



# Corrections and Rehabilitation

TRANSFORMING LIVES, INFLUENCING  
CHANGE, STRENGTHENING COMMUNITY.  
HEALTHY AND PRODUCTIVE

NEIGHBORS  
TRANSFORM

## DOCR PREA COORDINATED RESPONSE PLAN

CHANGE, STRENGTHENING COMMUNITY.  
HEALTHY AND PRODUCTIVE  
NEIGHBORS, A SAFE NORTH DAKOTA.

TRANSFORMING LIVES, INFLUENCING

**DATE ISSUED: AUGUST 1, 2021**

**MOST CURRENT DATE REVISED: JULY 13, 2021**

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**RESPONSIBLE PARTY(S): PREA COORDINATOR**

TRANSFORMING LIVES, INFLUENCING

# REVISION PAGE

EFFECTIVE DATE OF PLAN FOR MANUAL: AUGUST 1, 2021

## REVISION/REVIEW HISTORY

Revised/Reviewed: July 13, 2021

## SUMMARY OF REVISIONS

## RELATIVE ACA/PBS STANDARDS

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# SECTION I: GENERAL INFORMATION AND GUIDELINES

The Prison Rape Elimination Act of 2003 (PREA) is a federal law established to address the elimination and prevention of sexual assault and sexual harassment within correctional systems and detention facilities across the country. The PREA standards apply to all DOCR facilities. DOCR facilities shall use this plan to facilitate reporting of sexual abuse and sexual harassment and to coordinate actions taken in response to an allegation.

## PREA REPORTING OPTIONS

The DOCR allows adults in custody, juveniles, staff, and citizens to report privately to agency officials about sexual abuse, sexual harassment, and retaliation by other adults in custody, juveniles, staff, volunteers, or contractors. Adults in custody and juveniles can report in the following ways:

- 1) Verbal reporting to any staff member
- 2) Third party reporting
- 3) Request forms (Adult Only)
- 4) Grievance forms
- 5) Internal hotline – 555-1234 (toll free, recorded) (Adult Only)
- 6) Anonymous reporting
- 7) Notice of Prison Rape Elimination Act Allegation (SFN 60690) (Adult Only)
- 8) Written information
- 9) PREA Lockbox (Juvenile Only)

Staff are prohibited from requiring a person who reports verbally to write a written statement of the allegation unless the report is made by a staff person, contractor, or volunteer.

## PREA REPORTING OPTIONS

The DOCR does not allow adults in custody or juveniles to act as an interpreter for a limited English proficient victim unless obtaining an interpreter could compromise the victim's safety, the performance of the duties of the first staff member to respond, or the investigation into the victim's allegations. If someone in the custody of the DOCR is allowed to act as an interpreter, the reason for allowing this must be thoroughly documented.

Tele-Interpretation is available through a contract held by the DOCR. Refer to DOCR Policy 4B-6, Limited English Proficiency, for information on how to utilize this service.

## FORENSIC MEDICAL EXAMINATIONS

If a forensic medical examination is warranted, the following external medical providers will be utilized.

| <b>DOCR Facility</b> | <b>External Medical Provider</b>  |
|----------------------|---|
| NDSP, MRCC, and HRCC | Sanford Health  |
| JRCC                 | Jamestown Regional Medical Center   |
| YCC                  | Emergent examinations: Sanford Health.<br>Nonemergent Forensic examinations: Dakota Children's Advocacy Center (with possible referral to Sanford Health) |

Forensic medical examinations are offered without financial cost to the victim.

- Refer to NDCC Section 12.1-34-07

## ADVOCACY

If requested by the victim, a victim advocate, qualified agency staff member, or qualified community-based organization, a DOCR staff member will accompany and support the victim through the forensic medical examination process and investigatory interviews. Their role is to provide emotional support, crisis intervention services, information, and referrals.

The standard procedure utilized for the admittance of contractors and volunteers shall be followed. Exceptions may be granted upon approval of the warden or facility director.

Refer to policy 3A-15, Facility Access and Perimeter Security, for the applicable facility.

# SECTION II: DOCR COORDINATED RESPONSE PLAN FOR ADULT PREA ALLEGATIONS

## SEXUAL ABUSE ALLEGATION RESPONSE

**First Staff Member to Respond:** The first staff member to respond to an allegation of sexual abuse shall complete the following duties in this order:

- 1) Separate the victim from the perpetrator.
- 2) Notify the shift supervisor of the alleged incident.
- 3) Preserve and protect any crime scene until appropriate steps can be taken to collect evidence.
- 4) If the alleged abuse occurred within the past 96 hours, request that the victim not take any action that could destroy physical evidence including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, eating, or drinking.
- 5) If the alleged abuse occurred within the past 96 hours, staff will ensure that the perpetrator does not take any actions that could destroy physical evidence, including, as appropriate washing, brushing teeth, changing clothes, urinating, defecating, smoking, eating or drinking.
- 6) Document actions taken.

**Shift Supervisor:** Upon notification of an alleged incident of sexual abuse, the Shift Supervisor shall:

- 1) Notify the facility warden and the PREA compliance manager.
- 2) Ensure duties of the first responder are completed.
- 3) If a medical examination is appropriate, notify medical staff and have victim escorted to the medical department.
- 4) If known, secure the perpetrator and direct staff to ensure the person does not take any actions to destroy potential evidence. (eating, drinking, going to the bathroom, showering, changing clothes)
- 5) Work with DOOCR medical staff to determine whether external medical services are needed.
  - a. If external medical examination is required, the medical center will activate the Sexual Assault Response Team (SART). The following will report to the hospital: a sexual assault nurse examiner, a community-based victim advocate, and law enforcement personnel.
  - b. If there is no need for or the victim declines external medical services, DOOCR behavioral health practitioners will be utilized for assessment and support.
- 6) In the event transportation is necessary, it will be in accordance with transport policy. The warden will approve any exceptions. If the victim must change into transport clothes, the following process will be followed to limit loss of evidence:
  - a. The victim must undress on exam paper.
  - b. Each item of clothing must be placed in a separate paper bag (no plastic) and closed with evidence tape.

## SEXUAL ABUSE ALLEGATION RESPONSE CONTINUED

- c. The folded paper the victim undressed on must be placed in a separate paper bag (no plastic) sealed with evidence tape.
- d. Staff shall start a Chain of Possession of Evidence on the evidence.
- 7) Preserve and protect any crime scene until appropriate steps can be taken to collect evidence. The area will remain secured as a crime scene until released by the PREA compliance manager or investigator.
- 8) Offer the victim the opportunity to speak with a behavior health practitioner for counseling.

**PREA Compliance Manager:** Upon notification of an incident of sexual abuse, the PREA Compliance Manager shall complete the following duties:

- 1) In allegations of sexual abuse by a staff, contractor, or volunteer, consult on the allegation with the Warden and DOCR PREA coordinator to determine a course of action.
  - a. Separation of perpetrator from the victim.
    - i. Administrative leave
    - ii. Post reassignment
    - iii. Facility reassignment (if reasonable)
  - b. Investigator assignment based on acts alleged.
- 2) Finalize the investigator assignment and notify the warden and PREA coordinator of the name of the assigned investigator.
- 3) Monitor and provide technical resources to the PREA investigator.
- 4) Initiate retaliation monitoring.
- 5) For sexual abuse cases, if the finding is substantiated, contact the victim's case manager and request a PREA reassessment.
- 6) For sexual abuse cases, if the finding is substantiated or unsubstantiated, contact Behavioral Health to refer the perpetrator for assessment.
- 7) Within 30 days of completion of a sexual abuse case, schedule a Sexual Abuse Incident Review Team meeting.
- 8) Submit the Investigation Checklist to the Warden for review and respond to any proposed recommendations.

**Warden:** Upon notification of an alleged incident of sexual abuse, the warden shall:

- 1) If allegation of sexual abuse is against a staff, contractor or volunteer, notify the Director of Operations, DOCR Legal, Human Resources, and the Director of DOCR of the allegation.
- 2) Ensure separation between the victim and perpetrator.
- 3) Review notes from the Sexual Abuse Incident Review Team and, if needed, submit a response to proposed recommendations.

## SEXUAL ABUSE ALLEGATION RESPONSE CONTINUED

**Medical Staff:** Medical staff shall complete the following duties for alleged incidents of sexual abuse:

- 1) Reassure the victim medical services are involved only to ensure that the proper evaluation and treatment of any injuries are obtained.
- 2) Determine whether a sexual assault exam is appropriate. If a sexual assault examination is appropriate and the resident consents to being examined, explain the necessity and process of a sexual assault examination to the victim. Sexual assault examinations must be performed by a trained Sexual Assault Nurse Examiner (SANE) or Sexual Assault Forensic Examiner (SAFE). The examination may include a DNA mouth swab test so the victim should not have anything to eat or drink. The victim must avoid using the bathroom before an examination. The victim must be advised to not wipe or touch the areas of injury or sexual contact or apply any treatment, including ointment, or ice to the area of injury or sexual contact.
- 3) If the victim declines to be examined, staff shall document the refusal and have the victim sign an Against Medical Advice Release from Responsibility form.
- 4) Communicate the facts known about the incident, including the infectious disease status of the perpetrator, if known, to the external medical staff.
- 5) Contact the designated medical provider, who will initiate the Sexual Assault Response Team and request a victim advocate.
- 6) Contact the shift supervisor to make arrangements for transporting the inmate to the outside medical facility.
- 7) Document all actions taken and communications with the victim in the medical record.
- 8) Relay any information obtained from the victim regarding potential crime scenes, witnesses, or other relevant information to the shift supervisor.
- 9) Communicate the events to the Director of Nursing and Chief Nursing Officer.
- 10) Ensure sexual transmitted disease (STD) testing has occurred and prophylactic treatment is completed.
- 11) Ensure pre- and post- human immunodeficiency virus (HIV) counseling has been conducted.
- 12) Ensure all victims of sexually abusive penetration are offered pregnancy testing, if applicable.
- 13) If pregnancy results from the conduct above, provide the victim with timely and comprehensive information and timely access to all lawful pregnancy related medical services.
- 14) Ensure follow-up infectious disease testing is completed and that infectious disease testing is completed on the abuser if the allegation is substantiated or unsubstantiated.

**Behavioral Health Practitioners:** Behavioral health practitioners shall follow the following process for alleged incidents of sexual abuse.

- 1) A behavioral health practitioner or on-call counselor will be contacted by the shift supervisor and will be requested to immediately assess the victim to counsel and provide support.
- 2) The behavioral health practitioner may sit in on interviews with the victim if requested to do so by the victim or by a law enforcement officer.
- 3) Upon completion of the sexual abuse investigation, all perpetrators of unsubstantiated and substantiated allegations of sexual abuse shall be assessed within 60 days.



## SEXUAL ABUSE ALLEGATION RESPONSE CONTINUED

**PREA Investigator:** The PREA investigator shall follow the following process to investigate allegations of sexual abuse:

- 1) Complete the Risk Management Online Incident Reporting form within 24 hours of notification.
- 2) Initiate the PREA investigation process, as outlined in section IV of this manual.
- 3) Ensure the victim is informed of the results of the investigation and the Notice of Prison Rape Elimination Act (PREA) Investigation Status is completed properly.
- 4) Ensure all reports, evidence, and documentation are provided to the PREA compliance manager at the completion of the investigation for storage and retention.

## SEXUAL HARASSMENT ALLEGATION RESPONSE

The DOCR shall handle all investigations of sexual harassment internally unless there are elements of a criminal act (such as terrorizing).

**First Staff Member to Respond:** The first staff member to respond to an allegation of sexual harassment shall complete the following duties in this order:

- 1) Separate the victim from the perpetrator and stop the harassment immediately.
- 2) Notify the shift supervisor of the alleged incident.
- 3) Document actions taken.

**Shift Supervisor:** Upon notification of an alleged incident of sexual harassment, the shift supervisor shall:

- 1) Ensure duties of the first staff member to respond are completed.
- 2) Contact the facility PREA compliance manager to determine if an investigation is warranted.
- 3) If the PREA compliance manager determines an investigation is warranted, notify the facility warden/director.
- 4) Offer the victim the opportunity to speak with a behavior health practitioner for counseling.

**DOCR PREA Compliance Manager:** Upon notification of an alleged incident of sexual harassment, the DOCR PREA compliance manager shall complete the following duties:

- 1) Determine if the act(s) as reported meets the definition of sexual harassment as applied to PREA standards.
- 2) If determined the definition is met and the allegations involve sexual harassment by a staff, contractor, or volunteer, consult on the allegation with the warden and DOCR PREA coordinator to determine a course of action, which may include one or more of the following.
  - a. Separation of perpetrator from the resident.
    - i. Administrative leave
    - ii. Post reassignment
    - iii. Facility reassignment (if reasonable)
  - b. Investigator assignment based on acts alleged.
- 3) Finalize the investigator assignment and notify the warden and PREA coordinator of the name of the assigned investigator.
- 4) Monitor and provide technical resources to the PREA investigator.

## SEXUAL HARASSMENT ALLEGATION RESPONSE CONTINUED

**Warden:** Upon notification of an alleged incident of sexual harassment, the warden shall:

- 1) If allegation of sexual harassment is against a staff, contractor or volunteer, notify the Director of Operations, DOOCR Legal, Human Resources, and the Director of DOOCR of the allegation.
- 2) Ensure separation between the victim and perpetrator.

**Behavioral Health Practitioner:** Behavioral health practitioners shall follow the following process for alleged incidents of sexual harassment.

- 1) A behavioral health practitioner or on-call counselor will be contacted by the shift supervisor and will be requested to immediately assess the victim to counsel and provide support.

**PREA Investigator:** The PREA investigator shall follow the following process to investigate sexual harassment:

- 1) Complete the Risk Management Online Incident Reporting form within 24 hours of notification.
- 2) Initiate the PREA investigation process, as outlined in section IV of this manual.
- 3) Ensure the victim is informed of the results of the investigation and the Notice of Prison Rape Elimination Act (PREA) Investigation Status is completed properly.
- 4) Ensure all reports, evidence, and documentation are provided to the PREA compliance manager at the completion of the investigation for storage and retention.

## AGENCY PROTECTION AGAINST RETALIATION

Starting the date an allegation is made, the facility PREA compliance manager is responsible for ensuring all resident and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations are protected from retaliation by other residents or staff.

For reports of sexual abuse, the DOOCR PREA compliance manager will ensure monitoring continues and appropriate protection measures are available for at least 90 days following a report of sexual abuse. This monitoring shall continue beyond 90 days if the initial monitoring indicates a continuing need. The DOOCR's obligation to monitor expires if the investigation determines that the allegation is unfounded.

Monitoring must include the following:

- For adults in custody: review of disciplinary reports, housing changes, program changes, changes in privileges, and monthly in-person status checks documented in case notes in ELITE.
- For employees: review of disciplinary action, performance reviews, and reassignments.

If the PREA compliance manager finds indications of retaliation, they shall act promptly to remedy any such retaliation. If any other individual who cooperates with an investigation expresses a fear of retaliation, the warden/director and PREA compliance manager shall take appropriate measures to protect that individual against retaliation. Protection measures may include:

- Housing changes or transfers for victims or perpetrators;
- Voluntary protective custody;

## AGENCY PROTECTION AGAINST RETALIATION CONTINUED

- Short-term use of involuntary protective custody (in accordance with process outlined in the Protective Custody section of this plan);
- Removal of perpetrator from contact with victim; and
- Emotional support services for adults in custody who experience fear retaliation.

## INVOLUNTARY PROTECTIVE CUSTODY

Adults in custody at high-risk for sexual victimization may not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made and a determination has been made there is no available alternative means of separation from likely abusers. If an assessment cannot be completed immediately, the adult in custody may be held in involuntary segregated housing for less than 24 hours while assigned staff completes the assessment. If an involuntary segregated housing assignment is made, the case manager shall clearly document in ELITE the basis for the concern for the person's safety and the reason why no alternative means of separation can be arranged.

Adults in custody placed in involuntary segregated housing for this purpose shall have access to their normal programs, privileges, education, and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document any opportunities that have been limited, the duration of the limitation, and the reasons for any limitations.

Adults in custody may only be assigned to involuntary segregated housing until an alternative means of separation from likely abusers can be arranged. The assignment may not ordinarily exceed a period of 30 days. Efforts must be made to keep the victim in the victim's normal housing unit to prevent re-traumatization.

Every seven days for the first two months and then 30 days thereafter, the Administrative Segregation review team shall afford each resident a review to determine whether there is a continuing need for separation from the general population.

Refer to DOCR Directive 3A-18, Segregation, for more information.

# SECTION III: DOCR COORDINATED RESPONSE PLAN FOR JUVENILE PREA ALLEGATIONS

## SEXUAL ABUSE ALLEGATION RESPONSE

**First Staff Member to Respond:** The first staff member to respond to an allegation of sexual abuse shall complete the following duties in this order:

- 1) Separate the victim from the perpetrator.
- 2) Notify the shift supervisor of the alleged incident.
- 3) Preserve and protect any crime scene until appropriate steps can be taken to collect evidence.
- 4) If the alleged abuse occurred within the past 96 hours, request that the victim not take any action that could destroy physical evidence including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, eating, or drinking.
- 5) If the alleged abuse occurred within the past 96 hours, staff will ensure that the perpetrator does not take any actions that could destroy physical evidence, including, as appropriate washing, brushing teeth, changing clothes, urinating, defecating, smoking, eating or drinking.
- 6) Document actions taken.

**Shift Supervisor:** Upon notification of an alleged incident of sexual abuse, the shift supervisor shall:

- 1) Notify the facility director and the PREA compliance manager.
- 2) Ensure duties of the first responder are completed.
- 3) If known, secure the perpetrator and direct staff to ensure the person does not take any actions to destroy potential evidence. (eating, drinking, going to the bathroom, showering, changing clothes)
- 4) Work with facility medical staff to determine whether external medical services are needed.
  - a. If external medical examination is required, the medical center will activate the Sexual Assault Response Team (SART). The following will report to the hospital: a Sexual Assault Nurse Examiner, a community-based victim advocate, and law enforcement personnel.
  - b. If there is no need for external medical services, an internal behavioral health practitioner will be utilized for assessment and support.
- 5) In the event transportation is necessary, it will be in accordance with transport policy. The facility director will approve any exceptions. If the victim must change into to transport clothes, the following process will be followed:
  - a. The victim must undress on exam paper.
  - b. Each item of clothing must be placed in a separate paper bag (no plastic) and closed with evidence tape.
  - c. The folded paper the victim undressed on must be placed in a separate paper bag (no plastic) sealed with evidence tape.
  - d. Staff shall start a Chain of Possession of Evidence on the evidence.
- 6) Notify a behavioral health practitioner or on-call counselor, inform them of the alleged incident, and request they immediately assess the victim to counsel and provide support. The behavioral health practitioner may sit in on interviews with the victim if requested to do so by the victim or by a law enforcement officer.

## SEXUAL ABUSE ALLEGATION RESPONSE CONTINUED

**Medical Staff:** Medical staff shall complete the following duties for alleged incidents of sexual abuse:

- 1) Reassure the victim medical services are involved only to ensure that the proper evaluation and treatment of any injuries are obtained.
- 2) Determine whether a sexual assault exam is appropriate. If a sexual assault examination is appropriate and the resident consents to being examined, explain the necessity and process of a sexual assault examination to the victim. Sexual assault examinations must be performed by a trained Sexual Assault Nurse Examiner (SANE) or Sexual Assault Forensic Examiner (SAFE). The examination may include a DNA mouth swab test so the victim should not have anything to eat or drink. The victim must avoid using the bathroom before an examination. The victim must be advised to not wipe or touch the areas of injury or sexual contact or apply any treatment, including ointment, or ice to the area of injury or sexual contact.
- 3) If the victim (or for juveniles, the victim's parent or legal guardian) declines the examination, the refusal must be documented by using an Against Medical Advice Release from Responsibility form in compliance with Policy 4E-53, Confidentiality, Informed Consent, Privacy.
- 4) Communicate the facts known about the incident, including the infectious disease status of the perpetrator, if known, to the external medical staff.
- 5) Contact the designated medical provider, who will initiate the Sexual Assault Response Team and request a victim advocate.
- 6) Contact the shift supervisor to make arrangements for transporting the inmate to the outside medical facility.
- 7) Document all actions taken and communications with the victim in the medical record.
- 8) Relay any information obtained from the victim regarding potential crime scenes, witnesses, or other relevant information to the shift supervisor.
- 9) Communicate the events to the Director of Nursing and Chief Nursing Officer.
- 10) Ensure sexual transmitted disease (STD) testing has occurred and prophylactic treatment is completed.
- 11) Ensure pre- and post- human immunodeficiency virus (HIV) counseling has been conducted.
- 12) Ensure all victims of sexually abusive penetration are offered pregnancy testing, if applicable.
- 13) If pregnancy results from the conduct above, provide the victim with timely and comprehensive information and timely access to all lawful pregnancy related medical services.
- 14) Ensure follow-up infectious disease testing is completed and that infectious disease testing is completed on the perpetrator if the allegation is substantiated or unsubstantiated.

**PREA Compliance Manager:** Upon notification of an alleged incident of sexual abuse, the PREA Compliance Manager shall complete the following duties:

- 1) In allegations of sexual abuse by a staff, contractor, or volunteer, consult on the allegation with the facility director and PREA coordinator to determine a course of action.
  - a. Separation of perpetrator from the resident.
    - i. Administrative leave

## SEXUAL ABUSE ALLEGATION RESPONSE CONTINUED

- ii. Post reassignment
    - iii. Facility reassignment (if reasonable)
  - b. Investigator assignment based on acts alleged.
- 2) Finalize the investigator assignment and notify the director and PREA coordinator of the name of the assigned investigator.
- 3) Monitor and provide technical resources to the PREA investigator.
- 4) Initiate retaliation monitoring.

**Facility Director:** Upon notification of an alleged incident of sexual abuse, the facility director shall:

- 1) If allegation of sexual abuse is against a staff, contractor or volunteer, notify the Director of Operations, DOCR Legal, Human Resources, and the Director of DOCR of the allegation.
- 2) Ensure separation between the victim and perpetrator.

**PREA Investigator:** The PREA investigator shall follow the following process to investigate allegations of sexual abuse:

- 1) Complete the Risk Management Online Incident Reporting form within 24 hours of notification.
- 2) Initiate the PREA investigation process, as outlined in section IV of this manual.
- 3) Ensure the victim is informed of the results of the investigation and the Notice of Prison Rape Elimination Act (PREA) Investigation Status is completed properly.
- 4) Ensure all reports, evidence, and documentation are provided to the PREA compliance manager at the completion of the investigation for storage and retention.

## SEXUAL HARASSMENT ALLEGATION RESPONSE

The DOCR shall handle all investigations of sexual harassment internally unless there are elements of a criminal act (such as terrorizing).

**First Staff Member to Respond:** The first staff member to respond to an allegation of sexual harassment shall complete the following duties in this order:

- 1) Separate the victim from the perpetrator and stop the harassment immediately.
- 2) Notify the shift supervisor of the alleged incident.
- 3) Document actions taken.

**Shift Supervisor:** Upon notification of an alleged incident of sexual harassment, the shift supervisor shall:

- 1) Ensure duties of the first responder are completed.
- 2) Contact the PREA compliance manager to determine if an investigation is warranted.
- 3) If the PREA compliance manager determines an investigation is warranted, notify the facility warden/director.
- 4) Offer the victim the opportunity to speak with a behavior health practitioner for counseling.

## SEXUAL HARASSMENT ALLEGATION RESPONSE CONTINUED

**PREA Compliance Manager:** Upon notification of an alleged incident of sexual harassment, the PREA compliance manager shall complete the following duties:

- 1) Determine if the acts as reported meets the definition as applied to PREA standards.
- 2) If determined the definition is met and the allegations involve sexual harassment by a staff, contractor, or volunteer, consult on the allegation with the facility director and PREA coordinator to determine a course of action, which may include one or more of the following.
  - a. Separation of perpetrator from the resident.
    - i. Administrative leave
    - ii. Post reassignment
    - iii. Facility reassignment (if reasonable)
  - b. Investigator assignment based on acts alleged.
- 3) Finalize the investigator assignment and notify the facility director and PREA coordinator of the name of the assigned investigator.
- 4) Monitor and provide technical resources to the PREA investigator.

**Facility Director:** Upon notification of an alleged incident of sexual harassment, the facility director shall:

- 1) If allegation of sexual harassment is against a staff, contractor or volunteer, notify the Director of Operations, DOCR Legal, Human Resources, and the Director of DOCR of the allegation.
- 2) Ensure separation between the victim and perpetrator.

**PREA Investigator:** The PREA investigator shall follow the following process to investigate sexual harassment:

- 1) Complete the Risk Management Online Incident Reporting form within 24 hours of notification.
- 2) Initiate the PREA investigation process, as outlined in section IV of this manual.
- 3) Ensure the victim is informed of the results of the investigation and the Notice of Prison Rape Elimination Act (PREA) Investigation Status is completed properly.

## AGENCY PROTECTION AGAINST RETALIATION

Starting the date an allegation is made, the PREA compliance manager is responsible for ensuring all juveniles and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations are protected from retaliation by other juveniles or staff. This responsibility includes an obligation to proactively monitor for retaliation. Monitoring must include the following:

- For juveniles: review of disciplinary reports, housing changes, program changes, changes in privileges, and monthly in-person status checks documented in case notes in ELITE.
- For employees: review of disciplinary action, performance reviews, and reassignments.

## AGENCY PROTECTION AGAINST RETALIATION CONTINUED

If the PREA compliance manager finds indications of retaliation, the PREA compliance manager shall act promptly to remedy any such retaliation. If any other individual who cooperates with an investigation expresses a fear of retaliation, the facility director and PREA compliance manager shall take appropriate measures to protect that individual against retaliation. Protection measures may include:

- Housing changes or transfers for victims or perpetrators;
- Voluntary protective custody;
- Short-term use of involuntary protective custody (in accordance with process outlined in the Protective Custody section of this plan);
- Removal of the perpetrator from contact with victim; and
- Emotional support services for juveniles who experience fear retaliation.

For reports of sexual abuse, the PREA compliance manager will ensure monitoring continues and appropriate protection measures are available for at least 90 days following a report of sexual abuse. This monitoring shall continue beyond 90 days if the initial monitoring indicates a continuing need. The DOCR's obligation to monitor expires if the DOCR determines that the allegation is unfounded.

## INVOLUNTARY PROTECTIVE CUSTODY

Juveniles at high-risk for sexual victimization may not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made and a determination has been made there is no available alternative means of separation from likely abusers. If an assessment cannot be completed immediately, the juvenile may be held in involuntary segregated housing for less than 24 hours while assigned staff completes the assessment. If an involuntary segregated housing assignment is made, the case manager shall clearly document in ELITE the basis for the concern for the person's safety and the reason why no alternative means of separation can be arranged.

Juveniles placed in involuntary segregated housing for this purpose shall have access to normal programs, privileges, education, and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document any opportunities that have been limited, the duration of the limitation, and the reasons for any limitations.

Juveniles may only be assigned to involuntary segregated housing until an alternative means of separation from likely abusers can be arranged. The assignment may not ordinarily exceed a period of 30 days. Efforts must be made to keep the victim in the victim's normal housing unit to prevent re-traumatization.

Every 30 days thereafter, facility staff shall afford each resident a review to determine whether there is a continuing need for separation from the general population.



# SECTION IV: DOCR INVESTIGATIVE PLAN FOR PREA ALLEGATIONS

## **Additional Resources:**

***DOCR Policy 1A-9, Professional Standards Investigations***

***DOCR Policy 1A-27, Criminal Investigations, Intelligence, and Alleged Delinquencies***

***DOCR Policy 3A-12, Preservation of Physical Evidence***

***DOCR Policy 7B-4, Confidential Informant***

The DOCR is responsible for ensuring an administrative investigation is completed for all allegations of sexual abuse and/or harassment that occur within a DOCR facility. If the act is potentially criminal, the DOCR shall ensure the completion of a criminal investigation in addition to an administrative investigation.

DOCR facilities shall use this procedure as a plan to coordinate the investigation into an allegation of sexual abuse or sexual harassment.

## CRITERIA FOR AGENCY PREA INVESTIGATORS

Department staff members must meet the following criteria prior to serving as a PREA investigator. When a PREA Investigator training is scheduled, the PREA Coordinator will send a notice to all PREA Compliance Managers asking they work with the facility warden or director to identify staff to attend the training and serve as investigators.

- 1) Submit request to serve as a PREA Investigator to the facility warden and receive approval.
- 2) Complete a Department of Justice approved sexual abuse investigation training. This training includes completing the NIC online course "Investigating Sexual Abuse in a Confinement Setting" as well as department training. At a minimum, this training must include the following:
  - a. Techniques for interviewing sexual abuse victims;
  - b. Proper use of Miranda and Garrity warnings;
  - c. Sexual abuse evidence collection in a confinement setting; and
  - d. Criteria and evidence required to substantiate a case for administrative action or prosecution referral.
  - e. Shadow a trained investigator for one investigation and complete a minimum of one investigation under the supervision of a trained investigator.
    - 1) This requirement may be waived with permission of the facility warden and PREA Coordinator based on previous experience conducting investigations.
- 3) Be added to the DOCR's list of approved agency investigators who have met all requirements above.

## ADMINISTRATIVE INVESTIGATIONS

The DOCR is responsible for conducting administrative investigations into allegations of sexual abuse. The DOCR shall identify a PREA Investigator, who shall initiate a thorough and objective investigation for all allegations within 24 hours or as circumstances dictate.

PREA Investigators shall gather and preserve direct and circumstantial evidence, including available physical and DNA evidence and available electronic monitoring data; shall interview victims, perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

PREA Investigators shall assess the credibility of victims, perpetrators, and witnesses on an individual basis and not by the person's status as adult in custody/juvenile or staff. The DOCR may not require a person who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

Administrative investigations must include an effort to determine whether staff actions or failures to act contributed to the abuse. The administrative written report must include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings. The DOCR may not terminate the investigation based on the discharge or termination of employment of the perpetrator or victim.

## CRIMINAL INVESTIGATIONS

If, during the administrative investigation, it is found there were acts that are potentially criminal, the administrative investigation will stop until the conclusion of the criminal investigation unless directed to do otherwise by the DOCR Director. Information cannot be shared between the administrative investigator and the criminal investigator, unless a Miranda Warning was given for administrative interrogations of the individual(s) who may face criminal charges. The primary criminal investigative agency for allegations within all DOCR facilities is the ND Highway Patrol. When the North Dakota Highway Patrol investigates sexual abuse, DOCR investigators shall cooperate and assist as requested with outside investigators and shall remain informed about the progress of the investigation. In some cases, the DOCR may elect to have the criminal investigation completed by trained DOCR staff.

Criminal investigations must be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible. Substantiated allegations of conduct that appears to be criminal must be referred for prosecution.

## FORENSIC MEDICAL EXAMINATIONS

On adult victims, forensic medical examinations will only be conducted within 96 hours of the incident.

If during a forensic interview with a juvenile victim they disclose past sexual victimization, the interviewer may make the determination a forensic medical examination is appropriate. Forensic medical examinations will be offered to all victims of sexual abuse if deemed appropriate by DOCR medical staff.

## FINAL DETERMINATION

For each allegation investigated under PREA, the PREA investigator shall make a final determination on whether the allegation is substantiated, unsubstantiated, or unfounded. The allegation will be considered substantiated if a preponderance (more than 50 percent) of the credible evidence supports this finding. If the investigation produced insufficient evidence to make a final determination as to whether the incident occurred, it will be considered unsubstantiated. If the investigation determines that the incident did not occur, the allegation will be considered unfounded. If the investigation reveals a resident made a false allegation in bad faith, disciplinary action may be imposed.

## POST INVESTIGATION REQUIREMENTS

Following an investigation, the PREA investigator or a staff member designated by the PREA investigator will inform the victim verbally whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. The investigator or designated representative will deliver in person the Notice of Prison Rape Elimination Act (PREA) Investigation Status which will require a signature of the victim. If the victim refuses to sign the findings form, the investigator or designated representative will document the refusal and have a staff member witness and sign the refusal.

If the resident is released from custody, the DOOCR's obligation to complete the notifications is terminated. If the investigation is conducted by the North Dakota Highway Patrol or another external investigative entity, the DOOCR investigator shall request the relevant information in order to complete the Notice of Prison Rape Elimination Act (PREA) Investigation Status form. After the initial notification, if the DOOCR learns of additional information such as the perpetrator being criminally charged or convicted, another notification utilizing the Notice of Prison Rape Elimination Act (PREA) Investigation Status shall be completed.

## INVESTIGATIVE DOCUMENTS AND EVIDENCE RETENTION

The DOOCR shall retain all administrative and criminal written reports referenced for as long as the perpetrator is incarcerated or employed by the agency, plus five years or, for sexually dangerous individuals for twenty-five years, in accordance with NDCC Section 25-03.3-04.

# ABBREVIATIONS

- DOCR: Department of Corrections and Rehabilitation
- DOJ: Department of Justice
- EMRS: Electronic Medical Records Systems
- HIV: Human Immune Deficiency Virus
- PREA: Prison Rape Elimination Act of 2003
- SAFE: Sexual Assault Forensic Examiner
- SANE: Sexual Assault Nurse Examiner
- STD: Sexually Transmitted Disease

# GLOSSARY

- **Abuse:** The improper use or treatment of an adult in custody that directly or indirectly affects the adult in custody negatively or any intentional act that causes physical, mental or emotional injury.
- **Adult in Custody:** Individual sentenced to the legal and physical custody of the Department of Corrections and Rehabilitation, or individuals transferred to the physical custody of the Department of Corrections and Rehabilitation by another state or the federal government.
- **Behavioral Health Practitioner:** A person who, by education and experience, is professionally qualified to provide counseling interventions designed to facilitate individual achievement of human development goals and mediate mental, emotional, or behavioral disorders, and associated distresses which interfere with behavioral health and development.
- **Contractor:** A person who provides services on a recurring basis pursuant to a contractual agreement with the agency.
- **Deoxyribonucleic Acid or DNA:** A nucleic acid that contains the genetic instructions used in the development and functioning of all known living organisms.
- **Director of Professional Standards:** A staff member designated by the Director of the Department of Corrections and Rehabilitation conducts and directs investigations that may involve violations of departmental rules, regulations, policies, or of law.
- **ELITE:** The information management computer system utilized by adult and juvenile facilities, and juvenile community.
- **Exigent Circumstances:** Any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of the facility.
- **FileNet:** An electronic storage database.
- **Gender Non-Conforming:** Gender characteristics and behaviors that do not conform to those typically associated with a person's assigned gender at birth.
- **Intern:** An individual receiving academic credit or fulfilling an academic requirement of an accredited educational institution through work experience.
- **Medical Practitioner:** Any person practicing medicine to include the Department of Corrections and Rehabilitation physicians, nurse practitioners, and physician assistants.

## GLOSSARY CONTINUED

- **Medical Practitioner:** Any person practicing medicine to include the Department of Corrections and Rehabilitation physicians, nurse practitioners, and physician assistants.
- **Prison Rape Elimination Act of 2003:** Federal law that prohibits and seeks to eliminate sexual assaults and sexual misconduct in correctional institutions and community corrections settings.
- **Prison Rape Elimination Act 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.
- **Prison Rape Elimination Act Coordinator:** A senior-level position that reports directly to the agency head. The Prison Rape Elimination Act coordinator's responsibilities include developing, implementing, and overseeing the agency's plan to comply with the Prison Rape Elimination Act standards. He or she is also responsible for ensuring the completion of the assessment checklists in compliance with Prison Rape Elimination Act standards.
- **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:
  - Contact between the penis and vulva or the penis and anus, including penetration, however slight;
  - Contact between the mouth and the penis, vulva, or anus;
  - Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument; and
  - 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.
- **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:
  - Contact between the penis and vulva or the penis and anus, including penetration, however slight;
  - Contact between the mouth and the penis, vulva, or anus;
  - 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;
  - 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;
  - 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;

## GLOSSARY CONTINUED

- 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;
- Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an adult in custody, detainee, or juvenile and Voyeurism by a staff member, contractor, or volunteer.
- **Sexual Harassment (for PREA use only):** 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 in custody, detainee or resident directed toward another; or, repeated verbal comments or gestures of a sexual nature to an, adult in custody, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.
- **Sexually Transmitted Diseases:** Any of various diseases, including chancroid, chlamydia, gonorrhea, and syphilis, that are usually contracted through sexual intercourse or other intimate sexual contact.
- **Substantiated Allegation:** Allegation that was investigated and determined to have occurred.
- **Unfounded Allegation:** Allegation that was investigated and determined not to have occurred.
- **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.
- **Volunteer:** An individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency.
- **Voyeurism by a Staff Member, Contractor, or Volunteer:** An invasion of privacy of an adult in custody, detainee, juvenile or adult in custody by staff for reasons unrelated to official duties, such as peering at an adult in custody or juvenile who is using a toilet in his or her cell to perform bodily functions; requiring an adult in custody or juvenile to expose their buttocks, genitals, or breasts; or taking images of all or part of a resident's naked body or of an adult in custody or juvenile performing bodily functions. (For the purposes of PREA statistics, voyeurism is counted under sexual abuse.)