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**Part Three**

**Facility Operations**

**Section C**

**Safety and Security**

**Title**

**Sexual Abuse and Assault Prevention and Intervention Program**

**Number**

**HCDC-3C-21**

**Effective Date**

**07-14-08**

**Revised**

**10-21-13**

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**PURPOSE**

- To demonstrate compliance with the Prison Rape Elimination Act (PREA).
- To demonstrate compliance with Nebraska State Law and Nebraska Jail Standards.

**POLICY**

The Hall County Department of Corrections maintains a zero-tolerance for all forms of sexual abuse or assault. It is the policy of the Hall County Department of Corrections to provide a safe and secure environment for all inmates, employees, contractors, and volunteers, free from the threat of sexual abuse or assault, by maintaining a Sexual Abuse and Assault Prevention and Intervention Program that ensures effective procedures for preventing, reporting, responding to, investigating, and tracking incidents or allegations of sexual abuse or assault.

Sexual assault or abuse of inmates by other inmates or by employees, contractors, or volunteers is prohibited and subject to administrative, disciplinary, and criminal sanctions.

**A. PREA Coordinator**

The Hall County Department of Corrections has a PREA Coordinator who is responsible for overseeing all aspects of the facility's efforts to comply with this zero-tolerance policy, including by:

1. Assisting with keeping current these written policies and procedures for the Sexual Abuse and Assault Prevention and Intervention Program;
2. Assisting with the development of initial and ongoing training protocols;

3. Serving as liaison with other agencies;
4. Coordinating the gathering of statistics and reports on incidents of sexual abuse or assault;
5. Reviewing the results of every investigation of sexual abuse and conducting an annual review of all investigations to assess and improve prevention and response efforts; and
6. Reviewing facility practices to ensure required levels of confidentiality and maintained.

## **B. Definitions**

For the purposes of this policy, the following definitions apply:

### **1. Inmate on inmate Sexual Abuse and/or Assault: One or more inmates, by force, coercion, or intimidation, engaging in or attempting to engage in:**

- a. contact between the penis and the vagina or anus and, for purposes of this subparagraph, contact involving the penis upon penetration, however slight;
- b. contact between the mouth and the penis, vagina or anus;
- c. penetration, however slight, of the anal or genital opening of another person by a hand or finger or by any object;
- d. touching of the genitalia, anus, groin, breast, inner thighs or buttocks, either directly or through the clothing, with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person; or
- e. threats, intimidation, or other actions or communications by one or more inmates aimed at coercing or pressuring another inmate to engage in a sexual act.

### **2. Staff-on-inmate Sexual Abuse and/or Assault: One or more staff member(s), or contract personnel engaging in or attempting to engage in:**

- a. contact between the penis and the vagina or anus and, for purposes of this subparagraph, contact involving the penis upon penetration, however slight;

- b. contact between the mouth and the penis, vagina or anus;
- c. penetration, however slight, of the anal or genital opening of another person by a hand or finger or by any object;
- d. except in the context of proper searches and medical examinations, touching of the genitalia, anus, groin, breast, inner thighs or buttocks, either directly or through the clothing;
- e. threats, intimidation, harassment, indecent, profane or abusive language, or other actions (including unnecessary visual surveillance) or communications aimed at coercing or pressuring an inmate to engage in a sexual act; or
- f. repeated verbal statements or comments of a sexual nature to an inmate, including demeaning references to gender, derogatory comments about body or clothing, or profane or obscene language or gestures.

### **3. Sexual Contact between inmates Prohibited**

In addition to the forms of sexual abuse and/or assault defined above, all sexual conduct including consensual sexual conduct between inmates is prohibited and subject to administrative and disciplinary sanctions. (It should be noted that consensual sexual conduct between inmates and staff, volunteers, contract personnel is included within the definition of staff-on-inmate sexual abuse and/or assault above).

### **C. Staff Training**

Training on the facility's Sexual Abuse or Assault Prevention and Intervention Program shall be included in training for employees, volunteers and contract personnel and shall also be included in annual refresher training thereafter. The level and type of training for volunteers and contractors will be based on the services they provide and their level of contact with inmates; however, all volunteers and contractors who have any contact with inmates must be notified of the facility's zero-tolerance policy. The facility must maintain written documentation verifying employee, volunteer and contractor training.

Training shall include:

- 1. definitions and examples of prohibited and illegal behavior;

2. agency prohibitions on retaliation against inmates and staff who report sexual abuse;
3. instruction that sexual abuse and/or assault is never an acceptable consequence of detention;
4. recognition of situations where sexual abuse and/or assault may occur;
5. recognition of the physical, behavioral and emotional signs of sexual abuse and/or assault and ways to prevent such occurrences.
6. the requirement to limit reporting of sexual abuse and assault to personnel with a need-to-know in order to make decisions concerning the inmate-victim's welfare, and for law enforcement/investigative purposes;
7. the investigation process and how to ensure that evidence is not destroyed;
8. prevention, recognition and appropriate response to allegations or suspicions of sexual assault involving inmates with mental or physical disabilities;
9. instruction on reporting knowledge or suspicion of sexual abuse and/or assault and making intervention referrals to the facility's program coordinator; and
10. instruction on documentation and referral procedures of all allegations or suspicion of sexual abuse and/or assault.

**D. Inmate Notification, Orientation and Instruction**

The Director of Corrections or designee shall ensure that the orientation program notifies and informs inmates about the facility's zero tolerance policy for all forms of sexual abuse and assault.

Following the intake process, the facility shall provide instruction to inmates on the facility's Sexual Abuse and Assault Prevention and Intervention Program and ensure that such instruction includes at a minimum:

1. the facility's zero-tolerance policy for all forms of sexual abuse or assault;
2. prevention and intervention strategies;
3. definitions and examples of inmate-on-inmate sexual abuse, staff-on-inmate and coercive sexual activity;

4. explanation of methods for reporting sexual abuse or assault, including the Department of Homeland Security (DHS) /Office of the Inspector General (OIG) and the Immigration and Customs Enforcement (ICE)/Office of Professional Responsibility (OPR) investigation process for ICE detainees.
5. information about self-protection and indicators of sexual abuse;
6. prohibition against retaliation, including an explanation that reporting an assault shall not negatively impact the detainees immigration proceedings; and
7. rights of an inmate who has been subjected to sexual abuse to receive treatment and counseling.

Inmate notification, orientation and instruction must be in a language or manner that the inmate understands. The facility shall maintain documentation of inmate participation in the instruction session.

The facility's sexual abuse or assault prevention and intervention program shall provide inmates who are victims of sexual abuse or assault the option to report the incident or situation to a designated staff member other than a Unit Officer (e.g. PREA Coordinator, Shift Sergeant, Medical staff, Mental Health). The facility shall provide inmates with the name of the PREA Coordinator and information on how to contact him or her. Inmates will also be informed that they can report any incident or situation regarding sexual abuse or assault or intimidation to any staff member.

All required PREA information supplied by ICE will be displayed in unit information boards.

When practicable, provisions for written translation shall be made for other significant segments of the population with limited English proficiency. Oral interpretation or assistance shall be provided to any inmate who speaks another language in which written material has not been translated or who is illiterate.

## **E. Prevention**

All staff and detainees are responsible for being alert to signs of potential situations in which sexual assaults might occur, and for making reports and intervention referrals as appropriate.

Classification is an ongoing, dynamic process. An inmate who is subjected to sexual abuse or assault shall not be returned to general population until proper re-classification, taking into consideration any increased vulnerability of the inmate as a result of the sexual abuse or assault, is completed.

1. Inmates shall be screened upon arrival at the facility for potential vulnerabilities to sexually aggressive behavior or tendencies to act out with sexually aggressive behavior.
2. Each new arrival shall be kept separate from the general population until he/she is classified and may be housed accordingly.
3. Inmates with a history of sexual assault shall be identified, monitored and counseled while they are in custody. Inmates identified as high risk for committing sexual assault shall be assessed by a mental health or other qualified health care professional and treated, as appropriate.
4. Inmates at risk for sexual victimization shall be identified, monitored and counseled. Inmates identified as high risk for sexual victimization shall be assessed by a mental health or other qualified health care professional. Inmates who are considered at risk shall be placed in the least restrictive housing that is available and appropriate.
5. Inmates identified as being at risk for sexual victimization shall be transported in accordance with that special safety concern with particular attention to inmates who may need to be afforded closer observation for their own safety.

#### **F. Prompt and Effective Intervention**

Staff sensitivity towards inmates who are victims of sexual abuse and/or assault is critical.

Staff shall take seriously all statements from inmates claiming to be victims of sexual assaults and shall respond supportively and non-judgmentally. Any inmate who alleges that they have been sexually assaulted shall be offered immediate protection from the assailant and shall be referred for a medical examination and/or clinical assessment for potential negative symptoms. Staff members who become aware of an alleged assault shall immediately follow the reporting requirements set forth in the written policies and procedures.

The facility uses a coordinated, multidisciplinary team approach to responding to sexual abuse, which in accordance with community practices, includes a medical practitioner, a mental health practitioner, security staff and an investigator from the assigned investigative entity, as well as representatives from outside entities that provide relevant services and expertise.

Care must be taken not to punish a confirmed or alleged sexual assault victim. Victimized inmates should not be subject to disciplinary action either for reporting sexual abuse or for participating in sexual activity as a result or force, coercion, threats, or fear of force. Care shall be taken to place the inmate in a supportive environment that represents the least restrictive housing option possible (e.g. protective custody). However, victims shall not be held for longer than five days in any type of administrative segregation, except in highly unusual circumstances or a the request of the inmate.

#### **G. Reporting, Notifications and Confidentiality**

The facility shall employ procedures for an internal administrative investigation that shall be conducted in all cases only after consultation with the assigned criminal investigative entity or after the criminal investigation has concluded. Such procedures shall establish the coordination and sequencing of the two types of investigations, to ensure that the criminal investigation is not compromised by an internal administrative investigation. All incidents and allegations of sexual abuse or assault shall be reported immediately.

Information concerning the identity of an inmate victim reporting a sexual assault, and the facts of the report itself, shall be limited to those who have a need-to-know in order to make decisions concerning the inmate-victim's welfare, and for law enforcement/investigative purposes.

##### **1. Alleged Inmate Perpetrator**

When an inmate(s) is alleged to be the perpetrator, it is the Director's responsibility to ensure that the incident is promptly referred to the appropriate law enforcement agency having jurisdiction for investigation and reported to Field Office Director (when ICE detainee(s) involved).

## **2. Alleged Staff Perpetrator**

When an employee, contractor or volunteer is alleged to be the perpetrator of inmate sexual abuse and/or assault, it is the Director's responsibility to ensure that the incident is promptly referred to the appropriate law enforcement agency having jurisdiction for investigation and reported to the Field Office Director (when ICE detainee(s) involved) The County Board of Corrections shall also be notified.

Staff suspected of perpetrating sexual abuse or assault shall be removed from all duties requiring inmate contact pending the outcome of an investigation.

## **H. Investigation and Prosecution**

If an inmate alleges sexual assault, a sensitive and coordinated response is necessary. All investigations into alleged sexual assault must be prompt, thorough, objective, fair and conducted by qualified investigators. The program coordinator shall be responsible for reviewing the results of every investigation of sexual abuse.

When possible and feasible, appropriate staff shall preserve the crime scene, and safeguard information and evidence in coordination with the referral agency and consistent with established evidence gathering and evidence processing procedures.

At no cost to the inmate, the Director or designee shall arrange for the victim to undergo a forensic medical examination. During the forensic exam, the victim may request that an outside advocate be present for support. The results of the physical examination and all collected physical evidence are to be provided to the investigative entity. Appropriate infectious disease testing, as determined by the health service provider, may be necessary. Part of the investigative process may also include an examination and collection of physical evidence from the suspect assailant(s).

## **I. Health Care Services and Transfer of Inmates to Hospitals or Other Facilities**

Victims shall be provided emergency medical and mental health services and ongoing care. When possible and feasible, victims of sexual assault shall be referred, under appropriate security provisions, to a community facility for treatment and for collection evidence.

If available and offered by a community facility, prophylactic treatment, emergency contraception and follow up examinations for sexually transmitted diseases shall be offered to all victims, as appropriate.

1. Health care professionals shall conduct an examination to document the extent of physical injury and to determine whether referral to another medical facility is indicated. With the victim's consent, the examination shall include collection of evidence from the victim, using a kit approved by the appropriate authority.
2. All collected forensic evidence must be secured and processed by the investigating agency.
3. Health care professionals shall test for sexually transmitted diseases and infections (e.g. HIV, gonorrhea, hepatitis, Chlamydia and other diseases/infections) and refer victim for counseling, as appropriate.
4. Prophylactic treatment, emergency contraception and follow up examination for sexually transmitted diseases shall be offered to all victims, as appropriate.
5. Following a physical examination, a mental health professional shall evaluate the need for crisis intervention counseling and long term follow up.

If a transfer has taken place, a report shall be made to the facility administrator or designee to confirm that the victim has been separated from his/her assailant. Transfers shall take into account safety and security concerns and special needs of victimized inmates.

**J. Tracking Incidents of Sexual Abuse and/or Assault.**

All case records associated with claims of sexual abuse, including incident reports, investigative reports, offender information, case disposition, medical and counseling shall be maintained in appropriate files in accordance with policy.

Because of the very sensitive nature of information about victims and their medical condition, including infectious disease testing, staff must be particularly vigilant about maintaining confidentiality and releasing information only for legitimate need to know reasons.

Monitoring and evaluation are essential for assessing both the rate of occurrence of sexual assault and agency effectiveness in reducing sexually abusive behavior. The program coordinator is responsible for an annual review of aggregate data (omitting personally identifying information) and shall present the findings to the Field Office Director and ICE/ERO headquarters for use in determining changes to existing policies and practices to determine whether changes are needed to further the goal of eliminating sexual abuse. Accordingly the Director must maintain two types of files.

**1. General files include:**

- a.** the victim(s) and assailant(s) of a sexual assault;
- b.** crime characteristics;
- c.** detailed reporting timeline, including the name of the staff member receiving the report of sexual assault, date and time the report was received, and steps taken to communicate the report up the chain of command; and
- d.** all formal and/informal action taken.

**2. Administrative investigative files include:**

- a.** all reports;
- b.** medical forms;
- c.** supporting memos and videotapes, if any; and
- d.** any other evidentiary materials pertaining to the allegation.

The Director shall maintain these files chronologically in a secure location.

In addition, the Director shall maintain a listing of the names of sexual assault victims and assailants, along with the dates and locations of all sexual assault incidents occurring within the facility, on the computerized incident reporting system. Such information shall be maintained on a need to know basis which includes protection of electronic files from unauthorized access. At no time may law enforcement sensitive documents or evidence be stored at the facility.

Access to this designation shall be limited to those staff involved in the treatment of the victim or the investigation of the incident.

**REFERENCES**

American Correctional Association, Performance Based Standards for Adult Local Detention Facilities, 4<sup>th</sup> Edition: 4-ALDF-4D-22, 4D-22-1, 4D-22-2, 4D-22-3, 4D-22-4, 4D-22-5, 4D-22-6, 4D-22-7, 4D-22-8, 2A-29

National Commission on Correctional Health Care, Standards for Health Services in Jails, 2008: J-B-04, J-B-06, J-I-03

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**Part Three**

**Facility Operations**

**Section C**

**Safety and Security**

**Title**

**Prison Rape Elimination Act (PREA)**

**Number**

**HCDC-3C-21(a)**

**Effective Date**

**10-21-13**

**Revised**

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**PURPOSE**

- To demonstrate compliance with the Prison Rape Elimination Act.
- To demonstrate compliance with Nebraska State Law and Nebraska Jail Standards.

**POLICY**

The Hall County Department of Corrections maintains a zero-tolerance for all forms of sexual abuse or assault. It is the policy of the Hall County Department of Corrections to provide a safe and secure environment for all inmates, employees, contractors, and volunteers, free from the threat of sexual abuse or assault, by maintaining a Sexual Abuse and Assault Prevention and Intervention Program that ensures effective procedures for preventing, reporting, responding to, investigating, and tracking incidents or allegations of sexual abuse or assault.

Sexual assault or abuse of inmates by other inmates or by employees, contractors, or volunteers is prohibited and subject to administrative, disciplinary, and criminal sanctions.

**DEFINITIONS**

**Agency:** The unit of a governing or corporate authority with direct responsibility for the operation of any facility that confines inmates or detainees, including the implementation of policy as set by the governing or corporate authority.

**Agency head:** The chief authority of a Federal, State, or local correctional or law enforcement system.

**Allegation:** An oral, written, or electronic statement that sexual abuse has occurred or might occur that is provided to a staff member or outside agency.

**Audit:** A thorough investigatory review of information, including written records and interviews with staff and inmates, to determine whether and the extent to which an agency's and/or facility's policies, practices, and protocols comply with the PREA standards.

**Auditor:** An individual or entity that the jurisdiction employs or retains by contract to perform audits. An auditor may also be authorized by law, regulation, or the judiciary to perform audits; however, an auditor cannot be an agency employee. An auditor is able and prequalified by the U.S. Department of Justice to perform audits competently and without bias. Prequalification does not require prior employment with any particular agency.

**Contractor:** A person who provides services other than direct services to inmates on a recurring basis according to a contractual agreement with the agency (e.g., maintenance contractors).

**Credibility assessment:** An investigator's process of conducting interviews and weighing evidence to determine the truthfulness of victim, witness, and suspect statements.

**Critical incident:** An occurrence or event, natural or human-caused, that requires an immediate response to protect life, facility safety, or property.

**Cultural competence:** The ability to work and communicate effectively with people of diverse racial, ethnic, religious, and social groups based on an awareness and understanding of differences in thoughts, communications, actions, customs, beliefs, and values.

**Employee:** A person who works directly for the agency or facility or a person who provides direct services to inmates in a facility on a recurring basis according to a contractual agreement with the agency (e.g., contracted medical and mental health providers or contracted food service providers).

**Facility:** A place, institution, building (or part thereof), set of buildings, or area (whether or not enclosing a building or set of buildings) that is used for the confinement of individuals. A facility may be owned by a public or private agency.

**Facility head:** The chief authority of an individual confinement facility operated by a Federal, State, or local correctional or law enforcement agency or by a private entity (whether for-profit or nonprofit).

**Gender identity:** A person's internal, deeply felt sense of being male or female, regardless of the person's sex at birth.

**Gender nonconforming:** A person whose gender identity and/or expression do not conform to gender stereotypes generally associated with his or her birth sex.

**Immigration detainee:** Any person who is in the actual or constructive custody of the Department of Homeland Security’s Immigration and Customs Enforcement (ICE), Customs and Border Protection, or the Office of Refugee Resettlement (ORR) pending conclusion of immigration proceedings. ICE houses some detainees in facilities that it owns and operates and contracts with local, State, Federal, and private facilities to hold others. Unaccompanied minors in immigration detention are under the care and custody of ORR and are housed in foster care, shelters, group homes, and secure juvenile detention centers. Customs and Border Protection detains both adults and youth for short periods of time in holding cells before they are moved into ICE custody.

**Inmate:** Any person incarcerated or detained in any adult facility.

**Intersex:** A condition usually present at birth that involves reproductive, genetic, or sexual anatomy that does not seem to fit the typical definitions of female or male.

**Jurisdiction:** A legal entity of government with geographic boundaries, such as the United States, a State, a county, or a municipal entity.

**Lockup:** A temporary holding facility of a Federal, State, or local law enforcement agency. Lockups include locked rooms, holding cells, cell blocks, or other secure enclosures under the control of a law enforcement, court, or custodial officer. Lockups are primarily used for the temporary confinement of individuals who have recently been arrested or are being transferred to or from a court, local jail, State prison, or other facility.

**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. 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. A “qualified mental health practitioner” refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

**Need to know:** A criterion for limiting access of certain sensitive information to individuals who require the information to make decisions or take action with regard to an inmate’s safety or treatment or to the investigative process.

**Pat-down search:** A superficial running of the hands over the body of an inmate by an employee to determine whether the inmate possesses contraband.

**PREA coordinator:** A senior-level position that reports directly to the agency head. The PREA coordinator's responsibilities include developing, implementing, and overseeing the agency's plan to comply with the PREA standards. He or she is also responsible for ensuring the completion of the assessment checklists in this body of standards. The PREA coordinator is a full-time position in all State prison systems and agencies that operate large jails (more than 500 inmates) but may be a part-time position in agencies that operate medium (101–500 inmates) and small jails (100 inmates or fewer).

**Preponderance of the evidence standard:** The standard of proof used in most civil cases that requires the party bearing the burden of proof to present evidence that is more credible and convincing than the evidence presented by the other party. This standard is satisfied if the evidence shows that it is more probable than not that an event occurred. Preponderance of the evidence is a lesser standard of proof than “beyond a reasonable doubt,” which is required to convict in a criminal trial.

**Protocol:** Written instructions that guide the implementation of policies.

**Report:** Any allegation of sexual abuse. See definition of *allegation*.

**Security staff:** Employees responsible for the supervision and control of inmates in housing units, recreational areas, dining areas, and other program areas of the facility.

**Sexual abuse:** Encompasses (1) inmate-on-inmate sexual abuse, (2) inmate-on-inmate sexual harassment, (3) staff-on-inmate sexual abuse, and (4) staff-on-inmate sexual harassment.

**(1) Inmate-on-inmate sexual abuse:** Encompasses all incidents of inmate-on-inmate sexually abusive contact and inmate-on-inmate sexually abusive penetration.

**Inmate-on-inmate sexually abusive contact:** Non-penetrative touching (either directly or through the clothing) of the genitalia, anus, groin, breast, inner thigh, or buttocks without penetration by an inmate of another inmate without the latter's consent, or of an inmate who is coerced into sexual contact by threats of violence, or of an inmate who is unable to consent or refuse.

**Inmate-on-inmate sexually abusive penetration:** Penetration by an inmate of another inmate without the latter's consent, or of an inmate who is coerced into sexually abusive penetration by threats of violence, or of an inmate who is unable to consent or refuse. The sexual acts included are:

- Contact between the penis and the vagina or the anus;
- Contact between the mouth and the penis, vagina, or anus; or

- Penetration of the anal or genital opening of another person by a hand, finger, or other object.

**(2) Inmate-on-inmate sexual harassment:** Repeated and unwelcome sexual advances, requests for sexual favors, verbal comments, or gestures or actions of a derogatory or offensive sexual nature by one inmate directed toward another.

**(3) Staff-on-inmate sexual abuse:** Encompasses all occurrences of staff-on-inmate sexually abusive contact, staff-on-inmate sexually abusive penetration, staff-on-inmate indecent exposure, and staff-on-inmate voyeurism. Staff solicitations of inmates to engage in sexual contact or penetration constitute attempted staff-on-inmate sexual abuse.

**Staff-on-inmate sexually abusive contact:** Non-penetrative touching (either directly or through the clothing) of the genitalia, anus, groin, breast, inner thigh, or buttocks by a staff member of an inmate with or without the latter's consent that is unrelated to official duties.

**Staff-on-inmate sexually abusive penetration:** Penetration by a staff member of an inmate with or without the latter's consent. The sexual acts included are:

- Contact between the penis and the vagina or the anus;
- Contact between the mouth and the penis, vagina, or anus; or
- Penetration of the anal or genital opening of another person by a hand, finger, or other object.

**Staff-on-inmate indecent exposure:** The display by a staff member of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate.

**Staff-on-inmate voyeurism:** An invasion of an inmate's privacy by staff for reasons unrelated to official duties or when otherwise not necessary for safety and security reasons, such as peering at an inmate who is using a toilet in his or her cell; 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 and distributing or publishing them.

**(4) Staff-on-inmate sexual harassment:** Repeated verbal comments or gestures of a sexual nature to an inmate by a staff member. Such statements include demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

**Staff:** Employees and volunteers.

**Strip search:** A search that requires a person to remove or arrange some or all of his or her clothing so as to permit a visual inspection of the underclothing, breasts, buttocks, or genitalia of such person.

**Substantiated allegation:** An allegation that was investigated and the investigation determined that the alleged event occurred.

**Transgender:** A term describing persons whose gender identity and/or expression do not conform to the gender roles assigned to them at birth.

**Unfounded allegation:** An allegation that was investigated and the investigation determined that the alleged event did not occur.

**Unsubstantiated allegation:** An allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

**Victim advocate:** An individual, who may or may not be affiliated with the agency, who provides victims with a range of services during the forensic exam and investigatory process. These services may include emotional support, crisis intervention, information and referrals, and advocacy to ensure that victims' interests are represented, their wishes respected, and their rights upheld.

**Video monitoring system:** An integrated security system consisting of installed cameras monitored by employees, which augments and/or enhances the ability of employees to provide the sight and sound supervision necessary to prevent, detect, contain, and respond to incidents of sexual abuse.

**Visual body cavity search:** A visual inspection of a body cavity, defined as a rectal cavity or vagina, for the purpose of discovering whether contraband is concealed in it.

**Volunteer:** An individual who donates his or her time and effort on a recurring basis to enhance the activities and programs of the agency.

## **I. PREVENTION AND RESPONSE PLANNING**

### **Zero tolerance of sexual abuse**

The agency has a written policy mandating zero tolerance toward all forms of sexual abuse and enforces that policy by ensuring all of its facilities comply with the PREA standards. The agency employs or designates a PREA coordinator to develop, implement, and oversee agency efforts to comply with the PREA standards.

### **Contracting with other entities for the confinement of inmates**

If public correctional agencies contract for the confinement of their inmates, they do so only with private agencies or other entities, including other government agencies, committed to eliminating sexual abuse in their facilities, as evidenced by their adoption

of and compliance with the PREA standards. Any new contracts or contract renewals include the entity's obligation to adopt and comply with the PREA standards and specify that the public agency will monitor the entity's compliance with these standards as part of its monitoring of the entity's performance.

### **Inmate supervision**

Security staff provides the inmate supervision necessary to protect inmates from sexual abuse. The upper management officials responsible for reviewing critical incidents must examine areas in the facility where sexual abuse has occurred to assess whether physical barriers may have enabled the abuse, the adequacy of staffing levels in those areas during different shifts, and the need for monitoring technology to supplement security staff supervision. When problems or needs are identified, the agency takes corrective action.

### **Limits to cross-gender viewing and searches**

Except in the case of emergency, the facility prohibits cross-gender strip and visual body cavity searches. Except in the case of emergency or other extraordinary or unforeseen circumstances, the facility restricts nonmedical staff from viewing inmates of the opposite gender who are nude or performing bodily functions and similarly restricts cross-gender pat-down searches. Medical practitioners conduct examinations of transgender individuals to determine their genital status only in private settings and only when an individual's genital status is unknown. All cross gender searches will be documented.

### **Accommodating inmates with special needs**

The agency ensures that inmates who are limited English proficient (LEP), deaf, or disabled are able to report sexual abuse to staff directly, through interpretive technology, or through non-inmate interpreters. Accommodations are made to convey all written information about sexual abuse policies, including how to report sexual abuse, verbally to inmates who have limited reading skills or who are visually impaired.

### **Hiring and promotion decisions**

The agency does not hire or promote anyone who has engaged in sexual abuse in an institutional setting or who has engaged in sexual activity in the community facilitated by force, the threat of force, or coercion. Consistent with Federal, State, and local law, the agency makes its best effort to contact all prior institutional employers for information on substantiated allegations of sexual abuse; must run criminal background checks for all applicants and employees being considered for promotion; and must examine and carefully weigh any history of criminal activity at work or in the community, including convictions for domestic violence, stalking, and sex offenses. The agency also asks all applicants and employees directly about previous misconduct during interviews and reviews.

**Assessment and use of monitoring technology**

The agency uses video monitoring systems and other cost-effective and appropriate technology to supplement its sexual abuse prevention, detection, and response efforts. The agency assesses, at least annually, the feasibility of and need for new or additional monitoring technology and develops a plan for securing such technology.

**Response Planning**

**Evidence protocol and forensic medical exams**

The agency follows a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. The protocol must be adapted from or otherwise based on the 2004 U.S. Department of Justice's Office on Violence Against Women publication "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," subsequent updated editions, or similarly comprehensive and authoritative protocols developed after 2004. As part of the agency's evidence collection protocol, all victims of inmate-on-inmate sexually abusive penetration or staff-on-inmate sexually abusive penetration are provided access to forensic medical exams performed by qualified forensic medical examiners. Forensic medical exams are provided free of charge to the victim. The facility makes available a victim advocate to accompany the victim through the forensic medical exam process.

**Agreements with outside public entities and community service providers**

The agency maintains or attempts to enter into memoranda of understanding (MOUs) or other agreements with an outside public entity or office that is able to receive and immediately forward inmate reports of sexual abuse to facility heads. The agency also maintains or attempts to enter into MOUs or other agreements with community service providers that are able to: (1) provide inmates with confidential emotional support services related to sexual abuse and (2) help victims of sexual abuse during their transition from incarceration to the community. The agency maintains copies of agreements or documentation showing attempts to enter into agreements.

### **Agreements with outside law enforcement agencies**

If an agency does not have the legal authority to conduct criminal investigations or has elected to permit an outside agency to conduct criminal or administrative investigations of staff or inmates, the agency maintains or attempts to enter into a written MOU or other agreement specific to investigations of sexual abuse with the law enforcement agency responsible for conducting investigations. If the agency confines inmates under the age of 18 or other inmates who fall under State and local vulnerable persons statutes, the agency maintains or attempts to enter into an MOU with the designated State or local services agency with the jurisdiction and authority to conduct investigations related to the sexual abuse of vulnerable persons within confinement facilities. When the agency already has an existing agreement or long-standing policy covering responsibilities for all criminal investigations, including sexual abuse investigations, it does not need to enter into a new agreement. The agency maintains a copy of the agreement or documentation showing attempts to enter into an agreement.

### **Agreements with the prosecuting authority**

The agency maintains or attempts to enter into a written MOU or other agreement with the authority responsible for prosecuting violations of criminal law. The agency maintains a copy of the agreement or documentation showing attempts to enter into an agreement.

## **II. PREVENTION**

### **Employee training**

The agency trains all employees to be able to fulfill their responsibilities under agency sexual abuse prevention, detection, and response policies and procedures; the PREA standards; and relevant Federal, State, and local law. The agency trains all employees to communicate effectively and professionally with all inmates. Additionally, the agency trains all employees on an inmate's right to be free from sexual abuse, the right of inmates and employees to be free from retaliation for reporting sexual abuse, the dynamics of sexual abuse in confinement, and the common reactions of sexual abuse victims. Current employees are educated as soon as possible following the agency's adoption of the PREA standards, and the agency provides periodic refresher information to all employees to ensure that they know the agency's most current sexual abuse policies and procedures. The agency maintains written documentation showing employee signatures verifying that employees understand the training they have received.

### **Volunteer and contractor training**

The agency ensures that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the agency's sexual abuse prevention, detection, and response policies and procedures; the PREA standards; and relevant Federal, State, and local law. The level and type of training provided to volunteers and contractors is based on the services they provide and level of contact they have with inmates, but all volunteers and contractors who have contact with inmates must be notified of the agency's zero-tolerance policy regarding sexual abuse. Volunteers must also be trained in how to report sexual abuse. The agency maintains written documentation showing volunteer and contractor signatures verifying that they understand the training they have received.

### **Inmate education**

During the intake process, staff informs inmates of the agency's zero-tolerance policy regarding sexual abuse and how to report incidents or suspicions of sexual abuse. Within a reasonably brief period of time following the intake process, the agency provides comprehensive education to inmates regarding their right to be free from sexual abuse and to be free from retaliation for reporting abuse, the dynamics of sexual abuse in confinement, the common reactions of sexual abuse victims, and agency sexual abuse response policies and procedures. Current inmates are educated as soon as possible following the agency's adoption of the PREA standards, and the agency provides periodic refresher information to all inmates to ensure that they know the agency's most current sexual abuse policies and procedures. The agency provides inmate education in formats accessible to all inmates, including those who are LEP, deaf, visually impaired, or otherwise disabled as well as inmates who have limited reading skills. The agency maintains written documentation of inmate participation in these education sessions.

### **Specialized training: Investigations**

In addition to the general training provided to all employees, the agency ensures that agency investigators conducting sexual abuse investigations have received comprehensive and up-to-date training in conducting such investigations in confinement settings. Specialized training must include techniques for interviewing sexual abuse victims, proper use of *Miranda*- and *Garrity*-type warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral. The agency maintains written documentation that investigators have completed the required specialized training in conducting sexual abuse investigations.

**Specialized training: Medical and mental health care**

The agency ensures that all full- and part-time medical and mental health care practitioners working in its facilities have been trained in how to detect and assess signs of sexual abuse and that all medical practitioners are trained in how to preserve physical evidence of sexual abuse. All medical and mental health care practitioners must be trained in how to respond effectively and professionally to victims of sexual abuse and how and to whom to report allegations or suspicions of sexual abuse. The agency maintains documentation that medical and mental health practitioners have received this specialized training.

**Screening for risk of victimization and abusiveness**

All inmates are screened during intake, during the initial classification process, and at all subsequent classification reviews to assess their risk of being sexually abused by other inmates or sexually abusive toward other inmates. Employees must conduct this screening using a written screening instrument tailored to the gender of the population being screened. Although additional factors may be considered, particularly to account for emerging research and the agency's own data analysis, screening instruments must contain the criteria described below. All screening instruments must be made available to the public upon request.

- At a minimum, employees use the following criteria to screen male inmates for risk of victimization: mental or physical disability, young age, slight build, first incarceration in prison or jail, nonviolent history, prior convictions for sex offenses against an adult or child, sexual orientation of gay or bisexual, gender nonconformance (e.g., transgender or intersex identity), prior sexual victimization, and the inmate's own perception of vulnerability.
- At a minimum, employees use the following criteria to screen male inmates for risk of being sexually abusive: prior acts of sexual abuse and prior convictions for violent offenses.
- At a minimum, employees use the following criteria to screen female inmates for risk of sexual victimization: prior sexual victimization and the inmate's own perception of vulnerability.
- At a minimum, employees use the following criteria to screen female inmates for risk of being sexually abusive: prior acts of sexual abuse.

In situations where the genital status of an inmate is unknown, staff will attempt to determine the genital status through conversation with the inmate and/or review of medical records (if available). If all other attempts to determine the inmate's genital status have failed, gender will be determined as part of a broader medical examination conducted in private by medical staff.

An inmate's risk level will be reassessed when warranted due to the following:

- Referrals;
- Requests;
- Incidents of sexual abuse;
- Receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness.

Documentation is required whenever an involuntary segregated housing assignment is made based on the Department's concern for the inmate's safety or the reason why no alternative means of separation can be arranged.

### **Use of screening information**

Employees use information from the risk screening to inform housing, bed, work, education, and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive. The facility makes individualized determinations about how to ensure the safety of each inmate. Lesbian, gay, bisexual, transgender, or other gender-nonconforming inmates are not placed in particular facilities, units, or wings solely on the basis of their sexual orientation, genital status, or gender identity. Inmates at high risk for sexual victimization may be placed in segregated housing only as a last resort and then only until an alternative means of separation from likely abusers can be arranged. To the extent possible, risk of sexual victimization should not limit access to programs, education, and work opportunities.

## **III. DETECTION AND RESPONSE**

### **Inmate reporting**

The facility provides multiple internal ways for inmates to report easily, privately, and securely sexual abuse, retaliation by other inmates or staff for reporting sexual abuse, and staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse. The facility also provides at least one way for inmates to report the abuse to an outside public entity or office not affiliated with the agency that has agreed to receive reports and forward them to the facility head, except when an inmate requests confidentiality. Staff accepts reports made verbally, in writing, anonymously, and from third parties and immediately puts into writing any verbal reports.

**Exhaustion of administrative remedies**

Under agency policy, an inmate has exhausted his or her administrative remedies with regard to a claim of sexual abuse either (1) when the agency makes a final decision on the merits of the report of abuse (regardless of whether the report was made by the inmate, made by a third party, or forwarded from an outside official or office) or (2) when 90 days have passed since the report was made, whichever occurs sooner. A report of sexual abuse triggers the 90-day exhaustion period regardless of the length of time that has passed between the abuse and the report. An inmate seeking immediate protection from imminent sexual abuse will be deemed to have exhausted his or her administrative remedies 48 hours after notifying any agency staff member of his or her need for protection.

The Department will exclude the time consumed by inmates in preparing any administrative appeal from the computation of the 90 day time period.

The Department can claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The inmate will be notified in writing of any such extension and provide a date by which a decision will be made.

The Department recognizes that the absence of a response within the time allotted for reply (including any properly noticed extension) at any time in the administrative process (including the final level) allows the inmate to consider this absence of a response to be a denial at that level.

**Inmate access to outside confidential support services**

In addition to providing on-site mental health care services, the facility provides inmates with access to outside victim advocates for emotional support services related to sexual abuse. The facility provides such access by giving inmates the current mailing addresses and telephone numbers, including toll-free hotline numbers, of local, State, and/or national victim advocacy or rape crisis organizations and enabling reasonable communication between inmates and these organizations. The facility ensures that communications with such advocates are private, confidential, and privileged, to the extent allowable by Federal, State, and local law. The facility informs inmates, prior to giving them access, of the extent to which such communications will be private, confidential, and/or privileged.

### **Third-party reporting**

The facility receives and investigates all third-party reports of sexual abuse. At the conclusion of the investigation, the facility notifies in writing the third-party individual who reported the abuse and the inmate named in the third-party report of the outcome of the investigation. The facility distributes publicly information on how to report sexual abuse on behalf of an inmate.

### **Official Response Following an Inmate Report**

#### **Staff and facility head reporting duties**

All staff members are required to report immediately and according to agency policy any knowledge, suspicion, or information they receive regarding an incident of sexual abuse that occurred in an institutional setting; retaliation against inmates or staff who reported abuse; and any staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse or retaliation. Apart from reporting to designated supervisors or officials, staff must not reveal any information related to a sexual abuse report to anyone other than those who need to know, as specified in agency policy, to make treatment, investigation, and other security and management decisions. Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners are required to report sexual abuse and must inform inmates of their duty to report at the initiation of services. If the victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, the facility head must report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

#### **Reporting to other confinement facilities**

When the facility receives an allegation that an inmate was sexually abused while confined at another facility, the head of the facility where the report was made notifies in writing the head of the facility where the alleged abuse occurred. The head of the facility where the alleged abuse occurred ensures the allegation is investigated. Notification will be made as soon as possible, but no later than 72 hours after receiving the allegation. The notification will be documented.

### **Staff first responder duties**

Upon learning that an inmate was sexually abused within a time period that still allows for the collection of physical evidence, the first security staff member to respond to the report is required to (1) separate the alleged victim and abuser; (2) seal and preserve any crime scene(s); and (3) instruct the victim not to take any actions that could destroy physical evidence, including washing, brushing his or her teeth, changing his or her clothes, urinating, defecating, smoking, drinking, or eating. If the first staff responder is a non-security staff member, he or she is required to instruct the victim not to take any actions that could destroy physical evidence and then notify security staff.

The victim will be informed of his or her rights under relevant Federal or State laws.

### **Coordinated response**

All actions taken in response to an incident of sexual abuse are coordinated among staff first responders, medical and mental health practitioners, investigators, and facility leadership. The facility's coordinated response ensures that victims receive all necessary immediate and ongoing medical, mental health, and support services and that investigators are able to obtain usable evidence to substantiate allegations and hold perpetrators accountable.

### **Agency protection against retaliation**

The agency protects all inmates and staff who report sexual abuse or cooperate with sexual abuse investigations from retaliation by other inmates or staff. The agency employs multiple protection measures, including housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or cooperating with investigations. The agency monitors the conduct and/or treatment of inmates or staff who have reported sexual abuse or cooperated with investigations, including any staff reassignments, negative staff performance reviews, inmate disciplinary reports, housing, or program changes, for at least 90 days following their report or cooperation to see if there are changes that may suggest possible retaliation by inmates or staff. The agency discusses any changes with the appropriate inmate or staff member as part of its efforts to determine if retaliation is taking place and, when confirmed, immediately takes steps to protect the inmate or staff member.

## **Investigations**

### **Duty to investigate**

The facility investigates all allegations of sexual abuse, including third-party and anonymous reports, and notifies victims and/or other complainants in writing of investigation outcomes and any disciplinary or criminal sanctions, regardless of the source of the allegation. All investigations are carried through to completion, regardless of whether the alleged abuser or victim remains at the facility.

### **Criminal and administrative agency investigations**

Agency investigations into allegations of sexual abuse are prompt, thorough, objective, and conducted by investigators who have received special training in sexual abuse investigations. When outside agencies investigate sexual abuse, the facility has a duty to keep abreast of the investigation and cooperate with outside investigators. Investigations include the following elements:

- Investigations are initiated and completed within the timeframes established by the highest- ranking facility official, and the highest-ranking official approves the final investigative report.
- Investigators gather direct and circumstantial evidence, including physical and DNA evidence when available; interview alleged victims, suspected perpetrators, and witnesses; and review prior complaints and reports of sexual abuse involving the suspected perpetrator.
- When the quality of evidence appears to support criminal prosecution, prosecutors are contacted to determine whether compelled interviews may be an obstacle for subsequent criminal prosecution.
- Investigative findings are based on an analysis of the evidence gathered and a determination of its probative value.
- The credibility of a victim, suspect, or witness is assessed on an individual basis and is not determined by the person's status as inmate or staff.
- The Department will not allow the inmate to submit to a polygraph examination.
- Investigations include an effort to determine whether staff negligence or collusion enabled the abuse to occur.

- Administrative investigations are documented in written reports that include a description of the physical and testimonial evidence and the reasoning behind credibility assessments.
- Criminal investigations are documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and provides a proposed list of exhibits.
- Copies of all documentary evidence will be given to criminal investigators when feasible.
- Substantiated allegations of conduct that appears to be criminal are referred for prosecution.

### **Evidence standard for administrative investigations**

Allegations of sexual abuse are substantiated if supported by a preponderance of the evidence.

### **Discipline**

#### **Disciplinary sanctions for staff**

Staff is subject to disciplinary sanctions up to and including termination when staff has violated agency sexual abuse policies. The presumptive disciplinary sanction for staff members who have engaged in sexually abusive contact or penetration is termination. This presumption does not limit agency discretion to impose termination for other sexual abuse policy violations. All terminations for violations of agency sexual abuse policies are to be reported to law enforcement agencies and any relevant licensing bodies.

#### **Disciplinary sanctions for inmates**

Inmates are subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative ruling that the inmate engaged in inmate-on-inmate sexual abuse or following a criminal finding of guilt for inmate-on-inmate sexual abuse. Sanctions are commensurate with the nature and circumstances of the abuse committed, the inmate's disciplinary history, and the sanctions meted out for comparable offenses by other inmates with similar histories. The disciplinary process must consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed. Possible sanctions also include interventions designed to address and correct underlying reasons or motivation for the abuse, such as requiring the offending inmate to participate in therapy, counseling, or other programs.

## **Medical and Mental Health Care**

### **Medical and mental health screenings—history of sexual abuse**

Qualified medical or mental health practitioners ask inmates about prior sexual victimization and abusiveness during medical and mental health reception and intake screenings. If an inmate discloses prior sexual victimization or abusiveness, whether it occurred in an institutional setting or in the community, during a medical or mental health reception or intake screening, the practitioner provides the appropriate referral for treatment, based on his or her professional judgment. Any information related to sexual victimization or abusiveness that occurred in an institutional setting must be strictly

limited to medical and mental health practitioners and other staff, as required by agency policy and Federal, State, or local law, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments. Medical and mental health practitioners must obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18.

### **Access to emergency medical and mental health services**

Victims of sexual abuse have 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. Treatment services must be provided free of charge to the victim and regardless of whether the victim names the abuser. If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders take preliminary steps to protect the victim and immediately notify the appropriate medical and mental health practitioners.

### **Ongoing medical and mental health care for sexual abuse victims and abusers**

The facility provides ongoing medical and/or mental health evaluation and treatment to all known victims of sexual abuse. The evaluation and treatment of sexual abuse victims must include appropriate follow-up services, treatment plans, and, when necessary, referrals for continued care following their release from custody. The level of medical and mental health care provided to inmate victims must match the community level of care generally accepted by the medical and mental health professional communities. The facility conducts a mental health evaluation of all known abusers and provides treatment, as deemed necessary by qualified mental health practitioners.

**IV. MONITORING****Sexual abuse incident reviews**

The facility treats all instances of sexual abuse as critical incidents to be examined by a team of upper management officials, with input from line supervisors, investigators, and medical/mental health practitioners. The review team evaluates each incident of sexual abuse to identify any policy, training, or other issues related to the incident that indicate a need to change policy or practice to better prevent, detect, and/or respond to incidents of sexual abuse. The review team also considers whether incidents were motivated by racial or other group dynamics at the facility. When incidents are determined to be motivated by racial or other group dynamics, upper management officials immediately notify the agency head and begin taking steps to rectify those underlying problems. The sexual abuse incident review takes place at the conclusion of every sexual abuse investigation, unless the allegation was determined to be unfounded. The review team prepares a report of its findings and recommendations for improvement and submits it to the facility head.

**Data collection**

The agency collects accurate, uniform data for every reported incident of sexual abuse using a standardized instrument and set of definitions. The agency aggregates the incident-based sexual abuse data at least annually. The incident-based data collected includes, at a minimum, the data necessary to answer all questions from the most recent version of the BJS Survey on Sexual Violence. Data are obtained from multiple sources, including reports, investigation files, and sexual abuse incident reviews. The agency also obtains incident-based and aggregated data from every facility with which it contracts for the confinement of its inmates.

**Data review for corrective action**

The agency reviews, analyzes, and uses all sexual abuse data, including incident-based and aggregated data, to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training. Using these data, the agency identifies problem areas, including any racial dynamics underpinning patterns of sexual abuse, takes corrective action on an ongoing basis, and, at least annually, prepares a report of its findings and corrective actions for each facility as well as the agency as a whole. The annual report also includes a comparison of the current year's data and corrective actions with those from prior years and provides an assessment of the agency's progress in addressing sexual abuse. The agency's report is approved by the agency head, submitted to the appropriate legislative body, and made readily available to the public through its Web site or, if it does not have one, through other means. The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but it must indicate the nature of the material redacted.

### **Data storage, publication, and destruction**

The agency ensures that the collected sexual abuse data are properly stored, securely retained, and protected. The agency makes all aggregated sexual abuse data, from facilities under its direct control and those with which it contracts, readily available to the public at least annually through its Web site or, if it does not have one, through other means. Before making aggregated sexual abuse data publicly available, the agency removes all personal identifiers from the data. The agency maintains sexual abuse data for at least 10 years after the date of its initial collection unless Federal, State, or local law allows for the disposal of official information in less than 10 years.

### **Audits of standards**

The public agency ensures that all of its facilities, including contract facilities, are audited to measure compliance with the PREA standards. Audits must be conducted at least every three years by independent and qualified auditors. The public or contracted agency allows the auditor to enter and tour facilities, review documents, and interview staff and inmates, as deemed appropriate by the auditor, to conduct comprehensive audits. The public agency ensures that the report of the auditor's findings and the public or contracted agency's plan for corrective action are published on the appropriate agency's Web site if it has one or are otherwise made readily available to the public.

## **SUPPLEMENTAL STANDARDS FOR FACILITIES WITH IMMIGRATION DETAINEES**

### **Compliance with PREA Standards**

Adult immigrants detained pending determination of whether their presence in the United States is legal are in the custody of Immigration and Customs Enforcement (ICE), but they are held in a wide variety of settings, including local jails, State and Federal prisons, privately run prisons, facilities run by ICE called detention facilities and service processing centers, and short-term detention settings run by Customs and Border Protection. At the time of publication of this body of standards, families with children detained together are held in one of two family facilities that operate under contract with ICE.

Unaccompanied immigrant and refugee minors are the only group of immigration detainees who are not in ICE custody, but rather under the care and custody of the Department of Health and Human Services' (HHS') Office of Refugee Resettlement (ORR) Division of Unaccompanied Children's Services. ORR places these minors in a variety of settings, including foster care, shelters, group homes, and secure juvenile detention facilities.

These supplemental standards for facilities with immigration detainees must be enforced on behalf of all people detained solely by ICE, regardless of where they are detained. In other words, they must be enforced in any facility that is run by ICE or contracts with ICE to hold immigration detainees. They must also be enforced on behalf of all unaccompanied children in ORR custody. These standards do not apply to inmates in lockups, jails, or prisons who also happen to have an immigration detainer or warrant lodged by ICE. As long as an inmate is being held on criminal charges or is serving a sentence for a criminal charge, he or she will not be considered an immigration detainee for purposes of the standards. However, these standards do apply to persons in the custody of ICE due to ICE's commencement of removal proceedings on the basis of their past criminal conduct.

Standards developed pursuant to the Prison Rape Elimination Act (PREA) must be enforced on behalf of immigration detainees according to the settings in which they are detained. As a starting point, the standards that apply to inmates in lockups, jails, and prisons must be applied to all immigration detainees as well. These supplemental standards create additional requirements that must be met along with the requirements laid out in the inmate standards. So, ICE-run detention facilities and service processing centers must comply with the standards for adult prisons and jails as well as these supplemental standards. Customs and Border Protection facilities must comply with the standards for lockups as long as detainees are held there for less than 72 hours, but they must comply with standards for adult prisons and jails whenever detainees are held beyond 72 hours. Customs and Border Protection facilities also must comply with these supplemental standards. Shelters under contract with ORR to house unaccompanied minors must comply with the standards for community corrections, which include some special provisions for juveniles in a community corrections setting, along with these supplemental standards. Secure juvenile detention facilities that house unaccompanied minors for ORR must comply with the juvenile detention standards, along with these supplemental standards. Finally, the two family facilities must comply with the adult prison and jail standards, along with the supplemental standards for immigration detainees and those supplements and one modification laid out specifically for family facilities.

#### **Agreements with outside public entities and community service providers**

Any facility that houses immigration detainees maintains or attempts to enter into memoranda of understanding (MOUs) or other agreements with one or more local or, if not available, national organizations that provide legal advocacy and confidential emotional support services for immigrant victims of crime. The agency maintains copies of agreements or documentation showing attempts to enter into agreements.

### **Employee training and specialized training of investigators and medical and mental health care**

Any facility that holds immigration detainees provides special additional training to employees, including medical and mental health practitioners and investigators. This additional training includes the following topics: cultural sensitivity toward diverse understandings of acceptable and unacceptable sexual behavior, appropriate terms and concepts to use when discussing sex and sexual abuse with a culturally diverse population, sensitivity and awareness regarding past trauma that may have been experienced by immigration detainees, and knowledge of all existing resources for immigration detainees both inside and outside the facility that provide treatment and counseling for trauma and legal advocacy for victims.

### **Inmate education**

Sexual abuse education for immigration detainees is provided at a time and in a manner that is separate from information provided about their immigration cases, in detainees' own languages and in terms that are culturally appropriate, and is conducted by a qualified individual with experience communicating about these issues with a diverse population.

### **Detainee handbook**

Every detainee is provided with an ICE Detainee Handbook upon admission to the facility, and a replacement is provided whenever a detainee's handbook is lost or damaged. The Detainee Handbook contains notice of the agency's zero-tolerance policy toward sexual abuse and contains all the agency's policies related to sexual abuse, including information about how to report an incident of sexual abuse and the detainees' rights and responsibilities related to sexual abuse. The Detainee Handbook will inform immigration detainees how to contact organizations in the community that provide sexual abuse counseling and legal advocacy for detainee victims of sexual abuse. The Detainee Handbook will also inform detainees how to contact the Office for Civil Rights and Civil Liberties, the Office of the Inspector General (OIG) for the Department of Homeland Security (DHS), and diplomatic or consular personnel.

### **Screening for risk of victimization and abusiveness**

The facility makes every reasonable effort to obtain institutional and criminal records of immigration detainees in its custody prior to screening for risk of victimization and abusiveness. Screening of immigration detainees is conducted by employees who are culturally competent.

### **Use of screening information**

Any facility that houses both inmates and immigration detainees houses all immigration detainees separately from other inmates in the facility and provides heightened protection for immigration detainees who are identified as particularly vulnerable to sexual abuse by other detainees through the screening process. To the extent possible, immigration detainees have full access to programs, education, and work opportunities.

### **Inmate reporting**

The agency provides immigration detainees with access to telephones with free, preprogrammed numbers to ICE's Office for Civil Rights and Civil Liberties and the DHS OIG. In addition, the agency must provide immigration detainees with a list of phone numbers for diplomatic or consular personnel from their countries of citizenship and access to telephones to contact such personnel.

### **Inmate access to outside confidential support services**

All immigration detainees have access to outside victim advocates who have experience working with immigration detainees or immigrant victims of crime for emotional support services related to sexual abuse. The facility provides such access by giving immigration detainees the current mailing addresses and telephone numbers, including toll-free hotline numbers, of local, State, and/or national organizations that provide these services and enabling reasonable communication between immigration detainees and these organizations. The facility ensures that communications with such advocates is private, confidential, and privileged to the extent allowable by Federal, State, and local law. The facility informs immigration detainees, prior to giving them access, of the extent to which such communications will be private, confidential, and/or privileged.

### **Protection of detainee victims and witnesses**

ICE never removes from the country or transfers to another facility immigration detainees who report sexual abuse before the investigation of that abuse is completed, except at the detainee victim's request. ICE considers releasing detainees who are victims of or witnesses to abuse and monitoring them in the community to protect them from retaliation or further abuse during the course of the investigation.

### **Ongoing medical and mental health care for sexual abuse victims and abusers**

All immigration detainees are counseled about the immigration consequences of a positive HIV test at the time they are offered HIV testing.

## **Data collection**

The facility collects additional data whenever an immigration detainee is the victim or perpetrator of an incident of sexual abuse in custody. The additional incident-based data collected indicate whether the victim and/or perpetrator was an immigration detainee, his or her status at the initiation of the investigation, and his or her status at the conclusion of the investigation.

## **TRAINING TOPICS AND PROCEDURES**

The National Institute of Corrections (NIC) has developed a number of Prison Rape Elimination Act (PREA) training resources. The Commission directs all agency and facility heads to NIC's Web site (<http://www.nicic.org>) to learn more about existing resources and opportunities for training. However an agency or facility decides to deliver training, the Commission strongly recommends that the following topics be included for employee training. Some may also be appropriate for volunteer and inmate training. Following the list of topics, the Commission has made some procedural recommendations for ensuring that agency and facility heads deliver the most effective sexual abuse and PREA training to employees, volunteers, contractors, and inmates.

### **I. Recommended training topics**

#### **A. General education and awareness topics**

1. An overview of PREA.
2. A description of the inalienable right of all inmates to be free from sexual abuse.
3. The role of corrections officials to protect and enforce the human right to be free from sexual abuse.
4. Definitions and examples of prohibited and/or illegal behaviors and language that are considered sexual abuse.
5. Examples of conduct, circumstances, and "red flags" that may be precursors to sexual abuse or that suggest sexual abuse is occurring.
6. The agency's anti-retaliation policy.
7. Common reactions by victims of sexual abuse.

8. The agency's liability for sexual abuse of persons in custody (criminal, civil, and administrative).
9. A discussion of how sexual abuse is used to gain power and control in confinement settings.
10. The agency's policy regarding inmates who knowingly make false allegations of staff-on-inmate sexual abuse or staff-on-inmate sexual harassment.
11. Common myths and perceptions of sexual intimidation and abuse in confinement settings.
12. Professional boundary setting, including issues related to personal associations with inmates, consent, and imbalances of power.
13. Strategies for promoting effective prevention and intervention of staff-on-inmate sexual abuse and staff-on-inmate sexual harassment.
14. Strategies for removing a victim or witness of sexual abuse from any public or semipublic area without arousing the suspicion of other inmates or staff members.
15. Strategies for protecting the safety of vulnerable populations, including but not limited to lesbian, gay, bisexual, and gender-nonconforming inmates (including transgender and intersex); deaf, speech impaired, or visually impaired inmates; developmentally disabled inmates; inmates with limited English proficiency; mentally ill inmates; inmates with past histories of sexual abuse; inmates with personality disorders; and young inmates.

**B. Sexual abuse reporting duties**

1. Staff members' duty to report sexual abuse and their liability if they fail to report.
2. The process staff members should use to report sexual abuse.
3. The process that inmates should use to report sexual abuse.
4. Medical and mental health practitioners' reporting duties and the process they should use to report sexual abuse.

5. Facility head's duty to report to a designated State or local services agency any allegations involving a victim under the age of 18 under mandatory child abuse reporting laws.

**C. Medical and mental health care**

1. The range of victims' services available to inmates, including free medical and mental health care for injuries and/or trauma resulting from sexual abuse, and how inmates gain access to those services.
2. Rules governing forensic medical exams.
3. How to detect sexual abuse during medical and mental health exams.

**D. Investigations and discipline**

1. The investigative process for allegations of sexual abuse, including the importance of preserving evidence.
2. The legal and disciplinary sanctions for inmates who engage in inmate-on-inmate sexual abuse or inmate-on-inmate sexual harassment.
3. The legal and disciplinary sanctions for staff who engage in actual or attempted staff-on-inmate sexual abuse or staff-on-inmate sexual harassment.
4. Victims' rights based on relevant State or Federal law.
5. The rights of a staff member who is the subject of an investigation based on relevant Federal or State law or, if applicable, under collective bargaining agreements.

**II. Recommended procedures for delivering training**

**A. General guidance**

1. Train existing staff prior to training inmates.
2. Train new staff members before they have contact with inmates.
3. Prohibit staff members from working with inmates until they can demonstrate knowledge of the agency's sexual abuse policies and procedures.

4. Ensure that staff members, contractors, and inmates have access to copies of the agency's sexual abuse policies.
5. Use multiple mechanisms for presenting the information, including lectures, dialogues, role-play/scenario-based training, and other interactive techniques.
6. Ensure training materials are up to date by reviewing them at least annually and making revisions, if necessary, to address changes in laws, policies, or protocols.
7. Provide annual continuing education on sexual abuse that includes a review of the agency's sexual abuse data from the previous year.

#### **B. Testing and evaluation**

1. Test staff members following training.
2. Ask staff, contractors, and inmates to provide feedback on training, including suggestions for improving training tools and materials.
3. Evaluate staff members who conduct training at least annually to ensure that they are qualified and able to provide training effectively.

#### **INCIDENT-BASED DATA COLLECTION**

Standards require agencies to collect incident-based data for every incident of sexual abuse. Under this standard, the agency is required to collect data sufficient to answer all of the questions from the Bureau of Justice Statistics' (BJS') Survey on Sexual Violence. Collecting data on the following items would allow the agency to answer the questions posed on the BJS survey and should help it to reach the broader goal of eliminating sexual abuse and keeping inmates safe.

#### **Victim information**

1. Sex and gender identity.
2. Race/ethnicity.
3. Age.
4. Custody level.
5. Height and weight.
6. Classification assignment.
7. Previous sexual victimization in confinement.
8. Previous sexually abusive behavior in confinement.
9. Prior relationship with the alleged perpetrator.
10. Gang affiliation outside and/or inside the facility.
11. HIV/AIDS status.

**Perpetrator information**

**A. Inmate perpetrator**

1. Sex and gender identity.
2. Race/ethnicity.
3. Age.
4. Custody level.
5. Height and weight.
6. Classification assignment.
7. Previous sexual victimization in confinement.
8. Previous sexually abusive behavior in confinement.
9. Prior relationship with the victim.
10. Gang affiliation outside and/or inside the facility.
11. HIV/AIDS status.

**B. Staff perpetrator**

1. Sex and gender identity.
2. Race/ethnicity.
3. Age.
4. Position held within the agency.
5. Relationship with the victim.
6. Prior history of allegations and/or substantiated incidents of sexual abuse or harassment in current and prior employment.
7. Prior history of failure to comply with the agency's sexual abuse policies.

**III. Other incident information**

**A. Reporting**

1. The date and time of the report.
2. The date, time, and location of the incident.
3. The reporting mechanism used.
4. Who made the report.
5. To whom the report was made.
6. Details of the incident alleged to have occurred, including type of sexual abuse.
7. The time lapse between when the incident took place and when the report was made.
8. The time lapse between when the report was made and when an investigation was initiated.
9. The time lapse between when the report was made and when the inmate received medical/mental health care, if applicable.

**B. Medical and/or mental health care**

1. Whether the victim received medical and/or mental health care.
2. Any injuries sustained by the victim.

**C. Investigations**

1. Type of investigation pursued: criminal and/or administrative.
2. Name of investigator(s).
3. Dates of the initiation and conclusion of the investigation(s).
4. Outcome of the investigation(s)/if the investigation(s) is ongoing.
5. Violations of administrative and/or criminal codes.
6. If the case is referred for prosecution, whether the prosecutor accepted or declined the investigation and, if accepted, the case disposition.
7. If administrative actions against staff member(s) or inmate(s) are pursued, details about the sanctions.