

APPENDIX

New Jersey Legislature

Committee on Law and Public Safety

Testimony of Prof. Brenda V. Smith
American University, Washington College of Law

February 22, 2018

Hearing on
Pervasive Problem of Sexual Abuse against Women in Prison & Best Practices for
Prevention and Reporting Within the Prison Setting.

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Sexual Violence in Women's Correctional Facilities

Testimony of Prof. Brenda V. Smith

I. Introduction

Good afternoon, Chairman Greenstein and Vice-Chairman Diegnan. Thank you for inviting me here today and for the opportunity to speak with the members of the Committee on Law and Public Safety.

I am a Professor of Law at the American University Washington College of Law. I have a long investment in issues of treatment of individuals in custodial settings, dating back to my early years of running a program for women inmates imprisoned in the Minimum Security Prison of the District of Columbia Department of Corrections.¹ Because of my work with women in custody, I learned about sexual victimization in custodial settings and served as class counsel in *Women Prisoners v DC*² from 1993 to 2003. In November, 2003, I was appointed by then House Minority Leader, Nancy Pelosi to serve on the National Prison Rape Elimination Commission. I served in that capacity until August 2009, when the commission "sunsetted" after having issued comprehensive standards to address sexual abuse of individuals in custodial settings – prisons, jails, juvenile detention facilities, community corrections and immigration detention settings. The United States Department of Justice issued a final rule standards in August 2012 after several years of consultation with stakeholders and a robust public comment period.

In addition to those roles, I have also directed the Project on Addressing Prison Rape for the past 20 years. In that capacity, I have provided training and technical assistance to correctional agencies – adult and juvenile – on a variety of issues including: labor and employment issues; sexual abuse in custodial settings; culture change; treatment of LGBTQI persons in custody, and the specific needs of women and girls under authority of law.

Additionally, I have litigated and served as counsel and an expert in sexual abuse cases in correctional settings,³ and been involved as a scholar researching and writing on issues of sexuality and victimization in custody.⁴ My work investigating the legal construct of

¹ Brenda V. Smith, *AN END TO SILENCE: WOMEN PRISONERS' HANDBOOK ON IDENTIFYING AND ADDRESSING SEXUAL MISCONDUCT* (1998) available at

http://www.wcl.american.edu/endsilence/documents/NWLC_Silence_Final.pdf.

² *Women Prisoners of the D.C. Dep't of Corr. v. Dist. of Columbia*, 93 F.3d 910, 929 (D.C. Cir. 1996).

³ Expert witness work includes xxx

⁴ Brenda V. Smith, *Rethinking Prison Sex: Self-Expression and Safety*, Symposium on Sexuality and the Law, 15 Colum. J. Gender & L. 185 (2006); *Uncomfortable Places, Close Spaces: Theorizing Female Correctional Officers' Sexual Interactions with Men and Boys in Custody*, 59 U.C.L.A. L. Rev. 1690 (2012).

employment in correctional setting is also longstanding dating back to my initial work on cross-sex supervision in custody.⁵

As many have said including Dostoevsky, Mandela and de Tocqueville, the mark of a civilization is in how we treat those we punish. I submit to you today, that while the United States has made progress with the promulgation of the final PREA standards, there is still much work to be done. I think the allegations of sexual abuse in the Edna Mahan Facility are proof of that.

Today, I would like to do two things – focus on what I know of past reports of abuse in the Edna Mahan Facility and focus on the PREA standards and the other best practices for preventing, reporting and punishing sexual abuse in custody.

II. Past History of Reported Complaints Involving the Edna Mahan Correctional Facility

This hearing was called in response to the pervasive problem of sexual violence in The Edna Mahan Correctional Facility. Most recently in fall 2017, a female prisoner in the Edna Mahan Correctional Facility alleged that she was sexually assaulted by Officers Ambroise and May. In her civil complaint, she claimed that Defendants Ambroise and/or Mays and/or other EMCF officers in the past five years assaulted at least sixteen other women.

Further, the female prisoner stated that at least five EMCF officers and/or employees were fired and/or criminally indicted over the past three years over claims of sexual abuse. Lastly, the prisoner claimed that for several years Edna Mahan falsely reported no cases of sexual abuse of inmates and/or under-reported cases of sexual abuse of inmates.

Unfortunately, this most recent event that is the genesis of this hearing is not an isolated incident. Edna Mahan has a long-standing history of sexual violence against female inmates. Over the last twenty years, female and male officers at the Edna Mahan Facility have been disciplined, fired, or criminally prosecuted for offenses including exchanging sexual favors for gifts or money. Detailed below are a number of the reported cases I located in anticipation of testifying today:

A. Current Case -- Owens v. Ambroise et al., No. 317-cv-07159-PGS-LHG (amended complaint filed Sept. 15, 2017).

Plaintiff filed suit pursuant to § 1983 for violation of her First, Fourth, Eighth, and Fourteenth Amendment rights. Plaintiff alleges that she was sexually assaulted by Officers Ambroise and May. Upon information and belief, at least sixteen (16) other women have been assaulted by Defendants Ambroise and/or Mays and/or other EMCF officers in the past five years. Further, upon information and belief, at least five (5) EMCF officers and/or employees were fired and/or criminally indicted over the past three

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(3) years over claims of sexual abuse, including but not limited to Defendants Ambrose and Mays, as well as EMCF officers/employees Ahnwar Dixon, Thomas Seguire, and Joel Herscap. Notably, upon information and belief, for several years Edna Mahan falsely reported no cases of sexual abuse of inmates and/or under-reported cases of sexual abuse of inmates.

Cases

B. Matter of Colon, No. A-1726-15T4, 2017 WL 2991771 (N.J. Super. Ct. App. Div. July 14, 2017)

Petitioner appealed a final administrative action from the Civil Service Commission (Commission) and a denial of reconsideration of a Department of Correction (DOC) disciplinary action against petitioner removing him from his position for using excessive force against an inmate. Petitioner worked for the DOC as a senior corrections officer at Edna Mahan Correctional Facility for Women. This case stems from a January 26, 2015 incident between petitioner and an inmate, who is a special needs inmate receiving psychiatric care. The interaction was captured on the correctional facility's security cameras from two angles. The video shows the inmate approaching the control booth twice; the second time when she began to walk away, she stopped and said something over her shoulder. Next, the video shows petitioner walking towards the inmate, who turned and continued to walk back towards the housing unit. Petitioner closed the gap between himself and the inmate, standing inches from her. Petitioner pushed the inmate, causing the inmate to stumble, and eventually petitioner forcefully pushed her to the floor. The video shows petitioner punching the inmate while she was on the floor.

C. In re Coluccio, NO. A-0772-11T2, 2012 N.J. Super. Unpub. LEXIS 1883 (N.J. Aug. 6, 2012).

Plaintiff appealed a final determination of the Commissioner of Education removing him from his tenured position as a teacher with the New Jersey Department of Corrections. Coluccio was employed as a cosmetology teacher at the Department's Edna Mahan Correctional Facility for Women. On June 24, 2009, the Department filed a preliminary notice of disciplinary action, alleging that Coluccio had an improper relationship with an inmate at Edna Mahan, who was serving a six year sentence. Coluccio was charged with conduct unbecoming an employee, improper and unauthorized contact with an inmate, and sexual harassment or discrimination. The Court affirmed the Commissioner of Education's decision.

D. Heggenmiller v. Edna Mahan Corr. Inst., No. 04-1786, 128 Fed. Appx. 240 (3rd Cir. Apr. 11, 2005).

Plaintiffs alleged that a prison guard raped and sexually assaulted them between 1997 and 1999. The matter was allegedly investigated, and the guard was fired and brought up on charges. The inmates claimed that the administrators were deliberately indifferent to a serious risk of harm and failed to train the guards. While there was evidence of 10 different incidents of various sexual incidents between guards and inmates, none of the

prior incidents was shown to have involved the guard who assaulted both inmates. As to the past incidents, the administrators investigated, fired, and prosecuted at least five of the six guards involved in the incidents. Thus, there was no evidence that the administrators either looked the other way or attempted to intervene on behalf of any guard. The judgment of the district court was affirmed.

E. Raymond v. Edna Mahan Correctional Facility, NO. 2002-2678, 2005 WL 1190413 (N.J. Adm. May 4, 2005).

Appellant appealed his removal from respondent ("Edna Mahan") effective January 8, 2002 upon the determination that he had "improper or unauthorized contact with inmate-undue familiarity with inmates, parolees, their families, or friends," such contact being "conduct unbecoming an employee." The Court affirmed the respondent's removal of appellant from the position of Correction Captain.

F. State Of New Jersey V. Ralph W. Grier.

The guard, Lt. Ralph Grier, was found guilty of second-degree official misconduct in a criminal trial. That same jury acquitted him of three counts of sexual assault on inmates at Edna Mahan Correction Facility for Women, where Grier had worked for 20 years. According to court records. Judge Victor Ashrafi, sitting in Flemington, said that Grier took advantage of his position of authority in January 2002 and used it to develop a relationship with the victim, a female former inmate whose name was withheld. Grier gave the inmate cigarettes and candy to become friendly with her. Additionally, he sent her a \$30 money order and disguised it to come from a relative in exchange for allowing him to take nude photographs of her, according to court records. As part of the sentencing, Grier was permanently barred from seeking a position in law enforcement or holding a public office.

III. The Prison Rape Elimination Act

In 1994, the Supreme Court ruled that prison officials' deliberate indifference to a substantial risk of serious harm to an inmate violates the cruel and unusual punishment clause of the Eighth Amendment. The court also ruled that rape in prison is simply not "part of the penalty" for committing a crime⁶ Nine years later, Congress passed the Prison Rape Elimination Act, creating a zero-tolerance for sexual abuse in custody and the protect the 8th amendment rights of prisoners⁷.

⁶ *Farmer v. Brennan*, 511 US 825 (1994) (ruling that ruled that a prison official's "deliberate indifference" to a substantial risk of serious harm to an inmate violates the cruel and unusual punishment clause of the Eighth Amendment. Farmer, a transgender female, was placed with the general population at a male prison and was beaten and raped).

⁷ See generally, THE PRISON RAPE ELIMINATION ACT OF 2003, Pub. L. 108-79. 4 Sept. 2003. Stat 117.972. +

While we are here today to talk about sexual abuse in custody and how the Prison Rape Elimination Act Standards address that important issue, it goes without saying that PREA is about much more than abuse.

Sexual abuse of people in custody has been a problem since the inception of prisons. It has led to the creation of classification systems to detect vulnerability, and separate housing for men, women, and children.

Congress made several findings in passing that legislation that I think bear on today's proceedings:

- (1) most prison staff are not adequately trained or prepared to prevent, report, or treat inmate sexual assaults;
- (2) prison rape often goes unreported, and inmate victims often receive inadequate treatment for the severe physical and psychological effects of sexual assault—if they receive treatment at all;
- (3) inmates with mental illness are at increased risk of sexual victimization (America's jails and prisons house more mentally ill individuals than all of the Nation's psychiatric hospitals combined);
- (4) the high incidence of sexual assault in prisons involves likely violations of the U.S. Constitution.

In order to address these findings, Congress implemented the PREA Standards. I have detailed below the ones that I think this body should review carefully.

V. PREA Standards

PREA provided unprecedented funding to state and federal agencies to address sexual abuse in custody including:

1. funding for training and technical assistance to the National Institute of Corrections;⁸
2. funding for data collection by the Bureau of Justice Statistics;⁹
3. grants to state to address sexual violence in custody.¹⁰
4. funding to create the National Prison Rape Elimination Commission (NPREC), which Congress required to perform a comprehensive legal and factual analysis of

⁸ 42 U.S.C. § 15604.

⁹ 42 U.S.C. § 15603.

¹⁰ 42 U.S.C. § 15605.

the physical, mental, medical, social, penological, and economic consequences of prison rape.¹¹

After conducting hearings, expert panels and gathering data, the NPREC used that discovery to inform its development of draft standards for the prevention, detection and punishment of prison rape. After notice and consultation with the field through listening sessions, the Department of Justice (DOJ) issued final standards on August 20, 2012.

DOJ's standards require a variety of conditions related to staff training, reporting options, availability of mental and medical health resources, cross-gender supervision policies, and general oversight of compliance with PREA standards. Every agency is required to employ an agency-wide PREA coordinator who has sufficient time and resources to implement PREA and oversee agency efforts to comply with the standards. In addition, each facility within the agency is required to employ a PREA compliance manager who similarly has sufficient time and resources to effectively monitor and prevent sexual abuse in accordance with the PREA standards.¹²

These standards are the floor - they are minimum standards. States can and are encouraged to do more particularly if your state has set higher requirements.

In the PREA Standards, there are specific measures intended to prevent abuse perpetrated by prison officials including: (1) limits on cross-gender searches¹³; 2) improving hiring and promotion decisions¹⁴; (3) criminal and administrative agency investigations¹⁵; (4) disciplinary sanctions for staff¹⁶; and (5) training.

1) Cross-gender searches

28 CFR § 115.15:

(a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.

(b) As of August 20, 2015, or August 20, 2017 for a facility whose rated capacity does not exceed 50 inmates, the facility shall not permit cross-gender pat-down searches of female inmates, absent exigent circumstances. Facilities shall not restrict female inmates' access to

¹¹ 42 U.S.C. § 15606(d).

¹² 28 C.F.R. § 115.11(b) – (c).

¹³ 115.15

¹⁴ 115.17

¹⁵ 115.71

¹⁶ 115.76

regularly available programming or other out-of-cell opportunities in order to comply with this provision.

(c) The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female inmates.

(d) The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit. . . .

(f) The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

2) Hiring

28 CFR § 115.17: Hiring and promotion decisions

- (a) The agency shall not hire . . . anyone who may have contact with inmates, and shall not enlist the services of any contractor who may have contact with inmates, who – (1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility or other institution; (2) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; (3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.
- (b) The agency shall consider any incidents of sexual harassment in determining whether to hire . . . anyone, or to enlist the services of any contractor, who may have contact with inmates.
- (c)-(f) The agency shall ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring.

The second issue relates to the requirement for robust background checks. The PREA standards require background checks for any incidents involving sexual abuse and sexual harassment, and prohibit agencies from hiring staff with past convictions or substantiated incidents of sexual abuse in a facility or sexual activity in the community by force or

without consent.¹⁷ Agencies must conduct these checks on three occasions—at the point of hire, when being considered for a promotion and finally in a general five-year cycle. The PREA Standards enumerate the following offenses that bar hiring or promotion of staff:

- (1) engaging in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997); (2) convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or (3) has been civilly or administratively adjudicated for engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse.¹⁸

While good on its face, the background check standard assumes a reporting culture in correctional environments that often does not exist.¹⁹ The scandal in the Baltimore City Detention Center illustrates this problem. In April of 2013, twenty five people including thirteen corrections officers were indicted for a widespread smuggling scheme of drugs, cell phones and other contraband into the facility.²⁰ One inmate was discovered to have impregnated four officers.²¹ This scandal was so widespread that other staff members either knew or turned a blind eye to the misconduct.

3) Criminal and administrative agency investigations

28 CFR § 115.71: Criminal and administrative agency investigations (a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports. (b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to §115.34. (c) Investigators shall gather and preserve direct and circumstantial evidence, including any available

¹⁷ 28 C.F.R. § 115.317.

¹⁸ *Id.*

¹⁹ The Code of Silence is very prevalent in the corrections setting and results in staff staying silent about abuse, refusal to cooperate with investigations and actively hiding evidence of misconduct. *See, e.g.,* Kathleen M. Dennehy & Kelly A. Nantel, *Improving Prison Safety: Breaking the Code of Silence*, 22 WASH. U. J.L. & POL'Y 175 (2006); Lois Henry, 'Code of Silence' Pervades Prison System, BAKERSFIELD CALIFORNIAN (July 27, 2011) available at

<http://www.bakersfield.com/news/columnist/henry/x468147796/Code-of-silence-pervades-prison-system>.

²⁰ Ian Duncan et al., *Inside a Jail Run From Within*, THE BALTIMORE SUN (Apr. 28, 2013) available at <http://www.baltimoresun.com/news/maryland/bal-black-guerrilla-family-tavon-white-prison-corruption-20130425,0,7483161.html>

²¹ *Id.* ("Corrections department investigators discovered BGF documents outlining that new recruits are trained to target female officers with "low self-esteem, insecurities and certain physical attributes," according to the affidavit.")

physical and DNA evidence; any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator. (d) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for criminal prosecution.

28 C.F.R. § 115.76 : Disciplinary sanctions for staff

- a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.
- b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.
- c) Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.
- d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

28 C.F.R. § 115.31: Employee Training

- a) The agency shall train all employees who may have contact with inmates on:
 - 1) Its zero-tolerance policy for sexual abuse and sexual harassment;
 - 2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
 - 3) Inmates' right to be free from sexual abuse and sexual harassment;
 - 4) The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
 - 5) The dynamics of sexual abuse and sexual harassment in confinement;
 - 6) The common reactions of sexual abuse and sexual harassment victims;
 - 7) How to detect and respond to signs of threatened and actual sexual abuse;
 - 8) How to avoid inappropriate relationships with inmates;
 - 9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and
 - 10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.
- b) Such training shall be tailored to the gender of the inmates at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male inmates to a facility that houses only female inmates, or vice versa.

- c) All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide each employee with refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures. In years in which an employee does not receive refresher training, the agency shall provide refresher information on current sexual abuse and sexual harassment policies.
- d) The agency shall document, through employee signature or electronic verification, that employees understand the training they have received.

28 C.F.R. § 115.33: Inmate education

- a) During the intake process, inmates shall receive information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.
- b) Within 30 days of intake, the agency shall provide comprehensive education to inmates either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.

Finally, to combat the problems that sexual and familial relationships between inmates and correctional workers can raise, including security breaches and the reputation of the agency, correctional authorities have created and implemented anti-fraternization policies to regulate relations between correctional staff and inmates, both within and outside the correctional environment. These policies prohibit employees from engaging in relationships, romantic, financial, or otherwise, with current or former inmates and their families. Shoring up these policies would create another measure of protection for the agency and address another vector for sexual abuse in custody.

VI. Recommendations for Moving Forward

I hope I have given you a useful overview of the concerns I see in the Edna Mahan Facility based on the information I had at my disposal. To that end, I would recommend the following:

1. Strengthen the ability of Edna Mahan to address these issues as part of their PREA and other compliance efforts.
2. Provide funding for development of specialized training for staff and administrators.
3. Data collections for prevalence of sexual abuse that include all reported incidents.
4. Ensure inmate safety comes first regarding possible retaliation following a report.

5. Create training practices for new officers and regular training and sensitization specific to sexual assault/PREA as current training only addresses "undue familiarity," "inmate manipulation," and broadly, PREA.
6. Encourage the agency to seek technical assistance from the PREA Resource Center

VII. Conclusion

Based on my work over the course of over 30 years, first as an advocate for people in custody, then as Project Director of a national effort to address sexual abuse in custody and finally as a Commissioner serving for 5 years on the National Prison Rape Elimination Commission, I feel strongly that New Jersey correctional facilities have a unique ability and responsibility to address sexual abuse in their settings. However, in order to do that, the issue of sexual abuse in custody has to be a priority for correctional agencies.

Thank you again for inviting me to be here today and for the opportunity to speak to our proposed standards and our key findings and recommendations.

**The State of PREA in New Jersey from
the Perspective of NJCASA**

Good morning and thank you, Chairwoman Greenstein, and members of the Committee for giving me an opportunity to speak with you today.

I would first like to say thank you to the women who have been brave to share their stories here today. To them I say- we applaud your courage and we believe you.

My name is Patricia Teffenhart and I am the Executive Director of the New Jersey Coalition Against Sexual Assault - NJCASA. NJCASA exists to elevate the voice of sexual assault survivors and service providers throughout our state.

As you likely know, the victim services standards in the Prison Rape Elimination Act (PREA) are the standards that detail incarcerated survivors' right to access rape crisis center advocates for the core services of hotline, counseling, and medical accompaniment. As you also likely know, PREA encourages, but does not mandate, facilities to collaborate with, or attempt to collaborate with, community-based rape crisis centers.

But, in 2017, for the first time we, and a few of our local programs, were contacted by the Juvenile Justice Commission, and local corrections facilities. We were being asked, in a state of "audit urgency", to sign MOU's with facilities that grossly violated PREA standards and our own standards for service provision – mainly around confidentiality.

For years, we have navigated challenges primarily around clarifying our role and ensuring that our advocate's confidentiality privilege is preserved, that hotline access for survivors is provided in a confidential manner, and clarifying the role of an advocate during a forensic medical exam. It has taken years, but we have made progress, though, and within the last year, NJCASA signed an MOU with the Juvenile Justice Commission to support cross-systems training and collaboration.

It's important to note that no such agreement exists between NJCASA and the Department of Corrections. In fact, the partnership that used to exist between Edna Mahan and the county-based sexual violence service program in Hunterdon County, dissolved a few years back, leaving women in that facility with even fewer resources for support.

To be clear, we are outraged by the contents of this DOJ report that shines a spotlight on the blatant abuse and neglect at Edna Mahan. The report details multiple PREA and constitutional violations. It also makes very clear that mismanagement and misconduct continued even after the facility received high-profile attention regarding the problem of rampant sexual abuse.

We know that sexual violence and oppression are inextricably linked. This report lays bare how an incredibly vulnerable population – women who are incarcerated – had that vulnerability taken advantage of.

From the report:

- “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 Civil Rights of Institutionalized Persons.”
 - “A “culture of acceptance” of sexual abuse has persisted for many years [at Edna Mahan] and continues to the present.”
 - “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.”
 - “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.”
- AND
- “The systems in place at Edna Mahan discourage prisoners from reporting sexual abuse and allow sexual abuse to occur undetected and undeterred.”

The reality is that PREA has a range of standards designed with the overall aim of eliminating sexual abuse behind bars. **However, without culture change, accountability, transparency, and a true commitment to reform, PREA...as affirmed in this report, means nothing.**

In fact, the report itself states that, “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. 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.”

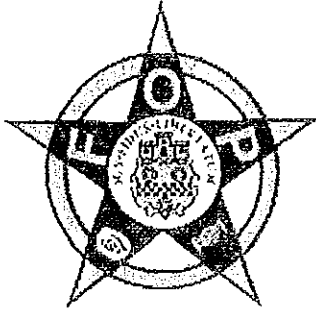
And to be honest, what today’s conversation should put front and center is the fact that while today’s hearing is specific to *one* correctional facility and its need for immediate improvement, we need for this conversation to expand beyond *just* PREA and *just* one facility. We can do better than this in New Jersey.

Let’s find a way to compliment this conversation with one that explores the possibility of restorative justice. It is overdue for us to expand avenues to justice that prioritize opportunities for healing and accountability, *without* being complicit in the perpetration of violence. In a 2014 article published in the *Journal of Interpersonal Violence*, M.P. Koss said, “Restorative justice focuses on repairing the harm caused by a crime through direct involvement of those affected. This approach acknowledges that crime has adverse effects on not just victims, but also their family, friends, and community members. Restorative justice aims to fulfill [survivors’] expectations for justice while holding those who have caused harm accountable for their actions.”

I would like to end my testimony by saying this- excerpts of this testimony are identical to that provided by NJCASA back in February 2018 – the last time this committee held a hearing to discuss this very issue. Establishing a commission to provide external accountability is overdue. The DOJ report makes it clear that stronger oversight is necessary. No one deserves to be raped. Everyone deserves to be safe - no matter where they reside in New Jersey. Thank you again for the opportunity to speak before you today.

Respectfully submitted on May 12, 2020:

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May 11, 2020

To: Hon. Senator Linda Greenstein and
Hon. Members of the State Senate Committee on Law and Public Safety

**Statement on Behalf of New Jersey Investigators Association, FOP Lodge #174
Adrian B. Ellison, President New Jersey Department of Corrections:
Operations & Response to Edna Mahan Correctional Facility**

I want to thank the Honorable Chair and Honorable Members of this Senate Committee for the opportunity to present testimony on behalf of the investigators represented by the New Jersey Investigators Association, FOP Lodge 174 ("NJIA"), at the Special Investigations Division ("SID" or "Division") of the New Jersey Department of Correction ("NJDOC" or "Department"). I have reviewed the Department of Justice Report ("Report") on Edna Mahan Correctional Facility ("Edna Mahan") including its findings with regard to investigations at Edna Mahan and the draft Senate Joint Resolution. The NJIA disputes many of the specifics in the Report and is very concerned that the Commission proposed in this Resolution will not address (or even investigate) the longstanding systemic deficiencies in management at the NJDOC, which play a central role in operational problems at Edna Mahan whereby the NJIA has highlighted numerous times in the past.

The "failures" at Edna Mahan are systemic failures of management at the NJDOC. The NJIA has repeatedly warned the Commissioner that our investigators lack essential resources to conduct investigations at all institutions, including Edna Mahan Correctional Facility, and that there is a critical lack of investigative staff at each facility. We specifically warned the Commissioner in writing in an August 2018 meeting Agenda that investigators need better training and support, that more investigators are essential, and that the SID Chief Duane Grade has

systematically limited overtime and thereby compromised the integrity and efficacy of countless investigations. In that same Agenda, we specifically warned that there were only 80 investigators as compared to more than 100 investigators ten years ago and that work responsibilities (including sexual assault complaints) had dramatically increased so that immediate action to expand resources for investigations was needed:

“The Chief seeks to unreasonably reduce and or eliminate overtime, thereby causing those who work overtime not to submit overtime slips for monetary/compensatory compensation. This restricts investigative staff to receive flex-time only. The drive-by management to reduce overtime has resulted in refusing to have investigators respond to incidents on overtime when they arise on weekends. SID’s work is incident driven. This restriction impairs our ability to give and receive credible information and to investigate or collect evidence regarding such incidents properly.”

Similar warnings continued in 2019 and 2020. The silence in response has been deafening. The Commissioner refused to meet with NJIA leadership in August 2018 after receiving the Agenda, and indeed has not met with us since. Nor has any action been taken in response to these problems.

As currently drafted, the Senate Resolution appears to ignore the systemic problems created by management. Instead of providing resources and guidance to improve the work capacity of the Special Investigations Division, the Resolution creates a Commission that has only one representative with any genuine understanding of how prisons actually work (the representative of Correctional Police Officers) and no representatives with supervisory or investigative experience.

The current Commissioner of NJDOC, who has never held any custody position and who has ignored demands for critical staffing and resources, does not qualify as such a “representative.” Creating a Commission to study prisons without experienced people would be akin to creating a commission to study health care without any doctors.

The central problems here are resources and management. This does not require creation of new investigative divisions, which lack understanding of corrections, but it does require adequate resources and the right priorities of management. The investigation of complaints in a correctional facility is complex in any case and more so when it is an inmate complaint against an officer. First, we start with the fact that prison inmates have been adjudged guilty of very serious

crimes despite having, in most cases, vehemently denied those charges so their credibility is an issue and we know that the Officers and Superior Officers are at risk for complaints being filed to gain advantage. Second, we know from experience here and in other states that many complaints are not credible. We take ALL complaints seriously as an investigative matter, but we need the time and resources to fully vet allegations and thoroughly investigate so those accused have a fair process, too, and the prison can continue to operate.

The current administration and the past administration have failed to provide resources and the investigative capacity to investigate all complaints thoroughly and in a timely manner. Further, management has failed to address mismanagement by the current SID leadership team including the Chief. As we have repeatedly complained, the management of SID continues to bully and threaten investigators, play favorites, engage in discrimination and harassment directed against female and minority investigators, and to undermine operations by denying overtime. The Commissioner has taken no action. Meanwhile, such rampant mismanagement has a negative impact on SID's investigative efficiency.

Right now, the total of 80 investigators at NJDOC include Principal Investigators, who are responsible for all investigations in their designated prison or area. Senior Investigators (generally experienced investigators) who handle more complex investigations, and Investigators, who are recently appointed. Collectively, the 80 investigators are responsible for investigations at all 13 state prisons plus a multitude of halfway houses, more than 8,000 correctional employees, and close to 19,000 inmates in the State's prisons. Each investigator must investigate all types of complaints including alleged violations of rules and regulations, complaints about interactions with inmates, complaints that have nothing to do with inmates at the prison, perform drug screens and coordinate with other jurisdictions to name a few of the myriad duties.

The core problem at Edna Mahan and throughout the DOC is simple: We do not have enough investigators. NJDOC must increase the number of investigators at all prisons including Edna Mahan. The investigators must have custodial experience to know how the prisons operate and must be recruited, tested, selected, and trained by PTC and experienced SID investigators. We are short in each investigator title so that Principal Investigators are being forced by the SID Chief to be responsible for more than one prison, Investigators are forced to perform Senior Investigators work and Senior Investigators are forced to work as a Principal Investigator. The inevitable result of these shortages is that everyone is constantly playing catchup while juggling huge and diverse

caseloads. By and large, our investigators perform nobly under these circumstances, but this is not a recipe for success.

We are understaffed by at least 40 investigators. At the same time, investigators are not allowed to work overtime unless it is an extraordinary situation. And management does not consider sexual assault investigations to be extraordinary enough to warrant overtime. The NJIA repeatedly complained to the Commissioner that the Chief of SID would do not authorize overtime and that overtime is essential when you are short staffed, like we are. We explained that investigators who get called on a weekend or when off duty, are not authorized to come into work on overtime to start the investigation and must wait per the Chief's orders. An investigator must be able to go on the scene of an incident immediately and run the investigation without interference from management. The first 48 hours after an incident are the most important in any investigation, especially within the walls of a prison. The threats and bullying of Principal and Senior Investigators by the Chief of SID must end. The routine denial of needed overtime must also end because serious investigations often require substantial amounts of overtime to be done correctly and completely.

We are less than 100 employees at the NJDOC, and responsible for investigations in a Department with 8,000 employees and more inmates. Respectfully, so what if there is a lot of overtime for our investigators when we are severely understaffed and expected to produce timely investigations? If you look at any functioning police agency with investigative responsibilities, overtime is essential to conduct investigations especially, in this incident-driven environment. Detectives in police departments routinely work many hours of overtime as do detectives and investigators at County Prosecutor's Offices. The Commissioner has ignored the problems.

Once investigators are appointed at NJDOC, the Department fails to provide the level of follow up training or any specialization into different areas of investigation other than a dedicated gang unit and computer-based investigations. Our appointees receive training at the PTC with colleagues in the Prosecutor's Offices and Division of Criminal Justice. Once those colleagues start working as investigators, they are generally assigned to specialized units like Homicide, Narcotics, Domestic Violence and Sexual Assault where they receive advanced training and are able to specialize and acquire expertise. It must be noted that our Department does not create specialized units like this, and investigators do not receive specialized training in sexual assault or

domestic violence investigations. Further, our peers in the Prosecutor's Offices receive support when it is needed to do the work. We do not.

If you give us the resources, tools, training, and staffing that investigators have been requesting for years and couple that with changes in management culture, you will get results. Like many things at NJDOC, this Administration, and the last, tried to do things on the cheap. The Commissioner has ignored our complaints, acted arbitrarily, and denied resources. With this record, we urge the Legislature to start this process by declaring that more resources for investigations are a fundamental part of the response to the Report. Investigations require time and support.

The NJIA has tried to attack the problem by giving the Commissioner information and by sounding the alarm. No relief has been provided, and we are told to make do. It is as if NJDOC leaders expect investigative work to be done magically. The Chief wants us to get things done, to shut up and to not ask questions.

I must return to the 2018 Agenda where I specifically warned the Commissioner that a "No Confidence" vote had been passed against the SID Chief "by his investigative unit, not me." I warned that investigators were being bullied and harassed by the SID Chief who was violating anti-discrimination laws as well as denying overtime when we were short staffed. I warned that these were critical problems undermining investigations that he needed to address.

Do you know what his answer was? He did not even show up for the 2018 meeting. In fact, this Commissioner has not met with me since he became the Commissioner, although he did meet with me when he was the Chief of Staff for then Commissioner Lanigan. Since then it has only been hello, how are you at events and no substance. He has given me the impression on occasion that he wants to meet but, when I follow up, no meeting.

The NJIA has this written record to submit because of the Commissioner's failure to meet. As a result of being denied meetings we started to write to the Commissioner to document and warn him of the serious problems undermining investigations at the SID in the hope he would review, and act. He did not.

Under his authority no action has been forthcoming. The claims now that NJDOC is forming a task-force and addressing the allegations in the DOJ report should give no comfort. At the same time, the draft Resolution does not recognize these systemic management failures and only includes one member, the representative of Correctional Police Officers, who has any

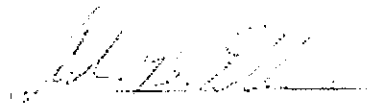
corrections law enforcement experience. And, it appears to set the stage for blaming the employees of this Department for the failure of management. Finally, the draft resolution appears to suggest the new processes and reviews are needed when that is not the case; in the investigation area what is needed is additional staff, resources, and support. The reforms we propose include the following:

1. The total number of investigators in the three titles at the Special Investigations Division in the Department of Corrections needs to be increased to at least 120 from its current allocation of 80. This could be done over two years so that you have time to train people.
2. The current restrictions on overtime at SID needs to be rescinded and replaced with a reasonable policy that permits investigators to commence investigations immediately and to conduct investigative tasks on weekends and at night, when necessary.
3. Training needs to be enhanced for existing investigators at all levels of experience to include ongoing regular investigator training as part of work, including sexual assault investigation training like what is conducted at police departments and at Prosecutor's Offices.
4. The current Special Investigations Division Chief and those Deputies under his authority need to be replaced immediately and a new head of the Special Investigations Division needs to be appointed who will provide leadership and resources that are necessary.
5. A separate Sexual Assault Investigation Unit must be formed, which will have expertise, experience, and credibility in the field of sexual assault investigations and should be centrally located so those investigators are deployed to work with the existing investigators on such complex investigations.

6. The input of the New Jersey Investigators Association is critical and we should be part of crafting any solution for investigations at NJDOC and on the proposed Commission.

7. The Unions that represent officers and superiors should be also heard and represented in this Commission.

Respectfully submitted,



Adrian B. Ellison, President
NJIA FOP Lodge 174
On Behalf of All Principal Investigators,
Senior Investigators, and Investigators at the
New Jersey Department of Corrections, Special
Investigations Division

Exhibit 1

2003 WL 23573529 (N.J. Adm.)

Office of Administrative Law

State of New Jersey

In the Matter of Steven Tessenholtz Northern State Prison Department of Corrections

Civil Service

OAL DKT. NO. CSV 10192-00

DOP DKT. NO. 2000-1991

ISSUED: August 22, 2003

FINAL ADMINISTRATIVE ACTION OF THE MERIT SYSTEM BOARD

LaFiandra

*1 The appeal of Steven Tessenholtz, Correction Lieutenant, Northern State Prison, Department of Corrections, ten-day suspension, on charges, was heard by Administrative Law Judge Maria Mancini LaFiandra, who rendered her initial decision on June 6, 2003. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Merit System Board, at its meeting on August 12, 2003, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Merit System Board finds that the action of the Appointing Authority in suspending the appellant was justified. The Board therefore affirms that action and dismisses the appeal of Steven Tessenholtz.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE MERIT SYSTEM BOARD ON AUGUST 12, 2003

Ida L. Castro, Commissioner

2003 WL 23573529 (N.J. Adm.)

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2003 WL 21675001 (N.J. Adm.)

Office of the Administrative Law

State of New Jersey

STEVEN TESSENHOLTZ, Appellant,
v.
NORTHERN STATE PRISON, Respondent.

Civil Service
OAL DKT. NO. CSV 10192-00
AGENCY DKT. NO. 00-1991
Record Closed: April 22, 2003
Decided: June 6, 2003

INITIAL DECISION

Mario A. Iavicoli, Esq., appearing for Appellant
Hugh J. Connelly, Employee Relations Coordinator, appearing for Respondent pursuant to *N.J.A.C.*
1:1-5.4(a)2

BEFORE MARIA MANCINI LA FIANDRA, ALJ:

STATEMENT OF THE CASE

*1 Appellant challenges Respondent's determination to impose disciplinary action, a 10-day suspension, because Appellant allegedly made a racially harassing remark. On December 19, 2000, the Merit System Board transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to *N.J.S.A.* 52:14B-1 to -15 and *N.J.S.A.* 52:14F-1 to -13.

PROCEDURAL HISTORY

The parties appeared before me on November 6, 2002, for a conference hearing on charges of racial harassment and conduct unbecoming a public employee which resulted in the imposition of a 10-day suspension. Appellant applied for dismissal of the charges because Respondent failed to adhere to the contractual provision¹ requiring that such charges be issued "within thirty days of the appointing authority reasonably becoming aware of the offense."

In this case, the incident giving rise to the charges occurred on May 17, 1999; Senior Investigator Freeman filed a complaint and an investigation ensued. The record is devoid of any information about the date on which Freeman made the complaint. The only conclusive date in the record relative to the investigation is the date reflected on each of the two reports filed by observers of the incident in response to a request from the EED Investigator. That date is July 1, 1999. The Preliminary Notice of Disciplinary Action is dated August 11, 1999.

I note that one of the two reports supports the assertions of Appellant while the other supports those of Respondent. There is nothing in the record to reflect the procedure the appointing authority engaged in to evaluate whether charges should issue. As a result, there is no date by which the 30-day period can be reasonably established.

In resolving an application to dismiss the pertinent court rule, found at *R.* 4:37-2(b), generally applies to OAL.

According to that rule, an application to dismiss should be evaluated by considering whether the evidence and all the legitimate inferences there from could sustain a judgment in favor of the party opposing the application. [*Dolson v. Anastasia*, 55 N.J. 2, 5-6 91969] (citations omitted)]. In this case, all of the evidence in support of Department of Correction (DOC), the party opposing the motion, must be examined and accorded all the inferences which can reasonable and legitimately be inferred there from. If reasonable minds could differ, the motion must be denied. 37 N.J. Practice, *Administrative Law and Practice* Sec. 195, at 203 (Lefelt S.1988).

Before reaching the issue of whether DOC complied with the 30-day provision, however, it is essential to determine if OAL has jurisdiction to entertain the application to dismiss on the basis of failure to comply with this provision. In a case which is on point with respect to this issue, after summarizing the statutory authority of OAL through the Merit System Board and that of the Public Employees Relations Commission (PERC) as the exclusive administrative power to deal fully and completely with complaints of unlawful practices relating to employee rights not directly covered by other laws, the Administrative Law Judge noted that the dispute relating to the 30-day provision rises to the level of unfair employer-employee relations, which is exclusively within PERC's jurisdiction. In addition, he noted that there is no statutory requirement in the civil service laws governing the time frame within which an agency must initiate disciplinary action. Moreover, PERC has exclusive power over claims involving unfair practice allegations when these constitute the sole or major complaint of the aggrieved employees. Where unfair practice, although not the primary issue, may dominate or color the entire case so that its determination might substantially influence or render moot the resolution of other issues, PERC's jurisdiction over the issue of the 30-day provision is mandatory. *Cory Emele v. Mountainview Youth Correctional Facility*, OAL Dkt. No. CSV 1753-99, - Letter Ruling and Order, 2/25/00. (Citations omitted).

*2 Because a finding that DOC failed to adhere to 30-day provision in the collective bargaining agreement would "substantially influence" the resolution of the substantive issue in this matter, *i.e.*, it would be dispositive, I CONCLUDE that PERC has mandatory jurisdiction over the issue. Accordingly, the application for dismissal of the charges is DENIED.

FINDINGS OF FACT

At the time of hearing, the parties stipulated to the following facts:

1. At the time of the incident giving rise to these charges, Appellant had been employed by DOC for twenty-six years; he had one reprimand in his disciplinary file over the course of his entire career. He attained the rank of lieutenant within the ranks and structure of DOC.
2. K. Freeman, who made the complaint resulting in the issuing of charges, was, at the time, a Senior Investigator in the Internal Affairs Unit.
3. Appellant was not the supervisor of Freeman.
4. The incident of May 17, 1999 took place in the offices of the Internal Affairs Unit (SID) at Northern State Prison.
5. There were two other investigators present for the conversation. They were Thaddeus Caldwell and Duane Grade. A secretary, Celeste Davis, was also present. She is no longer employed by DOC. Appellant and Freeman engaged in a conversation which was a teasing, joking repartee.

ANALYSIS AND CONCLUSIONS

Investigator Freeman filed a complaint against Appellant in which the investigator asserted that Appellant called him a "Sambo," a racially derogatory name. Appellant concedes that the conversation did take place; he denies, making the remark and contends that Freeman misunderstood his words. There were two other Senior Investigators present at the time, both of whom testified at the hearing and each of whom heard something

26x

different. One witness supports Freeman's version of the conversation; the other supports Appellant's version in which it is asserted that Appellant said "Sam go." Appellant testified that he did not know Freeman's first name so he substituted Sam.

It is well-established that the credibility and weight to be ascribed to evidence is a matter within the discretion of the judge. Credibility does not depend on the number of witnesses and the finder of fact is not bound to believe the testimony of any witness. The trier of fact may accept or reject, in whole or in part the testimony of any witness. In this case, I reject the testimony of Grade and Tessenholtz wherein they each testified that Appellant used the term "Sam go" rather than "Sambo". I FIND this specific testimony obviously contrived and patently absurd. I further FIND Appellant made the inappropriate remark of which Freeman complained.

The record reflects that the name "Sambo" is a particularly offensive and derogatory term to African Americans. I further FIND, therefore, that Appellant did make a racially offensive and derogatory remark.

Respondent has charged Appellant with conduct unbecoming a public employee and with discrimination pursuant to *N.J.A.C. 4A:2-2.3* which prohibits any conduct by an employee which is discriminatory in nature. Based on the language of that regulation, I FIND Appellant did engage in discriminatory conduct.

*3 Moreover, with respect to the charge of conduct unbecoming a public employee, a remark such as the one made here is clearly inappropriate in any context. I FIND, therefore, Appellant did engage in conduct unbecoming a public employee.

Although I am cognizant of the fact that Appellant was not a supervisor of Freeman, Appellant was a superior officer in a para-military organization. For that reason, I FIND the Appellant's insensitive remark particularly egregious, a fact which I must consider in determining the appropriate penalty.

The concept of progressive discipline is well-established and, as noted above in the findings of fact, this Appellant has had only one other *de minimus* incident in his disciplinary history which, in most circumstances, could have resulted in a reduction in the penalty imposed. In this case, however, based on the particularly offensive nature of the remark as well as the fact that Appellant was, at the time he made the remark, a superior officer, I FIND the conduct in which he engaged to be sufficiently egregious to warrant the imposition of the penalty imposed by Respondent. Accordingly, I FIND the penalty imposed by Respondent reasonable and appropriate.

Accordingly, I CONCLUDE the determination of Respondent should be affirmed and this appeal should be dismissed with prejudice.

ORDER

I hereby ORDER the determination of Respondent be and hereby is AFFIRMED; it is further ORDERED that the appeal be and hereby is DISMISSED WITH PREJUDICE.

I hereby FILE my initial decision with the MERIT SYSTEM BOARD for consideration.

This recommended decision may be adopted, modified or rejected by the MERIT SYSTEM BOARD, which by law is authorized to make a final decision in this matter. If the Merit System Board does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with *N.J.S.A. 52:14B-10*.

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the DIRECTOR, MERIT SYSTEM PRACTICES AND LABOR RELATIONS, UNIT H, DEPARTMENT OF PERSONNEL, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

MARIA MANCINI LA FIANDRA, ALJ

APPENDIX

Witnesses:

Steven Tessenholtz

Thaddeus Caldwell

Duane M. Grade

Exhibits:

J-1 Work History of Appellant

J-2 Preliminary Notice of Disciplinary Action, August 11, 1999

J-3 Final Notice of Disciplinary Action, November 8, 1999

A-1 Excerpt from Agreement, July 1, 1995 to June 30, 1999

R-1 Written Report to Frank Budd from Duane M. Grade, July 1, 1999

R-2 Written Report to Frank Budd from Thaddeus Caldwell, July 1, 1999

C-1 NJ DOC Human Resources Bulletin 84-17

C-2 Consent Decree

Footnotes

¹ The Superior Officers Law Enforcement Agreement (1995-1999) was in effect at the time of this incident.

2003 WL 21675001 (N.J. Adm.)

End of Document

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28x

Exhibit 2

David Beckett

4 Mableton Road, Princeton, New Jersey 08540
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David Becker
Member New Jersey,
and New York Bars

dbeckett@beckett.com

Peter B. Paris, Of Counsel
Member New Jersey, Maryland,
and District of Columbia Bars

pparis@beckett.com

June 27, 2018

Via Email and Fax:
Victoria L. Kuhn, Esq., Director
New Jersey Department of Corrections
Office of Employee Relations
Legal and Regulatory Affairs

**Re: NJIA FOP Lodge 174 and NJ Dept. of Corrections and
Chief Duane Grade: Sr. Investigator Whitaker**

Dear Director Kuhn:

The New Jersey Investigators Association, FOP Lodge 174 ("NJIA") demands that the New Jersey Department of Corrections ("DOC") intervene to address the violation of members' rights by Special Investigations Division Chief Duane Grade. On June 11, 2018, Chief Grade presented a Letter of Counseling to Senior Investigator William Whitaker. Deputy Chief Edward Soltys and union representatives, Terence Smith and Adrian Ellison were in attendance. In this Letter of Counseling, the Chief singled Whitaker out based upon a prior alleged incident that was more than three years old, that had never been disclosed and that was not in his DOC personnel file.

We know this because the Chief presented the three-year old memorandum regarding that prior alleged incident and stated he had kept it in his "own files", not in the DOC files. The Chief claims that this is evidence of a "prior incident" that proves a pattern that then supports this new Letter of Counseling.

This is not credible legally or factually. Because the 2015 memorandum had never been disclosed or presented, it could not provide guidance to the employee or any kind of warning. The use here of a "private memorandum" violates policy requiring just cause and fair treatment, and the contract, which does not allow for private personnel files like this to exist. In fact, the very act of keeping private files on employees and then using their contents to justify discipline later raises serious concerns about the Chief's motives, which needs to be addressed.

The personnel file of each DOC employee is an official department file. There should be no such private personnel files. The contract requires that each employee have access to documents in his or her personnel file and an opportunity to respond. This is why information in the official personnel file can be used.

The Chief's attempt to use this prior memorandum illustrates these problems. Senior Investigator Whitaker did not receive timely notice of the prior "incident" and the memorandum cannot be corrective guidance because it was hidden. If it had been disclosed when written, it would have been timely responded to and the Chief would have had to justify the contents of the memorandum at the time and why he was even writing one when he was not the Chief at the time. That same justification should be required now.

Additionally, the very fact that Chief Grade would create an unofficial personnel file three years ago when he was not the Chief at the time raises the concern that he has been keeping "files" on other DOC employees for years. This type of practice raises the concerns of favoritism and of possible animosity towards a particular employee or group (especially if a file is not kept on every employee).

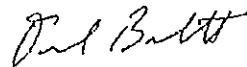
Adding to this concern is the fact that the Chief appears to favor some employees and disfavor others. This is contrary to the best interests of the Division and the members represented by the NJIA.

Here, the specific incident was not serious and the union representatives were effectively making that point, as well as citing to the reports that the supervisors had stated that they were "going to have fun" with Whitaker by going after him in this way. Instead of addressing those points directly, the Chief sought to justify this Letter of Counseling citing a private file he created when he was not the Chief. The citation to that untimely private file only validates concerns of retaliatory behavior and favoritism that are contrary to the contract and policy; it does not support a Letter of Counseling. The Chief should not be leading this type of treatment against unit employees and DOC should intervene.

The NJIA requests the immediate intervention of the Department's Human Resources and Labor Relations Offices to address these issues and practices. The union representatives further request that DOC take action to limit the Chief's authority to takes retaliatory or negative actions against union representatives of NJIA who also work for the DOC. The courtesy of an immediate reply is requested.

Yours truly,

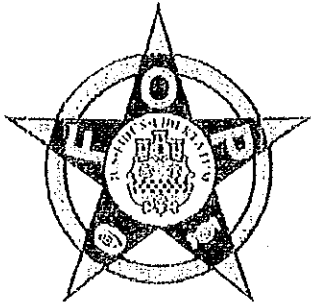
LAW OFFICE OF DAVID BECKETT



David Beckett, Esq.

cc: Camille Warner
Adrian Ellison
Terence Smith

Exhibit 3



New Jersey Investigators
Association, Inc.
FOP Lodge # 174
P.O. Box 253
Crosswicks, N.J. 08515-0253

August 17, 2018

To: Suzanne Lawrence, Chief of Staff -N.J. Department of Corrections

From: Adrian B. Ellison, President NJIA FOP Lodge 174

Re: Agenda for Meeting Between NJIA, FOP Lodge 174 and NJDOC Chief of Staff

The New Jersey Investigators Association, FOP Local 174 ("NJIA") seeks to address management's actions and related staffing/overtime and morale issues at the Special Investigation Division ("SID") in this meeting. Issues include:

1. SID Chief Investigator Duane Grade seeks to intimidate and manage by fear. This undermines morale and operational efficiency. Of note, the Chief recently received a vote of no confidence from the FOP #174 membership.
2. Chief Grade interferes with Investigators rights to file complaints under New Jersey and federal laws prohibiting discrimination and harassment.
3. Management retaliates against Investigators who exercise their rights under law.
4. Positions and assignments are distributed by favoritism, not qualification and not what's is best for operational effectiveness.

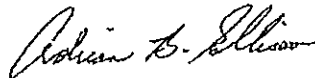
5. SID Offices are understaffed. We only have 80 investigators as compared to over 100 ten years ago however, the work responsibilities have more than tripled.

6. The Chief seeks to unreasonably reduce and or eliminate overtime thereby causing those who work overtime to not submit overtime slips for monetary/compensatory compensation. This restricts investigative staff to receive flex-time only. The drive by management to reduce overtime has resulted in refusing to have investigators respond to incidents on overtime when they arise after normal business hours or on the weekends. SID's work is incident driven. This restriction impairs our ability to give and receive credible information and to properly investigate or collect evidence regarding such incidents.

7. Deputy Chief (DC) Aversano mistreats females in the Division especially, minorities. DC Aversano belittles and degrades minority females when speaking to them. His approach to intimidate these females has been brought to Chief Grade's attention and nothing has been done about it.

These are serious operational and management issues. Investigators need to be treated with respect and provided resources, not threatened or bullied. The climate of fear created by management needs to be addressed.

Respectfully,



Adrian B. Ellison, President
NJIA FOP Lodge 174

Exhibit 4

David Beckett David Beckett Peter B. Park, Of Counsel
Member New Jersey Member New Jersey Member New Jersey, Member
and New York Bars and District of Columbia Bars
5 Mableton Road, Princeton, New Jersey 08540
609.439.0272 609.439.0169 dbeckett@w.com dbeckett@dbeckettlaw.com ppark@dbeckettlaw.com

August 29, 2018

Via Email:

Suzanne Lawrence, Chief of Staff, NJDOC, and
Leila Lawrence, Director E.E.D/Ethics & Litigation Support
New Jersey Department of Corrections
Whittlesey Road, PO Box 863
Trenton, NJ 08625

**Re: Complaint - Discrimination and Harassment
Reply to August 21, 2018 Email**

Dear Ms. Lawrence and Ms. Lawrence:

I represent the New Jersey Investigators Association, IOP Lodge 174 and its President, Adrian Ellison in the above referenced matter. Mr. Ellison's complaint has already provided substantial information that was relevant to the inquiry. In addition, I am notifying you of a taped internal affairs interview of Senior Investigator William Whitaker that was conducted on or about June 8, 2018 and of a follow up email dated June 12, 2018. Mr. Ellison was present as Senior Investigator Whitaker's representative at the interview and copied on the email.

In the interview, Senior Investigator Whitaker complained that he had been a victim of illegal harassment from management, describing treatment by Deputy Chief Nancy Zook of the Special Investigations Division ("SID"). On or about June 11, 2018, SID Chief Duane Grade contacted Senior Investigator Whitaker. Instead of acting to ensure that his complaint was sent immediately to your office, as the Chief of Staff did here, the SID Chief interfered and stopped the investigation.

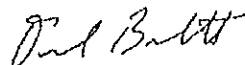
Any reasonable interpretation of the June 12th email from Senior Investigator Whitaker to the Chief shows that the Chief sought to stop a complaint against his Deputy Chief. The email from Senior Investigator Whitaker was sent at the direction of the Chief. This alone shows the interference by the Chief. Then, the email states that despite being aware of avenues for addressing the issues he (Whitaker) had reported, that he now did not wish to pursue the matter. It begs credulity to imagine that the Chief's intervention was not intended to quash this matter and it had that desired effect. The email shows, in short, that the Chief interfered and pressed Senior Investigator Whitaker not to move forward with any complaint against the Deputy Chief, and that Whitaker complied and confirmed his obedience.

This behavior by the Chief is in line with the pattern of threats of intimidation that prompted the filing of the complaint by Mr. Ellison. He had to file because the intimidations and threats have "worked" so that members are afraid to come forward with such issues. The Department must act immediately to stop such actions and behavior by the Chief.

The NJDOC must obtain and preserve all evidence that bears upon these issues and conduct a vigorous and complete investigation. Mr. Ellison looks forward to speaking with you and I will appear with him. Thank you.

Yours truly,

LAW OFFICE OF DAVID BECKETT



David Beckett, Esq.

cc: Adrian Ellison

From: Diana Begley <Diana.Begley@doc.nj.gov>
Date: August 21, 2018 at 1:54:38 PM EDT
To: Adrian Ellison <president@njafop174.org>
Cc: Lolla Lawrence <lolla.lawrence@doc.nj.gov>
Subject: Alleged/Possible Discrimination and Harassment

Good afternoon Mr. Ellison,

The EED office has received information that you have concerns of discrimination and/or harassment within the Special Investigation Division. Please provide the names of the DOC employees so that this office may mail EED packets or, if you would prefer, ask the employees to contact this office directly for same.

Your assistance is greatly appreciated,

Diana

*Diana Begley
Secretariat Assistant to Director Lolla Lawrence
Equal Employment Division/Ethics & Litigation Support
Office of Legal and Regulatory Affairs
NJ Department of Corrections
Trenton, NJ 08625
Office: (609) 826-5668
Facsimile: (609) 633-2237*

CONFIDENTIALITY NOTICE: This email message, including any attachments, might contain information that is confidential, legally privileged, or otherwise protected or exempt from disclosure under applicable law

Exhibit 5

40x

David Beckett

David Beckett
Director, New Jersey
Office of Ethics & Fair
Campaign Practices

Peter B. Paris, OIG Counsel
Director, New Jersey, Elections
and Fair Campaign Practices

1000 North Road, Princeton, New Jersey 08540

609.979.4171 / 609.979.4172 / dbeckett@law.com

dbeckett@debeckett.com / pparis@debeckett.com

September 1, 2018

Via Email:

Leila Lawrence, Director E.E.D/Ethics & Litigation Support
New Jersey Department of Corrections
Whittlesey Road, PO Box 863
Trenton, NJ 08625

**Re: Complaint - Discrimination and Harassment
Reply to August 29, 2018 Email of L. Lawrence**

Dear Ms. Lawrence:

I received the email you sent 4:12 p.m on August 29, 2018 acknowledging receipt of the information that was provided on behalf of Adrian Ellison, President of the NJIA FOP Lodge 174 by letter that same day. The August 29th letter we sent described actions taken by the SID Chief Duane Grade against Senior Investigator William Whitaker, specifically threats and intimidation by the Chief in an effort to quash a legitimate EED complaint. This information should have prompted immediate action to isolate the Chief from management authority; instead, we received an email minimizing the complaint and demanding more information.

President Ellison will share the June 12th email concerning Whitaker. He also is ready to try to assist by presenting the names/information you request but needs assurance that these members, the Union's Board, and he personally will be protected from retaliation by the Chief. To date, the Chief has been protected by NJDOC, and so people are not willing to have their names made public to management including your office.

4/1x

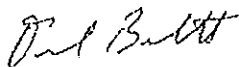
The emails your office sent did not provide any assurance of such protection; nor has any action been taken to reassure that those who speak with EED will be protected. In fact, the recent email sends the message that the Chief will continue in his position because no allegation is sufficient to act, and more is always going to be required.

The NJIA, and the members it represents, require assurance that the Chief will be stopped from retaliating against those who come forward. This has to be done by taking action to remove his authority while the complaint is being investigated. Until that is done, the NJIA has found that its members do not want to put themselves in the cross-hairs of the SID management team, which has threatened, intimidated and retaliated against members.

We are hopeful that once you look into the Whitaker matter and see the email, you will recognize the abuse of authority and take action. In the interim, immediate action is needed to temporarily remove authority from the Chief and those who act under his authority to threaten and intimidate. The Department must act immediately to stop such actions and behavior. Finally, as noted Mr. Ellison will meet with your office with counsel present so please contact me to schedule.

Yours truly,

LAW OFFICE OF DAVID BECKETT



David Beckett, Esq.

cc: Suzanne Lawrence, NJDOC Chief of Staff (Via Email)
Adrian Ellison, President NJIA FOP Lodge 174 (Via Email)
Terence Smith, Vice President NJIA FOP Lodge 174 (Via Email)

From: David Beckett dbeckett@dbeckellaw.com @
Subject: Re: [EXTERNAL] Response on Behalf of Adrian Ellison, President of NJIA, FOP LODGE 174 to August 21 request
Date: September 3, 2018 at 10:37 AM
To: Leila Lawrence Leila.Lawrence@doc.nj.gov
Cc: Suzanne Lawrence Suzanne.Lawrence@doc.nj.gov, Adrian Ellison president@njiafop174.org, Terence Smith Tkprlme@verizon.net, Diana Begley Diana.Begley@doc.nj.gov

Ms. Lawrence:

Please see attached reply on behalf of NJIA. I am out of the office for the next few days, so if there is a question or need to contact me please email or call my cell phone, which is 609-915-6454. If I cannot pick up, I will get back to you. Thank you.

David Beckett



9.2Sent..reply
to.8.29....18.pdf

On Aug 29, 2018, at 4:12 PM, Leila Lawrence <Leila.Lawrence@doc.nj.gov> wrote:

Good afternoon, Mr. Beckett:

Kindly be advised that the only information the EED received was an agenda from an August 17, 2018 meeting that took place between NJDOC Chief of Staff Lawrence and the NJIA Executive Board. Said agenda contained allegations of discriminatory/harassing treatment by Chief Grade and Deputy Chief Aversano; however, the agenda did not provide any names of potential complainants and/or specific allegations.

As such, on August 21, 2018, the EED sent an email to Investigator Ellison advising him to either provide us with the names of individuals who have been subjected to discrimination/harassment that is connected to their membership in a protected category (so that the EED may contact them) or to advise those individuals to contact the EED directly. Now that you have provided the EED with the name of Investigator Whitaker, the EED will contact him. In addition, with regard to the allegation against Deputy Chief Aversano, the EED will need the names of the individuals who feel as if they have been subjected to discriminatory treatment. In the alternative, please ask them to contact the EED at the number below or at our office in the Wilson Building on Central Office grounds.

Thank you and take care.

Leila Lawrence, Esq., Director
Equal Employment Division/Ethics & Litigation Support
Office of Legal and Regulatory Affairs
NJ Department of Corrections
Trenton, NJ 08625
Office: (609) 826-5668
Facsimile: (609) 633-2237

From: David Beckett [mailto:dbeckett@dbeckellaw.com]
Sent: Wednesday, August 29, 2018 3:33 PM
To: Leila Lawrence <Leila.Lawrence@doc.nj.gov>; Suzanne Lawrence <Suzanne.Lawrence@doc.nj.gov>
Cc: Adrian Ellison <president@njiafop174.org>; Terence Smith <Tkprlme@verizon.net>

43x

Subject: [EXTERNAL] Response on Behalf of Adrian Ellison, President of NJIA, FOP LODGE 174 to August 21 request

Ms. Lawrence and Ms. Lawrence:

This office represents Mr. Ellison and the NJIA FOP Lodge 174 in this matter. The attached letter is sent in response to the request for additional information from Mr. Ellison and to further request action by the NJDOC to address the complaint filed by Mr. Ellison. Thank you for your prompt attention and your courtesies.

David Beckett

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Exhibit 6

David Beckett

David Beckett
Member New Jersey
and New York Bars

Peter H. Paris, Of Counsel
Member New Jersey, Maryland,
and District of Columbia Bars

5 Mapleton Road, Princeton, New Jersey 08540
609.336.0250 / 609.336.0169 / dbeckett@law.com

dbeckett@dbeckentlaw.com pparis@dbeckentlaw.com

September 21, 2018

Via Email and Fax:

Victoria Kuhn, Esq., Director
New Jersey Department of Corrections
Office of Employee Relations
Legal and Regulatory Affairs
Whittlesey Road
Trenton, New Jersey 08625

Re: Complaint – Discrimination and Harassment

Dear Ms. Kuhn:

It has been more than four weeks since the initial filing by Adrian Ellison, President of NJIA FOP Lodge 174 on August 17th was referred to the Equal Employment Division ("EED") at the New Jersey Department of Corrections ("NJDOC" or the "Department"). The EED has made requests for more information, which have been answered. A copy of these exchanges including the initial filing are attached.

To date, no action had been taken to protect Mr. Ellison or the Board Members of NJIA from retaliation or to address the serious matters exposed by Mr. Ellison. Mr. Ellison and others are subject to threats and retaliation by management at the Department's Special Investigations Division ("SID"), which continue to occur.

The misconduct identified in the complaint included management actions to threaten and intimidate and to retaliate against a member who sought to assert a

46x

legally protected complaint. The level of intimidation and threats, arbitrary behavior continues unabated as shown by examples below. Mr. Ellison and the Board are rightly concerned that they and others will continue to be targeted unless immediate action is taken by NJDOC. The two examples below should illustrate, but there are, no doubt, other unreported instances of threats, bullying and intimidation by SID management.

The first reported instance relates to a September 14, 2018 email by Principal Investigator Erica Madden to the Chief describing intimidating behavior by Deputy Chief ("DC") Nancy Zook while she was out on "paid suspension". The DC had called to request that personal documents/property in and around her desk area be delivered to her residence. Principal Investigator Madden tried to make it clear that she could not direct staff to make a personal delivery as it was not "work" but the DC insisted it be done.

Principal Investigator Madden had to review the material to make sure that there was no work material, and she advised DC Zook that the assistant was willing to do the favor of delivering the material. She said that the assistant would do this after work, but that it could not be delivered on the exact date the DC had requested.

Deputy Chief Zook became enraged by the delays and told Principal Investigator Madden to get it done and that she (Zook) was still her "fucking Deputy Chief" and that she (Madden) should get this done for her. The clear threat was that DC Zook would retaliate when she returned from her paid suspension. Because DC Zook's tone and behavior was very intimidating, Madden wrote an email report to

the Chief (omitting the curses but conveying the essence) and she copied the union's Executive Vice President, Terence Smith on the email.

This matter should have been immediately referred for action to address Deputy Chief Zook's outrageous behavior. Instead, the Chief focused on the cc to the union's Executive Vice President, Terence Smith, telling Principal Investigator Madden that she should not copy Smith on any of further emails and to re-write without the cc. This conversation was intimidating and effectively endorsed DC Zook's outrageous actions.

This is part of the same pattern and practice whereby intimidating behavior is normalized and the Chief stifles any complaint about the harassment and improper behavior by his minions in management, the DC's. DC Aversano and DC Soltys later entered Principal Investigator Madden's office unannounced. They also took out the package for DC Zook.

In another recent case, a Senior Investigator was ordered to come up to the main offices in Trenton from South Woods State Prison by Management, which claimed this investigator had made an error in a completed report. This was false. The error was occurred in the info-share system. But, the "error" was not the true reason for being summoned. Instead, she was summoned to meet alone with the Chief and Deputy Chiefs Aversano and Soltys who all falsely claimed she had a "conflict" at the prison because her brother in law worked there. **He had worked there for 10 plus years and she has been there for 21; and this had been known to and approved by the prior Chief.** The Senior Investigator here was intimidated, forced to leave work and drive two hours on false pretenses so she

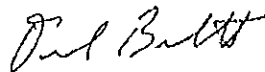
could attend a meeting where management sought to intimidate and bully her,
There was no notice to the union and no ability to get representation despite
this clearly being a meeting that warranted notice and representation.

There has been a steady pattern of actions to marginalize the Union and Mr.
Ellison and to subject unit employees to retaliation and to hostile treatment. It is the
Department's obligation to protect those who complain about such wrongdoing and
to stop the current management at SID from engaging in such illegal and hostile
behavior. The Department has not removed the Chief, or his deputies from active
management, nor has it taken any action to protect investigators from hostile and
arbitrary treatment.

The arbitrary, hostile actions that led Mr. Ellison to file the initial complaint
continue, as recounted herein. NJDOC must ensure that there is no retaliation
against Mr. Ellison in violation of the Conscientious Employee Protection Act and
common law protections for these legally protected complaints. The bullying,
threats, and wrongful treatment of unit employees by SID management must cease
immediately.

Yours truly,

LAW OFFICE OF DAVID BECKETT



David Beckett, Esq.

cc: Suzanne Lawrence, NJDOC Chief of Staff (Via Email)
Camille Warner, Governors Office of Employee Relations
Adrian Ellison, President NJIA FOP Lodge 174 (Via Email)
Terence Smith, Executive Vice President NJIA FOP Lodge 174 (Via Email)

Exhibit 7

EXHIBIT 7 – Email from Adrian Ellison to R. Mistichelli of November 23, 2018.

From: Adrian Ellison <Adrian.Ellison@doc.nj.gov>
Sent: Friday, November 23, 2018 9:31:56 AM
To: Mistichelli, Ryan <ryan.Mistichelli@csc.nj.gov>
Subject: Re: Confidential EEO matter

Investigator Mistichelli,

I received your email seeking to follow up on our brief conversation on Wednesday, November 7, 2018. I want to be sure that it is clear that I have already provided the Department of Corrections with the names of employees who have been harassed and discriminated against including Senior Investigator William Whitaker and Senior Investigator Donna Alexander. I will attempt to provide additional names/information but it has now been a number of months since the initial complaints were filed and no action has been taken. I keep producing information and yet no action has been taken to protect the investigators I represent, who continue to be harassed. Further, no investigation even seems to have been initiated. I need to see action from NJDOC to address these issues and to protect my investigators from continuing retaliation by Chief Duane Grade and his deputies, which should start with Alexander and Whitaker. Bottom line, I need my investigators protected, which does not appear to be occurring at this time. No action is being taken with regard to the information that I have already provided. I will provide additional information but, this is not just a one-way street. I need to see that the Department is taking this seriously because I know I am exposing myself and anyone whose name I disclose to retaliation from Chief Grade and his Deputies.

Exhibit 8

BECKETT & PARIS
Attorneys at Law

DAVID BECKETT
Morris, New Jersey
609.426.1100

PETER D. PARIS
Morris, New Jersey, Maryland
and District of Columbia
609.426.1100

August 2, 2019

Via Certified Mail

Hon. Marcus O. Hicks, Esq., Acting Commissioner
State of New Jersey, Department of Corrections
Whittlesey Road
P.O. Box 863
Trenton, New Jersey 08625

**Re: Special Investigation Division Management at
The New Jersey Department of Corrections:
Failure of Division of Equal Employment
Opportunity/Affirmative Action to Investigate and Act**

Dear Acting Commissioner Hicks:

This office represents the interests of the New Jersey Investigators Association, FOP Lodge 174 ("NJIA"). The NJIA President, Adrian Ellison, filed a number of internal complaints in 2018 with the New Jersey Department of Corrections ("NJDOC") (in accordance with policy) exposing harassing and illegal behavior by Special Investigation Division ("SID") Chief Duane Grade ("Grade"), Deputy Chief Anthony Aversano ("Aversano"), and then Deputy Chief Nancy Zook ("Zook"). These complaints have not been effectively addressed and recent developments involving Zook show why this failure to act is so egregious and why your office needs to intervene.

The attachments (Exhibits 1-5) show that as far back as June 2018, the NJIA has described threats and intimidation directed against experienced investigators such as Senior Investigator William Whitaker by Zook, Aversano and Grade. See, Exhibit 1, letter dated June 27, 2018. The complaints were properly directed to Leila Lawrence, Esq. the Director of the Division of Equal Employment Opportunity/Affirmative Action ("EEO/AA").

On or about August 17, 2018, the NJIA followed up with NJDOC Chief of Staff Suzanne Lawrence advising of the continuing threats, retaliation, and interference. Then, in a series of emails and letters, grouped here as Exhibit 3, the NJIA provided additional information to EEO/AA in the following months. In or about November 2018, without any internal investigation having been done by Ms. Lawrence or her EEO/AA unit, a Mr. Mitchell of the Civil Service Commission contacted President Ellison who told him that he had already provided names and information to the Department, which had done nothing to investigate or protect his members from retaliation. Such involvement again did not trigger any review or action by the Department, which under civil service rules set forth in subchapter 7 of Title 4A is obligated to investigate these allegations fully.

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The Department's EEO/AA has done nothing to address these serious allegations. Thus, after close to one year, nothing has been done to correct this situation. And, the first change that has occurred at SID is because of an unrelated matter where Zook has been demoted to corrections officer based upon charges of falsification and conduct unbecoming.

The demotion and charges are strong proof alone that the EEO/AA investigation process was absolutely ineffective. The Division had been warned repeatedly by the NJIA of untruthful statements of Zook, harassing behavior, and improper conduct. Yet, nothing was done. Instead, they took her word when she contested the charges. They did so even after Senior Investigator Whitaker received a Letter of Counseling in retaliation for complaining and Grade intervened to suppress his complaint. See, Exhibit 4, the Letter of Counseling and Exhibit 5, the email showing Grade's intervention. This retaliatory and harassing behavior by Zook, Aversano, and Grade was exposed by President Ellison. Still, nothing was done.

No good faith investigation was conducted by the EEO/AA Division or its Director, Leila Lawrence, Esq. Instead the issues were delayed and demands for more information were propounded without interviews, fact-gathering, or any investigative work being done. If they had done such work, instead of finding ways to delay, and refusing to understand concerns and reluctance of potential witnesses, the lies and falsifications by Zook would have been exposed much earlier. Instead, the EEO/AA justified inaction by claiming it needed more information and failed to speak with relevant persons or obtain information and allowed Zook and Grade to create false narratives and defenses. They even did nothing when Grade "suggested" to Whitaker that his complaint should be dropped, a suggestion President Ellison had exposed. (Exhibit 5)

The recent demotion of Zook on charges of falsification and conduct unbecoming a public employee should first require the Department to thoroughly review the repeated failures of the EEO/AA Division. In addition, the Department should reverse the false letter of counseling against Senior Investigator Whitaker. Further, the NJDOC must act upon the complaints of the NJIA describing improper actions of Zook, Aversano, and Grade and protect against further retaliation. Finally, any action taken against an investigator represented by the NJIA based upon Zook's claims or "word" has to be rescinded in light of these serious falsification charges.

The actions by Zook against Senior Investigator William Whitaker had the full support of SID management, including Grade. This fact should require a searching review of SID Chief and his team with emphasis placed upon the pattern of threats and intimidation exposed by the NJIA. The failures of EEO/AA stand exposed just as does the improper behavior of Zook and the actions by SID Chief Grade.

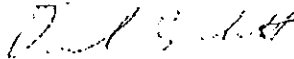
BECKETT & PARIS
ATTORNEYS AT LAW

The recent charges against Zook constitute a harsh rebuke to those who refused to take action and to those who refused to look into the complaints about her and SID. They all enabled the toxic management culture at the SID to persist.

A former Deputy Chief of Investigations has just been demoted based upon falsification charges. Numerous complaints about her actions and those of SID management were not acted upon; these are facts that must prompt a searching review of SID Chief Grade as well as EEO/AA Division leadership. NJIA President Ellison has been urgently seeking action and by this letter the NJIA emphasizes the need for immediate action.

Respectfully yours,

BECKETT & PARIS, LLC



David Beckett, Esq.

cc: Adrian Ellison, President, NJIA

Exhibit 9



Philip D. Murphy
Governor

Sheldal Y. Oliver
Deputy Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF EQUAL EMPLOYMENT OPPORTUNITY/
AFFIRMATIVE ACTION
PO BOX 345
TREASURY BUILDING
Telephone: (609) 633-0900 Fax: (609) 292-0900

Dendie L. Webster Cobb, Esq.
Chief Executive Officer

PERSONAL & CONFIDENTIAL

August 13, 2019

Sent Via Certified and Regular Mail

Adrian W. Ellison
4 Yorkshire Circle
Basking Ridge, NJ 08829

Re: Reporting Complaints
Division of EEO/AA Ref: 1619-001

Dear Mr. Ellison:

As you are aware, the State's Division of Equal Employment Opportunity and Affirmative Action ("Division of EEO/AA") is in receipt of your August 13, 2019, memorandum titled, "Agenda for Meeting Between BOLA, IOP Lodge 14 and NIDES' Chief of Staff," ("memo") to Suzanne Lawrence, Chief of Staff, New Jersey Department of Corrections ("NJDC"). Since your memo included allegations against Chief Leary Gracie and Deputy Chief Anthony Averano that may have implicated the New Jersey State Policy Prohibiting Discrimination in the Workplace ("State Policy") but referred your complaint to this office due to a potential conflict of interest for further action pursuant to the State Policy,

Among other responsibilities, the Division of EEO/AA oversees New Jersey State Agencies' implementation of the State Policy with regard to, "Under this policy, terms of employment discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender,

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www.nj.gov/eoe

57x

pregnancy, marital status, civil union status, genetic partnership status, marital status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability."

I would like to clarify information that the DOC has on record, since they had you listed as a Complainant in the matter. On November 5, 2018, you had a brief conversation with Ryan Mitchell, Investigator, Division of EEO/AA, during which you specifically advised him that you were not a Complainant in the matter but rather you were reporting allegations of discrimination that were reported to you by DOC employees. On November 7, 2018, Investigator Mitchell, emailed you asking for a list of the DOC employees who came to you with complaints of discrimination against Chief Clerk and Deputy Chief Anthony Averano and a summary of each employee's allegations. Since Investigator Mitchell had not received a response to his inquiry, he emailed you again on November 15, 2018, with the same request. On November 23, 2018, you replied to Investigator Mitchell's email and provided the names of two Correction Officers, specifically, Senior Investigator William Whitaker and Senior Investigator Donna Alexander. No other information was provided or has been received from you since.

This was the last communication that the Division of EEO/AA received from you. The Division of EEO/AA did follow up on the information provided as deemed necessary and would like to thank you for reporting concerns on behalf of DOC employees. Since you were not deemed a Complainant in the matter, the Division of EEO/AA is unable to provide you with the outcome of any investigation or action taken as a result of your reporting.

Please be advised that the provisions of the State Policy require all related complaints and investigations to be handled on a confidential basis, to the extent possible. Consequently, you should refrain from discussing this matter with anyone who does not have a legitimate and substantial business reason to know of it. In addition, there is a prohibition of retaliation, which states that "no employee bringing a complaint, providing

information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation."

Should you have any questions, please feel free to contact Investigator Mistanelli at (609) 884 1836.

Sincerely,

Manda Patel, Esq., Director
Division of PRO/AA
Civil Service Commission

cc: Lucia Lawrence, Director
Equal Employment Division
Department of Corrections
Ryan Mistanelli, Investigator
Division of PRO/AA
Civil Service Commission

Exhibit 10

BECKETT & PARIS
Attorneys at Law

DAVID BECKETT
Member New Jersey
and New York Bars

dbeckett@beckettparislaw.com

PETER B. PARIS
Member New Jersey, Maryland,
and District of Columbia Bars

pparis@beckettparislaw.com

August 28, 2019

Via Certified Mail:

Mamta Patel, Esq., Director
Division of EEO/AA
Civil Service Commission
P.O. Box 315
Trenton, New Jersey 08625-0315

Re: **Reporting Complaints**
Division of EEO/AA No: 2018-701

Dear Director Patel:

This serves as the reply to the August 13th letter to Adrian Ellison, President of the New Jersey Investigators Association, FOP Lodge 174 ("NJIA"). The August 13th letter fails to address the substantive issues raised in the certified letter sent on behalf of President Ellison and the NJIA, which was received by the Acting Commissioner Marcus O. Hicks, Esq., New Jersey Department of Corrections ("NJDOC"), on or about August 7th. This certified letter to Acting Commissioner Hicks recounted the delays, failures and lack of any action by NJDOC as well as the referral of the complaints filed by President Ellison to the Civil Service Commission ("CSC"). A copy of that letter without exhibits is attached for reference purposes only.

The August 13th letter opens by presenting a "reason" to justify the referral by NJDOC to the Division at CSC. That assertion is not persuasive.

To start, it is undisputed that there were allegations against Chief Duane Grade and Deputy Chief Anthony Aversano of the Special Investigation Division ("SID") at NJDOC. But there is no basis for any claim that such allegations could create a "potential conflict of interest" that would justify a referral by NJDOC.

The "reason" ignores the fact that discrimination complaints typically assert illegal discriminatory behavior by management officials at a particular agency or department. The complainant in most cases is also subordinate to the bad actor at the agency or department. Thus, the rank or status, of the Chief and Deputy Chief of SID cannot be a basis for asserting a "conflict".

Such complaints are at the heart of any anti-discrimination policy under which the agency or department must investigate and properly address each complaint alleging violations. There is no reason to have a departmental anti-discrimination policy or to have a Division of EEO/AA at NJDOC with personnel assigned and a Director, if any complaint against a high-level official at NJDOC is going to be referred to the Civil Service Commission for "investigation".

Let's

The claimed "conflict" appears to be offered as a way of obfuscating the situation and excusing the lack of any action by the NJDOC's EEO/AA Director Leila Lawrence or her Division. These complaints were directed to the department in the summer of 2018. They were referred to the NJDOC's EEO/AA division. That Division should have investigated the allegations and complaints per NJDOC policy. The claimed referral to this Division at CSC conveniently obscures the lack of action by NJDOC. And, a referral to the Civil Service Commission, which does not have the resources, the expertise, or the understanding of corrections essential to any effective investigation, is not a credible or reasonable course of action.

The "investigation" here by this Division of the Civil Service Commission in this case is further proof of these concerns. The lack of action that was emphasized by President Ellison with respect to the complaints he had made regarding mistreatment and discriminatory actions by the Chief and Deputy Chief should have been a cause for review and further investigation. Or, at the least, it should have prompted a thorough recounting of actions taken by the Division. Instead, this letter states that the Division followed up "as deemed necessary" and that the Division is "unable to provide you with the outcome of any investigation or action taken as a result of your reporting".

President Ellison is not aware of any action that was taken. He was not interviewed by any investigator. And, he is not aware of anyone else who was, which he would likely know of through the rumor mill at NJDOC. And, his experience tells him that if any thorough investigation had been conducted into the Chief or Deputy Chief, he would have known of it from their conduct.

The reason he appears to have received this August 13th correspondence is that a letter was sent on behalf of the NJIA complaining about the lack of any action. The response that he is not entitled to any information or a report as to what, if anything, was done, is a non-response. His complaint was protected activity under the New Jersey Law Against Discrimination ("NJLAD") and he should be entitled to a response.

Under the interpretation being suggested, neither the Division nor a department would have any obligation to report the outcome or to show what it has done. Mr. Ellison had made it clear he was affected, as an employee and as the President of the Union, by the discriminatory treatment against the individual that he reported. He would even be entitled to state a claim for damages as a result of such a hostile work environment even if he was not a direct victim. See, e.g., Lehmann v. Toys R Us, 133 N.J. 587 (1993). Thus, he is also entitled to receive updates on what had been done (or not done) and to receive the findings made as to his complaint.

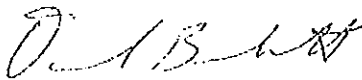
BECKETT & PARIS
Attorneys at Law

Finally, the vaguely threatening assertions at the end of the August 13th letter are of additional concern. First, President Ellison is the complainant here. Second, he has not discussed the complaint with anyone. Third, he has referred your letter to counsel for reply because it appeared to be an effort by the Division and Department to avoid taking any action with regard to legitimate claims of discriminatory treatment and actions that violate State policy. Fourth, instead of answering President Ellison's complaint and inquiry, he is "directed" to refrain from speaking with anyone. Instead of making such threats the Commission should direct NJDOC to justify its inaction and to enforce its announced policy prohibiting discriminatory treatment.

I have sent a copy of this letter to the Department of Corrections as the responsibility for taking action must still rest with them. They cannot outsource their obligations under the New Jersey Law Against Discrimination. They cannot avoid taking action and their failure to do so is not justified by the August 13th letter. The courtesy of a response to this correspondence is requested.

Yours truly,

BECKETT & PARIS, L.L.C.



David Beckett, Esq.

cc: Lella Lawrence, Esq. (Via Regular Mail)
Commissioner's Office, NJDOC (Via Regular Mail)
Adrian Ellison, NJIA (Via Regular Mail)

Exhibit 11

From: Adrian Ellison <Adrian.Ellison@doc.nj.gov>
Sent: Wednesday, June 20, 2018 1:35:59 PM
To: Duane M. Grade <Duane.Grade@doc.nj.gov>
Subject: Re: Scheduled Meeting - Wednesday, June 20, 2018

Chief Grade

I am on a approved union day. Obviously there was a miscommunication because we have spoken several times regarding meeting (i.e. active grievance/union concerns). I have spoken to deputy chief Solys several times today regarding current issues pertaining to contract issues that I have been addressing with the Gov's office, HR and centralized payroll regarding discrepancies we are experiencing. The tone is your email is not necessary and I'm sure we could have worked this out over the phone. I will be at your office to discuss this matter and any additional concerns you may have. Thank you

From: Duane M. Grade
Sent: Wednesday, June 20, 2018 1:23:34 PM
To: Adrian Ellison; Terence Smith
Subject: Scheduled Meeting - Wednesday, June 20, 2018

As you are both aware, an appointment was sent out on May 29, 2018, for today's scheduled meeting with me at 1:00pm.

PT Smith - Sandi informed me that you contacted COHQ at 12:48pm today and informed her that you "forgot" and would not be making the meeting.

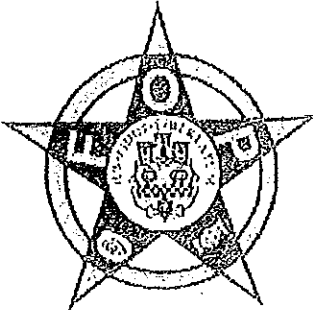
SE Ellison - Sandi informed me that you contacted COHQ at 1:07pm and stated that you are "tied up" today and can't make it. Sandi indicated that you said you had a conversation with me where it was agreed that we would meet tomorrow. That is not accurate.

Report to my office today at 3:30pm

Duane M. Grade
Chief Investigator
Special Investigations Division
P.O. Box 363
Trenton, NJ 08625
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Cell: (609) 414-1368

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New Jersey Investigators Association, Inc.
FOP Lodge # 174
P.O. Box 253
Crosswicks, N.J. 08515-0253

April 21, 2020

STATEMENT OF POSITION
of the
NEW JERSEY INVESTIGATORS ASSOCIATION, FOP LODGE 174
on the
DEPARTMENT OF JUSTICE REPORT ON EDNA MAHAN CORRECTIONAL
FACILITY

Reporting Complaints by NJIA and NJDOC's Failure to Act

FOR IMMEDIATE RELEASE

The New Jersey Investigators Association, FOP Lodge 174 ("NJIA") has reviewed the Report of the United States Department of Justice, Civil Rights Division ("DOJ") concerning the Edna Mahan Correctional Facility ("EMCF"). The Report identifies systemic problems at the Special Investigations Division ("SID") within the New Jersey Department of Corrections ("NJDOC" or "Department"), mirroring complaints by the NJIA concerning the management of the Special Investigations Division ("SID"). For years, the NJIA has told the Commissioner's office that the lack of resources, staffing, denial of needed overtime, coupled with the system of managing by fear, intimidation, and threats of retaliation from Chief Duane Grade and Deputy Chiefs of SID are a toxic mix that must be addressed.

The NJDOC has failed to address serious concerns, which have been raised by the NJIA in meetings as far back as 2016 when the Commissioner Marcus O. Hicks Esq. was the Chief of Staff in the last administration. At that time, SID Chief Grade was then the Assistant Chief who had overall responsibility for investigations at EMCF, and his recently retired Deputy Chief

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Aversano was the Principal Investigator at EMCF. Written submissions to this Commissioner's office since 2018, which were all included in the December 23, 2019 letter to the Commissioner and the Chief Counsel for the Governor, have been ignored even though they report problems at SID, which are highly relevant to issues described in the Report.

In August 2018, the NJIA President, myself, sent the Commissioner an Agenda for a planned meeting later that month, which started with the complaint that the Chief managed by intimidation, fear, and retaliation and reported that a "no-confidence" vote had been approved by the investigative membership of FOP 174. The Agenda then included a description of specific operational problems with SID management. Agenda items #2 thru 4 and 7 alerted the Commissioner to complaints of management interference with investigators' rights to file complaints under the New Jersey and Federal laws prohibiting discrimination, retaliation, and favoritism, as well as belittling and degrading treatment of minority female investigators. Item #5 of the Agenda directly warns that the level of understaffing impairs investigations because "we only have 80 investigators [in 2018] as compared to over 100 ten years ago; however, the work responsibilities have more than tripled." This understaffing is exacerbated by the refusal to approve overtime because that is the only way to make sure that operational effectiveness can be achieved with too few staff. The Commissioner avoided the meeting, sending his Chief of Staff and not following up despite these clear warnings in the Agenda that investigations were being undermined including the following:

"The Chief seeks to unreasonably reduce and or eliminate overtime, thereby causing those who work overtime not to submit overtime slips for monetary/compensatory compensation. This restricts investigative staff to receive flex-time only. The drive-by management to reduce overtime has resulted in refusing to have investigators respond to incidents on overtime when they arise on weekends. SID's work is incident driven. This restriction impairs our ability to give and receive credible information and to investigate or collect evidence regarding such incidents properly."

[Agenda Item 6, Exhibit 3 to December 23, 2019 letter]

Now, the NJDOC responds publicly to claim it has formed a "task force" to address the DOJ Report. Nevertheless, there has been no effort to contact the NJIA, nor has NJDOC followed up on the complaints by the NJIA. Given that the Report highlighted issues at SID, it appears that the Commissioner's office is again ignoring the problems and rewarding the failed

management at SID, who will no doubt follow their standard practice of blaming individual investigators when the problems are systemic and the fault of management.

This is not the time for business as usual. The SID Chief and Deputy Chiefs should not be on any task force; **they should be replaced immediately.** The Department needs to reach out to the NJIA and other stakeholders to address management and operations problems identified at SID. Those above the SID Chief at the Department and those in power at the State also bear responsibility for systematically underfunding and under-resourcing SID for years. However, the SID Chief and Deputy Chiefs have made things far worse at SID by managing by retaliation, intimidation, and threats while removing the support and resources needed for investigative work. This has undermined the critical work of SID, which is responsible for investigating all charges of Criminal and Administrative violations within the NJDOC.

The NJIA complaints and reports to the Commissioner as far back as 2018 gave notice that Chief Grade was refusing to allow investigators to work overtime needed to perform investigations. This refusal came at the time staffing was so reduced that Investigators were overwhelmed. As recently as February 2020, the NJIA identified operational problems and pointed out that Principal Investigators (who supervise caseloads) were being made to cover two different SID offices, which is impossible and is contrary to past practice. At that time, the NJIA showed that the most junior Investigator level employees were also being required to perform higher-level Senior Investigator work and that Senior Investigators were being forced to work as Principal Investigators. The response from the Commissioner's Office was mainly to acknowledge the problem of staff shortages and cite a lack of approval of positions by the Governor's Office. The Commissioner's Office again did nothing and has consistently failed to address operational problems, including the limits on overtime coupled with the threats, retaliation, and differential treatment by SID management.

As shown in the 2018 Agenda, NJIA has given notice of the extreme limits to overtime imposed by the Chief, and because overtime is so routinely denied, investigators often will not ask for it. The threats, intimidation, and retaliation, as well as the differential treatment of minority female investigators and those who challenge the Chief or Deputies, has created a

culture where investigators know that requests for needed overtime will be taken as a sign of not being able to work efficiently and as a challenge to management authority to be squashed. This refusal to support investigators with resources and overtime is a critical part of the problem.

Moreover, at the same time that DOJ was investigating allegations concerning EMCF investigations of sexual abuse and possible retaliation for complaining, the NJIA was telling the Commissioner that Chief Grade and his Deputies were hostile to minority female investigators and were retaliating against investigators engaging in protected activity. Did the NJDOC expect that SID management, which was engaging in such discriminatory and illegal conduct against its own employees, would support and provide resources for such investigations at EMCF? Does the NJDOC believe that the same management team should have a role in any task force or management of SID?

The NJDOC must address fundamental problems that the NJIA has identified at SID. That requires a fresh start in management, and much more. It requires addressing the fact that SID is, and has been, woefully understaffed. It needs at least 120 investigators or 1.5 times the current staffing of 80 investigators. Further, SID should have a dedicated Sexual Crimes Investigation Unit. In addition to staffing being increased, the NJDOC must approve overtime, which is essential to any investigative unit. The continuing limits on overtime are unacceptable and only undermine the ability to conduct an adequate investigation. These changes are minimum improvements, which have all been requested by the NJIA, not supported by SID management, and rebuffed by the Department.

The current management at SID cannot be part of a task force where they will use that opportunity to obscure their failures and seek to pin the blame on others. A new team is required to rebuild and improve SID. Further, representatives of the NJIA need to be part of any such task force. The NJIA members have on the ground experience and know the need for staff and overtime. The resources afforded to SID must also include more training and specialization. Also, investigators caseloads must be managed better because, in the past few years, the understaffing has resulted in pressure to close investigations within a specific period so that the investigator can address the demands of the next case. This failure to have adequate staffing and

overtime is a systemic failure of management, creating a toxic mix that inevitably resulted in problems with investigations. These are systemic problems, not the fault of individual investigators.

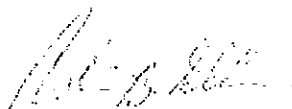
The NJIA does have issues with specific findings and recommendations in the Report, but views this as the opportunity to address the system-wide management and operations problems of the NJDOC and its SID; as such, this should not be an opportunity to obscure past failures. Serious operational and management issues at SID have been ignored by the NJDOC time and time again. This cannot continue. Thus, NJIA demands the following:

1. That the current Chief and Deputy Chiefs of NJDOC's SID be immediately removed and replaced with new leadership;
2. Representatives of the NJIA need to be included in all aspects of the task force, planning, and responses of the NJDOC to DOJ that relate to investigations at NJDOC;
3. That all reports and action statements issued by the Department relevant to concerns about investigations at Edna Mahan Correctional Facility be provided to the NJIA;
4. That the budgeted slots for investigator title positions for NJDOC be increased by 20 this year and another 20 more for the following year and that such positions be filled as soon as possible to get the adequate staffing needed of at least 120 investigators at NJDOC (Such increase in investigative staff cannot be obtained by moving investigators from the Juvenile Justice Commission or Parole Commission);
5. That NJDOC implement sexual abuse investigation training for investigators that is consistent with training for detectives and investigators at the Prosecutors Office and police departments throughout the State who handle sexual abuse investigations, and that addresses the unique situations at state prisons;
6. That NJDOC designate a specialized unit for Sexual Abuse investigations at NJDOC which shall have state-wide authority and shall be adequately staffed with investigators trained to perform such investigations for NJDOC;
7. That management at SID be directed to authorize overtime when required for any investigation, including but not limited to authorizing overtime for work on

- investigations, authorizing Investigators to respond to incidents when off duty and establishing reasonable protocols for approving overtime requests; and
8. That investigators be authorized to investigate complaints broadly and to open up a new investigation with proper notice to Supervisors.

The above minimum steps are a starting point for reform. The NJIA has sounded the alarm, and it can only hope now the NJDOC management will listen and act to address systemic problems. The NJIA stands ready to be part of that effort.

Respectfully,



Adrian B. Ellison
President, NJIA FOP #174

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December 23, 2019

Via Overnight Mail:
Marcus O. Hicks, Esq., Acting Commissioner
State of New Jersey
Department of Corrections
Whittlesey Road
PO Box 063
Trenton, NJ 08625

Matt Platkin, Esq., Chief Counsel
Office of the Governor
225 West State Street
PO Box 001
Trenton, New Jersey 08625

**Re: Reporting Complaints and Failure to Act
By New Jersey Department of Corrections**

Dear Commissioner Hicks and Chief Counsel Platkin:

Since June, 2018, the New Jersey Investigator's Association, FOP Lodge 174 ("NJIA"), and its President Adrian Ellison, have been trying to get the New Jersey Department of Corrections (NJDOC) to take action to address the hostile work environment being created at the NJDOC's Special Investigations Division ("SID") by Chief Duane Grade and his Deputy Chiefs, Anthony Aversano and Nancy Zook. The union and its President have filed complaints and followed up with evidence that Chief Grade and his deputies are creating a hostile work environment by harassing, singling out, and bullying investigators, in violation of NJDOC policy prohibiting such conduct and applicable law, including the New Jersey Law Against Discrimination ("NJLAD"). No action has been taken to address and remedy this illegal and discriminatory conduct in

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the Special Investigations Division at NJDOC, which is responsible for conducting fair and unbiased investigations of highly sensitive matters at NJDOC.

The NJIA is elevating this to the Office of the Governor with direct notice to Acting Commissioner Hicks because the response to date by NJDOC has been wholly inadequate. The record attached and this summary shows that NJDOC's EEO/AA Director's Office took no action to investigate or remediate, which is not consistent with a fair reading of NJAC 4A:7-3.1 or 3.2 as they place responsibility squarely with the departments/agencies EEO/AA offices. The failures have not been confined to NJDOC. The Division of EEO/AA at the New Jersey Civil Service Commission ("CSC"), where the complaints were unceremoniously sent without any investigation or action by Leila Lawrence, the Director of NJDOC's EEO/AA office, has failed to investigate or recommend any remedial action. In fact, they would have failed to notify complainant had we not inquired by letter dated August 2, 2019; and, the August 13, 2019 reply letter from Mamta Patel, Esq. closing the matter did not provide any information to the complainant union or its President. The attached documents submitted previously to NJDOC and the CSC are illustrative and underscore why the union and its President seek your intervention.

The NJIA has uncovered evidence showing that this record of inaction and indifference to its recent complaints are unfortunately part of a history and pattern of excusing such misconduct by Chief Grade that dates back two decades. The attached administrative law decision, Steven Tessenholtz v. Northern State Prison, OAL Docket

No. CSV 10192-00, (June 6, 2003) 2003 WL 21675001, aff'd. In the Matter of Steven Tessenholtz v. Northern State Prison, 2003 WL 23573529 (N.J. Adm. 2003) (Exhibit 1 to this letter) shows then Senior Investigator Grade making false statements under oath to protect racist misconduct by a white NJDOC Lieutenant in custody ranks. That Lieutenant had been charged with referring to Senior Investigator Freeman, a black investigator, by the racially derogatory term "Sambo", and Grade lined up to support the Lieutenant against his own co-worker with false testimony. After hearing the testimony, the Judge specifically found Grade's testimony that the Lieutenant had used the words "Sam go" and not "Sambo" was "obviously contrived and patently absurd." In other words, Senior Investigator Grade lied under oath to protect a white superior custody staff member (Lieutenant) against his own fellow Senior Investigator.

There was no corrective action taken against then Sr. Inv. Grade for blatantly false testimony and support of racism. Instead, he has been promoted, rewarded and empowered with the Chief's position at SID. In turn, he has supported and empowered discriminatory treatment toward investigators. Despite this history, the NJDOC has done nothing when confronted with the complaints and evidence submitted, which are attached as Exhibits 2-10:

- Exhibit 2: June 27, 2018 Complaint to Victoria Kuhn at NJDOC describing discriminatory action and singling out of Senior Investigator Whitaker by the Chief.
- Exhibit 3: August 17, 2018 Agenda submitted by the NJIA to Suzanne Lawrence at NJDOC for meeting with Commissioner describing issues to be discussed including discriminatory treatment and retaliation.
- Exhibit 4: August 29, 2018 letter to Suzanne Lawrence at NJDOC describing actions by Chief Grade to protect Deputy Chief Zook from complaint that a

Senior Investigator was seeking to file against her for misconduct with August 2, 2018 email documenting referral.

- Exhibit 5: September 1, 2018 Letter to L. Lawrence describing discrimination, harassment, and threats by the Chief which were part of his effort to squash an EEO complaint against his Deputy Chief with transmittal email to Leila Lawrence at NJDOC.
- Exhibit 6: September 21, 2018 Complaint to V. Kuhn further detailing discriminatory treatment and harassment with attachments to answer requests by NJDOC with email transmittal thread.
- Exhibit 7: November 23, 2018 email to Inv. Mistichelli by President Ellison providing information and requesting assurances of protection against further retaliation, which was unanswered.
- Exhibit 8: August 2, 2019 Letter to Acting Commissioner Hicks recounting complaints and lack of action by NJDOC or assigned investigators and demanding a response.
- Exhibit 9: August 13, 2019 Letter by NJCSC Div. of EEO/AA stating no report will be provided to the NJIA or President Ellison.
- Exhibit 10: August 28, 2019 Certified letter in response to NJCSC and to NJDOC Commissioner's Office protesting lack of action or report, which has not been answered.

The NJDOC has consistently avoided taking action, hidden behind claims it needs more information when it does not, and rewarded the Chief and those on his management team who are violating rules requiring equal treatment of employees by singling out certain unit employees. The Division of EEO/AA inexplicably referred the complaints to the CSC, which to our knowledge has done nothing, and which refused to provide answers or even respond when President Ellison provided additional information in November 2018 and told the Investigator there was more information but, the union needed to know there would be protection against further retaliation. (Exhibit 7). No response was provided by the CSC or NJDOC.

The delays and the utter failure of the NJDOC to investigate and remedy the demonstrated violations have given license and approval to conduct in which certain

investigators are singled out by virtue of who they are, not because of any conduct-related issue. In turn, this has led directly to continuing discriminatory and hostile behavior by Chief Grade and his Deputies toward Investigators and the NJIA.

In the last month, the SID Chief issued extraordinary disciplinary charges against an experienced African American Senior Investigator seeking to remove him from the unit for charges, on their face, do not support this extreme penalty. Added to that, this same Senior Investigator had previously filed a complaint alleging he was the victim of discriminatory treatment. In response, the Chief filed the charges without any due process and before addressing the matter with the union, unlike past practice.

This hostility is also evident in treatment of President Ellison, the sole union leader at NJDOC who is African American. He notes that the Chief appears to have an open-door policy for labor representatives of employees in other unions who are not working at SID. Not coincidentally, all of the labor leaders are white. Those white union leaders do not get summoned by the Chief to meetings or treated in a demeaning manner whereas President Ellison has been ordered to appear for labor management meetings by the Chief, as demonstrated by an email dated June 20, 2018, attached as Exhibit 11.

The ongoing discrimination, harassment, and retaliation at SID complained of included singling out of Principal Investigator Madden by Deputy Chief Zook and discriminatory actions against Senior Investigator Whitaker, which were defended. It also includes Deputy Chief Aversano telling President Ellison that "the South is winning

again" at NJDOC/SID a reference to "white pride" that was openly stated and not sanctioned. The fact that the whole hand-picked upper echelon of the SID is devoid of any African Americans or minorities in a department with African American leadership only adds to the bias. The discrimination that the NJDOC has failed to address at SID is not acceptable in the very Division that must investigate incidents *fairly and without bias* in a department where non-white officers make up a very significant percentage of the workforce.

Chief Grade's attitude toward members of the NJIA is colored by this bias, and President Ellison is concerned this is having an impact upon all investigators, in addition to those being investigated. The Chief and his Deputies have substantial power at SID. The Chief has threatened investigators with consequences if they challenge his directives and treated unit members differently on the basis of race and color. The pattern of intimidation and threats will also serve to ensure that the Chief has control over how investigators approach each case.

The failure to address this behavior is fostering a culture within the SID in which discriminatory treatment and harassment are endorsed and will undoubtedly have impacts upon investigations, some of which we cannot even currently discern. The NJDOC's refusal to take any action in response to the August 20, 2019 letter and the earlier submissions signifies NJDOC's approval of the "culture" being fostered at SID by the Chief. This must end and the NJIA and President Ellison will seek action from your

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Attorneys at Law

office, from the Governor's office, and from other responsible parties to ensure that the problems described herein are finally addressed.

Respectfully yours,

BECKETT & PARIS, LLC



David Beckett, Esq.

cc: Mamta Patel, Esq., Director
Attorney General Gurbir S. Grewal, Esq.
Adrian Ellison, President NJIA

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February 27, 2020

Via Email:

Victoria Kuhn, Esq., Deputy Chief of Staff
New Jersey Department of Corrections
P.O. Box 863
Trenton, New Jersey 08625

Re: **Operations/Supervision at NJDOC
Special Investigation Division**

Dear Ms. Kuhn:

On behalf of the New Jersey Investigators Association, FOP Lodge 174 ("NJIA"), the New Jersey Department of Corrections ("NJDOC") is being given notice that numerous investigators in the title of Principal Investigator, Senior Investigator, and Investigator are being required to perform work that is well beyond the scope of their responsibilities and titles. These requirements are subjecting them, and the Department, to potential liability and risk.

The Chief of the Special Investigations Division ("SID") has, among other things, forced certain Principal Investigators to cover two locations/units. This makes it impossible for those Principal Investigators to properly supervise each individual unit. Further, it makes Senior Investigators at each unit serve in a capacity of Principal Investigator. The locations and Investigators who are affected are as follows:

- P/I Brian Bonomo covers Professional Standards Unit (PSU), & Garden State Correctional Facility
- P/I Elcazar Spratley covers Intelligence Unit & South Woods State Prison
- P/I Randy Valentin covers PREA Unit & East Jersey State Prison
- S/I Matthew Brown and S/I Omar Howard have been covering the Fugitive Unit as a supervisor with no compensation because P/I Jerome Scott is out on FMLA

An immediate investigation and back compensation for Senior Investigators, including but not limited to Senior Investigators Brown and Howard, who are performing Principal Investigators duties is warranted and any related out of title work for Investigators should be addressed. The Department should also, as part of investigating this matter, direct that Principal Investigators be only responsible for one unit and Principal Investigators Bonomo, Spratley, and Valentin should be compensated for the double duty work they have performed as Principal Investigators.

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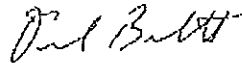
BECKETT & PARIS
Attorneys at Law

At the same time, the Chief has been directing those investigators at the Investigator title level to handle evidence, which contradicts departmental requirements and duties of that title. Only those at the Senior Investigator level and above are allowed to handle evidence. Having a new investigator perform such work creates risks for these unit employees, constitutes out of title work, and exposes the Department to risk. In addition, these actions by the Chief make cases more difficult to prosecute. The NJIA demands the courtesy of an initial meeting and action by the Department to address these ongoing violations.

Thank you.

Yours truly,

BECKETT & PARIS, LLC



David Beckett, Esq.

cc: NJIA FOP Lodge 174



**American Friends
Service Committee**

Newark Area Office

89 Market Street, 6th Floor · Newark, NJ 07102 · 973/643-1924 · fax 973/643-8924 · www.afsc.org

TESTIMONY TO THE NEW JERSEY SENATE LAW AND PUBLIC SAFETY COMMITTEE

May 12, 2020

By Bonnie Kerness, MSW

Program Director, AFSC PRISON WATCH

Good morning and thank you for having me. As Director of the American Friends Service Committee Prison Watch Program in Newark, we receive calls, letters and other forms of testimony from men, women and children in NJ prisons. I believe that along with the courageous women at Edna Mahon, Jean and I contributed to the Department of Justice coming into NJ to investigate the long-term sexual abuse issues there. Each of us independently have been issuing complaints and reports for many years.

While the pressing issues of the COVID lockdown in NJ prisons may act to interrupt some sexual abuse condemned in the DOJ report, it also exposed and censured harassment, misconduct, coercion, retaliation and other forms of assault as part of the ongoing culture in the NJ Department of Corrections. The testimonials they took from officers, administrators, Special Investigations Division and the women at the prison confirmed what many of us have known and protested for years – that how people in NJ prisons are treated is unacceptable, and often illegal. The complicity between officers, administrators and the Special Investigations Division is appropriately noted in the report as is the lack of confidentiality. The report also focused on the enablement of such behavior, with lack of appropriate supervision being specifically noted. Equally egregious is the absence of anonymity when prisoners complain about abuse, dearth of cameras and lack of concern for the safety and civil rights of a complainant.

I would like to share part of the statement I made before this Committee two years ago, as it remains pertinent to what continues to happen throughout the entire NJ Correctional system, and to the Bill SJR 79 which the Committee is hearing today. That Bill calls for a Commission to study sexual assault, misconduct and harassment in the NJ State prisons. As a long-time human rights advocate on behalf of people in NJ prisons, I couldn't be more appreciative and encourage language which makes it clear that the Commission will be seeking information on every one of the state's correctional facilities.

I said to you in 2018, "In the case of women in prison, we as a community and you as legislators need to discover where the proverbial "buck" stops. Administrators have a long history of ignoring justifiable complaints, so this becomes a layered issue with an equally layered need for change in current policies and practices. So where does the ultimate accountability lie: is it with a Commissioner of Corrections who sometimes seems to have little knowledge or concern about the behavior of front-line officers? Is it

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with the Union that allows and accepts that its membership behaves in a manner completely unacceptable in any profession, let alone in one fraught with unimaginable power over another human being? Is it with the prison administrators who receive the complaints being submitted via the kiosks? Is it with the Superintendent who may then disregard those complaints which reflect poorly on the practices at their institution? Is it the Department of Corrections Special Investigations Division which seems complicit in its investigatory responsibilities”?

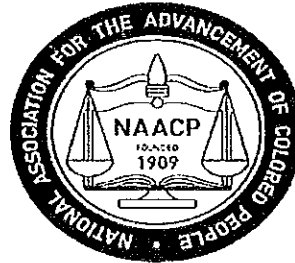
After monitoring the women’s institution along with all other NJ prisons for decades, after receiving letters and hearing accounts of the most devastating nature, I still don’t know all the answers. I do know that the DOJ report and this new bill can help New Jersey move forward in changing a culture which governs much of what is shameful about this system of imprisonment. You cannot give me a reason for the kinds of testimonies of torture from NJ prisons that come into my office every day. On May 1st an article appeared in the Trentonian noting that Emotion Blackwell, a prisoner in NJSP, was threatened by two “high ranking corrections officers” for speaking to the reporter in a prior article. They told him that he would be shipped out of state for daring to speak out about the lack of proper medical care. I receive daily stories of retaliation. In another letter, I hear from a transgender person in South Woods begging for help against officer harassment, exposure and cruelty; in another call yesterday, a NJ prisoner described a person with severe mental health issues being made to dance for his food.

I’ll confess to not being able to comprehend the tolerance for this kind of behavior from the officers’ Union. When I reflect on those who were indicted, tried and imprisoned as a result of their sexual abuse at Clinton, I think of what their families, their children are currently going through as a result of tolerance for vicious behavior. I’ll also confess to bewilderment at the disrespect of the refusal of the Department of Corrections to participate today. Wouldn’t they want to listen to those of us who hear daily from the victims of racism, the inappropriate use of power and what is often defined as torture by the United Nations that permeates every single prison in this State.

I do not know how you legislate a culture of cruelty, racism, mental and physical health neglect and sexual misconduct all conducted with impunity in a system hidden from public scrutiny. There is little or no community or legislative oversight, although it is badly needed. The public needs accessibility and has the right to accountability. Because of the daring of the women in Clinton and people like Emotion Blackwell, the bravery of those who have survived and come home, the willing lawyers, the extraordinary media coverage, and Hearings such as this, New Jersey is poised to lead the country in preventing the sexual abuse of girls and women in NJ prisons. Passage of SJR 79 would provide us with the beginning of monitoring and public oversight for all prisons in NJ, which is crucial to real social change. The Department of Corrections is more than a set of institutions, it is also a state of mind. That state of mind has led us here today and is at the core of the necessary changes that are coming due to the work of this Committee.

Thank you.

FOR IMMEDIATE RELEASE
Contact: Herbert D. Glenn, Newark NAACP
newarknaacp@gmail.com
973.980.6441
May 10, 2020



NJ NAACP State Conference Will Provide Oral Testimony before the NJ Senate Law & Public Safety Committee.

**Topic: Scathing DOJ Report on Edna Mahan Correctional Facility for
Woman-Allegations of Rapes & Sexual Acts of Abuse by Correction
Officers towards Women Inmates.**

After the initial NJ Senate Law & Public Safety (SLP) hearing in February of 2020 to administer suggested reforms and enact created laws to stop the alleged systemic problems of rape and sexual misconduct at the hands of correction officers at Edna Mahan Correctional Facility for Women, it seems the matter is again before us. On May 12, 2020 at 10 AM, Rick Robinson, Chairman of the NJ NAACP State Conference and the Newark NAACP Criminal Justice Committees will testify again to address the scathing Department of Justice (DOJ) Report that indicates the staff of the NJ Prison is still engaged in the same egregious and unlawful behavior-raping women inmates!

"Any person suspected of wrong doing, arrested by our Law Enforcement agencies, delivered to our court system and sanctioned to our Correction institutions should not be fearful of his/her safety nor be subjected to acts of rape or other sexual acts of abuse," said John, Smith, 3rd Vice President of the Newark NAACP.

The DOJ Report clearly found numerous violations of the Prison Rape Elimination Act (PREA). This is deeply troubling because the prison system is charged with the notion to rehabilitate inmates, not engage in mistreatment of any sort. Society expect these women to grow and become productive after serving their time. When they have been victimized sexually-for the record, their humanity is lost, their civil-rights are being compromised and it is almost impossible for someone to recover from these illegal instances.

"There is no way that this type of behavior should go unpunished and an immediate convening of a taskforce to address the problems with logical solutions is desperately needed. Please understand, we are speaking of state-paid employees allegedly raping and sexually abusing women in prison, where they are supposed to be protected and learn from their mistakes. The mistake here is for a woman inmate to be assigned to the Edna Mahan Correctional Facility for Women-that is the biggest mistake said", Deborah Smith Gregory, President of the Newark NAACP.

"We are looking to partner with the New Jersey Department of Corrections (NJ DOC) to try to foster change and establish an environment of safety & fairness. The NAACP is the oldest civil-rights organization in the world and we believe our experience will undoubtedly prove to be effective in planning, developing and executing plan-of-action projects to thwart these types of problems-in other words, we request a seat at the table", said Robinson.

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NJ Senate Law and Public Safety Hearing-May 12, 2020
Topic: Scathing Department of Justice Report on Edna Mahan Correctional Facility for Women
Chairman Rick Robinson-NJ NAACP SC/NEWARK NAACP
Criminal Justice Committees

Chairman's Testimony:

Our society is in severe trouble when corrupt practices at the hands of STATE PAID EMPLOYEES (who were sworn-in and pledged an oath), engage in criminal activities, such as alleged rapes and other alleged sexual acts of abuse. I am speaking about the unlawful conduct that is directed towards the women inmates of Edna Mahan Women's Correctional Facility in Clinton, New Jersey. We are currently in the year of 2020 and it should be abundantly clear that this type of behavior will longer be tolerated! Any person or group that wishes to condone this illegal conduct are in clear violations of the Prison Rape Elimination Act (PREA), the Federal Civil Right of Institutionalized Persons Act (CRIPA) and the Eight Amendment of the Federal Constitution. We ask that these persons of interest be immediately removed from the state premises, arrested and prosecuted for the sake of humanity.

The NJ Senate Law and Public Safety (SLP) Committee has already visited this matter in February of 2018, after of a series of articles by S. P. Sullivan of New Jersey Advance Media three years ago. As Chairman of the Criminal Justice Committee of the Newark NAACP in 2018, our branch submitted testimony (attached) to advocate for an immediate end in this over 20 year problem at this particular facility because a Newark, NJ resident filed a NAACP complaint-for she witnessed this catastrophe as an inmate. In addition, other notable organizations strongly conveyed similar messages that these illegal acts are no longer acceptable in our society. The recent Department of Justice (DOJ) Report of April 2020 gives up pause due to its humiliating claims that women inmates are still getting raped and treated with horrible disdain. Which is why we need to approach this problem differently and seek solutions to eradicate this accepted practice of unlawful acts.

As the newly appointed Chairman of the NJ NAACP State Conference for Criminal Justice Committee, it is my opinion that we need to try to assist the NJ DOC to foster much needed change. In other words, I am requesting that the NJ NAACP State Conference have a seat at the table, pertaining to all discussions involving the development of more effective policies, recommendation of penalties and consideration of a more accountable body, such as an oversight committee to review these types of matters in an unbiased fashion.

My recent talks with New Jersey Senator Linda Greenstein indicates that we share the same concerns and an immediate plan-of-action is needed to address the matter accordingly. From our conversation, it is no mistake that the Chairwoman and the NJ NAACP State Conference find the DOJ Report offensive, harmful and embarrassing to the state of New Jersey. Which is why I recommend our civil-rights organization to have a seat at the table to encourage safety and fairness. For the record, I met with the Commissioner, Marcus Hicks, Esq. and his administrative staff last month. It proved to be a great meeting and I indicated the NJ NAACP State Conference are more than willing to work with NJ DOC on a number of different

initiatives. We believe it will happen and we have confidence in Commissioner Hicks and his team.

Just think for a minute please? Hypothetically, you are a woman inmate and you are treated horribly, given no respect, you become sexually victimized let's say every week by STATE PAID EMPLOYEES (who were sworn-in and pledge an oath). These alleged rapes and sexual acts of abuse become forced leverage or bargaining tools for basic, institution supplies and you diminished of any worth as an individual? You are now a sex slave for STATE PAID EMPLOYEES! How can you learn from your mistakes and seek to become a productive person in society or in your community when you are treated as a sexual slave? Where is the rehabilitation in this equation? There is hardly no way one can come to respect herself, respect law enforcement, respect her children, respect probation officials, respect the New Jersey State Parole Board officials or simply respect people in general? It is not possible and there is a definite need to help NJDOC, involving the Edna Mahan Women Prison matter and other agency's issues. We would very much like to help and DOJ Report clearly indicates that assistance in needed.

I am asking NJ DOC. Please, seriously consider the NJ NAACP State Conference becoming a team member with NJ DOC. We would be honored to become part of your agency's team in regards to development, planning and execution of meaningful projects, with a mission to foster change at Edna Mahan Women Prison and possibly in other areas with the NJDOC.

On behalf of the NJ NAACP State Conference and the Newark NAACP, we wish to thank the SLP for this time to testify to the committee.

Respectfully,

Rick Robinson, Chairman
NJ NAACP State Conference &
Newark, NAACP Criminal Justice Committees

NEW JERSEY SENATE LAW AND PUBLIC SAFETY COMMITTEE
HEARING

RE: RAPE AND SEXUAL ABUSE ALLEGATIONS OF WOMEN INMATES
AT THE HANDS OF CORRECTION OFFICERS AND THE
ADMINISTRATOR AT EDNA MAHON CORRECTIONS INSTITUTION FOR
WOMEN

TESTIMONY BY RICK ROBINSON

NAACP NEWARK, NJ, CRIMINAL JUSTICE CHAIRMAN,

FEBRUARY 22, 2018

STATE BUILDING, TRENTON, NJ

It is horribly unfortunate that we have come to this point in our society, where we are holding legislative discussion about allegations of rape and sexual abuse of women inmates by correction officers and administrative personnel of a state prison facility. It is abundantly clear that restructure is imminent, accountability needs to be designated and professional assistance is warranted to help the victims in this matter.

These allegations, which some has resulted in plea agreements are unspeakable and questions our correctional system's purpose? My only question is how we can allow this to have happened and not initiate contingencies to prevent it from ever happening again. These accusations prove to be detrimental to our integrity, involving New Jersey's criminal justice system, which is mandated for better results on a national scale.

Because these accusations violates the federal standards of PREA, we must move to adequately prosecute and engage in drafting policy, so this can never occur again. We know that these are the 'bad acts' of some and should not be a reflection of all correctional facility personnel, which happens to be salaried by New Jersey tax dollars.

Our focus should end with services to address the traumatic problems of these women, with emphasis on life after rape, sexual abuse and prison. We need to take a hard look at what possibilities are needed in order to have them be productive in our society upon release. Our evaluation should be of a sensitive approach if we plan to help them at all.

Thank you,

Rick Robinson, Criminal Justice Chairman
NAACP Newark, NJ

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Points:

My name is Lydia Thornton. I served a bit over 4 years at Edna Mahan, exiting in December 2014. During my time there, I was in both the Maximum and Minimum security compounds, as well as spending 9 months in Administrative Segregation- which at the time was located in the Men's prison, here in Trenton. A side note to that - contrary to what Governor Christie has stated multiple times this year, Administrative Segregation DOES still exist in New Jersey - for both men and women.

My focus today, however, has to do with the recent (very late) reporting and investigation of the assaults and harassment of the women who are housed at Edna Mahan Correctional Facility. Having been in both compounds, and having worked in the Infirmary for a year, as a cleaner, and then in the Law Library as a paralegal, I have personally observed many things, as well as helping other women write complaints. My observations follow.

1. **SID**(special investigations division) being located on the same compound as the people that they are potentially investigating - conflict of interest potential is not just possible- but probable- it is virtually impossible to have lunch with someone on Tuesday - and see if they raped someone on Thursday. That is socially and psychologically challenging at the very least.

Compare this to local policing - if there is an issue in a local police department - an accusation of impropriety of any kind- a separate force who is thought to be completely impartial is brought in. (if Trenton PD has an issue, another locality will do the actual investigation, including interviewing all sides)

2. **PREA Audits** - these are blatantly written by someone who wants the facility to pass If you read them - year over year- the wording is practically identical. Even years back - when officers had been fired, though not prosecuted - the PREA audit was squeaky clean - how is that even possible- there should have been a huge piece in that year's audit. I have read the past 5 years audits that are posted on the DOC site. The verbage year over year is virtually identical, which is the first red flag. The second is the implication in the audits is that there have been no "credible" accusations in years. This is basically stated because that is what they are being told by DOC personnel.

Realistically, if you had an outside agency investigating your panel, and you were the reporting person, are YOU going to tell all?

3. **CULTURE**- Culture first let me state clearly that not ALL employees of DOC that work at EMCF are bad or need to be removed. Nor do I believe that only women should guard/oversee women - the problems that brings can be equally problematic. Some of the least humane officers I have ever interacted with were female.

However, it is not a gender issue. The culture that has been allowed to develop over the past decade or more is one that ENCOURAGES things be ignored. That basic personal/human rights of our women be treated as less than important, and that those in power are always right - and can demand anything they wish from those who are under their CARE and OVERSIGHT

87x

As a single sad example of the culture of depravity that has been allowed at EMCF is the story of C

C came into custody with KNOWN Mental Health issues - on various psychotropic medications which - for the most part kept her stable. Her family situation was - as many incarcerated women's are- unstable. however, her adoptive mother was her life- and the one person who kept her centered and grounded. Many of her associates knew this - and so during a verbal altercation one day, someone threatened to ensure that harm was done to her mother on the outside.

This caused C to have a psychotic break - trying to hurt everyone around her. Of course she was subdued, put into the control chair for a period of time, and after being shot up with a variety of medication to calm her, put into "Suicide Watch" (aka "Constant Watch")

If you are not familiar - this is a 7x9 cell that has a metal toilet/sink combination, and a single mat. She was given the 'turtle suit' to wear, which is a quilted gown that cannot be torn - to prevent tearing to try to hang oneself.

By DOC rule, an officer is stationed outside the room - which has a window to check on the individual every 15 minutes to ensure their safety.

For the first day or so, C was fairly silent- the drug cocktail had done its job. When she woke, however, she was completely manic. She repeatedly removed her gown and danced in the room - pressing her body against the window- and insisting she was a man - showing everyone who would look her 'penis'

Obviously, C needed assistance - mental health help. Instead, the officers (male AND female) who were 'watching' her called other officers over to see the 'show' - repeatedly encouraging her to 'dance' for them - and asking who she was, what her sexuality was, and on and on.

At any point there were both male and female officers standing at the window watching her, laughing and encouraging her to keep dancing. This was a young woman in an obvious mental health crisis, yet their first and ongoing instinct was their own entertainment.

This is what I refer to when I speak on the Culture of the institution. In multiple weeks that this young lady was kept in this solitary cell, on 'watch' this was daily entertainment. Officers who did not even work in the area were radioed to come and watch.

Secondly to this issue - DOC regulations state that nobody should remain on 'suicide watch' for more than 72 hours at a time. They must at that point be re-evaluated by Mental Health and either transferred to a higher level of care (Ann Klein) or released back to population if they are stable.

C was kept on Constant Watch - directly against regulations - for 11 days. They accomplished this by transferring her - on paper - between the two constant watch cells. Multiple levels of authority signed off on this - including Mental Health.

And the amusement continued. I worked in the infirmary, where constant watch is located. I observed Sgts and officers daily come to see her - not to see if her health was improving- but to watch the 'show' Medical staff did nothing to intervene - because the reality is that Corrections has ALL the power. They decide if you get medical attention at all - when it comes down to it. The one officer who DID attempt to intervene was told to sit down, shut up, or walk away - - or the next time she radioed for help she would get nothing but silence.

IF you combine that 'culture' with the fact that I have personally watched an officer walk down a hallway to a certain young woman's room, close the door, and come out 15-20 minutes later smiling - a few times a week.... and that same young lady has money on her books, and at any shakedown her room was left alone.

These are the obvious.

--Let a pretty woman get sentenced, let her NOT understand the 'culture' she will understand clearly the first time she has to strip to move between locations, or during a shakedown, and more than just a female officer watches her strip
--Let her complain, verbally, and she will learn, a bit, what she is up against, when she is laughed at and told "Welcome to prison, honey"
--Let her dare to write a complaint, and put it in the box, where SID is supposed to read it, and call her over to discuss, ask questions. Only to learn that the Lieutenant over her section has made that complaint vanish.

And as she watches, she will see the patterns, and as one young lady has testified, she will stop showering, gain weight, lose weight, ANYTHING to make herself LESS attractive, to stop being noticed. She will pray to survive when the first officer touches her inappropriately

She will cry herself to sleep after a visit, when she is told upon her return, as she is being stripped that if she doesn't cooperate and 'play nice' - there may not be more visits for her

And she will learn, as we all did - who to avoid, and how to move.

In today's environment of exposing sexual harassment, sexual assault and trauma at many levels, I am here today to state clearly that MOST vulnerable among us are our Grandmothers, our Aunties, our Mothers, Sisters, and Daughters who are in a place because they were sentenced to a period of time - for "Correction" or "Rehabilitation"

They were NOT sentenced to be raped, assaulted and traumatized. They were not sentenced to be a commodity to be used at the will of those who are Paid to guard them, not abuse them

Sadly our prisons are not safe - and you can make a difference

--By insisting on external investigations into the claims.

--By closing the loophole that allows for pleas by officers or civilians to not have to register as Offenders for life (as 2 already have in 2017 and Hunderdon County Prosecutors office signed off on it)

--By creating a Citizen oversight panel that is responsible for reviewing quarterly the conditions and issues at the prison. A panel that has the power to bring the information to authorities and follow the complaints through to resolution. and report quarterly to this body what the actual conditions are,

In conclusion, this **must** change. Our women - and yes, they are OURS - by definition right now, they "belong to" the State of New Jersey. That makes them YOUR responsibility. The LEAST they deserve is basic decency.

Regardless of their Crime, they must be treated with respect, and both Feel and actually BE safe. That is a basic Human Right. And while DOC has overlooked that for years, it is well within your power to ensure that this is ensured as we move forward to complete this decade and beyond.

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



United States Department of Justice
Civil Rights Division

United States Attorney's Office
District of New Jersey

April, 2020

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TABLE OF CONTENTS

I.	SUMMARY.....	1
II.	INVESTIGATION.....	2
III.	THE EDNA MAHAN CORRECTIONAL FACILITY FOR WOMEN	2
IV.	CONDITIONS IDENTIFIED.....	3
	A. Staff Sexual Abuse of Edna Mahan Prisoners Violates Prisoners’ Constitutional Rights	3
	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.....	8
	C. Officials at Edna Mahan Knew of the Risk to Prisoners from Staff Sexual Abuse and Disregarded It.....	22
V.	MINIMAL REMEDIAL MEASURES.....	27
VI.	CONCLUSION.....	29

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)¹ 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

¹ 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.”²

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

² *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.³

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

³ 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.⁴ 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.

⁴ 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.⁵ 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

⁵ 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,”⁶ 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.⁷

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

⁶ 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>.

⁷ 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."⁸ 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.⁹ 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

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

⁹ 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.¹⁰

¹⁰ 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. Schoupppe*, 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.¹¹

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.

¹¹ 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.¹² 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

¹² 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.¹³ 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.”¹⁴ 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.

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

¹⁴ *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.



State of New Jersey
DEPARTMENT OF CORRECTIONS
WHITTESEY ROAD
PO Box 863
TRENTON NJ 08625-0863

PHILIP D. MORRIS
Governor

SHIBLA Y. OLIVER
Lt. Governor

MARCUS O. HICKS, ESQ.
Commissioner

**NEW JERSEY DEPARTMENT OF CORRECTIONS RESPONSE TO DOJ REPORT ON
EDNA MAHAN CORRECTIONAL FACILITY FOR WOMEN**

Trenton, N.J. – April 13, 2020 – On April 26, 2018, the Department of Justice (DOJ) launched an investigation of Edna Mahan Correctional Facility for Women that focused on events that occurred under a previous administration. Since then, Marcus O. Hicks, Esq., was appointed to oversee the Department, and as part of his first order of business, his administration addressed a number of the recommendations cited in the DOJ report, among them:

- The Safety and Accountability for Edna Task Force was created and charged with examining ways to improve conditions and provide a safer facility. This group implemented gender restricted posts and identified the need for increased camera surveillance across our facilities, which have since been implemented.
- An increased focus was placed on educating staff and inmates on the Prison Rape Elimination Act (PREA) and ways to report. Inmates can report abuse via the PREA-liaison, staff members, the Office of the Ombudsman, the Special Investigations Division, through a third party (such as a family member), a dedicated hotline or via JPay (an inmate self-help kiosk system).
- The Department reestablished a third-party all female board of Trustees who serve as the voice of the women at EMCFW and advise us on our journey to continuous excellence.
- An Early Warning System was designed to identify patterns of problematic behavior that can jeopardize offender safety.
- Building off the National Institute of Corrections supervisory training on gender responsiveness and trauma-informed practices, a modified module was designed and presented to all staff and members of other units that provide services at Edna Mahan.

The Department of Corrections remains committed to ensuring the safety of all those in its care, and in service of that goal continues to regularly monitor and evaluate its operations, programs and services.

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122x



State of New Jersey

DEPARTMENT OF CORRECTIONS

WHITTLESEY ROAD

PO Box 863

TRENTON NJ 08625-0863

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

MARCUS O. HICKS, ESQ.
Acting Commissioner

October 16, 2019

Senator Linda R. Greenstein
1249 South River Road
Suite 105
Cranberry, NJ 08512

Dear Senator Greenstein,

Thank you for the opportunity to share some of our goals and objectives for fiscal year 2020 at the recent meeting on August 22, 2019. As a follow-up to our conversation, I have provided some of the accomplishments that the New Jersey Department of Corrections (NJDOC) and the SAFE (Safety and Accountability For Edna) Task Force have made to the Edna Mahan Correctional Facility for Women (EMCFW).

a. Improvements in reporting a Prison Rape Elimination Act incident at EMCFW:

- i. The Prison Rape Elimination Act (PREA) Booklet was designed and distributed during a prison-wide face to face meeting with all the offenders at EMCFW. This booklet is also now being provided to every new offender as they enter EMCFW. The booklet contains information on reporting a PREA incident.
 1. A new gender specific PREA video is now being utilized for the women at EMCFW during orientation.
- ii. A Director level staff member, who is the departmental PREA coordinator, tours EMCFW weekly and is available to the women for any and all issues.
- iii. A new PREA liaison for EMCFW has been appointed. She is an Assistant Superintendent who was a former social worker and has a strong rapport with the women of EMCFW. She tours regularly and is available to receive any PREA complaints/reports.

- iv. New informational posters were developed outlining the numerous ways to report any and all abuse. These have been displayed on every housing unit and in communal areas.
- v. A hotline providing emotional support and referrals, was established through a Hunterdon County agency. This hotline is live and operational at EMCFW.
- vi. A new confidential Special Investigation Division (SID) sexual assault support hotline was established to receive any reports.
- vii. A new female SID investigator tours each housing unit at EMCFW to establish a connection with the female population and speak to them about the confidential SID phone number where inmates may report any abuse or assaults and to receive any reports verbally.
- viii. In addition to the new female SID investigator, an additional position has been added to the EMCFW SID unit.
- ix. The development of a PREA link was established on the NJDOC website to provide loved ones with information on third party reporting and general information on the subject of prison rape.

b. NJDOC and the SAFE Task Force implements improvements to the conditions of confinement; thus provide increased dignity for the EMCFW population:

- i. Several items are now readily available, free of charge, for specific women's needs including: tampons, pajamas instead of night gowns, yogurt (for probiotic feminine health), and properly fitting undergarments for larger women.
- ii. Visiting hours have been expanded to three (3) hours to extend the time for the mothers to interact with their children.
- iii. A child friendly area within the general population visit areas was established to foster positive interaction between parent and children.
- iv. Based on the input from the offenders at EMCFW, a wellness presentation by medical staff was presented to the women on October 26, 2018. It explained how to care for your body physically, emotionally and medically.
- v. NJDOC executive staff worked with the affected unions to facilitate gender restricting 18 posts at EMCFW on minimum housing units in minimum compounds.
- vi. The EMCFW Board of Trustees was established, which was previously defunct. The Board, who consists of a former judge, medical doctor and professors, will provide their expertise and recommendations to continue to improve conditions for the women at EMCFW. These recommendations have/will be reviewed and implemented through the SAFE Task Force. These include:
 - 1. Enhancing educational, therapeutic and vocational opportunities.
 - 2. Aesthetic improvements: painting/cleaning/repairing.
- vii. Gender responsiveness and trauma informed care training for clinical staff was facilitated by Rutgers University.

- viii. Clinical Staff created a program for women victims of sexual assault/abuse. This program, #MeToo, is now open for any women offender's participation.
- ix. In February 2018, the National Institute of Corrections conducted a supervisory training on "Gender Responsiveness and Trauma Informed Practices". However, the committee recommended an expanded audience. This training module was then modified and designed to be presented to other custody and civilian staff within EMCFW, including our Central Transportation Unit and Special Operations Group that frequently service the EMCFW population.
- x. A reentry and employment fair was held at EMCFW on June 13, 2019. All inmates in attendance were federally bonded for \$50,000. Small business owners, Amazon, Macy's and Sansone were on hand to assist with employment opportunities. Please note, one (1) woman received a job at Sansone in the sales department.
- xi. On August 15, 2019 an outdoor playground was opened at EMCFW to further facilitate positive interactions between mother and child during visit periods.
- xii. The NJDOC established a unit to be trained by the Department of Labor in employment preparation. Unit staff travel to eight (8) pilot prisons, including EMCFW, to provide assistance in applying for jobs while incarcerated, with the goal of leaving state prison with a promise of employment.
- xiii. Thirty (30) staff members were trained in March 2019 on creating gender responsive policies and practices in the correctional facility. The training was facilitated by the National Institute of Corrections (NIC).
- xiv. NIC continues to offer input by participating via phone conference on the SAFE Task Force meetings.
- xv. Approximately sixty (60) NJDOC staff members were trained at the NJDOC conference in early spring 2019; which included a gender-responsiveness module.
- xvi. Our Chief of the Special Investigations Division has met with the Hunterdon County Prosecutors Office to enhance their working relationship.

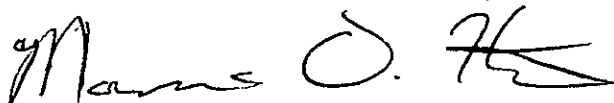
c. How can we quantify those accomplishments and results?

- i. At EMCFW, over 600 inmates received updated, face-to-face PREA training, booklets wellness training and additional resources.
- ii. Over 150 employees were provided gender responsiveness training.
- iii. Eighteen (18) new posts were gender restricted within EMCFW.
- iv. Seven (7) new members were appointed to the EMCFW Board of Trustees.
- v. In addition to the cameras already installed, 300 new cameras are set to be installed.

- d. **Going forward, what is the committee's priorities for 2019 and 2020?**
- i. Improvement of the security and entrance protocols at EMCFW.
 1. 10 additional metal detectors have been received by EMCFW to enhance safety, security and accountability. Installation is forthcoming.
 2. Increase of cameras in areas where blind spots are identified.
 - a. Funding has been established for the addition of over 300 cameras at EMCF. Next phase of implementation has taken place.
 3. Additional posts will be identified for the next wave of gender restriction.
 - ii. Survey results of custody and civilian staff to ascertain their input on improvement ideas for EMCFW are currently being analyzed.
 - iii. An additional Major, the highest ranking custody staff position, will be placed on second shift to offer additional oversight. Two Majors will continue to be assigned to first shift.
 - iv. The committee members are currently reviewing staff and inmate discipline history and sanctions, as a means to increase staff and inmate accountability. The report will be forthcoming to supply recommendations for modifications and additions to current policies/practices.
 - v. A new position, Women's Liaison from the Office of Victim Services, will be established at EMCFW.
 1. The women's liaison will be providing a women's trauma program.
 2. The liaison will be evaluating current policies, procedures and programs to ensure that gender responsivity is being incorporated.
 3. The liaison will be recommending new programs and policies to the committee.
 - vi. Improvements in the intake medical process.
 1. NJDOC Managing Physician and Director of Psychiatry will be reviewing practices and policies to create gender responsive and trauma informed environment.

In conclusion, this gender responsive and trauma informed environment at EMCFW will continue to evolve and adapt to the changing prison population. That progress will be monitored by the SAFE Task Force and our recommendations will reflect this ever-changing, complex environment.

Sincerely,



Marcus O. Hicks, Esq.
Acting Commissioner

People's Organization for Progress
P.O. Box 22505
Newark, N. J. 07101
(973) 801-0001



To: The Senate Law and Public Safety Committee
From: New Jersey People's Organization for Progress
Chair Lawrence Hamm (973-801-0001)
Prison Committee, Jean Ross, Esq. (609-924-6508)
Date: May 12, 2020
Re: Hearing on SJR 79: Sexual Abuse of Female Inmates at the Edna Mahan
Correctional facility

The People's Organization for Progress is an independent, Newark-based, human, and civil rights organization. We work with like-minded groups for the improvement of conditions in our communities, and for racial, social, political, and economic justice. The majority of our members are people of color, living in urban areas of north Jersey, in communities severely impacted by the criminal justice system and the phenomenon of mass incarceration. Jean Ross is a pro bono attorney providing administrative advocacy and representation for people in NJ state prisons, with a strong background in mental health law, acquired through long years working in the mental health system.

The People's Organization for Progress is most appreciative of the attention of the Senate Law and Public Safety Committee to the problem of the abuse of women at the Edna Mahan Correctional Facility (EMCF). We also wish to convey the strong appreciation expressed by prisoners at EMCF for the Department of Justice investigation conducted in 2019.

Good Morning. I am going to speak very briefly, because I have too much to say, so I am enclosing extensive testimony and recommendations that the People's Organization for Progress (POP) provided to this committee two years ago, which addressed essentially the same issues that brought us here today. I suggest that most but perhaps not all of the problems that we raised at that time were observed during the recent Department of Justice investigation at EMCF, and that the DOJ recommendations were not at all far from our own. Therefore, I will leave you with our 2018 testimony, in the hopes that its more detailed provisions will be carefully considered by whatever Commission takes up the challenges presented by the present attention to EMCF. As you know, women are usually not afforded sufficient attention in the largely male prison systems, so I think it would be desirable to focus this Bill entirely on the women, under the circumstances described in the Bill and in the light of the important and prestigious DOJ report.

With respect to SJR 79, I differ slightly from the comments, but not the factual premises of my colleague, Bonnie Kerness, regarding the scope of a Commission inquiry. I suggest that the proposed Bill is unclear with respect to whether its focus is meant to be on Edna Mahan or on broader structural and cultural problems throughout all of the state's correctional facilities that impact on the women's prison. Moreover, I believe that a meaningful effort to address those larger issues, or even the narrower presenting ones, can be informed by, but should not be premised solely on the present set of identified challenges.

Therefore, I would recommend that this Bill continue to focus attention on Edna Mahan and the women, but assign a separate Commission the daunting task of mining this effort for the serious structural issues it reveals that affect all of the prisons – each of which requires more consideration than we are realistically likely to provide in a single piece of legislation. By way of example, please consider our 2018 analysis and suggestions regarding the need for transparency, accountability, due process and "law and order" in the prisons, and the necessity of independent, community-based prison system oversight, the creation of a strong prison system advocacy division in a resurrected Public Advocate, and family focused rehabilitation in the "correctional" system.

This is an intimidating prescription, but it is surely worth the effort - one with which we would be interested in participating. On an easier level, I am attaching just a few short suggestions about the text of SJC 79.

Thank you again, for your attention to the women.
Jean Ross, Esq.

127x

ATTACHMENT

Questions for a Commission

1. Why did the PREA audits not identify problems the DOJ found at Edna Mahan?
2. What changes need to be made in administrative and supervisory policies and practices at EMCF, to prevent a repetition of apparently intractable serious and illegal problems?
3. Are there supervisors and Administrators currently working at EMCF or any of the prisons, who should not be maintained in such positions?
4. What changes need to be made in the DOC's Special Investigation Division, to significantly improve its "investigations" of prison issues?

Some specific proposed amendments:

1. (Whereas Clause and Section 3b(4)) Prisoners need to be protected from retaliation not just from an "affected" employee, but also from that employee's colleagues and supervisors.
2. Section 1 (composition of the Commission)
 - a. Add a mental health representative from DMHAS and/or DMHA;
 - b. If the Bill is intended to cover the men's prisons (not recommended), then there should be a male former prisoner on the Commission;
3. Section 2b: Public hearings should be specifically authorized to meet at correctional facilities;
4. If the Bill is intended to cover problems at the county jails:
 - a. Section 1: The Commission should include an appropriate representative from the NJCWA;
 - a. Section 2c: The Commission should be able to solicit testimony from people associated with the county correctional facilities;
 - b. Section 3b: should refer to whatever correctional facilities are intended to be covered by the Bill;
5. Section 3 (In general): these provisions should be broadened to address the facilities and issues within the scope of the Bill.

People's Organization For
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To: The Senate Law and Public Safety Committee
From: New Jersey People's Organization for Progress
Chair Lawrence Hamm (973-801-0001)
Jean Ross, Esq. (609-924-6508)
Date: January 4, 2018 - (Rescheduled for February 22, 2018)
Re: Hearing on Sexual Abuse of Female Inmates at the Edna Mahan
Correctional facility

The People's Organization for Progress is an independent, Newark-based, human and civil rights organization. We work with like-minded groups for the improvement of conditions in our communities, and for racial, social, political and economic justice. The majority of our members are people of color, living in urban areas of north Jersey, in communities severely impacted by the criminal justice system and the phenomenon of mass incarceration. Therefore, we work with many advocacy and grassroots organizations, such as the American Friends Service Committee. Jean Ross is a pro bono attorney providing administrative advocacy and representation for people in NJ state prisons, with a strong background in mental health law, acquired through long years working in the mental health system.

The People's Organization for Progress is most appreciative of the attention of the Senate Law and Public Safety Committee to the sexual abuse of women at the Edna Mahan Correctional Facility. (EMCF).

Table of Contents

1. Introduction and the Bottom Line: Priority Recommendations
2. Appendices: Broadening the Lens, The Context: Prisons, Prisoners, Woman, Inattention and Undue Deference
3. Recommendations

Introduction

We do not need to introduce you to the issues, presently so prominent in the media, about the pervasive sexual abuse of women, in contexts of power imbalances. The vulnerability of women, as relatively less powerful actors in so many venues, is exacerbated in historically male dominated institutions, such as our prisons. This is true even for prisons, like EMCF, that confine only women, since the prison culture was created and maintained by the policies and practices of historically male leaders and bureaucracies.

Therefore, it should not be surprising that in order to meaningfully address the problem of sexual abuse at EMCF, it is essential to look closely at the major characteristics of the context in which abuse occurs, the prisons, as well as the how the special vulnerabilities of women in society affect their experiences in prison. Such an approach requires that we use a wider lens to encompass issues of structural justice, institutional responsibilities in a democracy, and empowerment as a component of rehabilitation, rather than just focusing on specific policies and practices related to sexual abuse.

Because of this imperative, we base our recommendations on the general propositions, summarized in the Appendices below. Many of these were discussed and prepared during the extensive community-based Counting the Costs legislative hearings convened by then Assembly Majority Leader Bonnie Watson Coleman in 2009-10. We suggest that the propositions and recommendations should be only the start of a conversation among all stakeholders and continued action by the Legislature.

The Bottom Line: Summary of Priority Recommendations

1. **Increasing transparency and oversight in the prisons:**
 - a. Establish a system for the independent community-based oversight of the prison system, supplemented by prison health services oversight by the Department of Health and Senior Services;
 - b. Revive the Department of the Public Advocate, with authority to conduct advocacy on behalf of individual and classes of prisoners, and enforce the laws governing the DOC, through negotiation, recourse to the Governor, and judicial action; transfer the office of the Corrections Ombudsman to this new Department;
 - c. Strengthen the enforcement of APA publication laws, by the Department of Corrections, and require Department "internal management documents" to be publicly available;
 - d. Require information about prisoner operations and internal "contested cases" to be systematically gathered, reported to, and tracked by the highest level of the Department.
 - e. Strengthen the Department's monitoring of the county jails and enforcement of (enhanced) state regulations of the jails.
 - f. Require the Department to foster communications and relationships between prison and community groups.
 - g. Require education for workers and prisoners on issues that will address racism, misogyny, classism, and the discrimination that is prohibited by New Jersey law.
2. **Focusing attention on women and families**
 - a. Create the position of Assistant Commissioner for Women and Families, within the DOC;
 - b. Require the development of a statewide DOC plan for women prisoners, developed in cooperation with the Division of Women, women in prison, and community organizations, to include plans for oversight, diversion, placement, rehabilitation, staff training, preparation for reentry, and a Women's Council within the prison;
 - c. Require demonstrated progress towards the proportional inclusion of women among prison and state level staff and administration;
 - d. Require the Department to enact family - friendly regulations, designed to facilitate increased communication, contact, and healing, between prisoners and their families.
3. **Modeling Justice: accountability, due process, and bringing law and order in the prisons**
 - a. Enact a Bill of Rights for people in prison, incorporating international human rights norms;
 - b. Enhance due process in all prison proceedings in which prisoner claims or grievances are decided, and in all proceedings which impact on liberty interests;
 - c. Remove the exemption of the DOC from "contested case" reviews by the Office of Administrative Law;
 - d. Require the DOC to track and address patterns of prisoner grievances, in order to identify problematic institutions, units, shifts, services and employees, and strengthen monitoring of responses to prisoner grievances;
 - e. Enact and enforce strict penalties for staff retaliation against prisoners; require referrals to county prosecutors, for their independent investigation and prosecution, when there is reason to believe that prison staff have broken the law;
 - f. Require the Department to terminate exploitative contracts with private agencies.
4. **Improving the protection of life, health and safety**
 - a. Adopt a statutory zero tolerance and reporting policy for abuse of prisoners, as in the psychiatric hospitals (See, N.J.S.A. 4-15 et seq.)
 - b. Require the Commissioner to monitor, track and respond "unusual incidents";
 - c. For the significant population of prisoners with mental illness:
 - i. adopt a modified Patients' Bill of Rights (N.J.S.A. 30:4-23.2)
 - ii. authorize and require the Division of Mental Health and Guardianship Advocacy to provide protection and advocacy services to prisoners;
 - iii. Facilitate the appropriate psychiatric hospitalization of prisoners with serious mental illness, using community Screening Services to screen for commitment.
5. **Changing the Culture**

In general, the culture of an agency or institution is set by its leadership and its rules. See the suggestions for beginning the conversation about culture change, below.

APPENDICES

The Approach: Broadening the Lens

Because of the historical pattern of inattention to prison operations by all branches of government, women in the New Jersey prisons will continue to be subject to sexual and other forms of abuse, unless there is meaningful systems change initiated and/or participated in by independent forces in the community¹ Moreover, the structural dynamics of the hidden, authoritarian and toxic prison system described in the Appendix, below, will frustrate piecemeal attempts to resolve such problems. Therefore, decisive and coordinated community action must be taken to enlist each branch of government in bringing safety to those in state custody, and "law and order," and justice to the prisons.

Specifically, we suggest that a response to the problem of sexual abuse of women at EMCF requires attention to the following:

1. Increasing transparency and independent oversight of the prison system;
2. Modeling justice in prison operations; improving accountability; employing due process, and bringing "law and order" into prison operations;
3. Giving proper attention to women in prison;
4. Improving the mechanisms for the protection of life, health, and safety in the prisons; and
5. Changing the cultural environment of the prisons; partnering with the community

Legislative parameters are required to ensure regulatory reform in each of these areas.

While this list may appear daunting, it reflects the persistence of unacceptable conditions which are long overdue for change. But it also carries the benefit of using the specific horrifying problem of sexual abuse to promote remedies which will improve the entire prison system, and further the statutory missions of that system, and the cause of justice.

We do not have time here to discuss the details of each of these broad issues and recommendations, so the following recommendations are meant to be illustrative rather than comprehensive; nor do we expect any Legislator or Committee to initiate a comprehensive response. Community groups, academic experts, state agency staff and the people and families who have been subject to the prison system must work in partnership with government to make meaningful changes - building on the work of the BWC hearings.

We are committed, with our allies, to pursuing such change. We look forward to working with the Legislature to move forward.

¹ We note that the Department of Corrections (DOC or Department) has adopted and revised agency policies and Internal Management Procedures addressing sexual abuse issues since at least 2008. But none of these informal directives has been enshrined in formal regulations having the force of law and available to prisoners and the public. Although there is information about PREA available on the DOC website, such information may not be available to prisoners, on the web or in their handbooks. One might be excused from inferring that these observations reflect a lack of initiative and prioritization of sexual abuse issues by the DOC administration

THE CONTEXT "CORRECTIONAL FACILITIES - JAILS AND PRISONS" ²

The Institutions³

1. Prisons which confine people in state custody are closed (total) institutions,⁴ which historically resist inquiry, challenge and disclosure of information;
2. They discourage outside access and "interference";
3. They prioritize security and control over all other interests - isolating prisoners, authorizing staff use of weapons and mass staff assaults, and governing all movement and all aspects of prisoners' lives;
4. Prison culture emphasizes obedience, and utilizes humiliation, threats and assaults against persons and property, as well as limitations on privileges, to enforce compliance with orders of militarily-titled custody staff (Sgt., Lt., Major);
5. Staff rule violations and abuse are routinely covered up, by fabricating charges against prisoner victims, transferring witnesses to abuse or other violations, and threatening or engaging in physical retaliation;
6. Even honest and concerned staff are discouraged from reporting observed abuse;
7. Prison operations (policies and practices) are affected by the nature of the population sent to them by the courts - overwhelmingly people who are oppressed, stigmatized and powerless - people of color, people with mental illness, people without wealth, power or influence, and women).

The prison population

8. The prison population, in this era of "mass incarceration," consists overwhelmingly of people from classes of society that have historically been powerless, vulnerable, and oppressed in the wider society, without the individual strength or experience to effectively resist improper authority, such as:
 - a. people of color: In 2017, the adult prison population in NJ was 77% Black and Hispanic;
 - b. women: In 2017 there were only 646 adult women (less than 5%), in a total adult male-centered prison population of 13,972;
 - c. people with mental illness; (Citations available on request.)
 - d. people of low income and without wealth.

Such people are likely to be particularly vulnerable to the authoritarian culture of the prisons

Women

9. Women in general, and many women subject to imprisonment in particular, are especially vulnerable to and fearful of authoritarian power, because of their experiences in the larger society;
10. Group solidarity, which can assist people in the community to resist improper authority, is prohibited and punished;
11. Advocacy and social service resources and support are inadequate to counter the militaristic and punitive culture of the prisons and protect the safety and rights of women (and other prisoners);
12. By history, and in their design and operations, prisons have not acknowledged or accounted for, women's legitimate needs, roles, and responsibilities in their various generational families.⁵ Family contacts, support and advocacy are hampered, rather than encouraged, causing great suffering among women prisoners, weakening family ties and harming children whose mothers are incarcerated.

Government inattention, undue public deference to prison authority, and economic interests promoting inertia

13. Community law enforcement entities defer to prison authorities in investigating and

² This discussion is intended to reference both state prisons and the state regulated county jails. However, because of the different political and legal status of these facilities, legislative and regulatory remedies will need to be adjusted.

³ As a threshold matter, we note that although the Department of Corrections (DOC or Department) has adopted and revised agency policies and Internal Management Procedures addressing sexual abuse issues since at least 2008. But none of these informal directives have been enshrined in formal regulations having the force of law and available to prisoners and the public. Although there is information about PREA available on the DOC website, such information may not be available to prisoners, on the web or in their handbooks. One might be excused from inferring that this reflects a lack of initiative and prioritization of such issues by the DOC administration

⁴ Goffman 1968

⁵ Although we do not have the time to summarize the implications of this significant aspect of their prison experience, I am enclosing excerpts from a piece developed for the Bonnie Watson Coleman Counting the Costs hearings.

responding to criminal conduct on the part of prison staff (such as aggravated assault and murder; the widespread thefts of prisoners' property are rarely investigated.)

14. Courts give deference to decisions of prison authorities, even when decisions are made below the level and attention of the Commissioner of Corrections;
15. The highest level State executive authorities give little attention to prison operations and generally defer to the Commissioner, absent events that reach public, media or legislative attention;
16. Similarly for legislative attention to prison problems. These hearings, for example were not triggered by routine internal administrative reporting that should have alerted any branch of government to the hidden problems in our prisons;
17. The federal Department of Justice has not had the resources to investigate and respond to criminal offenses and violations of civil rights in the prisons.
18. Increasing private profit-making corporations providing "correctional" services discourage or bar criticism, support the status quo in the prisons, and resist changes which serve the interests of prisoners, public workers and the community.

Recommendations

1. **Increasing Transparency and Oversight:**
 - a. Establish a system for the independent community-based oversight of the prison system, supplemented by prison health services oversight,⁶ by the Department of Health and Senior Services; draft legislation available
 - b. Revive the Department of the Public Advocate, with authority to conduct advocacy on behalf of individual and classes of prisoners, and enforce the laws governing the DOC, through negotiation, recourse to the Governor, and judicial action; transfer the office of the Corrections Ombudsman to this new Department;
 - c. Strengthen the enforcement of APA publication laws, by the Department of Corrections, and require Department "internal management documents" to be publicly available;
 - d. Require information about prisoner operations and internal "contested cases" to be systematically gathered, reported to, and tracked by the highest level of the Department.⁷
 - e. Strengthen the Department's monitoring of the county jails and enforcement of (enhanced) state regulations of the jails.
 - f. Require the Department to terminate exploitative contracts with private agencies.
 - g. Require the Department to foster communications and relationships between prison and community groups.

2. **Focusing attention on Women and Families**
 - a. Create the position of Assistant Commissioner for Women and Families, within the DOC;
 - b. Require the development of a statewide plan for women, prisoners developed in cooperation with the Division of Women, women in prison, and community organizations, to include plans for oversight, diversion, placement, rehabilitation, staff training, and preparation for reentry, and a Women's Council within the prison;
 - c. Require demonstrated progress towards the proportional inclusion of women among prison and state level staff;
 - d. Require the Department to enact family - friendly regulations, designed to facilitate increased communication, contact, and healing, between prisoners and their families.

3. **Modeling Justice: accountability, due process, and law and order in the prisons**
 - a. Enact a Bill of Rights for people in prison, incorporating international human rights norms;
 - b. Enhance due process in all prison proceedings in which prisoner claims or grievances are decided, and in all proceedings which impact on liberty interests, such as the institutional remedy system, disciplinary appeal ("courtline") proceedings, classification decisions, and transfers to conditions of increased security;
 - c. Require that the Commissioner make final agency decisions in grievance and disciplinary matters;
 - d. Require the DOC to track and address patterns of prisoner grievances, in order to identify problematic institutions, units, shifts, services and employees, and strengthen monitoring of responses to prisoner grievances;
 - e. Remove the exemption of the DOC from "contested case" reviews by the Office of Administrative Law;
 - f. Enact strict penalties for staff retaliation against prisoners; r require referrals to county prosecutors, for their independent investigation and prosecution, when there is reason to believe that prison staff have broken the law;⁸

⁶ including mental and dental health, senior health, and substance abuse services

⁷ e.g. by authorizing Final Agency Decisions to be made by the Commissioner, rather than individual prison administrators or their designees (Accountability must be prioritized over defensive strategies that attempt to insulate Department authorities from legal responsibility.)

⁸ as is the case for prisoner law violations

134x

- g. Enact strict requirements for Internal Affairs (SID) investigations; require notice to complainants and all parties of investigation results;
 - h. provide meaningful access to the courts, including reasonable access to standard legal materials for all prisoners and meaningful access to experienced properly credentialed paralegal advocates, including prisoners and community volunteers;
 - i. provide opportunities for prisoners to act responsibly and constructively within the prison community by requiring the establishment of democratically chosen prisoner councils with access to prison administrators, the Department, the Public Advocate, the Inspector General and the Community Boards of Visitors;
 - j. require vigorous enforcement and independent external oversight of compliance with laws and regulations governing searches and the disposition of prisoners' property.
 - k. Require education for workers and prisoners on issues that will address racism, misogyny, classism, and the discrimination that is prohibited by New Jersey law.
4. **Improving protection of life, health and safety**
- a. Adopt a statutory zero tolerance and reporting policy for abuse of prisoners, as in the psychiatric hospitals (See, N.J.S.A. 4-15 et seq.)
 - b. Require monitoring and public reporting of the use of solitary confinement, at the institutional and Department levels
 - c. Require the Department to gather information from institutional grievance reports to track complaints and address patterns of institutional problems;
 - d. Similarly, monitor "unusual incidents," such as suicides and other prisoner deaths, SID investigations, medical "outbreaks," etc., to track patterns of institutional problems;
 - e. For the significant population of prisoners with mental illness:
 - i. adopt a modified Patients' Bill of Rights (N.J.S.A. 30:4-23.2) to apply to persons with serious mental illness, developmental disabilities and traumatic brain injuries in the prisons;
 - ii. authorize and require the Division of Mental Health and Guardianship Advocacy to provide protection and advocacy services to those populations in the prison;
 - iii. Facilitate the appropriate psychiatric hospitalization of prisoners with serious mental illness, using community screening services to screen for commitment.
5. **Changing the culture:** The culture of an agency is set by its leadership and its rules. Our challenge is to transform the present prison culture so that it will provide a foundation for supporting the respectful, just, humane and legal conduct that we wish offenders in prison to adopt. To create such a foundation, we suggest that it is necessary to adopt a broad approach of "modeling justice" within the prisons.

Rules for prisoners and staff need to be in place to establish boundaries for the conduct of both. And, as in the community, there need to be penalties for violations of those rules. But we do not recommend adopting the strategy of relying on punitive measures to change either behavior or attitudes and values.

Some components of an alternative approach are intimated by the recommendations in the Modeling Justice section, above, but these only begin the conversation. The following very preliminary list is not prioritized.

- a. Rules for prisoners and staff must be necessary and reasonable for promoting the purposes of imprisonment and the well-being of the prison community;
- b. Enforcement of rules must be fair, and must be perceived as fair; This requires, at least:
 - i. the adoption of additional elements of due process in all decision-making that affects dispute resolution and restrictions on prisoners' liberty;
 - ii. staff accountability for rule violations;
 - iii. fair staff enforcement of rules;
 - iv. severe limitations on staff use of physical force;
- c. Staff conduct and language towards prisoners must model the conduct and language we would have prisoners adopt in the prison and the community. This requires, in turn, that workers receive comparable treatment by supervisors and administration;
- d. Creative educational and clinical strategies must be employed to inspire respectful and humane positive conduct and positive relationships between prisoners and staff, while access to negative (violent, misogynist, racist) television and other media should be barred.