

PREA AUDIT REPORT Interim Final

ADULT PRISONS & JAILS

Date of report: October 18, 2016

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| Auditor Information | | | |
| Auditor name: Ericka Sage | | | |
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| Telephone number: 503-947-9950 | | | |
| Date of facility visit: May 23, 2016 thru May 25, 2016 | | | |
| Facility Information | | | |
| Facility name: Montana State Prison | | | |
| Facility physical address: 400 Conley Lake Road, Deer Lodge, MT 59722 | | | |
| Facility mailing address: <i>(if different from above)</i> Click here to enter text. | | | |
| Facility telephone number: 406-8461320 | | | |
| The facility is: | <input type="checkbox"/> Federal | <input checked="" type="checkbox"/> State | <input type="checkbox"/> County |
| | <input type="checkbox"/> Military | <input type="checkbox"/> Municipal | <input type="checkbox"/> Private for profit |
| | <input type="checkbox"/> Private not for profit | | |
| Facility type: | <input checked="" type="checkbox"/> Prison | <input type="checkbox"/> Jail | |
| Name of facility's Chief Executive Officer: Leroy Kirkegard | | | |
| Number of staff assigned to the facility in the last 12 months: 618 | | | |
| Designed facility capacity: 1485 | | | |
| Current population of facility: 1461 | | | |
| Facility security levels/inmate custody levels: Max, Close, Medium I, Medium II, Minimum I and Minimum II | | | |
| Age range of the population: 18-83 | | | |
| Name of PREA Compliance Manager: Patrick Sheehan | | Title: Policy/PREA Specialist | |
| Email address: psheehan@mt.gov | | Telephone number: 406-846-1320 x 2377 | |
| Agency Information | | | |
| Name of agency: Montana Department of Corrections | | | |
| Governing authority or parent agency: <i>(if applicable)</i> State of Montana | | | |
| Physical address: 5 South Last Chance Gulch, Helena, Montana 59620-1301 | | | |
| Mailing address: <i>(if different from above)</i> P.O. Box 201301 Helena, Montana 59620-1301 | | | |
| Telephone number: 406-444-3930 | | | |
| Agency Chief Executive Officer | | | |
| Name: Mike Batista | | Title: Director | |
| Email address: mbatista@mt.gov | | Telephone number: 406-444-4913 | |
| Agency-Wide PREA Coordinator | | | |
| Name: Andrew Jess | | Title: Montana PREA Coordinator | |
| Email address: ajess@mt.gov | | Telephone number: 406-444-6583 | |

AUDIT FINDINGS

NARRATIVE

The Prison Rape Elimination Act (PREA) on-site audit of the Montana State Prison (MSP) in Deer Lodge, Montana was conducted beginning May 23, 2016 and ending May 25, 2016. Originally the audit was scheduled to be completed by Robert Real, however due to extenuating circumstances one week before the audit it was changed to be audited by Ericka Sage, from Salem, Oregon, a U.S. Department of Justice Certified PREA Auditor for adult prisons and jails. Assisting the auditor in a support role was Amanda Rasmussen. Ms. Rasmussen has attended U.S. Department of Justice Auditor Training in September 2015, however has not yet received her auditor certification. Also, as part of the Oregon audit team, Robert Real, another U.S. Department of Justice Certified PREA Auditor conducted interviews with agency level staff including the Director or designee, the Contracts Manager, Human Resources Director and the Agency PREA Coordinator.

Pre-Audit preparation included a limited review of all documentation and materials submitted by the Facility's PREA Compliance Manager, via flash drive, to include data from the Pre-Audit Questionnaire one week prior to the audit. Prior to the on-site visit, the auditor conducted a comprehensive evaluation of agency policies, facility procedures, program documents, and other relevant materials. The review prompted several questions for the agency PREA Coordinator and the on-site facility PREA Compliance Manager which were formalized in a written format and later discussed during the on-site audit. A review of the agency's website was also conducted to evaluate compliance with the federal PREA standards.

Six weeks prior to the on-site audit, notification was posted throughout the facility with the auditor's contact information for confidential communications with staff and inmates. Documentation was forwarded to the auditor via email demonstrating the notice was posted within the prescribed timeline required by the Department of Justice. There were five letters that were written that were not received until after the onsite audit. The auditor reviewed the letter as part of the audit process. Appropriate follow up will be completed with the inmates and the facility.

The auditor conducted a tour of the facility which included but was not limited to: intake, all housing units to include segregated housing areas, medical, food services, industry areas, and programming and education areas. PREA signs and informational posters for services related to PREA were posted throughout the facility. An examination of the facility's intake process was reviewed. Overall, there was good staff visibility and they were frequently walking around checking on inmates. Offices had windows that would allow for better visibility when inmates are in an office alone with a staff. A few closets were propped open, prompting the auditor to make a recommendation that for best practice, when an area is not in use, that it is locked up or a window be placed in the door for better visibility.

There were a total of 41 random offender interviews conducted as part of the on-site tour which included a sampling from every living unit. Additionally, specialized interviews were conducted for offenders who disclosed sexual victimization during risk screening, transgender inmates, disabled and limited English proficient, and inmates who have reported sexual abuse. The institution stated there were no inmates to interview that have been placed in segregated housing for risk of sexual victimization or who have alleged to have suffered sexual abuse. There were 46 total in-person interviews conducted in a private office and several additional informal conversations while on the facility tour and while on-site for the duration of the audit.

Staff interviews were conducted, which included 28 random staff from a sampling of security and non-security, as well as staff from all three shifts (day, swing and graveyard). Specialized staff interviews conducted included the Warden, PREA Compliance Manager, first responders, intermediate or higher level facility staff, Human Resources staff, Medical staff, Mental Health staff, staff assigned to supervise offenders in segregated housing, staff that performs screening for risk of victimization and abusiveness, intake staff, volunteer and contractors, staff assigned to the incident review team, designated staff member charged with monitoring for retaliation and investigative staff. The facility reported there were no non-medical staff involved in cross-gender strip or visual searches and no staff who supervise youthful offenders. There were 48 staff interviews conducted either in-person or over the telephone in a private office and several additional informal interviews conducted while on the facility tour and while on-site for the duration of the audit.

In addition to the interviews conducted, the auditor reviewed investigative files, training records, training course materials, and other related materials that demonstrated MSP's efforts to comply with the Prison Rape Elimination Act.

DESCRIPTION OF FACILITY CHARACTERISTICS

Montana State Prison (MSP) is the largest correctional facility in the state, housing nearly 1,500 male inmates in a 68-acre compound designed to handle all custody levels: maximum, close, medium and minimum. Located in the Deer Lodge valley approximately 3.5 miles west of the town of Deer Lodge, the prison is a familiar symbol of corrections in Montana and houses some of the most violent offenders in the state.

Montana State Prison and its staff of about 640 uniformed and non-uniformed employees serve the citizens of Montana by providing a secure correctional environment that supports public safety by encouraging positive offender change.

The prison is divided into three compounds: low side, high side and locked housing. Within those custody levels are different types of supervision. Inmates range from general and special management populations to those with serious mental illness and inmates housed for pre-hearing confinement, detention or those in locked housing due to ongoing or serious behavior management problems.

Montana State Prison uses a unit management structure that is ultimately managed by a warden, four associate wardens and three bureau chiefs. Outside the fenced perimeter is a 192-bed Work and Reentry Center, which houses minimum-custody inmates who work on the 35,000-acre ranch and dairy program operated by Montana Correctional Enterprises (MCE). Together, the prison and MCE provide work for about 70 percent of the inmate population, as well as education, treatment, programming, recreation, religious activities and clinical services to promote the development of self-esteem, an environment that fosters self-improvement and a work ethic that will serve inmates before and after their release.



SUMMARY OF AUDIT FINDINGS

Overall it was evident that MSP had done a great deal of work preparing for their national PREA audit. During the course of the onsite visit staff were professional and inmates and staff were both willing to speak with the audit team.

On June 24, 2016 MSP was issued an interim audit report, which outlined 10 standards (115.12, 115.13, 115.14, 115.15, 115.17, 115.21, 115.31, 115.35, 115.42, 115.53) the facility was not compliant with at that time. Over the course of the following four months, the facility satisfactorily met the auditor's requirements in each of the standards to gain compliance. In some cases rules, policies, operational procedures and architectural changes were completed as well as the requirements to demonstrate proof of practice.

An explanation of the findings related to each standard is provided in this report. It is important to note the intention of this report is to provide the reader with a summary of audit findings and highlight some examples of evidence supporting these findings. The narrative in the report is not an "all inclusive" list of the supportive evidence needed to meet each PREA standard as there are a number of items considered when determining compliance. However, for each standard that was successfully met, interviews, observations, and review of additional documents during the on-site visit verified that practices employed at MSP are consistent with agency policies and facility protocols.

Number of standards exceeded: 1

Number of standards met: 42

Number of standards not met: 0

Number of standards not applicable: 0

Standard 115.11 Zero tolerance of sexual abuse and sexual harassment; PREA Coordinator

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

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

- (a) The Montana State Prison (MSP) and the Montana Department of Corrections (MDOC) has demonstrated compliance with all elements of this standard. The MSP and the Montana Department of Corrections adheres to *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)*, which stated the Department of Corrections has a zero tolerance relating to all forms of sexual abuse and sexual harassment. The PREA policy further outlines the agency's approach to preventing, detecting and responding to such conduct.

In addition to the agency policy, MSP has an Operational Procedure *MSP 1.1.17 – Prison Rape Elimination Act of 2003 (PREA)* that further supports its zero tolerance policy.

During a tour of the facility, the auditor observed two separate formats of signs clearly posted throughout the facility acknowledging the agencies zero tolerance policy towards sexual abuse and sexual harassment. Interviews with staff and inmates supports that they clearly understand the zero tolerance policy.

- (b) The department has designated Mr. Andy Jess as the Agency PREA Coordinator who reports directly to the Quality Assurance Director located out of the Agency Director's Office. During an interview with Mr. Jess, he stated that his sole duties are related to ensuring the department is compliant with PREA standards and that he has sufficient time and authority to develop, implement and oversee agency efforts to comply with the PREA standards in all of the agency facilities.

During the onsite audit it was apparent that Mr. Jess had the authority to develop, implement and oversee the agency's efforts to comply with the PREA standards. He was able to put out direction to staff at the facility so several compliance issues were able to be addressed immediately during the audit.

- (c) The MSP has designated Patrick Sheehan, Policy/PREA Specialist, as the Facility PREA Compliance Manager. During an interview with Mr. Sheehan, he stated that he has sufficient time and the authority to coordinate the facility's efforts to comply with PREA standards.

Standard 115.12 Contracting with other entities for the confinement of inmates

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's

conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

- (a) The MDOC reported it utilizes three contracts for confinement of offenders including two county jails and one private prison. The auditor reviewed the contracts and determined two contracts met the requirements of the standard including PREA language to ensure the entity’s obligation to adopt and comply with the PREA standards. One contract with Cascade County did not have PREA language included, yet is had been amended in September 2014.
- (b) MDOC employs contract monitors, whose sole duty is to monitor confinement contracts. Interview with the contract monitor indicated this was occurring.

The facility entered into a corrective action period to update the contract to include PREA language. On October 18, 2016 an updated contract that included PREA requirement was submitted to the auditor as supporting documentation. The contract had been signed by the MDOC Director and the Governor pending signatures by the county. The contract submitted satisfied the corrective action requirements, and the facility understands that if the county does not sign the contract, they can no longer contract for bed space with the facility.

Standard 115.13 Supervision and monitoring

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

- (a) MSP has a staffing plan that takes into consideration the following: Generally accepted detention and correctional practices; the facility’s architecture to include blind spots and areas where staff or inmates may be in isolated areas; the composition of the inmate population; number and placement of supervisory staff; occurrence of programs on specific shifts; applicable State and local laws, regulations and standards; and the prevalence of substantiated and unsubstantiated incidents of sexual abuse. There were no incidents of judicial findings of inadequacy or any finding of inadequacy from internal or external oversight bodies.

The staffing plan also identified strategies for adding additional video monitoring, including utilizing available grants as part of that process. The auditor was available to review camera placements through documentation provided and during the onsite visit. The number of cameras and locations were appropriate; however there were a few blind spots noted. In those areas the auditor made recommendations to ensure that inmates are restricted from entering that area.

- (b) MSP stated in circumstances where the staffing plan is not complied with, the facility shall document and justify all deviations from the plan. Documentation of deviations was provided to the auditor.

Interviews with the Warden and PREA Compliance Manager indicated a good understanding of the requirements in this standard.

The facility lists “staff shortage” as the most common reason for deviating from the staffing plan in the last 12 months.

- (c) MSP utilizes a form that is attached to the PREA Policy, titled *Prison Rape Elimination Act (PREA) Annual Staffing Plan Review* that encompasses all elements of the standard. The review is completed in consultation with the PREA Coordinator, facility PREA Specialist and the Warden. The last staffing review provided as documentation was dated 4/6/2015. This review was completed during a meeting and meeting minutes were also provided as supporting documentation. The facility indicated they would be scheduling another review shortly. The staffing plan review identified that the facility had difficulties filling vacant positions and were 40 positions below the minimum staffing number.
- (d) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)*, stated that administrators are required have intermediate level and higher level staff conduct unannounced rounds to identify and deter staff sexual abuse and sexual harassment. These rounds must be documented to cover all shifts and all areas of the facility. The facility must prohibit staff from alerting other staff of the conduct of such rounds.

MSP Operational Procedure 3.1.3 MSP Logs and Record Keeping Systems stated that the person who is assigned to maintain the logbook will log all staff “in” and “out” whenever they enter or exit the unit, work area, or security post for any reason.

While touring the facility, the auditor observed unannounced rounds being conducted throughout the facility. During interviews of staff, they acknowledged that supervisory staff conduct unannounced rounds on a regular basis. The facility utilizes a round tracking system that documents all rounds conducted by staff to include supervisory staff.

During interviews with staff, it was explained that supervisory rounds take place on all shifts, at random times, however; one supervisor that was explained that at the checkpoint to the facility staff do announce the presence on the radio to all staff that managers are onsite. As part of a corrective action, the warden issued a directive to all staff that staff members whom are posted at checkpoint will not radio Command Post using the telephone and Command Post will not radio or call the units alerting them that managers are entering the prison grounds to make an unannounced round.

Standard 115.14 Youthful inmates

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

MDOC Policy DOC 4.6.9 – Placement & Reporting of Youth with Adult Sentences stated that youthful inmates under the age of 16 will be placed in a youthful facility. The policy does allow for inmates with adult sentences over the age of 16 to be placed in an adult prison.

At the time of the audit, the facility stated that no youthful inmates were currently being housed at MSP. The facility stated that although it is not in the practice of routinely placing youthful inmates, one youthful inmate had been placed in the facility in the past twelve months.

The area that the youthful inmate was housed did not meet the requirement in the standard for sight and sound separation from adult inmates. The facility stated they closely supervised the youthful inmate for the eight days the youthful inmate was housed there.

MSP entered a corrective action period, which included developing a process to ensure that the facility would comply with this standard in the future. The agency has entered into an agreement with Pine Hills Youth Correctional Facility and the agency would complete a Youth Placement Agreement form. As a secondary plan in the event a youthful offender is not appropriate for placement at Pine Hills youth correctional Facility they will be housed temporarily in "H" block in Locked Housing Unit II at MSP. In this area they will be able to address the sight and sound separation needs of the offender and they will provide constant direct supervision when out of the cell. As a longer term solution, they have an interstate compact agreement with Nevada Department of Corrections, who has a unit dedicated to housing youthful offenders.

Standard 115.15 Limits to cross-gender viewing and searches

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

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

- (a) *MSP Operation Procedure 3.1.17A – Searches* stated that unclothed body searches should be conducted by male staff when possible. It is permissible for cross-gender unclothed body searches of male inmates when necessitated by staffing or emergency situations. It further stated that only the Warden is authorized to request outside health care providers to conduct a body cavity search / examination on an MSP inmate, and only when there is reasonable suspicion to believe contraband will be found and the inmate has consented in writing to the search. The health care provider is required to have written authorization from the Warden and a physician and shall fully document the search and its results.

The facility stated that in the past 12 months there have been no cross-gender strip or visual body cavity searches of inmates.

The Cross Gender Supervision training was provided as documentation that stated the facility shall not conduct cross gender unclothed searches or cross-gender visual body cavity searches except in exigent circumstances or when performed by medical practitioners.

Interviews with staff indicated a good understanding of the requirement and there was no indication that this had occurred in the past.

- (b) The facility does not house female inmates; therefore this provision of the standard is not applicable.
- (c) *MDOC Policy 3.1.17 – Searches and Contraband Control* stated that procedures must require staff to document all searches, excluding pat searches that do not result in the discovery of contraband or result in a disciplinary write-up. Documentation is submitted to the chief of security, or designee in accordance with *DOC 3.1.3 Logs and Record-Keeping Systems*.

MSP Operational Procedure 3.1.17A – Searches further stated that staff will document all searches they conduct. At a minimum they must make a logbook entry to document each area or group search they complete.

Interviews with staff indicated they would document the cross-gender strip or visual body cavity searches.

- (d) *MSP Operational Procedure 1.1.17 Prison Rape Elimination Act of 2003 (PREA)* stated that female staff will announce their presence when entering any housing block or dormitory where there is a reasonable expectation of privacy. A memorandum from the Warden to all MSP employees, dated June 9, 2015 was provided as supporting documentation of this standard. The memorandum indicated that prior to this date announcements were only being completed at the beginning of each shift. The memorandum provides the directive that female staff entering a housing block or dormitory will announce their presence by stating “female on the unit”.

The training staff received, titled *Cross Gender Supervision* included that opposite gender staff are required to announce their presence when entering a housing unit. It also specifically points out that to the extent that cameras are focused on an area in which inmates are likely to be undressed or toileting, such as shower, bathrooms, and individual cells, the cameras should only be monitored by officers or nonmedical administrators of the same gender as the inmates viewed through the camera.

MSP Operational Procedure 4.4.1 – Inmate Hygiene, Clothing & Linen Supplies stated that in order to enable inmates to shower, perform bodily function, and change clothing without nonmedical staff of the opposite gender viewing their buttocks, or genitalia, female custody staff are not to enter inmate shower and/or toilet areas and view inmates while they shower, perform bodily functions and change clothes. It further stated that the only exception to this will be during circumstances when they are responding to signs that illegal or unauthorized activities may be in progress in these areas, or where such viewing is incident to the performance of other routine security duties. Inmates are required to dress in the shower areas.

During the audit the audit team was able to observe opposite gender staff making the announcement when entering a housing unit. Interviews with staff and inmates also indicated this was routinely occurring.

Shower and bathroom areas were observed and there were some architectural changes that needed to be made to prevent opposite gender viewing. As part of a corrective action period the facility made the changes necessary and emailed photo's to this auditor.

Additionally, there were some close observation cells that had cameras that would show an inmate using the restroom or changing. Through conversations with staff, it was determined that opposite gender non-medical staff do view the cameras in control points. As part of corrective action, the post orders were updated to include the following language: “per PREA audit action plan of 2016, if a female officer is in the control cage and an inmate is in the isolation cell, a small sticky note is to be placed on the video feed monitor of the isolation cell, in the location the toilet area to allow privacy when using the toilet, unless there is a justified reason why this shouldn't take place”. The facility understands their need to provide ongoing checks to ensure this practice actually takes place.

- (e) *MDOC Policy 3.1.17 – Searches and Contraband Control* state that staff are prohibited from searching or physically examining a transgender or intersex offender for the sole purpose of determining the offender's genital status.

Interviews with transgender inmates did not indicate this had occurred. Interviews with staff indicated a good understanding of the requirement of this provision of the standard.

- (f) MSP stated on the Pre-Audit Questionnaire that a hundred percent of security staff has been trained in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

The training curriculum was reviewed and met compliance with this standard by instructing staff to be professional, respectful and the requirements around searches.

Interviews with staff indicated most had a good understanding of the training that was provided to them; however, a couple of staff particularly on graveyard indicated they had not received the training and there was some confusion on how the searches would be conducted. After reviewing training logs, it was determined they had not received the

training. MSP entered a corrective action period in this area. They have since verified that all staff that security staff have all received the training, with exception to staff that are on extended leave for medical reasons and will be trained on return before contact with offenders.

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

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

(a-b) *MDOC Policy 1.1.17 – Prison Rape Elimination Act of 2003* stated that a program or facility will provide offender education in formats accessible to all offenders, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to offenders who have limited reading skills.

Training curriculum was provided that outlined the Americans with Disabilities Act (ADA) requirements. This training outlined how the facility provides reasonable accommodations to inmates with physical or mental impairment, including the use of interpreters and TTY phones.

Inmate orientation was provided that stated an inmate could ask for a reasonable accommodation by asking their Unit Counselor or other Department staff in person or in writing or by contacting the ADA Coordinator.

MDOC provided a contract that MSP utilizes for telephonic interpretation services (OPI) and braille transcription services. The contract stated languages will include, but not be limited to, Spanish, Russian, German, French, Montana Native American Tribes (based on availability), Mandarin, and Arabic.

The facility stated they did not currently have anyone at the facility that was limited English proficient but a disabled inmate was interviewed as part of audit. The disabled inmate was able acknowledge that they had been educated on PREA.

(c) *MDOC policy 1.1.17 – Prison Rape Elimination Act of 2003 (PREA)* state that the program or facility will not rely on offender interpreters for investigations regarding sexual misconduct expect in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the offender’s safety, the performance of first-response duties or the investigation of the offender’s allegations.

Interviews with staff indicated they were aware of this requirement and no inmate or staff interviews indicated this had occurred in the past.

Standard 115.17 Hiring and promotion decisions

- Exceeds Standard (substantially exceeds requirement of standard)

- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

- (a) The *MDOC Policy 1.3.2 Performance and Conduct* does not specifically prohibit the agency from hiring or promoting anyone who may have contact with inmates, and shall not enlist the services of any contractor who have been engaged, convicted of or civilly or administratively adjudicated in all activities described in 1-3 of the standard.

The facility stated that in the past 12 months, there were 217 persons hired who may have contact with inmates who have had criminal background records checks.

- (b) At the time of the audit, there was no documentation provided to the auditor to show that MSP considers incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with inmates.

- (c-e) *MDOC policy 1.3.2 Performance and Conduct* states the Office of Human Resources will ensure a criminal background check is conducted on all employees and service providers upon hire or transfer from another state agency, or promotion and every five years thereafter.

Hiring files indicated criminal history checks had been completed on new employees.

- (f) At the time of the audit, there was no documentation provided that indicated that the agency shall ask all applicants about previous misconduct described in (a). *MDOC policy 1.3.2 Performance and Conduct* outlines an affirmative duty to disclose criminal conduct. As part of a corrective action, the agency developed a questionnaire that all applicants will need to complete, which meets compliance with this provision.
- (g) At the time of the audit, no documentation was provided that stated material omissions regarding such misconduct or the provision of materially false information shall be grounds for termination. This language is not added into the questionnaire that has been added in the corrective action period.
- (h) At the time of the audit, no documentation was provided that stated the agency shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institution employer for whom such employee has applied to work.

The facility entered into a corrective action period, in which it made significant changes to *MDOC policy 1.3.2 Performance and Conduct* to meet compliance. The new policy language reiterates all provisions of this standard. Furthermore, the agency has stated this is now in practice, satisfying the auditor’s corrective action requirements.

Standard 115.18 Upgrades to facilities and technologies

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

- (a) MSP stated that the facility has not made any substantial expansion or modifications of existing facilities since August 20, 2012.
- (b) MSP stated the facility has not installed or updated a video monitoring system, electronic surveillance system, or other monitoring technology since August 20, 2012.

Interviews with the Warden, PREA Specialist and the Director’s designee (the Quality Assurance Director) indicated a good understanding of this requirement.

Standard 115.21 Evidence protocol and forensic medical examinations

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

- (a) MSP has established uniform protocols for investigating allegations of sexual abuse that maximize the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions as outlined in *MDOC Policy 3.1.28, Crime Scene and Physical Evidence Preservation*.

DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA) outlines first responder duties that include separating the victim and the suspect and requesting the victim not perform any functions that may damage evidence such as bathing or showering, using the restroom, changing clothes, combing hair etc.

Interviews with random staff and a facility investigator indicated a good understanding of the uniform evidence protocol.

- (b) MSP stated that the protocol was adapted from or otherwise based on the most recent edition of the DOJ’s Office on Violence Against Women publication, “*A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents*”.

A review of the protocol was confirmed that it was appropriate.

- (c) *MDOC Policy Prison Rape Elimination Act of 2003 (PREA)* states that medical staff will offer assessments to all inmates involved in a sexual abuse incident without financial cost including a forensic medical examination if reported within 72 hours of the incident. The staff will, with the victim’s permission, immediately transport the victim to a medical facility equipped with medical personnel certified as Sexual Assault Forensic Examiners (SAFE’s) or Sexual Assault Nurse Examiners (SANE’s), or if none are available, to a medical facility with other qualified medical practitioners, to evaluate and treat sexual assault/rape victims.

MSP stated that there have been three forensic medical examinations that were conducted during the past 12 months; two performed by a SANE/SAFE and one performed by a qualified medical practitioner. Inmates are transported to Deer Lodge Medical Center or local area medical facilities for SANE/SAFE exams.

- (d) MSP has a Memorandum of Understanding with a local rape crisis center, Safe Space, to provide sexual abuse victim advocacy, which includes response to the hospital during a forensic medical exam.
- (e) *MDOC policy 1.1.17 – Prison Rape Elimination Act of 2003 (PREA)* states that offenders who allege to be victims of sexual abuse or sexual harassment must be provided access to a victim advocate or rape crisis center counselor who can offer emotional support services through the investigative process, or access to a qualified facility staff person.

The Memorandum of Understanding with Safe Space outlines that they will provide hospital response during the forensic medical examination and shall provide emotional support, crisis intervention, information and referrals.

During the tour the audit team noticed that the phone number and contact information for advocacy centers were not provided on posters or other areas. The auditors were concerned that inmates were not aware that the option to have a victim advocate was available to them. The facility PREA Specialist stated the information is in rules and policies, and inmates have access to those through the library.

The facility entered into a corrective action period and was required to provide inmates with information on victim advocacy. The facility created a pamphlet titled “End the Silence” that provided information on victim advocacy, and how to reach them. The facility will have the pamphlet readily available to all inmates by placing them in all housing units and other areas.

- (f-g) MDOC is responsible to investigate allegations of sexual abuse; therefore this provision of the standard is not applicable.
- (i) Safe Space staff have been screened for appropriateness to serve in this role and have received education concerning sexual assault and forensic examination issues in general.

Standard 115.22 Policies to ensure referrals of allegations for investigations

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

- (a) *MDOC Policy 3.1.19, Investigations* states that all reported incidents of sexual abuse and sexual harassment will be investigated either by local law enforcement or the Department’s Office of Investigations. *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)*, states that allegations of sexual abuse and sexual harassment will be assessed by personnel designated by the administrator and investigative staff to ensure each report is forwarded to the appropriate investigative office.

MDOC Office of Investigations conducts all criminal investigations, and administrative investigations are investigated by select facility staff. Interviews with staff, including an investigator indicated this was occurring. During the audit there was an inmate that reported sexual abuse to the auditor. The auditor was able to observe that the allegation was immediately forwarded for investigation.

- (b) *MSP Operating Procedure 1.1.17 Prison Rape Elimination Act of 2003 (PREA)* states that allegations of sexual abuse or sexual harassment are initially reviewed by the Command Post staff and the PREA Specialist and then forwarded to the Office of Investigations or forward to the appropriate MSP staff to conduct an administrative investigation.

MDOC Policy 3.1.19, Investigations stated that outlines the general requirements that all criminal investigations are to be referred for to an investigator with the legal authority to conduct the investigation. The policy is available on the MDOC website at: https://cor.mt.gov/Portals/104/Resources/Policy/Chapter3/3-1-19%20Investigations%2003_11_15.pdf.

MSP stated that during the past 12 months there have been 30 allegations of sexual abuse and sexual harassment that were administratively investigated and four that were criminally investigated.

Investigative files reviewed as part of the onsite visit showed that the allegations were investigated and referrals were documented.

- (c-e) Since MDOC conducts its own investigations these provisions of the standards are not applicable.

Standard 115.31 Employee training

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

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

- (a-b) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that prior to working with offenders, all Department employees with direct and/or incidental contact with offenders must receive documented PREA training and sign the [Staff PREA Acknowledgement](#) form. Training and documentation will be repeated annually thereafter. Training will include, but is not limited to:

1. Review of this policy, the *Prison Rape Elimination Act (PREA)*, *DOC Policy 1.3.12 Staff Association and Conduct with Offenders*, appropriate site-specific procedures, and any other applicable state or federal laws;
2. investigation, and prosecution of sexual misconduct;
3. the Department's zero tolerance stance;
4. recognition of sexual misconduct, predatory offenders, potential victims, and/or staff involvement;
5. how to fulfill their responsibilities under Department sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
6. facility or program procedures on sharing confidential information;

7. an offender’s right to be free from sexual misconduct;
8. offender and employee rights to be free from retaliation for reporting sexual abuse and harassment;
9. the dynamics of sexual abuse in confinement;
10. common reactions of sexual abuse victims;
11. how to detect and respond to signs of threatened and actual sexual abuse;
12. how to avoid inappropriate relationships with offenders;
13. how to communicate effectively and professionally with offenders who might be lesbian, gay, bisexual, transgender, intersex (LGBTI) or gender nonconforming; and
14. gender-specific training.

New employees receive a two hour in person, classroom training titled “Prison Rape Elimination Act (PREA)”. The training included all topics required in 1-10 of this standard. New employees also receive boundaries training that include how to avoid inappropriate relationships with inmates.

Copies of training rosters were not provided and some staff did not feel they had been adequately trained. Training records were spot checked and it appeared some staff had not received PREA training. As part of the audit the facility stated they were unable to provide a training roster, as the electronic system they utilize was not able to do so. As corrective action, the training department completed an audit of training records to ensure that all staff that hasn’t been trained receives the training as outlined in the standard.

- (c) MDOC stated they provide refresher training every two years to ensure all employees know the agency’s current sexual abuse and sexual harassment policies and procedures and in years in which an employee does not receive refresher training, the agency shall provide refresher information on current sexual abuse and sexual harassment policies.

This year the refresher training was focused specifically on how to effectively and professionally communicate with LGBTI inmates. In previous years there were various other trainings that focused on specific topics. It was not clear that all staff have received the training covered in this standard. As part of a corrective action, the training department reviewed training records to ensure all staff received this training. The training was also added into new employee training to ensure staff receive the training in the future.

Standard 115.32 Volunteer and contractor training

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

- (a) *DOC Policy 1.1.17, Prison Rape Elimination Act (PREA)* states that the definition of department employee also covers volunteers; therefore, volunteers must adhere to the same training requirements.

The policy further stated that all service providers who have contact with offenders will be trained on the Department’s zero tolerance policy concerning sexual abuse and harassment, prevention, detection and response

methods, and how to report such incidents.

The facility did not have any volunteers at the facility during the audit. During interviews with a contractor, she acknowledged that they had received PREA training and knew of her responsibility to report all allegations of sexual abuse and sexual harassment.

- (b) *DOC Policy 1.1.17, Prison Rape Elimination Act (PREA)* stated that the level and type of training provided to service providers will be based on the services they provide and the level of contact they have with offenders. Service providers will sign the *Service Provider PREA Acknowledgement Form*.

DOC Policy 1.3.16, Volunteer Services, states that volunteers with direct and/or incidental contact with offenders must receive documented PREA training during volunteer orientation in accordance with *DOC Policy 1.1.17, Prison Rape Elimination Act (PREA)*. Page 12 of the Volunteer Handbook describes the Prison Rape Elimination Act and their responsibilities.

- (c) Documentation of training was provided during the audit when requested.

Standard 115.33 Inmate education

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

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

- (a) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)*, stated that within 72 hours of facility or program intake, staff will communicate to offenders, verbally and in writing:
- a. Information about the Department's zero tolerance of sexual abuse and sexual harassment;
 - b. How to report incidents or suspicion of abuse or harassment; and
 - c. This policy, 1.3.12 Staff Association and Conduct with Offenders, 3.3.3 Offender Grievance Program, and corresponding site specific procedures.

MSP stated that out of the 1,094 inmates admitted during the past 12 months, all received PREA education within appropriate timeframes.

During the audit the auditor was able observe that inmates who enter intake immediately watch a PREA video that serves as the education. Interviews with inmates indicated this was occurring regularly. The intake Case Manager was interviewed and was able to explain the process.

- (b) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)*, states that within 30 day of intake, the program or facility will provide education to offenders either in person or through video regarding their right to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding program or facility procedures for reporting and responding to such incidents.

MSP Operational Procedure 1.1.17 Prison Rape Elimination Act of 2003 (PREA) states that inmates at MSP will receive education and information about the PREA standards and MSP's zero tolerance position toward sexual abuse and sexual harassment; all sexual abuse and sexual harassment allegations will be handled as substantiated claims, until

proven unfounded or unsubstantiated.

MSP meets this requirement of the standard by educating inmates during orientation within 30 days of arrival. The education is in person and allows for discussion and questions on the process to be asked. This includes scenarios on what to do and how to report if something were to occur.

Interviews with inmates confirmed they have received the education as described.

- (c) MSP stated that all inmates were educated within one year of the effective date of the PREA standards. Interviews with inmates confirmed this had occurred.
- (d) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)*, stated that the program or facility will provide offender education in formats accessible to all offenders, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to offenders who have limited reading skills.

MSP stated that there are very few limited English proficient inmates incarcerated in MDOC but they were able to describe the process in which an interpreter would be utilized if needed. A developmentally disabled inmate was interviewed and had a good understanding of PREA.

- (e) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that the facility will maintain documentation of offender participation in PREA education sessions and have offenders sign the Offender PREA Acknowledgement form. The form was reviewed as supporting documentation.
- (f) During the tour of the facility the auditor was able observe several PREA posters throughout the facility. The information was readily available to inmates. The facility PREA Specialist also explained that information is also distributed periodically on the inmate televisions.

Interviews with inmates indicated the posters have been available for some time and all inmates were able to articulate that they knew how to report a PREA allegation if they had one.

Standard 115.34 Specialized training: Investigations

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

- (a) *MDOC Policy 1.1.17 Prison Rape Elimination Act of 2003 (PREA)* stated that administrative investigations will be conducted in accordance with DOC 1.3.13 Administrative Investigations; individuals assigned to conduct administrative investigations will work in cooperation with the Office Human Resources and be trained in all specialized investigative training topics relevant to confined settings.

A criminal and an administrative investigator were interviewed as part of the audit process. Both stated they received the training.

- (b) The training provided to staff is training that is available through the PREA Resource Center and includes all the training topic including techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.
- (c) Training rosters were provided as documentation.
- (d) MDOC conducts its own criminal and administrative investigations; therefore, this provision of the standard is not applicable.

Standard 115.35 Specialized training: Medical and mental health care

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

- (a) *MDOC Policy 1.1.17 Prison Rape Elimination Act of 2003 (PREA)* stated that medical and mental health providers will receive additional, specialized training relevant to their role in detecting and assessing signs of sexual abuse and sexual harassment; preservation of evidence, and responding effectively to victims of sexual abuse and sexual harassment.

MSP stated the training includes going through the process for assessing a PREA allegation and has them review the PREA procedure.

An interview with a contracted nurse indicated she had not received specialized training as required by this standard. After reviewing training records, she had not received the training.

- (b) MSP stated medical staff employed by the agency do not conduct forensic examinations, therefore this provision of the standard is not applicable. Interviews with medical staff reinforced they had not completed the exams.
- (c) Training rosters were provided as documentation that medical and mental health providers have received the specialized training. Rosters indicate 61 medical and mental health staff have been trained.
- (d) MSP indicated contractors and volunteers that are medical and mental health care practitioners also receive the training mandated for employees under 115.31 and 115.32, depending upon the practitioner’s status at the agency. A contracted nurse did indicate she had received contractor basic PREA training.

As part of a corrective action, the facility audited the training records and ensured all staff was trained. The facility also made changes to the PREA procedure to indicate that prior to having contact with inmates, all medical and mental health staff, and contracted medical and mental health staff will complete the National institute of Correctional training course of PREA Medical Health Care for Sexual Assault Victims in a Confinement Settings Course.

Standard 115.41 Screening for risk of victimization and abusiveness

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

(a-b) *MDOC policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)*, states that risk assessment of all offenders through the use of an objective screening instrument for victimization and abusiveness will take place within 72 hours of intake into a facility or program.

MSP Operating Procedure policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA), states that unit staff or designee will complete the assessment and place the completed forms in the inmate’s main and mini-file.

Screenings are completed in person by the Intake Case Manager. After speaking with inmates and reviewing documentation it was discovered that occasionally inmates were not screened within the required timeframe if they go directly to segregation. The Case Manager was immediately advised that the PREA screenings should still take place within the required timeframes with the information that she has available to her. She confirmed she will begin this practice immediately; therefore, no corrective action is needed in this area.

- (c) The auditor reviewed the risk assessment tool – *Sexual Predator/Vulnerability PREA Screening Checklist*, which was an objective screening instrument.
- (d) The auditor reviewed completed PREA: Risk Assessment – Sexual Predator/ Vulnerability PREA Screening Checklists to ensure that all the required criteria was being considered to include the following: Possible Victim factors include: Former victim of prison rape or sexual assault within the past ten years; Youthful age (under 25); Elderly (65 or older); Small physical stature (5’0” or less and/or 95lbs or less); Developmental disability/mental health history/physical disability; First time incarcerated; Gay/lesbian/bisexual/transgender/intersex/gender nonconforming; History of any sexual abuse with the past ten years; History of correctional facility consensual sex within the past ten years; Placement in Special Management within the past ten years.

The screening did not include whether the inmate’s criminal history is exclusively nonviolent or the inmate’s own perception of vulnerability. The facility was proactive in immediately updating and implementing the form to include this required information in the assessments. Documentation was provided to the auditor and interviews with the Case Manager indicated an understanding that she should immediately begin using the form.

The PREA Standard requires that inmates being detained solely for immigration purposes be considered as part of the risk screening. The Montana Department of Corrections only takes custody of inmates who have been criminally sentenced and would not hold inmates solely for immigration purposes. As such, it is not considered during their screening process.

- (e) The *Sexual Predator / Vulnerability PREA Screening Checklist* lists possible predator factors to include: Institutional predatory sexual behavior with the past ten years; current or prior conviction for rape, child abuse or neglect within the past ten years; Sexual abuse or sexual assault toward others or domestic violence with the past ten years; gang affiliation; Institutional strong –arming / assaults within the past ten years; Institutional sexual taunting toward staff or

offenders within the past ten years.

(f-g) *MDOC policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)*, states that reassessment will occur within 30 days of intake into a facility or program and when warranted thereafter based on new information. *MSP Operating Procedure policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)*, states that the reassessment is completed by the Case Managers or designee utilizing the PREA risk assessment form.

Additionally, *MSP Operating Procedure policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)*, states that a risk assessment screening will be completed after a PREA investigation has taken place.

Screenings are done in person in a private location.

- (h) *MSP Operating Procedure policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)*, states that MSP prohibits disciplining inmates for refusing to answer questions, or for not disclosing complete information related to:
- a. Whether the inmate has a mental, physical, or developmental disability;
 - b. Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender non-conforming;
 - c. Whether the inmate has previously experienced sexual victimization; and
 - d. The inmates own perception of vulnerability

Interviews with staff that do the screening indicated they understood this requirement. Interviews with inmates did not indicate this had been completed in the past.

- (i) Interviews with facility staff that conduct the screening indicate that appropriate controls on the dissemination within the facility of responses to questions pursuant to this standard in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates. The screening is treated as confidential and limited to need to know staff.

Standard 115.42 Use of screening information

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

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

- (a) *MSP Operating Procedure 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* stated that staff shall use information from the PREA: Risk Assessment to make informed housing, bed, work, educational, and program assignments.

MSP has a computerized database that tracks inmates found to be at high risk of sexual victimization or aggressiveness. This information is available as a designator and is considered when making housing, bed, work, educational, and program assignments. All staff who are making such assignments have access to see if an inmate has a designator. Interviews with staff indicated this process was occurring for all assignments made.

- (b) *MSP Policy 4.2.200 – Institutional Services/Classification* states that inmates identified as sexual predators shall not be housed in the same cell or on the same block with inmates who have been identified and designated as susceptible or vulnerable to sexual assaults or intimidation

MSP Operational Procedure 4.2.1 Inmate Classification System states that classification recommends or advocates a management scheme which takes into account safety and security interests, supervision needs, inmate related risks, program considerations and other management factors.

MSP Policy 4.2.202 –Inmate Separation Needs/ Special Needs Offenders describes how individualized determinations are made with regards to safety concerns of inmates.

Interviews with staff indicated the agency makes individualized determinations about how to ensure the safety of each inmate.

- (c) MSP currently housing transgender or intersex inmates based off their genital status in practice, which is not allowable by the standard. As part of corrective action, they have updated the policy and practice to ensure housing assignments are done on a case by case basis and not solely of genital status.
- (d) In reviewing records there is not a formal process at MSP to reassess transgender or intersex inmates at least twice a year to review any threats to safety experienced by the inmate, however informal conversations do regularly occur.

Two transgender inmates were interviewed during the onsite audit. The auditor was not supplied any documentation that biannual reviews have occurred. The inmates were also not able to articulate reviews were occurring.

- (e) Transgender and intersex inmate’s own views with respect to his or her own safety is given consideration through informal conversations, however there is not currently a formalized process.
- (f) *MSP Operating Procedure 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that inmates that are transgender or intersex shall be given the opportunity to shower separately from other inmates. Inmates that are deemed to be transgender or intersex by definition may send an *Offender/Staff Request (OSP)* to the Unit Manager or Shift Commander requesting the accommodation. All inmate accommodations will be made through a collaborated effort by the Unit Manager and Shift Commander, and each accommodation will be done on a case by case basis.

The facility PREA Specialist explained that inmates are not asked directly if they would like a private shower, but need to request one. The auditor was concerned that if inmates do not know if they are available, they would not know to ask for one. The facility PREA Specialist indicated all inmates have access to review the PREA Operating Procedure in the library. The auditor finds that this is not sufficient to meet the standard, as not all showers in the facilities are private from other inmates and accommodations would need to be made.

- (g) There was nothing to indicate the agency places lesbian, gay, and bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification status. The facility is not subject to a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates.

The facility entered into a corrective action period for this standard. *MSP Operating Procedure 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* was updated to add that the PREA Specialist will be notified when an inmate identifies as transgender or intersex during the risk assessment. Additionally, inmates that identify as transgender or intersex will be reassessed at least twice each year to review any threats to safety experienced by the inmate. The reassessment will include: the transgender or intersex inmates’ own views of their personal safety and if the housing and program assignments ensure safety, and if they have the opportunity to shower separately from other inmates. It also states that in determining a transgender or intersex inmate’s housing and programming assignments, the facility will consider on a case-by-case basis whether an assignment would ensure the inmates health and safety and whether the assignment would present management or security problems. To show proof of practice that the update to the operating procedure had actually been implemented, copies of reviews were provided, as well as a tracking mechanism that was created by the PREA Specialist.

Standard 115.43 Protective custody

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

- (a) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that victims of sexual abuse and sexual harassment will only be placed in administrative segregation for protective purposes if all alternative options have been considered. MSP reported that no inmates have been placed in administrative segregation for this purpose in the past 12 months.

During the auditor interview with the Facility’s Warden, he did not indicate this was occurring. Interviews with staff who supervise segregation further supported compliance.

- (b) MSP stated that if they did have an inmate placed in segregated housing for this purpose, they shall have access to programs, privileges, education, and work opportunities to the extent possible or document why the opportunities have been limited, the duration of the limitation and the reasons for such limitations. There were no examples of this occurring; however staff interviews indicated an understanding of this process.

- (c-e) *MSP Operational Procedure 4.2.1 Inmate Classification System* states that the Unit Management Team (Unit Manager, Case Manager (s), Sergeants and Correctional Officers) shall conduct classification reviews of all inmates in segregation at least every 30 days, using a Locked Housing Progress Report.

The assessments document the basis for the facilities concern for the inmate’s safety and the reason why no alternative means of separation could be made.

Standard 115.51 Inmate reporting

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

- (a) MDOC provides multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA) outlines the process for reporting including directly to a staff, utilizing the grievance system, through confidential telephone hotlines or by utilizing the telephone system to contact the facility PREA Specialist.

Inmates are educated on all the reporting options through inmate orientation and posters in housing units and other areas. Inmates and staff who were interviewed were able to articulate that they understood the reporting methods available.

- (b) MSP has entered into a formalized agreement with the YWCA to provide a method for inmates to provide reports of sexual abuse and sexual harassment. Inmates may call YWCA, who then agrees to forward reports of sexual abuse and sexual harassment to agency officials, allowing the inmate to remain anonymous upon request. The auditor reviewed a Memorandum of Understanding with the YWCA that outlines the process of notifying MDOC's on-call investigator immediately of any case reported on the hotline.

The phone number to the YWCA is posted on inmate posters; however it did not indicate that the inmates may ask to remain anonymous. It is recommended that this information be included on the PREA posters.

MSP does not house inmates solely for civil immigration purposes, therefore that provision of this standard is not applicable.

- (c) All staff interviewed were aware they should accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document verbal reports. Staff are also trained on this requirement.
- (d) *MSP Operating Procedure 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that staff can privately report sexual abuse and sexual harassment to the PREA Specialist and Office of Human Relations. All staff interviewed were aware of this requirement.

Standard 115.52 Exhaustion of administrative remedies

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

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

- (a) *MDOC Policy 3.3.3 – Offender Grievance Program* is the administrative procedure that outlines the process of inmate grievances of sexual abuse.
- (b) The policy stated that there will be no time limit placed on the filing of a grievance alleging sexual abuse and that applicable time limits may be applied to any portion of a grievance that does not allege an incident of sexual abuse.

The policy stated that offenders alleging sexual abuse must not be required to use an informal grievance system nor must they be required to resolve such a grievance with staff.

There was nothing in the policy that would restrict the agency's ability to defend against an inmate lawsuit on the ground that the applicable statute of limitations has expired.

- (c) The policy stated that offenders are not required to submit the grievance to the staff member who is the subject of the complaint and the grievance will not be referred to the staff member who is the subject of the complaint.
- (d) The policy stated that a final decision on the merits of any portion of a grievance alleging sexual abuse must be issued within 90 days of the initial filing of the grievance. This does not include time consumed by the offender in preparing any appeals.

If the 90-day time period for response is insufficient to make an appropriate decision an extension of up to 70 days may be allowed to respond. The offender must be notified in writing of any such extension and provided a date by which a decision will be made.

The facility stated that there were two grievance that were filed in the past 12 months alleging sexual abuse and in both cases a decision on the merits of the grievance was made within 90 days after being filed.

At any level of the process, including the final level, if the offender does not receive a response within the time allotted for reply, including any properly noticed extension, the offender may consider the absence of a response to be a denial at that level.

- (e) The policy stated that third parties are permitted to assist offenders in filing requests for administrative remedies relating to allegations of sexual abuse, and are permitted to file such requests on behalf of an offender, with the following exceptions:
 - a. adult offenders must give permission for the third party to file requests and must personally pursue any subsequent steps in the grievance process;
 - b. if the alleged victim is a juvenile a parent or legal guardian is allowed to file a grievance, including appeals, on behalf of the juvenile without the agreement of the juvenile;
 - c. if the alleged victim is a juvenile and the third party is not a parent or legal guardian, the facility may require the juvenile to agree to have the request filed on his or her behalf and may require the juvenile to personally pursue any subsequent steps in the grievance process;
 - d. if the offender declines to have the request processed on his or her behalf the facility will document the offender's decision.
- (f) The policy stated that the procedures for the filing of an emergency grievance alleging that an offender is subject to a substantial risk of imminent sexual abuse must include:
 - a. the grievance, or any portion thereof that alleges the substantial risk of imminent sexual abuse, will immediately be forwarded to a level of review at which immediate corrective action may be taken;
 - b. an initial response will be provided within 48 hours;
 - c. a final decision will be made within five calendar days; and
 - d. the initial response and final decision will document the determination whether the offender is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

An interview with the facility grievance coordinator indicated a good understanding of this standard.

Standard 115.53 Inmate access to outside confidential support services

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the

facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

- (a) *MSP Operating Procedure 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that mental health staff (or the Command Post in the event mental health staff is unavailable) will complete an *Emergency Interview Questionnaire Form* (attachment J) for all parties involved and that services may include providing inmates with access or contact information to outside victim advocates for support services related to sexual abuse. The questionnaire was reviewed and did not include information on providing advocacy to the inmates, although an interview with mental health staff did indicate that she was aware of her ability to provide an inmate the information.

MSP has a Memorandum of Understanding (MOU) with Safe Space, which is an outside victim advocacy center. The MOU outlines that MSP will provide inmates with mailing addresses and telephone numbers, at no cost and that MSP will respect confidential, 24-hour access to the Safe Space rape crisis hotline and through the prison’s mailing system.

During the tour of the facility it was noted that information was not provided to inmates on how to contact Safe Space through educational materials or on PREA posters. Additionally, random interviews with inmates did not show a clear understanding of their option to contact the service. Inmates who had alleged sexual abuse also indicated they were not aware they could contact Safe Space.

The facility entered into a corrective action period and was required to provide inmates with information on victim advocacy. The facility created a pamphlet titled “End the Silence” that provided information on victim advocacy, and how to reach them. The facility will have the pamphlet readily available to all inmates by placing them in all housing units and other areas.

- (b) There was no indication that the facility informs inmates, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws. The facility included this information in the pamphlet that was created that will be readily available to inmates.
- (c) MSP has entered into an MOU with Safe Space to provide inmates with confidential emotional support services related to sexual abuse. The MOU was reviewed by the auditor.

Standard 115.54 Third-party reporting

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA) stated that inmates may report through a third party. Inmate education also includes information on third party reporting.

Interviews with inmates indicated an awareness of third party reporting.

Third party reporting information is published on the MDOC website at <https://cor.mt.gov/PREA>.

Standard 115.61 Staff and agency reporting duties

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

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

- (a) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* outlines the agency's zero tolerance and informs staff they must immediately report to the shift supervisor as soon as a staff is informed of, or witnesses an incident of sexual abuse or sexual harassment.

Staff are trained in their reporting requirements and all staff were able to articulate how they would report when interviewed.

- (b) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that staff who report shall mark the report as confidential and limit information to appropriate staff.

Staff understood the requirements of confidentiality when interviewed.

- (c) Medical and mental health practitioners have the same reporting requirements as staff. Interviews with medical and mental health staff indicated they were aware that they needed to inform inmates of their duty to report and limitation of confidentiality at the initiation of service.

- (d) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that in accordance with *41-3-201 MCA*, if a youth offender (under the age of 18) has been victimized, Department of Public Health and Human Services (DPHHS) must be notified by contacting the Montana child abuse hotline at (866) 820-5437.

- (e) *MSP Operating Procedure 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* stated that Command Post staff and the PREA Specialist will review sexual abuse or sexual harassment allegations and either forward all information to the Office of the Investigations or the appropriate MSP staff to conduct an administrative investigations. All staff was aware of the reporting requirements.

The auditor was able to review investigations onsite, which showed allegations being reporting to investigators.

Standard 115.62 Agency protection duties

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA) clearly outlines the agency’s policy of zero tolerance against sexual misconduct to include sexual abuse, sexual harassment and retaliation including separating the victim and suspect and keeping the victim safe.

A review of policy and staff interviews demonstrated that risk assessments are completed for every inmate. Information from this assessment is utilized to assist in identifying those at risk for sexual victimization and those at risk of being sexually abusive. This information is used when determining housing assignments that are most appropriate.

Auditor interviews with the Agency’s Quality Assurance Director, Warden, and random staff demonstrated an agency understanding of the requirement to report allegations immediately and knew what steps would be taken to separate the potential victim from the suspected aggressor.

Standard 115.63 Reporting to other confinement facilities

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

(a-d)*DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that allegations that an offender was sexually abused while at another facility or program must be reported by the administrator to the administrator of the facility or program where the abuse occurred as soon as possible but no later than 72 hours after the initial report.

Samples of notifications were provided as supporting documentation. The samples were within the required timeframe and interviews with the Warden indicated an understanding of the requirements.

Standard 115.64 Staff first responder duties

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-

compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

(a-b) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* details steps first responders are required to take. Staff who receive a report of sexual abuse or sexual harassment will:

1. separate the victim from the alleged perpetrator to protect the victim and prevent violence,
2. promptly intervene on the victim’s behalf to ensure prompt medical and psychological assistance including an assessment for potential risk of suicide; and
3. protect evidence in accordance with *DOC 3.1.28 Crime Scene and Physical Evidence Preservation*;
 - a. staff will request that the alleged victim and ensure that the alleged abuser not take any actions that could destroy physical evidence such as bathing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating; or
 - b. if the first staff responder is not a security staff member, the responder must request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.

First responder duties have been incorporated into training. During interviews with staff, all were able to clearly describe their first responder duties.

Standard 115.65 Coordinated response

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

MSP Operating Procedure 1.1.17, Prison Rape Elimination Act of 2003 (PREA) outlines a detailed written institutional plan that coordinates actions taken in response to an incident of sexual abuse, among first responders, medical and mental health practitioners, investigators and facility leadership.

The coordinated plan outlines staff first responder duties, including immediate notification of the allegation to the Command Post. The Command Post and the PREA Specialist, or designee reviews the allegations and assigns it for investigation. Medical is notified and offers the inmate an assessment. If within 72 hours, MSP medical staff will transport the inmate to an outside medical provider for additional assessments. Medical staff notifies the Office of Investigations to obtain the evidence. Medical staff will refer inmates to mental health staff. Mental Health staff (or the Command Post in the event Mental Health staff are unavailable) will complete an Emergency Interview Form.

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

- Exceeds Standard (substantially exceeds requirement of standard)

- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

(a-b) A review of the Collective Bargaining Agreements between the Montana State Prison Employees, Local #4700, MEA-MFT, AFT, AFL-CIO and the Montana State Prison Montana Department of Corrections 2015-2017 and was provided for the auditor’s review. There was no language preventing the removal of staff alleged to have committed sexual abuse from contact with inmates pending the outcome of the investigation.

Interviews with human resource staff verified that there was no language in any collective bargaining agreement that would prevent an alleged staff abuser from being removed from inmate contact pending the outcome of an investigation. A review of investigative files supported compliance with this standard.

Standard 115.67 Agency protection against retaliation

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

- (a) DOC Policy 1.1.17 Prison Rape Elimination Act of 2003 (PREA) stated that The Department will not tolerate retaliation against offenders, employees, or other parties for reporting sexual misconduct. Individuals that retaliate against any offender or witness are subject to disciplinary action. Facilities and programs will employ protective measures, such as transfers or removals, to separate victims from abusers.
- (b) Interviews with the facility PREA Specialist and facility staff indicated that there are multiple protection measure, such as housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.
- (c) DOC Policy 1.1.17 Prison Rape Elimination Act of 2003 (PREA) stated that The facility or program will monitor, for at least 90 days, the conduct and treatment of offenders and staff who reported sexual abuse or sexual harassment and offenders who were reported to have suffered sexual abuse or sexual harassment to prevent retaliation. For offenders, this will include periodic status checks. Monitoring will continue beyond 90 days if there is a continuing need. Each facility will designate a staff member responsible for retaliation monitoring. At MSP, the Case Managers are responsible to conduct the monitoring.

MSP utilizes a Retaliation Monitoring Data Sheet ensures the following items are reviewed for indications that

retaliation may have occurred: Inmate Disciplinary Reports; Performance Evaluations; Housing Changes; Program Changes; and includes a face to face interview to determine if retaliation is alleged to have occurred.

- (d) Monitoring is done weekly and interviews with staff who monitor indicate it is occurring from at least 90 days to six months usually. A review of completed sheets indicated this was occurring.
- (e) The Retaliation Monitoring Data Sheet includes those who cooperated with the investigation.

Documentation was reviewed onsite and a Case Manager was interviewed. The Case Manager understood all the requirements of the standard and was able to describe what he would do if he suspected retaliation.

It is this auditor's opinion the weekly in person meetings that frequently exceed the ninety day requirement exceed the requirements of the standard.

Standard 115.68 Post-allegation protective custody

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

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

MSP does not house inmates who are at risk for sexual victimization or who have suffered sexual abuse in segregated housing unless it is a last resort. The facility stated this has not taken place in the past 12 months.

A spreadsheet was provided as documentation that indicated this had not occurred.

Auditor interviews with the Warden and staff who supervise inmates in segregated housing demonstrated a belief that all efforts should be made to not further traumatize an inmate at risk of sexual victimization or who has been sexually victimized.

Standard 115.71 Criminal and administrative agency investigations

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

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

- (a) *DOC Policy 3.1.19, Investigations, DOC Policy 3.1.28 and DOC Policy 1.3.13 Administrative Investigations* outlines how investigations are handled. The policy specifically stated that investigations shall be conducted fairly and objectively and investigators shall exercise professionalism during the course of the investigation.

Interviews with both criminal and administrative investigators indicated they understood allegations of sexual abuse and sexual harassment should be handled promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reporting.

- (b) *DOC Policy 3.1.19, Investigations, DOC Policy 3.1.28* states that specialized training shall be completed prior to conducting sexual assault or other specialty type investigations. Training rosters were provided to the auditors, which showed investigators at MSP had received the specialized training. Interviews with investigators also indicated training had been received.
- (c) Interviews with investigators indicated they understood they shall gather and preserve direct and circumstantial evidence, including any available DNA evidence and any available electronic monitoring data and shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.
- (d) Interviews with investigators indicated they understood that if the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors.
- (e) Interviews with investigators indicated they understood the credibility of an alleged victim, suspect, or witness shall not be determined by the person's status as an inmate or a staff and that they would not require an inmate who alleged sexual abuse to submit to a polygraph examination or other truth telling device as a condition for proceeding with an investigation.
- (f-g) Administrative investigations were reviewed during the audit. The investigations documented in the written reports provided a description of evidence, reasons behind credibility assessments, and investigative facts and findings.
- (h) *DOC Policy 3.1.19, Investigations, DOC Policy 3.1.28* states that criminal investigations will be forwarded with a Request for Prosecution to the county attorney having jurisdiction for a determination of whether a case will be prosecuted.

Interviews with investigators indicated an understanding of the requirement.

Standard 115.72 Evidentiary standard for administrative investigations

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

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

The auditor reviewed *DOC Policy 1.3.13, Administrative Investigations and DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* which states that investigators will not use a standard higher than preponderance of the evidence in determining whether allegation of sexual abuse or sexual harassment are substantiated.

Interviews with investigators clearly indicated a good understanding of this requirement.

Standard 115.73 Reporting to inmates

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

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

- (a) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that following an investigation of sexual abuse or sexual harassment, the PREA Specialist will inform the inmate whether the allegation has been determined to be substantiated, unsubstantiated or unfounded.

The facility PREA Specialist explained this is completed on a letter and sent to the inmate.

- (b-d) The facility also provides the inmate a notification if the staff member is no longer posted within the inmate's unit, the staff member is no longer employed at MSP, the staff member is indicted or convicted on a charge related to sexual abuse within the facility, or if an inmate has been indicted on a charge related to sexual abuse within the facility.

The facility PREA Specialist confirmed this is occurring via a checkoff list that is supplied to the inmates.

- (e) The notifications are documented with a letter and a checkoff sheet that the facility PREA Specialist maintains copies of for documentation.
- (f) The facility PREA Specialist was aware that the agency's obligation to report under this standard shall terminate if the inmate is released from the agency's custody.

Standard 115.76 Disciplinary sanctions for staff

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

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

- (a) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states staff who violate this procedure are subject to administrative discipline including termination of employment, criminal prosecution, or both.
- (b) An interview with Human Resources indicated that termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.

The facility stated that in the past 12 months there has been one staff terminated for violation of agency sexual abuse or sexual harassment policies.

- (c) An interview with Human Resources indicated all disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member’s disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.
- (d) An interview with Human Resources indicated all terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

The facility reports that in the past twelve months one staff had been reported to law enforcement agencies.

Standard 115.77 Corrective action for contractors and volunteers

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

- (a) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that service providers who violate the PREA policy are subject administrative sanctions including removal and denial of access, criminal prosecution or both.

The facility stated that during the previous 12 months there were no contractors or volunteers reported to law enforcement.

- (b) During an auditor interview with the warden, he expressed that any contractor or volunteer who had an allegation of sexual abuse or sexual harassment brought against them would be removed from inmate contact until the investigation was complete. If the allegation was substantiated, their access to the facility would be terminated immediately.

Standard 115.78 Disciplinary sanctions for inmates

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard)

for the relevant review period)

- Does Not Meet Standard (requires corrective action)

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

- (a) *MSP Operational Procedure 3.4.1, Institutional Discipline*, outlines that offenders are subject to disciplinary sanctions if they are found in violation and adjudicated as guilty of a misconduct violation. The sanctions available for sexual abuse and sexual harassment are: rape, sexual assault, sexual abuse, engaging in sexual acts, making sexual proposals, threats, or harassing marks, kissing, or inappropriate touching, directly or through the clothing of the genitalia, anus, groin, breast, inner thigh or buttocks. All are major rule infractions resulting in varying sanctions.

MSP reported that in the previous 12 months, there were no reported incidents of inmate on inmate sexual abuse that were substantiated, therefore no disciplinary reports were available to review at the time of the audit.

- (b) The disciplinary grid is commensurate with the nature and circumstances of the offense and the offender. Varying sanctions include cell restriction, detention, and loss of good time, fines and other sanctions.

An interview with the Warden indicated this was occurring.

- (c) This process takes into account the inmate's mental disabilities/illness that contributed to his/her behavior when considering what type of sanction, if any, should be imposed.

An interview with the Warden indicated this was occurring.

- (d) MSP does offer treatment to address and correct underlying reasons or motivations for sexual abuse. The disciplinary grid does allow for a sanction to be a referral to such treatment.

- (e) The facility PREA Specialist stated that the agency only disciplines an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact.

There was no indication that inmates have been disciplined for having sexual contact with a staff that consented.

- (f) MSP reported that the agency prohibits disciplinary action for a report of sexual abuse made in good faith upon a reasonable belief that the alleged conduct occurred, even if an investigation does not establish evidence sufficient to substantiate the allegation.

- (g) MSP does prohibit all sexual activity between inmates; however consensual sexual activity does not constitute sexual abuse if it is determined that the activity was not coerced.

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

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-

compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

(a-b) All inmates are screened pursuant to 115.41. The facility stated that when an inmate discloses they have experienced prior sexual victimization or have perpetrated sexual abuse the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.

Interviews with screening and mental health staff supported this was occurring.

Documentation of those referrals were provided to the auditor as documentation.

(c) MSP is a prison facility; therefore this provision of the standard is not applicable.

(d-e) MSP’s *Disclosure and Consent for Services* form stated that MDOC and MSP has set up policies and procedures designed to keep the information confidential and only available to staff members with a need to know the information for treatment, classification, security, or parole purposes.

Interviews with medical and mental health staff indicated a good understanding of confidentiality issues and that information would be strictly limited to staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, educations, and program assignments, or as otherwise required by federal, state, or local law.

Standard 115.82 Access to emergency medical and mental health services

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

(a) Interviews with medical and mental health staff indicated that inmate victims of sexual abuse receive timely, unimpeded access to emergency medical treatment and crisis intervention services and that the nature and scope of which are determined according to their professional judgment.

MSP provided an *Urgent/ Emergent medical / mental health log*. The log demonstrated compliance with this standard.

(b) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* outlines first responder duties.

All staff interviews indicated a good understanding that that if they were a first responder to a recent abuse, they would take preliminary steps to protect the victim pursuant to 115.62 and immediately notify the appropriate medical and mental health practitioners.

(c) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that inmate victims shall be offered timely

access to emergency contraception STD prophylaxis.

Interviews with medical staff indicated an understanding of the requirement in the standard.

- (d) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that services must be available without financial cost to the victim.

There was no indication that any inmate victim had had to pay for services, even if they chose not to cooperate with an investigation.

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

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

- (a) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* outlines the facility’s medical and mental health evaluation process for inmates who have been victimized by sexual abuse. Medical and mental health evaluations and as appropriate, treatment are completed with inmates who have been victimized by sexual abuse at the facility.
- (b) Interviews with medical and mental health providers indicated the evaluation and treatment of victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.
- (c) Interviews with medical and mental health providers indicated that the medical and mental health services are consistent with the community level of care.
- (d-e) Interviews with medical staff indicated victims of sexually abusive vaginal penetration while incarcerated would be offered pregnancy tests and comprehensive information about the timely access to all lawful pregnancy-related medical services. The facility does not currently have any female inmates.
- (f) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that victims will be referred to appropriate health care providers responsible for treatment and follow up care for sexually transmitted or other communicable diseases.

Interviews with medical staff indicated this was completed.

- (g) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that treatment will be made available without financial cost.

Interviews indicated treatment would be provided regardless of if the victim named the abuser or cooperated with the inmate investigation.

- (h) Interviews with mental health staff indicated that a mental health evaluation of all known inmate –on-inmate abusers would be completed within 60 days of learning of such abuse history, and treatment offered when deemed appropriate

by mental health practitioners.

Standard 115.86 Sexual abuse incident reviews

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

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

- (a) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that the facility or program will conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.

MSP has an incident review form it utilizes. The auditor reviewed completed incident reviews while onsite at the facility.

A member of the incident review team was interviewed as part of the audit. He stated the incident reviews are completed at an in-person meeting. They discuss all the required elements and make recommendations as appropriate.

- (b) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that such a review will normally occur within thirty days of the conclusion of the investigation.

The auditors observed the incident reviews met the required timeframe. Additionally incident reviews are logged to track timelines.

- (c) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that the review team will include upper-management from the facility or program, the Department PREA coordinator, line supervisors, investigators, medical and mental health staff, and other staff with direct involvement.

The incident review form requires the review team members to include their name and title.

- (d) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that the review team will:

1. consider whether the allegation or investigation indicates a need to change policy or procedure to better prevent, detect or respond to sexual abuse;
2. consider whether the incident or allegation was motivated by race, ethnicity, gender identity, LGBTI status or perceived status, STG affiliation or was motivated or caused by other group dynamics at the facility or program;
3. examine the area where the incident allegedly occurred to assess whether the physical barriers in the area may enable abuse;
4. assess the adequacy of staffing levels in that area during different shifts;
5. assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
6. prepare a report of its findings and any recommendations for improvement and submit the report to the facility or program administrator, the Department PREA coordinator and facility or program PREA specialist.

The incident review form outlines all the requirements of this standard.

Completed incident reviews were reviewed onsite and included in documentation and met the requirements.

- (e) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that the facility or program will implement the recommendations for improvement or document its reasons for not doing so.

Standard 115.87 Data collection

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

- (a) *DOC Policy 1.1.17, Prison Rape Elimination Act of 2003 (PREA)* states that MDOC will collect accurate, uniform data for every allegation of sexual abuse at facilities and programs under its direct control using a standardized instrument and definitions set forth in the policy.

MDOC collects uniform data for every allegation of sexual abuse at the facilities under its direct control utilizing a secure drive on the agency data system where a PREA tracking form is accessible for a limited number of agency personnel at each facility and at central office to track incidents of sexual abuse and sexual harassment within the agency.

The agency is currently working to transition this record keeping on an Offender Management Information System (OMIS) and is unsure when the transition will be completed.

- (b) The Agency PREA Coordinator indicated he reviews the incident-based aggregated data at least annually.
- (c) The aggregated data that is retained included all the data needed to complete the most recent version of the Survey of Sexual Violence.
- (d) The Agency PREA Coordinator and the facilities retain all incident-based documents, including reports, investigation files and sexual abuse incident reviews.
- (e) The agency does contract with private facilities and the Agency PREA Coordinator retains incident-based aggregated data from those facilities.
- (f) The Agency PREA Coordinator stated he provides all such data from the previous calendar year to the Department of Justice no later than June 30, or by the date they request.

Standard 115.88 Data review for corrective action

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard)

for the relevant review period)

- Does Not Meet Standard (requires corrective action)

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

- (a-c) MDOC has developed and published on its website a thorough and detailed report and analysis identifying problem areas and corrective action. Additionally, they have produced and published a report with a comparison with previous years' data and an assessment regarding the agency's progress in addressing sexual abuse.

The Agency reviews collected data to assess and improve the effectiveness of its efforts to prevent, detect, and respond to PREA related concerns. The data is used to help identify problem areas and to determine what corrective action is needed. An annual report was published that has been reviewed and approved by the Agency Director's Office. The agency had redacted personally identifying information.

Standard 115.89 Data storage, publication, and destruction

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

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

- (a) The Agency PREA Coordinator collects data and reports from all facilities and compiles a report annually of investigations of all allegations of sexual abuse and sexual harassment.
- (b) The Agency Coordinator compiles the report which consists of prevention and response, findings of corrective action and the assessment of the Department's progress in addressing sexual abuse and sexual harassment allegations. This report is compared against previous years. The Agency PREA Coordinator then submits the report to the Director of the Montana Department of Corrections for their review. Once the review is complete a copy is then placed on the department's website. All data and reports are submitted to the U.S. Department of Justice upon request. A review of the agency's website demonstrated that the report for the 2015 calendar year was posted for public review.
- (c) The agency has redacted personal identifying information from the annual report.
- (d) The Agency PREA Coordinator maintains records of sexual abuse and sexual harassment cases pursuant to the state's Records Retention Schedule. All investigation records are retained for five years after the close of the investigation. Excluded are records covered by the Prison Rape Elimination Act which are retained for 10 years after the close of the investigation. This includes incident and investigative reports, evidence cards, photographs, interviews, and other related items.

AUDITOR CERTIFICATION

I certify that:

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

Auditor Signature

October 18, 2016
Date