

Prison Rape Elimination Act (PREA)

812.1 PURPOSE AND SCOPE

This policy provides guidance for compliance with the Prison Rape Elimination Act of 2003 (PREA) and implementing regulation that establishes standards to prevent, detect and respond to sexual abuse and sexual harassment.

812.2 DEFINITIONS

Definitions related to this policy include:

Intersexual- A person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female.

Sexual abuse- Any of the following acts, if the inmate does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse: Sexual abuse of an inmate, can be by an inmate, staff member, contractor, or volunteer includes any of the following acts, with or without consent of the inmate, detainee, or resident:

- (A) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (B) Contact between the mouth and the penis, vulva, or anus;
- (C) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument;
- (D) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.
- (E) Contact between the mouth and any body part with the intent to abuse, arouse, or gratify sexual desire; to include kissing.
- (F) Any display of the genitalia, buttocks, or breast in the presence of an inmate.
- (G) Voyeurism by a staff member, contractor, or volunteer: an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

Sexual harassment- Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

Transgender- A person whose gender identity (i.e. internal sense of feeling male or female) is different from the person's assigned sex at birth.

812.3 POLICY

This office has a zero-tolerance of sexual abuse and sexual harassment toward inmates. This office will take appropriate affirmative measures to protect all inmates from sexual abuse and harassment and promptly and thoroughly investigate all allegations of sexual abuse and harassment.

812.4 PREA COORDINATOR

The Detention Administrator shall appoint an upper-level manager to oversee office efforts to comply with PREA standards. The PREA coordinator shall review facility policies and practices and make appropriate compliance recommendations to the Detention Administrator.

The PREA coordinator's responsibilities shall include:

- (a) Developing a written plan to coordinate response among staff first responders, medical and mental health practitioners, investigators and facility management to an incident of sexual abuse. The plan must also outline the office's approach to identifying imminent sexual abuse toward inmates and preventing and detecting such incidents.
- (b) Ensuring that within 30 days of intake, inmates are provided with comprehensive education, either in person or through video, regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding the office's policies and procedures for responding to such incidents.
- (c) Developing a staffing plan to provide adequate levels of staffing and video monitoring, where applicable, in order to protect detainees from sexual abuse. This includes documenting deviations and the reasons for deviations from the staffing plan, as well as reviewing the staffing plan a minimum of once per year. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration:
 - 1. Generally accepted detention and correctional practices.
 - 2. Any findings of inadequacy.
 - 3. Any findings of inadequacy from federal investigative agencies.
 - 4. Any findings of inadequacy from internal or external oversight bodies.
 - 5. All components of the facility's physical plant, including blind spots or areas where staff or inmates may be isolated.
 - 6. The number and placement of supervisory staff.
 - 7. Institution programs occurring on a particular shift.
 - 8. Any applicable state or local laws, regulations or standards.
 - 9. The prevalence of substantiated and unsubstantiated incidents of sexual abuse.
 - 10. Any other relevant factors.
- (d) Ensuring that, when designing, acquiring, expanding or modifying facilities, or when installing or updating a video-monitoring system, electronic surveillance system or other monitoring technology, consideration is given to the office's ability to protect inmates from sexual abuse.

- (e) Making reasonable efforts to enter into agreements with community service providers to provide inmates with confidential emotional support services related to sexual abuse. The facility shall provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, state or national victim advocacy or rape crisis organizations.
- (f) Ensuring the protocol describing the responsibilities of the Office and of another investigating agency, if another law enforcement agency will be responsible for conducting any sexual abuse or sexual harassment investigations, is published on the facility website.
- (g) Implementing a process by which inmates may report sexual abuse and sexual harassment to a public/private entity or an office that is not part of the Office and that the outside entity or office is able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to the Detention Administrator, allowing the inmate anonymity.
- (h) Establishing a process to ensure accurate, uniform data is collected for every allegation of sexual abuse at facilities under the direct control of this office.
- (i) Establishing a process to monitor the conduct and treatment of detainees or staff who have reported sexual abuse, and the conduct and treatment of detainees who were reported to have suffered sexual abuse.
- (j) Ensuring that the following are published on the office website or by other means, if no website exists:
 - 1. Office policy governing investigations of allegations of sexual abuse and sexual harassment or the referral of such investigations of sexual abuse or sexual harassment.
 - 2. Information on how to report sexual abuse and sexual harassment on behalf of an inmate.
- (k) Implementing a protocol requiring mid-level or higher-level supervisors to conduct and document unannounced inspections to identify and deter sexual abuse and sexual harassment. The protocol shall prohibit announcing when such inspections are to occur, unless it is necessary for operational considerations.

812.5 REPORTING SEXUAL ABUSE, HARASSMENT AND RETALIATION

Any employee, agency representative, volunteer or contractor who becomes aware of an incident of sexual abuse, sexual harassment or retaliation against inmates or staff shall immediately notify a supervisor, who will forward the matter. Staff may also privately report sexual abuse and sexual harassment of inmates to the Detention Administrator.

Inmates may report sexual abuse or sexual harassment incidents anonymously or to any staff member they choose. Staff shall accommodate all inmate requests to report allegations of sexual abuse or harassment. Staff shall accept reports made verbally, in writing, anonymously or from third parties and shall promptly document all verbal reports.

Threats or allegations of sexual abuse and sexual harassment, regardless of the source, shall be documented and referred for investigation. Sexual abuse and sexual harassment reports shall only be made available to those who have a legitimate need to know, and in accordance with this policy and applicable law.

812.6 RETALIATION

All inmates and staff who report sexual abuse or sexual harassment, or who cooperate with sexual abuse or sexual harassment investigations, shall be protected from retaliation.

Protective measures, including housing changes, transfers, removal of alleged abusers from contact with victims, administrative reassignment or reassignment of the victim or alleged perpetrator to another housing area, and support services for inmates or staff who fear retaliation, shall be utilized.

812.7 FIRST RESPONDERS

If an allegation of inmate sexual abuse is made, the first detention officer to respond shall:

- (a) Separate the parties.
- (b) Request medical assistance as appropriate. If no qualified health care or mental health professionals are on-duty when a report of recent abuse is made, staff first responders shall take preliminary steps to protect the victim and shall immediately notify the appropriate qualified health care and mental health professionals.
- (c) Establish a crime scene to preserve and protect any evidence. Identify and secure witnesses until steps can be taken to collect any evidence.
- (d) If the time period allows for collection of physical evidence, request that the alleged victim, and ensure that the alleged abuser, do not take any actions that could destroy physical evidence (e.g., washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, eating).
- (e) Consider whether a change in classification or housing assignment for the victim is needed or whether witnesses to the incident need protection, both of which may include reassignment of housing.
- (f) Determine whether the alleged perpetrator should be administratively segregated or administratively transferred during the investigation.

If the first responder is not a detention officer, the responder shall request the alleged victim to refrain from any actions that could destroy physical evidence and then immediately notify a detention officer.

Should an investigation involve inmates who have disabilities or who have limited English proficiency, the first responder shall not rely on inmate interpreters, inmate readers or other types of inmate assistants, except in limited circumstances where an extended delay in obtaining an interpreter could compromise inmate safety, the performance of first responder duties or the investigation of sexual abuse or sexual harassment allegations.

812.8 SEXUAL ABUSE AND SEXUAL HARASSMENT BETWEEN STAFF AND INMATES

Sexual abuse and sexual harassment between staff, volunteers or contract personnel and inmates is strictly prohibited. The fact that an inmate may have initiated a relationship or sexual contact is not a defense to violating this policy.

Any incident involving allegations of staff-on-inmate sexual abuse or sexual harassment shall be referred to the Criminal Investigation Division for investigation.

812.8.1 SEXUAL ABUSE BY CONTRACTOR OR VOLUNTEER

Any contractor or volunteer who engages in sexual abuse within the facility shall be immediately prohibited from having any contact with inmates. He/she shall be promptly reported to the law enforcement agency that would investigate such allegations and brought to the attention of any relevant licensing bodies.

812.9 SEXUAL ABUSE VICTIMS

Inmates who are victims of sexual abuse shall be transported to the nearest appropriate location for treatment of injuries and collection of evidence, and for crisis intervention services. Depending on the severity of the injuries, transportation may occur by a staff member or by ambulance, in either case with appropriate security to protect the staff, the inmate and the public, and to prevent escape.

A victim advocate from rape crisis center should be made available to the victim. If a rape crisis center is not available, the Office shall make available a qualified member of a community-based organization, or a qualified health care or mental health professional from the Office, to provide victim advocate services. Efforts to secure services from a rape crisis center shall be documented.

812.10 EXAMINATION, TESTING AND TREATMENT

Examination, testing and treatment shall include the following:

- (a) Forensic medical examinations shall be performed as evidentiary or medically appropriate, without financial cost to the victim. Where possible, these examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs). If either SAFEs nor SANEs are available, other qualified medical practitioners can perform the examination.
- (b) If requested by the victim, a victim advocate, a qualified office staff member or a qualified community organization staff member shall accompany the victim through the forensic medical examination process and investigatory interviews. That person will provide emotional support, crisis intervention, information and referrals.
- (c) Provisions shall be made for testing the victim for sexually transmitted diseases.
- (d) Counseling for the treatment of sexually transmitted diseases, if appropriate, shall be provided.
- (e) Victims shall be offered information about, and given access to, emergency contraception, prophylaxis for sexually transmitted infections and follow-up treatment for sexually transmitted diseases. This shall be done in a timely manner.
- (f) Victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests. If pregnancy results from the abuse, such victims shall receive comprehensive information about, and access to, all lawful pregnancy-related medical services. This shall be done in a timely manner.
- (g) Victims shall be provided with follow-up services, treatment plans and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities or their release from custody.
- (h) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.
- (i) The Health Care Adviser or mental health staff shall obtain informed consent from inmates before reporting information to detention center staff about prior sexual victimization that occurred somewhere other than an institutional setting.
- (j) Medical and mental health practitioners shall ensure that information related to sexual victimization that occurred in an institutional setting is limited to medical and mental health practitioners and other staff unless it is necessary to inform detention center staff about security or management decisions.

812.11 PROTECTIVE CUSTODY

Inmates at high risk for sexual victimization shall not be placed in involuntary protective custody unless an assessment of available alternatives has been made and it has been determined that there is no reasonably available alternative means of separation. Inmates may be held in involuntary protective custody for less than 24 hours while an assessment is completed.

If an involuntary protective custody assignment is made because of a high risk for victimization, the Detention Administrator shall clearly document the basis for the concern for the inmate's safety and the reasons why no alternative means of separation can be arranged.

The facility shall assign these inmates to involuntary protective custody only until an alternative means of separation from likely abusers can be arranged, not ordinarily in excess of 30 days.

Inmates placed in temporary protective custody shall continue to have reasonable access to programs, privileges, education and work opportunities. If restrictions are put in place, the Detention Administrator shall document the following:

- (a) The opportunities that have been limited
- (b) The duration of the limitation
- (c) The reasons for such limitations

Every 30 days, the Detention Administrator shall afford each such inmate a review to determine whether there is a continuing need for protective custody.

812.12 SEXUAL ABUSE INCIDENT REVIEW

An incident review shall be conducted at the conclusion of every sexual abuse investigation unless the allegation has been determined to be unfounded. The review should occur within 30 days of the conclusion of the investigation.

The review team shall include upper-level management officials and seek input from line supervisors, investigators and qualified health care and or mental health professionals, as appropriate:

- (a) Consider whether the investigation indicates a need to change policy or practice in order to better prevent, detect or respond to sexual abuse.
- (b) Identifying corrective actions taken.
- (c) Recommending corrective actions.
- (d) Comparing current annual data and corrective actions with those from prior years.
- (e) Assessing the office's progress in addressing sexual abuse.

812.13 RECORDS

All case records and reports associated with a claim of sexual abuse and sexual harassment, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment or counseling, shall be retained in accordance with confidentiality laws.

The Office shall retain all written reports from administrative and criminal investigations pursuant to this policy for as long as the alleged abuser is held or employed by the Office, plus ten years.

812.14 SEXUAL ABUSE AND SEXUAL HARASSMENT INVESTIGATIONS

An administrative investigation, criminal investigation or both shall be completed for all allegations of sexual abuse and sexual harassment. Administrative investigations shall include an effort to determine whether the staff's actions or inaction contributed to the abuse. All administrative and/or criminal investigations shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.

When practicable, an investigator of the same sex as the victim should be assigned to the case. Sexual abuse and sexual harassment investigations should be conducted promptly and continuously until completed. Investigators should evaluate reports or threats of sexual abuse and sexual harassment without regard to an inmate's sexual orientation, sex or gender identity. Investigators should not assume that any sexual activity among inmates is consensual.

The departure of the alleged abuser or victim from the employment or control of the Detention Center or Office shall not provide a basis for terminating an investigation.

If the investigation is referred to another agency for investigation, the Office shall request that the investigating agency follow the requirements as provided. The referral shall be documented. The Office shall cooperate with the outside agency investigation and shall request to be informed about the progress of the investigation. If criminal acts are identified as a result of the investigation, the case shall be presented to the appropriate prosecutor's office for filing of new charges.

Evidence collection shall be based on a uniform evidence protocol that is developmentally appropriate for youth, if applicable.

Inmates alleging sexual abuse shall not be required to submit to a polygraph examination or other truth-telling device as a condition for proceeding with an investigation.

812.14.1 INVESTIGATIVE FINDINGS

All completed written investigations shall be forwarded to the Sheriff.

The staff shall be subject to disciplinary sanctions, up to and including termination, for violating this policy. Termination shall be the presumptive disciplinary sanction for staff members who have engaged in sexual abuse. All discipline shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history and the sanctions imposed for comparable offenses by other staff with similar histories.

All terminations for violations of sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to the law enforcement agency that would handle any related investigation and to any related investigation and to any relevant licensing bodies.

812.14.2 REPORTING TO INMATES

The Detention Administrator or the authorized designee shall inform a victim inmate in writing whether an allegation has been substantiated, unsubstantiated or unfounded. If the Office did not conduct the investigation, the Office shall request relevant information from the investigative agency in order to inform the inmate.

If a staff member is the accused (unless the Office has determined that the allegation is unfounded), the inmate shall also be informed whenever:

- (a) The staff member is no longer assigned to the inmate's unit or employed at the facility.
- (b) The Office learns that the staff member has been indicted or convicted on a charge related to sexual abuse with the facility.

If another inmate is the accused, the alleged victim shall be notified whenever the Office learns that the alleged abuser has been indicted or convicted on a charge related to sexual abuse within the facility.

All notifications or attempted notifications shall be documented. When notification is made while the inmate is in custody, the inmate will sign a copy of the notification letter. The letter will be added to the case file.

812.15 PRESERVATION OF ABILITY TO PROTECT INMATES

The Office shall not enter into or renew any agreement that limits the office's ability to remove alleged staff sexual abusers from contact with any inmates pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.