reference to your classification process, can you
explain how that -- how that is done? What do you
access in order to make those classification
determinations?

MAJOR K.W. BERRY: I'm not -- and I
have not worked in classification. However, I can say
that it's a point system, as I recall, looking at --
reviewing the system. Inmates are graded according --
given points according to their criminal
sophistication, their age, their race, their sex, and
based on that number, it's determined where they are
housed and how they are housed.

CHAIRMAN WALTON: Now, if somebody gets
arrested by the Houston Police Department, are they
immediately brought to your facility or they're housed
in a police station before they are taken to court?

MAJOR K.W. BERRY: If my memory serves
me correctly, they're brought to the Houston Police
Department first prior to coming to our office, or
being booked into our station and --

CHAIRMAN WALTON: Would they be
detained overnight? Say, if they were arrested at
6:00 or 7:00 at night, would they be in a police
holding facility before they go to court or would they
be brought to you?
MAJOR K.W. BERRY: That would depend on if they were conducting an ongoing investigation, Commissioner, as I understand their process.

CHAIRMAN WALTON: So if the -- if it's a completed crime and there is no further investigation to take place, then they would be brought to you after booking?

MAJOR K.W. BERRY: Yes, sir.

CHAIRMAN WALTON: But if there is an ongoing investigation, then they may remain at the police station for further investigation until they're brought to court.

MAJOR K.W. BERRY: Is my understanding, yes, sir.

CHAIRMAN WALTON: Is there an amount of time under Texas that they can be detained before they are brought before a judge?

MAJOR K.W. BERRY: I don't know particularly, but I believe that's 72 hours.

CHAIRMAN WALTON: Of the assaults that were reported, were there any convictions in those cases?

MAJOR K.W. BERRY: My data doesn't reflect convictions. However, it only reflects that they were filed on and charges were accepted by the
D.A.'s Office. There was no -- I don't have any
follow up on whether convicted.

CHAIRMAN WALTON: And your inmate
handbook, you are said inmates are given that upon
coming into your facility?

MAJOR K.W. BERRY: Yes, sir, they are.

CHAIRMAN WALTON: And does it say
anything about sexual assault?

MAJOR K.W. BERRY: What it addresses is
criminal behavior or behavior that -- which disrupts.

It has a number of charges involved in that, some of
which -- if, for example, a sexual incident occurred
between two inmates and it was determined that it was
a consensual sexual incident and no charges being
filed, there is a disciplinary grievance -- there is a
disciplinary process in which that particular case
would go through the department -- or within the
detention system.

CHAIRMAN WALTON: And is there any
reporting system you have in place where inmates are
able to report the incident without fear of
retaliation?

MAJOR K.W. BERRY: As soon as an
incident is reported or comes to our attention, by any
way, the inmate is immediately taken from his assigned
area, and in most cases rehoused and assured that he
won't be exposed to anyone or any participants in that
act against him. He would be definitely protected,
yes. In fact, he would be reclassified for his
protection.

CHAIRMAN WALTON: Commissioner Puryear.

COMMISSIONER PURYEAR: I just have one
quick question and that is, how you ascertain whether
it was consensual and therefore something to be dealt
with internally versus something to refer outside.
It's always troubled me how one goes about determining
the level of consent within the prison environment or
detention environment.

MAJOR K.W. BERRY: What we have found
in investigating, through investigations, after the --
this is all determined after the investigation and
usually the inmates will say, well, look, we agreed to
have this contact and he didn't pay me my commissary
he was going to give me. And this is how -- we don't
make that determination based on what we find
ourselves. We refer those cases to the D.A.'s Office.
If they don't wish to pursue charges, we can't make
that happen. However, we do talk to the inmates
individually and find out what their level of
involvement in that incident was, both inmates.
COMMISSIONER FELLNER: Would you -- or I don't know if you can, but it would be very helpful if you could send us the -- or send to the staff the Commission on Jail Standards standards so we could review them to see what they have on these PREA-related matters. And it would be very helpful if we could get a copy of the training curriculum that is used, again, so we could see what kind of training is provided on these matters.

And I just wanted to follow up on Mr. Puryear's questions. If inmates know that if they report a sexual incident that it may end up exposing them to disciplinary action if it's determined to be, quote, consensual, isn't that in and of itself a strong disincentive to reporting, one; and, two, you mentioned as an example where an inmate -- you know, they have sex because someone -- as payment for a commissary debt. Would you consider sex as payment for a commissary debt consensual or something that warrants some kind of either disciplinary or criminal response?

MAJOR K.W. BERRY: In response to your first question: Deterrents is our biggest element that works for us here. Inmates in the Harris County jail understand if they're involved in a criminal act,
they will be prosecuted to the fullest extent that's available to us.

Despite the fact that these people are in jail doesn't mean that they're stupid. They play games. They test the system. They know that if they're involved in these activities that, you know, they'll be reclassified; they're subject to disciplinary action, and some still participate.

COMMISSIONER FELLNER: I'm not sure that answered my question as to whether or not if they -- that they would not report. It strikes me as a very low number of incidents, only to have 55 incidents, total reported incidents out of an average daily population -- in five years, out of an average daily population of 8,000, which makes me wonder whether some -- it's just low. That may be because you have an incredibly safe jail, which would be wonderful. It may be because some inmates are not reporting, which tends to be the case around the country. And I was just wondering if you think there are -- or let me put it this way.

What steps do you take to encourage inmates to report abusive situations, either by staff or by other inmates?

MAJOR K.W. BERRY: The efforts that we
take to encourage them is the fact that, you know, them being involved in an incident usually leads to other troubles for them in the cellblock. We can reclassify them, rehouse them, get them out of that environment they're in if, in fact, they are involved voluntarily or involuntarily. That usually happens after any reports incidents that we get them out of the environment they're in. That's an incentive for them to report anything that may be occurring, voluntary or involuntary. However, those that participate voluntarily, we don't usually find out that it's a voluntary situation until long after the investigation. Other than that, we're pursuing these investigations for criminal acts by the perpetrator.

COMMISSIONER FELLNER: And would you answer how you consider, if somebody has sex to pay off a commissary debt, how do you characterize that? Is that consensual in terms of how it would get listed and dealt with in your facility?

MAJOR K.W. BERRY: No, ma'am. I don't consider it consensual because inmates can't consent to sex in our care and custody and control. They have no consent to be able to do that under our control. The inmates -- the determination of whether they were consensual or not, this is usually
done after we've pursued prosecution after the
investigation is done. Then they'll -- well, I
participated voluntarily. This is usually after the
investigation. We pursue these things criminally to
begin with, every one of them.

COMMISSIONER FELLNER: Thank you.

CHAIRMAN WALTON: Let me just ask. If
a person comes forward and says that they were forced
to engage in a sexual act, and later a determination
is made administratively that it wasn't consensual --
I mean, that it wasn't forced. That it was consensual
but the person is still insisting that it was forced,
even though you all make a determination
administratively that it wasn't. Is that person
sanctioned?

MAJOR K.W. BERRY: If --

CHAIRMAN WALTON: The other person
says, it was consent. The alleged victim says, no, it
was forced. But administratively, you determine that
it was, in fact, consensual. Is that report who made
the report punished, even though they continue to
insist that it was -- that it was forced?

MAJOR K.W. BERRY: No, they are not
punished. They are reclassified and rehoused. We
again bring this before the District Attorney's Office
to make determination on criminal charges. If, in fact, they don't accept charges and they say, well, we don't feel like this is prosecutable, we make the determination on who the victim is in this case and take every step to protect the victim.

COMMISSIONER PURYEAR: You said, are reclassified or rehoused. Are they put into a higher security classification where they have less liberty within -- relatively less liberty within your facility?

MAJOR K.W. BERRY: No, not necessarily. That's all depending on how available housing. In some cases, they are put in administrative segregation areas. They have full services in terms of, they have their own room, they're in an area with other inmates just like themselves in terms of protection, so to speak. Not that they have any -- they go to recreation with these same people, they go to the law library with these same people, but they're not locked down, no. Will.

COMMISSIONER AIKEN: Again, thank you so much for appearing today. I just -- I have about four questions.

Can you explain briefly the type of housing configurations that you have? How is your
population, from medium to high custody inmates, how are they housed, the majority of your population? Are they in single cells or are they in open dorms or in pods, or how does that work?

MAJOR K.W. BERRY: We have -- the pod configuration, which may be broken down, will have in 96, and they could be broken down in cells of 24, four of 24, or two of 48. And we have dormitory and single cell housing.

Our maximum risk inmates are put in single cell housing. They're allowed to come out one hour a day. They are taken to recreation one at a time, individually. They go to the law library individually.

Your other dorm housing areas that are not restricted, for example, admin seg, they're not under any restrictions. They're taken as a group to recreation. Although they live in a cellblock, they have individual cells within the cellblock. And then we have the dormitory cells which have a group setting, in terms of one day room and several inmates in one cell -- in one cell area.

COMMISSIONER AIKEN: So you can have -- and that's basically your general population, so to speak?
MAJOR K.W. BERRY: Yes.

COMMISSIONER AIKEN: For instance, the majority of your population is housed in cells and it can house three, two, three, four people?

MAJOR K.W. BERRY: Yes, that's correct.

COMMISSIONER AIKEN: And then with a centralized day room. Is that correct?

MAJOR K.W. BERRY: That is correct.

COMMISSIONER AIKEN: Okay. And question that I asked -- and I don't want to get too specific with the classification criteria, but if I walked into a general population housing unit and looked at the population, what is the basic driving criteria for that inmate to be in that specific housing configuration?

MAJOR K.W. BERRY: And, again, I am not well versed in classification. However, I will tell you that inmates with like histories would be housed together.

COMMISSIONER AIKEN: Okay. You said with like histories. Are we talking about criminal charges, institutional behavior, mental disease, medical diseases, what?

MAJOR K.W. BERRY: Obviously, mental health issues, mental -- and medical conditions would
affect that classification. Your criminal history obviously would have an affect on that classification.

COMMISSIONER AIKEN: Okay. So, therefore, if I walked into a general population, I would get armed robbery charges here, or murder charges here, and another place is embezzlement over here? How are these people placed in the housing units? I mean, what criteria generally is the driver of placement of this population?

MAJOR K.W. BERRY: Mr. Commissioner, I would be really -- I'm having difficulty answering your question because, here again, I don't deal directly with classification.

COMMISSIONER AIKEN: Yes.

MAJOR K.W. BERRY: Although I will add this and say, again, that our classification system meets or exceeds that which is required by the Texas Commission on Jail Standards.

COMMISSIONER AIKEN: I understand that. That is not really what I'm getting at. I'm just trying to see what is the general reason for placing an inmate in this particular housing configuration. Not necessarily specific criteria of a classification tree, I think you called it, which explained what is the classification tree. I'm not talking about that.
MAJOR K.W. BERRY: Let's say, for example, if we have a number of ex-convicts, people who have been in a penitentiary, who would have prior convictions, you would find that group of inmates in the same cellblock. You would not have any first offenders on that cellblock.

COMMISSIONER AIKEN: Okay. My next question is, and you may not be able to answer this either, but what is the formalized process to put inmates in specific cells when there are multiple placements of inmates into housing unit? What is the criteria you use to put three inmates in one cell? How -- how are housing bed assignments made? Is there a formal process?

MAJOR K.W. BERRY: Mr. Commissioner, again, I would have to say that there is a formal process. I'm just not familiar with it.

COMMISSIONER AIKEN: Okay. Well, we'll move on, then.

You made the comment about having call buttons or panic buttons. Is that correct?

MAJOR K.W. BERRY: That is correct, sir.

COMMISSIONER AIKEN: Okay. Where are they located in the housing units of general
MAJOR K.W. BERRY: There is a call button at the door of each individual cell. A call button calls directly to the pod deputy's location with two-way communications. And it's also -- most of them are equipped with a second button that provides radio -- commercial radio stations for them.

COMMISSIONER AIKEN: Now, when the button is pressed, is there logs kept in the central location that receives the message from the call button?

MAJOR K.W. BERRY: No, sir. There are no logs kept. The only time something is documented in terms of receiving a call from an inmate, if there is -- if there is a distress. Then something is noted at that point in time.

COMMISSIONER AIKEN: Okay. What is your definition of distress?

MAJOR K.W. BERRY: If an inmate is saying, well, I'm sick, I need to see the doctor, or something of that nature.

COMMISSIONER AIKEN: And what is the process that you use to provide direct or indirect supervision of this population when they are restricted to their housing unit, particularly, the
cell. Three, four inmates to one cell. How is sight, sound, supervision managed?

MAJOR K.W. BERRY: There are inmates in those cellblocks. We have deputies actually make 30-minute walk-throughs through each cellblock in that case. They actually walk through the cellblock.

COMMISSIONER AIKEN: And those are 30-minute intervals?

MAJOR K.W. BERRY: Yes, sir.

COMMISSIONER AIKEN: Okay. So you don't have an officer that's placed in that particular cellblock continuously during the time that the inmate population is housed in their specific living cubicle or area. Is that correct?

MAJOR K.W. BERRY: No, sir. The pod concept is an open viewed area with windows completely around in the pod there where the deputy can see out, and it's usually -- if there is 96 inmates, there are two deputies, this one-to-48 ratio. Every 30 minutes, one deputy will -- they'll take turns walking through the actual cellblock themselves.

COMMISSIONER AIKEN: So when you said 30-minute intervals, this officer may be walking through this part, then walk through that part, then they switch out with the control room. Is that what
you're saying?

MAJOR K.W. BERRY: Yes, sir.

COMMISSIONER AIKEN: Switch out with the control room and then this officer will make a 30-minute round and then another 30-minute round, et cetera?

MAJOR K.W. BERRY: We'll leave that to their discretion as to which ones make the --

COMMISSIONER AIKEN: Yes, I understand that. But there is a formal 30-minute making -- a welfare check, so to speak.

MAJOR K.W. BERRY: Yes, sir.

COMMISSIONER AIKEN: And that's the direct -- indirect supervision concept with that. Is that correct?

MAJOR K.W. BERRY: Yes, sir.

COMMISSIONER AIKEN: Okay. And your total population is 8,000 inmates, generally speaking? Generically?

MAJOR K.W. BERRY: That was the average daily population for the six years that I mentioned to you, 2001 through 2006. Today's population is 9298.

COMMISSIONER AIKEN: Okay. Now, you have those persons that are remanded for county charges, that people are accused of violations of
criminal -- criminal codes while in the county and
they're picked up by your local police departments.
Is that correct?

MAJOR K.W. BERRY: That is correct.

COMMISSIONER AIKEN: And then there are
inmates that are already sentenced and awaiting going
to state facilities. Is that correct?

MAJOR K.W. BERRY: That is correct.

COMMISSIONER AIKEN: And then there are
inmates that are in federal jurisdictions that are
being housed for you. Is that correct?

MAJOR K.W. BERRY: That is correct.

COMMISSIONER AIKEN: And are there any
inmates or persons that are awaiting immigration
determinations housed in your facility?

MAJOR K.W. BERRY: Not at this time.

I'm not aware of any, sir.

COMMISSIONER AIKEN: Okay. Thank you
very much, sir.

CHAIRMAN WALTON: Okay. If no other
person, then we need to proceed with the next panel.
We appreciate you presenting your
testimony. Did you have anything in writing to
present to us?

MAJOR K.W. BERRY: No. I was not aware
that I would be testifying. However, that can be made available to the Commission upon request.

CHAIRMAN WALTON: We'd appreciate that.

MAJOR K.W. BERRY: Okay.

COMMISSIONER FELLNER: And you will get the standards to us, or should we make that request directly to the jail commissioner?

MAJOR K.W. BERRY: It would probably be a lot easier if had a direct request from the jail commission to send that to you. They have electronic ways getting it to you, more so than I would.

COMMISSIONER FELLNER: Okay. Thank you.

CHAIRMAN WALTON: Thank you.

Next panel. We started this part of the hearing, which is looking at the situation in the state of Texas. Two of our next witnesses are related to victims of sexual assault in detention facilities. Unfortunately, those individuals who are the actual victims we were not able to make arrangements to have present. We will, however, seek to try and have their testimony by way of affidavit or otherwise under oath submitted so we'll have that on the record as testimony that was presented to the Commission under oath. Under the circumstances, however, we will have