

PREA Audit: Subpart A DHS Immigration Detention Facilities Audit Report



Homeland Security

AUDITOR INFORMATION

Name of auditor:	Elisabeth Copeland	Organization:	Creative Corrections, LLC
Email: (b) (6), (b) (7)(C)	[REDACTED]	Telephone number:	785-294-(b) (6), (b) (7)(C)

AGENCY INFORMATION

Name of agency:	U.S. Immigration and Customs Enforcement (ICE)
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FIELD OFFICE INFORMATION

Name of Field Office:	El Paso Field Office
Field Office Director:	William P. Joyce
ERO PREA Field Coordinator:	(b) (6), (b) (7)(C)
Field Office HQ physical address:	11541 Montana Avenue, Suite E, El Paso, TX 79936
Mailing address: (if different from above)	Same as above

INFORMATION ABOUT THE FACILITY BEING AUDITED

Basic Information About the Facility			
Name of facility:	Otero County Processing Center		
Physical address:	26 McGregor Range Road, Chaparral, NM 88081		
Mailing address: (if different from above)	Same as above		
Telephone number:	575-824-4143		
Facility type:	DIGSA		
Facility Leadership			
Name of Official/Officer in Charge:	H.R. Terry	Title:	Warden
Email (b) (6), (b) (7)(C)		Telephone number:	575-824-(b) (6), (b) (7)(C)
Facility PSA Compliance Manager			
Name of PSA Compliance Manager:	(b) (6), (b) (7)(C)	Title:	Prevention of Sexual Assault (PSA) Compliance Manger
Email (b) (6), (b) (7)(C)		Telephone number:	575-824-(b) (6), (b) (7)(C)

AUDIT FINDINGS

NARRATIVE OF AUDIT PROCESS AND DESCRIPTION OF FACILITY CHARACTERISTICS:

Directions: Discuss the audit process to include the date of the audit, names of all individuals in attendance, audit methodology, description of the sampling of staff and detainees interviewed, description of the areas of the facility toured, and a summary of facility characteristics.

The Prison Rape Elimination Act (PREA) on-site audit of the Otero County Processing Center (OCPC) in Chaparral, New Mexico was conducted on April 3 -5, 2018, by Elisabeth Copeland, Lead Auditor, and (b) (6), (b) (7)(C) Auditor, both are PREA Auditors contracted through Creative Corrections, LLC. This will be the first PREA audit for OCPC. OCPC is an Immigration and Customs Enforcement (ICE) contract detention facility, operated by Management & Training Corporation with a designed capacity of 1000 beds. The detention facility houses adult male detainees to hold, process, and prepare individuals pending the results of judicial removal review. The purpose of the audit was to determine compliance with The Department of Homeland Security (DHS) PREA standards.

The point of contact established for OCPC was through the External Reviews and Analysis Unit (ERAU) Team Lead (b) (6), (b) (7)(C) provided the completed Pre-Audit Questionnaire (PAQ) along with supporting documentation approximately 10 days prior to the on-site portion of the audit. Pre-audit preparation by the Auditor included a thorough review of all documentation and materials submitted by the facility along with the date included on the completed PAQ. The documentation reviewed included agency policies with corresponding attachments, procedures, forms, training records and curriculum, facility layouts and other PREA related materials that were provided to demonstrate compliance with the PREA standards. The documentation submitted, to include the questionnaire, was well organized and provided a picture of PREA implementation at OCPC.

An entry-briefing, led by the ERAU Team Lead (b) (6), (b) (7)(C) was conducted shortly after arrival at the facility on April 3, 2018, day one of the on-site review. Those in attendance at the entry-briefing were as follows:

(b) (6), (b) (7)(C)	Deputy Field Office Director (DFOD)
(b) (6), (b) (7)(C)	Assistant Field Office Director (AFOD)
(b) (6), (b) (7)(C)	Supervisory Detention and Deportation Officer(SDDO)/Enforcement and Removal Operations (ERO) PREA Field Coordinator
H. R. Terry	Warden, OCPC
(b) (6), (b) (7)(C)	Deputy Warden, OCPC
(b) (6), (b) (7)(C)	Prevention of Sexual Assault (PSA) Compliance Manager, OCPC
(b) (6), (b) (7)(C)	Grievance Lieutenant/Back-up PSA
(b) (6), (b) (7)(C)	Captain/Chief of Security

Once the introductions were given, the auditors introduced themselves and provided an overview of the audit process.

Immediately following the entry-briefing, the Warden led the Auditors, the ERAU Team Lead and small group of OCPC staff on a tour of the facility. All areas of the facility were toured to include, intake, multi-purpose rooms, barbershop, library/law library, general population housing, Special Housing Unit (SHU), kitchen, dining, medical, laundry, courtroom, recreation yards and visitation. OCPC has 175 security staff (129 male and 45 female) and 27 medical and mental health staff. The facility has three buildings which encompasses 20 open bay/dorm style housing units. Each housing unit contains 50 beds (25 bunkbeds), day room and shower/bathroom area. The shower/bathroom area in the housing unit is separated by a four-foot wall (approximate) from the day room. The open shower area is then separated by a six-foot wall (approximate) from the bathroom area. Both showers and bathroom area are open and not separated or covered by a curtain. The SHU contains 38 double bunked cells and 10 single bunk cells. Each cell contains one toilet in open view. Showers are conducted in a separate area and are done one at a time. The shower area contains a curtain for preventing cross-gender viewing. Medical contains two holding rooms, separated by classification, and 13 beds.

During the tour of all housing units, cross-gender announcements were made over the intercom by the Video Monitoring Officer and verbally by the Dorm Officer. These announcements were made in English and consisted of "female onsite."

The housing units contained audit notices, PREA posters highlighting reporting methods and sexual abuse assault and zero tolerance, as well as having notices of possible phone monitoring by all phones.

Over the preceding year, the average detainee population was 771 and the average stay was 52 days per detainee. The detainee count on the first day of the on-site review was 825. The top three nationalities of the detainee population are Mexican, Guatemalan, and Indian. The Auditor received zero letters of correspondence from detainees at OCPC.

Immediately following the tour, the Auditors began interviewing both staff and detainees. The detainee interviews were conducted in the courtroom area of the facility in a room that had a window and allowed for confidentiality. The room also contained a phone to contact interpretive services as needed. Staff interviews were conducted in an empty office that also allowed for confidentiality. Interview samplings for staff and detainees were selected randomly by the Auditors from OCPC provided facility staff and detainee rosters. The detainee random selection included selections from each housing unit. The staff random selection included selections from each shift. The Auditors remained at the facility beyond normal working hours to interview additional facility staff. The Auditors interviewed a total of 30 detainees, which included 28 random and two targeted limited English proficient (LEP) detainees. No other targeted detainees were on-site to be interviewed. Multiple administrative staff verified this fact. This included no detainees who filed a grievance related to sexual abuse, who had reported sexual victimization during risk screening, reported sexual abuse, had a disability, a juvenile, detainees who identified as gay, bisexual, lesbian, transgender or intersex. It should be noted that additional five detainees were selected for interview; however, they refused to participate. The interpretive service used was Language Services Associates and the language requested for interpretation was Spanish. In addition, the Auditors interviewed 20 staff including 10 designated staff and 10 random staff representing all shifts.

OCPC reported one allegation of sexual abuse that occurred during the review period. At the time of the onsite portion of this audit, this case still remains open and a finding has not been determined. Due to this case remaining open, the Audit team was not allowed to review it. The Audit team was only allowed to view closed cases. As no cases occurred in 2016, the Auditor reviewed two closed cases from 2015.

SUMMARY OF AUDIT FINDINGS:

Directions: Discuss audit findings to include a summary statement of overall findings and the number of provisions which the facility has achieved compliance at each level: Exceeds Standard, Meets Standard, and Does Not Meet Standard.

On Thursday, April 5, 2018, (day three), an exit-briefing was conducted at approximately 3 p.m. local time. The exit-briefing was opened by ERAU Team Lead (b) (6), (b) (7)(C) and then turned over to the Auditors for an overview of the on-site findings and a close-out summary. Those in attendance for the exit-briefing were as follows:

(b) (6), (b) (7)(C)	DFOD
(b) (6), (b) (7)(C)	AFOD
(b) (6), (b) (7)(C)	SDDO/ERO PREA Field Coordinator
H. R. Terry	Warden, OCPC
(b) (6), (b) (7)(C)	Deputy Warden, OCPC
(b) (6), (b) (7)(C)	PSA Compliance Manager, OCPC
(b) (6), (b) (7)(C)	Grievance Lieutenant/Back-up PSA
(b) (6), (b) (7)(C)	Captain/Chief of Security
(b) (6), (b) (7)(C)	Classification Manger

Via Conference Call:

(b) (6), (b) (7)(C)	Senior Director of Corrections, Management & Training Corporations (MTC)
(b) (6), (b) (7)(C)	Director of Corrections, MTC
(b) (6), (b) (7)(C)	Vice President of Corrections, MTC

During the exit-briefing, the Auditors discussed their observations made during the on-site review. The Auditors observed that staff were visible and active in the direct supervision of the detainees. Staff also were knowledgeable of the coordinated response and referred to the Sexual Assault Response cards attached to their uniforms during the interview process. OCPC has a high number of staff who are bilingual and had access to great oral interpretive services. It should also be noted that OCPC has access to written translation services. Lionbridge Technologies is the interpretive service used by OCPC. The detainees knew their rights and how to report sexual abuse. The Auditors advised the group that concerns were discovered in the risk assessment process and how detainees were housed based on this assessment. The group was advised that more information will need to be reviewed before a level of compliance can be determined. Several recommendations were made to OCPC including adding shower curtains to the open showers to increase detainee privacy, updating policies to reflect the practice at the facility, strengthening the knowledge of victim advocate services for detainees and a reminder that sexual abuse incident reviews need to be conducted within 30 days of the conclusion of the investigation.

Of the 41 standards reviewed, the Auditor found that OCPC exceeded 2 standards (115.32 and 115.65), met 30 standards, had 7 standards that do not meet expectations (115.15, 115.16, 115.41, 115.42, 115.43, 116.67 and 115.86), and had 2 standards (115.14 and 115.18) that were non-applicable. As a standard practice while onsite, the Auditor reviews random files to support compliance. While onsite, the Auditor reviewed 14 human resource files for background checks, 14 staff training files for PREA training, 10 detainee files for detainee orientation, 10 detainee files to verify that reassessment of risk had been completed and 2 investigative files closed in 2015. The Auditor reviewed cases from 2015 as OCPC has one open case from 2017 that could not be viewed by the auditors and had no allegations in 2016.

SUMMARY OF AUDIT FINDINGS

Number of standards exceeded:	2
Number of standards met:	30
Number of standards not met:	7
Number of standards N/A:	2

PROVISIONS

Directions: In the notes, the auditor shall include the evidence relied upon in making the compliance or non-compliance determination for each provision of the standard, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet the standard. These recommendations must be included in the Corrective Action Plan Final Determination, accompanied by information on specific corrective actions taken by the facility. Failure to comply with any part of a standard provision shall result in a finding of "Does not meet Standard" for that entire provision, unless that part is specifically designated as Not Applicable. For any provision identified as Not Applicable, provide an explanation for the reasoning. If additional space for notes is needed, please utilize space provided on the last page.

§115.11 – Zero tolerance of sexual abuse; Prevention of Sexual Assault Coordinator.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(c) OCPC policy 2.1.18 Protection for Harm: Sexual Abuse and Assault Prevention and Intervention (SAAPI), dated February 28, 2018 mandates zero tolerance towards all forms of sexual abuse. "Otero County Processing Center is committed to a zero-tolerance standard for sexual violence, sexual misconduct and sexual harassment." This policy also details the facility's approach to preventing, detecting, and responding to such conduct. Management & Training Corporation (MTC), who operates OCPC, also has a policy mandating zero tolerance. MTC policy 903E.02, Ensuring Safe Prisons, states, "MTC is committed to a zero-tolerance standard for sexual violence." This same policy also outlines the procedures and expectations of the facilities this company manages.

(d) OCPC has designated a Prevention of Sexual Assault Compliance Manager (PSA Compliance Manager) who is responsible for overseeing all aspects of the facility's efforts to comply with the zero-tolerance policy (OCPC policy 2.1.18). This designation is supported by a review of the facility's organizational chart. The organizational chart shows the PSA Compliance manager reports directly to the Grievance Lieutenant who reports directly to the Warden. The PSA Compliance Manager indicated through his interview the following, "I oversee the staff's knowledge of PREA by use of the PREA response cards, making sure they take it seriously and make sure policies work for us and are meeting our expectations. I have sufficient time to study and talk to the staff." When asked about his access to the Warden he replied, "I can talk directly to the Warden if needed. He is advised of everything."

§115.13 – Detainee supervision and monitoring.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b) OCPC policy 2.1.2 Protection from Harm: Security and Staff Assignment dated December 4, 2017 ensures the supervision requirements and staffing levels. The auditor reviewed the OCPC staffing analysis and samples of staffing schedules for all shifts, as well as the layout of their video monitoring capabilities which ensures sufficient supervision. OCPC has comprehensive detainee supervision guidelines which are outlined by security post orders that detail the supervision duties for each respective area of the facility. The auditor also reviewed an annual assessment from January 5, 2018 demonstrating compliance with sections (a) and (b).

(c) The review included consideration of each required item in determining adequate levels of supervision. OCPC has had no deviations from the staffing levels.

(d) OCPC policy 2.1.5 Protection from Harm: Patrols and Inspections covers rounds made by supervisors. The Auditor reviewed a sample of log entries where unannounced rounds were made by designated supervisors. The Auditor also reviewed a random sampling of log entries while on site. The interviews of supervisors and staff supported that these unannounced rounds were being made on both day and night shift and that other staff are not alerted when these rounds are being made. OCPC uses an electronic key for supervisors to log their rounds through the facility. This was demonstrated to the Auditor during the audit tour.

OCPC upper-level supervisors are very active and visible throughout the facility. This adds to the strength of direct supervision the facility provides to the detainees.

§115.14 – Juvenile and family detainees.

Outcome: Not Applicable (provide explanation in notes)

Notes:

This standard does not apply to OCPC, as they reported no juveniles are detained at this facility. The interviews and the on-site review supports this report.

§115.15 – Limits to cross-gender viewing and searches.

Outcome: Does not Meet Standard (requires corrective action)

Notes:

(b) OCPC policy 2.3.2, Contraband: Detainee Searches dated December 4, 2017 states, "In accordance with Sexual Abuse and Assault Prevention and Intervention, cross-gender pat down searches of male detainees shall not be conducted unless, after reasonable diligence, staff of the same gender is not available at the time of the pat down search is required or in in exigent circumstances." All 10-random staff interviewed reported only male staff do pat searches on the male detainees.

(c) This subsection is non-applicable as OCPC is an all-male facility.

(d) OCPC policy 2.3.2 states, "...All cross-gender pat down searches shall be documented." In the past 12 months, OCPC reported one cross-gender pat down of a male detainee. The Auditor reviewed the documented incident report of this event and found it met the compliance under this standard. This event occurred in medical and at the request of medical personnel. The female officer completed a pat down search of a male detainee in order to locate a substance that could impact his health.

(e)(f) OCPC policy 2.3.2 states, "Strip searches will be conducted by a member of the same sex. All strip searches will take place where visual privacy is ensured. Searches of body areas covered by bandages or dressings will be conducted by a physician, nurse, or licensed vocational nurse." This same policy states, "Strip searches will be documented in writing to include the reason for the suspicion and the results of the search." In addition, OCPC policy 2.3.2 states, "Body cavity searches will be done in the following manner: The search can only be performed by physician, physician assistant, or nurse. One ranking detention staff member of the same sex may be present for security but should not participate in the search. A written report must document the reasons for the search and the results of the search. The report must be made available to the ICE Contracting Officer Representative (COR)..." All staff interviewed reported that strip searches are not done by security staff and only medical can perform a strip search. Medical staff interviewed reported no strip searches have occurred in the past 12 months. Female staff interviewed also reported they have never been asked to participate in or witness a strip or body cavity search of male detainees.

(g) OCPC 2.1.10, Protection from Harm: Detainee Admission and Reception dated December 4 2017 states, "Each new detainee will undergo a screening with a metal detector, be subject to a pat search, and will have their property and clothing searched and inventoried. New detainees shall be issued facility clothing. The clothing they wear into the facility shall be taken washed before storage if needed. An officer of the same sex must be present in the exchange area which itself offers as much privacy as possible taking into account the security and safety are paramount..." During the tour Auditors observed the intake area where the clothing exchange takes place and found adequate privacy for detainees to change clothes.

OCPC Post Orders for Dorm Officers dated February 28, 2018 states, "Be sensitive to the privacy needs of detainees while ensuring the security of the dorms especially when cross-gender supervision is involved. Attempt to avoid viewing detainees in stages of undress, showering, or when performing bodily functions to extent possible." During the tour of the housing units it was observed that the shower and restroom areas are open and are separated from the day room area by

only a half wall approximately four feet in height. The shower area, consisting of three shower heads, are then separated by the restroom area, consisting of three toilets, by a cement wall approximately six feet in height. When the Auditors stood at the front of the dorm, near the officer's desk, no one could be observed behind the six-foot wall until they stepped out past the wall to dry off. In two separate dorms detainees were showering and the lead Auditor observed them stepping out past the wall to dry off. When viewing the day room areas to view PREA posters and the phones, Auditors were able to see into the shower and restroom area with no obstruction. All security staff interviewed advised that female staff would alter their security checks to avoid viewing detainees in the shower or restroom area. When asked where detainees change clothes for either bed or for the next day, staff reported that detainees change in the shower area. They also reported that if detainees are going to sleep they are to keep their boxers on.

CORRECTIVE ACTION: While Federal Rule states that viewing of detainees while showering and using the restroom incidental to routine checks is not a gateway for abuse in detention, the fact that female staff are altering their paths for security checks is concerning. This also demonstrates that staff are not following their post orders. As noted above, several post orders state the detainees have the right to shower, perform bodily functions, and change clothing while not being viewed by staff of the opposite gender. It is recommended that OCPC install curtains that are clear at the top and bottom and have fabric in the middle to prevent viewing of a person from the neck down to the knees. The installation of these curtains will ensure adequate privacy for detainees to shower, change clothes and use the restroom without female staff viewing them. This will also allow female staff to ensure the safety and security of the dorm without having to altering their paths for security checks; especially when detainees are aware that female staff are doing this.

(b) (6), (b) (7)(C)

(b) (7)(E)

. One Auditor reviewed the monitoring system in the Deputy Warden's office and it was determined the cameras did not cover the shower and restroom areas. Only the four-foot wall could be observed when looking from the day room angle. The Auditors were satisfied that no viewing of genitalia or buttocks could be observed by the (b) (7)(E)

During the tour of the housing units, a "Female Onsite" announcement was made over the intercom by the Video Monitoring Officer, as well as made by the Dorm Officer. This announcement was made in English. When this Auditor asked staff in the housing units how detainees who are hard of hearing or deaf would be told that a female is entering the housing area they could not provide answer. When asked how a detainee would understand the announcement if they could not speak English, the Auditor was told "they know."

RECOMMENDATION: OCPC has a high number of staff who are bilingual (Spanish). It is recommended that Dorm Officers who are bilingual also make the announcement of "Female Onsite" in Spanish. While this will not encompass every language spoken by the detainees, it will reach the largest group of the detainee population at OCPC. It is also recommended that OCPC develop a plan to address detainees in general population who are hard of hearing or deaf so they are also given the opportunity to be notified when female staff enter the living units. In addition, while OCPC has addressed the detainee's right to shower, perform bodily functions, and change clothing without being viewed by staff of the opposite gender in several post orders, this is not addressed in the facility's main sexual abuse prevention policy. It is also recommended that OCPC include this verbiage in their policy 2.1.18 to ensure that it can be easily located by all staff and be covered in any PREA refreshers OCPC will have in the future.

(h) This subsection is non-applicable as OCPC is not a Family Residential Facility.

(i) Interviews of both security and medical staff support that OCPC does not conduct strip searches for the sole purpose of determining detainee's genital characteristics.

(j) The Training Supervisor reports, "All employees are trained in pat search techniques as they may be used in exigent circumstances. I include a video from the PREA Resource Center (PRC) with hands on techniques that cover cross-gender, transgender and intersex pat searches." Security staff interviewed supported they received this training. Auditor reviewed training rosters from January 2018 showing 15 staff members were trained and received certificates.

§115.16 – Accommodating detainees with disabilities and detainees who are limited English proficient.

Outcome: Does not Meet Standard (requires corrective action)

Notes:

(a) OCPC policy 6.2.3 Fair Treatment of Detainees: Disable Detainees dated December 4, 2017, states, "The Otero County Processing Center will ensure that a qualified individual will be assigned to assist with the necessary accommodations for all disabled detainees while they are at the facility." OCPC also uses Lionbridge Technologies, Inc. who has interpretive services for over 200 languages and interpretive services available for detainees who communicate via sign language.

When interviewing intake staff, the Auditor was told that if they had a detainee arrive who could not hear they would contact ICE for an interpreter. While intake forms are provided in both English and Spanish, if it was determined the detainee could not read English or Spanish, intake personnel would read the intake forms to them and ask if they understand the information. Interviews with limited English proficient (LEP) detainees supported this practice of intake personnel accommodating their needs. LEP detainees advised they have translated materials available to them and knew how to report sexual abuse. Intake staff shared that if a detainee spoke a language other than English or Spanish, interpretive services would be used to read intake materials to the detainee. (It should be noted that this same interpretive service can be used to translate written materials in English into written materials in the language spoken by the detainee.)

Intake staff also shared that if a detainee had low vision or was blind, they would read all information to the detainee and check for understanding. This would also occur if the detainee reported they were unable to read. For those detainees who displayed low cognitive behaviors or behaviors that may require psychiatric interference, Intake staff reported they would immediately contact medical staff to assist with the intake process.

OCPC had no disabled detainees in custody during the on-site portion of this audit.

(b)(c) OCPC 2.1.18 states, "If a detainee requests an interpreter, one will be provided to them by way of ICE. At no time will another detainee be used as an interpreter." A majority of the detainees have limited English proficiency (LEP), and OCPC has many staff who can be used as interpreters. OCPC also has an agreement with Language Line Services Inc. to provide interpretive services for any language requested. Intake staff reported the PREA orientation video is provided in English and in Spanish which was confirmed by the auditor through observation

MTC policy 903E.02 states, "For PREA related activities, MTC prohibits the use of inmate interpreters, inmate readers, or other type of inmate assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first-responders duties under 115.64, or the investigation of the inmate's allegations." It should be noted that while this policy specifically uses the term "inmate", MTC has facilities that house inmates and that house detainees. When OCPC specific policy references "inmate" it also refers to "detainee." The interviews with staff supported the practice of this policy. Staff reported they would immediately take the detainee to medical and use interpretive services in that location.

CORRECTIVE ACTION: DHS PREA Standards state, "In matters relating to allegations of sexual abuse, the agency and each facility shall provide in-person or telephonic interpretation services that enable effective, accurate, and impartial interpretation, by someone other than the detainee, unless the detainee expresses a preference for another detainee to provide interpretation and the agency determines that such interpretation is appropriate and consistent with DHS policy ..." MTC policy 903E.02 or OCPC policy 2.1.18 does not address allowing the use of detainee interpreters at the request of the detainee. It is recommended that the missing language from this

standard either be incorporated both policies. Once this language is incorporated into policy, OCPC must notify staff of the changes.

§115.17 – Hiring and promotion decisions.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b) MTC policy 903E.02, Ensuring Safe Prisons, dated August 1, 2017, states, "MTC prohibits hiring and/or promoting staff who have contact with inmates who have engaged in sexual abuse and or sexual harassment." This same policy also states, "In corrections, under PREA, MTC must ask all applicants (including current employees for promotion) who may have direct contact with inmates whether they have engaged in sexual abuse in prison or institutions, and whether they have been convicted of engaging in sexual activity with any person by force, coercion, or the victim did not consent." The interview with the human resources manager supported this policy, "We always ask that question, plus they have to sign a written form. We would not hire or promote anyone who has done this."

(c)(d)(e) OCPC specific policy 7.2.2 Recruitment, Retention and Promotion: Background Checks, dated December 4, 2017 states, "Individuals who are identified and selected for employment with Otero Processing Center, regardless of status, e.g. full-time, part-time, on-call, or temporary, as well as candidates for work study, volunteer and intern positions are required to successfully comply a background check which may include, but not limited to: past employment verification and reference checks and criminal records. The applicant signature on the MCT Application for Employment and Background Verification Disclosure serves as authorization to conduct a background check." In addition, this policy states, "Background checks will be performed based on the relevancy of job-related duties required for a particular position in accordance with applicable state and federal regulations. Employment actions, up to and including termination, will be taken if the background check reveals information not reported or contrary to the information that is self-reported during the hiring process. It is the responsibility of the Human Resources Manager to ensure the appropriate background checks are conducted."

Regarding contractors, MTC policy 903E.02 states, "Contractors having contact with inmates require a background check before enlisting services and every 5 years of continued services in accordance with MTC policy 13.20 Purchase Policy. Facilities shall either conduct criminal background record checks at least every five years for current employees who may have contact with inmates or have in place a system for otherwise capturing such information for current employees."

MTC policy 903E.02 states, "Material omissions or the provisions of materially false information by staff is prohibited as detailed in MTC Policy 204.01.B.8B.18, Rules of Conduct."

The interview with the member of Human Resources supported this practice at OCPC. "ICE will do a check through e-Quip and the facility will run checks through NCIC every 5 years. Staff are required to report any incidents that happen at a second job and can be subject to termination if they engage in sexual abuse."

The Auditor reviewed 14 personnel files of the 20-staff interviewed. The Auditor found OCPC was in compliance with this standard.

(f) During this same interview it was reported that OCPC will disclose information on substantiated allegations of sexual abuse involving a former employee upon receiving a request from an institutional employer for who such employee applied for work. The Human Resource Manager reported that a signed release from the former employee must accompany the request.

§115.18 – Upgrades to facilities and technologies.

Outcome: Not Applicable (provide explanation in notes)

Notes:

(a)(b) This standard is non-applicable as OCPC has not acquired a new facility, made a substantial expansion or updated their video monitoring system since May 6, 2014.

§115.21 – Evidence protocols and forensic medical examinations.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(e) MTC policy 903E.02 and OCPC Coordinated Response both detail an evidence protocol that maximizes the potential for securing physical evidence. The policy and plan are coordinated with ICE under DHS. OCPC detains no juveniles. In the interview with the PSA Compliance Manager he reports, "ICE conducts all of our investigations."

MTC has a memorandum of understanding (MOU) with La Pinon Sexual Assault Recovery Services to provide SANE/SAFE exams as needed. Per the MOU, "The purpose of this MOU is to assure a unified effort between the entities involved to provide incarcerated victims or complainants (hereinafter referred to as "incarcerated victims") of sexual assault with confidential emotional support, crises intervention, information, and referrals related to sexual violence as required by PREA (Prison Rape Elimination Act) standard 28 C.F.R. 115.21 – 115.53."

It should be noted that the MTC policy 903E.02 does state, "If MTC is not responsible for investigating allegations of sexual abuse and relies on another agency to conduct these investigations, MTC will request (through agreement/MOU) that the responsible agency follow PREA requirements for evidence protocol and forensic examinations." Both the Warden and the PSA Compliance Manager reported that if an allegation is criminal in nature, local law enforcement will be contacted.

OCPC also contacts the Otero County Sheriff's Office when allegations are criminal in nature. Per a letter dated October 7, 2017, "Otero County (OCPC) will receive all County services provided any business within the County." OCPC policy 2.1.18 states, "Any act that is deemed as criminal in nature will be reported to Otero County Sheriff's Department for criminal investigation and/or prosecution. Any violation of the Sexual Abuse and Assault Prevention and Intervention Standards by staff or detainees may be referred for criminal prosecution as well as administrative disciplinary proceedings." Otero County Sheriff's Office follows a uniform evidence protocol as it relates to the PREA standards.

(b)(d) MTC policy 903E.02 states, "If requested by the victim, a victim advocate, qualified MTC staff member, or qualified community-based organization staff member accompanies and supports the victim through the forensic examination process and investigatory interviews and provide emotional support, crises intervention, information and referrals." OCPC's protocol includes intervention by La Pinon Sexual Assault Recovery Services, a rape crises center which provides victim advocate services 24/7. La Pinon provided in-person advocacy when resources and staff availability permit. In an interview with the Health Services Administrator he reports, "If La Pinon is not available or until they can arrive, we have two staff members who can step in. Our nurse practitioner and our mental health counselor went through a National Institute of Corrections (NIC) course on working with victims."

During the auditor tour, Auditors viewed flyers from La Pinon in English and Spanish on bulletin boards in the housing units and as well as in the SHU.

(c) MTC policy 903E.02 states, "MTC will offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility without financial cost, where evidentiary or medically appropriate. Such examinations shall be performed by SAFE's or SANE's where possible. If SAFE's or SANE's cannot be made available, the examination can be performed by other qualified medical practitioners. MTC will document efforts to provide SAFE or SANE." In an interview with a medical professional at OCPC, they confirmed "everything we do is free of charge to detainees." OCPC PSA Manager

states, "La Pinon will provide SANE/SAFE at the community hospital." It should be noted the Auditor was informed that La Pinon has an agreement with the community hospital to provide SANE/SAFE as needed for detainees. The Auditor reviewed the pamphlet from La Pinon, in this pamphlet La Pinon provides registered nurses certified in SANE/SAFE services.

§115.22 – Policies to ensure investigation of allegations and appropriate agency oversight.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b)(d)(e)(f) OCPC does not conduct criminal or administrative investigations. OCPC is only responsible for collecting all necessary information to forward to investigators at the ICE Field Office Director, the Joint Intake Center, the ICE Office of Professional Responsibility (OPR) or the DHS Office of Inspector General. ERO is contacted by OPR after a review is conducted of the information provided by OCPC of the allegation. In accordance with U.S. Immigration and Customs Enforcement policy 11062.2: Sexual Abuse and Assault Prevention and Intervention, the ICE OPR has oversight responsibilities to ensure all components of the investigative process have been conducted, as well as coordinating all investigative efforts with federal, state, or local law enforcement or facility incident review personnel. This same policy also states, "All sexual abuse and assault data collected pursuant to this Directive shall be maintained for at least 10 years after the date of initial collections, unless Federal, State, or local law requires otherwise." The Warden stated, "We always follow ICE directives."

ICE Directive 11062.2 states, "When the incident occurs in ERO custody, the FOD shall: When feasible, securing and preserving the crime scene and safeguarding information and evidence consistent with established protocols; conducting a prompt, thorough and objective investigation by qualified investigators; arranging for the victim to undergo a forensic medical examination, where appropriate, ensuring that the presence of the victim's outside or internal victim advocate, as requested by the victims, is allowed for support during forensic exams and investigatory interviews..."

This same directive also states, "When the incident occurs in ERO custody, the FOD shall: Ensure the appropriate law enforcement agency having jurisdiction for the investigation has been notified by the facility administrator of the alleged sexual abuse or assault. The FOD shall notify the appropriate law enforcement agency directly if necessary; Notify ERO's Assistant Director for Field Operations telephonically within two hours of the alleged sexual abuse or assault or as soon as practical thereafter, according to procedures...Notify the ICE Joint Intake Center (JIC) telephonically within two hours of the alleged sexual abuse or assault, in in writing within 24 hours via the ICE SEN Notification Database, according to procedures outlined in the Torres Memorandum..."

OCPC also contacts the Otero County Sheriff's Office when allegations are criminal in nature. Per a letter dated October 7, 2017, "Otero County (OCPC) will receive all County services provided any business within the County." OCPC policy 2.1.18 states, "Any act that is deemed as criminal in nature will be reported to Otero County Sheriff's Department for criminal investigation and/or prosecution. Any violation of the Sexual Abuse and Assault Prevention and Intervention Standards by staff or detainees may be referred for criminal prosecution as well as administrative disciplinary proceedings."

Interviews with the Warden and the PSA Compliance Manager supported this process. The two 2015 investigative cases reviewed by the Auditor were conducted by an ERO fact finder.

(c) The investigative protocol for all ICE detention facilities is posted on the ICE website at www.ice.gov/prea.

§115.31 – Staff training.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b)(c) OCPC specific policy 7.2.5 Recruitment Retention, and Promotion: Training Plan, dated December 4, 2017 states, "All new correctional officer, new professionals and support employees, including contractors, who have regular or daily detainee contact will receive training during their first year of employment which will cover the following areas: ...Sexual Abuse and Assault Prevention and Intervention..." MTC policy 903E.02 states, "MTC trains all employees on matters related

to PREA as detailed in MTC Policy 901D.02, Training Requirements.” Auditor reviewed lesson plans titled, “Sexual Abuse/Assault PREA and Detainee Supervision,” and found all nine subcomponents of this standards covered in the curriculums. Interviews with random staff supported that they received PREA pre-service training and annual refresher training. The Training Supervisor reported during his interview, “We have a refresher every year.”

OCPC provided four Pre-Service Training Rosters dated May 3, 2017, January 23, 2018, January 30, 2018 and February 6, 2018. While on-site, the Auditor requested to view training records of 14 of the 20-staff interviewed. The Training Supervisor provided these records. The Auditor found that all 14 employees have received pre-service PREA training and annual refreshers.

RECOMMENDATION: While OCPC is conducting the required refreshers, MTC policy 7.2.5 does not address this requirement. It is recommended that verbiage be included in this policy to reflect the practice of annual PREA refreshers at OCPC.

§115.32 – Other training.

Outcome: Exceeds Standard (substantially exceeds requirement of standard)

Notes:

(a)(b)(c) MTC policy 903E.02 states, “MTC will train all volunteers and contractors who have contact with inmates as detailed in MTC policy 901D.02 Training Requirements.” The Training Supervisor reports, “All volunteers and contractors receive PREA training similar to full-time and part-time staff; however, they do not receive pat search training. If they have low contact, then they receive zero-tolerance information and reporting techniques.” During the interview with a volunteer at OCPC, the volunteer was highly knowledgeable of the protocols at OCPC and how to report sexual abuse of detainees.

Auditor reviewed the lesson plan for contractors and volunteers titled, “Sexual Abuse and Assault Prevention and Intervention: PREA.” This lesson plan contains the following 10 objectives:

1. Explain the SAAPI Policy
2. Explain PREA
3. Discuss the Eighth Amendment...
4. Define sexual assault and abuse by staff, employees, volunteers...
5. Explain characteristics of victims/predators
6. Describe Rape Trauma Syndrome
7. Discuss first responder intervention
8. Discuss first responder protocol
9. Identify staff intervention and practices

OCPC provided a training roster for Religious Services Volunteer Orientation dated December 9, 2017 and a Pre-Service Training Roster for contractors dated October 22, 2017.

While standards state, “The level and type of training provided to volunteers and other contractors shall be based on the services they provide and the level of contact they have with detainees...” OCPC’s lesson plan for contractors and volunteers is highly detailed and provides much of the same information required under 115.31a for staff. Volunteers and contractors at OCPC receive the same PREA training as full- and part-time staff. Therefore, the Auditor has determined this process to exceed the standard.

§115.33 – Detainee education.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(f) OCPC policy 2.1.10 Protection from Harm: Detainee Admission and Reception dated December 4, 2017 which states, "Detainees are separated from the general population during the admissions process. All new detainees will undergo screening interviews, complete questionnaires, attend the facility on-site orientation program, be medically screened and cleared prior to admission into general population...A video orientation program will provide an overview of the facilities programs, services and operations. Subjects covered will include access to officials, problem resolution, prohibited activities, unacceptable behavior and the associated sanctions that could result. This information will be substantiated by the detainee handbook." MTC policy 903E.02 states "Inmates receive information at the time of intake about the zero-tolerance policy and how to report incidents or suspicions of sexual abuse or harassment..." Auditor found all subcomponents of this standard listed in policy with the exception of prohibition against retaliation. While this was not listed as a topic in policy, it is listed in the Detainee Handbook as a behavior that is not tolerated along with the other subcomponents of this standard. The Auditor reviewed the detainee handbook and reporting information was included on page 36.

(b)(e) Interviews with both staff and detainees confirmed that information on sexual abuse and/or assault is provided in formats accessible to all detainees. Written materials are provided in English and Spanish. If other languages or formats are required, OCPC has access to interpretive services that can provide the material in the format or language needed. The intake staff interview supported that intake makes every attempt to identify any disability when arriving at the facility. They work one-on-one if needed to break down the orientation for those who have intellectual, psychiatric or speech disabilities. Intake reports they advise medical as soon as any disability is identified. OCPC has the PREA education video available on a television channel playing in the holding rooms, which is accessible by all detainees in English and in Spanish. The Detainee Handbook is also available in English and Spanish. Detainees all receive a copy of the DHS prescribed "Sexual Assault Awareness Information" pamphlet. This pamphlet is available in English and Spanish and is also posted on housing units bulletin boards. Intake staff shared that if a detainee spoke a language other than English or Spanish, interpretive services would be used to read intake materials to the detainee. (It should be noted that this same interpretive service can be used to translate written materials in English into written materials in the language spoken by the detainee.)

(c) MTC policy 9903E.02 states, "MTC maintains documentation of inmate participation in PREA education sessions." OCPC provided examples of signed detainee acknowledgements of receiving the Detainee Handbook and watching orientation video in the PAQ documentation. They also provided an example of a new arrival log from August 18, 2017. While on-site, the Auditor requested copies of 10 detainees' orientation signed acknowledgements. The Auditor selected 10 out of the 30 detainees interviewed. All 10 detainees selected had signed acknowledgements on file.

(d) MTC policy 903E.02 states, "MTC ensures that key information about MTC's PREA policy is continuously and readily available or visible through posters, inmates' handbooks, or other written formats." During the tour of OCPC, the Auditors noted PREA posters and reporting information posted in each living area on the bulletin boards. This poster "Break the Silence" contained the DHS prescribed sexual assault awareness notice, the name of OCPC's PSA Compliance Manager and the name of the local organization, La Pinion Sexual Assault Recovery Services, that can assist detainees who have been victims of sexual abuse. The Special Housing Unit (SHU) also had this same information available to detainees. Information also included on how to reach La Pinon Sexual Assault Recovery Services. All information can be located in a three-ring binder attached to the phone the detainees use.

RECOMMENDATION: While living units at OCPC contained PREA reporting information, there were other areas in which detainees gather that did not have PREA information posted. Those areas included: multi-purpose rooms, dining rooms, laundry room, courtroom area, visitation and hallways with detainee access to phones. Having this information posted outside the living areas allows the detainees to make reports or seek advocacy services without having to do so in the living units. It increases the opportunity for the detainee to make a confidential report.

§115.34 – Specialized training: Investigations.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b) MTC policy 903E.02 states "If MTC conducts its own investigation of allegations of sexual abuse, investigators are trained in conducting sexual abuse investigations in a confinement setting...Documentation of such training will be maintained showing that investigators have completed the required training." Interviews with upper level management reported that OCPC does not conduct criminal or administrative investigations on any staff-on-detainee or detainee-on-detainee sexual abuse, sexual assault or sexual harassment allegations. Although allegations are referred to local law enforcement and the OIG, investigations at the agency level are completed by ERO (agency level fact finders).

The Auditor reviewed the following training provided to ERO Fact Finders:

1. Specialized Sexual Abuse and Assault Training. (This training focused on interview techniques.)
2. Implementing DHS PREA Investigative Requirements
3. PREA Training for Fact Finders/Supervisors. (This training focuses on transgender detainees).

The Auditor found that this training met the requirements set forth in this training and that the fact finders who completed the 2015 investigations received this training.

§115.35 – Specialized training: Medical and mental health care.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b) MTC policy 903R.02 outlines the specialized training medical and mental health care employees will receive regarding sexual abuse and assault. This policy lists all subcomponents required by this standard. The Auditor reviewed the following lesson plan titled "Recognizing the Signs," along with a blank PREA Post Test and some of the PREA Health Services Information Tracking Log. This lesson plan contains all the required subcomponents of this standard. This same policy also states, "Medical and mental health care practitioners shall also receive the training mandated for employees under 115.31 or for contractors and volunteers under 115.32, depending upon the practitioner's status at the agency."

OCPC provided a roster of training held on July 19, 2017 along with training certificates for two staff members.

(c)OCPC also provided documentation showing their policy requiring training was reviewed and approved by ICE/DHS on March 7, 2018.

§115.41 – Assessment for risk of victimization and abusiveness.

Outcome: Does not Meet Standard (requires corrective action)

Notes:

(a)(b) OCPC policy 2.1.10 states, "All detainees will undergo screening interviews, complete questionnaires, attend the facility on-site orientation program, be medically screened and cleared prior to admission into general population... Detainees will be classified at the point of arrival at this facility." OCPC policy 2.1.13 Protection from harm: Detainee Classification and Separation dated December 4, 2017 states, "It is the policy of the Otero County Processing Center (OCPC) to implement a formal classification system that starts at admission, for managing and separating detainees and administering the facility based upon the facility mission, classification goals, and detainee custody. This process will use verifiable and documented data about detainees. This system will be used to separate detainees into groups that reduce the probability of assault and disruptive behavior. At a minimum, the classification system evaluates the following: Criminal and escape history, medical and mental status, vulnerability, need to keep separate, history or assaultive behavior, age and disruptive group (gang) affiliation. The classification system at the Otero County Processing Center will be formulated

and implemented using standard procedures formulated by existing ICE policy. If ICE provides a recommended custody classification or custody classification score, facility staff is encouraged to follow recommendations.”

Intake staff report that all detainees completed the intake process within 12 hours of their arrival to OCPC. Interviews with detainees supported the intake practice at OCPC. They advised they were not placed in general population until they completed talks with intake and medical. There were no transgender or intersex detainees onsite during this portion of the audit process.

OCPC policy 2.1.10 also states, “If the detainee cannot be classified without certain information at the time of processing, the detainee will be segregated from the general population in the Special Housing Unit pending the arrival of the data. After this information is obtained, the detainee may be housed in general population.” During the interview with the Classification Supervisor, she reports this has never been done at OCPC as all classifications have been completed at intake within the required 12-hour timeframe.

(c)(d) The Auditor reviewed the ICE Custody Classification Worksheet, the Medical Intake Screen and the Intake Screen – Mental Health. All three forms in part gather information required in subsection 115.41c and 115.41d with the exception of whether the detainee has self-identified as gay, lesbian, bisexual or gender nonconforming.

The ICE Classification Worksheet asks about criminal history, previous incarceration, sex offenses against an adult or child, prior institutional violence or sexual abuse.

The Medical Intake Screen asks about height and weight, and if the detainee self identifies as transgender or intersex.

The Intake Screen for Mental Health asks if the detainee has a current or past history of mental illness or disabilities; current, recent or past history of physical, emotional or sexual assault (perpetrator or victim); ever been sexually assaulted prior to arrival; suicidal thoughts; self-harm or harm others; and if anyone at the facility is a threat.

CORRECTIVE ACTION: While the Medical Intake form does ask the detainee if they self-identify as transgender or intersex, standards also require the facility to ask about self-identification when it comes to sexual orientation. The Medical Intake Screen must be revised to include the missing self-identifiers.

(e) OCPC policy 2.13 states, “Detainees can request reclassification at any time by filling out a request to an official...Any detainee placed in segregation due to violation of facility rules will be reclassified and assigned accordingly, prior to being returned to the general population. The first reassessment is completed 60-90 days after the date of the initial assessment. Subsequent reassessments shall be completed at 90 to 120-day intervals. A special reclassification assessment is completed within 24 hours of a detainee being released from disciplinary segregation. Special reclassification assessment will be initiated as a result of an assault, a criminal act or detainee victimization...If it is documented, suspected or reported that a detainee has been physically or sexually abused or assaulted, the victim’s perception of his or her safety and well-being shall be among the factors considered.”

An interview with intake staff supports the reclassification process at OCPC. The Classification Manager reports, “They are reclassified 60-90 days after arrival then 90-120 days when they get a disciplinary or go to segregation. Also, if we get new information.”

It should be noted that the average length of stay at OCPC is 52 days. However, there are times when detainees may stay longer. While on-site the Auditor was provided a copy of an OCPC detainee roster which included names of detainees who have been at OCPC longer than 60 days. The Auditor selected 10 random names from the list of names who have a length of stay longer than 60 days. Of the 10 selected, eight had the 60-day reclassification completed and two are scheduled to be reassessed by the facility the following week.

(f) Staff interview responses report that the practice at OCPC is to not to discipline detainees for refusing to answer, or for not disclosing complete information in responses to questions asked during the intake/classification process.

RECOMMENDATION: The verbiage of not disciplining detainees for refusing to answer, or for not disclosing complete information in response to questions asked during the intake/classification process should be added to OCPC policy 2.1.10 so that policy matches practice.

(g) OCPC specific policy 2.1.18 states "Information concerning the identity of a detainee victims reports sexual assault and the fact of the report itself, shall be limited to those who have the need to know in order make decisions concerning the detainee-victim's welfare and for law enforcement/investigative purposes." The Classification Supervisor shared "Only clerks in the count room have access to detention files and medical files. Staff have access to this information on a need to know basis with limited access. If they want to view a file, they must have an approval to check it out." It should be noted that the Count Room is part of classification.

RECOMMENDATION: Verbiage needs to be added to OCPC policy 2.1.10 that covers dissemination within the facility regards to the responses to the questions asked pursuant to this standard. While several OCPC policies address confidentiality as it relates to reporting sexual abuse, no policy addresses appropriate controls for 115.41.

§115.42 – Use of assessment information.

Outcome: Does not Meet Standard (requires corrective action)

Notes:

(a) The subsection of this standard specifically states, "The facility shall use the information from the risk assessment under 115.41 of this part to inform assignment of detainees to housing, recreation, and other activities, and voluntary work. The agency shall make individualized determinations about how to ensure the safety of each detainee."

OCPC policy 2.1.13 states, "The Classification system shall assign detainees to the least restrictive housing unit consistent with the facility safety and security. By grouping detainees with like classification scores together and separating differently classified detainees, the system reduces the likelihood that non-criminal and non-violent detainee's exposure to physical and psychological danger is minimal. This system identifies and isolates detainees whose histories indicate the characteristics of the hardened criminal, the category most likely to intimidate, threaten or prey on the vulnerable. In facilities that have single cell living arrangements, detainees that pose an immediate and serious threat of violence to staff, other detainees, or themselves shall be housed there."

The auditor found that OCPC classification levels are solely based on criminal history and previous institutional misconduct. The classification process does not take into account the information gathered under 115.41 as to the level of risk a detainee may have to be sexually victimized or be sexually aggressive to other detainees.

This same policy states, "ICE may provide to facilities specific recommendations or scores based on the ICE custody classification system to further guide facility housing assignments. Under the current ICE Custody Classification Worksheet, medium-low custody detainees who may be housed with low level detainees score between the ranges of 3 and 4 points. Medium-high custody detainees score between 5 and 6 on the ICE Custody Classification Worksheet. Under no circumstances may a medium custody detainee with a history of assaultive or combative behavior be placed in a low custody housing unit."

OCPC policy 5.3.3 Programs: Voluntary Work Programs, dated January 22, 2018 states, "...The detainee's classification level will determine the type of work assignment for which he/she is eligible."

OCPC has not demonstrated how the information gathered under 115.41 is used to make informed decisions for housing and work.

CORRECTIVE ACTION: As it currently stands, OCPC's classification system is based only off criminal history, past institutional conduct or gang affiliation and does not take into count how to classify those detainees who may be at a higher risk of sexual victimization or sexual predation. This can be accomplished by incorporating this

information into the classification definitions in Policy 2.1.13 or by training the staff under the Classification Manager on how to take these factors into consideration when making specific housing assignments.

(b)(c) OCPC policy 2.1.13 states, "...Special consideration should be given to any factor that would raise the risk of vulnerability, victimization or assault includes, but not limited to, persons who are transgender, elderly, pregnant, physically disabled, suffering from a serious medical or mental illness, and victims of torture, trafficking, abuse, or other crimes of violence." This policy also states, "When making classification and housing decisions for a transgender detainee, staff shall consider the detainee's gender self-identification and on assessments of the effects of placement on the detainee's mental health and well-being. A medical or mental health professional shall be consulted as soon as practical on this assessment. Placement decisions should not be based solely on the identity documents or physical anatomy of the detained and a detainee's self-identification of his/her gender shall always be taken into consideration as well. Placement shall be consistent with the safety and considerations of the facility."

Interviews with intake staff, medical staff and the PSA Compliance Manager supports this policy. While the current length of stay at OCPC averages 52 days, classification staff advised that if a transgender or intersex detainee would be housed at OCPC for longer than 180 days, they would be reassessed per ICE policy. Classification staff were aware of the required to reassess transgender and intersex detainees every six months. These same staff also reported that transgender detainees would be given the opportunity to shower separately from other detainees.

RECOMMENDATION: It is recommended that the verbiage regarding the offering of separate shower times be included in OCPC policy 2.1.13.

OCPC has not had a transgender or intersex detainee in the past 12 months. Interviews with line staff and administrative staff supports the finding that no transgender or intersex detainees were present during the on-site portion of this audit process.

§115.43 – Protective custody.

Outcome: Does not Meet Standard (requires corrective action)

Notes:

OCPC has not had any detainees placed in administrative segregation on the basis of vulnerability to sexual abuse in the past twelve months.

(a) OCPC policy 2.1.15 Protection from Harm: Special Housing Unit, dated December 4, 2017 states, "Placement in Administrative Segregation is a non-punitive form of separation from the general population used when the continued presence of the detainee in the general population would pose a threat to self, staff, other detainees, property, or the security or orderly operation of the facility. Others in this housing status includes detainees who require protective custody, those who cannot be placed in local population because they are enroute to another..." This same policy provides examples of detainees who would be placed in protective custody.

The interview with the Warden supports this practice. "The language in the PREA standard describes what we do. We use the least restrictive housing (general population) before we even look at administrative segregation."

(b)(c) OCPC policy 2.1.15 states, "...A detainee requires protection. Protective Custody (PC) may be initiated at the detainee's request or ordered to protect the detainee from harm. The Shift Supervisor will initiate a protective custody packet." The Warden reports, "I am not sure on the length of stay, we have to report it to FOD if longer than 14 days. We can't control how long an investigation takes; but we do have to justify holding them longer. They still get the same services that everyone else gets."

(d) OCPC policy 2.1.15 states, "The Chief of Security/Captain or designee shall conduct a review within 72 hours of the detainee's placement in Administrative Segregation to determine whether segregation is still warranted. If the detainee has been segregated for the detainee's protection, but not at the detainee's request, the signature of the warden or designee is required to authorize continued detention. The Chief of Security, Deputy Warden or their designee shall conduct an

identical review after the detainee has spent seven days in Administrative Segregation and every week thereafter, for the first 30 days and every 10 days thereafter, at a minimum. The review shall include an interview with the detainee. A written record shall be made of the decision and the justification.

(e) OCPC policy 2.1.15 states, "The FOD shall be notified through AFOD when any detainee has been in administrative detention for 14 days."

CORRECTIVE ACTION: This subsection states, "Facilities shall notify the appropriate ICE Field Office Director no later than 72 hours after the initial placement into segregation, whenever a detainee has been placed in administrative segregation on the bases of vulnerability to sexual abuse or assault." OCPC policy 2.1.15 must be corrected to reflect the timeframe required by this subsection.

§115.51 – Detainee reporting.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a) OCPC policy 2.1.18 states, "Detainees shall be encouraged to promptly report signs or incidents of sexual abuse and/or assault and may not be punished for reporting. Staff shall take seriously all statements from detainees claiming to be victims of sexual assault and shall respond supportively and non-judgmentally. Any detainee may report acts of sexual abuse or assault to any employee, contractor or volunteer..." This same policy also outlines the various ways detainees can report sexual abuse. These are echoed in the Detainee Handbook, page 36.

During the tour of OCPC, the Auditors viewed multiple bulletin boards in the living units with reporting information. Detainees also received this information via the Detainee Handbook, pamphlets and orientation during the intake process. Interviews with detainees supports this practice.

(b) OCPC uses The Office of the Inspector General (OIG) and the La Pinon Sexual Assault Recovery Services as the reporting method outside of OCPC or ICE that detainees can report any allegation of sexual abuse. The contact information is posted throughout the facility. The Auditor did conduct a test call to the La Pinon Sexual Assault Recovery Services and discovered detainees are being required to enter their PIN at the end of the prompts to proceed. The Auditors notified OCPC of this concern and it was promptly addressed by the facility. The La Pinon Sexual Assault Recovery Services phone number is now entered into their system and does not require a PIN from the detainee to proceed with the call.

(c) OCPC policy 2.1.18 mandates that staff are to accept reports made verbally, in writing, anonymously, and from a third party. Staff interviews support this mandate. They also reported that they would document verbal reports before the left shift.

§115.52 – Grievances.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

OCPC reported there has been no grievance filed in the past 12 months relating to sexual abuse.

(a)(b)(e) OCPC policy 6.2.1 Fair Treatment of Detainees: Grievances dated February 1, 2018 states, "A detainee may submit a formal written grievance, if the outcome of the informal attempts do not satisfy the detainee...A detainee may submit a grievance regarding all allegations or claim of sexual assault at any time regardless of when the incident is alleged to have occurred...An emergency grievance involves an immediate concern regarding a detainee's safety, welfare, or claim of sexual assault...Emergency grievances shall be processed immediately, if possible, but no longer than 24 hours after the receipt."

An interview with the Grievance Lieutenant supported this policy. "There are no limits on any of type of grievances filed. We have 24 hours to respond if it is considered an emergency. The detainees are not required to submit an informal

grievance first.” This is also reflected in the Detainee Handbook which states, “If informal resolution is unattainable or impractical, a formal grievance may be submitted, including medical grievances.”

OCPC policy 6.2.1 also states, “All properly submitted grievances will be answered within five (5) working days. The Grievance Lieutenant/Unit Health Administrator will send responses to all grievances and each detainee will receive written notification of resolution or disposition upon grievance completion. When the detainee is illiterate, disabled, or non-English speaking, the decision will be read to him/her or attempts will be made to translate it into his/her language.”

The Detainee Handbook also states, “Grievances will be investigated by the Unit Grievance Coordinator or Unit Health Administrator and reviewed before a response is returned to you. If you are not satisfied with the decision, you may submit a step 2 appeal for consideration by the facility Warden. If you are still dissatisfied, you may submit another appeal to the ICE Officer in Charge. You are able to submit any grievance at any time to the ICE Officer in Charge. If you need assistance in filing a grievance, assistance may be provided to you by staff or other detainees.”

In addition, the Detainee Handbook states, “Detainees may file a complaint about staff misconduct, physical or sexual abuse or civil rights violations at any point to the Department of Homeland Security, Office of Inspector General (OIG) or by calling the number listed below or by writing the address listed below...”

The Grievance Lieutenant also shared in regards to the process OCPC has in place to responding to those grievances that have been appealed. It was reported that a detainee can appeal the grievance to the Warden and if they don't agree with the Warden then it gets submitted to ICE. The following was shared, “Once we gather all of the findings we send it to ICE and it goes through ERO. Once they have made their decision we respond to the detainee with their findings.” The Grievance Lieutenant reported that although the Warden has 30 days to respond to an appeal, it does not take that long.

(c) OCPC policy 6.2.1 states, “A box for grievances shall be located near the dining hall, in the medical housing area, and in the SHU for convenience. The Shift Supervisor or staff member designated to receive grievances will accept the grievance form signed and dated by the detainee. If the detainee claims that the issue is sensitive or the detainee's safety or well-being would be jeopardized if others in the facility learned of the grievance, the detainee may seal the grievance in an envelope, clearly mark the envelope “sensitive” and submit directly to the Shift Supervisor or a staff member. If the grievance is medically sensitive, the grievance may also be sealed with “Medically Sensitive” marked on the envelope. In these cases, the grievance must include the reason for circumventing the chain of command.”

During the tour of OCPC, the Auditor observed secured boxes for grievances located throughout the facility per this policy.

(d) OCPC policy 2.1.18 states, “Staff shall alert proper medical personnel of any sexual abuse related medical emergencies...” Interviews with security staff and medical staff support this mandate.

(f) OCPC policy 6.2.1 states, “...The detainee shall be given the opportunity to obtain assistance from another detainee or facility staff in preparing a grievance. Illiterate, disabled, or non-English speaking detainees shall be given the opportunity to receive additional assistance upon request.” This information is also located in the Detainee Handbook, page 29. While the interview with the Grievance Lieutenant supported this mandate, security staff interviewed appeared to be unclear if this practice was allowed.

RECOMMENDATION: It is recommended that the Grievance Lieutenant send out an email to the security staff reminding them that is allowed or provide this information at the next staff meeting.

§115.53 – Detainee access to outside confidential support services.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b) OCPC and La Pinon have entered into an inter-agency collaboration for La Pinon to serve OCPC and its detainees for victim advocate services related to victims of sexual abuse. This agreement was dated July 12, 2017. La Pinon is included in OCPC's sexual abuse prevention and intervention protocol. OCPC policy 2.1.18 allows for this agreement.

(c) Posters are posted throughout OCPC with contact information for La Pinon. This information is posted in English and Spanish. The Detainee Handbook states, "...Emotional support is available from the facility's mental health and medical staff, and from the chaplains..." There is no mention of being able to contact La Pinon for these services.

Interviews with the detainees supported this lack of knowledge regarding services provided by La Pinon.

RECOMMENDATION: Update the Detainee Handbook to include contact information for outside emotional support services. It is recommended that this information be included under the "Next Steps After Reporting a Sexual Assault or Attempted Sexual Assault" on page 36.

(d) Detainees at OCPC receive information regarding the extent to which communication with outside emotional support services would be monitored during orientation. In addition, while on the tour of OCPC, the Auditors also found this information stenciled on walls near phones in the living units. This information is written in English.

RECOMMENDATION: Update the Detainee Handbook to include this information with La Pinon's contact information on page 36. With the Detainee Handbook being provided in English and Spanish and with the ability to translate it into additional languages, this information can be provided to the entire detainee population.

§115.54 – Third-party reporting

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

OCPC has established more than one method for third parties to report incidents of sexual abuse. The Auditor reviewed the ICE website (www.ice.gov/prea) and these methods were also posted in the living units.

RECOMMENDATION: It is recommended that OCPC post this information in the visitation room and lobby so that family and visitors of the detainees can see it when they enter.

§115.61 – Staff reporting duties.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a) MTC policy 903E.02 states, "MTC requires all staff to report immediately and accordingly to MTC Policy 201.10 Employee Discipline, any knowledge, suspicion, or information they receive regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the organization." Interviews with upper-level management and security staff supported this mandate. In a memo dated March 7, 2018, DHS/ICE approved OCPC policies on staff reporting duties in regards to sexual abuse, sexual assault and sexual harassment.

During the interview with the Warden he stated that it is required for any person working at OCPC to report any knowledge or suspicions of sexual abuse. He added, "I tell all of them during orientation my expectations and if I find out they did not report abuse or engaged in abuse, I will personally escort them out of the building and testify against them."

(b) OCPC policy 2.1.18 states, "The following guidelines may help staff in responding appropriately to a suspected victim." Interviews with security staff supported that staff were aware of how to report sexual abuse. Each staff member carries a PREA Response Card attached to their ID. The PREA Response Card gives staff a step by step guide on how to respond to a sexual abuse and/or assault report. The steps listed tie back to OCPC policy 2.1.18.

(c) OCPC policy 2.1.18 states, "Information concerning the identity of a detainee-victim reporting a sexual assault, and the facts of the report itself, shall be limited to those who have the need to know in order to make decisions concerning the detainee-victim's welfare and for law enforcement/investigative process." Interviews with staff support this mandate.

(d) This is non-applicable as OCPC does not house juveniles.

§115.62 – Protection duties.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

MTC policy 903E.02 and OCPC specific policy 2.1.18 not only mirrors the language provided in this standard but provides guidance regarding staff member's action after a report of sexual abuse is received through first responder duties. Staff interviews support their knowledge of actions that need to be taken to protect the victim.

Interview with the Warden supports this mandate. "We would notify the supervisor then everyone else that needs to know. The Classification Manager and medical would then get involved and talk to the detainee about their feeling of safety. We then would determine what needs to be done. We would work with ICE throughout this process."

§115.63 – Report to other confinement facilities.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b)(c) OCPC policy 2.1.18 states, "If the act is alleged to have taken place at another facility, OCPC will notify the previous facility or ICE, who will send notification within 72 hours." The Warden advises, "As soon as we receive the report we would take action. We would gather the information and send it to that facility and to ICE. The PREA Manager would make that report and document it."

RECOMMENDATION: While the facility has reported that no notifications have been made and the practice at the facility would be to document this notification, it is recommended that the notification to another facility be documented by the PSA Compliance Manager and that this be included in OCPC policy 2.1.18.

(d) OCPC policy 2.1.18 does not include how the facility would respond to reports received from another facility. Warden reported that if OCPC would receive information of an allegation from another facility they would act as they always do in responding to an allegation. He reported, "Any allegations would be taken seriously and would follow the same protocol as we would anything else. OCPC's PSA Compliance Manager reported no reports from other facilities regarding allegations that occurred at OCPC.

RECOMMENDATION: Update policy 2.1.18 to include steps OCPC will follow when receiving a report from another facility of a possible sexual abuse or sexual assault that had occurred at OCPC. These steps should include the requirement that the allegation will be referred to investigation in accordance with these standards and reported to the appropriate ICE Field Office Director.

§115.64 – Responder duties.

Outcome: Exceeds Standard (substantially exceeds requirement of standard)

Notes:

(a)(b) OCPC policy 2.1.18 ensures the first staff responding to an allegation of sexual abuse shall be required to complete items (1) through (4) as outlined in section (a) of this standard. Each staff member also carries a PREA First Response card attached to their ID's. This card has each of these steps listed.

Interview with PSA Compliance Manager supports this practice. He reported he makes sure every staff member (including non-security staff) has this card on their person. Interviews with staff also supports this practice. They were very knowledgeable of their first responder duties and were able to show this Auditor their PREA Response Cards.

§115.65 – Coordinated response.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b) OCPC policy 2.1.18 outlines OCPC's plan to coordinate actions taken by staff first responders, medical and mental health practitioners, investigators, and facility leadership in response to an incident of sexual abuse. The plan included required actions for multiple staff to demonstrate a team approach to responding to sexual abuse allegations at OCPC.

(c)(d) The PSA Compliance Manager reported that OCPC had not transferred any victims of sexual abuse to another facility covered by 6 CFR part 115, subpart A or B nor have they transferred a detainee to a facility not covered by 6 CFR part 15, subpart A or B. The Warden shared, "Those transfers would require a special precautions checklist. It would include any violent, vulnerable or significant events that have happened to the detainee. ICE would make that determination if movement is to be made." He also added, "I don't think we would ever send a detainee to a non-DHS facility unless ICE requested it."

RECOMMENDATION: It is recommended that this practice be included in the verbiage in OCPC specific policy 2.1.18. This would ensure the continuing of medical or mental health care a victim of sexual assault may need.

§115.66 – Protection of detainees from contact with alleged abusers.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

OCPC policy 2.1.18 requires all employees, contractors, and volunteers suspected of perpetrating sexual abuse be removed from all duties pending the outcome of an investigation. Interviews with the Warden and Human Resource Manager confirmed this practice.

§115.67 – Agency protection against retaliation.

Outcome: Does not Meet Standard (requires corrective action)

Notes:

(a) OCPC policy 2.1.18 states, "Detainee reporting or alleging a sexual assault will not be subject to retaliation." MTC policy 903E.02 states, "MTC protects all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff."

(b)(c) While OCPC policy 2.1.18 states that detainees will not be subject to retaliation, the policy does not address how the facility will prohibit such acts from occurring. This policy also does not address providing emotional support services to detainees and staff who fear retaliation for reporting sexual abuse or for cooperating with investigations. It was unclear

after the interview with the warden on whether the practice for monitoring for retaliation for detainees and staff is in place at OCPC as there is no form used to track the monitoring of retaliation.

CORRECTIVE ACTION: Develop a form that demonstrates the facility is actively monitoring for retaliation. This will include, but not limited to, interviewing the detainees, housing changes to remove the victim from the abusers, and checking for disciplinary reports. The form must also include demonstrating the monitoring of retaliation against staff. This will include, but not be limited to, interviewing that staff member, checking for disciplinary write-ups, unjustified schedule changes and unjustified changes in overtime. The form should indicate that monitoring will last for at least 90 days following a report of sexual abuse and/or assault. While the Auditor understands the average length of stay at OCPC for a detainee is 52 days, there are many detainees that stay longer than this timeframe.

§115.68 – Post-allegation protective custody.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

It should be noted that OCPC has not had any detainees placed in post-allegation protective custody in the past 12 months nor was post-allegation protective custody used in the two cases reviewed from 2015. There were no instances of post-allegation protective custody in 2016 as no allegations were reported.

(a) OCPC policy 2.1.15 states, "Administrative segregation is a non-punitive form of separation from the general population used when the continued presence of the detainee in general population would pose a threat to self, staff, other detainees...since all detainees that arrive for assignment are classified as high custody, the only consideration of housing detainees together will be gang affiliation, known enemies, etc."

(b) OCPC policy 2.1.15 states, "The Chief of Security/Captain or designee shall conduct a review within 72 hours of the detainee's placement in Administrative Segregation to determine whether segregation is still warranted. If the detainee has been segregated for the detainee's protection, but not at the detainee's request, the signature of the warden or designee is required to authorize continued detention. The Chief of Security, Deputy Warden or their designee shall conduct an identical review after the detainee has spent seven days in Administrative Segregation and every week thereafter, for the first 30 days and every 10 days thereafter, at a minimum. The review shall include an interview with the detainee. A written record shall be made of the decision and the justification. The interview with Warden supported this mandate. He reported, "We notify ICE daily with the lock-up justification. We (MDT) review everyone in the SHU every Monday at 1:30 p.m.)"

(c) OCPC policy 2.1.13 states, "Any detainee placed in segregation due to violation of facility rules will be reclassified and assigned housing accordingly prior to being returned to general population...Special reclassification assessments will be initiated as a result of an assault, a criminal actor or detainee victimization..."

(d) OCPC policy 2.1.15 states, "The FOD shall be notified through the AFOD when any detainee has been in administrative detention for 14 days." The practice at OCPC, per the warden, is to notify ICE daily of a detainee's placement in the SHU and the justification for the lockup. This is done in lieu of waiting to see if a detainee will be in administrative detention for 14 days. He reported, "We notify them daily with the lockup justification if anyone is placed in the SHU, no matter the reason. We also review everyone in the SHU every Monday at 1:30 p.m. ICE is a part of those reviews."

NOTE: OCPC policy 2.1.15 is used for protective custody at the initial report of sexual abuse and after the investigation process.

§115.71 – Criminal and administrative investigations.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b)(c)(e)(f) The only responsibility OCPC has is gathering the initial information to forward to ICE and notifying the detainee at the conclusion of an investigation. OCPC policy 2.1.18 states, "All reports of sexual abuse or assault must be handled and investigated in accordance with the ICE Sexual Abuse and Assault Prevention and Intervention Standard."

ICE Directive 11062.2 states, "Immediately following notice of an alleged sexual abuse or assault the FOD shall: a) Ensure that the appropriate law enforcement agency having jurisdiction for the investigation has been notified by the facility administrator of the alleged sexual abuse or assault. The FOD shall notify the appropriate law enforcement agency directly if necessary; b) Notify ERO's Assistant Director for Field Operations telephonically within two hours of the alleged sexual abuse or assault or as soon as practical thereafter, according to procedures outlined in the June 8, 2006 Memorandum from (b) (6), (b) (7)(C) Acting Director, Office of Detention and Removal Operations, regarding "Protocol on Reporting and Tracking of Assaults" (Torres Memorandum); c) Notify the ICE Joint Intake Center (JIC) telephonically within two hours of the alleged sexual abuse or assault, and in writing within 24 hours via the ICE SEN Notification Database, according to procedures outlined in the Torres Memorandum. The JIC shall notify the DHS Office of Inspector General (OIG); d) When a non-ICE employee, contractor, or volunteer is alleged to be the perpetrator of the sexual abuse or assault, ensure that the facility administrator has also contacted the corporation or locality that operates the facility..."

In addition, OCPC policy 2.1.18 identifies the steps the facility will take to collect evidence from assailant. Those steps are as follows, "Identify the assailant, if possible, and isolate the assailant, whenever possible, pending further investigation. In the event that the alleged assailant is a non-ICE employee, such MTC staff, volunteers, or contractors, Otero County will be notified by the Warden. Any staff member, contractor or volunteer who engages in sexual abuse shall be prohibited from contact with detainees and shall be reported to law enforcement agencies. Used standard crime scene preservation, investigative and evidence-gathering procedures. Any act that is deemed criminal in nature will be reported to the Otero County Sheriff's Department for criminal investigation and/or prosecution. Any violation of the Sexual Abuse and Assault Prevention and Intervention Standards by staff or detainee may be referred for criminal prosecution as well as administrative disciplinary proceedings. If facility medical staff attempts to examine the alleged assailant, findings should be documented both photographically and in writing. A written summary of all medical evidence and findings should be completed and maintained in the detainee's medical record. Copies should also be provided to supervisory security staff and appropriate law enforcement officials. If the act is alleged to have taken place at another facility, OCPC will notify the previous facility or ICE, who will send notification within 72 hours."

Interviews with the Warden and the PSA Compliance Manager supports this practice. Both advised their sole role is to provide all gathered information from the initial allegation. The PSA Compliance Manager also reported a good working relationship with Otero County Sheriff's Department. He advised that he acts as a liaison for Otero County and ICE. He assists in making detainees available for interviews and to provide any additional information they or ICE may need.

While onsite the Auditor reviewed two closed files from 2015 due to OCPC reporting only one allegation in the review period and that investigation is still open. The open case was not available for review. There were no cases in 2016. Both 2015 files, one substantiated detainee on detainee sexual harassment and one substantiated staff on detainee sexual harassment with touching, contained all the components required under this standard to include detainee notification and were conducted by trained ERO Fact Finders.

§115.72 – Evidentiary standard for administrative investigations.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

All investigations (criminal and administrative) are conducted by the ERO Investigators. The only responsibility OCPC has in gathering the initial information to forward to ICE and notifying the detainee at the conclusion of an investigation.

MTC policy 903E.02 states, "MTC poses a standard of preponderance of evidence or a lower standard of proof for determining whether allegations of sexual abuse or sexual harassment are substantiated."

While onsite the Auditor reviewed two closed files from 2015 due to OCPC reporting only one allegation in the review period and that investigation is still open. The open case was not available for review. There were no cases in 2016. Both 2015 files, one substantiated detainee on detainee sexual harassment and one substantiated staff on detained sexual harassment with touching, contained all the components required under this standard to include detainee notification and were conducted by ERO fact finders.

It was also noted that the Auditor found the findings in these cases to be reflective of the preponderance of the evidence.

§115.73 – Reporting to detainees.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

OCPC policy 2.1.18 states, "The alleged victim will be made aware of the outcome of the investigation and informed of all other actions taken if the incident is referred for criminal prosecution." The Warden reported, "It depends on where he is. We will notify them in writing if he is here. If they are out of the facility, we will make an attempt at a last known address and notify ICE."

There were no detainees onsite that reported sexual abuse to OCPC administration.

While onsite the Auditor reviewed two closed files from 2015. Both files contained all the components required under this standard 115.71 and included detainee notification.

§115.76 – Disciplinary sanctions for staff.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(c)(b)(d) MTC policy 903E.02 states, "...Staff is subject to disciplinary sanctions up to and including terminations for violating agency sexual abuse or sexual harassment policies." OCPC specific policy 2.1.18 states, "Any violation of the Sexual Abuse and Assault Prevention and Intervention standards by staff or detainees may be referred for criminal prosecution as well as administrative disciplinary proceedings. The Employee Handbook, under Rules of Conduct/Discipline, outlines behavior that may result in immediate dismissal. Those behaviors include sexual abuse of a detainee.

The same policy also states, "All terminations for violation of MTC sexual abuse or sexual harassment policies or resignations by staff who would have been terminated if not for their resignation, are reported to law enforcement agencies, unless the activity was clearly not criminal, and to any licensing bodies." OCPC provided a memo dated March 7, 2018 signed by the AFOD approving OCPC's policies and procedures for disciplining staff.

Interview with the Human Resource Manager reported that OCPC will disclose information to law enforcement when they receive a signed release of information on any former employer. OCPC specific policy 2.1.18 states, "All terminations for violation of MTC sexual abuse or sexual harassment policies or resignations by staff who would have been terminated if not

for their resignation, are reported to law enforcement agencies, unless the activity was clearly not criminal, and to any licensing bodies.”

Interview with the Human Resource Manager supported this practice at OCPC.

In reviewing the 2015 investigations, one investigation involved staff-on-detainee sexual harassment and touching. The case was substantiated and the staff person was terminated.

§115.77 – Corrective action for contractors and volunteers.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b) MTC policy 903E.02 states, “MTC policy requires that any contractor or volunteer who engages in sexual abuse be reported to law enforcement agencies, unless the activity was clearly not criminal and to relevant licensing bodies. OCPC policy 2.1.18 states, “In the event that the alleged assailant is a non-ICE employee, such as MTC staff, volunteers or contractors, Otero County Processing Center will be notified by the Warden. Any staff member, contract or volunteer who engages in sexual abuse shall be prohibited from contact with detainees and shall be reported to law enforcement agencies.” The Warden advised, “Everyone here has the same requirement. Just as I have told staff, I will testify against them at trial.” MTC policy 903E.02 and OCPC 2.1.18 both require that contractors or volunteers who engage in sexual abuse be prohibited from contact with detainees.

(c) MTC policy 903E.02 states, “MTC facilities take remedial measures and prohibit further contact with inmates in the case of any other violation of MTC sexual abuse or sexual harassment policies by a contractor or volunteer.”

RECOMMENDATION: This verbiage is missing from OCPC policy 2.1.18. It is recommended that this is added and to describe what remedial measures would look like at OCPC.

§115.78 – Disciplinary sanctions for detainees.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

There have been no cases of detainee-on-detainee sexual abuse reports in the past 12 months. While onsite the Auditor reviewed two closed files from 2015 due OCPC reporting only one allegation in the review period and that investigation is still open. The open case was not available for review. There were no cases in 2016. Both 2015 files, one substantiated detainee on detainee sexual harassment and one substantiated staff on detainee sexual harassment with touching.

(a) OCPC policy 2.1.18 states, “In addition to the forms of sexual abuse and/or assault defined above, all sexual conduct, including consensual conduct between detainees is prohibited and subject to administrative and disciplinary sanctions.” MTC policy 903E.02 states, “Inmates are subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the inmate engaged in inmate-on-inmate sexual abuse. Inmates are subject to disciplinary sanctions pursuant to a formal disciplinary process following a criminal finding of guilt for inmate-on-inmate sexual abuse.” The Warden reports, “We used the ICE discipline statutes. We use due process afforded to detainees.”

(b)(c) The Auditor reviewed the Detainee Handbook (pages 23 -28) and found steps to the disciplinary process and sanctions that would be imposed. The sanctions are progressive in nature and meet the requirements under this standard.

(d) MTC policy 903E.02 states, “MTC facilities offer therapy counseling, of other interventions designed to address and correct underlying reasons or motivations for abuse. While offering therapy, counseling or other interventions designed to address and correct underlying reasons and motivations for abuse, MTC facilities will consider whether to require the offending inmate to participate in such intervention as condition of access to programming or other benefits.

(e) MTC policy 903E.02 states, "MTC disciplines inmates for sexual conduct with staff only upon finding that staff did not consent to such contact.

RECOMMENDATION: It is recommended that this verbiage be included in OCPC policy 2.1.18. This will demonstrate how OCPC will address the requirement of this standard.

(f) MTC policy 903E.02 states, "MTC prohibits action for a report of sexual abuse made in good faith based upon a reasonable believe that the alleged conduct occurred, even if an investigation does not establish evidence sufficient to substantiate the allegation.

RECOMMENDATION: It is recommended that this verbiage be included in OCPC policy 2.1.18. This will demonstrate how OCPC will address the requirement of this standard.

§115.81 – Medical and mental health assessment; history of sexual abuse.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a)(b)(c) MTC policy 903E.02 states, "All residents are screened by security staff within 24 hours of arrival at the facility for potential vulnerabilities or tendencies of acting out with sexually aggressive behavior. Housing assignments are made accordingly."

MTC Medical Policy 904E.118 Intake Health Screening dated October 1, 2017 states, "Intake medical screening for residents commence upon residents arrival at facility and is performed by health-trained or qualified health care personnel...All residents receive initial mental health screening at the time of admission to the facility by mental health or qualified mental health care personnel...Where there is a clinically significant findings as a result of the initial screening, a referral shall be initiated."

Medical personnel reported, "We refer them to mental health when they report sexual abuse history or report a sexual assault. When we make the referral, he has 48 hours to see them. If it is after a report of sexual abuse, we also give them pamphlets on STI's and offer a syphilis test."

§115.82 – Access to emergency medical and mental health services.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a) OCPC policy 2.1.18 states, "Notify staff at the community medical facility and alert them to the detainee's condition. When necessary conduct STD and HIV testing. Refer the detainee for crisis counseling as appropriate."

Medical personnel reported, "We refer them to mental health when they report sexual abuse history or report a sexual assault. When we make the referral, he has 48 hours to seem them. If it is after a report of sexual abuse, we also give them pamphlets on STI's and offer a syphilis test. We provide this immediately if possible, but not later than 72 hours. We also offer this to the perpetrator. Cooperation does not impact the level of service we provide."

Medical personnel also reported that while they do not conduct SAFE's or SANEs they do provide emergency and life-saving treatment to detainees before they would be transferred to the community medical facility.

While reviewing the 2015 investigative files, the Auditor found referrals to medical and mental health staff where made immediately after the allegation was received.

(b) MTC policy 903E.02 states, "MTC will offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility without financial cost, where evidentiary or medically appropriate. Such examinations shall be performed by SAFE's or SANE's where possible. If SAFE's or SANE's cannot be made available, the examination can be performed by other qualified medical practitioners. MTC will document efforts to provide SAFE or SANE." In an interview with a medical professional at OCPC, they confirmed "everything we do is free of charge to detainees." They also reported, "While we do not do forensic exams here, we do provide emergency medical services before we transport."

§115.83 – Ongoing medical and mental health care for sexual abuse victims and abusers.

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

(a) OCPC policy 2.1.18 states, "If determined appropriate by the facility administrator or designee, the detainee will be examined by medical personnel from the community."

Medical personal stated they provide triage type services when there is an assault or report of abuse; any other type of medical services is provided by the community and then they (OCPC) provide follow up treatment as ordered by the community provider.

(b)(c)(f) MCT Medical Policy 904E.310FNI Sexual Abuse/Assault states, "...In the event of sexual abuse/assault, the following applies: ...Following the physical examination, there is availability of an evaluation by a mental health professional to assess the need for crisis intervention counseling and long-term follow-up." Medical staff reported that a psychiatrist comes in once a month and mental health counselor is at OCPC every week. Medical staff also reported that detainees receive the same level of care as if they were in the community with the exception of not charging fees to the detainees.

(d) This is non-applicable as this is a male only facility.

(e) MTC Medical Policy 904E.210FNI states, "In the event of sexual abuse/assault, the following applies: ...Provision is made for testing sexually transmitted diseases (for example HIV, gonorrhea, hepatitis, and other diseases) and counseling as appropriate. Prophylactic treatment and follow-up sexually transmitted diseases are offered to all victims, as appropriate."

Interviews with medical personnel supported this practice at OCPC.

(g) MTC Medical Policy 904E.118 states, "All residents receive an initial mental health screening at the time of admission to the facility by mental health trained or qualified mental health care personnel. All residents are screened with 24 hours of arrival at the facility." This same verbiage is also in OCPC policy 2.1.18.

Interviews with medical personnel reported that once it has been determined that detainee has suffered sexual abuse or has been the sexual abusers, they both would receive a mental health evaluation and would be offered treatment where appropriate.

There have been no cases of detainee-on-detainee sexual abuse reports in the past 12 months. While onsite the Auditor reviewed two closed files from 2015 due to OCPC reporting only one allegation in the review period and that investigation is still open. The open case was not available for review. There were no cases in 2016. Both 2015 files, one substantiated detainee on detainee sexual harassment and one substantiated staff on detainee sexual harassment with touching were reviewed by the Auditor. In both cases, the victims were referred to medical and to mental health for evaluations.

§115.86 – Sexual abuse incident reviews.**Outcome:** Does not Meet Standard (requires corrective action)**Notes:**

(a)(b) OCPC policy 2.1.18 states, "The facility Sexual Abuse and Assault Prevention and Intervention Program Manager shall, together, with the Warden, conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation to assess an improve prevention and response efforts. Such review shall ordinarily occur within 30 days of the conclusion of the investigation." This policy also contains language outlined in subsection (b) of this standard. Interviews with the Warden and the PSA Compliance Manager supports this practice at OCPC.

The Auditor reviewed two investigations from 2015 and found that the incident reviews occurred outside the 30-day timeframe by 45-60 days. OCPC has had no incident reviews in 2016 or 2017 due to no allegations being reported.

CORRECTIVE ACTION: If the open investigation is closed during the corrective action period, OCPC needs to provide proof that a sexual abuse incident review did occur within 30 days of the conclusion of the investigation. If the conclusion of the investigation does not occur during the corrective action period, it is recommended that the Warden send a memo to the PSA Compliance Manager reminding him of the 30-day timeframe to conduct incident reviews.

(c) The auditor reviewed OCPC's negative annual reviews from 2016 and 2017 showing no sexual abuse allegations have been reported. OCPC began implementing PREA standards on May 28, 2015 and did not provide their first annual review until 2016.

§115.87 – Data collection.**Outcome:** Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)**Notes:**

OCPC policy 2.1.18 states, "All case records associated with claims of sexual abuse, including incident reports, investigations reports, offender information, medical and counseling evaluation findings, and recommendations for post-release treatment and/or counseling, shall be maintained. All documentation will be kept for a minimum of the time the detainee is housed at the facility plus 5 years." Interviews with the Warden and PSA Compliance Manager confirmed this practice.

§115.201 – Scope of audits.**Outcome:** Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)**Notes:**

The Auditors were able to tour OCPC and observe all areas of the facility. The Auditors were also allowed to revisit areas as requested. The Auditors were provided relevant documentation for review in order to determine OCPC's level of compliance. The Auditors were able to conduct private and confidential interviews with staff, contractors, volunteers and detainees. The audit notice was posted in all living units and the Auditor did not receive any letters of correspondence from any detainee or staff person.

AUDITOR CERTIFICATION:

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

/s/ *Elisabeth M. Copeland*

Auditor's Signature & Date

~~July 28, 2018~~ July 28, 2018

PREA Audit: Subpart A
DHS Immigration Detention Facilities
Corrective Action Plan Final Determination



**Homeland
Security**

AUDITOR INFORMATION			
Name of auditor:	Elisabeth Copeland		Organization:
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			785-294-(b) (6), (b) (7)(C)
AGENCY INFORMATION			
Name of agency:	U.S. Immigration and Customs Enforcement (ICE)		
FIELD OFFICE INFORMATION			
Name of Field Office:	El Paso Field Office		
Field Office Director:	William P Joyce		
ERO PREA Field Coordinator:	(b) (6), (b) (7)(C)		
Field Office HQ physical address:	11541 Montana Avenue, Suite E, El Paso, Tx 79936		
Mailing address: (if different from above)	Same as above		
INFORMATION ABOUT THE FACILITY BEING AUDITED			
Basic Information About the Facility			
Name of facility:	Otero County Processing Center		
Physical address:	26 McGregor Range Road, Chaparral, NM 88081		
Mailing address: (if different from above)	Same as above		
Telephone number:	575-824-4143		
Facility type:	IGSA		
Facility Leadership			
Name of Officer in Charge:	(b) (6), (b) (7)(C)	Title:	Warden
Email address:	(b) (6), (b) (7)(C)	Telephone number:	575-824-(b) (6), (b) (7)(C)
Facility PSA Compliance Manager			
Name of PSA Compliance Manager:	(b) (6), (b) (7)(C)	Title:	Prevention of Sexual Assault (PSA) Compliance manger
Email address:	(b) (6), (b) (7)(C)	Telephone number:	575-824-(b) (6), (b) (7)(C)

FINAL DETERMINATION

SUMMARY OF AUDIT FINDINGS:

Directions: Please provide summary of audit findings to include the number of provisions with which the facility has achieved compliance at each level after implementation of corrective actions: Exceeds Standard, Meets Standard, and Does Not Meet Standard.

The Prison Rape Elimination Act (PREA) on-site audit of the Otero County Processing Center (OCPC) in Chaparral, New Mexico was conducted on April 3 -5, 2018, by Elisabeth Copeland, Lead Auditor, and (b) (6), (b) (7)(C) Auditor, both are PREA Auditors contracted through Creative Corrections, LLC. This was the first PREA audit for OCPC. OCPC is an Immigration and Customs Enforcement (ICE) contract detention facility, operated by Management & Training Corporation with a designed capacity of 1000 beds. The detention facility houses adult male detainees to hold, process, and prepare individuals pending the results of judicial removal review. The purpose of the audit was to determine compliance with The Department of Homeland Security (DHS) PREA standards.

Of the 41 standards reviewed, the Auditor found that OCPC exceeded 2 standards (115.32 and 115.65), met 30 standards, had 7 standards that do not meet expectations (115.15, 115.16, 115.41, 115.42, 115.43, 116.67 and 115.86), and had 2 standards (115.14 and 115.18) were non-applicable.

On September 17, 2018, the Auditor received ICE Corrective Action Plan (PREA Audits) from by External Reviews and Analysis Unit (ERAU) Team Lead (b) (6), (b) (7)(C) for OCPC. This Corrective Action Plan addressed the seven standards that did not meet expectations during the PREA Audit conducted April 3 - 5, 2018. The Auditor reviewed the plan and documentation submitted and found the ICE Corrective Action Plan addressed the areas of non-compliance on 6 standards (115.16, 115.41, 115.42, 115.43, 115.67 and 115.86). The supporting documentation brought OCPC into compliance with these 6 standards. This plan outlined OCPC's plan to bring standard 115.15 into compliance by January 29, 2019.

On February 1, 2018, the Auditor received documentation supporting full compliance on 115.15.

Of the 41 standards reviewed on February 1, 2019, the Auditor found that OCPC exceeded 2 standards (115.32 and 115.65), met 37 standards and had 2 standards (115.14 and 115.18) were non-applicable.

PROVISIONS

Directions: After the corrective action period, or sooner if compliance is achieved before the corrective action period expires, the auditor shall complete the Corrective Action Plan Final Determination. The auditor shall select the provision that required corrective action and state if the facility's implementation of the provision now "Exceeds Standard," "Meets Standard," or "Does not meet Standard." The auditor shall include the evidence relied upon in making the compliance or non-compliance determination for each provision that was found non-compliant during the audit. Failure to comply with any part of a standard provision shall result in a finding of "Does not meet Standard" for that entire provision, unless that part is specifically designated as Not Applicable.

§115. 15 - Limits to cross-gender viewing and searches

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

OCPC installed shower curtains in all dorms. The Auditor was provided photographs of shower areas at OCPC. These photographs showed shower areas now have sufficient privacy for detainees to shower and change clothes without staff of the opposite gender viewing them in stages of undress. At the same, female staff can still conduct security checks without having to alter their path in the day room area.

§115. 16 - Accommodating detainees with disabilities and detainees who are limited English proficient

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

OCPC policy 2.1.18 has been updated and the missing language has been incorporated to policy. This language can be found on page 2 of Section 3 "Detainee Reporting," Subsection E. It states, "Detainees with disabilities and detainees with Limited English Proficiency will be provided with in-person or telephonic interpretation services that enable effective, accurate, and impartial interpretation, both receptively and expressively, using any necessary specialized vocabulary. Interpretation services shall be provided by someone other than another detainee, unless the detainee expresses a preference for another detainee to provide interpretation and the agency determines that such interpretation is appropriate and consistent with DHS policy."

§115. 41 - Assessment or risk of victimization and abusiveness

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

The Medical Intake Screen Worksheet has been revised. The worksheet includes the missing self-identifiers. "Do you identify yourself as lesbian, gay, bisexual, transgender, intersex, or gender nonconforming?" This updated language is found on page 1 of the Medical Intake Screen.

§115. 42 - Use of assessment information

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

OCPC policy 2.1.13, page 2, Section 4, "Classification Information," has been revised to reflect incorporating information into the classification definitions for the purpose of identifying which detainees are at a higher risk for victimization or sexual predation. Staff training has been completed advising staff how to use the information gathered.

§115. 43 - Protective custody

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

OCPC policy 2.1.18 has been revised to include the updated language. On page 3, Section 6, "Notifications and Referrals," Subsection C, states, "The FOD shall be notified through the AFOD no later than 72 hours after the initial placement of any detainees into administrative segregation."

§115. 67 - Agency protection against retaliation

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

A form, "PREA Allegation Follow UP," has been created to monitor retaliation. The form also incorporates a 30-day, 60 day and 90 day follow-up monitoring.

§115. 86 - Sexual abuse incident reviews

Outcome: Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

Notes:

The SAAPI Program Manager together with the Warden have implemented a new SAAPI Case Tracking System process which will ensure all required steps are completed, to include detainee letter notification, thirty-day incident review and an annual review which will include the negative report if no allegations have been reported within the prescribed timeframes. The tracking system was created on 8/22/2018.

AUDITOR CERTIFICATION:

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

/s/Elisabeth M. Copeland

February 5, 2019

Auditor's Signature & Date