

First Judicial District Department of Correctional Services Department Policy and Procedure	MANUAL:	PERSONNEL	6-4-2021	PER 52
	TITLE:	PREA/Reporting & Investigations	REFERENCES: PREA STANDARDS	

**POLICY** In 2003 Congress enacted the Prison Rape Elimination Act (PREA) to address the problem of sexual abuse of persons in the custody of United States correctional agencies. In 2012, specific PREA standards and requirements were approved by the United States Department of Justice.

In accordance with these PREA Standards, the First Judicial District Department of Correctional Services is committed to maintaining a work environment free of sexual harassment, sexual misconduct, and sexual abuse.

## DEFINITIONS

***Sexual abuse*** includes—

- (1) Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident; and
- (2) Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer.

***Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident*** 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:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- (4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

***Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer*** includes any of the following acts, with or without consent of the inmate, detainee, or resident:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Contact between the mouth and any body part where the staff member, contractor, or

volunteer has the intent to abuse, arouse, or gratify sexual desire;

(4) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(5) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(6) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1)-(5) of this section;

(7) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and

(8) Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

***Sexual harassment*** includes—

(1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and

(2) Repeated verbal comments or gestures of a sexual nature to an inmate, 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.

#### CRIMINAL AND ADMINISTRATIVE INVESTIGATIONS (PREA 115.271)

1. When the Department conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.
2. Where sexual abuse is alleged, the Department shall use investigators who have received special training in sexual abuse investigations pursuant to PREA Standard 115.234.
3. Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

4. When the quality of evidence appears to support criminal prosecution, the Department shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.
5. 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 resident or staff. The Department shall not require a resident 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.
6. Administrative investigations:
  - A. Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and
  - B. 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.
7. 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.
8. Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.
9. The agency shall retain all written reports referenced in paragraphs 6 and 7 of this section for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.
10. The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.
11. Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.
12. When outside agencies investigate sexual abuse, the Department shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

## PROCEDURES

1. All staff are required to immediately report to a supervisor, any type of sexual harassment, sexual misconduct, or sexual abuse involving staff, offenders, or any other persons. This includes any third-party or anonymous reports. Staff who fail to report such information may be subject to disciplinary action. (PREA 115.261 a, b, e).
2. Management staff who receive a report of sexual harassment, sexual misconduct, or sexual abuse, shall notify the PREA Coordinator, Division Manager, Assistant Director, and District Director within 24 hours.
3. All reports, including third party or anonymous reports, of sexual harassment, sexual misconduct, or sexual abuse will be investigated by Management staff in accordance with Department policies PER 26, PER 27, and any other applicable policies. (PREA 115.271 a, b).
4. The standard used by the Department for determining whether allegations of sexual harassment, sexual misconduct, or sexual abuse are substantiated shall be by a "Preponderance of the Evidence." (PREA 115.272).
5. In all cases of reported sexual harassment, sexual misconduct, or sexual abuse, Management staff will complete an investigation and issue a final decision within 90 days of the incident being reported. (PREA 115.252 d).
6. Within 30 days after rendering the final decision and closing a sexual abuse investigation, except in cases where the allegation was unfounded, an Incident Review will be completed by the Management staff who completed the investigation, with input from the PREA Compliance Manager, the Assistant Director, the District Director, and other appropriate staff. Form PER-78F (PREA Incident Review Form) will be used to complete the Incident Review and all findings shall be documented in the report. (PREA 115.286 a, b, c, d, e).
7. Allegations of sexual harassment, sexual misconduct, or sexual abuse which do not involve criminal behavior will be investigated by Management staff and an Administrative Investigation will be completed. Allegations of sexual harassment, sexual misconduct, or sexual abuse which involve criminal behavior will be referred to the proper criminal investigating authority as appropriate and determined by Department Management staff, and any such referrals will be documented. The PREA Coordinator/designee will provide information and assistance to the criminal investigating authority as requested. (PREA 115.222 & 115.271).
8. A uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions will be utilized. (PREA 115.221)
9. At the conclusion of an investigation for sexual harassment, sexual misconduct, or sexual abuse involving a resident as the alleged victim, the Management staff who completed

the investigation will notify the resident of the results of the investigation. All notifications shall be documented in the investigation file. If the Department did not conduct the investigation into a resident's allegation of sexual abuse in the Department's facility, a request shall be made to the investigating agency to obtain the relevant information from the investigative agency in order to inform the resident. (PREA 115.273(b))

- A. Further, if the allegation was founded and involved a staff member, the resident will be notified of the following:
    - 1) The staff member is no longer posted in the resident's facility/unit.
    - 2) The staff member is no longer employed at the facility.
    - 3) The Department learns that the staff member has been indicted on or convicted of a charge related to sexual abuse within the facility.
  - B. If the allegation was founded and involved another resident, the resident (victim) will be notified of the following:
    - 1) The Department learns that the resident (perpetrator) has been indicted on or convicted of a charge related to sexual abuse within the facility.
  - C. The notifications as listed in A and B above will no longer be required after the resident (victim) is released from the Department's custody. (PREA 115.273).
10. All investigation reports and associated documents shall be retained by the Department for as long as an alleged abuser is incarcerated or employed by the agency, plus 5 years. (PREA 115.271).
11. Uniform data from all sexual harassment, sexual misconduct, or sexual abuse allegations which occurred in DCS Residential Facilities will be collected and securely maintained by Management staff. This data shall contain all necessary information as required by the most recent U.S. Department of Justice Survey instrument and will be aggregated on an annual basis. This data may be provided to IDOC Central Office for reporting as well. (PREA 115.287).
12. The data, as noted above, will be reviewed annually to assess and improve the effectiveness of the Department's sexual abuse prevention, detection, and response policies, practices, and training. An Annual PREA Report shall be completed which includes the following:
- A. Identification of problem areas.
  - B. Any corrective action taken for each facility and the Department as a whole.
  - C. Comparison of current data to data collected in previous years.
  - D. An assessment of the Department's progress in addressing sexual abuse.

The Annual PREA Report shall be approved by the District Director and made available on the Department's website. However, any material which presents a clear and specific threat to the safety and security of a Residential Correctional Facility will not be included

in the report. The nature of any redacted material will, however, be noted in the report. (PREA 115.288).

13. All data, as noted above, shall be securely retained for a period of at least 10 years after the date it was collected. Aggregated data, with any personal identifying information and confidential information removed, will be posted on the Department website on an annual basis with the Annual PREA Report. (PREA 115.289).

#### PROTECTION AGAINST RETALIATION (PREA 115.267)

1. The Department shall protect all residents and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other residents or staff. Designated Management staff shall be responsible for monitoring retaliation.
2. The Department shall employ multiple protection measures, such as housing changes or transfers for resident victims or abusers, removal of alleged staff or resident abusers from contact with victims, and emotional support services for residents or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.
3. For at least 90 days following a report of sexual abuse, the Department shall monitor the conduct and treatment of residents or staff who reported the sexual abuse and of residents who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by residents or staff, and shall act promptly to remedy any such retaliation. Items the Department may monitor include any resident disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The Department shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.
4. In the case of residents, such monitoring shall also include periodic status checks.
5. If any other individual who cooperates with an investigation expresses a fear of retaliation, the Department shall take appropriate measures to protect that individual against retaliation.
6. The Department's obligation to monitor shall terminate if the Department determines that the allegation is unfounded.