



**STATE OF MONTANA
DEPARTMENT OF CORRECTIONS
POLICY DIRECTIVE**

Policy No. DOC 1.3.14	Subject: PRISON RAPE ELIMINATION ACT OF 2003 (PREA)
Chapter 1: ADMINISTRATION AND MANAGEMENT	Page 1 of 9 and Attachments
Section 3: Human Resource Bureau	Effective Date: Sept. 12, 2007
Signature: /s/ Mike Ferriter, Director	Revised: 07/01/08; 12/15/08

I. POLICY

The Department of Corrections has zero tolerance relating to the sexual assault/rape of offenders and recognizes these offenders as crime victims. The Department will immediately respond to allegations, fully investigate reported incidents, pursue disciplinary action, and refer for investigation and prosecution those who perpetrate such conduct.

II. APPLICABILITY

All Department divisions, contracted facilities and programs.

III. DEFINITIONS

Administrative Investigation – Any agency investigation that is not conducted for the purpose of law enforcement or criminal prosecution.

Administrator – The official, regardless of local title (division or facility administrator, bureau chief, warden, superintendent), ultimately responsible for the division, facility, or program operation and management.

Employee or Staff – The terms include paid employees or contracted persons, volunteers and interns who are paid or donate time or services to the Department, and individual service providers, e.g., delivery, maintenance, vendors, or other service providers who may not be contracted to the Department.

Facility – Refers to any prison, correctional facility, or community program under Department jurisdiction or contract.

Offender – Any individual in the custody or under the supervision of the Department of Corrections or its contracted service providers. The term includes former offenders for whom less than one year has elapsed since discharge from Department custody or supervision.

PREA Coordinator – The official responsible for the coordination and compliance monitoring of the Prison Rape Elimination Act of 2003 in Department and contracted facilities and programs.

PREA Investigator – The PREA unit criminal investigator with sworn peace officer authority responsible for the criminal investigation of sexual misconduct allegations established through a memorandum of understanding with the Montana Department of Justice, Division of Criminal Investigation.

Unit Investigation – A formal internal investigation conducted primarily by facility-designated investigatory staff to discover whether a violation of facility policy/procedure has occurred.

IV. DEPARTMENT DIRECTIVES

A. Sexual Misconduct

PREA covers incidents of both staff sexual misconduct and offender on offender sexual abuse. The Department defines sexual misconduct, which encompasses both staff sexual misconduct and offender on offender sexual abuse, as follows:

1. Non-consensual Sexual Act: An incident in which one or more of the following acts occurs without the offender's consent, or the offender is unable to consent or refuse:
 - a. contact between the penis and the vagina or the penis and the anus involving penetration, however slight. It does not include kicking, grabbing, or punching genitals when the intent is to harm rather than sexually exploit;
 - b. contact between the mouth and the penis, vagina, or anus; and
 - c. penetration of the vagina or anus of another person by hand, finger, or other object.
2. Abusive Sexual Contact: Sexual contact without the offender's consent, or in which the offender is unable to consent or refuse. This includes one or more of the following behaviors:
 - a. intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of the victim; and
 - b. sexual contact does not include kicking, grabbing, or punching genitals when the intent is to harm or debilitate rather than sexually exploit.
3. Staff Sexual Misconduct: Any behavior or act of a sexual nature directed toward an offender by an employee, volunteer, contractor, official visitor, or other agency representative; sexual relationships of a romantic nature between staff and offenders are included in this definition. Consensual or nonconsensual sexual acts are defined as follows:
 - a. intentional touching of the genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, arouse, or gratify sexual desire;
 - b. completed, attempted, threatened, or requested sexual acts; and
 - c. occurrences of indecent exposure, invasion of privacy, or staff voyeurism for sexual gratification.
4. Staff Sexual Harassment: Repeated verbal statements or comments of a sexual nature to an offender by an employee, volunteer, contractor, official visitor, or other agency representative. Behaviors may include:
 - a. demeaning references to gender or derogatory comments about body or clothing; and
 - b. repeated profane or obscene language or gestures.

B. Staff Responsibilities

1. The Department PREA coordinator is responsible for oversight of all Prison Rape Elimination Act (PREA)-related activities.

2. The PREA coordinator will:
 - a. coordinate and develop procedures to identify, monitor, and track sexual misconduct incidents occurring in Department facilities and programs;
 - b. maintain related statistics;
 - c. supervise the PREA investigator; and
 - d. conduct audits to ensure compliance with Department policy and the Prison Rape Elimination Act of 2003.
3. Each administrator will assign a staff member to serve as PREA liaison to:
 - a. coordinate facility/program PREA-related activities;
 - b. ensure compliance with training requirements,
 - c. coordinate activities with the PREA coordinator, and
 - d. track and report PREA statistical data to the PREA coordinator.
4. The PREA investigator will conduct criminal investigations of alleged incidents of sexual misconduct in cooperation with the Investigations Bureau, Human Resource Bureau, and local law enforcement as needed.

C. Offender Orientation and Education

1. During each facility orientation and as offenders are transferred between facilities, all offenders will receive information about sexual misconduct. Designated staff will communicate the information verbally and in writing, in a manner that is clearly understood by offenders. Information provided will include, but is not limited to:
 - presentation of this policy
 - *DOC Policy 1.3.12, Staff Association and Conduct with Offenders*
 - *DOC Policy 3.3.3, Offender Grievance Program*, and facility grievance procedures
 - *Probation & Parole 60-10, Offender Grievance System*
 - Department zero tolerance stance
 - self protection methods
 - prevention and intervention
 - treatment and counseling
 - reporting incidents
 - protection against retaliation
 - consequences of false allegations
2. Staff in the community will provide this information to offenders during the field intake process.
3. Staff will document verification of offender orientation and education on PREA by completing the [Offender PREA Acknowledgement Form](#). Staff will maintain the original signed acknowledgement form in the offender's main file with copies in the field files.

D. Offender Reporting

1. Reporting Incidents

- a. offenders who are victims of or have knowledge of sexual misconduct should immediately report the incident to a staff member; or
 - b. offenders may utilize the “locked box” formal grievance procedure to report sexual misconduct in accordance with facility procedures and *DOC Policy 3.3.3, Offender Grievance Program*; however, offenders are not required to go through the informal resolution step to report allegations of sexual misconduct. Designated staff will process such grievances as a high priority in accordance with established facility emergency grievance procedures and immediately forward copies to the PREA coordinator; or
 - c. offenders may use a Department approved free confidential telephone hotline to report sexual misconduct. Procedures for using the telephone hotline will be communicated both verbally and in writing to offenders during each facility orientation and as offenders are transferred between facilities.
2. Offenders are not required to file written reports; however, staff who receive verbal reports from offenders are required to file written incident reports as set forth in this policy.
 3. False Reporting

Substantiated deliberately malicious or false reports by offenders or other parties will result in disciplinary action or criminal charges.

E. Prevention

1. All staff and offenders will be alert to signs of potential situations in which sexual misconduct might occur. Signs may include:
 - a. staff/offenders being overly friendly;
 - b. offering money, canteen, favors, etc.; and
 - c. security threat group activity.
2. All facilities and programs will identify, assess, and manage offenders with special needs, including those who are potentially vulnerable and potentially dangerous, to provide safe housing, adequate protection, and programmatic resources to meet their needs in accordance with *DOC Policy 4.2.2, Special Needs Offenders*.

F. Intervention

1. Staff who receive an initial report of sexual misconduct must separate the victim from the alleged assailant to protect the victim and prevent further violence.
2. Staff who receive an initial report of sexual misconduct are required to promptly intervene on the victim’s behalf to ensure the victim receives prompt medical and psychological assistance, as appropriate to his or her needs and the circumstances of the alleged offense. Victims of sexual misconduct must have an assessment for potential risk of suicide.

3. Psychological trauma may occur to individuals other than the victim of sexual misconduct. Mental health staff must be available to support and assist those in need.
4. The shift supervisor/commander must refer victims of sexual misconduct to a community health care facility for treatment and the gathering of evidence if the sexual misconduct is reported within 72 hours of the incident. Shift supervisors/commanders will refer incidents of sexual misconduct reported more than 72 hours after the incident to “in house” health care providers who will:
 - a. complete a patient history and conduct an examination to document the extent of physical injury to determine whether referral to another medical facility is indicated;
 - b. offer to all victims, as appropriate, prophylactic treatment and follow up care for sexually transmitted or other communicable diseases (e.g. HIV, hepatitis B);
 - c. arrange an evaluation by a qualified mental health professional for crisis intervention counseling and long term follow up; and
 - d. submit a report to the appropriate staff to effect separate housing assignments for the victim and his or her assailant.

G. Services Provided

1. Administrators will develop procedures for providing available services to offenders who allege that they are victims of sexual misconduct and will ensure that offenders who allege that they are victims have access to the following services:
 - a. medical examination, documentation, and treatment of injuries, including testing for HIV and other sexually transmitted diseases;
 - b. mental health crisis intervention and treatment;
 - c. social, family, and peer support; and
 - d. reasonable measures taken to protect and prevent future assaults such as classification procedures to identify predator and vulnerable offenders and separation needs.

H. Examination of Sexual Assault Victims

1. If the alleged sexual misconduct is reported within 72 hours of the incident with the victim’s permission, facility and program staff will immediately transport the victim to a community medical facility equipped to evaluate and treat sexual assault/rape victims.
2. If the alleged sexual misconduct is reported more than 72 hours after the incident with the victim’s permission, law enforcement may request that facility and program staff transport the victim to a community medical facility for evidence collection.
3. If the victim refuses medical attention following a sexual misconduct incident or allegation, staff will document the refusal on the [Medical Treatment Refusal Form](#).

I. Tracking Sexual Assaults

1. The PREA investigator will track sexual misconduct reports to collect data on victims, assailants, crime characteristics, and action taken.

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J. Staff Reporting

1. Regardless of its source, Department staff, contract employees, and volunteers who receive information concerning offender on offender sexual misconduct, or who observe an incident of offender on offender sexual misconduct, or have reasonable cause to suspect an offender is a victim of sexual misconduct, must immediately report the information or incident directly to their immediate supervisor and/or shift supervisor/commander. The shift supervisor/commander will notify the MSP Command Post at (406) 846-6059, complete a written report and forward it to the MSP Command Post at (406) 846-2953. The MSP Command Post will then notify and forward all written reports to the PREA investigator or Investigations bureau chief to ensure timely notification. The assigned criminal investigator will notify local law enforcement.
2. Regardless of its source, Department staff, contract employees, and volunteers who receive information concerning staff on offender sexual misconduct, or who observe an incident of staff on offender sexual misconduct, or have reasonable cause to suspect an offender is a victim of sexual misconduct, must immediately report the information or incident directly to the MSP Command Post at (406) 846-6059. The MSP Command Post will then notify the PREA investigator, or Investigations bureau chief, to ensure timely notification. The PREA investigator, or Investigations bureau chief, will advise the Human Resource bureau chief of the incident to ensure that facility supervisors and staff have access to Human Resource Bureau support. The assigned criminal investigator will notify local law enforcement.
3. In addition to the above reporting requirements, Department staff, contract employees, and volunteers who know or have reasonable cause to suspect that a youth offender has been abused or neglected, must immediately report the matter to the administrator, or designee, and to the Department of Public Health and Human Services as required by *Mont. Code Ann. § 41-3-201*.
4. Any employee or volunteer who fails to report an allegation, or coerces or threatens another person to submit inaccurate, incomplete, or untruthful information with the intent to alter a report, may face disciplinary action, up to and including dismissal, even on a first offense.
5. Staff will report incidents and complete reports in accordance with *DOC Policy 1.1.6, Incident Reporting and Acting Director System*.

K. Security Procedures

1. Staff will follow appropriate security procedures, which include:
 - a. providing mental health and medical assistance for the alleged victim as soon as possible;
 - b. separating the victim from the alleged perpetrator;
 - c. taking reasonable measures to identify, isolate, and separate witnesses;
 - d. securing the incident scene so items cannot be removed or introduced; and
 - e. allowing only assigned investigators to assess the scene.

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L. Investigative Protocols of Sexual Assaults

1. The shift commander, or designee, will initiate the [Sexual Assault Response and Containment Checklist](#). The completed checklist must be forwarded by fax to the MSP Command Post at (406) 846-2953. The MSP Command Post will forward the checklist to the PREA investigator or Investigations bureau chief.
2. Facilities will establish facility-specific protocols for the administrative and unit investigations of allegations of sexual misconduct. Staff assigned to investigate either administratively or at the unit level will work in cooperation with the assigned criminal investigator to ensure the criminal investigation is not compromised.
3. Facility staff assigned to investigate will submit an incident report, in accordance with *DOC Policy 1.1.6, Incident Reporting and Acting Director System*, to the PREA investigator, or Investigations bureau chief.
4. The PREA investigator, or designee, will conduct criminal investigations of allegations of sexual misconduct in accordance with *DOC Policies 1.3.13, Staff Misconduct Investigations*, and *3.1.19, Investigations*.

M. Documentation

1. All staff who witness or have knowledge of alleged sexual misconduct must submit an incident report before the end of their shift. This includes staff who secured the incident scene, transported offenders, or talked to possible witnesses.
2. At the completion of a criminal investigation, the PREA investigator, or designee, will notify the facility or program administrator, the victim, and the Department Legal Bureau of the outcome.

N. Treatment for Victims

1. Victim services for offenders will include crisis intervention and trauma-specific treatment provided by mental health and/or medical professionals.
2. Victim services will be made available to all offenders under the Department's jurisdiction who were victims of sexual misconduct by Department staff, contract employees, volunteers, or other offenders while in secure care or in community correctional facilities or programs.

O. Staff Training

1. All Department staff, contract employees, and volunteers with direct and/or incidental contact with offenders will receive documented PREA training during orientation and/or Correctional Detention Officer Basic (CDOB), and annually thereafter.
2. Training will include, but is not limited to:
 - a. review of this policy, the *Prison Rape Elimination Act (PREA)*, *DOC Policy 1.3.12, Staff Association and Conduct with Offenders*, and any other applicable state or federal laws;

- b. prevention, investigation, and prosecution of sexual misconduct;
 - c. zero tolerance stance;
 - d. recognition of sexual misconduct, predatory offenders, potential victims, and/or staff involvement;
 - e. facility procedures on sharing confidential information; and
 - f. reporting procedures.
3. Designated staff will document training in the State's personnel data system.
 4. The Department will provide specialized training for staff who respond to and/or investigate allegations of sexual misconduct. Training will include crime scene management/investigation, victim sensitivity, and crisis intervention.
 5. Staff are prohibited from working with offenders before they demonstrate a knowledge of *DOC Policies 1.3.12, Staff Association and Conduct with Offenders*, and *1.3.14, Prison Rape Elimination Act (PREA)*. Upon initial hire, staff will verify acknowledgement of the above-stated policies by signing the [Staff PREA Acknowledgement Form](#) which will be included in the new hire packet along with *DOC Policies 1.3.12, Staff Association and Conduct with Offenders*, and *1.3.14, Prison Rape Elimination Act (PREA)*.

P. Data Collection/Tracking

1. The PREA coordinator, or designee, will compile records and report statistical data to the Federal Bureau of Justice on an annual basis as required by the Prison Rape Elimination Act of 2003.
2. In accordance with *DOC Policy 1.5.5, Case Records Management*, designated staff will retain records including incident and investigative reports, offender information, case disposition, medical and counseling findings, and recommendations for post-release treatment and/or counseling.

V. CLOSING

Provisions of this policy not required by statute will be followed unless the provisions conflict with negotiated labor contracts, which will take precedence to the extent applicable.

Questions concerning this policy should be directed to the Department's PREA coordinator.

VI. REFERENCES

- A. *41-3-201, MCA (2007) Reports; 45-5-501, MCA (2007) Sexual Crimes Definitions; 45-5-502, MCA (2007) Sexual Assault; 45-5-503, MCA (2007) Sexual Intercourse without Consent*
- B. *4-4281-1 through 4-4281-8; 2008 ACA Standards Supplement*
- C. *Prison Rape Elimination Act of 2003*
- D. *DOC Policies 1.1.6, Incident Reporting and Acting Director System; 1.5.5, Case Records Management; 1.3.12, Staff Association and Conduct with Offenders; 1.3.13, Staff Misconduct Investigations; 1.8.1, Victim Services; 3.3.3, Offender Grievance Program; 4.1.2, Offender Reception and Orientation; 4.2.1, Offender Classification System; 4.2.2, Special Needs Offenders*

VII. ATTACHMENTS**Related Forms:**

[Offender PREA Acknowledgement Form](#)

[Medical Treatment Refusal Form](#)

[Sexual Assault Response and Containment Checklist](#)

[Staff PREA Acknowledgement Form](#)