



Corrections and Rehabilitation

POLICY & PROCEDURES

POLICY NUMBER AND SECURITY:

3C-04 – This policy has no confidential or exempt information.

RELATED STANDARDS (such as PbS/PREA):

ACI 4-4253, 4-4281-1M, 4-4281-2M, 4-4281-3M, 4-4281-4M, 4-4281-5M, 4-4281-6M, 4-4281-7M, 4-4281-8M, 4-4406-NDSP, JRCC

PREA Standards 115.11, 115.12, 115.13, 115.14, 115.15, 115.16, 115.17, 115.18, 115.21, 115.22, 115.31, 115.32, 115.33, 115.34, 115.35, 115.41, 115.42, 115.43, 115.51, 115.52, 115.53, 115.54, 115.61, 115.62, 115.63, 115.64, 115.65, 115.66, 115.67, 115.68, 115.71, 115.72, 115.73, 115.76, 115.77, 115.78, 115.81, 115.82, 115.83, 115.86, 115.87, 115.88, 115.89, 115.93, 115.401, 115.402, 115.403, 115.404, 115.405, 115.501

RELATED REFERENCES:

- Adult - PREA Acknowledgement Form (Appendix)
- Adult - PREA Allegation Investigation Checklist (Appendix)
- Adult - PREA Orientation Information (Appendix)
- Juvenile - PREA Allegation Investigation Checklist (Appendix)
- Juvenile - Safety Guide (Appendix)
- Juvenile - Sexual Victimization and Abusiveness Risk Assessment (Appendix)
- DOCR Coordinated Response Plan (posted on the Intranet)
- PREA Rating Assessment Manual (posted on the Intranet)
- Annual Prison Rape Elimination Act of 2003 Training

DIVISION:

Division of Adult Services;
Division of Juvenile Services

FACILITY/WORKGROUP:

North Dakota State Penitentiary, James River Correctional Center, Missouri River Correctional Center, Heart River Correctional Center, and the North Dakota Youth Correctional Center, Parole & Probation

TOPIC:

(PREA) Prison Rape Elimination Act of 2003

Effective Date: August 17, 2011
Revised: August 30, 2012
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Revised: September 21, 2018
Revised: September 23, 2019
Revised: January 15, 2020
Revised: July 29, 2021
Revised: May 12, 2022

Summary of Revision(s)

Revisions by Casey Traynor and approved by Lisa Bjergaard.

1. 5-A-15-c: Added: Adults in custody and juveniles may not be disciplined for any refusal or nondisclosure during screening regarding gender identity, sexual orientation, intersex condition, disability status, or prior sexual victimization.
2. 5-A-16-c: Added: Added: Adults in custody and juveniles may not be disciplined for any refusal or nondisclosure during screening regarding gender identity, sexual orientation, intersex condition, disability status, or prior sexual victimization.

1. **AUTHORITY:** Authority for this policy with procedures is found in chapters 54-23.3 and 12-47 of the North Dakota Century Code and part 115 of Title 28 of the Code of Federal Regulations.
2. **APPLICABILITY:** This policy with procedures applies to all employees, adults and juveniles in custody within and working for any DEPARTMENT facility, as well as Parole and Probation of the Department of Corrections and Rehabilitation.
3. **DEFINITIONS AND ACRONYMS: (PREA 115.11)**
 - A. Prison Rape Elimination Act of 2003 (PREA): Federal law that prohibits and seeks to eliminate sexual assaults and sexual misconduct in correctional institutions and community corrections settings.
 - B. PREA Compliance Manager: The designated facility staff at each facility with sufficient time and authority to coordinate the facility's efforts to comply with the Prison Rape Elimination Act standards.
 - C. PREA Coordinator: A senior-level position within the Department with the responsibilities of developing, implementing, and overseeing the agency's plan to comply with the Prison Rape Elimination Act standards.
 - D. Sexual Abuse of an Adult or Juvenile in Custody by another Adult or Juvenile in Custody: Includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse: which may include: persuasion, inducement, enticement or forcible compulsion, subjecting to sexual contact another person who is incapable of giving consent by reason of custodial status; subjecting another person to sexual contact who is incapable of consenting by reason of being physically helpless, physically restrained or mentally incapacitated; prostituting or otherwise sexually exploiting another person includes:
 1. Contact between the penis and vulva or the penis and anus, including penetration, however slight;
 2. Contact between the mouth and the penis, vulva, or anus;
 3. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
 4. 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. Sexual Abuse of an Adult or Juvenile in Custody by a Staff Member, Contractor, or Volunteer. Includes any of the following acts, with or without consent of the adult or juvenile in custody:
 1. Contact between the penis and vulva or the penis and anus, including penetration, however slight;
 2. Contact between the mouth and the penis, vulva, or anus;
 3. Contact between the mouth and any body part where the staff member, contractor, or volunteer which has the intent to abuse, arouse, or gratify sexual desire;

4. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
 5. Any other intentional touching, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
 6. Any attempt, threat or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs 1-5. of this section;
 7. Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an adult or juvenile in custody.
- F. Sexual Harassment: Includes: Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one adult or juvenile in custody directed toward another; or, repeated verbal comments or gestures of a sexual nature to an adult or juvenile in custody 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.
- G. Sexual Victimization and Abusiveness Risk Assessment: An assessment tool utilized to screen juveniles for their risk of sexual victimization or sexual aggression and to inform housing, bed, work, education, and programming assignments.
- H. Specialized Housing for Juveniles: Specific supervision and housing assigned to a juvenile who has been determined to be potentially sexually assaultive or sexually aggressive, or specific supervision and housing for juveniles who may be at risk for sexual victimization.
- I. Substantiated Allegation: Allegation that was investigated and determined to have occurred.
- J. Unfounded Allegation: Allegation that was investigated and determined not to have occurred.
- K. Unsubstantiated Allegation: Allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.
- L. Volunteer and Contractor Unescorted Contact: Any contact with adults or juveniles in custody that occurs while the volunteer or contractor is not escorted or observed by staff. These persons will receive Prison Rape Elimination Act training prior to entering a Department of Corrections and Rehabilitation facility unescorted or unsupervised. Volunteer and contractor acknowledgement forms shall be retained in the volunteer/contractor's file by designated facility staff.
- M. Voyeurism by a Staff Member, Contractor, or Volunteer: An invasion of privacy of an adult or juvenile in custody by staff for reasons unrelated to official

duties, such as peering at an adult or juvenile in custody who is using a toilet in his or her cell to perform bodily functions; requiring an adult or juvenile in custody to expose their buttocks, genitals, or breasts; or taking images of all or part of an adult or juvenile in custody's naked body or of an adult or juvenile in custody performing bodily functions. (For the purposes of PREA statistics, voyeurism is counted under sexual abuse).

4. **POLICY:** The Department is committed to maintaining a zero-tolerance policy for sexual abuse and sexual harassment at all facilities. Department facilities shall have written policy and procedures mandating zero-tolerance towards all forms of sexual abuse, and sexual harassment and outlining the Department's approach to preventing, detecting, and responding to such conduct. Policy and procedures will be in accordance with the DOJ Title 28 Code of Federal Regulations, Part 115, National Standards, to prevent, detect, and respond to prison rape.

5. **PROCEDURES:** These procedures provide uniform guidelines to reduce the risk of sexual abuse and sexual harassment within all Department facilities.

A. Prevention Planning.

1. § 115.11/115.31 Zero tolerance for sexual abuse and sexual harassment. This policy, as well as applicable plans, manuals, and guides outline how the Department will implement the agency's zero tolerance approach to preventing, detecting, and responding to sexual abuse and sexual harassment. Refer to the Prison Rape Elimination Act of 2003 – Position Guide and agency/facility organizational charts.

2. § 115.12/115.312 Contracting with other entities for the confinement of adults and juveniles in custody. Refer to Policy 1B-16, Contract and Grants

3. § 115.13/115.313 Supervision and Monitoring.

a. Staffing Plan.

1.) Adults – Refer to Policy 1C-05, Staffing Requirements.

2.) Juveniles – Refer to Policy 1C-05, Staffing Requirements; Policy 3A-04, Juvenile Movement within the North Dakota Youth Correctional Center.

b. Unannounced Rounds.

1.) Adults – Refer to Policy 3A-03, Patrols and Inspections.

2.) Juveniles – Refer to Policy 3A-03, Evaluations, Inspections, and Reviews.

4. § 115.14/115.314 Youthful Adults in Custody. Refer to N.D.C.C. § 12-46-13.

5. § 115.15/115.315 Limits to cross-gender viewing and searches.

a. Adults – Refer to Policy 3A-06, Control of Contraband, Searches of Adults in Custody, Visitors, and Facilities; Policy

3C-09, Protection from Unreasonable Searches, Freedom in Grooming.

- b. Juveniles – Refer to Policy 3A-06, Control of Contraband; Policy 3C-01, Rights.
6. § 115.16/115.316 Adults and juvenile in custody with disabilities; adults and juveniles in custody who are limited English proficient.
- a. Adults – Refer to Policy 4B-06, Limited English Proficiency; Policy 2A-03, Appendix titled Policy for Provision of Auxiliary Aids and Services for Communication with People with Disabilities.
 - b. Juveniles – Refer to Policy 4B-06, Limited English Proficiency; Policy 2A-03 Appendix titled Policy for Provision of Auxiliary Aids and Services for Communication with People with Disabilities.
7. § 115.17/115.317 Hiring and Promotion Decisions. Refer to Policy 1C-09, Selection and Promotion, Probationary Period, and Provisional Appointment; Policy 1C-11, Criminal Record Check and Fingerprinting.
8. § 115.21/115.321 Evidence Protocol and Forensic Medical Examinations. Refer to the DOCR Coordinated Response Plan.
9. § 115.22/115.322 Policies to ensure referrals of allegations for investigations. The Department is responsible for ensuring an administrative investigation is completed for all allegations of sexual abuse and/or harassment that occur within a Department facility. If the act is potentially criminal, Department staff also shall ensure the completion of a criminal investigation. Refer to the DOCR Coordinated Response Plan; and Policy 1A-27, Criminal Investigations, Intelligence; and Alleged Delinquencies; Policy 1A-09, Professional Standards Investigations.
10. § 115.31/115.331 Employee Training.
- a. Adults – Refer to Policy 1D-03, Training Requirements and Orientation.
 - b. Juveniles – Refer to Policy 1D-03, Training Requirements and Orientation.
11. § 115.32/115.332 Volunteer and Contractor Training.
- a. Adults – Refer to Policy 3A-15, Facility Access and Perimeter Security.
 - b. Juveniles – Refer to Policy 1D-03, Training Requirements and Orientation and Policy 3A-15, Facility Access and Perimeter Security.

12. § 115.33/115.333 Adult and Juvenile in Custody Education.
 - a. Adults – Refer to Policy 4A-01, Admission, Reception, and Orientation, Transfers; Policy 4B-06, Limited English Proficiency; Resident Training Presentation and Lesson Plan; Resident Orientation PREA Information Pamphlet.
 - b. Juveniles – Refer to Policy 4A-01, Admission, Screening, Orientation, and Transfers; Policy 4B-06, Limited English Proficiency; Important Information about your Juvenile Rights form; Intake Juvenile PREA Education; YCC Safety Guide.
13. § 115,34.115.334 Specialized Training: Investigations.
 - a. Adults – Refer to Policy 1D-05, Specialized Training.
 - b. Juveniles – Refer to Policy 1D-05, Specialized Training.
14. § 115.35/115.335 Specialized Training: Medical and Behavioral Health Care.
 - a. Adults – Refer to Policy 1D-03, Training Requirements and Orientation.
 - b. Juveniles – Refer to Policy 1D-03, Training Requirements and Orientation.
15. § 115.41/115.341 Screening for Risk of Sexual Victimization and Abusiveness.
 - a. Adults – Refer to the PREA Rating Assessment Manual and Assessment forms.
 - b. Juveniles: Staff shall screen juveniles within 24 hours of arrival for potentially sexually aggressive or assaultive behavior. Refer to Sexual Victimization and Abusiveness Risk Assessment and Health Screening Questionnaire for All Newly Admitted Juveniles form.
 - c. Adults in custody and juveniles may not be disciplined for any refusal or nondisclosure during screening regarding gender identity, sexual orientation, intersex condition, disability status, or prior sexual victimization.
16. § 115.42/115.342 Use of Screening Information.
 - a. Adults – Refer to Policy 4A-01, Admission, Reception and Orientation, and Transfers; Policy 4B-07, Gender Non-Conforming Persons; PREA Rating Assessment Manual.
 - b. Juveniles – Refer to Policy 4A-01, Admission, Screening, Orientation, and Transfers; Policy 4B-07, Gender Non-Conforming Persons.

- c. Adults in custody and juveniles may not be disciplined for any refusal or nondisclosure during screening regarding gender identity, sexual orientation, intersex condition, disability status, or prior sexual victimization.
- 17. § 115.43/115.343 Protective Custody.
 - a. Adults – Refer to Policy 3A-18, Segregation; the DOCR Coordinated Response Plan.
 - b. Juveniles – Refer to the DOCR Coordinated Response Plan.
- 18. § 115.51/115.351 Adult and Juvenile in Custody Reporting and § 115.53/115.353 Adult and Juvenile in Custody Access to Outside Confidential Support Services.
 - a. HRCC: Department Public Website; Refer to the DOCR Coordinated Response Plan; the Memorandum of Understanding between the Department and the Abused Adult Resource Center; the Memorandum of Understanding between the Department and the North Dakota Highway Patrol.
 - b. JRCC: Department Public Website; Refer to the DOCR Coordinated Response Plan; the Memorandum of Understanding between the Department and the North Dakota Highway Patrol; the Memorandum of Understanding between James River Correctional Center and Safe Shelter.
 - c. MRCC: Department Public Website; Refer to the DOCR Coordinated Response Plan; the Memorandum of Understanding between the Department and the Abused Adult Resource Center; the Memorandum of Understanding between the Department and the North Dakota Highway Patrol.
 - d. NDSP: Department Public Website; Refer to the DOCR Coordinated Response Plan; the Memorandum of Understanding between the Department and the Abused Adult Resource Center; the Memorandum of Understanding between the Department and the North Dakota Highway Patrol.
 - e. YCC: Department Public Website; Refer to the DOCR Coordinated Response Plan; the Memorandum of Understanding between the Department and the North Dakota Highway Patrol; the Memorandum of Understanding between the Division of Juvenile Services and the Dakota Children's Advocacy Center.
- 19. § 115.52/115.352 Exhaustion of Administrative Remedies.
 - a. Adults – Refer to Policy 3C-10, Grievance Procedures.
 - b. Juveniles – Refer to Policy 3C-01, Rights.
- 20. § 115.54/115.354 Third-Party Reporting. Refer to Department website.

21. § 115.61/115.361 Staff and Agency Reporting Duties. Refer to Policy 1C-03, Rules of Conduct; the DOCR Coordinated Response Plan; Policy 4E-53, Confidentiality, Informed Consent, Privacy.
22. § 115.62/115.362 Agency Protection Duties. Refer to the DOCR Coordinated Response Plan.
23. § 115.63/115.363 Reporting to Other Confinement Facilities. Refer to the PREA Coordinator Position Guide.
24. § 115.65/115.365 Coordinated Response – Investigations of Sexual Abuse or Sexual Harassment. Refer to the DOCR Coordinated Response Plan.
25. § 115.66/115.366 Preservation of ability to protect adults and juveniles in custody from contact with abusers. Standard § 115.66 does not apply to North Dakota since there are no collective bargaining agreements. North Dakota is a right to work state.
26. § 115.67/115.367 Agency Protection Against Retaliation. The Department PREA compliance manager at each Department facility protects all adults and juveniles in custody and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other adults in custody, juveniles, or staff. Refer to the DOCR Coordinated Response Plan.
27. § 115.68/115.368 Post-Allegation Protective Custody.
 - a. Adults – Refer to Policy 5A-17, Adult in Custody Separation (NDSP only); Policy 3A-18, Segregation; the DOCR Coordinated Response Plan.
 - b. Juveniles – Refer to the DOCR Coordinated Response Plan.
28. § 115.71/115.371 Criminal/Administrative Agency Investigations. Refer to the DOCR Coordinated Response Plan; Policy 1A-27, Criminal Investigations, Intelligence, and Alleged Delinquencies; Policy 1A-09, Professional Standards Investigations; Policy 3A-12, Preservation of Physical Evidence; N.D.C.C. § 12-59-20, Probation and parole officers as peace officers; N.D.C.C. § 39-03-09, Powers of highway patrol.
29. § 115.72/115.272 Evidentiary standard for administrative investigations. Refer to DOCR Coordinated Response Plan.
30. § 115.73/115.373 Reporting to Adults and Juveniles in Custody. Refer to the DOCR Coordinated Response Plan.

B. Discipline.

1. § 115.76/115.376 Disciplinary Sanctions for Department Staff. Refer to the ND DOCR Employee Handbook; Policy 1C-22, Employee Terminations and Early Retirement; Policy 1A-09, Professional Standards Investigations.

2. § 115.77/115.377 Corrective Action for Contractors/Volunteers. Any contractor or volunteer who engages in sexual abuse is prohibited from contact with the residents from the time of initial allegation through the investigation. Disciplinary measures for any contractor or volunteer who has been found to have engaged in sexual abuse or sexual harassment will be commensurate with disciplinary measures used with facility staff for similar offenses.
 3. § 115.78/115.378 Disciplinary Sanctions for Adults and Juveniles in Custody.
 - a. Adults – Refer to Policy 4B-09, Special Needs Adults in Custody; Inmate Handbook.
 - b. Juveniles – Refer to Policy 3C-02, Handbook Rules of Conduct, Resolution of Rule Violations, Criminal Violations, and North Dakota Youth Correctional Center Juvenile Offense Codes.
- C. Medical and Mental Health Care.
1. § 115.81/115.381 Medical and Mental Health Screenings, History of Sexual Abuse
 - a. Adults – Refer to Policy 4F-10, Sex Offender Assessment and Treatment Programming (SOTP); Policy 1E-01, Open Records, Confidentiality, and Release of Information.
 - b. Juveniles – Refer to Policy 4F-10, Juvenile Mental Health Program.
 2. § 115.82/115.382 Access to Emergency Medical and Behavioral Health Services. Refer to the DOCR Coordinated Response Plan.
 3. § 115.83/115.383 Ongoing Medical and Behavioral Health Care for Sexual Abuse Victims and Abusers. Refer to the DOCR Coordinated Response Plan.
- D. Data Collection, Review, and Reporting.
1. § 115.86/115.386 Data Collection and Incident Reviews.
 - a. The facility shall conduct a sexual abuse incident review pursuant to PREA Standard 115.87 at the conclusion of every sexual abuse investigation, including when the allegation has not been substantiated, unless the allegation has been determined to be unfounded.
 - b. The review shall ordinarily occur within 30 days of the conclusion of the investigation. The review team may include PREA Coordinator, facility PREA Compliance Manager, behavioral health staff, investigator, and assigned facility staff. The results of the review will be provided to the warden.
 - c. Refer to the PREA Investigation Checklist and investigation files.

2. § 115.87/115.387 Data Collection.
 - a. The Department shall conduct accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions. (115.87(a)/(c)-1) The Department utilizes the Department of Justice, Bureau of Justice Statistics form SSV-2, Survey of Sexual Violence for State Prison Systems, as well as collecting the information within the state's Risk Management Incident Reporting Data System. This information is forwarded to the Department of Justice upon request.
 - b. The Department PREA Coordinator shall aggregate incident-based sexual abuse data at least annually. (115.87(b)-1)
 - c. The Department contract managers obtain incident-based and aggregated data from every contract facility with which it contracts for the confinement of its adults in custody.
3. § 115.88/115.388 Data Review for Corrective Action.
 - a. The PREA Coordinator in conjunction with the facility wardens shall review data collected and aggregated pursuant to PREA Standard 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training to include:
 - 1.) Identifying problem areas;
 - 2.) Taking corrective action on an ongoing basis; and
 - 3.) Preparing an annual report of its findings and corrective actions for each facility and the agency as a whole. This report will be approved by the Director of the Department and posted to the Department website. The Department may redact specific material from the reports when publication presents a clear and specific threat to the safety and security of a facility but must indicate the nature of the material redacted.
4. § 115.89/115.389 Data Storage, Publication, and Destruction.
 - a. The Department shall make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through the public website. Before making aggregated sexual abuse data publicly available, the Department shall remove all personal identifiers.
 - b. All case records associated with claims of sexual abuse, including incident reports, investigation reports, inmate information, case disposition, medical and counseling

evaluation findings, and recommendations for post-release treatment and counseling will be retained in accordance with North Dakota statute. **(4-4281-8M)** Refer to N.D.C.C. § 25-03.3-04.

- E. Audit. § 115.93/115.393/115.401 Audits of Standards. The Department shall comply with all audit requirements from the Department of Justice.
- 6. **SIGNATURE:** This policy with procedures and applicable manuals become effective when signed by the Director of the Department of Corrections and Rehabilitation.

This copy has been approved by the Director with the original signature on file.