⁸¹

ii. Facility's Explanation for Reported High Incidence of Sexual Victimization

In written testimony, Mr. Harold W. Clarke, Director of the VADOC, stated that the reported high incidence of staff-on-inmate sexual victimization that the *BJS Report* identified at Fluvanna should be understood in light of allegations that surfaced in 2007 involving the facility's former chief of security.¹⁸² Ultimately, the chief of security stood trial in 2008 and was convicted of engaging in sexual acts with female offenders at Fluvanna.¹⁸³ Mr. Clarke noted that VADOC investigated these incidents and the perpetrator was disciplined, terminated, and charged under Virginia law.¹⁸⁴ Mr. Clarke observed, "Due to his high position in [Fluvanna's] management, confidence in the leadership and management of the facility was lost. Therefore, when the surveys were completed the offenders based their responses on issues which occurred during 2007."¹⁸⁵

Mr. Clarke conceded that there were a number of factors that led to the former chief of security's sexual misconduct, including the lack of supervision, the distance of the chief of security's office from his supervisor's office, the chief of security's office having an unmonitored entrance, inadequate procedures for tracking the movement of inmates, the lack of strategically located surveillance cameras, the chief of security's work schedule extending beyond business hours, his working behind closed doors, no protocols for male staff working alone with female offenders, a staff who feared retaliation for reporting the sexual misconduct of a supervisor, inadequate

175

training for staff, the dismissal of complaints from offenders, and poor communication at various levels within the organization.¹⁸⁶

Mr. Clarke also testified that the following factors related to offenders may have contributed to the high incidence of inmate-on-inmate sexual victimization that the *BJS Report* identified at Fluvanna:

Lack of knowledge of PREA and the process for reporting incidents,

Fear of retaliation for reporting sexual victimization,

Fear of being placed in administrative segregation during the investigation of a reported incident,

Lack of trust in the staff to handle properly allegations of sexual victimization, and

Fear of the staff's labeling an offender as a consenting participant in a sexual relationship with another inmate.¹⁸⁷

Mr. Clarke also stated that short staffing during the early morning and late evening hours, when most incidents occur, may have contributed to the high incidence of reported inmate-on-inmate sexual victimization at Fluvanna.¹⁸⁸ He asserted that VADOC believes that some consensual sexual relationships among inmates were improperly classified as PREA violations.¹⁸⁹

The Panel notes that in the wake of the sexual scandal at Fluvanna, VADOC took action to address the problem, replacing both the warden, who retired, and the chief of security, who was sent to prison, and appointing a committee in July of 2009 to investigate the facility and make recommendations for improving its management.¹⁹⁰ When the committee ultimately released its report, among other issues, it addressed management styles and practices at Fluvanna and reviewed whether inmate housing assignments were related to sexual orientation.¹⁹¹

The committee found that the chief of security at the time¹⁹² had tried to enhance security measures at the facility, but the committee had concerns with his management style, noting his use of inappropriate language with offenders and low staff morale:

Interviews revealed that the [chief of security] and key administrators were ineffective in their communication of changes to operational procedures. Input

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* 1(b).

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ See *Fluvanna Managerial Review Final Report* (Jan. 4, 2010) (on file with the Panel) [hereinafter *Fluvanna Report*].

¹⁹¹ *Fluvanna Report* 1.

¹⁹²

from impacted staff and others was not obtained before the implementation of changes which has led to low morale of staff, offenders, and volunteers. According to staff . . . [the chief of security's] management practices lack a contemporary participatory style and staff feels uncomfortable in approaching the [chief of security]. There were multiple complaints concerning the [chief of security's] use of inappropriate language in some of his interactions with staff and volunteers.¹⁹³

In testimony before the Panel, Mr. John Jabe, Deputy Director of Operations at VADOC, stated that he doubted the accuracy of the Fluvanna Report as it pertained to the alleged complaints against the chief of security.¹⁹⁴ He sensed that the former warden and her staff did not like the way the new chief of security implemented VADOC policies; consequently, Mr. Jabe believed that the negative comments about the chief of security that appeared in the Fluvanna Report were inaccurate.¹⁹⁵

Based on an article published by the Associated Press claiming that Building 5D at Fluvanna was a "butch wing," where the facility allegedly segregated offenders based on their masculine physical appearance and sexual orientation,¹⁹⁶ the committee investigated housing practices at Fluvanna and concluded that there was no factual evidence to support this news story.¹⁹⁷

Among the recommendations that the committee made were the following:

- Staff should have additional training on working with female offenders;
- Administrators needed training on effective communication and leadership;
- Staff should be consulted before the facility implemented policy changes;
- The administration should develop facility expectations and communicate them to all staffing levels;
- The facility should clarify staff roles in the operation of the facility;
- The administration should apply policies consistently, and
- The facility should implement an equitable system to make special programming available to all offenders.¹⁹⁸

Ms. Wendy Hobbs, the current warden at Fluvanna, who took leadership of the facility in December of 2009,¹⁹⁹ stated that problems at Fluvanna were the result of poor security

¹⁹³ *Id.* 4.

¹⁹⁴ Tr., J. Jabe, 204:10-205:3; *but see infra* notes 251 and 274.

¹⁹⁵ Tr., J. Jabe, 205:7-10, 12.

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

measures.²⁰⁰ When she was the warden at the Virginia Correctional Center for Women in Goochland, Virginia, Warden Hobbs served on the committee that investigated Fluvanna.²⁰¹ Warden Hobbs assured the Panel that the administration at Fluvanna takes incidents of sexual victimization at the facility seriously, investigating any allegations, taking statements from both the alleged victim and alleged perpetrator, and providing medical services as needed.²⁰²

Warden Hobbs said that one of her priorities at Fluvanna is to increase the number of female security staff, which is not as high as she would like.²⁰³ She said that she would like to increase

iii. Observations

**(a) The Distinctive Dynamics of Women's
Prisons**

The Panel invited testimony from Dr. Barbara Owen, Professor of Criminology at the California

Dr. Owen noted female offenders are not all the same, and the reasons for their engaging in sexual activity while in prison vary considerably:

[F]emale inmates are not a homogenous group of passive victims. Some do fall in love with correctional officers, some actively exploit male or female officers who fall in love with them, and some willingly participate in sexual banter. If it is true that female inmates actively seek out sexual relationships with male staff members, it may be the case that such relationships are truly consensual; or it may be that such relationships can be understood as the tactics of the oppressed, a result of sexualized identity and low self image because of childhood sexual abuse, or a result of gender socialization.²²⁵

In any case, Dr. Owen testified that any official reports of sexual victimization of female inmates are certain to be lower than the actual numbers, as the consequences for reporting a sexual assault are too high for both the inmate and the staff member.²²⁶

To improve the safety of women inmates, Dr. Owen asserts that it is important to consider both the individual as well as the place of confinement in analyzing the factors that increase the risk of sexual victimization, noting that “safety and violence have different meanings for female and male inmates.”²²⁷ Dr. Owen suggests that correctional institutions should broaden the definition of safety in considering female inmates to include “physical, psychological, social, moral, and ethical safety.”²²⁸ She writes, “Expanding on these broader components of safety for female offenders directs our attention not only to improving safety in women’s facilities, but also supports successful re-integration and rehabilitation.”²²⁹

In fashioning recommendations to reduce institutional violence, Dr. Owen, referring again to the ecological model, offered suggestions for improvement in three broad categories: individual factors, relationship factors, and community and facility factors.²³⁰

In regard to individual factors, she suggests that correction0003 T2 T[(In f)4(a)-.2(shioni11. TD.7gtr0005 Raes a

boundaries.²³⁴ Correctional facilities should also provide constructive programming for inmates, which may include education on conflict management, the warning signs and components of domestic and intimate-partner violence, the mechanisms to promote personal safety, and the ways to break the cycle of violence.²³⁵

In regard to community and facility factors, Dr. Owen wrote that it is important for correctional institutions to evaluate the level of violence tolerated in the facility, which includes whether the staff sexually harasses inmates, whether the management has a rehabilitative or custodial approach, and whether verbal and nonverbal interactions with female inmates are either respectful or degrading.²³⁶ Dr. Owen wrote that it is important for correctional facilities to have clear policies against verbal, physical, or sexual misconduct.²³⁷ Among other recommendations, she suggested that correctional facilities implement processes for reporting and investigating sexual victimization that protect confidentiality, provide treatment to victims, and refer them to appropriate services.²³⁸ She wrote that prisons should require staff training on “gender-appropriate ways to manage female offenders, with a particular emphasis on respecting female inmates, understanding the role of trauma and victimization as a pathway to prison/jail, sexual harassment, and staff sexual misconduct.”²³⁹ She also noted that staff training should address negative attitudes toward women, especially stereotypes about women in the criminal justice system.²⁴⁰ Finally, Dr. Owen recommended that correctional institutions develop committees that include the participation of female inmates, as well as the custody and treatment staffs, to “implement innovative ideas to reduce institutional violence.”²⁴¹

In elaborating on her written testimony, Dr. Owen observed that verbal harassment in prison is a key indicator of the level of violence a correctional institution may tolerate:

Our findings show that both inmate-inmate victimization and staff sexual
mi

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

the roles of predator and victim are often interchangeable for women on an individual level.²⁴⁴

Dr. Owen also said that the term “manipulation” is an ill-fitting term in describing the relationship between women offenders and staff members; she said that this language requiring

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

correctional staff use, along with hand and foot shackles, when moving inmates located in segregated housing.²⁵⁶

During the hearing, in response to the Panel's questions about the necessity of using the tether strap in dealing with inmates in segregation, especially in balancing its usefulness relative to the negative message it communicates to inmates, Mr. Jabe stated that VADOC will reevaluate its policy on the use of the tether strap.²⁵⁷

During the onsite visit, the Panel learned a

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

Fluvanna in November of 2007, where she spent the last three years of her sentence before her release in July of 2010.²⁶⁷ Ms. Andrews testified as a survivor of an inmate-on-inmate sexual assault at another VADOC facility, but she nonetheless provided first-hand observations about the culture of Fluvanna. Ms. Andrews testified that the sexual encounters between female inmates and male correctional staff were not violent; instead they were often the result of an agreement between the parties:

I've never heard or seen a violent sexual exchange between officers and inmates because it is more of an exchange of services between the two. Women would allow these officers to have sexual relations with them because they were lonely, wanted a better job, wanted more privileges, wanted less consequences for infractions or just for something to do.²⁶⁸

Ms. Andrews said that incarcerated women are especially vulnerable to staff members who show an interest in them, as the women come to pr

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

scandal at the prison involving the former chief of security, and to create a “a culture of

appearance. Given these allegations, it may make sense to invest in staff training on the obligation to respect inmates, regardless of sexual orientation or physical appearance. The staff training might include a segment on the importance of appropriate professional language in creating a positive institutional culture. Consistently speaking to inmates with respect plays a key role in creating a prison culture that does not tolerate any form of sexual victimization. In practice, implementing zero tolerance for inmate sexual victimization might begin with insisting on zero tolerance for verbal harassment of inmates in any form. The Panel encourages Warden Hobbs to strengthen staff training programs, particularly for male staff, on the dynamics of working in a female facility and on the importance of maintaining appropriate professional boundaries.

b. Allred

i. Facility Description

Allred is a maximum-security prison for men operated by the TDCJ, in Wichita Falls, Texas. On January 1, 2008, and January 1, 2009, the facility's capacity was 3682; on January 1, 2008, the actual inmate population was 3646; and on January 1, 2009, the actual inmate population was 3636.²⁹⁹ In 2008, 5866 inmates spent any time at Allred; the average length of stay was 1302

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

investigated for improper conduct involving an inmate and resigned prior to receiving discipline.³¹⁰

them.³²⁵ The investigative reports indicated that when the charge was sustained against a female staff member, she was either escorted from the facility or allowed to resign without facing discipline or criminal prosecution.³²⁶

In reviewing the complete investigative files from Allred, there were instances in which the Panel could not determine from the produced documents what happened either to the complainant or the alleged perpetrator.³²⁷ On reviewing the investigative files, the Panel noted that there were a significant number of complainants who self-identified as homosexual.³²⁸

ii. Facility's Explanation for Reported High Incidence of Sexual Victimization

Neither the written nor oral testimony to the Panel from representatives from the TDCJ provided a sufficient explanation for the sustained high level of sexual victimization at Allred in 2008 and 2009. In responding to the Panel's Data Request,³²⁹ the TDCJ stated that the high level of reported sexual victimization at Allred may be related to the classification of inmates at the facility, but the TDCJ did not explain how inmate classification led to the high prevalence of sexual victimization:

Due to Allred's maximum security profile, it houses various custody levels ranging from general population offenders that are housed in accordance with the agency's Classification Plan to various levels of administrative segregation. Additionally, the unit houses a significant number of *Safekeeping* offenders. *Safekeeping* is a classification status utilized for housing offenders who have been identified as vulnerable and in some cases have been victimized in the past. These custody levels are contributing factors in the allegations of sexual victimization.³³⁰

Mr. Brad Livingston, Executive Director, TDCJ, explained in his written testimony that the Texas Board of Criminal Justice (TBCJ), comprised of nine members appointed by the governor

³²⁵ *Id.* (Incidents 1-3, 21-25); *see supra* note 311.

³²⁶ App. C (Allred Staff-on-Inmate Assaults) (Incidents 1-3, 21-25).

³²⁷ *Id.* (Incidents 27, 28); *see also* Tr., R. Taler, 427:1-3 ("I can't even tell from the documentation any additional actions taken against the offender.").

³²⁸ Based on the Panel's review of Allred's investigative files of inmate complaints alleging inmate-on-inmate sexual victimization, the Panel found that a significant number of the complainants self-identified as being other than heterosexual. In 2008, out of thirty-four inmate complaints alleging inmate-on-inmate sexual victimization, fourteen complainants (41%) self-identified as other than heterosexual. In 2009, out of thirty-two inmate complaints alleging inmate-on-inmate sexual victimization, seventeen complainants (53%) self-identified as being other than heterosexual.

³²⁹ Question forty-six in the Data Request that the Panel sent to the TDCJ is "What are the key factors that led to the high incidence of sexual victimization at the Allred Unit in calendar years 2008 and 2009?" *See* app. A (Letter and Data Request from Michael L. Alston, Attorney Advisor, Panel, to Brad Livingston, Executive Director, TDCJ (Feb. 2, 2011)).

³³⁰ Allred Resp. 46 (*italics in original*).

of Texas, is the policy-making and oversight body for the TDCJ.³³¹ The OIG, the Internal Audit Division, the PREA Ombudsman, and the Special Prosecution Unit are independent agencies that report directly to the TBCJ.³³² Mr. Livingston noted that prior to the enactment of PREA, the Texas Legislature mandated that TDCJ implement a safe prisons program to address offender assault.³³³ Moreover, in 2007, the Texas Legislature codified into law the TDCJ's zero-tolerance policy toward sexual assault in Texas prisons and created the position of PREA Ombudsman within the TDCJ.³³⁴ Mr. Livingston stated, "From the time an offender enters our system and an individual accepts employment with our agency, we communicate our expectations for behavior and our mechanisms for reporting behavior in violation of our standards of conduct."³³⁵ He said that the offender population receives orientation and a handbook that addresses the issue of sexual assault, and during intake and prior to permanent assignment to a unit, the Safe Prisons Program Coordinator interviews each inmate and provides information on the TDCJ Safe Prisons Program.³³⁶ The Safe Prisons Program is "a coordinated effort to integrate education, training, classification, security, monitoring medical and investigative functions in a manner which promotes offender safety."³³⁷ The TDCJ displays posters on its zero-tolerance policy in prominent locations in each unit.³³⁸ TDCJ employees also receive written standards of conduct and an ethics policy, and they must acknowledge receipt of these documents in writing.³³⁹ All employees receive a toll-free telephone number for the OIG to report any criminal violations, including sexual assault.³⁴⁰ Mr. Livingston noted that avenues for reporting sexual victimization include grievance procedures, the agency's ombudsman, the PREA Ombudsman, the administrative monitor for the use of force, and direct reports to the OIG.³⁴¹ Mr. Livingston noted that none of these administrative functions report to the division responsible for prison operations.³⁴²

iii. Observations

Mr. Wayne Krause, the legal director of the Texas Civil Rights Project (TCRP), provided testimony to the Panel on the culture at Allred.³⁴³ He stated that the TCRP has an active prisoner

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

inmate.³⁴⁵ Producing a redacted sworn statement from John, who is still housed at TDCJ, Mr. Krause stated that on October 5, 2008, a correctional officer came to John's cell and forced him to perform oral sex.³⁴⁶ Mr. Krause contended that there were two good reasons to believe John's version of this event: first, there is an official report that shows that the semen sample that John produced matched the DNA of the accused correctional officer; and second, the correctional officer confessed to prison authorities

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

statutes, which in most states extend the reporting period to five years or more after the incident.³⁵⁸ Mr. Krause also commented on the lack of services for victims of sexual assault at Allred and a culture that follows rules at the expense of people.³⁵⁹

Mr. Krause offered four recommendations for improving Allred: (1) providing consistent, effective education on preventing and responding to sexual victimization for both correctional staff and inmates; (2) having correctional officials take every complaint of sexual victimization seriously; (3) collaborating with organizations outside the prison to provide services to inmate victims; and (4) expanding the staff of TDCJ’s PREA Ombudsman (currently there is just one ombudsman and one assistant) and improving communication between the PREA Ombudsman’s Office and inmates who have complained of sexual victimization, especially when it comes to informing them of the disposition of the charges made against sexual predators.³⁶⁰

In reflecting on Mr. Krause’s testimony regarding the alleged treatment of both John and Jane, the Panel noted that during its onsite visit of Allred, staff members referred to homosexual inmates as “queens.”³⁶¹

At the request of the Panel, the BJS prepared a short summary comparing the incidence of sexual victimization at Allred between its last appearance before the Panel, based on 2007 data, and the data collected in the most recent *BJS Report*. The summary, Trends in Sexual Victimization at Allred, appears in the following chart.³⁶²

Trends in Sexual Victimization at Allred	2007	2008-09
Total	9.9%	10.9%
Inmate-on-Inmate	4.8	7.6
Nonconsensual Sexual Acts	4.0	2.5
Staff Sexual Misconduct	6.7	5.6
Nonconsensual Sexual Acts	4.9	3.6
Nonconsensual Sexual Acts	8.0	6.5
Abusive Sexual Contacts Only	1.9	4.4
Physically Forced		
Inmate-on-Inmate	3.6	6.8
Staff	3.2	3.2
Pressured		
Inmate-on-Inmate	2.8	3.9
Staff	3.2	3.7
No Force/Pressure	2.3	3.2
Injured		
Inmate-on-Inmate	3.3	1.9
Staff	0.9	0.6

Based on the chart that the BJS prepared, the Panel expressed concern that the data indicated that abusive sexual contact at Allred more than doubled since the *BJS Report 2007*.³⁶³ Mr. Livingston said that the data from BJS significantly differs from the number of reported incidents that the TDCJ has.³⁶⁴ He said that he could not offer an explanation for why the incidence of sexual victimization at Allred increased, nor could he make sense of the discrepancy between the BJS' data and the TDCJ's data on the reported incidence of sexual victimization at Allred, as TDCJ's numbers are roughly ten times less than the numbers reported in the *BJS Report*.³⁶⁵ Mr. Livingston stated that contrary to the trend suggested by the BJS data in the above chart, the TDCJ as a whole actually had a decrease in the incidence of sexual victimization from 261 in 2007 to 168 in 2009.³⁶⁶ Mr. Livingston testified that during the same three-year period, Allred also experienced a slight decrease in the incidence of sexual victimization.³⁶⁷ Mr. Livingston noted that Allred has an inmate population with many of the characteristics that the *BJS Report* identified as being overrepresented among inmates who have experienced sexual victimization, including inmates convicted of violent offenses, inmates with mental illness, inmates who identify as being other than heterosexual, and inmates in safekeeping status.³⁶⁸

In reviewing reports of both inmate-on-inmate sexual victimization and staff-on-inmate sexual victimization that Allred provided to the Panel, the Panel chose one report involving the investigation of an inmate's sexual assault on a cellmate to examine more closely with the assistance of representatives of the TDCJ.³⁶⁹ The Panel noted that the record showed that the perpetrator had a history of being disciplined repeatedly for sexual misconduct,³⁷⁰ and the facility had identified the perpetrator as a sexual predator.³⁷¹ In reviewing the report, TDCJ officials noted that some of the previous disciplinary actions against the perpetrator were most likely based on his masturbating in front of female staff members, but the inmate's disciplinary record attached to the report lacked sufficient detail to determine whether the other incidents prompting discipline for sexual misconduct were limited to masturbation or involved sexual activity with other inmates.³⁷² In this instance, the investigative report noted that the perpetrator admitted to the sexual assault on his cellmate.³⁷³ Despite this admission, the investigator checked a box on the standard investigative report form, indicating that the investigator was "Unable to Substantiate Subject's Allegation."³⁷⁴

After reviewing the investigative report, Mr. Eddie Williams, Senior Warden of Allred, said that he was unable to explain the investigator's action.³⁷⁵ The report showed that the victim was placed in transient housing pending the outcome of the investigation,³⁷⁶ but the report was silent

³⁶³ Tr., G. Christensen, 369:14-17.

³⁶⁴ *Id.*, B. Livingston, 370:3-12.

³⁶⁵ *Id.* 372:7-12, 373:2-4; *see also id.*, R. Thaler, 374:22-375:3.

³⁶⁶ *Id.*, B. Livingston, 377:18-22.

³⁶⁷ *Id.* 378:4-5.

³⁶⁸ *Id.* 380:5-21, 381:4-13.

³⁶⁹ *Id.*, G. Christensen, 410:1-4.

³⁷⁰ *Id.*, G. Christensen & E. Williams, 414:13-415:5.

³⁷¹ *Id.*, E. Williams, 416:18-19.

³⁷² *Id.* 414:22, 417:7-8, 420:7; *id.*, J. Moriarty, 423:9-14.

³⁷³ *Id.*, E. Williams, 418:22-419:2.

³⁷⁴ *Id.* 419:19-21.

³⁷⁵ *Id.*

³⁷⁶ *Id.* 415:17-21.

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

as to whether Allred took any actions against the alleged perpetrator.³⁷⁷ Sgt. Lisa James, Safe

The Panel strongly recommends that TDCJ and Allred develop a comprehensive management plan that identifies the factors contributing to the high incidence of sexual victimization at Allred, including measurable goals that an outside observer can track to ensure demonstrable progress. The plan should include an evaluation of Allred's compliance with directives, policies, and common practices that TDCJ has promulgated to eliminate sexual misconduct.³⁸⁹ The Panel also urges TDCJ and Allred to review administrative investigations into allegations of sexual abuse, which might involve having TDCJ or OIG conduct quarterly reviews of all investigations, strengthening the training for investigative staff, improving documentation of investigative outcomes, and ensuring better coordination of administrative and OIG investigations. The Panel also encourages the prosecutor's office to review its stated practice of not relying on evidence gathered during administrative investigations. The TDCJ should also review the services it provides to inmates who have been the target of sexual abuse. In light of the high number of grievances from self-identified homosexual inmates at Allred, the Panel encourages the Allred administrators to provide training to staff on the vulnerability of homosexual inmates and to take steps to protect them from sexual assault. Given the significant number of female staff members who were forced to resign from Allred in the wake of investigations finding that they established inappropriate relationships with male inmates, Allred should provide staff training, especially for newly hired female staff, on how to maintain proper professional boundaries. The training should include information for both staff members and supervisors on how to identify early warning signs that a staff member's professional relationship with an inmate may be headed in the wrong direction.

c. Elmira

i. Facility Description

Elmira, located in Upstate New York, is a maximum-security prison for men. On January 1, 2008, and on January 1, 2009, the full rated capacity at Elmira was 1680; in addition there were fifty-four beds in the Special Housing Unit (SHU) and thirty-four beds in the infirmary.³⁹⁰ The actual number of inmates on January 1, 2008, was 1718 in the general population, 51 in the SHU, 15 inmates in the infirmary, and 16 inmates out of the count, making a total of 1800 inmates.³⁹¹ The total number of inmates who spent any time at Elmira in 2008 was 9464.³⁹² In 2008, the average length of stay for an inmate was 161 days; the longest length of stay was 6463 days.³⁹³ The actual number of inmates at Elmira on January 1, 2009, was 1750 in the general population, 54 in the SHU, 17 in the infirmary, and 11 out of the count, making a total of 1832 inmates.³⁹⁴ The total number of inmates who spent any time at Elmira in 2009 was 9396.³⁹⁵ In 2009, the average length of stay for an inmate was 168 days; the longest length of stay was 6776 days.³⁹⁶

³⁸⁹ *S18.u5Tm18.u5Tm3c*

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

In 2008, among the 9464 inmates who spent any time at Elmira, the racial and ethnic composition was as follows: 3260 Whites, 4782 African Americans, 1249 Hispanics, 18 Asians, 95 Alaska Natives or American Indians, 40 others, and 20 unknown.³⁹⁷

In 2009, among the 9396 inmates who spent any time at Elmira, the racial and ethnic composition was as follows: 3384 Whites, 4612 African Americans, 1226 Hispanics, 15 Asians, 100 Alaska Natives or American Indians, 53 others, and 6 unknown.³⁹⁸ In 2008 and 2009, Elmira did not collect inmate data either for the category of Native Hawaiian or Other Pacific Islander or for the category of Two or More Races.³⁹⁹

At Elmira in 2008, one inmate committed suicide, and ten inmates attempted suicide.⁴⁰⁰ The suicide and attempted suicides in 2008 were not related to sexual victimization.⁴⁰¹ In 2009, two inmates committed suicide, and eleven attempted suicide.⁴⁰² One of the inmates who attempted suicide in 2009 had alleged that he was the victim of inmate-on-inmate sexual abuse about three months earlier at another correctional facility, but the charge was not substantiated and the inmate had a well-documented history of mental illness.⁴⁰³ There were no homicides at Elmira in 2008 and 2009, and Elmira does not gather data on attempted homicides.⁴⁰⁴

On January 1, 2008, there were 727 staff positions at Elmira at full capacity (523 sworn and 204 non-sworn).⁴⁰⁵ On January 1, 2008, however, there were 232 sworn staff members and twenty-six non-sworn staff members actually present.⁴⁰⁶ DOCCS does not require a minimum mandatory number of daily staff at each of its facilities; rather it employs a “plot-plan approach” to determine the staffing pattern.⁴⁰⁷ In 2008, the plot-plan for Elmira entailed 266 security and sixteen non-uniform positions.⁴⁰⁸

On January 1, 2009, Elmira at full capacity had 741 staff positions (544 sworn and 197 non-sworn).⁴⁰⁹ On January 1, 2009, there were, however, 235 sworn staff and nineteen non-sworn staff actually present.⁴¹⁰ In 2009 the staffing plot-plan for Elmira entailed 269 security and sixteen non-uniform positions.⁴¹¹

³⁹⁷ *Id.* 11(a)-(g).

³⁹⁸ *Id.* 12(a)-(g).

³⁹⁹ *Id.* 11(g), 12(g).

⁴⁰⁰ *Id.* 13(a)-(b).

⁴⁰¹ *Id.* 14.

⁴⁰² *Id.* 15(a)-(b).

⁴⁰³ *Id.* 16.

⁴⁰⁴ *Id.* 13(c)-(d), 14(c)-(d).

⁴⁰⁵ *Id.* 23(a)-(c).

⁴⁰⁶ *Id.* 23(e)(i), (f)(i). These numbers refer to individuals and do not account for staff members who may have worked more than one shift.

⁴⁰⁷ *Id.* 23(g).

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.* 24(a)-(c).

⁴¹⁰ *Id.* 24(e)(i), (f)(i). These numbers refer to individuals and do not account for staff members who may have worked more than one shift.

⁴¹¹ *Id.* 24(g).

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

On January 1, 2008, and on January 1, 2009, the ratio of uniformed staff to inmates was one to 3.49.⁴¹²

In 2008 and 2009, Elmira did not have a PREA coordinator.⁴¹³

For the period under review, calendar years 2008 and 2009, there were four investigations into inmate-on-inmate charges of sexual assault at Elmira.⁴¹⁴ In each case, the charge was not sustained.⁴¹⁵ During the same period, there were twenty-two investigations into staff sexual misconduct at Elmira.⁴¹⁶ In all but one of these cases the charges were not substantiated.⁴¹⁷ In one instance, the investigation substantiated a charge of unwanted touching against a contract phlebotomist; Elmira referred the matter for prosecution, but at trial the accused was found not guilty.⁴¹⁸

In reviewing the complaint files that Elmira produced, the Panel found them unorganized, incomplete, and difficult to follow, hindering an independent review of the facility's complaint process.

ii. Facility Explanation for Reported High Incidence of Sexual Victimization

After reviewing the data in the *BJS Report* showing a high incidence of staff-on-inmate sexual victimization at Elmira, Brian Fischer, Commissioner of DOCCS, made two observations: (1) the results of the recent BJS survey differ significantly from a comparable BJS survey of Elmira in 2007 that showed a significantly lower rate of

incidence of staff-on-inmate sexual victimization, whereas those same offenders considered pat frisks a form of sexual assault:

Anecdotally, when asked about the results of the [*BJS Report*], offenders housed at Elmira expressed shock that their facility would be rated as a facility with high incidence of staff-on-inmate sexual abuse. They reported never having experienced any such abuse, nor even knowing of any staff-on-inmate sexual contact at the facility. What is relevant is that a number of these same offenders, when asked about pat frisks, responded that they felt they were being conducted inappropriately by a small number of employees. Those offenders stated that they consider a thorough pat frisk to constitute a sexual assault. We believe that the perception that a good pat frisk constitutes a sexual assault is the major fact influencing the results of the [*BJS Report*].⁴²³

iii. Observations

At the request of the Panel, two experts provided testimony and sworn, written statements on the conditions of confinement at Elmira: Mr. Jack Beck, Director of the Prison Visiting Project (PVP) for the Correctional Association (CA) of New York, and Ms. Betsy Hutchings, Managing Attorney of the Ithaca Office of Prisoners' Legal Services (PLS) of New York.

In his sworn, written statement, Mr. Beck explained that the New York State Legislature created the CA to inspect prisons operated by DOCCS and then report its findings to the Legislature.⁴²⁴ "The CA uses this unique mandate to advocate for improved prison conditions and to issue comprehensive reports to policymakers and the public."⁴²⁵ The CA's PVP conducts onsite assessments of DOCCS' sixty-two male facilities, visiting six to eleven facilities each year.⁴²⁶ In the past six years, the PVP has gathered extensive data from the prison population in DOCCS, surveying inmates on a variety of issues, including general prison conditions, substance abuse and other treatment programs, medical health services, disciplinary confinement, reentry programs, and inmates' experience with prison violence and staff abuse.⁴²⁷

Mr. Beck stated that the PVP's survey of Elmira in March of 2010 is consistent with the finding in the *BJS Report* of elevated levels of staff sexual misconduct at the facility:⁴²⁸

Eleven percent of the 176 Elmira general population inmates who responded to our survey reported that they frequently or very frequently hear about staff sexual abuse occurring in the prison, suggesting that sexual abuse is more prevalent at Elmira than at approximately two-thirds of the state prisons we have visited. Similarly, 11% of Elmira survey participants said that staff sexual abuse was

⁴²³ *Id.*

⁴²⁴ Beck Test. 2 (Apr. 27, 2011), available at http://www.ojp.usdoj.gov/reviewpanel/pdfs_apr11/testimony_beck.pdf. Mr. Beck's testimony also appears in the Transcript of Record. See

common in the prison, a rate that is higher than the response from survey participants at approximately two-thirds of the CA-visited prisons.⁴²⁹

Mr. Beck stated that CA also analyzed complaints of sexual abuse at Elmira and found that in the three-year period from 2008 to 2010, Elmira averaged seventeen complaints of staff sexual abuse per year per 1000 inmates, a rate five times higher than the median rate at all DOCCS facilities.⁴³⁰ The CA also found that even though inmates at Elmira did not express “strongly negative views of the prison’s staff,” the survey found that the “rate of Elmira inmates’ grievances about staff conduct for the period 2007-09 was 67% higher than the median rate for all state prisons.”⁴³¹

Addressing the DOCCS’ contention that the high rate of reported staff sexual misconduct at Elmira in the *BJS Report* may be attributable to inmates’ dissatisfaction with thorough but proper pat frisks, Mr. Beck acknowledged that aggressive pat frisks may be “highly charged encounters” that some inmates perceive to be “sexually offensive,” but he cautioned that the “persistence of inmates’ complaints of aggressive pat-frisking procedures . . . should not be use[d] to dismiss or minimize the existence of other staff conduct that involves sexual abuse.”⁴³² Moreover, Mr. Beck testified that based on the data CA collected from Elmira in 2010, aggressive pat-frisk procedures may account for some of the inmates’ sexual misconduct complaints against staff; however, inmate discomfort with aggressive pat frisks does not account for the reported high levels of staff sexual misconduct at the prison:

The CA 2010 survey of Elmira inmates specifically asked whether the survey respondent experienced abus[ive] pat frisks; how frequently the individual heard about abusive pat frisks of others at the prison; and how common such activity was in the prison. Elmira survey participants’ responses support the conclusion that abusive pat frisks occurred at Elmira at rates that were about average for all CA-visited prisons. A review of inmates’ comments included in the survey responses did not reveal any particular expression of heightened concern about sexually abus[ive] pat frisks compared to other prisons we have visited.⁴³³

Mr. Beck said that it would be difficult to assess all of the factors at Elmira that may contribute to staff sexual abuse, but based on previous conversations with inmates and the CA’s recent visit to the facility, he identified three causes of concern.⁴³⁴ First, he asserted that Elmira’s physical plant is not conducive to safety.⁴³⁵ Mr. Beck observed that cells in housing areas run along long tiers, making it difficult for inmates to view activity outside their cells.⁴³⁶ In addition, the facility has few video cameras, allowing staff members, who routinely escort inmates, to isolate them from the observation of other inmates.⁴³⁷ Second, Mr. Beck noted that an analysis of incident reports suggests that “violence is a significant issue at the prison, both between inmates and staff

⁴²⁹ *Id.* 3-4 (citation omitted).

⁴³⁰ *Id.* 4.

⁴³¹ *Id.*

⁴³² *Id.* 5.

⁴³³ *Id.* (citation omitted).

⁴³⁴ *Id.* 6.

⁴³⁵ *Id.*

⁴³⁶ *Id.*

⁴³⁷ *Id.*

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

and among inmates.”⁴³⁸ Mr. Beck observed that there were a large number of inmate grievances at Elmira alleging staff misconduct, which may include any allegations of mistreatment by staff; the CA found a high correlation between allegations of staff misconduct and sexual abuse.⁴³⁹ According to the CA, “[t]he rate of such grievances was substantially higher for Elmira than at most other state prisons.”⁴⁴⁰ Finally, Mr. Beck stated that Elmira inmates are particularly vulnerable during the work shift from 3:00 pm

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

Finally, Mr. Beck identified the DOCCS' low rate

also been sexually assaulted during the alleged excessive use of force, but he was afraid to include the sexual misconduct claim in his grievance “out of ‘personal pride’ and because he thought he would not be believed and would suffer retaliation.”⁴⁶⁴ Ms. Hutchings testified that after speaking to the PLS attorney, the inmate felt sufficiently safe to amend his grievance to include the sexual assault charge.⁴⁶⁵ After investigating the inmate’s grievance and dismissing it, investigators instituted charges against the inmate, claiming that he lied based on the inconsistencies in his grievances and the lack of medical evidence to prove his claim.⁴⁶⁶ At the subsequent disciplinary hearing, despite the inmate’s explanation that he did not include the sexual assault charge in the initial grievance because he feared retaliation and despite his citing another DOCCS written policy that prohibits reprisal against an inmate who reports staff sexual misconduct (and despite contesting the investigators’ understanding of the medical reports), the hearing officer found the inmate guilty and imposed a penalty of nine months in isolated confinement.⁴⁶⁷ Ms. Hutchings stated that on appeal the Director of Inmate Disciplinary Programs affirmed the determination of guilt.⁴⁶⁸ Ultimately the PLS contacted the Commissioner of DOCCS on the inmate’s behalf and obtained a reversal of the decision, but only after the inmate had spent four months confined to the SHU.⁴⁶⁹

Ms. Hutchings stated that the details of this case study are important because it shows that the very people entrusted with protecting inmates from reprisal failed to protect an inmate when he made a charge of sexual misconduct against a staff member.⁴⁷⁰ Significantly, Ms. Hutchings noted that the inmate’s initial fears about filing a sexual-misconduct grievance against a staff member were justified; she contends that other inmates will cite his experience to confirm their belief that reporting incidents of staff sexual misconduct results in retaliation.⁴⁷¹

Similar to Mr. Krause’s concerns with the limited timeframe for filing grievances with TDCJ, Ms. Hutchings criticized the grievance procedures at DOCCS because she believes there is insufficient time to make claims of staff sexual misconduct.⁴⁷² She cited a twenty-one day deadline for filing a grievance, which may be extended to forty-five days for good cause.⁴⁷³ She contended that these time limits do not sufficiently take into account the reluctance that many inmates must overcome to file a sexual misconduct grievance against a staff member.⁴⁷⁴

Ms. Hutchings stated that based on her interviews with civilian victim advocates, who come to local hospitals to assist inmates who are victims of sexual assault,

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

inmates from speaking about staff perpetrators because they feared retaliation from the security staff.⁴⁷⁶

Ms. Hutchings also dismissed the assertion that aggressive pat frisks could account for the high level of reported staff sexual misconduct at Elmira. She wrote, “The notion that inmate reports of staff-on-inmate sexual misconduct during pat frisks is based on the inmates’ misunderstanding of invasiveness of a properly conducted pat frisk is misguided.”⁴⁷⁷ She said that an otherwise proper pat frisk can become improper when it includes sexual taunts, when it is “unduly rough, or when it involves unnecessary touching.”^{478 479}

Ms. Hutchings offered five recommendations to reduce sexual victimization in DOCCS

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

involved in all aspects of an investigation into inmate sexual victimization are aware of their roles and responsibilities.

DOCCS may also want to reconsid

needs of women inmates.⁴⁸⁸ In creating prison cultures that protect women from sexual abuse, it is important to recognize that self-esteem is a significant criminogenic factor for female offenders.

c. Understanding the Importance of Professional Language in Establishing a Safe Environment

The importance of language in creating an institutional culture is an issue that the Panel heard previously in its hearings on juvenile justice facilities;⁴⁸⁹ so it is not surprising that the Panel received corroborative testimony at its prison hearings that the language that correctional officers use in referring to inmates under their supervision, particularly female inmates, serves as an indicator of whether an institution is committed to creating an environment that has zero tolerance for sexual victimization of inmates.⁴⁹⁰ In prisons where inmates must bear verbal harassment from the staff, the question arises as to whether other forms of mistreatment are tolerated in the facility, including sexual abuse. This question is particularly significant in light of the testimony the Panel heard from Fluvanna, which may be a case study in the linkage between the alleged demeaning terms that the staff used to refer to the women in custody and the reported high incidence of both inmate-on-inmate and staff-on-inmate sexual victimization.⁴⁹¹

d. Recognizing the Vulnerability of Non-Heterosexual Inmates and Their Need for Proper Treatment

Given that inmates who identify as being other than heterosexual are more likely to be targets of sexual abuse while in custody,⁴⁹² the way a prison treats non-heterosexual inmates may also be a marker that indicates its commitment to preventing sexual victimization. The experience at Fluvanna may again be instructive. If it is true, as alleged, that Fluvanna segregated lesbians and masculine-appearing women into separate housing units and it also allowed its staff to refer to these women in demeaning ways, then one would expect to find, as the *BJS Report* did, a facility with a high rate of reported sexual victimization.⁴⁹³

A similar dynamic may also have been work at Allred in the context of responding to and investigating grievances alleging sexual victimization from homosexual inmates, whom staff referred to as “queens.” As mentioned previously, the Panel noted in its review of sample investigative files that a significant number of complainants self-identified as homosexual. Given Allred’s history of being a prison with a high rate of sexual victimization while having no records substantiating sexual abuse—other than inappropriate relationships between female staff members and male inmates, a question remains as to whether complaints from homosexual inmates are treated as seriously as they deserve.⁴⁹⁴

⁴⁸⁸ Owen Test. 3.

⁴⁸⁹ *Juvenile Justice Report* 6 (citing Transcript of Record: Panel Hearings on Sexual Victimization in Juvenile Correctional Facilities, T. Decker, 54:10-15 (June 3-4, 2010), available at http://www.ojp.usdoj.gov/reviewpanel/pdfs_june10/transcript_060410.pdf).

⁴⁹⁰ Tr., B. Owen, 92:16-93:4.

⁴⁹¹ *BJS Report* 8 tbl.2, 9 tbl.3.

⁴⁹² *Id.* 14.

⁴⁹³ *Id.* 8 tbl.2.

⁴⁹⁴ National studies have found that a significant number of correctional officers believe that homosexual inmates should not be protected from rape or that if homosexual inmates are raped, they got what they deserved. See

When inmates lose confidence in the grievance process and the resultant investigations, victims of sexual abuse are unlikely to come forward.

f. Providing Effective Victim Services

The services a prison provides to an inmate after a sexual assault demonstrate how seriously it takes the issue of sexual victimization. The failure to provide comprehensive victim services to an inmate alleging sexual abuse devalues the significance not only of the claim but also of the individual making the claim.

Institutions that are relatively isolated from outside services may tend to have closed environments that invite deviant behavior.⁴⁹⁵ When outside victim advocates are not available or when their interactions with victims are not confidential, inmates may be less inclined to take advantage of the support they need or report staff sexual misconduct.

There is a need for correctional institutions to collaborate with victim service providers. In many states, victim advocates and, in particular, statewide sexual assault coalitions and rape crisis centers seek to partner with correctional agencies in both preventing and responding to sexual victimization.

g. Equipping Staff to Respond Effectively to Inmate Sexual Victimization

The Panel noted that institutions that either lacked a PREA coordinator or had an ineffective one risked having a higher incidence of sexual abuse.

Many of the wardens who appeared at the hearings stressed the importance of providing their staffs with appropriate training to deal with the particular challenges their facilities encounter in dealing with sexual victimization. Notably, at Bridgeport and Fluvanna, the wardens stressed the need to provide training to staff in operating a female facility and understanding the importance of maintaining professional boundaries. The need for this training is no less needed at male facilities such as Allred, where female staff members entered into inappropriate relationships with male inmates. With each staff training program, however, it is important to identify the desired outcome and then measure the staff's progress toward achieving it.

4. Topics for Further Study

The Panel encourages academics and practitioners to conduct additional research on the following topics.

a. Why are Homosexuality and Prior Victimization Significant Indicators of Inmate Victims of Sexual Abuse?

The Panel is interested in understanding more precisely the dynamics that make homosexual inmates and inmates with a history of sexual victimization prior to coming to prison particularly vulnerable to sexual aggression. There are a number of questions related to this issue. If having a history of victimization attracts predators, how do inmates who have internalized this identity

⁴⁹⁵ See Nat'l Standards, 76 Fed. Reg. at 6282 (§ 115.53).

convey this message? Are there effective tools that prior victims can access to protect themselves in prison? Do negative attitudes of prison staff toward homosexual inmates play a significant role in making the inmates particularly vulnerable to sexual assaults? If so, is there effective training that engages these attitudes in a constructive way to create an environment that protects homosexual inmates?

b. What are the Distinctive Needs of Female Facilities in Preventing Sexual Victimization?

The Panel is aware of the paucity of resources that are available to female correctional facilities when it comes to serving the particular needs of female offenders. The Panel encourages additional research into ways of creating healthy female prisons based on data that show the relationship between institutional practices (e.g., policies on touching between inmates) and the incidence of sexual victimization. The Panel also encourages the development of training tools especially tailored to helping staff who work in female facilities in addressing such issues as maintaining proper professional boundaries and creating an environment free of verbal harassment.

B. Jails

1. Low-Incidence Jails

a. Hinds County

i. Facility Description

Located in Raymond, Mississippi, Hinds County, which opened in 2009, is a joint county and state facility for men, which housed on August 9, 2011, 156 state inmates convicted of felonies and fifty-six county inmates convicted of misdemeanors.⁴⁹⁶

The state inmates and the jail inmates occupy separate sections or “zones” of the jail, and they do not interact with each other.⁴⁹⁷ Each zone can house up to 200 inmates at a time.⁴⁹⁸ The facility consists of open bays, which afford correctional officers a clear line of sight to observe the inmates at all times.⁴⁹⁹ All of the inmates are convicted on nonviolent charges; some are at the facility for a few months, whereas others are at the facility for as long as five to eight years.⁵⁰⁰ None of the inmates has a sex-crime conviction, and state inmates have an incentive to abide by the jail’s rules or they risk being sent back to state prisons where they would not have the same level of freedom and variety of work assignments.⁵⁰¹ The work assignments include such

⁴⁹⁶ Interview with John Hulsebosch, Deputy, HCSD, in Raymond, Miss. (Aug. 9, 2011) (on file with the Panel) [hereinafter Hinds County Interview]. In response to the Panel’s Data Request, Hinds County provided no data related to the capacity of the facility, the number and composition of inmates, and the number and composition of staff. Hinds County Resp. 9-12, 23-27 (on file with the Panel).

⁴⁹⁷ Hinds County Interview 1.

⁴⁹⁸ *Id.* 3.

⁴⁹⁹ *Id.* 1, 4.

⁵⁰⁰ *Id.* 1.

⁵⁰¹ *Id.* 3, 4.

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

conditions that might lead to possible sexual assault, and trusting enough for inmates to confide

rehabilitative effect. Through community service, inmates have an opportunity to develop greater self-respect, which then extends to the respectful treatment of other inmates in the facilities where they live. Lastly, when corrections staff members are “firm but fair,” acting with professional integrity in keeping with the organization’s mission, inmates will find them not only approachable but also trusted to take necessary actions to address sexual impropriety.

b. The Moss Center

i. Facility Description

The Moss Center, located in Tulsa, Oklahoma, and completed in 1999, provides for direct supervision of inmates; the facility is bright, light, and airy.⁵²⁴ The Moss Center houses both male and female inmates at all custody levels, including a small number of juveniles.⁵²⁵ In addition to inmates from Tulsa County, the Moss Center houses inmates detained by the U.S. Marshals Service and the U.S. Immigration and Customs Enforcement (ICE).⁵²⁶

On January 1, 2008, and on January 1, 2009, the rated capacity of the jail was 1714.⁵²⁷ On January 1, 2008, there were 1390 inmates in the jail.⁵²⁸ In calendar year 2008, the total number of inmates who spent any time at the Moss Center was 30,312; the average length of stay was eighteen days; and the longest length of stay was 204 days.⁵²⁹ On January 1, 2009, there were 1359 inmates in the jail.⁵³⁰ Although the jail ordinarily functioned well below its rated capacity in 2008 and 2009, on June 1, 2009, there were 1717 inmates present in the jail.⁵³¹ In calendar year 2009, the total number of inmates who spent any time at the Moss Center was 30,879; the average length of stay was eighteen days; and the longest length of stay was 365 days.⁵³²

In calendar year 2008, the inmate composition at the Moss Center was as follows: 12,222 White males; 4126 White females; 7414 African American males; 2274 African American females; 2586 Hispanic males; 200 Hispanic females; 894 Alaska Native or American Indian males; 383 Alaska Native or American Indian females; 189 males of other or unknown ancestry; and 24 females of other or unknown ancestry.⁵³³ In calendar year 2009, the inmate composition at the Moss Center was as follows: 12,122 White males; 4414 White females; 6952 African American males; 2074 African American females; 3681 Hispanic males; 257 Hispanic females; 863 Alaska Native or American Indian males; 353 Alaska Native or American Indian females; 135 males of other or unknown ancestry; and 28 females of other or unknown ancestry.⁵³⁴ The Moss Center did not use the following three categories in tracking the racial or ethnic backgrounds of inmates

⁵²⁴ Interview with Stanley Glanz, Sheriff, TCSO, et al. in Tulsa, Okla. 1 (Aug. 17, 2011) (on file with the Panel).

⁵²⁵ *Id.*

⁵²⁶ *Id.*

⁵²⁷ Moss Center Resp. 9(a), 10(a) (on file with the Panel).

⁵²⁸ *Id.* 9(b).

⁵²⁹ *Id.* 9(f)-(h).

⁵³⁰ *Id.* 10(b).

⁵³¹ *Id.* 10(d).

⁵³² *Id.* 10(f)-(h).

⁵³³ *Id.* 11(a)-(c), (e), (g).

⁵³⁴ *Id.* 12(d), (f), (g).

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

in 2008 and 2009: (1) Asian, (2) Native Hawaiian or Other Pacific Islander, and (3) two or more races.⁵³⁵

The Moss Center reported that in 2008, there was one inmate suicide, twenty-five attempted suicides, no homicides, and no attempted homicides.⁵³⁶ The suicide and attempted suicides in 2008 were not related to sexual victimization.⁵³⁷ The Moss Center reported that in 2009, there was one suicide, nineteen attempted suicides, no homicides, and no attempted homicides.⁵³⁸ The suicide and attempted suicides in 2009 were not related to sexual victimization.⁵³⁹

On January 1, 2008, the total number of authorized staff positions at the Moss Center was 340 (forty-three sworn and 297 non-sworn).⁵⁴⁰ The staffing level on January 1, 2008, was 333 (forty-three sworn and 297 non-sworn).⁵⁴¹ On January 1, 2009, the total number of authorized staff positions at the Moss Center was 339 (sixty-two sworn and 277 non-sworn).⁵⁴² The staffing level on January 1, 2008, was 339 (sixty-two sworn and 277 non-sworn).⁵⁴³

The Moss Center does not distinguish between sworn and non-sworn staff members.⁵⁴⁴ On January 1, 2008, the ratio of staff members to inmates was one staff person per 4.17 inmates; on January 1, 2009, the ratio of staff members to inmates was one staff person per 4.01 inmates.⁵⁴⁵

In calendar year 2008, one staff person was terminated from employment for sexual misconduct.⁵⁴⁶ In calendar year 2009, on the basis of sexual misconduct, the Moss Center terminated three staff members and allowed one to resign.⁵⁴⁷

There was one investigation of staff-on-inmate sexual misconduct in 2008 at the Moss Center and another investigation in 2009.⁵⁴⁸ In the first incident, a male nurse allegedly observed a female juvenile while she was showering.⁵⁴⁹ The investigation produced sufficient evidence to present the charge to the district attorney, who then declined to prosecute.⁵⁵⁰ In the second incident, a male detention officer allegedly used coercion to perform oral sex on a male inmate.⁵⁵¹ The investigation produced sufficient evidence to present the charge to the district attorney, who then prosecuted the case and obtained a conviction.⁵⁵²

⁵³⁵ *Id.* 11(d), (f), (g); *id.* 12(d), (f), (g).

⁵³⁶ *Id.* 13.

⁵³⁷ *Id.* 14.

⁵³⁸ *Id.* 15.

⁵³⁹ *Id.* 16.

⁵⁴⁰ *Id.* 23(a)-(c).

⁵⁴¹ *Id.*

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

Security.⁵⁶³ Sheriff Glanz observed that being open to outside inspection prevents sexual assaults at the Moss Center.⁵⁶⁴ He noted that another deterrent to sexual victimization at the facility, consistent with this openness, is the daily presence of hundreds of community volunteers who work with inmates.⁵⁶⁵

According to the testimony that the Panel heard, other factors that contributed to the low incidence of sexual victimization at the Moss Center are a corrections philosophy and a facility design that promote direct supervision,⁵⁶⁶ a rapid response to and in-depth investigation of sexual assaults,⁵⁶⁷ inmate programming that develops life skills,⁵⁶⁸ and an inmate classification system based on behavior.⁵⁶⁹

In the written response to the Panel's Data Request, Sheriff Glanz summarized the reasons for the Moss Center's success:

It is my belief that employees of this facility are proactive with sexual assault due to their professionalism, the training that is given on a continual basis that addresses such issues, the

counseling services to victims of sexual assault.⁵⁷⁵ The Moss Center may want to review its practices in making available victim services to inmates who have been sexually assaulted.

Like Hinds County, the Moss Center is a modern building designed to support the philosophy of direct supervision of inmates. Despite the significant differences between Hinds County and the Moss Center, it may be no coincidence that the two jails that the Panel identified as having a low incidence of sexual victimization share this common commitment. The Panel supports Sheriff Glanz's assessment that providing ongoing staff training and welcoming outside inspection—whether through the accreditation process of professional organizations or the constant presence of community volunteers—are invaluable tools in creating a jail culture that prevents sexual victimization.

2. High-Incidence Jails

a. Clallam County

i. Facility Description

Clallam County is located in Port Angeles, Washington. On January 1, 2008, and on January 1, 2009, the full rated capacity of Clallam County was 120.⁵⁷⁶ The actual number of inmates present in the facility on January 1, 2008, was 125.⁵⁷⁷ In calendar year 2008, the total number of inmates who spent any time at the jail was 44,544;

abuse while housed at Clallam County.⁵⁹⁸ Sheriff Benedict said that he also received a letter from the head of the public defenders, who concurred with him in questioning whether any sexual abuse occurred in the jail; Sheriff Benedict noted that the head of the public defenders would know about sexual abuse in the jail because he interviews every inmate.⁵⁹⁹ Sheriff Benedict also said that the FBI reported to him that there was no evidence that his staff was abusing inmates and until it could find a victim there was nothing the FBI could do.⁶⁰⁰ Sheriff Benedict pointedly observed, “[T]here are no victims.”⁶⁰¹

Sheriff Benedict stated that he did not question the methodology of the BJS survey, its accuracy, its internal safeguards to identify dissemblers, or the veracity of inmates.⁶⁰² He also said that he also understood that prison rape happens and that it needs to be eliminated.⁶⁰³ He did, however, question what the survey actually measures; he contended that in addition to gathering data on sexual misconduct, the survey may reflect a “cultural delusion.”⁶⁰⁴ Sheriff Benedict argued that the survey results may be understood in reference to the fantasy that a significant number of people sincerely believe that they have been abducted and sexually molested by aliens:

I think there is, for lack of a better term—and I’ve done some research on this—there is a factor that I’ll call cultural delusion. And it is very prevalent in our society, and I’ll give you an example. You may think it’s far off, but it is very true.

Many surveys have been done, and it shows that between fifty and seventy percent of our population believe in UFOs. . . . Does that prove that they exist? No. But there is a subset of that which says two percent of the general population that believe—and survey after survey concludes this—that believe that they have been abducted by aliens, have gone to the mother ship. Some of them have been sexually abused in the mother ship.⁶⁰⁵

Sheriff Benedict said that the frequency of reported alien abductions is unlikely, yet he infers that this cultural phenomenon may be a useful reference in thinking about inmate responses to the BJS survey.⁶⁰⁶ He noted that many inmates suffer from PTSD as well as mental illness; and so, despite facts to the contrary, they may sincerely believe that they have been the victims of sexual abuse by another inmate or a staff member.⁶⁰⁷ He suggested that the survey should filter out these self-deluded responses; the survey’s current capacity to screen out inconsistent responses is insufficient because it does not eliminate response r1s e,.335 e-.007cv . Doai Benedict argued that 602

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

delusions of sexual abuse are real.⁶⁰⁸ Sheriff Benedict observed, “[W]ith human beings, belief is often as powerful as experience.”⁶⁰⁹

Sheriff Benedict also questioned the results in the *BJS Report* based on extrapolating the survey results to the yearly population size at Clallam County.⁶¹⁰ He said that if as the *BJS Report* showed, eight percent of the daily population at the jail experienced sexual victimization, the Sheriff speculated that with roughly 4000 bookings per year, which the Sheriff then halved to take into account repeat offenders, there would be approximately 160 people who have experienced sexual abuse in the jail every year (i.e., eight percent of 2000).⁶¹¹ He noted that if these numbers were true, then there would be 800 victims since he took office five years ago.

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

and was in the process of replacing the film on the windows with a one-way coating that would still prevent inmates from looking outward but would allow correctional officers to see into units where inmates are.⁶¹⁹ The Panel also observed that there was a lack of privacy in the boxes used for collecting grievance forms from inmates, and the Panel suggested that Clallam County might consider ways to guarantee the confidentiality of the grievance process.⁶²⁰ Sheriff Benedict noted the concern and said that he would address it.⁶²¹ The Panel also observed that even though the facility's telephones advised inmates about PREA, there were no posted placards that

inmates).⁶³² In 2009, the total number of inmates who spent any time at the PTDC was 109,899; the average length of an inmate's stay was over twenty-one days; and the longest stay of any inmate was 4249 days.⁶³³

In 2008, for the total number of inmates at PTDC, the racial and ethnic composition was as follows: 14,784 Whites; 49,800 African Americans; 53,452 Hispanics; 25 Asians; 13 Alaska Natives or American Indians; no Native Hawaiians or Other Pacific Islanders; no inmates identifying as belonging to two or more races; and 6 inmates of unknown racial or ethnic heritage.⁶³⁴ In 2009, for the total number of inmates at PTDC, the racial and ethnic composition was as follows: 13,363 Whites; 45,943 African Americans; 50,537 Hispanics; 34 Asians; 17 Alaska Natives or American Indians; no Native Hawaiians or Other Pacific Islanders; no inmates identifying as belonging to two or more races; and 5 inmates of unknown racial or ethnic heritage.⁶³⁵

In 2008, at PTDC there were no suicides, homicides, or attempted homicides; there were, however, six attempted suicides.⁶³⁶ In 2009, at PTDC there were no suicides, homicides, or attempted homicides; there were again, however, eight attempted suicides.⁶³⁷ The PTDC reported that the attempted suicides in 2008 and 2009 were not related to staff-on-inmate or inmate-on-inmate sexual victimization.⁶³⁸

On January 1, 2008, the total number of authorized staff positions at PTDC was 429 (397 sworn and thirty-two non-sworn).⁶³⁹ The staffing level at PTDC on January 1, 2008, was 342 (294 sworn and forty-eight non-sworn).⁶⁴⁰ On January 1, 2009, the total number of authorized staff positions at PTDC was 378 (350 sworn and twenty-eight non-sworn).⁶⁴¹ The staffing level at PTDC on January 1, 2009, was 340 (296 sworn and forty-four non-sworn).⁶⁴²

On January 1, 2008, the ratio of sworn staff to inmates was one to sixteen; on January 1, 2009, the ratio of sworn staff to inmates was one to fourteen.⁶⁴³

In 2008 and 2009, the PTDC initiated nine investigations into inmate-on-inmate sexual assaults.⁶⁴⁴ The charges included rape and sexual assault.⁶⁴⁵ In each case, either the complainant

⁶³² *Id.* 10(c)-(e).

⁶³³ *Id.* 10(f)-(h).

⁶³⁴ *Id.* 11.

⁶³⁵ *Id.* 12. The PTDC reported that the total number of inmates in 2009 was 109,899, but the data it provided to the Panel on the racial and ethnic composition of the total inmate population accounted for only 109,865.

⁶³⁶ *Id.* 13.

⁶³⁷ *Id.* 15.

⁶³⁸ *Id.* 14, 16.

⁶³⁹ *Id.* 23(a).

⁶⁴⁰ *Id.* 23(d)(i), (e)(i), (f)(i). The numbers do not include staff members on scheduled leave.

⁶⁴¹ *Id.* 24(a).

⁶⁴² *Id.* 24(d)(i), (e)(i), (f)(i). The numbers do not include staff members on scheduled leave.

⁶⁴³ *Id.* 25(a), (e).

⁶⁴⁴ App. C (PTDC Inmate-on-Inmate Assaults). Lt. Eric Garcia, Special Victims Bureau, Miami-Dade Police Department (MDPD), testified that his unit investigated eleven sexual assault cases in 2008 and 2009, but it is unclear from his testimony whether these investigations were limited to the PTDC or involved other MDCR units. Tr., E. Garcia, 328:17-19. Lt. Garcia testified that out of the eleven cases that his unit investigated, one resulted in

rescinded the charge or the evidence did not support the allegation.⁶⁴⁶ In 2008 and 2009, the PTDC conducted three investigations into staff-on-inmate sexual misconduct.⁶⁴⁷ The charges included sexual misconduct and an inappropriate relationship with an inmate.⁶⁴⁸ In the first case, the investigation did not substantiate the underlying charge, but it found that staff members failed to report the matter immediately to the appropriate supervisor.⁶⁴⁹ In the second case, the investigation substantiated the charges against a female officer, finding that she had an inappropriate relationship with a male inmate and that she introduced contraband into the jail; PTDC terminated her employment.⁶⁵⁰ In the third case, the investigation found insufficient evidence to support the charge.⁶⁵¹

In 2008 and 2009, based on sexual misconduct, the PTDC terminated three staff members and disciplined one staff member.⁶⁵²

ii. Facility's Explanation for Reported High Incidence of Sexual Victimization

The MDCR did not provide an explanation for the high incidence of sexual victimization at the PTDC, contending that its own internal review did not support the findings of the *BJS Report*: “MDCR respectfully disputes the characterization of a high incidence of sexual victimization at the PTDC facility during the years 2008 and 2009. An analysis of empirical data by MDCR and uppor789

eighth largest jail system in the United States.⁶⁵⁷ The jail system operates under Florida rules that require correctional certification, not law enforcement certification; this means that the Miami-Dade Police Department investigates criminal matters involving PREA in the jail system.⁶⁵⁸ Mr. Ryan stated that the MDCR is not a single jail facility, but is comprised of six housing units, serving at the time of the hearing 6000 inmates.⁶⁵⁹ Mr. Ryan noted that the current inmate population is significantly smaller than the inmate population at the time of the BJS survey in 2008 when the inmate population was 7400.⁶⁶⁰ He stated that the inmate population is 8% female and 92% male, whereas the custodial staff is 53% female and 47% male.⁶⁶¹

Mr. Ryan noted that the prison system receives arrestees from thirty-seven jurisdictions at the rate of one every four minutes, and one in five of these arrestees is mentally ill.⁶⁶² The inmate population of the MDCR is 84% pre-sentence, while 16% are sentenced.⁶⁶³

Mr. Ryan said that to become a correctional officer at MDCR requires passing a rigorous written test, a background check, psychological screening, and a medical examination.⁶⁶⁴ He said that in his department's last recruitment effort, there were 1700 applicants but only 150 received offers of employment.⁶⁶⁵ Once selected, a recruit must successfully pass a twenty-two-week academy, which includes training on PREA; on completion of the academy, the recruit must successfully pass a state-certification examination, receive thirty days of intensive orientation, and serve a one-year probationary period.⁶⁶⁶ All correctional officers must be recertified every four years, which requires retraining on such topics as PREA.⁶⁶⁷ Mr. Ryan said that NIC's online training on PREA is being provided to all staff, and at the time of promotion as well as at other times, supervisors and managers receive in-service training, which includes information on PREA.⁶⁶⁸ He said that at the time of the hearing 2800 MDCR staff members (95%) have completed the NIC's online PREA course.⁶⁶⁹

In describing the PTDC, Mr. Ryan observed, "This facility is considered a first generation jail with indirect supervision as its model which means that inmates are not under constant observation by staff."⁶⁷⁰ Mr. Ryan said, "Like most of the urban jails designed and built in the 1950s and 1960s, it was not anticipated that it would incarcerate the numbers and types of violent inmates it has been called upon to house today."⁶⁷¹

⁶⁵⁷ *Id.*

⁶⁵⁸ *Id.*

⁶⁵⁹ *Id.*

⁶⁶⁰ *Id.*

⁶⁶¹ *Id.* 2.

⁶⁶² *Id.* 2.

⁶⁶³ *Id.* 2-3.

⁶⁶⁴ *Id.* 2.

⁶⁶⁵ *Id.*

⁶⁶⁶ *Id.*

⁶⁶⁷ *Id.*

⁶⁶⁸ *Id.*

⁶⁶⁹ *Id.* 4.

⁶⁷⁰ *Id.* 3 (underscoring omitted).

⁶⁷¹ *Id.*

Mr. Ryan reported, “Since taking the leadership role at Miami-Dade County, I did discover that even though there had long been policies and procedures addressing sexual misconduct, the PREA initiative had not been fully embraced.”⁶⁷² To remedy this situation, Mr. Ryan said that he took the following steps: distributing videos to the staff that conveyed the institution’s zero tolerance for fraternization with inmates; developing and updating the institutional policy addressing PREA; revising the inmate handbook to include a reference to the institution’s intolerance of sexual misconduct; posting PREA placards in three languages in all six housing units; incorporating information on PREA into annual and in-service training programs for staff; including information on PREA in new-employee orientation; improving intake, medical, and classification procedures to identify potential victims of sexual assault and predators; installing a rape-crisis hotline that is available from every inmate telephone; contracting with outside organizations (e.g., Just Detention International (JDI), The Moss Group, Inc.) to provide technical assistance to assess institutional needs and provide specialized training on investigating sexual assaults; installing surveillance cameras in housing units; and implementing word-recognition software that will identify incident reports with sexually related language.⁶⁷³ Mr. Ryan also said that he also strongly believes in meeting national professional standards for correctional facilities, which has meant obtaining accreditation from the ACA for some of the units at the MDCR; the MDCR is in the process of obtaining ACA accreditation for its other units, including the PTDC.⁶⁷⁴

Mr. Ryan noted that since 2007, the incidence of inmate-on-inmate violence dropped 54%, from 162 incidents in March 2007 to seventy-five in 2011.⁶⁷⁵ He also reported that use-of-force reports have dropped 78% since 2008, from fifty-four events in March 2008 to twelve events in March 2011.⁶⁷⁶

Mr. Ryan mentioned that the British Broadcasting Corporation (BBC) produced a troubling documentary on MDCR operations that was useful in facing the “age old problem between policy and practice.”⁶⁷⁷ One of the problems that the BBC documentary highlighted, especially for female staff, is male inmates masturbating in their presence.⁶⁷⁸ Mr. Ryan said that this is an issue in which the MDCR is still seeking answers.⁶⁷⁹ He noted that the MDCR has been unsuccessful in having the State Attorney’s Office prosecute inmates for this behavior, which means that the only available response is administrative discipline.⁶⁸⁰ Mr. Ryan said that recently the MDCR has provided staff members who have encountered this situation with counseling services from in-house psychologists.⁶⁸¹

iii. Observations

During the Panel's onsite tour

change, not only in an America in which joking about sexual assaults in prisons and jails remains pervasive, but also among the people who work in the field of corrections.⁶⁹⁶

[W]e have a cultural change to make as well, to recognize that our jails and prisons should not have [sexual assaults] going on; that as a profession, we do not tolerate those things.

And that message, I don't think has gotten out, that we have not done a good job of marketing ourselves as to what we really do believe in.⁶⁹⁷

iv. Facility-Specific Recommendations

In reviewing the section in the handbook for inmates on reporting and preventing sexual abuse, the Panel found that the information could be more accessible to inmates. In particular, the Panel found the printing was small and that some of the language was too technical (e.g., a reference to carnal knowledge), making the information difficult for inmates with limited education to understand.⁶⁹⁸ The Panel recommends reviewing this section in the inmate handbook, as well as other educational materials, to make sure that the information on reporting and preventing sexual victimization is readily accessible to inmates.

The Panel remains troubled by the August 2011 CRIPA findings of the U.S. Department of Justice and encourages the MDCR to work closely with the Special Litigation Section of the Civil Rights Division in implementing all of the recommendations in the Letter of Finding, particularly those dealing with prisoner violence.⁶⁹⁹ Toward this end, the Panel also encourages the MDCR to continue seeking the assistance of outside advocacy and professional organizations to create a jail environment in which inmates are protected from sexual victimization.

c. OPP

i. Facility Description

The South White Street Jail in New Orleans, Louisiana, is one of a number of housing units at the OPP, which also include Old Parish Prison, the House of Detention (HOD), the Tents, Conchetta, and Templeman V.⁷⁰⁰ In response to the Panel's initial Data Request for the South White Street Jail, the OPP stated that this housing unit at its full rated capacity on January 1, 2008, and on January 1, 2009, was 288.⁷⁰¹ The actual number of inmates present in the facility on January 1, 2008, was 176.⁷⁰² In 2008, the total number of inmates who spent any time at the South White Street Jail was 5089; the average length of stay was almost fifteen days; and the

⁶⁹⁶

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

longest length of stay of any inmate was 365 days.⁷⁰³ The actual number of inmates present in the facility on January 1, 2009, was 185.⁷⁰⁴ In 2009, the total number of inmates who spent any time at the South White Street Jail was 5371; the average length of stay was a little over eighteen days; and the longest length of stay of any inmate was 364 days.⁷⁰⁵

In 2008, for the total number of inmates at the South White Street Jail, the racial and ethnic composition was as follows: 1149 Whites, 3716 African Americans, 172 Hispanics, and 52 Asians.⁷⁰⁶ In 2009, for the total number of inmates at the South White Street Jail, the racial and ethnic composition was as follows: 1169 Whites, 4167 African Americans, 11 Hispanics, and 24 Asians.⁷⁰⁷ The OPP reported that in both 2008 and 2009, there were no inmates who identified as Alaska Native or American Indian, as Native Hawaiian or Other Pacific Islander, or as belonging to two or more races.⁷⁰⁸

In 2008, the OPP reported that at the South White Street Jail, there were no suicides, no attempted suicides, no homicides, and the number of attempted homicides was unknown.⁷⁰⁹ In 2009, the hite

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

investigative file did not have information on the outcome of the case.⁷³² In one investigation into an inmate-on-inmate sexual assault, despite the inmate's allegation of rape, the investigative team concluded that the sexual encounter was consensual.⁷³³ The investigative files showed that in more than half of the cases, the OPP provided the complainants with a medical examination.⁷³⁴

ii. Facility's Explanation of Reported High Incidence of Sexual Victimization

Elected in 2004, Orleans Parish Sheriff Marlin N. Gusman provided the Panel with a notarized written statement dated September 15, 2011.⁷³⁵ Sheriff Gusman reminded the Panel that the OPSO was still recovering from th

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

threatening injuries before sending the inmate to the hospital.⁷⁵² According to Sheriff Gusman, on release of the inmate from the hospital, the OPP houses the inmate in OPP's Acute Psychiatric Unit to provide both protection and mental health services.⁷⁵³ Sheriff Gusman wrote that a psychiatrist evaluates the needs of the victim, ensuring the provision of proper medical care and the counseling services of a social worker, if warranted.⁷⁵⁴ He said that only when the victim is psychiatrically stable would the victim leave the protective custody of the psychiatric unit.⁷⁵⁵

Sheriff Gusman wrote that every warden of a housing unit "responds immediately to all reports of sexual victimization and then contacts the SOD."⁷⁵⁶ He assured the Panel, "Wardens also review all grievances and incident reports filed in the JMS and respond to the inmate either in person or in writing."⁷⁵⁷

Acknowledging that the OPP can improve its operations, Sheriff Gusman said that the OPP plans to use a new checklist in the inmate-classification process that will better identify potential victims and predators, assign an assistant to the designated PREA coordinator to monitor compliance with PREA standards, and build a new direct-supervision facility.⁷⁵⁸

iii. Observations

Four factors influenced the Panel to shift the scope of its inquiry, which began with a focus on the South White Street Jail, to the OPP as a whole. First, with the closing of the South White Street Jail, the Panel could no longer observe the operations of the housing unit at the OPP that exclusively served female inmates. Second, in light of the serious findings of the Special Litigation Section of the Civil Rights Division at the U.S. Department of Justice that the OPP was in violation of CRIPA, the Panel recognized the need to broaden its inquiry beyond the South White Street Jail.⁷⁵⁹ Third, JDI, an independent, prisoner-advocacy organization, identified an individual who provided a compelling account of alleged sexual victimization while incarcerated at the OPP during the time period of the BJS survey. Finally, the OPP itself urged the Panel to think of the OPP as a whole rather than limiting its view to the South White Street Jail.⁷⁶⁰

The Panel found the following testimony particularly useful in framing its understanding of the OPP: (1) testimony from Ms. Elizabeth Cumming, a New Orleans civil rights attorney; (2) testimony from A.A., a former inmate at OPP; (3) the OPP's response to A.A.'s testimony; and

⁷⁵² *Id.*

⁷⁵³ *Id.* 4.

⁷⁵⁴ *Id.*

⁷⁵⁵ *Id.*

⁷⁵⁶ *Id.*

⁷⁵⁷ *Id.*

⁷⁵⁸ *Id.* According to the OPP, construction started on a new facility on September 1, 2011, and the completion date is March 2014. OPP Supp. Resp. 1.

⁷⁵⁹ Letter of Finding from Loretta King, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, to Marlin N. Gusman, Sheriff, OPSO (Sept. 11, 2009), *available at* http://www.justice.gov/crt/about/spl/documents/parish_findlet.pdf [hereinafter OPP Letter of Finding].

⁷⁶⁰ *See, e.g.*, Gusman Test. 2.

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

completed in many cases.”⁷⁷³ Ms. Cumming contended that nothing has changed since the

broken system. The level of sexual assaults and violence present in the jail are symptoms of this system's profound dysfunction.⁷⁸⁴

(b) Statement of Former Inmate

JDI brought to the Panel's attention the experience of a former inmate at OPP, A.A.,⁷⁸⁵ who at the time of the hearing was serving a sentence in the Mississippi Department of Corrections. Although he could not appear before the Panel in person, counsel for the Panel interviewed him prior to the hearing, and A.A. submitted a statement about his experience at OPP that a representative of JDI read into the record.⁷⁸⁶ Here follow excerpts from his statement, in which he claims that he was brutally assaulted at the OPP multiple times, and despite his seeking assistance through the jail's grievance process and other avenues, he received no help:

When I was arrested in 2008 in New Orleans, I was on a 72-hour pass from [a work center] in Mississippi. . . . Because I didn't return to the Work Center within 72-hours, I was considered an escapee and arrested on October 31, 2008. I went to the Central Lock-[U]p at the OPP's House of Detention. I was thirty years old at the time.

In January 2009, I was moved from Central Lock-[U]p to the general population at the OPP's House of Detention (HOD). Before assigning me to the general population, the facility officials didn't do a screening process. For instance, no one asked me if I was gay. No one asked me if I had ever been sexually assaulted before, either. The fact is that I had been—prior to my incarceration. Because I was afraid for my safety, I told them I was gay and that I wanted to be put on a tier for gay men. . . . When they said they didn't have that tier anymore, I asked if I could just stay in Central Lock-Up. They said no and that I had to go to general population.

They put me in an overcrowded cell that should have been used for ten inmates maximum, but had fifteen or sixteen in it when I got there. The other inmates were all between eighteen and twenty-one years old. From the moment I arrived, they were sizing me up. They asked me whether I was gay. I was 000 b4 I wlie I w them so I said "yes." I didn't have a bed so I took a mat to lay on. I was so depressed and exhausted that I put it on the floor next to the cell bars and took a nap.

I woke up all of a sudden when some of my cellmates threw a chest of ice on me that was kept in the cell for drinks. One of the inmates told me to give him a blow job. This man was very 000 y, and I felt extremely afraid. I called for help, but there were no guards around and no one respondb4 I wmy screams. At first, I

⁷⁸⁴ *Id.*

⁷⁸⁵ To the extent that it is possible, the Panel protects the identities of individuals who allege I have been victims of sexual abuse.

⁷⁸⁶ A.A. Test. (Apr. 15, 2011), available at [http://www6j/Cs6/wwwj/www.ust.inp6\(pr://www6j/Cs6/www006h81i/-0001Tw\(repr e](http://www6j/Cs6/wwwj/www.ust.inp6(pr://www6j/Cs6/www006h81i/-0001Tw(repr e)

refused to do what the inmate was telling me to do, but then he grabbed me by my hair and kicked me while another inmate held a knife to my back. I decided that I had better do what he wanted in order to save my life—I was already bleeding from the knife.

Later that night, several of these inmates tied me down to the frame of a bed in the cell with strips of a blue towel. I tried to fight them off at first, but a large inmate choked me until I passed out. When I came to, I was choked again. There were at least a dozen inmates around who saw what was happening. Three of the men said they wanted me to give them oral sex, but they were afraid that I would bite them, so they masturbated onto me instead. This nightmare only ended when an inmate kicked me off the bed I was tied to because he wanted to go to sleep.

During my assault, there were no guards around. I quickly realized that the guards at OPP did not do rounds of the tiers on a regular basis, so there was no one to protect me. . . . And there were no cameras around, so the attacks weren't recorded or seen by guards in another part of the jail. . . .

The morning after that first night at OPP, I couldn't go to the showers so I washed up as best I could using the small sink in the cell. I tried to be friendly to the other inmates just so I could try to keep from being attacked again. But, I was on the lookout for an officer who I could ask for help. The whole day passed and I never had a chance to talk to a guard or any other staff members.

As the next night came, I was really anxious. I had not been able to speak with any jail officials, and I was so afraid that my cellmates would attack me again. That night, three of the inmates—all large men—anally raped me. With no one to help me, I laid down on the floor, bleeding from my injuries, and terrified about what would happen next. My cellmates continued to orally and anally gang-rape me . . . the whole time I was at OPP sometimes in the cell, but often in the showers.

It happened so many times I lost count.⁷⁸⁷

A.A. stated that despite filing atll, b.2 0D.00t correctional officers,
and a response from OPP.⁷⁸⁸ He stated that on one occasion he tried to give a
ll, cer, and the correctional officall, allegedly responded, ““a faggot
—imagine that!””⁷⁸⁹

ll, A.A. also wrote that he had requested medical help from correctional officers
ary to April of 2009 because he was afraid of
e.⁷⁹⁰ He said that he must have filled out over twenty-five slips requesting

⁷⁸⁷ A.A. Test. 1-2.

⁷⁸⁸ *Id.* 2.

⁷⁸⁹ *Id.*

⁷⁹⁰ *Id.* 3.

medical care, but he said that he never received a response.⁷⁹¹ A.A. said that the only time he saw a doctor at A.A. was by accident: when he happened to pass the medical unit on the way to the “rec yard” he asked to see the doctor on duty.⁷⁹² A.A. reported that after waiting for two hours, the doctor examined him and did blood work to see whether he had Hepatitis C or HIV, but the medical staff did not administer a rape kit.⁷⁹³ A.A. stated that “[t]he doctor told me that I had herpes, which he thinks I got from the rapes.”⁷⁹⁴ A.A. also reported that despite telling the doctor about the sexual assaults, the doctor took no action: “The doctor told me that he couldn’t do anything about the rapes and beatings, because that was a security issue, not a medical one.”⁷⁹⁵

A.A. claimed that while at OPP there were also no available support services to help him as a victim of sexual assault: “There was no one I could talk with to help me with how I was feeling emotionally. I don’t think OPP had a chaplain or counselor, and there were no religious services or any other type of support that I could find.”⁷⁹⁶ He said, “I would say without a doubt that the whole time I was at OPP, I had to deal with all this stuff on my own. Not one person there tried to help me in any way.”⁷⁹⁷

A.A. wrote that he was not the only one at OPP who was a victim of sexual assault.⁷⁹⁸ During his tenure at OPP, he claimed to have witnessed between five and seven other male inmates who were sexually assaulted; one transgender woman was so severely beaten that she was sent to the hospital.⁷⁹⁹

Appealing to the Panel, A.A. wrote, “I think that what I went through and what I saw happening to some of the other people at OPP could have been prevented if OPP had done something to keep inmates like me—guys who are gay or who are going to be targeted by other inmates—safe.”⁸⁰⁰

(c) OPP’s Response to the Former Inmate’s Testimony

Following up on the testimony from A.A., which the Panel received prior to the hearing, the Panel requested that OPP produce any documentation that might be related to A.A.’s confinement at OPP, including whether he filed any grievances and whether the OPP responded to the grievances.⁸⁰¹

⁷⁹¹ *Id.*

⁷⁹² *Id.*

⁷⁹³ *Id.*

⁷⁹⁴ *Id.*

⁷⁹⁵ *Id.*

⁷⁹⁶ *Id.*

⁷⁹⁷ *Id.*

⁷⁹⁸ *Id.*

⁷⁹⁹ *Id.* 3-4.

⁸⁰⁰ *Id.* 4.

⁸⁰¹ App. A (Letter from Michael L. Alston, Attorney Advisor, Panel, to Marlin N. Gusman, Sheriff, OPSO 3 (Aug. 3, 2011)) [hereinafter Supp. Data Request].

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

Based on the documentation that the OPP submitted to the Panel regarding the history of A.A.'s grievances while he was in custody, the Pane

Review Panel on Prison Rape
Sexual Victimization in

Citing a 2009 public letter from the American Civil Liberties Union to Sheriff Gusman, Mr. Ware noted that it is well known to the members of the transgender community in New Orleans that if they are detained at OPP, they should post bond as soon as possible or risk being raped.⁸²⁹

Mr. Ware cited a number of examples of gay men and transgender women who experienced sexual victimization at the OPP.⁸³⁰ He read into the record a short statement from one young man, “Robert,” a “twenty-two year old gender-nonconforming, gay white male” who claimed to have experienced sexual victimization during his custody at OPP from December 2010 to February 2011.⁸³¹ Robert’s statement is similar in many ways to A.A.’s: he claimed that during the classification process the OPP did ask him if he had any concerns for his safety; that the OPP housed him in HOD; that in the night, a larger inmate in the same housing unit overpowered him and raped him; that he screamed for help but no correctional officer responded; and that despite sustaining serious injuries, no correctional officer checked on him throughout the night.⁸³²

On the morning after his alleged attack, Robert stated that he reported the assault to a correctional officer, and then two investigators from SOD interviewed him.⁸³³ Robert stated, “During the interview, one of the SOD investigators accused me of lying and called me a ‘faggot.’ He accused me of wanting to have anal sex because I was a ‘faggot.’”⁸³⁴ Robert said that after the interview, OPP placed him in a holding cell for two to three hours and then took him to the hospital where a rape kit was completed.⁸³⁵ Robert questioned whether the rape kit was ever given to the Orleans Police Department.⁸³⁶ Robert said that when he was released from the hospital, the OPP placed him back in the same cell at HOD, next to the inmate who allegedly raped him.⁸³⁷

Consistent with A.A.’s account, Robert stated that the OPP did not provide any follow-up medical or psychological support, nor did the OPP respond to any of his written grievances:

The OPP never provided me with any additional medical or psychological treatment while I was in custody.

⁸²⁹ *Id.* 2-3 & n.1 (citing ACLU Seeks to End Rapes in New Orleans Parish Prison (Apr. 4, 2009), available at <https://laaclu.org/newsArchive.php?id=330#n330>; Letter from Marjorie R. Esman, Executive Director, ACLU of Louisiana, to Marlin N. Gusman, Sheriff, OPSO (Apr. 28, 2009), available at https://www.laacclu.org/PDF_documents/Letter_Gusman_042809.pdf).

⁸³⁰ Ware Test. 3. The Panel met informally with youth members of *BreakOUT!* on August 22, 2011, in New Orleans, Louisiana, and listened to first-hand accounts from young transgender women and gay men who claimed to have been mistreated at the OPP. They stated that their filed grievances at the OPP received no responses. They said that before Hurricane Katrina there was a separate, “protective custody” unit for LGBTQ inmates, which is now no longer an option. They stated that there is only one social worker who serves all of the OPP; they claimed that they did not have access to counselors or chaplains.

⁸³¹ *Id.*

⁸³² *Id.* 3-4.

⁸³³ *Id.* 4.

⁸³⁴ *Id.*

⁸³⁵ *Id.*

⁸³⁶ *Id.* 4-5.

⁸³⁷ *Id.* 5.

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

I filed a number of written grievances while I was at OPP, including an emergency grievance complaining about the rape as well as one complaining about being physically abuse[d] by an OPP guard. I never received a response to my grievances.⁸³⁸

Mr. Ware offered recommendations for improving the OPP based on consultations that *BreakOUT!* conducted with the local LGBTQ community, youth members of *BreakOUT!*, and criminal justice reform advocates in New Orleans.⁸³⁹ Echoing three of Ms. Cumming's recommendations, Mr. Ware advised the OPP (1) to revamp its inmate-classification system to protect vulnerable inmates, noting in particular the needs of transgender inmates; (2) to strengthen its grievance and investigation procedures to respond more effectively to complaints of sexual victimization; and (3) to increase the staff-to-inmate ratio at the jail by decoupling funding of the jail from the size of the inmate population.⁸⁴⁰

inmates approached the Panel privately, stating that their grievances went unanswered. These appeals are a particular cause for concern, given that the OPP admitted its failure in responding to A.A.'s grievances, that the Panel heard similar complaints from *BreakOUT!* youth members, and that the Panel heard testimony from both Ms. Cumming and Mr. Ware about the OPP's dysfunctional grievance and investigation system.⁸⁴⁹ The Panel urges the OPP, consistent with the OPP Letter of Finding, to conduct a thorough review of its grievance process, making sure that all inmates receive a fair, timely response to every grievance, and that any investigation, no matter how minor, has sufficient documentation that would allow an outside organization to review the investigative process and understand the outcome.

In its Letter of Finding, the Civil Rights Division concluded, "Staffing levels at OPP are inadequate to protect inmates from harm."⁸⁵⁰ As a remedial measure, the Civil Rights Division recommended that the OPP should implement, "in accordance with generally accepted professional standards of correctional practice,"⁸⁵¹ a program for safety and supervision to "[e]nsure that correctional officer staffing and supervision levels are appropriate to adequately supervise inmates."⁸⁵² Noting that the testimony from Ms. Cumming and Mr. Ware support this assessment, the Panel concurs with the Civil Rights Division and urges the OPP to review its current staffing plan.

The Panel, consistent with the recommendations of Ms. Cumming, Mr. Ware, and the Civil Rights Division,⁸⁵³ urges the OPP to implement an objective classification system that protects vulnerable inmates from sexual assault.⁸⁵⁴ At the hearing, Colonel Ursin agreed that the OPP needed to put into place an *objective* classification system that would better serve vulnerable inmates.⁸⁵⁵ The Panel encourages the OPP to improve the classification system as soon as possible.

without court enforceable federal oversight." *Id.* 2. On December 20, 2011, the chief of the Special Litigation Section of the Civil Rights Division responded. Letter from Jonathan M. Smith, Chief, Special Litigation Section, Civil Rights Division, U.S. Department of Justice, to Dr. Reginald A. Wilkinson, Chairperson, Panel (Dec. 20, 2011) (on file with the Panel). Chief Smith wrote, "Attorneys from the Section are actively engaged with OPP leadership in settlement discussions. We continue to be hopeful that the parties will agree upon a court-enforceable settlement." *Id.* 1.

⁸⁴⁸ Just prior to the release of this Report, the Panel read with alarm a letter that the Southern Poverty Law Center (SPLC) of New Orleans sent to the OPP to seek protection for a transgender woman who was allegedly raped multiple times in February and March of 2012 while in OPP's custody. Letter from Katie Schwartzmann, Managing Attorney, SPLC, to Marlin N. Gusman, Sheriff, OPSO (Mar. 27, 2012), *available at* <http://www.splcenter.org/sites/default/files/downloads/case/GusmanLetter03272012.pdf>.

⁸⁴⁹ The Panel acknowledges that it did review some investigations from SOD into allegations of sexual victimization

problematic, a result that was completely independent of the Civil Rights Division's investigations and findings. Although the Justice Department has a key role in holding correctional institutions accountable, Sheriff Glanz of TCSO and Director Ryan of MDCR reminded the Panel of the benefits that come from working with outside organizations in helping jails improve their operations. Echoing their remarks, Director Arthur Wallenstein of the Montgomery County, Maryland, Department of Corrections and Rehabilitation, a jail administrator with significant experience in implementing PREA, also noted the importance of correctional institutions being open to outside oversight.⁸⁵⁹ Sheriff Glanz, Director Ryan, and Director Wallenstein commented on the important role that accreditation organizations have in holding jails to professional standards. Jail administrators should consider what may prevent them from welcoming the opportunity of a neutral, outside organization's review of their operations.

c. Noting the Reluctance to Prosecute Sexual Victimization Cases Involving Inmates

The Panel heard the frustrated testimony of more than one jail administrator who complained that prosecutors are often reluctant to take criminal cases that involve sexual victimization of inmates. The Panel heard speculation that the reluctance may be attributable to a number of factors, including societal stereotypes about inmates, female staff members, and alternative sexual practices.

d. Recognizing the Resource Challenges that Jails Face

The Panel heard from jail administrators about the challenges that they face under current economic conditions to maintain safe correctional in

Review Panel on Prison Rape
Sexual Victimization in Prisons and Jails

congratulate them on their efforts and thank them for their contributions to the continued professionalization of the corrections field.

We realize that all correctional agencies want to reduce institutional assaults. Unfortunately, the attention given to eliminating sexual abuse is not the same throughout the nation. We know that sexual assaults can be reduced by changing attitudes toward potentially vulnerable populations, including female, LGBTQ, and physically frail inmates; paying close attention to institutional design and surveillance; providing offender education and staff training; improving operational policies and post orders; and monitoring adherence to established policies. Moreover, a reliable inmate-classification system; improved efforts on the part of first responders, investigators, and prosecutors; and timely victim assistance and healthcare services will help an agency reduce, if not eliminate, inmate sexual victimization.

With the goal of ending sexual violence in prisons and jails, we will continue to gather information that we hope will be helpful to correctional policymakers, administrators, line staff, and allied professionals.⁸⁶⁵ Our mission is nothing less than to assist correctional institutions to become safer and more humane.

⁸⁶⁵ In 2013, the BJS anticipates issuing the next surveys of sexual victimization in prisons, jails, and juvenile facilities based on inmate interviews. The Panel will schedule hearings related to the surveys shortly after their publication.