



**STATE OF MONTANA
DEPARTMENT OF CORRECTIONS
POLICY DIRECTIVE**

Policy No. DOC 1.1.17	Subject: PRISON RAPE ELIMINATION ACT OF 2003 (PREA)
Chapter 1: ADMINISTRATION AND MANAGEMENT	Page 1 of 10 and Attachments
Section 1: General Administration	Effective Date: Sept. 12, 2007
Signature: /s/ Mike Batista, Director	Revised: 07/07/2016

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 divisions, facilities, and programs Department-owned and contracted, as specified in contract.

III. DEFINITIONS

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.

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 2-18-601, MCA; volunteers, interns, temporary and short term workers; this term does not include service providers.

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

Law Enforcement Agency of Jurisdiction (LEAJ) – The government agency, i.e. 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.

Service Providers - This term includes contracted persons or other vendors providing service whose assignment is primarily on Department premises, e.g. 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 a staff member 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 a staff member or service provider to engage in these activities; any display by a staff member or service

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provider of his or her uncovered genitalia, buttocks, or breast in the presence of an offender; or voyeurism by a staff member or service provider, when these acts are unrelated to official duties or where the staff member or service provider has the intent to abuse, arouse, or gratify sexual desire.

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 offender directed toward another or repeated verbal comments or gestures of a sexual nature to an offender by a staff member or service provider.

Sexual Misconduct – Includes sexual abuse of an offender by another offender, sexual abuse of an offender by a staff member or service provider, sexual harassment and voyeurism.

Voyeurism - An invasion of privacy of an offender by a staff member or service provider for reasons unrelated to official duties.

IV. DEPARTMENT DIRECTIVES

A. General Requirements

1. Administrators, or designees, will immediately respond to allegations of sexual abuse and sexual harassment, fully investigate reported incidents in accordance with *DOC Policy 3.1.19 Investigations*, pursue disciplinary action, and refer for investigation and prosecution those who violate the requirements set forth in this policy.
2. The Department director, or designee, will appoint a Department PREA coordinator responsible for the following:
 - a. coordinating and developing procedures to identify, monitor, and track staff 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 Federal Bureau of Justice on an annual basis as required by PREA standards.
3. Each administrator, or designee, will assign a PREA specialist responsible for the following:
 - a. coordinating facility or program PREA-related activities with the PREA coordinator;
 - b. ensuring facility or program compliance with training requirements; and
 - c. tracking and reporting related statistics to the Department PREA coordinator.

B. Offender Reporting

1. 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 a staff member, verbally, in writing, anonymously or through a third party;
 - b. utilize the “locked box” formal grievance procedure in accordance with *DOC Policy 3.3.3 Offender Grievance Program*;
 - c. use the Department-approved free confidential telephone hotline operated by an external agency; or
 - d. use the Telemate inmate phone system, dial 9 and a message is sent to a Department employee.

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2. Reports made in bad faith, which includes deliberately malicious reports by offenders or other parties, will result in disciplinary action and/or criminal charges.

C. Prevention and Intervention

1. Staff must be alert to situations in which sexual abuse or sexual harassment might occur and be capable of identifying indicators.
2. 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.
3. Administrators will require intermediate-level and higher-level staff conduct unannounced rounds to identify and deter staff sexual abuse and sexual harassment. These rounds must be documented and cover all shifts and all areas of the facility. The facility must prohibit staff from alerting other staff of the conduct of such rounds.
4. 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 Policy 4.2.2 Special Needs Offenders*.
5. Victims of sexual abuse and sexual harassment will only be placed in segregated housing for protective purposes if all alternative options have been considered. The facility will review each offender placed in segregated housing for protective purposes every 30 days.
6. Risk assessment of all offenders through the use of an objective screening instrument for victimization or abusiveness will take place within 72 hours of intake into a facility or program. Reassessment will occur within 30 days of intake into a facility or program and when warranted thereafter based on any new information. 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. Information from the risk assessment for victimization or abusiveness will be used to inform housing, bed, work, education, and program assignments with the goal of keeping separate those offenders at high risk of being sexually victimized from those at high risk of being sexually abusive.
8. Placement and programming assignments for each transgender or intersex offender will be reassessed at least twice each year to review any threats to safety experienced by the offender.
9. The Department will not tolerate retaliation against offenders, employees, or other parties for reporting sexual misconduct. Individuals that retaliate against any offender or witness are subject to disciplinary action. Facilities and programs will employ protective measures, such as transfers or removals, to separate victims from abusers.
10. The facility or program will monitor, for at least 90 days, the conduct and treatment of offenders and staff who reported sexual abuse or sexual harassment and offenders who have reported abuse or 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. Each facility will designate a staff member responsible for retaliation monitoring. The

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facility or program's obligation to monitor retaliation may be terminated if the allegation is determined to be unfounded.

D. Victim Services Provided

1. The administrator, or designee, will develop procedures for providing victim services to offenders alleged to be victims of sexual abuse or sexual harassment. 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, all pregnancy-related tests and services; and
 - d. access to a victim advocate or rape crisis center counselor who can offer emotional support services throughout the investigative process, or access to a qualified facility staff person.
2. Department employees 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, staff will document the refusal on the [Medical Treatment Refusal](#) form;
 - b. if reported within 72 hours of the incident, staff will, 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, staff will, with the victim's permission, adhere to the following:
 - i. refer 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
 - ii. upon request from law enforcement, transport the victim to a community medical facility for evidence collection.
3. Mental health staff or established providers will provide services for victims of sexual abuse and sexual harassment and for other offenders affected.

E. Staff 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 or program, 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. If the alleged victim is under the age of 18 the administrator, or designee, must report the allegation to the Department of Public Health and Human Services in accordance with *41-3-201, MCA*.

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3. Apart from reporting to designated supervisors or officials, employees 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.
4. Unless otherwise precluded by law, medical and mental health practitioners will report sexual abuse and will inform offenders of their duty to report, and the limitations of confidentiality, at the initiation of services.
5. Staff who receive a report of sexual abuse or sexual harassment will:
 - a. separate the victim from the alleged perpetrator to protect the victim and prevent violence,
 - b. promptly intervene on the victim's behalf to ensure prompt medical and psychological assistance including an assessment for potential risk of suicide; and
 - c. protect evidence in accordance with *DOC 3.1.28 Crime Scene and Physical Evidence Preservation*;
 - i. staff will request that the alleged victim and ensure that the alleged abuser not take any actions that could destroy physical evidence such as bathing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating; or
 - ii. if the first staff responder is not a security staff member, the responder must request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.
6. Allegations that an offender was sexually abused while at another facility or program must be reported by the administrator to the administrator of the facility or program 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.
7. Department employees and service providers will report sexual abuse, misconduct or harassment by an employee or offender in accordance with *DOC Policy 1.1.6 Priority Incident Reporting and Acting Director System*. Incidents of sexual abuse and sexual harassment will be simultaneously reported to the LEAJ, where appropriate.
8. Employees and service providers must document any verbal reports they receive.
9. 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 disciplinary action, up to and including dismissal.

F. Investigative Protocols

1. Reported incidents of sexual abuse and sexual harassment will be investigated either by the LEAJ or by the Department's Office of Investigations in accordance with *DOC Policy 3.1.19 Investigations*.
2. Administrators, or designees, will ensure all staff follow appropriate security procedures outlined in *DOC Policy 3.1.28 Crime Scene and Physical Evidence Preservation*.
3. Allegations of sexual abuse and sexual harassment will be assessed by personnel designated by the administrator and investigative staff to ensure each report is forwarded to the appropriate investigative office.

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4. Reports that do not rise to the level of a criminal investigation will be forwarded to the Office of Human Resources and/or the appropriate administrator, or designee.
5. Administrative staff will coordinate with investigations staff prior to initiating an administrative investigation.
6. Administrative investigations will be conducted in accordance with *DOC 1.3.13 Administrative Investigations*; individuals assigned to conduct administrative investigations will work in cooperation with the Office of Human Resources and be trained in all specialized investigative training topics relevant to sexual abuse in confined settings.
7. Investigators will not use a standard higher than preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.
8. 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.
9. The program or facility will not rely on offender interpreters for investigations regarding sexual misconduct 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.
10. Following an investigation into an offender's allegation of sexual abuse or sexual harassment in a facility or program, the facility or program will inform the offender as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. If the investigation is conducted by a LEAJ, the Department will request relevant information from the LEAJ in order to inform the offender.
11. 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.

G. Staff Training

1. Prior to working with offenders, all Department employees with direct and/or incidental contact with offenders must receive documented PREA training and sign the [Staff PREA Acknowledgement](#) form. Training and documentation will be repeated annually thereafter. Training will include, but is not limited to:
 - a. review of this policy, the *Prison Rape Elimination Act (PREA)*, *DOC Policy 1.3.12 Staff Association and Conduct with Offenders*, appropriate site-specific procedures, and any other applicable state or federal laws;
 - b. investigation, and prosecution of sexual misconduct;
 - c. the Department's zero tolerance stance;
 - d. recognition of sexual misconduct, predatory offenders, potential victims, and/or staff involvement;
 - e. how to fulfill their responsibilities under Department sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
 - f. facility or program procedures on sharing confidential information;
 - g. an offender's right to be free from sexual misconduct;
 - h. offender and employee rights to be free from retaliation for reporting sexual abuse and harassment;

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- j. the dynamics of sexual abuse in confinement;
 - k. common reactions of sexual abuse victims;
 - l. how to detect and respond to signs of threatened and actual sexual abuse;
 - m. how to avoid inappropriate relationships with offenders;
 - n. how to communicate effectively and professionally with offenders who might be lesbian, gay, bisexual, transgender, intersex (LGBTI) or gender nonconforming; and
 - o. gender-specific training.
2. All service providers who have contact with offenders will be trained 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 service providers will be based on the services they provide and the level of contact they have with offenders. Service providers will sign the [Service Provider PREA Acknowledgement Form](#).
 3. 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.

H. Offender Education

1. Within 72 hours of facility or program intake for adult offenders and during the intake process for residents at juvenile facilities, staff 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, *1.3.12 Staff Association and Conduct with Offenders*, *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 program or 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 program or facility procedures for reporting and responding to such incidents.
3. The program or 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.
4. The program or facility will maintain documentation of offender participation in PREA education sessions and have offenders sign the [Offender PREA Acknowledgement](#) form.
5. The program or facility will ensure that PREA information is continuously and readily available or visible to offenders through posters, offender handbooks, or other written formats.

I. Incident Reviews

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1. The facility or program 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 normally occur within thirty (30) days of the conclusion of the investigation.
2. The review team will include upper-management from the facility or program, the Department PREA coordinator, line supervisors, investigators, medical and mental health staff, and other staff 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 or program;
 - 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 or program administrator, the Department PREA coordinator and facility or program PREA specialist.
4. The facility or program will implement the recommendations for improvement or document its reasons for not doing so.

J. 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 Violence conducted by the Department of Justice.
4. The Department's Office of Investigations will maintain records of all allegations and investigations of sexual misconduct at secure facilities to 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 or program PREA specialist will maintain records of all allegations, investigations, and Incident Reviews and report such information to the PREA coordinator.

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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.

K. Sanctions

1. The presumptive disciplinary sanction for employees who have engaged in sexual abuse will be termination.
2. Disciplinary sanctions for violations of Department policies relating to sexual abuse or sexual harassment, other than actually engaging in sexual abuse, will be proportionate to the nature and circumstances of the acts committed, disciplinary history and sanctions imposed for comparable offenses by other employees with similar histories.
3. All terminations for violations of department sexual abuse and 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 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. The Department will only discipline an offender for sexual contact with an employee or service provider upon finding that the employee or service provider did not consent to such contact.

V. CLOSING

Questions concerning 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*
- B. *4-4281-1 through 4-4281-8; 2008 ACA Standards Supplement*
- C. *Prison Rape Elimination Act of 2003*
- D. *DOC Policies 1.1.16 Priority Incident Reporting and Acting Director; 1.3.12 Staff Association and Conduct with Offenders; 1.3.13 Administrative Investigations; 1.5.5 Case Records Management; 1.8.1 Victim Services; 3.1.19 Investigations; 3.1.28 Crime Scene and Physical Evidence Preservation; 3.3.3 Offender Grievance Program; 4.1.2 Offender Reception and Orientation; 4.2.1 Offender Classification System; 4.2.2 Special Needs Offenders*

VII. ATTACHMENTS

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[Medical Treatment Refusal](#)

[Offender PREA Acknowledgment](#)

[Service Provider PREA Acknowledgement Form](#)

[Staff PREA Acknowledgement](#)