

GENERAL DISTRIBUTION

**WEST VIRGINIA
DIVISION OF CORRECTIONS
& REHABILITATION**

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**SUBJECT: PRISON RAPE ELIMINATION
ACT (PREA) COMPLIANCE**

POLICY DIRECTIVE

PURPOSE:

To ensure compliance with the Prison Rape Elimination Act (PREA) by mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the Division of Corrections and Rehabilitation's approach to preventing, detecting, and responding to such conduct.

REFERENCE:

United States Department of Justice Final Rule, National Standards to Prevent, Detect, and Respond to Prison Rape Under the Prison Rape Elimination Act (PREA), 28 C.F.R. Part 115; U.S. Department of Justice, United States Marshals Service, Prisoner Operations Division, Detention Services Intergovernmental Agreement with the West Virginia Division of Corrections and Rehabilitation; U.S. Immigration and Customs Enforcement (ICE) National Detention Standards for Non-Dedicated Facilities; and WV Code §§49-2-803, and 61-8B-10.

RESPONSIBILITY:

The DCR Director of PREA Compliance shall maintain a PREA Manual to comply with this Policy and National PREA Standards.

CANCELLATION:

Any previous written instruction on the subject including DCR Policy Directive 430.00, dated 15 September 2019.

APPLICABILITY:

All facilities within the Division of Corrections and Rehabilitation (DCR). This Policy is available for general distribution and is to be made available for offender review upon the effective date.

DEFINITIONS:

Abusive Sexual Contact: Sexual contact by any offender toward another offender without his or her consent, or of a person who is unable to consent or refuse. Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person. This definition excludes incidents in which the contact was incidental to a physical altercation.

Contractor: A person who provides services on a recurring basis pursuant to a contractual agreement with the agency.

Director of PREA Compliance: An individual who serves as the subject matter expert on all PREA accreditation requirements, is responsible for creating and implementing DCR policies, procedures and practices; ultimately overseeing and coordinating the DCR's efforts to comply with the PREA Standards.

Exigent Circumstances: Any set of temporary and unforeseen circumstances that require immediate action to combat a threat to the security or institutional order of a facility.

Gender Nonconforming: A person whose appearance or manner does not conform to traditional societal gender expectations.

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

Juvenile: For the purposes of this Policy, any person under the age of eighteen (18) years of age and those between eighteen (18) and twenty-one (21) years of age who are under the juvenile jurisdiction of the court.

LGBTI: Abbreviation for Lesbian, Gay, Bi-Sexual, Transgender and Intersex.

Medical Practitioner: A health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. For the purposes of this Policy, a “qualified medical practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

Mental Health Practitioner: A mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. For the purposes of this Policy, a “qualified mental health practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

Nonconsensual Sexual Acts: Sexual contact by any offender toward another offender without his or her consent, or of a person who is unable to consent or refuse. Contact between the penis and the vulva or the penis and the 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.

Offender: For the purposes of this Policy, any adult or juvenile lawfully detained in custody or confinement of a DCR facility regardless of temporary absence due to medical treatment, transportation, court appearance, or any other reason of temporary absence.

PREA Compliance Manual: An instruction manual and attachments used to gather pertinent required information that is needed to document the agencies actions and efforts to respond to the PREA Standards.

PREA Coordinator: DCR shall employ or designate an upper-level, agency-wide PREA Coordinator with sufficient time and authority to develop, implement, and oversee DCR efforts to comply with the PREA standards in all facilities.

Preponderance of the Evidence: A standard of evidence or proof that determines that the greater weight of the evidence supports that the allegation most likely occurred.

Sexual Harassment: Repeated and unwelcome sexually suggestive comments, gestures, advances, requests, actions of a derogatory or offensive sexual nature directed toward an offender by another offender.

Staff: Any employee compensated directly by the DCR for work to include full-time and part-time personnel.

Staff Sexual Harassment: Repeated verbal comments or gestures of a sexual nature to an offender by an employee, volunteer, contractor, official visitor, or other agency representative to include demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or repeated profane or obscene language or gestures.

Staff Sexual Misconduct: Any behavior or act of sexual nature directed toward an offender by an employee, volunteer, contractor, official visitor or other agency representative. To include incidents of over-familiarity and sexual relationships of a romantic nature between staff and offenders. Consensual or nonconsensual sexual acts including intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks that is unrelated to official duties or with the intent to abuse, arouse, or gratify sexual desire; Any completed, attempted, threatened, or requested sexual acts or occurrences of indecent exposure, invasion of privacy, or staff voyeurism for reasons unrelated to official duties or for sexual gratification.

Substantiated Allegation: An allegation that was investigated and determined to have occurred.

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

Unannounced Rounds: An unexpected facility tour conducted by intermediate-level or higher-level supervisors to identify and deter sexual abuse and sexual harassment.

Unfounded Allegation: An allegation that was investigated and determined not to have occurred.

Unsubstantiated Allegation: An allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether the event occurred.

Victim: For the purposes of this Policy, a person who was sexually abused or harassed.

Volunteer: A person who, by mutual agreement with the DCR, provides services or donates time and effort on a recurring basis without compensation, or who voluntarily assists offenders or the DCR in the course of the volunteer's duties.

POLICY:

I. Prevention Planning

- A. The Division of Corrections and Rehabilitation (DCR) has zero tolerance for any acts of sexual abuse, assault, misconduct, or harassment. Sexual activity between staff and offenders, volunteers or contract personnel and offenders, and offender and offender, regardless of consensual status, is prohibited and subject to administrative and criminal disciplinary sanctions up to and including dismissal and prosecution pursuant to West Virginia Code §61-8B-10 and DCR policy and procedure. (115.11(a))
- B. The DCR Director of PREA Compliance along with DCR PREA Coordinators and designated support staff shall make up the Office of PREA Compliance and will have sufficient time and authority to develop, implement, coordinate and oversee DCR efforts to comply with the PREA standards in all facilities. (115.11 (b))
- C. Each Superintendent, in consultation with the Director of PREA Compliance, shall designate a Facility PREA Compliance Manager (PCM) who will have sufficient time and authority to develop, implement, coordinate, and oversee DCR efforts to comply with the PREA standards in his/her facility. (115.11(a-c))
- D. Any new contract or contract renewal for the confinement of offenders shall include an obligation to:
 - 1. Comply with PREA Standards;
 - 2. Comply with DCR policy; and
 - 3. Ensure that the contracted facility is complying with the PREA standards by monitoring the facility performance. (115.12 (a) (b))

II. Supervision and Monitoring

- A. DCR shall ensure that each facility develops, documents, and makes its best efforts to comply with the PREA staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect offenders against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration: (115.13 (a))
1. Generally accepted detention and correctional practices;
 2. Any judicial finding of inadequacy;
 3. Any findings of inadequacy from federal investigative agencies;
 4. Any findings of inadequacy from internal or external oversight bodies;
 5. All components of the facility's physical plant (including blind spots or areas where staff or offenders may be isolated);
 6. The composition of the offender population;
 7. The number and placement of supervisory staff;
 8. Facility programs occurring on various shifts;
 9. Any applicable State or local laws, regulations or standards;
 10. Any prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
 11. Any other relevant factors.
- B. In circumstances where the staffing plan is not complied with, the facility PCM or designee shall document the noncompliance, in writing, and justify all deviations from the plan. This documentation will be forwarded to the Superintendent, appropriate Assistant Commissioner and the Office of PREA Compliance. (115.13 (b))
- C. Whenever necessary, but no less frequently than once a year, each facility PCM, in consultation with the Office of PREA Compliance, shall assess, determine, and document whether adjustments are needed to: (115.13 (c))
1. The PREA staffing plans;
 2. Prevailing staffing patterns;
 3. The facility's deployment of video monitoring systems and other monitoring technologies; and

4. The resources the facility has available to commit to ensure adherence to the staffing plan.
- D. Each secure juvenile facility shall maintain staff ratios of a minimum of 1:8 during offender waking hours and 1:16 during offender sleeping hours, except during limited and discrete exigent circumstances, which shall be fully documented. Staff that have received the appropriate training and are actively supervising or controlling a group of juvenile offenders shall be included in these ratios. (115.313 (c))
- E. In an effort to identify and deter staff sexual abuse and sexual harassment a minimum of four (4) unannounced rounds must be completed each month, two of those unannounced rounds must occur during the evening/overnight hours between 7:00 pm and 7:00 am. The overnight rounds must be completed by someone who arrives at the facility for the sole purpose of conducting the unannounced round. Two (2) rounds must be completed between the hours of 7:00 am and 7:00 pm. The unannounced rounds will be documented using PREA Compliance Manual Attachment 16 and submitted to the facility PCM monthly. (115.13 (e))
- F. Any staff member found to be alerting other staff that these rounds are occurring will be subject to disciplinary action unless such announcement is related to the legitimate operational functions of the facility. (115.13 (e))
- G. A juvenile offender shall not be placed in a housing unit in which they will have sight, sound, or physical contact with any adult offender through use of a shared dayroom or other common space, shower area, sleeping quarters or areas outside of housing units. The DCR shall either maintain sight and sound separation between juvenile and adult offenders or provide direct staff supervision when juvenile and adult offenders have sight, sound, or physical contact. DCR shall make best efforts to avoid placing juvenile offenders in isolation to comply. Absent exigent circumstances, agencies shall not deny juvenile offender access to daily large-muscle exercise, legally required special education services or other programs and work opportunities to the extent possible. (115.314 (a) – (c))
- H. Staff shall not conduct cross gender pat-down, strip searches or cross-gender visual body cavity searches, except in exigent circumstances or when performed by medical practitioners in accordance with current Policy. All exigent cross-gender searches will be documented via incident report. For a facility whose rated capacity does not exceed 50 offenders, the facility shall not permit cross-gender pat-down searches of female offenders, absent exigent circumstances. Facilities shall not restrict female offenders access to regularly available programming or other out-of-cell opportunities in order to comply with this provision. If these searches occur, they shall be documented. (115.15 (a) (b) (c))
- I. Offenders shall be able to shower, perform bodily functions, and change clothing without non-medical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine

cell checks. This limitation not only applies to in-person viewing, but also all forms of remote viewing as well. (115.15 (d))

- J. Staff shall announce their presence every time they enter an offender housing unit of the opposite gender to indicate that there will be someone of the opposite gender on the unit. (115.15 (d))
- K. Facilities shall not search or physically examine a transgender or intersex offender for the sole purpose of determining genital status. If unknown, staff should attempt to determine the genital status through conversations with the offender or by reviewing medical records. (115.15 (e))
- L. Staff shall be trained to conduct pat searches of transgender and intersex offenders, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security. (115.15 (f))
- M. Facilities shall take reasonable steps to ensure all offenders with disabilities and those who are limited English proficient have meaningful access and equal opportunity to participate in or benefit from all aspects of the DCR's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. The facility shall use the contracted translation services to facilitate communication with the offender. (115.16 (a) (b))
- N. Written materials will either be delivered in alternative formats that accommodate the offender's disability or the information will be delivered through alternative methods, that ensure effective communication with offenders with disabilities, including those with intellectual disabilities, limited reading skills, or no or low vision. Reading the information to the offender or communicating through an interpreter, will ensure that he or she understands the PREA related material. In addition to providing such education, the facility shall ensure that key information is continuously and readily available to offenders through posters, or other written formats. (115.16 (a)) (115.33 (e) (f))
- O. Only staff members or qualified contractors will provide translation for offenders. The DCR shall not rely on offender interpreters, readers, or other types of offender assistants 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. (115.16 (b) (c))
- P. All individuals who may have contact with offenders will be asked to disclose previous misconduct during interviews for hiring, promoting and every four (4) years as part of the reoccurring background check process of current employees. Employees shall have a continuing affirmative duty to disclose any such misconduct. DCR shall not hire, promote or enlist the services of any person who has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution or has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse or has been civilly or

administratively adjudicated to have engaged in such activity. The DCR shall consider any incidents of sexual harassment in determining whether to hire or promote anyone, or enlist the services of any contractor, who may have contact with offenders. Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination. (115.17 (a) (b) (f) (g))

- Q. The DCR shall also consult any child abuse registry maintained by the State or locality in which the employee would work with juveniles. (115.317 (d) (e))
- R. A background investigation will be completed before hiring or promoting employees, enlisting the services of contractors, interns, or volunteers. The DCR shall conduct criminal background checks of all employees, volunteers, interns and contractors every four (4) years. (115.17 (d) (e))
- S. Consistent with Federal, State, and local law, the DCR must make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse. Unless prohibited by law or policy, the DCR shall provide information on substantiated allegations of sexual abuse or sexual harassment involving former employees upon receiving a request from an institutional employer from whom the employee has applied to work. (115.17 (c) (h))
- T. When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the DCR shall consider the effect of the design, acquisition, expansion, or modification upon the DCR's ability to protect offenders from sexual abuse. The facility PCM will be responsible for consulting with the Office of PREA Compliance, when the facility is installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology; the DCR shall consider how such technology may enhance the DCR's ability to protect offenders from sexual abuse. (115.18 (a) (b))

III. **Staff Training**

- A. All employees, contractors, volunteers, mentors and interns will receive training regarding DCR's zero tolerance policy regarding sexual misconduct. This training should be conducted during orientation, but no later than thirty (30) days after date of hire or enlistment of services.
- B. At a minimum, the training shall include the following information: (115.31(a))
 - 1. Sexual contact with an offender is prohibited;
 - 2. Offender's right to report if sexual contact occurs;
 - 3. The zero-tolerance policy against sexual abuse and sexual harassment within the DCR;

4. How staff are to fulfill their responsibilities under the Division's sexual abuse and sexual harassment prevention, detection, reporting and response policies and procedures as defined in this Policy;
 5. Offenders right to be free from sexual abuse and sexual harassment;
 6. The right of offenders and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
 7. The dynamics of sexual abuse and sexual harassment in confinement;
 8. The common reactions of sexual abuse and sexual harassment victims;
 9. How to detect and respond to signs of threatened and actual sexual abuse;
 10. How to avoid inappropriate relationships with offenders;
 11. How to communicate effectively and professionally with offenders, including LGBTI or gender nonconforming offenders;
 12. How to comply with relevant laws of West Virginia related to mandatory reporting of sexual abuse to outside authorities; and
 13. Sexual misconduct in confinement facilities.
- C. Each facility shall document through a Certificate of Understanding that staff, volunteers and contract employees have received and understand the training they have received. Documentation will be kept in the employee's training file and a copy will be sent to the Office of PREA Compliance. (115.31(d)) (115.32 (c))
- D. Staff training shall be appropriate to the gender of the offenders within the facility. (115.31 (b))
- E. The DCR shall provide employees with a yearly refresher to ensure that all employees know the DCR's current sexual harassment policies and procedures. Facilities shall ensure that volunteers and contractors who have contact with offenders have been trained on their responsibilities under the DCR's sexual abuse and sexual harassment prevention, detection and response policies and procedures. The level and type of training provided to volunteers and contractors shall be based on the services that they provide and level of contact they have with offenders, but all volunteers and contractors who have contact with offenders shall be notified on the DCR's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents. (115.31 (c)), (115.32 (a) (b))
- F. In addition to the general training provided to all employees pursuant to §115.31, the DCR shall ensure that, to the extent the DCR itself conducts sexual abuse investigations, its investigators have received training in conducting such

investigations in confinement settings. Corrections Investigation Division (CID) investigative staff shall receive additional specialized training on conducting sexual abuse investigations in confinement settings. Documentation will be kept in the employee's training file and a copy will be sent to the Office of PREA Compliance. (115.34 (a) (b) (c)) (115.71 (b)) This specialized training will include but is not limited to:

1. Interviewing sexual abuse victims;
2. Proper use of Miranda warnings and the Garrity rule;
3. Sexual abuse evidence collection in confinement settings; and
4. The criteria and evidence required to substantiate a case for administrative action or prosecutorial referral.

G. In addition to the general training provided by the facility during Orientation, all full- and part-time medical and mental health employees shall receive additional specialized training regarding victims of sexual abuse and sexual harassment. This training will be coordinated and completed by a qualified source. All medical employees must receive this training during orientation, but no later than one (1) month of the effective date of hire. Contractual medical staff will not conduct forensic examinations. (115.35 (a) (b) (c) (d)) This specialized training will include, but is not limited to:

1. How to detect and assess signs of sexual abuse and sexual harassment;
2. How to preserve physical evidence of sexual abuse;
3. How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and
4. How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

IV. Offender Education

A. During the intake process, and every year thereafter if applicable, offenders shall receive educational information explaining, in an age-appropriate fashion, the DCR's zero-tolerance policy on sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or harassment. This information shall be communicated verbally, in writing and in language clearly understood by the offender. The curriculum may be provided to offenders individually or in groups. At a minimum, the offender shall receive: (115.33 (a))

1. Information regarding the agencies reporting procedures.

2. Information related to access to outside victim advocates for emotional support services related to sexual abuse, by providing, posting, or otherwise making accessible mailing addresses and telephone numbers, including toll free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations.
 3. The facility shall inform offenders, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws. The facility shall enable reasonable confidential communication between offenders and these organization. (115.53 (a) (b) (c))
 4. The offender shall sign an acknowledgement of receiving the PREA training and PREA related materials. This documentation shall be scanned into the offender's record in Offender Information System (OIS) Document Management and retained by the facility PCM as directed. (115.33 (e))
 5. For people detained solely for civil immigration purposes, the person will receive contact information for immigrant service agencies. The facility shall enable reasonable communication between offenders and these organizations and agencies, in as confidential a manner as possible. (115.53 (a))
 6. Within thirty (30) days of intake, adult offenders shall receive comprehensive education regarding their rights to be free from sexual abuse, sexual harassment, and retaliation for reporting such incidents and regarding DCR policies and procedures for responding to such incidents. Juvenile offenders shall receive this comprehensive education within ten (10) days. All offenders should sign the appropriate attachment within the PREA Manual as an acknowledgement of receiving the training and the signed form will be scanned into the offender's record in OIS Document Management. It shall also be retained by the facility PCM as directed. (115.33 (b))
 7. It is mandatory that offenders attend PREA training. Offenders refusing, without good cause, shall be disciplined. The facility PCM or designee can make accommodations for offenders who have been previously sexually abused or who may have other good cause to find the training too difficult in a group setting.
- B. Offenders shall receive PREA education upon each transfer to a different facility. The offender shall be provided a handbook, in addition to PREA training. Documentation of offender participation in these education sessions shall be scanned into the offender's record in OIS Document Management and maintained by the facility PCM as directed. (115.33 (c))

V. Screening for Risk of Sexual Victimization and Abusiveness

- A. All offenders shall be assessed individually and in a private setting during intake screening and upon transfer to another facility for their risk of being sexually abused

by other offenders or sexually abusive toward other offenders prior to housing in general population.

- B. The screening will occur:
1. Within seventy-two (72) hours of intake;
 2. Upon transfer to a different facility;
 3. After an incident of sexual abuse; and
 4. When warranted due to a referral, request, or receipt of additional information that bears on the offender's risk of sexual victimization or abusiveness.
- C. This shall be accomplished by using the appropriate attachment within the PREA Manual to gather the following information: (115.41 (a) (b) (c) (d) (e) (g))
1. Known or perceived gender nonconforming appearance or identifies as lesbian, gay, bisexual, transgender or intersex (LGBTI) and whether the offender may therefore be vulnerable to sexual abuse;
 2. Whether the offender has a mental, physical, or developmental disability;
 3. Offender's age and physical build;
 4. Current charge, offense history and whether the offender has been previously incarcerated for convictions for sex offenses against an adult or child or a history of acts of sexual abuse;
 5. Whether the offender's criminal history is exclusively non-violent;
 6. Whether the offender has previously experienced sexual victimization;
 7. The offender's own perceptions of her or his vulnerability;
 8. Any specific information about individual offenders that may indicate heightened needs for supervision, additional safety precautions, or separation from certain other offenders;
 9. Whether the offender is detained solely for civil immigration purposes; and
 10. Level of emotional and cognitive development (**for juvenile offenders only**).
- D. The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the DCR, in assessing offenders for risk of being sexually abusive.

- E. This information shall be ascertained through:
1. Direct conversations with the offenders during the intake process;
 2. Medical and mental health screenings;
 3. During classification assessments; and
 4. By reviewing court records, case files, facility behavioral records, and other relevant documentation from the offender's records.
- F. Facility staff and contractors involved in the assessment process will not disseminate responses to the screening questions or other sensitive information which may be exploited to the offender's detriment by staff or other offenders. Offenders determined to be at risk for sexual victimization if assigned to general population will be identified. This information will be documented in the offender's record, and in the appropriate database. Offenders may not be disciplined for refusing to answer or for not disclosing complete information. If an offender refuses to disclose the information requested, housing placement should be based on a review of the offender's records.
- G. The Superintendent shall designate specific staff to complete PREA reassessments. A reassessment shall be completed between twenty (20) and thirty (30) days after the initial assessment and should not exceed thirty (30) days from the offender's arrival at the facility. This information shall be ascertained through direct conversations with the offender, through medical and mental health screenings, reviewing court records, case files, facility behavioral records, and other relevant documentation from the offender's records. The facility will reassess the offender's risk of victimization or abusiveness when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the offender's risk of sexual victimization or abusiveness. All offenders that remain in custody will also be reassessed every year thereafter, if applicable, by using the appropriate PREA Manual attachment. (115.41 (f) (i) (h))
- H. Juvenile offenders may be isolated from others only as a last resort when less restrictive measures are inadequate to keep them and other offenders safe, and then only until an alternative means of keeping all offenders safe can be arranged. During any period of isolation, agencies shall not deny any offenders daily large-muscle exercise and any legally required educational programming or special education services. All offenders in isolation shall receive daily visits from a medical or mental health care clinician. Offenders shall also have access to other programs and work opportunities to the extent possible. Every thirty (30) days, the facility shall afford each juvenile offender a review to determine whether there is a continuing need for separation from the general population. If a juvenile offender is isolated for these reasons, the facility shall clearly document the basis for the facility's concern for the offenders' safety and the reason why no alternative means of separation can be arranged. (115.342 (b))

- I. The PREA screening assessment information shall be used to make decisions regarding housing, bed, work, education, and program assignments. The goal of the DCR is to keep offenders that are at high risk for being sexually victimized away from those at high risk of being sexually abusive. The facility shall make individualized determinations about how to ensure the safety of each offender. (115.42 (a) (b)) (115.68)
- J. If the PREA screening indicates that an offender has experienced prior sexual victimization or has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the offender is offered a follow-up meeting with the facility mental health practitioner within fourteen (14) days of the intake screening. (115.81 (a) (b) (c)) (115.83 (h))
- K. The DCR shall not consider lesbian, gay, bisexual, transgender, or intersex identification or status as an indicator of likelihood of being sexually abusive. The facility shall consider the offender's health and safety when determining placement. In deciding whether to assign a transgender or intersex offender to a facility for male or female offenders, and in making other housing and programming assignments, the DCR shall consider on a case-by-case basis whether a placement would ensure the offender's health and safety, and whether the placement would present management or security problems. (115.42 (c) (d))
- L. All staff, volunteers, and contractors will communicate with, treat, and talk about any offender who is LGBTI, or perceived to be LGBTI, in a professional and respectful manner. Placement and programming assignments for each transgender or intersex offender shall be reassessed twice a year. Staff will take into consideration the facility population, staffing patterns, physical layouts and legal requirements. LGBTI offenders will not be placed in dedicated facilities or units solely based on such identification or status. A transgender or intersex offender's own views with respect to his or her own safety shall be given serious consideration. Transgender and intersex offenders shall be given the opportunity to shower separately from other offenders. (115.42 (d) (e) (f) (g))
- M. Offenders with a high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made and there is no available alternative means of separation from likely abusers. If the facility cannot conduct the assessment immediately, the facility may hold the offender in involuntary segregated housing no longer than twenty-four (24) hours while completing the assessment. (115.43 (a)), (115.68)
- N. If an involuntary segregation housing assignment is made, the facility PCM shall clearly document the following: (115.43 (d))
 1. The basis for the staff member's concern for the offender's safety;
 2. The other alternative means of separation that were explored; and

3. The reason why no alternative means of separation can be arranged.
- O. Offenders placed in involuntary segregation for protection from sexual victimization shall have access to programs, privileges and education. Work opportunities shall be afforded to the offender to the extent possible. If limited, the facility must document the reasoning for limiting these opportunities and the duration of the limitation. If no immediate alternatives are identified, the facility may assign offenders to involuntary segregation until an alternative means of separation from likely abusers can be arranged. Such assignment shall not ordinarily exceed thirty (30) days, if an extension of involuntary segregation beyond thirty (30) days is necessary, the facility shall clearly document the basis for concern of the offender's safety and why no other alternative means of separation can be arranged. Any extension beyond thirty (30) days must be approved by the Superintendent within seventy-two (72) hours of being implemented. Any assignment to involuntary segregation must be reported to the facility PCM within twenty-four (24) hours. Every thirty (30) days, the facility shall afford each such offender a review to determine whether there is a continuing need for separation from the general population. (115.43 (b) (c) (d) (e))

VI. Reporting

- A. Offenders shall be provided multiple internal and external ways to privately report sexual misconduct, retaliation by other offenders or staff for reporting sexual abuse, sexual harassment, staff neglect or violation of responsibilities that may have contributed to such incidents. The DCR shall also provide at least one way for offenders to report abuse or harassment to a public or private entity or office that is not part of the DCR, and that is able to receive and immediately forward offender reports of sexual abuse and sexual harassment to DCR officials, allowing the offender to remain anonymous upon request. Offenders detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the U.S. Department of Homeland Security. The DCR shall distribute publicly through the DCR website the e-mail, address and information on how to report sexual abuse and sexual harassment on behalf of the offender and the DCR policy regarding the referral of allegations of sexual abuse or sexual harassment for criminal investigations. (115.54), (115.22) (115.51 (a) (b))
- B. All employees, contractors, volunteers and interns are mandatory reporters and shall accept verbal, written, anonymous and third-party allegations from offenders who observe, are involved in, or have any knowledge, information or suspicion of sexual abuse, harassment, or an inappropriate relationship. All reports shall be promptly documented and reported to the Superintendent and facility PCM. Staff may be subject to disciplinary action if they do not report such conduct. Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners shall be required to report sexual abuse. (115.51 (c)), (115.54), (115.61)
- C. Staff can privately report information about sexual assault and sexual harassment by submitting a confidential report to the Superintendent, facility PCM or the Office of PREA Compliance. (115.51 (d))

- D. An offender may also report abuse by using the grievance process. These grievances will be forwarded to the Superintendent or designee for immediate action. There is no time limit on when an offender may submit a grievance regarding an allegation of sexual abuse. The DCR may apply otherwise-applicable time limits to any portion of a grievance that does not allege an incident of sexual abuse. The DCR shall not require an offender to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse. Nothing in this section shall restrict the DCR's ability to defend against an offender lawsuit on the ground that the applicable statute of limitations has expired. (115.52 (a) (b)) The agency shall ensure that:
1. An offender who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint: and
 2. Such grievance is not referred to a staff member who is the subject of the complaint.
- E. DCR shall issue a final agency decision on the merits of any portion of a grievance alleging sexual abuse within ninety (90) days of the initial filing of the grievance. (115.52 (d))
- F. Third parties, including fellow offenders, staff members, family members, attorneys, and outside advocates, are permitted to assist offenders in filing reports or grievances and requests for administrative remedies relating to allegations of sexual abuse. Third parties are also permitted to file such requests on behalf of offenders. If the offender declines third party assistance, it must be documented by using the appropriate attachment within the PREA Manual. CID will discuss the allegation with the alleged victim and to the extent possible proceed with an investigation if the allegation occurred in a correctional setting. (115.52 (e)) (115.54)
- G. After receiving a PREA emergency grievance alleging an offender is subject to substantial risk of imminent sexual abuse, it must be forwarded to the Superintendent or designee for immediate action. An initial response will be provided within forty-eight (48) hours and a final decision shall be within five (5) calendar days. The initial response and final DCR decision shall document the DCR's determination whether the offender is in substantial risk of imminent sexual abuse and action taken in response to the emergency grievance. (115.52 (f))
- H. Offenders may be disciplined for filing a grievance related to alleged sexual abuse only where the DCR demonstrates that the offender filed the grievance in bad faith. (115.52(g))
- I. The DCR shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide offenders with confidential emotional support services related to sexual abuse. The DCR shall maintain copies of agreements or documentation showing attempts to enter into such agreements. (115.53 (c))

- J. DCR shall also provide juvenile offenders with reasonable and confidential access to their attorneys or other legal representation and reasonable access to parents or legal guardians. (115.353 (d))
- K. Per West Virginia Code §49-2-803(a), all instances of abuse involving juvenile offenders must be reported directly to the child abuse hotline at 1-800-366-0015 as soon as possible but no later than twenty-four (24) hours of becoming aware of the misconduct. (115.361)

VII. **Official Response**

- A. The facility PCM will report all allegations of sexual abuse, including anonymous allegations to the Office of PREA Compliance. Staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary to make treatment, investigation or other security and management decisions. (115.61 (b) (e))
- B. When facility staff learn that an offender is subject to a substantial risk of sexual abuse, the facility shall assess and implement appropriate protective measures and shall take immediate action to protect the offender without unreasonable delay. (115.62)
- C. Within seventy-two (72) hours of receiving an allegation that an offender was sexually abused while confined in another correctional facility, the Superintendent of the facility that received the allegation shall notify in writing the head of the facility or appropriate office of where the alleged abuse occurred and shall also notify the Office of PREA Compliance. The Superintendent can contact the other facility via phone before forwarding the report in writing. The facility shall document that it has provided such notification by using the appropriate attachment within the PREA Manual. The facility head or agency office that receives such notification shall ensure that the allegation is investigated in accordance with PREA standards. (115.63 (a) (b) (c) (d))
- D. Upon learning of an allegation that an offender was sexually abused, the first staff member to respond to the incident shall separate the alleged victim and abuser; and preserve and protect any crime scene until appropriate steps can be taken to collect any evidence. If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim and abuser not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating. When responding to incidences of sexual abuse, all first responders are required to follow the DCR coordinated response plan. (115.64 (a) (b)) (115.65)
- E. DCR does not have the authority to enter into collective bargaining agreements pursuant to WV State Code.
- F. The DCR shall employ multiple protection measures, such as housing changes or transfers for offender victims or abusers, removal of alleged staff or offender abusers from contact with victims, and emotional support services for offenders or staff who

fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations. (115.67 (b))

- G. The DCR shall monitor the conduct and treatment of offenders or staff who reported the sexual abuse and of offenders who were reported to have suffered sexual abuse for at least ninety (90) days following a report of sexual abuse, to see if there are changes that may suggest possible retaliation by offenders or staff and shall act promptly to remedy any such retaliation. Items the DCR should monitor include any offender disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The DCR shall continue such monitoring beyond ninety (90) days if the initial monitoring indicates a continuing need. These efforts shall be documented by using the appropriate attachment within the PREA Manual. Such monitoring shall include periodic status checks. The obligation to monitor for retaliation shall terminate if the allegation is unfounded. If any individual who cooperates with an investigation expresses a fear of retaliation, the DCR shall take appropriate measures to protect that individual against retaliation. The facility shall act promptly to remedy any such retaliation. Action taken to protect staff or offenders shall be documented and reported to the Office of PREA Compliance within twenty-four (24) hours of the reported incident. Any effort to hinder or impede staff or an offender from reporting an incident or retaliation shall result in disciplinary action. (115.67(a) (b) (c) (d) (e) (f))

VIII. Investigations

- A. Protection of witnesses and the victim shall be paramount throughout the investigation process. The Office of PREA Compliance, in conjunction with the facility PCM shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.
1. Individuals conducting these investigations will receive specialized training.
 2. Staff members, as designated by the Superintendent, shall do an inquiry on offender-on-offender harassment allegations.
 3. CID investigators will conduct investigations on all staff-on-offender allegations and offender-on-offender sexual abuse allegations.
 4. CID investigators will be primarily responsible for contacting and referring criminal allegations and assisting as needed with the investigation.
 5. Investigations will be promptly, thoroughly, and objectively completed for all allegations, including third party and anonymously reported allegations. The reports and all related documentation are to be entered in the appropriate tracking system.
 6. Staff having any knowledge of or reason to suspect that sexual misconduct has taken place, is subject to questioning by person(s) investigating such allegations.

Failure to cooperate with the investigation, such as withholding known information, withholding evidence or giving false statements will result in disciplinary action. (115.22 (a)) (115.71 (a) (g))

- B. Administrative investigations shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings. (115.71 (f))
- C. Criminal investigations shall 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 shall be referred for prosecution. (115.71 (g) (h))
- D. The DCR shall retain all written reports for as long as the alleged abuser is incarcerated or employed by the DCR, plus five (5) years. (115.71 (i))
- E. When an outside agency investigates sexual abuse, the DCR shall request that the investigating agency follow the medical and mental health requirements of this policy. CID shall endeavor to remain informed about the progress of the investigation and regularly update the Office of PREA Compliance throughout the investigative progress. (115.21 (f) (g)) (115.71 (l)) (115.22 (b))
- F. Administrative and criminal investigations shall be conducted in accordance with best practice for the investigation of sexual assault and shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative procedures and criminal prosecutions. The protocol shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011. (115.21 (a) (b))
- G. Investigators shall:
 - 1. Gather and/or preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data;
 - 2. Interview alleged victims, suspected abusers, and witnesses;
 - 3. Review prior complaints and reports of sexual abuse involving the suspected abuser; and
 - 4. Determine whether staff actions or failures to act contributed to the abuse and shall be documented in the reports. (115.71)

- H. The DCR shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated. (115.72) (115.71 (c) (f))
- I. As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals. (115.21(d))
- J. When the quality of evidence appears to support criminal prosecution, the DCR shall conduct compelled interviews only after consulting with prosecutors to determine whether compelled interviews may be an obstacle for subsequent criminal prosecution. The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as an offender or staff. The DCR shall not require an offender who alleges unwanted forced sexual abuse to submit to a polygraph examination or other truth telling device as a condition of proceeding with the investigation of such an allegation. Investigations shall not be terminated solely because the source of the allegation recants the allegation. (115.71 (c) (d) (e) (f) (h))
- K. At the conclusion of the investigation, the investigator will prepare an investigative report that documents a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings and all documentary evidence when feasible. The investigative findings will indicate whether the evidence supports a finding that sexual abuse has occurred (substantiated), the allegation is false (unfounded), or the evidence is inconclusive (unsubstantiated). If the case has not already been referred for criminal prosecution, the investigator will refer substantiated allegations of conduct that appears to be criminal for prosecution in the county where the assault occurred. If any State entity or Department of Justice component conducts investigations shall do so pursuant to the above requirements. (115.71 (h) (k)) (115.73 (b))
- L. Following an investigation into an offender's allegation that he or she suffered sexual abuse, the facility PCM shall inform the offender as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. If the facility did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the offender. Information given to the offender shall be documented. (115.73 (a) (b))
- M. Following a substantiated or unsubstantiated allegation that a staff member has committed sexual abuse against an offender, the facility shall subsequently inform the offender whenever: (115.73(c))
1. The staff member is no longer posted within the offender's unit;
 2. The staff member is no longer employed at the facility;

3. The facility learns that the staff member has been indicted on a charge related to sexual abuse within the facility; and/or
 4. The facility learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility. (115.73 (d))
- N. Following an offender's allegation that he or she has been sexually abused by another offender, the DCR shall subsequently inform the alleged victim whenever:
1. The DCR learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; and/or
 2. The DCR learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
- O. All notifications or attempted notifications shall be documented and sent to the offenders current DCR placement or address on file. The facility's obligation to report under this policy shall terminate if the offender is released from the Division's custody. (115.73 (e) (f))

IX. Staff Discipline

- A. The staff member shall be subject to disciplinary sanctions up to and including termination for violating DCR sexual abuse or sexual harassment policies, termination shall be the presumptive disciplinary sanction for staff who has engaged in sexual abuse. Disciplinary sanctions for violations of DCR policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories. All terminations for violations of sexual abuse or harassment policies, or resignations by staff that would have been terminated if not for their resignation, will be documented and reported to law enforcement agencies, unless the act was clearly not criminal, and to any relevant licensing bodies. The departure of the alleged abuser or victim from the employment or control of the DCR shall not provide a basis for terminating an investigation. (115.76 (a) (b) (c) (d)) (115.71 (j))
- B. Any contractor, volunteer, intern or any individual who conducts business with or uses the resources of the DCR, who engages in, fails to report, or knowingly condones sexual abuse or sexual harassment of an offender shall be subject to appropriate disciplinary action. Retaliatory action against any individual who reports or is involved in a sexual abuse or sexual harassment investigation is strictly prohibited. Any contractor, volunteer, intern or any individual who engages in sexual abuse shall be prohibited from contact with offenders and shall be reported to law enforcement agencies and relevant licensing bodies. (115.77 ((a) (b))).

- C. All sexual contact, whether voluntary or forced, between offenders is prohibited and subject to disciplinary action. Any mutual sexual contact between offenders is a rule violation but shall not constitute sexual abuse. Offenders shall be subject to disciplinary sanctions pursuant to an investigation that concluded that the offender engaged in offender-on-offender sexual abuse. Offenders may be charged with a facility rule violation even if they are also being charged within the court system. Sanctions shall be commensurate with the nature and circumstances of the abuse or harassment, the offender's disciplinary history, and the sanctions imposed for comparable offenses by other offenders with similar histories. The disciplinary process shall consider whether an offender's mental disabilities or mental illness contributed to his/her behavior when determining what type of sanction, if any, should be imposed. The facility may discipline an offender for sexual contact with staff only upon a finding that the staff member did not consent to such contact. (115.78 (a) (b) (c) (e) (g))

X. Offender Discipline

- A. When an adult offender is found guilty of misconduct related to sexual abuse and the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to require the offender to participate in such interventions as a condition of access to programming or other benefits. (115.78 (d))
- B. When a juvenile offender is found guilty of misconduct related to sexual abuse, the facility PCM shall refer the offender to the psychologist/mental health clinician, who will consider whether to require the abuser to participate in therapy, counseling or other intervention designed to address and correct underlying reasons or motivations for the abuse. Participation may be required in such interventions as a condition of access to rewards-based behavior management system or other behavior-based incentives, but not as a condition to access to general programming or education. (115.378 (d))
- C. A report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation. (115.78 (f))

XI. Medical and Mental Health

- A. Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical, and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education and program assignments, or as otherwise required by Federal, State or local law. Such practitioners shall be required to inform offenders at the initiation of services of their duty to report and the limitations of confidentiality. Medical and mental health practitioners shall obtain informed consent from offenders before reporting information about prior victimization that did not occur in an institutional setting unless the offender is under the age of eighteen (18). (115.61 (d) (115.81(e) (d))

- B. Victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment. All victims of sexual abuse shall be offered access to forensic medical examinations at an outside facility, such examinations shall be performed by a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) where possible. Offenders who may require SAFE/SANE exam may not refuse such exams at the facility level. The DCR shall document efforts to provide a SAFE or SANE, if one is not available, the examination can be performed by other qualified medical practitioners. Treatment shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. The facility shall maintain a SAFE/SANE log documenting when these services were attempted or utilized. (115.82 (a) (d)), (115.83 (g)), (115.21 (c))
- C. The facility will use the list of local hospitals that employ a SANE, to determine the appropriate medical provider to transport to. Any refusal by the offender to undergo the forensic exam, must be documented. If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, first responders shall take preliminary steps to protect the victim and shall immediately notify the appropriate medical and mental health practitioners. (115.21 (c)) (115.82 (b))
- D. The DCR shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the DCR shall provide a qualified staff member to provide these services. Agencies shall document efforts to secure services from rape crisis centers. If requested by the victim, a victim advocate, qualified DCR staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals. To the extent the DCR itself is not responsible for investigating allegations of sexual abuse, the DCR shall request that the investigating agency follow the requirements within policy. (115.21 (d) (e))
- E. Victims of sexual abuse shall be offered information about timely access to emergency contraception, pregnancy tests and sexually transmitted disease testing and treatment, in accordance with professionally accepted standards and policies of care, where medically appropriate. If pregnancy results due to the sexually abusive vaginal penetration while incarcerated such victims shall be receive timely and comprehensive information about access to all lawful pregnancy related medical services. (115.82 (c)) (115.83 (d) (e) (f))
- F. DCR facilities shall offer medical and mental health evaluation and, as appropriate, treatment to all offenders who have been victimized by sexual abuse within any facility. Offenders will be offered follow-up medical and mental health services consistent with the community level care as well as access to outside victim advocates for emotional support services related to sexual abuse. The evaluation and treatment of such victims

shall include, as appropriate, follow-up services, treatment plans, and when necessary, referrals for continued care following their transfer to placement to other facilities or release from custody. (115.83 (a) (b) (c))

- G. The facility shall attempt to conduct a mental health evaluation of all known offender-on-offender abusers within sixty (60) days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners. 115.83 (h)

XII. Data Collection and Review

- A. The Office of PREA Compliance, in collaboration with the facility PCM shall conduct a Sexual Abuse Incident Review within thirty (30) days of the conclusion of every sexual abuse investigation where the allegation was substantiated, or unsubstantiated. The review team shall include upper-level facility staff, with input from line supervisors, investigators, and medical or mental health practitioners. No review shall be conducted if the allegation has been determined to be unfounded. (115.86 (a) (b) (c)).

- B. The review committee shall: (115.86 (d))

1. Consider whether the allegation or investigation indicates need to change policy or practice to better detect, or respond to sexual abuse;
2. Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
3. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
4. Assess the adequacy of staffing levels in that area during different shifts; and
5. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff.

- C. The facility shall document the recommendations for improvement or reasons for not doing at the conclusion of the Sexual Abuse Incident Review. (115.86 (e))

- D. The Office of PREA Compliance shall prepare a report of its findings and ensure that any deficiencies are promptly identified and corrected. The review findings, recommendations for improvement and corrective action shall be documented.

- E. The facility PCM shall be responsible for ensuring that accurate information is collected for every allegation of offender-on-offender sexual abuse and staff-on-offender sexual misconduct that occurs within his/her facility. Incident-based data

reports shall be generated each month. The data collected shall include at a minimum:
(115.87 (a))

1. The total number of allegations;
2. Investigation number and the disposition;
3. The DCR shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews; and
4. The DCR also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its offenders. (115.87 (e))
5. The incident-based data collected shall include, at a minimum, the data necessary to complete the Survey of Sexual Violence conducted by the Department of Justice. (115.87 (c))

F. The DCR shall use the data to:

1. Identify areas of concern;
2. Determine corrective action on an ongoing basis;
3. Assess and improve the effectiveness of the agencies sexual abuse prevention, detection, and response policies, practices, and training; and
4. Create an annual report of findings and corrective actions for each facility and DCR.

G. All sexual abuse data shall be securely retained for at least ten (10) years after the date of the initial collection. (115.88 (a)) (115.89 (d)) (115.89 (a))

H. The Director of PREA Compliance shall submit an annual report of the incident-based sexual abuse data, to include facility recommendations and corrective actions to the DCR Commissioner. The annual report shall include comparisons of the current year's data and corrective actions with those from prior years and will include an assessment of the DCR's progress in addressing sexual abuse. The annual report shall be approved by the DCR Commissioner and made readily available to the public annually through the DCR website. The DCR may redact personal identifiers or other specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility but must indicate the nature of the material redacted. Upon request, the DCR shall provide all such data from the previous calendar year to the Department of Justice. (115.87 (b) (f)) (115.88 (b) (c) (d)) (115.89 (b) (c))

XIII. Audits

- A. Upon request for information, the Director of PREA Compliance will be responsible to respond to all external surveys, schedule audits required by the Department of Justice's National PREA Standards and comply with all PREA requirements and ensure that at least one-third of each facility type under the DCR's control is audited during each year of the three-year audit cycle. (115.401 (a) (b))
- B. The auditor will review and have access to all relevant information listed below:
1. Policies, procedures, reports, internal and external audits, and accreditations for each facility type;
 2. A sampling of relevant documents and other records and information for the most recent one-year period;
 3. Shall observe, all areas of the audited facilities;
 4. Shall be permitted to request and receive copies of any relevant documents (including electronically stored information);
 5. Shall retain and preserve all documentation (including, e.g., video tapes and interview notes) relied upon in making audit determinations. Such documentation shall be provided to the Department of Justice upon request;
 6. Shall interview a representative sample of offenders and of staff, supervisors, and administrators;
 7. Shall review a sampling of any available videotapes and other electronically available data that may be relevant to the provisions being audited;
 8. Shall be permitted to conduct private interviews with offenders; and
 9. Shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.
- C. All offenders shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel. (115.401 (f-n))

XIV. Special Instructions Concerning Federal Detainees


- A. Federal detainees include individuals charged with Federal offenses and detained while awaiting trial, individuals who have been sentenced and are awaiting designation and transport to a Bureau of Prisons (BOP) facility, and individuals who are awaiting a hearing on their immigration status or deportation.

B. The Superintendent shall ensure the immediate notification of the concerned Chief Deputy U.S. Marshal, or his or her designee, when a federal detainee alleges sexual abuse or assault. The U.S. Immigration and Customs Enforcement (ICE) Field Office Director (FOD) shall be immediately notified if the allegation is made by an ICE detainee.

ATTACHMENT(S):

No attachments are included in this Policy. All required attachments are in the DCR PREA Manual.

APPROVED SIGNATURE:



Brad Douglas, Acting Commissioner

9/21/22

Date