



POLICY DIRECTIVE

Policy:	DOC 1.1.17 PRISON RAPE ELIMINATION ACT OF 2003 (PREA)
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Signature/Title:	/s/ Brian Gootkin, Director

I. POLICY

The Department of Corrections has zero tolerance relating to all forms of sexual abuse and sexual harassment in accordance with the standards set forth in the *Prison Rape Elimination Act of 2003 (PREA)*.

II. APPLICABILITY

All Department divisions, facilities, and programs.

III. DEFINITIONS

Administrative Investigation – Any agency investigation that is not conducted for the purpose of law enforcement or criminal prosecution.

Administrator – The official, regardless of local title (division or facility administrator, bureau chief, warden, superintendent), ultimately responsible for the division, facility, or program operation and management.

Confidential – Information to be shared only by order of a court or with those whose official capacity dictates their absolute need to know.

Criminal Investigation – A formal investigation by a law enforcement agency having jurisdiction (LEAJ) or by a Department of Corrections criminal investigator to discover whether there is probable cause to believe that criminal conduct has occurred.

Criminal Investigator – A Department of Corrections investigator in the Office of Investigations with sworn Peace Officer authority established through a Memorandum of Understanding with the Montana Department of Justice, Division of Criminal Investigations.

Department Employee – A person employed by the Department of Corrections who has attained permanent status or is eligible to attain permanent status, as provided in 2-18-101(20), MCA; a volunteer, an intern, or a temporary or short-term worker. This term does not include service providers.

Garrity Warning – Formal advisement given to an individual during an administrative investigation when potential for criminal charges may exist. Neither the individual's answers nor the fruits of those answers may be used against the individual in a subsequent or concurrent criminal prosecution.

Incarcerated Offender – Any individual detained in a Department-owned, operated, or contracted facility that is sentenced or committed to Department of Corrections supervision.

Intersex – A person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

Investigation – A formal fact-finding activity for the specific purpose of addressing complaints or

allegations. Investigations may include, but are not limited to: interviews, surveillance, review of electronic and paper records, correspondence, and other information storage devices.

Investigator – The designated Department employee assigned to conduct an official investigation of a complaint, incident, or report of sexual abuse or sexual harassment of an offender.

Law Enforcement Agency of Jurisdiction (LEAJ) – The government agency, for example, sheriff's office or local police department, operating within their defined area of responsibility.

PREA Coordinator – The Department position responsible for administration and management of the Department-wide PREA program including but not limited to compliance, policy and procedure development, staff training, offender education, and records and statistical tracking.

Qualified Health Care Professional (QHCP): Physicians, physician assistants, nurses, nurse practitioners, dentists, mental health professionals, and others who, by virtue of their education, credentials, training, and experience are permitted by law to evaluate and care for patients, including Department staff and contracted or fee-for-service professionals.

Qualified Mental Health Professional (QHMP) – Psychiatrists, psychologists, psychiatric social workers, psychiatric nurses, psychiatric nurse practitioners, licensed professional counselors, licensed clinical social workers, and others who, by virtue of their education, credentials, training, and experience, are permitted by law to evaluate and care for the mental health needs of patients, including Department staff and contracted or fee-for-service professionals. This definition excludes Mental Health Technicians.

Service Providers – This term includes contracted persons or other vendors providing service whose assignment is primarily on Department premises, for example, facility or program office.

Sexual Abuse of an Offender by Another Offender – Sexual acts, sexual contact or any other intentional touching, either directly, through the clothing or with an object, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation, in which the victim does not consent, is coerced by overt or implied threats of violence, or is unable to consent or refuse.

Sexual Abuse of an offender by an Employee or Service Provider – Sexual acts, sexual contact or any other intentional contact, either directly, through the clothing or with an object, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, any attempt, threat, or request by an employee or service provider to engage in these activities, any display by an employee or service provider of his or her uncovered genitalia, buttocks, or breast in the presence of an offender, or voyeurism by an employee or service provider, when these acts are unrelated to official duties or where the employee or service provider has the intent to abuse, arouse, or gratify sexual desire.

Sexual Harassment of an Offender by Another Offender – Repeated and unwelcomed sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one offender directed toward another offender.

Sexual Harassment of an Offender by an Employee or Service Provider – Repeated verbal comments or gestures of a sexual nature to an offender by an employee or service provider, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

Substantiated – An event was investigated and determined to have occurred, based upon the preponderance of the evidence.

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.

Unfounded – An event was determined not to have occurred.

Unsubstantiated – Evidence was insufficient to meet the preponderance of the evidence to make a final determination as to whether or not the event occurred.

Volunteer – Any person who has been approved to provide services for Department programs without compensation.

Voyeurism – An invasion of privacy of an offender by an employee or service provider for reasons unrelated to official duties.

IV. DEPARTMENT DIRECTIVES

A. General Requirements

1. All Department facilities will comply with all applicable standards under *28 CFR Part 115, Prison Rape Elimination Act of 2003*. Documentation of compliance with all standards will be maintained by the facility.
2. Administrators, or designees, will immediately respond to allegations of sexual abuse and sexual harassment, fully investigate reported incidents, pursue disciplinary action, and refer for investigation those who violate the requirements set forth in this policy.
3. The Department director, or designee, will appoint a Department PREA Coordinator responsible for the following:
 - a. coordinating and developing policies and procedures to identify, monitor, and track sexual abuse and sexual harassment;
 - b. conducting audits to ensure compliance with Department policy, applicable state or federal laws, and PREA standards; and
 - c. compiling records and reporting statistical data to the U.S Department of Justice on an annual basis as required by PREA standards.
4. Each administrator, or designee, will assign a PREA compliance manager responsible for the following:
 - a. coordinating facility PREA-related activities with the PREA coordinator;
 - b. ensuring facility compliance with all PREA standards;
 - c. ensuring facility compliance with PREA training requirements; and
 - d. tracking and reporting PREA allegations and statistics to the Department PREA coordinator.

B. Prevention and Intervention

1. Employees must be alert to situations in which sexual abuse or sexual harassment might occur and be capable of identifying indicators of sexual abuse and sexual harassment.
2. Any new contract or contract renewal for the confinement of offenders will include the contract entity's obligation to adopt and comply with the PREA standards and a provision for the Department to monitor the contract to ensure the contractor is complying with the PREA standards.
3. When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the facility and the Department must consider the effect of the design, acquisition, expansion, or modification upon the facility's and Department's ability to protect offenders from sexual abuse.
4. When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the facility and Department must consider how such technology may enhance the facility's and Department's ability to protect offenders from sexual abuse.
5. The Department will not enter into or renew any collective bargaining agreement or other agreement that limits the Department's ability to remove alleged staff sexual abusers

from contact with any offender pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.

6. Administrators are required to develop, document, and make best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring, to protect offenders against abuse. In circumstances where the staffing plan is not complied with, facilities will document and justify all deviations from the plan.
7. The facility will review the staffing plan annually, in consultation with the PREA coordinator, to assess and document whether adjustments are needed.
8. Administrators will require intermediate-level and higher-level staff to conduct random unannounced rounds to identify and deter employee or service provider sexual abuse and sexual harassment. These rounds must be documented in an unannounced rounds log and cover all shifts and all areas of the facility. The facility must prohibit staff from alerting others of the conduct of such rounds.
9. All facilities will identify, assess, and manage offenders with special needs, including those who are potentially vulnerable or dangerous, to provide safe housing, adequate protection, and programmatic resources to meet their needs in accordance with *DOC 4.2.2 Special Needs Offenders*.
10. Transgender and intersex offenders will be given the opportunity to shower separately from other offenders either through physical separation by separate shower stalls, or by time-phasing or scheduling of showers.
11. The Department will not place lesbian, gay, bisexual, intersex, or transgender offenders in dedicated facilities, units, or wings solely on the basis of such identification or status.
12. Victims of sexual abuse and offenders at high risk for sexual victimization will not be placed in segregated housing for protective purposes unless an assessment of all available alternatives has been made and a determination is made that there is no alternative means of separation. If a facility cannot conduct such an assessment immediately, the facility may hold the offender in segregated housing for up to 24 hours while completing the assessment. The facility will clearly document the basis for the facility's concern for the offender's safety and the reason no alternative means of separation could be arranged. The facility will review each offender placed in segregated housing for protective purposes every 30 days.
13. Offenders placed in segregated housing for protective purposes will have access to programs, privileges, education, and work opportunities to the extent possible. If access is restricted the facility will document what opportunities have been limited, the duration of the limitation and the reasons for such limitations.

C. Training

1. Prior to working with offenders, all Department employees with direct and/or incidental contact with offenders, which includes visual, physical, or audio contact, must receive documented PREA training. If an employee is unable to attend comprehensive PREA classroom training prior to contact with offenders, they must receive pre-service training in the form of reviewing the PREA policy and a PREA brochure and signing an acknowledgment form. The employee must then attend the next available classroom training.
2. Comprehensive classroom training and pre-service training will include, but is not limited to:
 - a. review of this policy, *DOC 1.3.12 Staff Association and Conduct with Offenders*, appropriate site-specific procedures, and any other applicable state or federal laws;
 - b. the Department's zero tolerance policy for sexual abuse and sexual harassment;
 - c. how employees and service providers fulfill their responsibilities under the Department's sexual abuse and sexual harassment prevention, detection, reporting, and response

- policies and procedures;
 - d. an offender's right to be free from sexual abuse and sexual harassment;
 - e. offender and employee rights to be free from retaliation for reporting sexual abuse and harassment;
 - f. the dynamics of sexual abuse and harassment in confinement;
 - g. common reactions of sexual abuse and sexual harassment victims;
 - h. how to detect and respond to signs of threatened and actual sexual abuse;
 - i. how to avoid inappropriate relationships with offenders;
 - j. how to communicate effectively and professionally with offenders who might be lesbian, gay, bisexual, transgender, intersex (LGBTI) or gender nonconforming;
 - k. how to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities;
 - l. facility procedures on sharing confidential information; and
 - m. gender-specific information tailored to the gender of the offenders at the facility.
3. Each employee will attend refresher training in odd number years to cover the topics in IV.C.2 above. In even numbered years, employees will receive refresher information on current sexual abuse and sexual harassment policies.
 4. All volunteers and service providers who have visual, physical, or audio contact with offenders will be trained at a minimum on the Department's zero tolerance policy concerning sexual abuse and harassment, prevention, detection, and response methods, and how to report such incidents. The level and type of training provided to volunteers and service providers will be based on the services they provide and the level of contact they have with offenders, and could rise to the level of employee training referenced in IV.C.2 above. Volunteers and service providers will sign a training acknowledgment form.
 5. Medical and mental health providers will receive additional, specialized training relevant to their role in detecting and assessing signs of sexual abuse and sexual harassment, preservation of evidence, and responding effectively to victims of sexual abuse and sexual harassment.
 6. Employees who conduct sexual abuse investigations will receive additional training in conducting such investigations in confinement settings, to include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collections, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.
 7. All training will be documented, through signature or electronic verification, showing acknowledgement that the employee, volunteer, or service provider received and understood the training. For comprehensive training, staff will use the *Comprehensive PREA Training Acknowledgment*.

D. Offender Education

1. Within 72 hours of facility intake for adult offenders and during the intake process for residents at juvenile facilities, employees will communicate to offenders, verbally and in writing:
 - a. information about the Department's zero tolerance of sexual abuse and sexual harassment;
 - b. how to report incidents or suspicion of abuse or harassment; and
 - c. this policy, *DOC 1.3.12 Staff Association and Conduct with Offenders*, *DOC 3.3.3 Offender Grievance Program*, and corresponding site-specific procedures.
2. Within 30 days of intake for adult offenders, or within 10 days of intake for residents at juvenile facilities, the facility will provide education to offenders 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 facility procedures for reporting and responding to such incidents.

3. Offenders will receive education upon transfer to a different facility regarding any policies and procedures of the offender's new facility that differ from those of the previous facility.
4. Each facility must take appropriate steps to ensure offenders with disabilities have an equal opportunity to participate in or benefit from all aspects of the facility's efforts to prevent, detect and respond to sexual abuse and sexual harassment. Such steps will include access to interpreters and written materials provided in formats or through methods that ensure effective communication. The facility will provide offender education in formats accessible to all offenders, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to offenders who have limited reading skills.
5. The facility will maintain documentation of offender participation in PREA education sessions and have offenders sign an acknowledgment form.
6. The facility will ensure that PREA information is continuously and readily available or visible to offenders through posters, offender handbooks, or other written formats.

E. Screening for Risk of Victimization or Abusiveness

1. Risk assessment of all offenders using an objective screening instrument for victimization or abusiveness will take place within 72 hours of intake into a facility.
2. Within 30 days of intake the facility will reassess the offender's risk of victimization or abusiveness, taking into consideration any additional relevant information received by the facility since the initial screening.
3. The facility will conduct additional screening assessments when warranted based on any new information, referral, request, or incident of sexual abuse.
4. The screening instrument will consider, at a minimum, the following criteria for risk of sexual victimization:
 - a. whether the offender has a mental, physical, or developmental disability;
 - b. the age of the offender;
 - c. the physical build of the offender;
 - d. whether the offender has previously been incarcerated;
 - e. whether the offender's criminal history is exclusively nonviolent;
 - f. whether the offender has prior convictions for sex offenses against an adult or child;
 - g. whether the offender is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
 - h. whether the offender has previously experienced sexual victimization; and
 - i. the offender's own perception of vulnerability.
5. The screening will consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse in assessing the offender's risk for being sexually abusive.
6. Offenders will not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked during screening or reassessment.
7. When the risk assessment indicates an offender has experienced prior sexual victimization or previously perpetrated sexual abuse, whether it occurred in the community or in an institutional setting, the facility will ensure the offender is offered a follow-up meeting with a qualified mental health professional within 14 days of the assessment.
8. Information from the risk assessment for victimization or abusiveness will be provided on a need-to-know basis to individuals who make housing, bed, work, education, and program assignments and used with the goal of keeping separate those offenders at high risk of being sexually victimized from those at high risk of being sexually abusive.

9. In deciding whether to assign a transgender or intersex offender to a facility, and in making other housing and programming assignments, the Department will consider on a case-by-case basis the placement's effect on the offender's safety, whether the placement would present management or security problems, and whether such placement would likely endanger the safety of other offenders.
10. The Classification Manager will use the offender classification system outlined in *DOC 4.2.1 Offender Classification System* to conduct an individual assessment with all relevant information, including the offender's own views of their safety and vulnerability when considering placement in a facility.
11. The assessment will occur as soon as possible following notification to the Department that an offender has been committed to a secure facility but no later than 30 days after arrival at a facility.
12. The classification manager will ensure all considered information is documented and maintained in a secure location. Placement will be reviewed at each classification status review.
13. Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate. A transgender or intersex inmate's own views with respect to their own safety shall be given serious consideration.

F. Offender Reporting

1. Facilities will provide multiple internal ways for offenders to privately report sexual abuse and sexual harassment, retaliation by other offenders or employees for reporting sexual abuse and sexual harassment, and employee neglect or violation of responsibilities that may have contributed to such incidents.
2. Facilities must provide at least one way for offenders to report abuse or harassment to a public or private entity that is not part of the Department, and that is able to receive and immediately forward any reports from offenders of any sexual abuse or harassment to facility or Department officials, allowing the offender to remain anonymous upon request.
3. Offenders who are victims of or have knowledge of sexual abuse or sexual harassment should immediately report the incident by one of the following methods:
 - a. report the incident to an employee or service provider verbally, in writing, anonymously or through a third party;
 - b. utilize the "locked box" formal grievance procedure in accordance with *DOC 3.3.3 Inmate Grievance Program*;
 - c. contact the external agency listed on PREA posters and brochures that are posted and available throughout the facility; or
 - d. use the inmate phone system following the instructions on the phone to leave a message for a Department employee.
4. Employees and service providers will accept reports verbally, in writing, anonymously, and from third parties and will immediately document any verbal reports.
5. Reports made in bad faith, which includes deliberately malicious reports by offenders or other parties, will result in disciplinary action and/or criminal charges.

G. First Responder Duties

1. Upon learning of an allegation that an offender was sexually abused, the first security staff to respond to the report will:
 - a. separate the alleged victim and alleged perpetrator;

- b. preserve and protect any crime scene until appropriate steps can be taken to collect any evidence, in accordance with *DOC 3.1.28 Crime Scene and Physical Evidence Preservation*;
 - c. if the abuse allegedly occurred within a time period that allows for the collection of physical evidence, typically 72 hours, request that the alleged victim and ensure that the alleged abuser not take any actions that could destroy physical evidence such as washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.
2. If the first employee or service provider to learn of an allegation that an offender was sexually abused is not security staff, the employee or service provider will request that the alleged victim not take any actions that could destroy physical evidence, take reasonable steps to ensure the victim's safety, and immediately notify security staff.
 3. Each facility will maintain a written institutional plan to coordinate actions taken in response to an incident of sexual abuse among employee and service provider first responders, medical and mental health practitioners, investigators, and facility leadership.

H. Employee and Service Provider Reporting

1. Department employees and service providers will report immediately any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the Department; retaliation against offenders or employees who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
2. Employees and service providers may privately report sexual abuse or sexual harassment through their chain of command or by notifying the Department PREA coordinator.
3. If the alleged victim is under the age of 18, the administrator, or designee, must report the allegation to:
 - a. the Director or Deputy Director immediately upon receipt of the allegation; and
 - b. the Department of Public Health and Human Services in accordance with *41-3-201, MCA*.
4. If the alleged victim is at least 60 years old or is a person with a developmental disability, the administrator, or designee, must report the allegation to the Department of Public Health and Human Services in accordance with *52-3-811, MCA*.
5. Apart from reporting to designated supervisors or officials, employees and service providers will not reveal any information related to a sexual abuse report to anyone other than to the extent necessary to make treatment, investigation, and other security and management decisions.
6. Unless otherwise precluded by law, medical and mental health practitioners will report sexual abuse according to facility procedures and will inform offenders of their duty to report, and the limitations of confidentiality, at the initiation of services.
7. Allegations that an offender was sexually abused while at another facility must be reported by the administrator to the administrator of the facility where the abuse occurred as soon as possible but no later than 72 hours after the initial report. For allegations involving a resident of a juvenile facility the administrator will also notify the appropriate investigative agency. Notifications will be documented.
8. Potential criminal conduct will be reported to the LEAJ first, immediately followed by the Office of Investigations. If the Office of Investigations has primary jurisdiction over a facility's criminal investigations, however, that facility will report potential criminal conduct only to the Office of Investigations.
9. Sexual abuse or harassment by an employee, service provider, or offender will be reported in

accordance with *DOC 1.1.6 Priority Incident Reporting and Acting Director*.

10. Reports of sexual abuse or sexual harassment by an employee, service provider, or offender will be forwarded to the Office of Investigations, facility PREA compliance manager and the Department PREA coordinator within one business day.
11. Any employee or service provider who fails to report an allegation, or coerces or threatens another person to submit inaccurate, incomplete, or untruthful information may face dismissal or other disciplinary action.

I. Retaliation Monitoring

1. The Department will not tolerate retaliation against offenders, employees, or other parties for reporting sexual abuse or sexual harassment or cooperating with an investigation. Individuals that retaliate against any offender or witness are subject to disciplinary action.
2. Employees who report sexual abuse or sexual harassment of an offender will not be subjected to retaliation by anyone within or outside of their chain of command in accordance with *DOC 1.3.2 Employee Performance and Conduct*.
3. Facilities will employ multiple protective measures, such as transfers or removals to separate victims from abusers, and emotional support services.
4. The facility will monitor, for at least 90 days, the conduct and treatment of offenders and employees who reported sexual abuse or sexual harassment and offenders who were reported to have suffered sexual abuse or sexual harassment to prevent retaliation. Monitoring will continue beyond 90 days if there is a continuing need.
5. Monitoring will include reviewing any offender disciplinary reports, housing or program changes, or negative performance reviews or reassignments of employees. For offenders, monitoring will also include periodic status checks.
6. If an offender is transferred from one Department facility to another Department facility during their monitoring, the transferring facility will notify the receiving facility of the offender's monitoring status and the receiving facility will continue the monitoring for the remainder of the 90 days, or beyond if there is a continuing need.
7. The facility will act promptly to remedy any detected retaliation.
8. Each facility will designate staff members responsible for retaliation monitoring.
9. The facility's obligation to monitor retaliation may be terminated if the allegation is determined to be unfounded.
10. If any other individual who cooperates with an investigation expresses a fear of retaliation, the Department will take appropriate measures to protect that individual against retaliation.

J. Medical, Mental Health, and Victim Services

1. Medical and mental health services for victims will be consistent with the community level of care.
2. The administrator, or designee, will develop procedures for providing services to offenders alleged to be victims of sexual abuse or sexual harassment within a confinement setting. Services must be made available without financial cost to the victim and must include, at minimum:
 - a. access to medical examination and treatment to include follow up care and referrals;
 - b. mental health crisis intervention and treatment;
 - c. timely access to emergency contraception, STD prophylaxis, and all pregnancy-related tests and services; and
 - d. access to a victim advocate or rape crisis center that can offer emotional support services

throughout the investigative process, or access to a qualified employee or service provider.

3. Department employees and service providers will adhere to the following standards for examination of victims of sexual abuse or sexual harassment:
 - a. if the victim refuses medical or mental health attention, document the refusal on the *Medical Treatment Refusal* form;
 - b. if reported within a time period which allows for collection of physical evidence, typically within 72 hours of the incident, and with the victim's permission, immediately transport the victim to a medical facility equipped with medical personnel certified as Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs), or if none are available, to a medical facility with other qualified medical practitioners, to evaluate and treat sexual assault/rape victims; and
 - c. if reported more than 72 hours after the incident, and with the victim's permission, adhere to the following:
 - 1) refer the victim to appropriate health care providers responsible for treatment and follow up care for sexually transmitted or other communicable diseases who will complete a patient history, conduct an examination to document the extent of physical injury and determine whether referral to another medical facility is required; and
 - 2) upon request from law enforcement, transport the victim to a community medical facility for evidence collection.
4. Qualified mental health professionals will provide crisis intervention and ongoing services for victims of sexual abuse and sexual harassment and for other offenders affected.
5. Facilities will attempt to conduct a mental health evaluation of all known offender-on-offender abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by qualified mental health professionals.
6. Each facility will provide all offenders with access to outside victim advocates for emotional support services related to sexual abuse by giving offenders mailing addresses and telephone numbers of local, state, or national victim advocacy or rape crisis organizations. The facility will enable reasonable communication between offenders and these organizations in as confidential a manner as possible. The facility will inform offenders, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities.

K. Investigative Protocols

1. All reported incidents of sexual abuse and sexual harassment will be investigated promptly, thoroughly, and objectively. Criminal investigations will be conducted by either the LEAJ or by the Department's Office of Investigations in accordance with *DOC 3.1.19 Investigations*.
2. Administrators, or designees, will ensure all staff follow appropriate evidence procedures outlined in *DOC 3.1.28 Crime Scene and Physical Evidence Preservation*.
3. A *Request for Investigation (RFI)* for all allegations of sexual abuse and sexual harassment will be sent to the Office of Investigations to initiate an investigation.
4. The Office of Investigations will forward requests for investigation that do not rise to the level of a criminal investigation to the PREA compliance manager and/or the appropriate administrator, or designee, to open an administrative investigation. For cases involving employees, the Office of Investigations will also notify the Office of Human Resources.
5. All allegations of sexual abuse or sexual harassment that are criminally investigated will also be administratively investigated. The administrative investigation will begin when the Office of Investigations determines that the administrative investigation will not interfere with the criminal investigation.

6. Investigations of offender sexual abuse or sexual harassment will be conducted by Department employees who have received specialized training in conducting sexual abuse and sexual harassment investigations in a confinement setting.
7. Investigators will gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data. Investigators will interview alleged victims, suspected perpetrators, and witnesses and will review prior complaints and reports of sexual abuse involving the suspected perpetrator.
8. When the quality of evidence appears to support criminal prosecution, compelled interviews will only be conducted after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.
9. The credibility of an alleged victim, suspect, or witness will be assessed on an individual basis and will not be determined by the person's status as an inmate or employee.
10. Offenders who allege sexual abuse will not be required to submit to a polygraph examination as a condition for proceeding with the investigation of an allegation.
11. The facility will not rely on offender interpreters for investigations regarding sexual abuse or sexual harassment except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the offender's safety, the performance of first-response duties or the investigation of the offender's allegations.
12. Department employees are guaranteed constitutional and administrative protections; within the boundaries of those protections, employees will cooperate with any authorized investigation or inquiry and will relate fully and truthfully their knowledge of all issues pertaining to the alleged conduct under investigation. Material omissions or the provision of materially false information which the employee knows or suspects to be false will result in the employee being subject to disciplinary action in accordance with *DOC 1.3.2 Employee Performance and Conduct*.
13. Administrative investigators will issue the *Interviewee Administrative Investigation Warning* to employees who are being interviewed as the subject of an investigation or witnesses in an investigation.
14. In cases of sexual abuse involving staff, the *Separation Order Pending Investigation* will be issued to the alleged staff member at the time of the allegation. *The Return to Work – Case Closed* form will be given to the staff member at the end of the investigation when the allegation is unfounded or unsubstantiated.
15. When a staff member reports an allegation involving another staff member, the administrative investigator assigned to the case will give the complainant the *Investigation Notice for Complainant*.
16. Information obtained during either a criminal or an administrative investigation may be jointly shared and utilized; however, a self-incriminating statement may not be utilized in a criminal investigation against an individual that has been provided with a *Garrity Warning*.
17. Investigators will not use a standard higher than preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated in administrative investigations.
18. Administrators must provide investigators with unrestricted access to Department records including, but not limited to, documents; electronic recordings; and correspondence materials relevant to the investigation.
19. Administrative investigators must conduct fair and objective investigations, exercise professionalism during an investigation, and conduct investigations in such a manner that

information is kept confidential.

20. Administrative investigations will include an effort to determine whether employee actions or failures to act contributed to abuse.
21. All investigations will be documented in a written report that includes a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.
22. Investigative materials including, but not limited to incident reports, statements, and investigative reports will be stored in a criminal or administrative investigative case file. Criminal investigative case files must be submitted to the Investigations Manager. Administrative investigative case files must be submitted to the PREA Compliance Manager and the PREA Coordinator.
23. All administrative and criminal investigation written reports will be retained for as long as the alleged abuser is incarcerated or employed by the Department, plus five years.
24. Conduct that appears to be criminal will be referred by the Office of Investigations for prosecution.
25. The departure of the alleged abuser or victim from the employment or control of the facility or Department will not provide a basis for terminating an investigation.
26. If an outside agency investigates sexual abuse, the facility will cooperate with outside investigators and will endeavor to remain informed about the progress of the investigation.

L. Reporting to Offenders

1. Following an investigation into an offender's allegation of sexual abuse or sexual harassment in a facility, the facility will inform the offender as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.
2. If the investigation is conducted by a LEAJ, the Department will request relevant information from the LEAJ in order to inform the offender.
3. Following an offender's allegation that an employee or service provider has committed sexual abuse against the offender, the facility will inform the offender, unless the allegation is unfounded, whenever:
 - a. The employee or service provider is no longer posted within the offender's unit;
 - b. The employee or service provider is no longer employed at the facility;
 - c. The Department learns that the employee or service provider has been indicted on a charge related to sexual abuse within the facility; or
 - d. The Department learns that the employee or service provider has been convicted on a charge related to sexual abuse within the facility.
4. Following an offender's allegation that they have been sexually abused by another offender, the facility will inform the alleged victim whenever:
 - a. The facility learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
 - b. The facility learns that the alleged abuser has been convicted on a charge related to sexual abuse within a facility.
5. All such notifications or attempted notifications will be documented.
6. A facility's obligation to report will terminate if the offender is released from the Department's custody.

M. Incident Reviews

1. The facility will conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded. Such review will occur within 30 days of the conclusion of the investigation.
2. The review team will include upper-management from the facility, the facility's PREA compliance manager, line supervisors, investigators, qualified medical or mental health professionals, and other employees with direct involvement.
3. The review team will:
 - a. consider whether the allegation or investigation indicates a need to change policy or procedure to better prevent, detect or respond to sexual abuse;
 - b. consider whether the incident or allegation was motivated by race, ethnicity, gender identity, LGBTI status or perceived status, STG affiliation or was motivated or caused by other group dynamics at the facility;
 - c. examine the area where the incident allegedly occurred to assess whether the physical barriers in the area may enable abuse;
 - d. assess the adequacy of staffing levels in that area during different shifts;
 - e. assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
 - f. prepare a report of its findings and any recommendations for improvement and submit the report to the facility administrator, the Department PREA Coordinator and facility PREA Compliance Manager.
4. The facility will implement the recommendations for improvement or document its reasons for not doing so.

N. Data Collection, Review, Storage, Publication and Destruction

1. There will be a system in place to collect data on incidents of sexual abuse or sexual harassment. Such data will be analyzed to determine possible corrective action or improvement.
2. The Department will collect accurate, uniform data for every allegation of sexual abuse at facilities and programs under its direct control using a standardized instrument and definitions set forth in this policy.
3. The incident-based data collected will include, at a minimum, the data necessary to answer all questions from the most recent version of the *Survey of Sexual Victimization* conducted by the Department of Justice.
4. The Department's Office of Investigations will maintain records of all criminal investigations of sexual abuse and sexual harassment conducted by that office or as provided by the LEAJ. Each facility will maintain records of all administrative investigations of sexual abuse and sexual harassment at that facility. Records will include information on the outcome of any criminal or disciplinary charges.
5. The Department will aggregate the incident-based sexual abuse data at least annually. The Department will maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.
6. Each facility PREA compliance manager will maintain records of all allegations, investigations, and Incident Reviews and report such information to the PREA coordinator. Upon request, the Department will provide all such data from the previous calendar year to the Department of Justice.
7. The Department will make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, available to the public at least annually

through the Department website. All personal identifiers will be removed from this data prior to making it public. The Department will maintain sexual abuse data for at least 10 years after the date of its initial collection.

O. Sanctions

1. Employees will be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies. Termination is the presumptive disciplinary sanction for employees who have engaged in sexual abuse.
2. Disciplinary sanctions for violations of Department policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) will be commensurate with the nature and circumstances of the acts committed, the employee's disciplinary history, and the sanctions imposed for comparable offenses by other employees with similar histories.
3. All terminations for violations of Department sexual abuse or sexual harassment policies, or resignations by employees who would have been terminated if not for their resignation, will be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.
4. Service providers or volunteers who engage in sexual abuse will be prohibited from contact with offenders and will be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies. The Department will take appropriate remedial measures, and will consider whether to prohibit further contact with offenders, in the case of any other violation of Department sexual abuse or sexual harassment policies by a service provider.
5. Offenders are subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the offender engaged in offender-on-offender sexual abuse or following a criminal finding of guilt for offender-on-offender sexual abuse.
6. Sanctions will be commensurate with the nature and circumstances of the abuse committed, the offender's disciplinary history, and the sanctions imposed for comparable offenses by other offenders with similar histories.
7. The disciplinary process will consider whether an offender's mental disabilities or mental illness contributed to their behavior when determining what type of sanction, if any, should be imposed.
8. If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility will consider whether to require the offender to participate in such interventions as a condition of access to programming or other benefits.
9. The agency may discipline an offender for sexual contact with staff only upon a finding that the staff member did not consent to such contact.
10. For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred will not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.
11. An offender may not engage in sexual acts, make sexual proposals or threats or engage in indecent exposure pursuant to *DOC 3.4.2 Prohibited Acts*, and is subject to disciplinary action for violations. The facility may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

V. CLOSING

Questions about this policy should be directed to the Department's PREA Coordinator.

VI. REFERENCES

- A. 41-3-201, MCA; 45-5-501, MCA; 45-5-502, MCA; 45-5-503, MCA; 52-3-811, MCA
- B. 4-4281-1 through 4-4281-8; 2008 ACA Standards Supplement
- C. 28 CFR Part 115, Prison Rape Elimination Act of 2003
- D. DOC 1.1.16 Priority Incident Reporting and Acting Director; DOC 1.3.2 Performance and Conduct; DOC 1.3.12 Staff Association and Conduct with Offenders; DOC 1.5.5 Case Records Management; DOC 1.8.1 Victim Services; DOC 3.1.19 Investigations; DOC 3.1.28 Crime Scene and Physical Evidence Preservation; DOC 3.3.3 Offender Grievance Program; DOC 4.1.2 Offender Reception and Orientation; DOC 4.2.1 Offender Classification System; DOC 4.2.2 Special Needs Offenders
- E. *Garrity v. State of New Jersey*, 385 U.S. 493 (1967); *Gardner v. Broderick*, 392 U.S. 273 (1968); *Uniformed Sanitation Men Assoc., Inc. v. Commissioner of Sanitation of the City of New York*, 392 U.S. 280 (1968)
- F. P-F-06; National Commission on Correctional Health Services in Prisons, 2018
- G. MH-B-05; National Commission on Correctional Mental Health Services in Correctional Facilities, 2015

VII. FORMS

- A. Medical Treatment Refusal
- B. Comprehensive PREA Training Acknowledgment
- C. Garrity Warning
- D. Interviewee Administrative Investigation Warning
- E. Investigation Notice for Complainant
- F. Return to Work – Case Closed
- G. Separation Order Pending Investigation