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**INVESTIGATION OF THE  
EDNA MAHAN CORRECTIONAL  
FACILITY FOR WOMEN  
(UNION TOWNSHIP, NEW JERSEY)**

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United States Department of Justice  
Civil Rights Division

United States Attorney's Office  
District of New Jersey

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## I. SUMMARY

The Department of Justice's Civil Rights Division and the U.S. Attorney's Office for the District of New Jersey (Department) provide notice, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. §§ 1997 *et seq.* (CRIPA), that there is reasonable cause to believe, based on the totality of the conditions, practices, and incidents discovered that: (1) conditions at the Edna Mahan Correctional Facility for Women (Edna Mahan) violate the Eighth Amendment of the United States Constitution due to the sexual abuse of prisoners by the facility's staff; and (2) these violations are pursuant to a pattern or practice of resistance to the full enjoyment of rights protected by the Eighth Amendment. The Department does not serve as a tribunal authorized to make factual findings and legal conclusions binding on, or admissible in, any court, and nothing in this Notice of Investigative Conclusions (Notice) should be construed as such. Accordingly, this Notice is not intended to be admissible evidence and does not create any legal rights or obligations.

Specifically, the United States provides notice that the State of New Jersey, through the New Jersey Department of Corrections (NJDOC), fails to keep prisoners at Edna Mahan safe from sexual abuse by staff. From October 2016 to November 2019, five Edna Mahan correction officers and one civilian employee were convicted or pled guilty to charges related to sexual abuse of more than 10 women under their watch. For example:

- In May 2018, an Edna Mahan correction officer was found guilty of five counts of sexually abusing prisoners. According to the sentencing judge, the "pervasive culture" at Edna Mahan allowed this correction officer to abuse his "position of authority to indulge in [his] own sexual stimulation."
- In July 2018, another Edna Mahan correction officer pled guilty to three counts of official misconduct after he admitted sexually abusing three separate prisoners.
- In January 2019, another correction officer pled guilty to official misconduct charges after admitting that he repeatedly sexually abused two Edna Mahan prisoners over a period of several years. In sentencing him, the New Jersey court concluded that the officer had "sexually assaulted a vulnerable population."

Another Edna Mahan correction officer has been indicted for charges related to sexual abuse of prisoners and is pending trial. Long-standing problems with staff sexual abuse at Edna Mahan have been documented for decades. Despite being on notice of this sexual abuse, NJDOC and Edna Mahan failed to take timely action to remedy the systemic problems that enabled correction officers and other staff to continue to sexually abuse Edna Mahan prisoners. Women have suffered actual harm from sexual abuse and are at substantial risk of serious harm because the systems in place at Edna Mahan discourage prisoners from reporting sexual abuse and allow sexual abuse to occur undetected and undeterred.

Consistent with the statutory requirements of CRIPA, we write this Notice to notify New Jersey of the Department's conclusions with respect to these constitutional violations, the facts

supporting those conclusions, and the minimum remedial measures necessary to address the identified deficiencies.

## **II. INVESTIGATION**

On April 26, 2018, the Department notified the State of New Jersey of our intent to conduct an investigation of Edna Mahan pursuant to CRIPA. Our investigation focused on whether there is reasonable cause to believe that Edna Mahan violates the constitutional rights of women prisoners by failing to take measures to reasonably protect them from the harm of staff sexual abuse during their incarceration at Edna Mahan.

Two expert consultants in correctional operations and sexual safety of incarcerated persons assisted with our investigation. One of our experts is a former high-ranking corrections official with significant experience leading correctional facilities and consulting with departments of correction. Our other expert is an attorney with specific expertise in reviewing conditions in correctional facilities, and a certified Prison Rape Elimination Act (PREA)<sup>1</sup> Auditor and Field Training Auditor.

In July 2018, representatives from the Department and our experts conducted a four-day, on-site review of Edna Mahan. Over the course of our visit, we interviewed NJDOC and Edna Mahan administrative staff, security staff, medical and mental health staff, and prisoners. In preparation for and during our on-site review, we reviewed documentation produced by Edna Mahan and NJDOC. Over the course of on-site review, we toured the entire compound, at different time intervals, including the late shift hours. We observed and met with prisoners in various settings throughout the facility, including all security levels, vocational opportunities, and restrictive housing units. We conducted exit conferences with Edna Mahan and NJDOC officials upon the conclusion of our visit in order to provide transparency and technical assistance during the course of the investigation. Both NJDOC officials and the Edna Mahan Administration and staff cooperated with and facilitated our on-site review.

Following our on-site review, we requested and the State produced additional documentation relevant to our investigation. The State has fully cooperated with our investigation and has produced over 33,000 pages of documents. The Department and its experts conducted extensive document review of policies and procedures, staffing information, prisoner files, incident reports, investigative reports, disciplinary reports, administrative audit reports, prisoner grievances, unit logs, orientation materials, training materials, and quality assurance materials. The State also provided updated information as to its efforts to address issues related to sexual abuse.

## **III. THE EDNA MAHAN CORRECTIONAL FACILITY FOR WOMEN**

Edna Mahan opened as the State Reformatory for Women at Clinton in 1913. It is New Jersey's only prison facility for state-sentenced women prisoners. The prison is located in Union Township, Hunterdon County, in western New Jersey, near the Pennsylvania border. Edna Mahan is comprised of three housing compounds, with ten operable housing buildings, and

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<sup>1</sup> 34 U.S.C. § 30301 *et seq.*

various support buildings. It shares administrative services with the nearby Mountainview Youth Correctional Facility in Annandale, New Jersey. As the only women’s prison operated by NJDOC, Edna Mahan houses women of all custody levels. There is one housing compound for minimum security prisoners, one for maximum and medium security prisoners, and a third housing compound for prisoners with mental health needs. The population of the facility during the Department’s July 2018 on-site review was 655 women prisoners. The State reports Edna Mahan’s population capacity as approximately 710.

#### **IV. CONDITIONS IDENTIFIED**

NJDOC and Edna Mahan are violating the Constitution by failing to protect prisoners from serious harm and a substantial risk of serious harm. *See Farmer v. Brennan*, 511 U.S. 825, 833 (1994); *Helling v. McKinney*, 509 U.S. 25, 33-35 (1993). The Department’s investigation has uncovered facts that provide reasonable cause to conclude that Edna Mahan (1) fails to protect women prisoners from sexual abuse by staff in violation of the Eighth Amendment; and (2) exposes women prisoners to substantial risk of serious harm from sexual abuse in violation of the Eighth Amendment. Systemic failures in Edna Mahan’s policies and practices discourage reporting of sexual abuse; do not provide an adequate response to and investigations of allegations of prisoner sexual abuse; and result in inadequate supervision that provides opportunities for further sexual abuse.

As detailed below, the combination of numerous, specific and repeated violations of the Eighth Amendment at Edna Mahan, taken together with multiple deficient policies and practices that caused or contributed to those violations, is sufficient to establish a pattern or practice of constitutional violations under CRIPA. CRIPA authorizes the Attorney General to investigate and take appropriate action to enforce the constitutional rights of prisoners whose rights are violated subject to a pattern or practice of unconstitutional conduct or conditions. 42 U.S.C. § 1997. To establish a pattern or practice of violations, the United States must “establish by a preponderance of the evidence that [] [violating federal law] was . . . the regular rather than the unusual practice.” *See Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 336 (1977). In some sections we provide more examples to illustrate the variety of circumstances in which the violation occurs, while in others we focus on one or two examples that demonstrate the nature of the violations we found. The number of examples included in a particular section is not indicative of the number of violations we found. These examples comprise a small subset of the total number of incidents upon which we base our conclusions.

#### **A. Staff Sexual Abuse of Edna Mahan Prisoners Violates Prisoners’ Constitutional Rights**

##### **1. *Failure to Protect Prisoners from Harm from Sexual Abuse Violates the Eighth Amendment.***

The Eighth Amendment governs “the treatment a prisoner receives in prison and the conditions under which [s]he is confined.” *Helling*, 509 U.S. at 31. Prisons are required under the Eighth Amendment to protect prisoners from a range of types of harm and to take reasonable measures to protect prisoners’ safety. *Farmer*, 511 U.S. at 832 (citing *Hudson v. Palmer*, 468

U.S. 517, 526-527 (1984)). This requirement includes protection of a prisoner's right to be free of sexual abuse by prison employees while in confinement. *Roten v. McDonald*, 394 F. App'x 836, 840 (3d Cir. 2010) (citing *Beers-Capitol*, 256 F.3d at 142 n. 15)). Staff sexual abuse of prisoners is "objectively, sufficiently serious to constitute an Eighth Amendment violation." *White v. Ottinger*, 442 F. Supp. 2d 236, 248 (E.D. Pa. 2006). As the Supreme Court has held, sexual abuse is not part of any person's punishment, regardless of the crime for which she or he was convicted. *Farmer*, 511 U.S. at 834. "Our society requires prisoners to give up their liberty, but that surrender does not encompass the basic right to be free from severe unwanted sexual contact." *Ricks v. Shover*, 891 F.3d 468, 471 (3d Cir. 2018).

In determining whether a punishment is cruel and unusual in violation of the Eighth Amendment, the courts look to "contemporary standards of decency." *Pearson v. Prison Health Serv.*, 850 F.3d 526, 534 (3d Cir. 2017) (quoting *Helling*, 509 U.S. at 32); *see also Estelle*, 429 U.S. at 102. In the Third Circuit, consideration of contemporary standards of decency begins by reviewing "objective indicia of consensus, as expressed in particular by the enactments of legislatures that have addressed the question." *Ricks*, 891 F.3d at 477 (quoting *Roper v. Simmons*, 543 U.S. 551, 564 (2005)). Under New Jersey state law, it is a crime for prison staff to have sexual contact with prisoners. N.J. Stat. Ann. § 2C:14-2c(2) (defining "sexual assault" to include "sexual penetration" where the victim is in prison and "the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status"); N.J. Stat. Ann. § 2C:14-3b (defining "aggravated criminal sexual contact" to include an "act of sexual contact" where the victim is in prison and "the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status").

Specifically, the Third Circuit has declined to "craft a mechanical test for when sexual contact is objectively, sufficiently serious. The scope, place and timing of the offensive conduct will bear on its severity, as will the details of the alleged contact. But it goes without saying that objectively serious sexual contact would include sexualized fondling, coerced sexual activity, combinations of ongoing harassment and abuse, and exchanges of sexual activity for special treatment or to avoid discipline." *Ricks*, 891 F.3d at 478 (emphasis added).

Prison conditions violate the Eighth Amendment's prohibition against cruel and unusual punishment if they result in deliberate indifference to a substantial risk of serious harm to prisoners. *Farmer*, 511 U.S. at 828. To establish deliberate indifference, one must meet both objective and subjective requirements. *Id.* at 834. An official acts with deliberate indifference when she or he "knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.* at 837.

In the Third Circuit, to state a claim of deliberate indifference, prisoners "must show that the defendants knew or were aware of and disregarded an excessive risk to [prisoners'] health or safety," which can be shown "by establishing that the risk was obvious." *Beers-Capitol v. Whetzel*, 256 F.3d 120, 135 (3d Cir. 2001). It is not necessary to show a physical injury in the case of correctional sexual abuse, as the "significant distress and often lasting psychological

harm” attributable to sexual abuse are sufficient to establish an Eighth Amendment violation. *Ricks*, 891 F.3d at 477 (quoting *Washington v. Hively*, 695 F.3d 641, 643 (7th Cir. 2012)).

The subjective component requires that the prison official “acted with a sufficiently culpable state of mind,” while an objective component requires that “the alleged wrongdoing was objectively harmful enough to establish a constitutional violation.” *Hudson v. McMillian*, 503 U.S. 1, 8 (1992). The prison officials need not be complicit in the harmful acts, nor have specific knowledge that a particular prisoner is suffering abuse; “it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.” *Farmer*, 511 U.S. at 839, 842. Prison officials who are aware of a substantial risk to prisoner safety must respond reasonably to the risk in order to ensure “reasonable safety.” *Id.* at 844 (noting that prison officials may avoid liability “if they responded reasonably, even if the harm ultimately was not averted.”).

In 2003, Congress enacted the Prison Rape Elimination Act (PREA) to combat sexual abuse in correctional settings. 34 U.S.C. § 30301 *et seq.* In 2012, the Attorney General published the National Standards to Prevent, Detect, and Respond to Prison Rape (PREA standards). 28 C.F.R. § 115 *et seq.* The PREA standards require zero tolerance for sexual abuse and sexual harassment of prisoners and detail a series of policy and practice reforms aimed at reducing correctional sexual abuse and sexual harassment and ensuring an adequate response to allegations of sexual abuse or sexual harassment. Although non-compliance with a PREA standard alone is not sufficient to support a finding of a constitutional violation, the PREA standards provide notice to jurisdictions of their obligations to protect prisoners from sexual abuse and sexual harassment. Knowledge of, and failure to comply with, the PREA standards can serve as further evidence of subjective recklessness with regard to prisoner safety. *Farmer*, 511 U.S. at 843; *see also Crawford v. Cuomo*, 796 F.3d 252 (2d Cir. 2015) (finding PREA and other such legislative enactments to be reliable evidence of contemporary standards of decency, and thus relevant in evaluating whether specific acts of sexual abuse or sexual harassment rise to an Eighth Amendment claim). “Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence.” *Farmer*, 511 U.S. at 842.

## ***2. Edna Mahan Prisoners Have Suffered Serious Harm from Staff Sexual Abuse and the Substantial Risk of Serious Harm.***

Sexual abuse of women prisoners by Edna Mahan correction officers and staff is severe and prevalent throughout the prison. A “culture of acceptance” of sexual abuse has persisted for many years and continues to the present. As observed by one state court in 2018, this “pervasive culture” has enabled Edna Mahan staff to abuse their authority by “preying on vulnerable women . . . for sexual gratification.”<sup>2</sup>

In the course of our investigation, the Department and its experts reviewed 100% of the investigation files produced by NJDOC of reports of sexual abuse and sexual harassment of Edna Mahan prisoners over several years, including over 70 investigations of staff-on-prisoner

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<sup>2</sup> *State of New Jersey v. Jason Mays*, Judgment of Conviction & Order for Commitment, HNT-16-00671, CRM2018560286 (Sep. 17, 2018).

allegations. Substantiated incidents of staff sexual abuse of prisoners at Edna Mahan are varied and disturbing. Some staff abused prisoners through unwanted and coerced “sexual contact” or “sexual penetration.” In other instances, prisoners were forced to perform fellatio on or touch the “intimate body part” of staff. In still other instances, staff required prisoners to undress or masturbate in their cells—or even engage in sexual acts with other prisoners—while staff watched. In at least one instance, a correction officer forced a prisoner to keep watch as he sexually abused her to prevent detection of his crimes. The incidents of sexual abuse follow similar patterns where officers and staff sexually assault and harass women who are vulnerable to sexual abuse and fear retaliation, violence, deprivation of privileges, or endure sexual abuse in exchange for food, medication, or contraband, in violation of the prisoners’ constitutional rights. *Ricks*, 891 F.3d at 478 (holding that unconstitutional sexual abuse of prisoners includes “sexualized fondling, coerced sexual activity, combinations of ongoing harassment and abuse, and exchanges of sexual activity for special treatment or to avoid discipline”).

During a period dating from October 2016 to April 2019 (a full year after we notified NJDOC of our investigation), seven Edna Mahan correction officers and one civilian employee were arrested, indicted, convicted, or pled guilty to charges related to sexual abuse of the prisoners they were assigned to supervise. Most of the incidents involve senior officers, who had worked at Edna Mahan for many years, and multiple victims. The Hunterdon County Prosecutor’s Office remains active pursuing these and other matters related to Edna Mahan.

In May 2018, one correction officer was found guilty of five counts of sexually abusing prisoners, including sexual assault and criminal sexual contact. While stationed at a housing unit, he “continuously engag[ed] in inappropriate sexual behavior with women.” With one of the victims, he frequently solicited sexual intercourse, entered her cell while she was sleeping to touch her vagina and buttock through her clothing, and made demands that she touch his penis. To coerce this prisoner to accede to his demands, he threatened her with disciplinary action, which she believed could have jeopardized her eligibility for parole. Eventually, when the prisoner was in a room outside the view of others, he put a condom on his penis and sexually penetrated her vagina. Four other prisoners testified that this officer engaged in similar criminal sexual contact with them. As the state court observed at sentencing, “[w]hen one victim left your area and was no longer available to you, you quickly sought another.” With one of those victims, he required her to “watch for people coming” while he sexually penetrated her. He was sentenced to sixteen years in prison.

Since 2017, four other correction officers have pled guilty to charges related to their sexual abuse of prisoners:

- In November 2019, a female correction officer pled guilty to criminal sexual contact with an Edna Mahan prisoner. According to the criminal complaint, this officer committed crimes throughout 2018 by engaging in “sexual conduct” with a prisoner and by “touching the intimate parts of the victim.”
- On January 31, 2019, an Edna Mahan correction officer pled guilty to two counts of official misconduct. This officer, who was originally charged with three counts of sexual assault and two counts of official misconduct, admitted to repeatedly having



sexual intercourse, over a period of several years, with two prisoners in the housing unit where he was assigned to work and where the prisoners resided. Alarming, this correction officer was tasked to teach newly-hired correction officers that sexual contact between officers and prisoners was a crime. In June 2019, he was sentenced to three years in prison. The court applied an aggravating factor to the officer's sentence because "the victims were essentially incapable of exercising normal physical or mental power of resistance as you, as a corrections officer, controlled their every move. You sexually assaulted them and they were particularly vulnerable."

- On July 10, 2018, another correction officer pled guilty to three counts of official misconduct. After being charged with sexual assault, criminal sexual contact, and official misconduct, he admitted to sexual abuse of three separate prisoners. The prosecutor recommended a sentence of six years in prison. He awaits sentencing.
- In February 2017, a senior correction officer pled guilty to official misconduct. According to the criminal complaint, this officer sexually assaulted a prisoner "by committing an act of sexual penetration" upon the prisoner. The officer, who had worked at Edna Mahan for seven years, admitted to providing contraband to the prisoner and bringing her to a staff bathroom – on more than one occasion – to engage in sexual intercourse. He was sentenced to three years in prison.

In addition to correction officers, Edna Mahan civilian staff have also sexually abused prisoners. For example, in October 2016, a vocational instructor in the prison kitchen pled guilty to official misconduct after being charged in connection with trading smuggled cigarettes for sex with two Edna Mahan prisoners. He was sentenced to three years in prison.

We spoke with dozens of current and former prisoners, staff, investigators, administrators, and third-parties who credibly described many other incidents of staff-on-prisoner sexual abuse. According to these accounts, despite rules to the contrary, some male correction officers make efforts to watch prisoners as they shower, undress, or use restrooms. Many report that some correction officers inappropriately grope, and sometimes expose, prisoners' breasts and genitals during searches. Similarly, numerous prisoners report that, during unnecessarily close contact with male correction officers, some correction officers "rub" or "press themselves" – that is, their clothed genitals – against prisoners. Others report being strip searched with several other women at the same time or while male correction officers watched. In one instance, a prisoner reported that a male officer watched as she inserted a tampon. In another instance, it was reported that a group of officers had "viewing parties" of a prisoner with mental illness on suicide watch who believed she was a male and would follow officers' instructions to dance and show her "penis" while undressed.

Correction officers and staff at Edna Mahan routinely refer to prisoners as "bitches," "hoes," "assholes," "dyke," "stripper," "faggot-assed bitch," "motherfuckers," and "whores." They graphically comment on prisoners' physical appearance or remark about their perceived sexual inclinations and histories. For instance, one prisoner reported that a correction officer told

her during a strip search that “you gotta trim that bush.” This environment emboldens Edna Mahan staff to seek out opportunities for sexual abuse.

In addition to the seven correction officers and the civilian staff member who were criminally charged, NJDOC has fired or indefinitely suspended several other Edna Mahan employees since 2010 as a result of sexual abuse allegations. Others were permitted to resign. As discussed in more detail in Section IV.C below, the problem dates back many years without improvement. Indeed, credible allegations of sexual abuse by both correction officers and civilian staff continued to surface throughout 2018 and into 2019, despite the attention focused on the issue. NJDOC and Edna Mahan have been aware that their women prisoners face a substantial risk of serious harm from sexual abuse, and they have failed to remedy this constitutional violation.

**B. Inadequate Systems for Preventing, Detecting, and Responding to Sexual Abuse Place Edna Mahan Prisoners at Substantial Risk of Serious Harm from Staff Sexual Abuse.**

Edna Mahan exposes women prisoners to a substantial risk of serious harm from sexual abuse because Edna Mahan: (1) deters prisoners from reporting staff sexual abuse due to the threat of retaliation; (2) fails to respond with appropriate investigations when women do report abuse; (3) fails to provide effective and confidential reporting mechanisms; and (4) provides inadequate supervision of prisoners, which presents opportunities for sexual abuse to occur. A lack of gender-responsive and trauma-informed policies and practices exacerbates these problems and exposes victims to additional harm. Many prisoners reported that incidents of sexual abuse are frequently ignored or result in no corrective action. Several prisoners stated that they tolerate or do not report sexual abuse because they fear reprisal. These systemic deficiencies combine to result in Edna Mahan’s failure to protect women prisoners from the harm of sexual abuse.

***1. Edna Mahan Prisoners are Reluctant to Report Sexual Abuse Due to Valid Fear of Retaliation.***

**a. Edna Mahan Subjects Victims who Report Sexual Abuse to Harsh and Isolating Conditions.**

In order to prevent and detect sexual abuse, a prison must ensure that prisoners and staff feel safe to report wrongdoing. If prisoners fear retaliation or punishment for reporting, they are less likely to do so. At Edna Mahan, victims who report sexual abuse are subjected to a process that they experience as retaliatory, punitive, and traumatic. When an Edna Mahan prisoner reports an incident of sexual abuse, the reporter is typically immediately taken to the medical unit for a physical examination in handcuffs and shackles, scanned in the Body Orifice Security Scanner (B.O.S.S.) chair for contraband, stripped searched, and then taken to the Temporary Closed Custody Unit (TCC) on the maximum security compound for up to 72 hours, until the Special Investigations Division (SID) interviews them regarding their complaint. In TCC, they are held in solitary confinement under many of the same conditions and protocols as in punitive housing. They are also likely to be moved from their unit or their job, instead of the alleged

abuser being moved away from them. This default protocol is followed regardless of the nature of the abuse (*e.g.*, touching versus penetration) or when the abuse allegedly occurred (several days or weeks before the report), and without regard to the victim's physical or emotional state at the time of the report.<sup>3</sup>

Prisoners in TCC are subjected to the same conditions and protocols as prisoners in the disciplinary segregation unit: singled-celled with little to no out-of-cell time in a maximum security setting. They are also deprived of privileges, such as work opportunities and programming in the unit. Prisoners therefore view TCC as punitive. Along with fear of retaliation, the fear of being placed in "lock-up" causes prisoners to be reluctant to report sexual abuse. For example, one prisoner reported to SID that a sergeant pressed his penis, through his clothing, against her backside. In response, she was placed in segregated housing, with restricted out of cell time and privileges. She expressed to the Department that this experience caused her to fear getting "in trouble for telling." By setting up a system in which victims feel that they are being punished for reporting abuse, Edna Mahan effectively discourages prisoners from reporting incidents of sexual abuse or sexual harassment. Indeed, Edna Mahan investigation reports revealed that this prisoner was sexually abused by one of the indicted correction officers and was reported to have been abused by another officer, but she did not report either officer.

The following examples demonstrate how applying this practice as a default is unnecessary and likely discourages Edna Mahan prisoners from reporting abuse:

- In May 2018, a prisoner was returned to Edna Mahan from a halfway house after a third-party reported that the prisoner had been sexually abused by a male staff member of the community release program. Although the accused staff member was not at Edna Mahan and could pose no threat to her, the prisoner was isolated in TCC upon her return to the prison. Prisoners we spoke with, including the alleged victim, viewed both the removal from the community release program and the involuntary segregation in TCC as punitive responses to the report of sexual abuse.
- In April 2018, a prisoner reported that a male sergeant pulled back the curtain while she was naked and showering to speak with her. After reporting this incident, she was sent in restraints to the maximum security compound hospital for a medical evaluation and then to a segregated cell in the Mental Health Transitional Care Unit, even though she had no prior history of mental health issues while incarcerated. There was no indication she was in danger of further sexual abuse at the time of her report and she did not report any physical abuse, so it was inappropriate to subject her to involuntary segregation and an invasive medical examination.
- In January 2018, a prisoner reported that a correction officer sexually harassed her by making sexual comments while she was cleaning during count. Edna Mahan did not respond to her complaint until a week later, at which time she was pat searched, strip searched, scanned in the B.O.S.S. chair, handcuffed, and involuntarily segregated in the TCC. When she had the opportunity to share with SID, she stated that she felt

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<sup>3</sup> NJDOC has the authority to reassign an officer accused of sexual assault instead of the complainant in order to separate the two. But it fails to exercise that authority.

safe in her housing unit, as long as she was not on the same side of the building as the officer who sexually harassed her. Indeed, she had remained on the housing unit and felt secure for an entire week before Edna Mahan finally responded to her complaint and then segregated her in TCC; there was no imminent risk to her safety that required involuntary segregation and the accompanying indignities.

- In October 2017, an Edna Mahan prisoner alleged that a correction officer had rubbed his penis against her buttocks while she stood in the lunch line. She called the Ombudsman to report the incident because she was too afraid to report to staff at Edna Mahan. She was put in restraints, taken for a full medical examination, and then placed in handcuffs and involuntarily segregated in TCC, even though the alleged abuse did not occur in her housing unit.

After we advised Edna Mahan that prisoners perceive transfer to TCC following a report of sexual abuse as punitive or retaliatory, Edna Mahan revised its policy to allow prisoners to retain their personal belongings and maintain visitation and phone privileges while in TCC, unless there are specific reasons to restrict such privileges. We believe this is a positive change and should reduce the punitive nature of TCC. However, the issue of categorically subjecting women who report sexual abuse to segregation as a result of their report can result in increasing the trauma to victims of sexual abuse. Victims should be segregated only after Edna Mahan conducts a review of all alternative housing placements and determines that no alternative is available to keep the prisoner safe. Edna Mahan need not resort to segregation to keep women who report sexual abuse safe.

Edna Mahan also fails to provide victims of sexual abuse with appropriate access to victim services. The PREA standards require that Edna Mahan provide prisoners “with access to outside victim advocates for emotional support services related to sexual abuse.” 28 C.F.R. § 115.53(a). Since the summer of 2018, NJDOC no longer provides on-campus counseling services from an outside advocate for women housed at Edna Mahan who had suffered sexual abuse. Instead, the private group that had provided such services offers a hotline to receive calls from Edna Mahan. But the hotline has been severely underutilized, which suggests that women are unaware of the hotline, have no confidence that the hotline will provide any meaningful assistance, or fear that the calls may not be confidential. It is especially troubling given that at the time the external advocate stopped providing counseling services on-site at Edna Mahan, there was a waitlist of 45 women prisoners who had requested to meet with their trained victim support counselor.

#### **b. Edna Mahan Fails to Protect Victims Who Report Sexual Abuse from Retaliation.**

Edna Mahan does not have adequate policies and procedures for monitoring staff and prisoners for retaliation. Indeed, the former Institutional PREA Compliance Manager for Edna Mahan told us that neither NJDOC nor its facilities were required to have a protocol for monitoring prisoners who reported sexual abuse for potential retaliation. He explained that within 45-90 days of a prisoner making a sexual abuse allegation, he would interview the prisoner to ask if she had experienced any retaliation. He would only speak to the prisoner once,

unless she specifically reported retaliation. The retaliation interview would occur where the prisoner was housed, and there was no effort to provide the prisoner with a greater degree of confidentiality. Retaliation monitoring was based solely on the prisoner's responses and did not include any proactive review of institutional files, disciplinary records, grievances, or other documents to monitor for retaliation. It was recorded on a one-page Retaliation Monitoring Form with a check box and a place for the prisoner's signature. Once the prisoner signed the form, Edna Mahan considered the monitoring "complete." Moreover, the limited retaliation monitoring the PREA Compliance Manager provided did not reach all of the prisoners who made sexual abuse allegations because he did not have a complete list of which prisoners should be monitored for retaliation.

Since our on-site review, NJDOC implemented an updated policy that requires the facility PREA Compliance Coordinator to conduct at least two face-to-face meetings with prisoners who allege sexual abuse, and two paper reviews during the 90 days following a complaint. After 90 days, the Coordinator makes a formal finding as to whether monitoring is complete, whether any retaliation was found, and whether monitoring should continue for additional 30-day periods as needed. While these reforms are welcome, there is no evidence yet to demonstrate that Edna Mahan has implemented these changes successfully.

In addition, the Principal SID Investigator stated that she recalled only one instance of SID investigating a claim of retaliation, but noted that "the inmate was in the wrong."

In October 2017, SID investigated an "allegation of harassment by staff of PREA victim." The victim had previously reported sexual abuse by a correction officer, who was indicted in January 2017 on charges related to sexual abuse and was serving a prison sentence for official misconduct at the time of the retaliation. A sergeant, the brother of the indicted officer, ordered and/or supervised multiple shakedowns of the victim's cell and housing unit within a short period in October 2017. The victim reported this conduct to the state Ombudsman, but the Ombudsman's office did not forward her complaint to the facility Administrator. The victim also reported the conduct to SID, which began an investigation only after Edna Mahan's administrator ordered it to do so. During the course of the investigation, the Edna Mahan administrator ordered the retaliatory officer removed from Edna Mahan and he was reassigned to another NJDOC facility. It is not clear from the available documents if the officer was disciplined in any other manner for his retaliatory actions against his brother's alleged sexual abuse victim. Despite this incident, which clearly put NJDOC on notice of the real possibility of retaliation, Edna Mahan did not develop and implement a protocol for retaliation monitoring.

Finally, most prisoners we questioned at Edna Mahan were not aware of their right to report incidents of retaliation.<sup>4</sup> This lack of knowledge about their right to be free from retaliation for reporting has two consequences: (1) women prisoners feel they must tolerate acts of retaliation for reporting; and (2) women prisoners do not report the original act of sexual harassment or abuse.

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<sup>4</sup> The PREA standards require facilities to provide comprehensive education to prisoners "regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents." 28 C.F.R. § 115.33(b).

## **2. *Edna Mahan's Inadequate System for Investigating Reports of Sexual Abuse Subjects Prisoners to Substantial Risk of Harm.***

### **a. *Edna Mahan's SID Investigations Are Inadequate.***

At least four of the Edna Mahan staff members who have been criminally charged in recent years for sexual abuse of prisoners were involved in SID investigations related to prisoner sexual abuse years before the conduct that resulted in their indictments. SID conducted insufficient investigations, closed investigations as unsubstantiated without applying the appropriate standard of evidence, and failed to investigate some incidents at all.<sup>5</sup> Often, SID investigators focused narrowly on the specific allegation that was the impetus of an investigation, and failed to investigate or follow up on troubling allegations of retaliation or other misconduct, including sexual abuse, that arose during the course of the investigation. In each of these instances, allegations of sexual abuse were not adequately investigated, and the staff members later committed acts of sexual abuse. For example:

- One officer, who worked at Edna Mahan for over a decade, was convicted in July 2018 of a 2016 sexual assault and criminal sexual contact with Edna Mahan prisoners under his charge. As recently as 2016, he coerced women prisoners into having sex with him by blackmail and threatening disciplinary action if they did not comply. SID did a cursory investigation of him in 2013 for allegations that he exchanged contraband for sex with prisoners, but the investigation was closed as unsubstantiated and he was allowed to continue working on Edna Mahan's maximum security compound. This officer was also mentioned in the 2015 sexual abuse SID investigation of another correction officer. In that instance, the investigation revealed that the alleged victim noted that the officer had been flirting with her. There was no indication that investigators pursued this allegation.
- Another senior correction officer, who pled guilty to official misconduct in January 2019, after admitting to repeatedly having sexual intercourse with two prisoners as recently as 2017, was also investigated in 2014 for allegedly having sex with another Edna Mahan prisoner who later allegedly became pregnant. At that time, SID investigators found "no evidence to support" the allegations, despite finding information regarding an abortion pill in the alleged victim's property.
- The correction officer who, in February 2018, was arrested on 15 charges stemming from his sexual abuse of three women prisoners at Edna Mahan as recently as 2017, was identified in a SID investigation nearly three years earlier. In a late 2014 SID investigation into sexual abuse by another correction officer, a prisoner victim reported retaliation by this same, later-arrested officer. The later-arrested officer

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<sup>5</sup> If a correctional agency does not adequately investigate allegations of sexual abuse, it will be unable to determine the factors that enable abuse to occur and the corrective actions necessary to address the problem. *See Jacoby v. PREA Coordinator*, No. 5:17-cv-00053-MHH-TMP, 2017 WL 2962858, at \*5 (N.D. Ala. April 4, 2017) (citing *Farmer*, 511 U.S. at 833) (noting that failure to investigate can be a constitutional violation if the failure prevents prison officials from protecting prisoners).

reportedly told the victim, “I will punch you in the face and fuck you up,” for having made an allegation of sexual abuse against another officer.

- In October 2016, a civilian vocational instructor in the Edna Mahan kitchen pled guilty to official misconduct after being charged in connection with trading smuggled cigarettes for sex with two Edna Mahan prisoners in 2016. In 2014, this vocational instructor was suspected of trading tobacco for sex when SID investigated another employee for the same pattern of misconduct. During the SID investigation of the other staff member, an Edna Mahan prisoner reported that the vocational instructor committed sexual abuse. It does not appear, however, that SID initiated a separate investigation into the vocational instructor’s conduct.

These examples may have been missed opportunities to prevent abuse, due to a deficient system for investigating complaints of sexual abuse.

Notably, the Edna Mahan SID investigators are not applying the proper standard of proof in their sexual abuse administrative investigations and are not making sufficient findings and recommendations. These failures result in the inability of Edna Mahan and NJDOC to implement corrective action to prevent further sexual abuse. NJDOC policy and the PREA standards mandate that Edna Mahan “impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.” 28 C.F.R. § 115.72. “The goal of this standard is to ensure that the agency uses a standard of proof that is fair to all parties and appropriate for administrative action,”<sup>6</sup> as opposed to the “beyond a reasonable doubt” standard that is appropriate in criminal court. When we asked one of Edna Mahan’s SID senior investigators which standard of proof SID applied to sexual abuse investigations, the investigator did not know the answer, despite having conducted investigations at Edna Mahan for ten years.

Based on her review of administrative investigations at Edna Mahan, our expert determined that SID investigators did not apply the preponderance standard. Instead, all but a handful of the SID investigations we reviewed contained only vague findings of “evidence to support” or “insufficient evidence to support.” A few investigations noted “no further investigation at this time,” unless new evidence surfaces to reopen an investigation, and there were some cases where there were no stated findings at all, but merely a note forwarding the investigation to the administration for any action it deemed necessary. These vague findings do not track the PREA standards or NJDOC policy regarding investigative determinations.<sup>7</sup>

But more importantly, the “conclusions” of Edna Mahan’s SID investigations are woefully insufficient to provide direction to the facility administration to implement monitoring for retaliation and corrective action to prevent future sexual abuse. Making distinct investigative

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<sup>6</sup> National Prison Rape Elimination Commission, *National Standards Prevention, Detection, Response, and Monitoring of Sexual Abuse in Adult Prisons and Jails*, 45 (Jun. 23, 2009), <https://www.ncjrs.gov/pdffiles1/226680.pdf>.

<sup>7</sup> The PREA Standards define the proper administrative investigative findings as “substantiated” (an allegation that was investigated and determined to have occurred); “unsubstantiated” (an allegation that was investigated, and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred); and “unfounded” (an allegation that was investigated and determined not to have occurred). 28 C.F.R. §115.5.

findings is very important, not only to the investigations themselves, but to the remedial actions the findings may trigger to prevent future incidents of sexual abuse and sexual harassment in confinement settings. These specific determinations drive requirements for notice to the victim about the result of the investigation; notice to prospective employers if an allegation against a staff member was substantiated or if he or she resigned during a pending investigation of sexual abuse; consideration of both substantiated and unsubstantiated incidents in the facility staffing plan; retaliation monitoring; and the sexual abuse incident review process. Edna Mahan's insufficient investigative findings also hinder the facility from taking steps to protect vulnerable prisoners by providing information necessary for the administration to evaluate potential flaws in the physical plant, staffing plan, monitoring, training, and staff actions so that the facility can correct deficiencies to prevent future sexual abuse.

In some cases, investigators closed investigations by noting that there was "insufficient evidence" or that "no further investigation" would be conducted where the evidence presented in the report seemingly demonstrated at least a preponderance of evidence in support of the allegation, or at least a need for further investigation. For example, a prisoner at Edna Mahan reported that an officer was engaging in sexual activity with another prisoner. Separately, the State Ombudsman received a report that the alleged victim had written letters to a male NJDOC prisoner about a sexual relationship she was having with that officer. Based on these two reports, SID conducted an investigation and found a letter in the male prisoner's possession in which the alleged victim at Edna Mahan described sexual acts with the officer and described his penis. Despite this evidence, including evidence that corroborated information by the original complainant, SID closed the investigation, stating that "[n]o further investigation into this matter is necessary at this time. However, if new evidence of a sexual relationship between [the prisoner and the officer] is discovered, the issue will be reopened." The referenced Edna Mahan officer had previously been the subject of at least two other investigations alleging sexual abuse of a prisoner and inappropriate touching during a pat down search. Based on our expert's review of the SID file, this investigation should have been concluded with a "substantiated" finding, or at least an "unsubstantiated" finding with corrective action recommended to ensure that the officer in question did not have opportunities to sexually abuse Edna Mahan prisoners.

In addition to applying the wrong standard of proof, SID failed to investigate some allegations of sexual abuse adequately and left other investigations incomplete. For instance, in one matter where a prisoner alleged that her entire unit had witnessed a correction officer threaten to rape her with a broomstick, SID interviewed the complainant and correction officers, but failed to interview any of the alleged prisoner witnesses. Notably, in its report, SID determined that it could not substantiate the complainant's allegations because she did not provide a specific date and time that the officer allegedly threatened to rape her, which is something the alleged prisoner witnesses may have known. Similarly, in another investigation, where a prisoner complained that a correction officer sexually penetrated her cell mate, SID interviewed the complainant, the alleged victim, and certain correction officers, but failed to seek out or interview any other potential prisoner witnesses. Moreover, although the complainant also alleged another officer threatened to hurt her after she lodged the sexual assault complaint, SID failed to seek out or interview any potential witnesses to the alleged threat and instead only interviewed the complainant and the officer, who denied making the threat. Three years after SID closed the investigation, the Hunterdon County Prosecutor's Office indicted the officer who



had been accused of violently threatening the complainant on charges of sexually abusing multiple Edna Mahan prisoners as recently as 2017.

SID also delayed in conducting timely investigations after becoming aware of allegations of sexual assault and sexual harassment. In one instance, where a prisoner reported that an officer had inappropriately viewed her in the shower, SID did not interview the officer for almost two months. In another instance, SID did not initiate an investigation into alleged prisoner sexual abuse by a staff member until after a prisoner witness made multiple complaints through various channels, including speaking with two Edna Mahan administrators and instructing her mother to contact the Ombudsman. While SID finally initiated an investigation into this complaint, it never reached any conclusions.

Even with recent additional focus and attention on the issue of staff sexual abuse at Edna Mahan, SID investigations of allegations from late 2018 and early 2019 contain similar flaws. For example, in a late 2018 investigation of allegations that a correction officer repeatedly sexually abused an Edna Mahan prisoner, SID failed to interview the victim and closed the investigation as “unsubstantiated for reporting reasons”—essentially applying the criminal standard of proof to an incomplete administrative investigation. In a separate 2019 investigation, multiple prisoners reported sexual abuse or sexual harassment by a civilian staff member. SID identified other potential misconduct by the staff member, which resulted in the staff member’s removal from Edna Mahan, but made no conclusions regarding the allegations of sexual abuse and harassment.

Compared to national averages, NJDOC has a low rate of substantiating allegations of sexual victimization of prisoners. Combined with the other deficiencies identified, this is further indicative of an ineffective response to incidents of sex abuse. In 2017, NJDOC substantiated only 7 out of 145 allegations of sexual abuse or harassment of NJDOC prisoners statewide, or 4.8%. Approximately 8% of sexual victimization allegations from prisons and jails nationwide are substantiated based on completed investigations, according to the most recent national statistics available. Out of 38 allegations of staff-on-prisoner sexual abuse statewide in 2017, NJDOC substantiated only 2 reports, or 5%, which is closer to the national rate of 6%. However, although the number of sexual abuse complaints by NJDOC prisoners has increased significantly in recent years, and went up from 97 in 2016 to 145 in 2017, the number of substantiated incidents has not increased. The increase in complaints of sexual abuse is especially significant in light of the common concerns prisoners voice about reluctance to report due to the perception that they are subjected to retaliation in response for reporting. It is likely that sexual abuse is still underreported at Edna Mahan. In the context of our conclusions about deficient investigations of sex abuse at Edna Mahan, the system’s comparatively low rate of substantiated complaints may be a result of flaws in the investigative process.

**b. SID Investigators Lack the Independence Necessary to Conduct Unbiased Investigations.**

NJDOC fails to ensure autonomy and a lack of bias within Edna Mahan’s SID office. We observed close, friendly, and personal interactions between SID administrators and current Edna Mahan correction officers during our on-site review. While SID staff should have a civil

and positive relationship with staff at the prison, it is important to maintain boundaries and a bias-free process for evaluating potential staff misconduct. None of the SID staff we interviewed thought it was necessary to recuse themselves from any investigations involving correction officers they knew well and had personal relationships with. Indeed, SID's Deputy Chief emphasized that professional ethics required recusal only for "relationships, not friendships." Hence, so long as an SID investigator has no familial relationship or romantic involvement, the investigator can conduct an investigation of a close friend and former co-worker at Edna Mahan.

Where SID investigators fail to disclose personal relationships with the subjects of SID investigations, the potential for bias can result in a compromised investigation. For example, when a senior custody officer at Edna Mahan was being investigated for potential misconduct involving a relationship with, and marriage to, a former prisoner, a SID investigator did not disclose that he had been a guest at the senior officer's home and met his wife, whom he knew had been a prisoner at Edna Mahan while the senior officer worked there.

NJDOC instituted a new policy in October 2017 (modified in April 2018), which requires SID investigators to report personal relationships with other NJDOC staff if a reasonable person could perceive the relationship as affecting the investigator's impartiality or the integrity of an investigation. The SID Deputy Chief then determines whether the investigator will be recused from an investigation. The policy requires only this limited initial reporting and review by the SID Deputy Chief, but does not require recusal, and does not include consequences for violating the policy. The revisions to the policy leave much to the SID's discretion. . If Edna Mahan investigators continue to investigate staff with whom they have personal relationships, Edna Mahan investigations are likely to continue to be tainted.

### **c. SID Investigators Do Not Have Sufficient Training to Investigate Allegations of Sexual Abuse.**

"Proper training is essential to combating sexual abuse in correctional facilities."<sup>8</sup> Sexual abuse investigations require a specific skill set, which necessitates specialized training on interviewing victims of sexual abuse, collection of evidence, and the standard of evidence required to substantiate an administrative investigation.<sup>9</sup> Edna Mahan's SID investigators receive a basic training course for investigating at the NJDOC training academy, but we received conflicting reports on whether all SID investigators receive training specific to investigating allegations of sexual abuse in a correctional setting. Indeed, the former head of Edna Mahan's SID office confirmed that he had not received specialized training for investigating sexual abuse allegations, noting "SID conducts all investigations, not just PREA investigations." He had participated in providing some training to Edna Mahan staff through videotaped skits on undue familiarity in February 2017, following the staff indictments for sexual abuse of prisoners. None of Edna Mahan's SID staff had received training on techniques on interviewing women prisoners

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<sup>8</sup> *National Standards to Prevent, Detect, and Respond to Prison Rape*, 77 Fed. Reg. 37106, at 37109 (June 20, 2012) (explanatory text).

<sup>9</sup> The PREA standards require that investigators receive specialized training in sexual abuse investigations, 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." 28 C.F.R. §§ 115.34 & 115.71(b)

who may be victims of sexual abuse. Recent “Sexual Assault Investigations” training provided to Edna Mahan staff focuses on the officer’s initial response to sexual abuse allegations, is not specific to corrections, and includes a caveat that the training module is not intended to train officers as sexual assault investigators.

Lack of specific training on correctional sexual abuse of women is not only a problem with SID staff. The former Institutional PREA Compliance Manager for Edna Mahan was “instructed” by the NJDOC Commissioner to fill the duties of that position at Edna Mahan despite the fact that he had no experience or formal training on working with female prisoners. The only training for the State’s PREA Compliance Managers is achieved informally through quarterly meetings of all the NJDOC Institutional PREA Compliance Managers.

### ***3. Lack of Confidential Reporting Mechanisms Discourage Edna Mahan Prisoners from Reporting Sexual Abuse.***

Lack of a reliable, confidential means of reporting sexual abuse deters women prisoners from reporting sexual abuse at Edna Mahan.

At the time of our on-site review, SID reported receiving information about allegations of sexual abuse at Edna Mahan in multiple ways. Prisoners can report allegations of sexual abuse directly to Edna Mahan staff, who forward the complaints to their supervisors, who then forward the complaints to the facility administrator, through the chain of command. Edna Mahan prisoners may also contact SID directly to report sexual abuse or sexual harassment. The former Principal Investigator at Edna Mahan had a designated SID cell phone that enabled prisoners to contact him directly. Although he had been promoted to a new position outside of Edna Mahan at the time of our on-site review, he still had the phone in his possession and said he forwarded relevant messages to the current Principal Investigator.

In early summer 2018, Edna Mahan initiated a new SID hotline. Although the hotline had been in use for approximately a month at the time of our on-site view, and had yielded three calls, the number was not posted in the Edna Mahan housing units or common areas. We were informed that the original flyers posting the number had been removed because another number listed on the same notice was not functional. SID staff were unaware that the notices had been taken down. The toll-free SID hotline is referred to by staff as the “Snitch Line,” and that is how it is displayed on the facility’s caller identification system, which demonstrates a seeming lack of respect for the callers and their allegations. It is both problematic and emblematic of the problems with the reporting systems at Edna Mahan.

Many of the Edna Mahan prisoners we spoke to said they would not use the SID hotline because their calls would be recorded and they would then face retaliation by staff for reporting incidents of alleged sexual harassment or abuse. When we advised the prisoners that hotline calls are not recorded, they referred us to a sign by each phone which stated: “ATTENTION!!! All inmate phone calls shall be subject to recording and monitoring/listening. Legal and ombudsman calls are not monitored/recorded.” When we raised this concern with the Edna Mahan administration, we were told that prisoners “should know” that calls to the hotline would be treated the same as a legal call. But the confusion is Edna Mahan’s responsibility to fix.

Edna Mahan prisoners also can report sexual abuse and sexual harassment, and communicate with SID, through the JPay system. JPay is an electronic system used by NJDOC and other correctional agencies to handle grievances, electronic communications, commissary and other prisoner funds, and additional capabilities through on-unit kiosks or tablets paid for by prisoners or their families. At Edna Mahan, JPay is not a reliably confidential method to report allegations of sexual abuse. An NJDOC official acknowledged that the placement of the JPay terminals within the Edna Mahan housing units, near prisoner telephones and where prisoners congregate, made it difficult to communicate confidentially on JPay. In addition, SID staff revealed that although JPay is intended to be confidential, administrative staff are able to review the JPay grievances and share information with others. Edna Mahan prisoners expressed concerns about custody staff screening their JPay grievances and the resultant opportunity for retaliation. SID staff reported instances in which supposedly confidential information would “get back to the grounds,” indicating a breach in privacy. Although Edna Mahan has used JPay for two years, Edna Mahan has not resolved this confidentiality issue.

Separately, when SID receives a notice of a sexual assault-related complaint, through JPay or otherwise, SID’s standard practice is to inform the shift commander lieutenant that the prisoner wanted to speak with SID. SID investigators leave it to the discretion of the lieutenant as to how to handle it from there. Staff acknowledged that some lieutenants failed to keep prisoners’ referral to SID for an interview confidential, which is a concern to prisoners. The former Edna Mahan Principal Investigator reported that he would arrange for confidential interviews with women who reported or witnessed sexual abuse by scheduling the prisoners for pretextual medical treatment or administrative appointments to enable prisoners to meet with SID without the knowledge of other staff or prisoners. This apparently effective practice was discontinued when the new SID Principal Investigator took over in June 2018.

In addition, Edna Mahan prisoners with limited English proficiency (LEP) reported that they had no way to report sexual abuse or other issues without seeking assistance from other prisoners, which compromised confidentiality. Spanish-speaking prisoners at Edna Mahan reported that they could not submit grievances without the assistance of English-speaking prisoners who attempted to help by writing grievances or other complaints in English because prison staff would not respond to requests written in Spanish. When SID attempted to interview a Spanish-speaking LEP prisoner about a complaint about an officer who was harassing her, the investigator did not understand Spanish or offer an interpreter, so they had to try to communicate in English. During our on-site review, an Edna Mahan correction officer opined that the Spanish-speaking prisoners “don’t really need help” because he believed they all could speak English and were only pretending not to in order to seek special treatment.<sup>10</sup>

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<sup>10</sup> Title VI of the Civil Rights Act of 1964 (Title VI) prohibits NJDOC from discriminating against prisoners on the basis of race, color, and national origin (*see* 42 U.S.C. § 2000d-1; 28 C.F.R. § 42.104(a)-(b)), which can include failure to provide meaningful language access to LEP individuals. 42 U.S.C. §§ 2000d to 2000d-7; 28 C.F.R. §§ 42.101-112, 42.401-415. Edna Mahan has a legal obligation to treat LEP prisoners in a non-discriminatory manner and duty to ensure meaningful access to prison programs and services, including the reporting and investigative services. *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 Fed. Reg. 41,455 (June 18, 2002).

Edna Mahan prisoners also have the option of contacting the Office of Corrections Ombudsman, which is independent from the NJDOC. Per policy, the Ombudsman should then forward the report to the NJDOC SID Central Office or the facility administrator, which should trigger communication with the SID office at Edna Mahan for investigation. Nine percent of the sexual abuse and sexual harassment SID investigations we reviewed were reported through the Ombudsman; over half of which included reports of retaliation. Although prisoners reportedly have the option to remain anonymous when reporting to the Ombudsman, the reports we reviewed clearly identified the reporters of sexual abuse, without any mention of anonymity or confidentiality.

**4. *Edna Mahan’s Policies and Practices Enable Sexual Assault of Prisoners by Staff by Failing to Ensure a Reasonably Safe Environment.***

**a. *Failure to Secure and Monitor the Physical Plant of Edna Mahan Enables Staff Sexual Abuse of Prisoners.***

The physical plant of Edna Mahan poses challenges for adequate supervision and provides opportunities for sexual abuse to occur unseen. In an effort to avoid detection, Edna Mahan staff purposely exploited weaknesses in Edna Mahan’s physical structure and security practices to abuse prisoners.

Prior to 2018, there were limited cameras on the grounds of Edna Mahan, and in many instances, staff brought prisoners to unmonitored areas—often in camera “blind spots”—to sexually assault prisoners. NJDOC began installing additional cameras at Edna Mahan in late 2016, but camera coverage was severely lacking during our 2018 on-site review, and remains deficient. For example, there were no exterior cameras on the compound during our on-site review, apart from one that pointed at the entrance to the maximum security compound. There were cameras in some housing unit hallways and entryways, but not inside the common space of most housing units. While NJDOC was in the process of installing more cameras at Edna Mahan, the cameras were described as basic commercial models with limited capabilities and utility to investigators.

NJDOC has plans for a complete update with comprehensive camera coverage and expert architectural guidance on placement. As of April 2019, NJDOC was still finalizing the design for this project and did not provide a completion date for the planned three-phase installation of new camera system. According to recent reports, some housing units are still without cameras. In addition, there is no plan to have a staff member monitor the cameras at all times and no plans to increase the number of staff. While cameras can augment prisoner supervision, they are not a substitute for adequate staffing. Hence, while the addition of sufficient cameras could aid Edna Mahan in the investigation of complaints of sexual abuse, they will not provide sufficient supervision of staff and prisoners at Edna Mahan.

Upgraded camera coverage cannot compensate for lack of foundational correctional security practices, for example, controlling contraband. Edna Mahan does not effectively control contraband, which fuels the risk that officers will use access to and reporting of contraband as a means of control and to harass and abuse prisoners. Proper correctional security policies require

entry to a facility through a secure checkpoint, with adequate contraband searches for staff and visitors, and appropriate protocols followed consistently for all who enter. The security lapses at Edna Mahan allow staff to bring contraband into the facility, which contributes to a coercive environment and gives rise to other misconduct. On certain shifts, Edna Mahan staff are required to call Central Control via radio to operate the gates into the maximum security compound. Edna Mahan staff confirmed that, because there were no cameras at some entrances, it is likely that Central Control opens the gates without seeing who is present. Edna Mahan officials confirmed that staff could drive onto the compound grounds without going through a security checkpoint. Multiple Edna Mahan staff noted that there are not security checkpoints at all entrances to Edna Mahan and the compound is not secure.

Although we were on site a year and a half after multiple Edna Mahan correction officers had been indicted, and who later pleaded or were found guilty, for sexual abuse, we observed lapses in supervision and physical plant deficiencies that presented continued opportunities for undetected sexual abuse and other harmful misconduct. Multiple Edna Mahan staff members opined that the facility still offered numerous blind spots from cameras and supervision sight lines. Our on-site inspection confirmed this. Unsupervised spaces on the Edna Mahan compound pose another clear threat to prisoner safety and present opportunities for undetected sexual abuse. We observed dilapidated and apparently unused buildings throughout the compound and were informed that they were padlocked and that “very few” people had access. Staff did not know who had the keys or access to some buildings. Women prisoners on the minimum security compound walk by abandoned buildings without security escorts or exterior camera coverage. On the maximum security compound, prisoners worked in a cavernous warehouse-type room that was filled with old, unused equipment, supplies, and furniture. The prisoners’ current work required only a few tables in the middle of the room, but the remaining space and contents of the room provided numerous blind spots. These abandoned structures and unused spaces on the Edna Mahan compound pose a threat to prisoner safety and present opportunities for sexual abuse.

After our on-site review, NJDOC reported that Edna Mahan had employed a strict locking and tracking system to ensure that access to basements, attics, and other unoccupied areas is restricted and tracked through Center Control. This is positive, but it remains unclear if all of the unoccupied, abandoned, or unused buildings and structures on the Edna Mahan compound are adequately controlled. NJDOC is also in the process of implementing a centralized parking plan for Edna Mahan and evaluating other potential changes to require centralized checkpoints, which should increase physical plant security.

**b. Staff Deployment Puts Edna Mahan Prisoners at Substantial Risk of Harm.**

Edna Mahan’s failure to ensure adequate supervision of women prisoners exposes them to the substantial risk of harm from sexual abuse. Staff are insufficiently deployed in housing units to prevent sexual abuse from occurring. Edna Mahan must better deploy staff to observe and secure areas where abuse could occur, and must create more gender specific posts to protect the privacy of female inmates.

Edna Mahan's Administrator confirmed that there is a minimum of one correction officer per unit, and that most posts are not gender restricted. Male staff hold single-staff work posts and shifts in Edna Mahan housing units. While this staffing level is not unacceptable per se, given the physical plant challenges of Edna Mahan's facilities and the history of staff sexual abuse of prisoners, our experts concluded Edna Mahan's staff deployment is not sufficient to keep prisoners safe.

For example, on the minimum security compound, a single male officer supervised 42 women in two wings of single cells with a small, outside yard without camera coverage. In another building, one male officer supervised 50 women in a building with two floors, an attic and a basement, and spotty camera coverage. This lay out and staffing pattern was duplicated in other Edna Mahan housing units. The sole officer responsible for supervising 50 prisoners throughout a housing unit noted that there were no cameras in stairwells, some cameras were broken, and he could not observe the cameras when he was doing rounds. We observed obvious blind spots in the building. A storage room, which had no camera coverage, had a mattress on the floor.

Prisoner movement on the minimum-security compound is based on "call outs," where women are told to report to different locations throughout the compound and officers are to be posted along the routes to monitor their movement. However, we did not observe any officers posted along routes as we traversed between buildings. Indeed, we noted few to no correction officers on the grounds.

Maximum security housing units were staffed with two correction officers: one at a stationary position in a control area called "the cage," and one as a floor walker. There were cameras in the entrance ways of some housing units, but no cameras into the wings themselves. In some of the substantiated incidents of sexual abuse at Edna Mahan, one of the officers would take a prisoner behind the cage to commit sexual abuse while the other officer acted as lookout. However, the staffing pattern and physical layout remained unchanged during our July 2018 on-site review, with the only change being that an officer in Central Control now can see the housing unit hallways via camera. The maximum security kitchen, which includes a dining area, pots room, freezer and refrigerator area, storage area, cooking area, and prisoner restrooms, but little camera coverage, was staffed by one male officer.

In addition to the risk of sexual abuse, under the Fourth Amendment, a prisoner has the right "to shield . . . [her] unclothed figure from [the] view of strangers, and particularly strangers of the opposite sex." *Byrd v. Maricopa Cnty Sheriff's Dep't*, 629 F.3d 1135, 1141-43 (9th Cir. 2011) (quoting *York v. Story*, 324 F.2d 450, 455 (9th Cir. 1963)) (holding that a woman cadet touching a male pretrial detainee's genitals and buttocks during a pat down while the detainee was only wearing boxer shorts violated his right to privacy); see also, e.g., *Kent v. Johnson*, 821 F.2d 1220, 1226 (6th Cir. 1987) (noting that "there must be a fundamental constitutional right to be free from forced exposure of one's person to strangers of the opposite sex"). While opposite-sex surveillance of women prisoners is not unconstitutional *per se*, such surveillance must further the goal of prison security. See *Devenshire v. Schoupp*, No. 2:15-CV-01197, 2016 WL 6988718, at \*2 (W.D. Pa. Nov. 29, 2016) (citing *Timm v. Gunter*, 917 F.2d 1093, 1102 (8th Cir. 2002) *cert. denied*, (emphasizing that practices that arguably violated prisoners' privacy

outweighed by legitimate institutional concerns). In recognition of prisoners' right to maintain some level of privacy, the PREA standards limit cross-gender viewing of prisoners in shower and bathroom areas to exigent circumstances or when viewing is incidental to routine cell checks. *See* 28 C.F.R. § 115.15(d).

NJDOC documents confirm that, at least as of early 2018, many housing units on the minimum and maximum Edna Mahan compounds were staffed exclusively by male staff on multiple shifts, in some cases seven days of the week. Privacy violations that result in the unnecessary exposure of women prisoners' bodies to male staff contribute to a sexualized environment conducive to sexual abuse and harassment of prisoners. Ensuring that women prisoners can shower, undress, and toilet without observation by male staff would be difficult with Edna Mahan's current staffing plan.

Edna Mahan does have some gender-restricted posts that must be filled by female staff. For example, in Cottage C, Edna Mahan's Special Needs housing unit, where prisoners with the most intensive mental health needs are housed, policy requires that certain shifts and posts be filled by female staff. Edna Mahan staff reported during our on-site review that even when female staff are assigned to the gender-restricted posts that involve constant observation of women prisoners in their cells, there are not enough female staff to relieve them when they go on breaks. Therefore, male officers fill in for female officers during breaks, which violates the gender-restricted post requirements and results in male officers conducting constant observation of women prisoners who may need to undress or use the toilet. Indeed, we witnessed male officers conducting constant observation and filling in for other supposedly gender-restricted posts during our on-site review.

In an April 2018 request that acknowledged Edna Mahan's "crucial need" for additional gender-restricted posts, Edna Mahan's Administrator noted that Edna Mahan has "many challenges to safety, security and key PREA issues regarding the prevention of staff sexual misconduct and the prevention of prison rape on a daily basis. These challenges are primarily due to the lack of female staff." Edna Mahan's administrator requested additional gender-restricted posts to ensure adequate supervision, including constant watch; yard movements; contraband detection; pat downs; and strip searches. NJDOC reported in March 2019 that they have designated more gender-restricted posts for Edna Mahan, but fewer posts than were recommended or are necessary.<sup>11</sup>

**A. Officials at Edna Mahan Knew of the Risk to Prisoners from Staff Sexual Abuse and Disregarded It.**

Officials at NJDOC and Edna Mahan have been on notice of incidents of staff sexual abuse of prisoners for years and have failed to adequately address the deficiencies that enabled the abuse to occur. By disregarding the obvious risks to prisoner safety, officials at Edna Mahan evinced a deliberate indifference to prisoners' constitutional rights. *Farmer*, 511 U.S. at 842.

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<sup>11</sup> Any gender-restricted posts must be evaluated through a process to determine compliance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.*, and ensure the requirements are met for a bona-fide occupational qualification.



While the criminal indictments of eight Edna Mahan staff between May 2016 and April 2019 focused attention on sexual abuse at Edna Mahan, the problems have existed for many years. In the 1990s and 2000s, at least eight other correction officers and other Edna Mahan staff members were charged with crimes relating to sexual abuse. In April 2002, NJDOC's Commissioner sent a letter to "remind all staff" not to permit themselves "to become over-familiar" with prisoners, including by engaging in "sexual behavior" with prisoners. The letter further notes that "in the [NJDOC], there have been far too many instances of such misconduct." In 2005, the Third Circuit found that NJDOC was not deliberately indifferent to sex abuse because it lacked notice of such incidents. *Heggenmiller v. Edna Mahan Corr. Inst. for Women*, 128 F. App'x 240, 248 (3d Cir. 2005). After this opinion's detailed recounting of such incidents, NJDOC was certainly on notice of unacceptable incidents of sex abuse in its facilities. In 2010 and 2011, three correction officers were fired after several women prisoners alleged sexual abuse dating back to 2008. At least 16 women claimed they were beaten or sexually abused by one correction officer between 2008 and 2010. Seven of them have formally accused the officer of physical and sexual abuse in two lawsuits filed in state and federal court. While this officer maintained his innocence and was never criminally charged, he recently agreed to a \$75,000 consent judgment to settle a lawsuit by six former prisoners. Another prisoner was pursuing a lawsuit against three correction officers related to sexual abuse, and the case settled in 2018.

Current and former prisoners at Edna Mahan described sexual abuse of prisoners by correction officers as "an open secret." There is no indication that NJDOC took reasonable responses to prevent correction officers and staff from continuing to sexually abuse prisoners at Edna Mahan.

### ***1. Edna Mahan's Administration Failed to Review Pertinent Information Concerning Incidents of Sexual Abuse and Sexual Harassment***

Despite documentation of a long-standing problem with sexual abuse at Edna Mahan, the administration failed to take sufficient remedial measures. We found no evidence to demonstrate a reasonable response to sexual abuse incident review process at Edna Mahan, which is essential to identifying contributing factors to sexual abuse and recommending any changes to policy or practice to help prevent such incidents of abuse in the future.<sup>12</sup> While SID collected some information concerning alleged incidents of sexual abuse, critical details of several of those incidents have not been shared with facility leadership. Moreover, Edna Mahan's administration has not set up a team to review with its leadership alleged incidents of sexual abuse and any needed corrective action. To the contrary, Edna Mahan has set up a system that deprives the administration of the details of incidents of sexual abuse and sexual harassment, which allows systemic deficiencies to persist despite repeated reports of abuse. The former Institutional PREA Compliance Manager for Edna Mahan stated that Edna Mahan will notify SID of any allegations of sexual abuse or sexual harassment, "no matter how minute." SID conducts the investigation and sends an e-mail with their findings to the facility PREA Compliance Manager. However, the PREA Compliance Manager does not receive SID's report or do any review of the investigative file. Indeed, the PREA Compliance Manager could only assume that SID maintains a file on the

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<sup>12</sup> The PREA standards require a sexual abuse incident review at the facility level at the conclusion of every sexual abuse investigation. 28 CFR § 115.86(a).

findings because he has never seen one. Edna Mahan’s top official, the facility’s Administrator, also does not have access to SID investigative reports or case files. The SID investigation reports state that SID “will forward findings to the Administrator for appropriate action,” but the Administrator is not provided details of the investigations in order to fashion appropriate corrective action.

NJDOC has a PREA Committee at the NJDOC agency level that meets monthly to review PREA investigation reports from all NJDOC facilities and make recommendations for facilities. Edna Mahan does not have such a committee or meetings at the facility level. The NJDOC PREA review may have limited impact for individual facilities. When we asked NJDOC officials what types of recommendations the PREA Committee might make in response to PREA investigation reports, the only response we received was “camera placement,” twice, which is inadequate.

Edna Mahan’s Administrator should be made aware – but is not – of the details regarding sexual abuse or other investigations within the prison she manages. With more information, the Administrator can act in real time to separate alleged perpetrators from victims, respond to physical plant issues that create opportunities for sexual abuse, and make other administrative changes to protect prisoners from the serious harm of sexual abuse. Edna Mahan should have a sexual abuse review team, consisting of facility leadership, conduct timely reviews (generally, within 30 days of the investigative finding), so that Edna Mahan can react swiftly to identify and implement corrective action to prevent future incidents of sexual abuse in similar places and/or manners.

The recent indictments, pleas, criminal convictions, and terminations of correction officers for sexual abuse of Edna Mahan prisoners are but one tool to combat wrongdoing by officers. Administrative investigations of staff for allegations related to sexual abuse where the local authorities declined to prosecute are another important tool. While an administrative hearing process exists to determine if discipline, including termination, is appropriate in NJDOC cases in which misconduct is indicated even though criminal charges did not accrue, there have been no such administrative hearings for Edna Mahan, except for the criminal cases in which NJDOC sought termination of employment.

## ***2. NJDOC and Edna Mahan Failed to Remedy Systemic Deficiencies that Enable Sexual Abuse of Prisoners to Persist***

NJDOC acknowledged during our on-site review that before the January 2017 indictments, a “culture” existed at Edna Mahan that permitted sexual abuse, but assured us that the State has been putting changes in place to increase accountability and address the problem. For example, after four Edna Mahan correction officers were indicted in January 2017, the State requested technical assistance from the Department of Justice’s National Institute of Corrections (NIC). An NIC expert team visited Edna Mahan and provided NJDOC with a report and recommendations in January 2018. NJDOC also engaged a private consultant in September 2017, to conduct a review at Edna Mahan and provide advice as to recommended responsive measures. Although the consultant made a number of recommendations related to Edna Mahan, NJDOC has not shared his work with the Department.

In May 2018, NJDOC created a Safety and Accountability for Edna (SAFE) task force to address many of the NIC Technical Assistance recommendations and other potential corrective action measures. NJDOC's Chief of Staff heads the SAFE task force and members include high-level NJDOC officials, but no representatives from Edna Mahan's administration or staff. The SAFE task force set a list of goals related to NIC's recommendations, and outlined plans to address them.

As a result of these proactive steps, NJDOC has initiated some positive remedial measures at Edna Mahan. Unfortunately, many of the initiatives are incomplete or lack acceptance at the facility level. For example, NJDOC has commissioned a comprehensive camera coverage upgrade that will result in 654 cameras throughout the Edna Mahan compound, double the current data retention period, include motion activation in generally unoccupied areas, and other improvements to the system. However, it is unclear when the project will be complete and, during our on-site review, it was reported that no one was assigned to conduct continuous monitoring of the cameras. Staffing numbers at Edna Mahan were not expected to increase with the installation of additional cameras, which minimizes the usefulness of cameras for direct surveillance. While NJDOC implemented a new policy in June 2018, which requires audits of surveillance video by facility supervisors, during our on-site visit, it was reported that Edna Mahan supervisors were resistant to reviewing camera footage. Lieutenants and other high-level officers indicated a reluctance to review footage for evidence of staff misconduct, which they would then be required to report to the Administrator for corrective action. We were not informed of any adverse consequences for lieutenants and higher-level staff refusing to review camera footage.

In addition, NJDOC has sought and successfully implemented an expansion of gender-restricted posts, including at all minimum-security housing posts at Mahan. This required the reassignment of 17 male correction officers at Edna Mahan. But this is fewer gender-restricted post than the changes NJDOC proposed during our on-site review, which would have affected 39 male correction officers. In addition, it has been reported that while the number of gender-restricted posts has increased, Edna Mahan does not have enough female correction officers to adequately staff the posts. As such, female officers cannot be relieved for timely meal breaks and are being subjected to mandatory overtime.

Other recommendations have been disregarded. There is no indication that NJDOC has remedied the lack of a written policy addressing gender differences between male and female prisoners. In this way, NJDOC continues to minimize women prisoners' experience, for example, the significant trauma history of many women prisoners, which contributes to the failure to protect them from harm. As discussed above, NJDOC reforms fall short of requiring recusal of SID investigators who have personal relationships with the staff they are investigating. Edna Mahan made policy changes that lessen the punitive nature of TCC, but continues to subject victims of sexual abuse to segregation as a result of their report. The SAFE task force considered a change to Edna Mahan policy that would have prohibited officers from taking prisoners out of their cells during count times, without supervisor approval, or requiring deployment of supervisors to conduct rounds during count time. These changes were contemplated, and recommended by NIC, because of sexual abuse that occurred during count,

when an officer could isolate himself with a prisoner while everyone else on the unit was locked down. However, the task force decided not to pursue these changes on the recommendation of Edna Mahan custody staff, who balked at the idea of getting permission from the shift lieutenant before removing a woman from her cell during count because it could “possibly delay” meal time. Without any additional evidence or explanation of how meal delay might outweigh sexual safety, the SAFE task force gave up on this proposal. The task force also decided not to pursue changes that would have limited the duration of correction officer assignments through use of more temporary job bids or generalized job bids, which would enable NJDOC to move staff around within the facility or system. Changes of these types would help to minimize the development of unprofessional relationships between staff and prisoners, which can lead to opportunities for staff sexual abuse.

While NJDOC’s positive efforts and willingness to make changes at Edna Mahan are commendable, our investigation has revealed that many of the practices and attitudes that enabled the abuse to occur persist at Edna Mahan. In addition, Edna Mahan prisoners continue to raise credible allegations of staff sexual abuse and sexual harassment, despite the reforms. The proposed and completed changes are unlikely to resolve problems of sexual abuse if facility staff and administrators are not involved in developing and implementing corrective action within Edna Mahan.

During our on-site review, some Edna Mahan administrators and staff opined that the culture had not changed and that a code of silence persisted to discourage reporting sexual abuse. One officer investigated by SID was engaging in sexual harassment while another officer’s criminal trial for sexual abuse was ongoing. Some officers were candid in disparaging the recent focus on sexual abuse, based on the view that prisoners abuse the system, and supervisory staff reinforced, rather than correct, this perception that sexual assault received undue focus.

In our review of SID investigation files for allegations of sexual abuse or sexual harassment, we found that, despite being aware of both ongoing instances of sexual abuse and sexual harassment and the means to report, correction officers did not report sexual abuse or sexual harassment being committed by other custody staff, even anonymously. This implies either that correction officers do not trust Edna Mahan’s investigative systems; that a “code of silence” exists where Edna Mahan officers are unwilling to speak out against other officers; or that some officers are involved in actively concealing misconduct. An important component to eradicating sexual abuse in correctional settings is staff participation in identifying abusive conditions and their responses to these conditions. This is why the PREA standards require that staff members are trained on preventing, detecting, reporting, and responding to sexual abuse and that staff have a duty to report “any knowledge, suspicion, or information” regarding sexual abuse or sexual harassment of prisoners. 28 C.F.R. §§ 115.31, 115.61. Edna Mahan officials opined that to the extent the culture has changed, it is only because officers are now afraid of being caught. The candid statements that Edna Mahan staff offered to the Department demonstrate that, while NJDOC and Edna Mahan may be working to reform their system, a deeper cultural change is necessary.

Edna Mahan suffers from a “culture of acceptance” of sexual abuse, which has enabled abuse to persist despite years of notice and efforts towards change at the State level.<sup>13</sup> As noted above, at the conclusion of a full criminal trial of an Edna Mahan correction officer, the state court observed that this “pervasive culture” gives staff the opportunity and audacity to abuse their authority by “preying on vulnerable women . . . for sexual gratification.”<sup>14</sup> Both NJDOC and Edna Mahan have been reactionary to the multiple criminal indictments, civil lawsuits, and press garnered around prior staff sexual abuse of Edna Mahan prisoners. If NJDOC and Edna Mahan do not effectively address the systemic deficiencies that led to the criminal sexual abuse revealed by the staff indictments, practices will continue at Edna Mahan that will likely result in continued sexual abuse of the women incarcerated there.

## V. MINIMAL REMEDIAL MEASURES

As the efforts by NJDOC to address the issues outlined in this Notice have been thus far inadequate to protect women from sexual abuse at Edna Mahan, the following remedial measures are necessary.

- Comply with PREA and its implementing regulations, the National Standards to Prevent, Detect, and Respond to Prison Rape (28 C.F.R. §§ 115 et seq.).
- Cease the practice of automatically transferring prisoners who report sexual abuse to TCC or other segregated housing unless an Edna Mahan official has completed and documented an assessment of all available alternatives, and has determined that there is no available alternative means of separating the victim from likely abusers.
- If it is necessary to hold prisoners who report sexual abuse in TCC or other segregated housing in order to keep them safe from further abuse or retaliation, ensure that such prisoners have access to privileges, including visitation, commissary, programming, and vocational opportunities.
- Ensure that prisoners have a confidential option for reporting sexual abuse and sexual harassment, anonymously if requested, including an option that is independent from NJDOC.
- Ensure that prisoners receive information and education on how to access all confidential reporting options and SID.
- Ensure that prisoners who report sexual abuse have access to victim advocates mental health care professionals for emotional support services related to sexual abuse.
- Develop and implement a system for monitoring retaliation, consistent with the PREA standards, to ensure that persons who report sexual abuse or sexual harassment do not experience retaliation by other prisoners or staff.

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<sup>13</sup> *State of New Jersey v. Jason Mays*, Judgment of Conviction & Order for Commitment, HNT-16-00671, CRM2018560286 (Sep. 17, 2018).

<sup>14</sup> *Id.*

- Develop and implement a new staffing plan, taking into account all the factors delineated in 28 C.F.R. § 115.13(a), in order to ensure adequate staffing levels and, where applicable, real-time video monitoring, to protect prisoners from sexual abuse.
- Develop and implement a plan to recruit additional women correction officers to work at Edna Mahan in a manner that complies with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.*
- Develop and implement a plan to designate reasonably necessary gender-restricted posts at Edna Mahan, through a process that will determine compliance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.*, and ensure the requirements are met for bona-fide occupational qualifications.
- Complete and implement the plan for strategic placement of additional cameras at Edna Mahan, with appropriate oversight and review of camera footage.
- Cameras and video maintenance systems installed should have the capability of retaining video data for not less than 90 days and capacity to store selected video indefinitely.
- Ensure that access to and from the Edna Mahan compound is through secure checkpoints only.
- Ensure that anyone entering the Edna Mahan compound, including staff, undergoes appropriate contraband screening.
- Conduct an inventory of all abandoned, dilapidated, or currently out of use structures on the Edna Mahan compound and develop and implement plans to demolish or secure any buildings that pose a threat to institutional security or provide opportunities for sexual abuse.
- If Edna Mahan determines that it will continue to utilize the old upholstery warehouse, Edna Mahan shall clear the space of unused equipment and inventory that pose safety concerns and create blind spots.
- All SID investigators and administrators must receive specialized training in sexual abuse investigations. Specialized training shall include techniques for interviewing sexual abuse victims, proper use of *Miranda v. Arizona*, 384 U.S. 436 (1966), and *Garrity v. New Jersey*, 385 U.S. 493 (1967), warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.
- All SID investigative staff must disclose any personal relationships with Edna Mahan staff who may be the subject of a current SID investigation, and must recuse themselves from participating in an investigation involving any Edna Mahan staff member with whom they have a personal relationship.

- Edna Mahan’s Administrator should have access to investigative files and regular briefings of PREA investigations that include sufficient details so that the facility Administrator and/or the incident review team has sufficient information to devise and implement any necessary movement, discipline, or corrective action.

## **VI. CONCLUSION**

We have reasonable cause to believe that Edna Mahan violates the constitutional rights of prisoners in its care, resulting in serious harm and the substantial risk of serious harm. Specifically, Edna Mahan fails to protect women prisoners from harm due to sexual abuse by staff. Finally, as explained above, we have reasonable cause to believe that Edna Mahan’s violations are pursuant to a pattern or practice of resistance to the full enjoyment of rights protected by the Eighth Amendment

We look forward to working cooperatively with the State of New Jersey to ensure that these violations are remedied. We are obligated to advise you that 49 days after issuance of this letter, the Attorney General may initiate a lawsuit pursuant to CRIPA to correct deficiencies identified in this letter if State officials have not satisfactorily addressed our concerns. 42 U.S.C. § 1997b(a)(1). The Attorney General may also move to intervene in related private suits 15 days after issuance of this letter. 42 U.S.C. § 1997c(b)(1)(A). Please also note that this Notice is a public document. It will be posted on the Civil Rights Division’s website.