



**State of North Carolina
Department of Public Safety
Prisons**

Chapter: F
Section: .3400
Title: **Offender Sexual Abuse and
Sexual Harassment Policy**
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POLICY AND PROCEDURE

References

5th Edition Standards for Adult Correctional Institutions

Related ACA Standards

5-ACI-1C-09, 5-ACI-2C-02, 5-ACI-3D-08, 5-ACI-3D-09, 5-ACI-3D-10, 5-ACI-3D-11, 5-ACI-3D-12, 5-ACI-3D-13, 5-ACI-3D-14, 5-ACI-3D-15, 5-ACI-3D-16, 5-ACI-4B-34, 5-ACI-5B-17

PREA Standards as Applicable

.3401 PURPOSE

It is the policy of North Carolina Department of Public Safety, Prisons to provide guidelines for the prevention, detection, response, investigation, prosecution and tracking of offender on offender and staff on offender sexual abuse and sexual harassment (5-ACI-1C-09).

.3402 APPLICABILITY

This policy applies to all offenders, and to all persons employed by Prisons, volunteers, approved custodial agents for Prisons, and contractors assigned to a facility and/or providing services to offenders.

.3403 DEFINITIONS

- (a) **ABUSER:** The offender or staff member who commits an act of sexual abuse and/or sexual harassment.
- (b) **BISEXUAL:** A person who is romantically or sexually attracted to more than one gender or sexual category.
- (c) **CONTRACTOR:** Means a person who provides services on a recurring basis pursuant to a contractual agreement with the agency.
- (d) **CUSTODIAL AGENT:** Employee of State Government or Non-State Government agencies approved to provide custody and supervision of offenders for labor and/or transition/reentry services.
- (e) **DIRECT STAFF SUPERVISION:** Means that security staff are in the same room with, and within reasonable hearing distance of, the resident or offender.

- (f) **EMPLOYEE:** A person employed by NCDPS Prisons, whether full-time, part-time, temporary, contractual, or as an intern.
- (g) **EXIGENT CIRCUMSTANCES:** Means any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.
- (h) **FIRST RESPONDER:** The first staff member to respond to a report of alleged sexual abuse or sexual harassment.
- (i) **GAY:** Commonly refers to men typically attracted to other men.
- (j) **GENDER NONCONFORMING:** A person whose appearance or manner does not conform to traditional societal gender expectations.
- (k) **INDECENT EXPOSURE:** Any display by an employee, contractor or volunteer of their uncovered genitalia, buttocks, or breast in the presence of an offender.
- (l) **INVESTIGATOR:** A staff member who has been assigned or designated to administratively investigate a report of alleged offender sexual abuse and/or sexual harassment; and has received specialized training in conducting such investigations in confinement settings.
- (m) **INTERSEX:** A person who has a sexual or reproductive anatomy or chromosomal pattern that does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development. An example would be an individual born with characteristics of both sexes.
- (n) **LESBIAN:** Commonly refers to women typically attracted to women.
- (o) **LGBTI:** An acronym for a group of sexual minorities including lesbian, gay, bisexual, transgender, and intersex individuals.
- (p) **OFFENDER:** Means any person incarcerated or detained in a prison or jail.
- (q) **PREA SUPPORT PERSON:** A designated employee, at each facility, that has been screened for appropriateness to serve as a victim advocate and has received education concerning sexual assault and forensic examination issues in general.
- (r) **PREA COMPLIANCE MANAGER (PCM):** A designated employee, at each facility, with sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards.
- (s) **PRELIMINARY REVIEW:** Is conducted by a sexual abuse and sexual harassment investigator to determine, at a minimum:

- (1) if the allegation is a form of sexual abuse or sexual harassment, and
 - (2) who is the alleged victim(s) and abuser(s)
- (t) **PREPONDERANCE OF EVIDENCE:** Is the evidentiary standard for administrative investigations.
- (1) 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;
 - (2) This standard is satisfied if the evidence shows that it is more probable than not that an event occurred;
 - (3) Preponderance of the evidence is a lesser standard of proof than “beyond a reasonable doubt,” which is required to convict in a criminal trial;
 - (4) The agency shall impose no standard higher than a preponderance of evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated, §115.72 of the national standards.
- (u) **SEXUAL ABUSE REVIEW TEAM:** Includes the PREA Compliance Manager and upper-level management officials, with input from line supervisors, investigators, and medical and mental health practitioners.
- (v) **SEXUAL ABUSE:** Encompasses (1) sexual abuse of an offender, detainee, or resident by another offender, detainee, or resident; and (2) sexual abuse of an offender, detainee, or resident by a staff member, contractor, or volunteer.
- (1) Sexual abuse of an offender, detainee, or resident by another offender, detainee, or resident includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:
 - (A) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
 - (B) Contact between the mouth and the penis, vulva, or anus;
 - (C) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
 - (D) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

- (2) Sexual abuse of an offender, detainee, or resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the offender, detainee, or resident:
- (A) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
 - (B) Contact between the mouth and the penis, vulva, or anus;
 - (C) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire; to include kissing.
 - (D) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
 - (E) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire; Note: A properly conducted routine (pat and frisk) search involving incidental contact with an offender's genitals shall not be considered a form of sexual abuse.
 - (F) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (a)-(e) of this section;
 - (G) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an offender, detainee, or resident, and
 - (H) Voyeurism by a staff member, contractor, or volunteer: an invasion of privacy of an offender, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an offender who is using a toilet in his or her cell to perform bodily functions; requiring an offender to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an offender's naked body or of an offender performing bodily functions.
- (w) **SEXUAL HARASSMENT:**
- (1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one offender, detainee, or resident directed toward another; and

- (2) Repeated verbal comments or gestures of a sexual nature to an offender, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.
- (x) **SUBSTANTIATED ALLEGATION:** Means an allegation that was investigated and determined to have occurred.
- (y) **TRANSGENDER:** A person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth. For example, a transgender woman (an individual who is anatomically male but self-identifies as female) may have breasts or more feminine features due to hormone therapy or plastic surgery.
- (z) **UNFOUNDED ALLEGATION:** Means an allegation that was investigated and determined not to have occurred.
- (aa) **UNSUBSTANTIATED ALLEGATION:** Means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.
- (bb) **VICTIM:** The offender who has been determined to have a history of being sexually abused and/or sexually harassed by another.
- (cc) **VOLUNTEER:** any person who provides goods or services to Prisons of his/her own free will and does so for no financial gain.
- (dd) **VULNERABLE ADULT:** any person 18 years of age or over or any lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated due to mental retardation, cerebral palsy, epilepsy or autism; organic brain damage caused by advanced age or other physical degeneration in connection therewith; or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances.
- (ee) **YOUTHFUL OFFENDER:** any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail.

.3404 POLICY

The North Carolina Department of Public Safety is committed to a standard of zero-tolerance of sexual abuse and sexual harassment toward offenders, either by staff, contractors, volunteers, or by offenders (5-ACI-3D-14). Therefore, it is the policy of Prisons to provide a safe, humane and appropriately secure environment, free from the threat of sexual abuse and sexual harassment for all offenders, by maintaining a program of prevention, detection, response, investigation, prosecution and tracking (5-ACI-3D-08).

.3405 PROCEDURES

(a) EMPLOYEE TRAINING:

- (1) New Employees: shall receive the Sexual Abuse and Harassment 101 training that addresses the following:
 - (A) The agencies standard of zero-tolerance of sexual abuse and sexual harassment toward offenders, either by staff, contractors, volunteers, or by offenders.
 - (B) Employees' responsibilities when responding to sexual abuse and harassment;
 - (C) Offenders' right to be free from sexual abuse and sexual harassment;
 - (D) Offenders' and employees' right to be free from retaliation for reporting sexual abuse and harassment;
 - (E) The dynamics of sexual abuse and sexual harassment in confinement;
 - (F) Common reactions of sexual abuse and sexual harassment victims;
 - (G) Detect and respond to signs of threatened and actual sexual abuse;
 - (H) How to avoid inappropriate relationships with offenders;
 - (I) How to communicate effectively and professionally with offenders, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming offenders;
 - (J) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities;
 - (K) Relevant laws regarding age of consent; and
 - (L) Unique attributes of working with males and/or females in confinement/supervision.
- (2) ***Annual Refresher Training and Information: All staff shall receive SAH 101 refresher training every two years and receive SAH 201 refresher information during the alternate years on offender sexual abuse and sexual harassment issues emphasizing the zero-tolerance and duty to report, as well as covering current sexual abuse and sexual harassment policies and procedures (5-ACI-ID-13).***

- (3) All materials provided to staff on the subject of sexual abuse and sexual harassment, and any lesson plans used during any presentations on this topic shall be approved by Department of Public Safety's PREA Office.
 - (4) Additional training may be offered at individual facilities or through the Office of Staff Development and Training.
 - (5) Training for staff shall be offered by approved Staff Trainers certified as General Instructors unless an exception is given by the Commissioner of Prisons.
 - (6) Verification of employee training shall be documented on form OSDT-1 and in appropriate agency training tracking system.
 - (7) Certification of employee understanding of material shall be documented by signing the Form OPA-T10 PREA Acknowledgement; or electronic signature when completing the ELearning course authorized by the agency.
- (b) TRAINING FOR VOLUNTEERS, CUSTODIAL AGENTS, CONTRACTORS, AND OTHER PERSONS PROVIDING SERVICES TO OFFENDERS:
- (1) Initial Training:
 - (A) Volunteers (with the exception of One-Time volunteers who have no direct contact with offenders), custodial agents, contractors and other persons providing services to offenders:
 - (i) Shall receive the Sexual Abuse and Harassment 101 training as part of initial orientation which addresses:
 - The agencies standard of zero-tolerance of sexual abuse and sexual harassment toward offenders, either by staff, contractors, volunteers, or by offenders; and
 - Applicable methods to report incidents of sexual abuse and sexual harassment.
 - (ii) The application process will not be complete until the volunteer verifies understanding of training by signing the PREA Acknowledgement Form and returning the form to the facility.
 - (B) One-Time volunteers
 - (i) Shall review information on Form OPA-T10 PREA Acknowledgement which addresses:

- The agencies standard of zero-tolerance of sexual abuse and sexual harassment toward offenders, either by staff, contractors, volunteers, or by offenders; and
 - Applicable methods to report incidents of sexual abuse and harassment.
- (ii) The application process will not be complete until the volunteer verifies understanding of information by signing the Form OPA-T10 PREA Acknowledgement and returning the form to the facility.
- (C) Training shall be offered by approved Staff Trainers certified as General Instructors unless an exception is given by the Director.
- (2) Annual Training:
- (A) VOLUNTEERS: At a minimum, all volunteers must review and sign a Form OPA-T10 PREA Acknowledgement annually as part of the application renewal process. The application process will not be complete until the volunteer verifies understanding of training by signing the PREA Acknowledgement Form and returning the form to the facility.
- (B) WORK RELEASE/STUDY RELEASE: The Work Release/Study Release Coordinator shall provide the Form OPA-T10 PREA Acknowledgement to the company or school contact person. The contact person must review and verify understanding of training by signing the Form OPA-T10 PREA Acknowledgement and returning it to the Coordinator.
- (C) CUSTODIAL AGENTS: Custodial Agents shall receive annual refresher training on offender sexual abuse and sexual harassment issues emphasizing the zero-tolerance and duty to report, as well as covering current sexual abuse and sexual harassment policies and procedures.
- (D) CONTRACT PERSONS/AGENCIES (who have direct contact with offenders):
- (i) Contracts will be modified to include language that reflects Prisons' commitment to a zero-tolerance of sexual abuse and sexual harassment, the contract person's duty to report any allegations of offender sexual abuse or sexual harassment either by another offender or by staff, and obligation to adopt and comply with the PREA standards.

- (ii) New contracts and contract renewals shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards.
- (c) **SPECIALIZED TRAINING:**
 - (1) **Investigators: Sexual Abuse and Harassment**
 - (A) Shall complete appropriate employee training defined in section .3406(a)
 - (B) Shall receive training on conducting sexual abuse and harassment investigations in a confinement setting. Such training shall include:
 - (i) Techniques for interviewing sexual abuse victims;
 - (ii) Proper use of Miranda and Garrity Warnings;
 - (iii) Sexual abuse evidence collection in a confinement setting; and
 - (iv) Criteria and evidence required to substantiate a case for administrative action or prosecution referral.
 - (C) Completion of training shall be documented on form OSDT-1 and in appropriate agency training tracking system.
 - (2) **Medical and Mental Health care practitioners:**
 - (A) Shall complete mandated training defined in section .3406(a) for Employees; or mandated training defined in section .3406(b) for Volunteers, Custodial Agents, Contractors, and Other Persons Providing Services to Offenders for contractors.
 - (B) All full- and part-time medical and mental health care practitioners who work regularly in its facilities shall be trained in:
 - (i) Detecting and assessing signs of sexual abuse and sexual harassment;
 - (ii) Preserving physical evidence of sexual abuse;
 - (iii) Responding effectively and professionally to victims of sexual abuse and sexual harassment; and
 - (iv) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

- (C) Verification of employee training shall be documented on form OSDT-1 and in appropriate agency training tracking system.
- (3) Understanding the Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Population

New and current employees shall receive training specific to the care and custody of LGBTI offenders as follows:

- (A) Sexual Abuse and Harassment 101/201 in accordance with Chapter F .3400 policy (Annually).
 - (B) PREA Understanding the LGBTI Offender
 - (C) Multicultural Awareness training
 - (D) Professional Ethics in the Workplace
 - (E) Safe Search Practices (certified staff)
 - (F) Annual Refresher: All staff shall receive refresher training in accordance with policy.
- (d) **OFFENDER EDUCATION:**
- (1) **RECEPTION:** All offenders shall receive, during reception, information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment, how to report incidents or suspicions of sexual abuse and sexual harassment, prevention/intervention, self-protection, treatment, and counseling (5-ACI-3D-09).
 - (2) **INTAKE:** All offenders shall receive comprehensive education about sexual abuse and sexual harassment. Such education shall be completed within 30 days of intake and upon transfer to a different facility.
 - (A) Comprehensive education shall include:
 - (i) Offenders' rights to be free from sexual abuse and sexual harassment;
 - (ii) Offenders' rights to be free from retaliation for reporting incidents of sexual abuse and sexual harassment; and
 - (iii) Policies and procedures for responding to incidents of sexual abuse and sexual harassment.
 - (iv) Methods available to offenders for reporting incidents of sexual abuse or sexual harassment internally and to an external agency or entity.
 - (B) Education for Offenders shall be offered by staff that have completed the PREA Train the Trainer Offender Education course.

- (3) TRANSFER: All offenders shall receive education about sexual abuse and sexual harassment upon transfer to a different facility.
 - (A) Education shall be completed utilizing the Offender FACTSHEET OPA-T101 Facilitator Talking Points.
 - (B) Each offender shall receive a copy of the PREA Brochure.
 - (C) Each offender will sign the Orientation Form and placed in his/her field jacket.
 - (D) Education for offenders shall be offered by a designated employee at the facility.
 - (4) Appropriate provisions shall be made as necessary for offenders not fluent in English, persons with disabilities and those with low literacy levels.
 - (5) Additional sexual abuse and sexual harassment information shall be provided through offender brochures, handbooks and posters.
 - (6) All materials provided to offenders on the subject of sexual abuse and sexual harassment, and any lesson plans used during any presentations on this topic shall be approved by Department of Public Safety's PREA Office.
- (e) GENERAL PROVISIONS:
- (1) Screening for risk of victimization and abusiveness:
 - (A) *All offenders and safekeepers shall receive a screening inventory, administered via the web-based OPUS intake system, within 24 hours after admission to Prisons (5-ACI-3D-10). Diagnostic Services staff shall conduct screening to determine an offender's risk of being sexually abused by other offenders or their risk of being sexually abusive towards other offenders (5-ACI-3D-12, 5-ACI-3D-13).* The screening shall use an objective screening instrument that obtains the following minimum biographical data about the offender:
 - (i) Whether the offender has a mental, physical, or developmental disability;
 - (ii) The age of the offender;
 - (iii) The physical build of the offender;
 - (iv) Whether the offender has previously been incarcerated;

- (v) Whether the offender's criminal history is exclusively nonviolent;
 - (vi) Whether the offender has prior convictions for sex offenses against an adult or child;
 - (vii) Whether the offender is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
 - (viii) Whether the offender has previously experienced sexual victimization;
 - (ix) The offender's own perception of vulnerability;
 - (x) Whether the offender is detained solely for civil immigration purposes; and
 - (xi) The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence or sexual abuse, as known to the agency, in assessing offenders for risk of being sexually abusive.
- (B) ***Based upon the results of the MHSI, a referral may be generated to mental health for any concerns (5-ACI-3D-12, 5-ACI-3D-13).*** Qualified mental health professional(s) shall be contacted immediately at any time during the screening process, if the offender's mental health indicates that he or she needs to be seen.
- (C) Every treatment encounter between an offender and a mental health staff member will be recorded in OPUS.
- (D) The responses to the MHSI, are confidential; therefore, the facility shall implement appropriate controls on the dissemination of responses to questions asked in order to ensure that sensitive information is not exploited to the offender's detriment by staff or other offenders.
- (E) Offenders may not be disciplined for refusing to answer or for not disclosing complete information during screening or assessment.
- (F) Within a set time period, not to exceed 30 days from the offender's arrival at the facility, the facility will reassess the offender's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.
- (G) ***Upon transfer to another facility, within 24 hours, the PCM and/or OIC shall review an offender's risk of victimization and abusiveness by***

reviewing the dashboard and acknowledging housing placement is appropriate (5-ACI-3D-10).

- (H) An offender's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse and/or sexual harassment, or receipt of additional information that bears on the offender's risk for sexual victimization or abusiveness.
 - (I) The case manager/screener will reassess the offender's risk by completing the screening upon transfer. The screening questions include the offender's own perception of risk, and the case manager's/screener's perception of risk relating to gender identity/sexual orientation since the last completed screening. This screening shall be conducted using the Offender Population Unified System (OPUS). Based on the responses, a referral may be generated to mental health for any concerns.
 - (J) When a safekeeper transfers from one facility to another, within 3 days of arrival, a case analyst shall conduct a screening to determine the safekeepers' own perceptions of vulnerability. Based on the response from the safekeeper, a referral may be generated to mental health for any concerns. The screening will be conducted using the web-based case management roster.
 - (K) In the event of a medical transfer to Central Prison or the North Carolina Correctional Institution for Women, the offender shall be screened within 3 days of arrival to determine the offenders' own perception of vulnerability. This screening will be conducted using the web-based case management roster. Based on the response from the offender a referral may be generated to mental health for any concerns.
 - (L) If the offender indicates they were erroneously identified as lesbian, gay, bisexual, gender non-conforming, transgender or intersex during the completion of the MHSI, then the Case manager should update the screening information in accordance with current procedures.
 - (M) The transgender or intersex offender, upon self-disclosure, may be housed temporarily in a single cell or bed with officer visibility until the Facility Transgender Accommodation Review Committee (FTARC) convenes and determines permanent housing placement based on the offender's concerns for safety, request for accommodations, screening information, and high-risk status
 - (N) Refer to policy F .4300 Evaluation and Management of Transgender Offenders for additional compliance requirements not stated in this policy.
- (2) Medical and Mental Health Screening; History of Sexual Abuse:

- (A) *If the screening for risk of victimization and abusiveness indicates that a prison offender has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the offender is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening (5-ACI-3D-13).*
 - (B) *If the screening for risk of victimization and abusiveness indicates that a prison offender has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the offender is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening (5-ACI-3D-12).*
 - (C) Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law.
 - (D) Medical and mental health practitioners shall obtain informed consent from offenders before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the offender is under the age of 18.
- (3) Use of Screening information:
- (A) The information from the screening for risk of victimization and abusiveness shall be used to inform housing, bed, work, education, and program assignments with the goal of keeping separate those offenders at high risk of being sexually victimized from those at high risk of being sexually abusive.
 - (B) The following procedures will be followed to manage housing and bed assignments:
 - (i) *Any offender identified as a high-risk abuser or high risk of being sexually victimized shall be restricted from double-cell housing (5-ACI-2C-02).*
 - (ii) A report of newly admitted high risk abusers will be reviewed weekly by Prisons Administration, Manager of Classification Services, or designee to activate a Central Monitoring file to prevent double cell housing.

- (iii) Designated personnel at each facility, as authorized by the Commissioner of Prisons, will review web-based security search tool to identify a list of high-risk abusers.
 - (iv) The facility shall make individualized determination for bed assignments, based on facility housing designs, to ensure the safety of each offender.
- (C) The following procedures will be followed to manage work assignments:
- (i) Facilities will consider such factors as the amount of staff supervision in the area, the presence or absence of surveillance equipment, and whether the job is in an isolated area prior to making assignments for high risk abusers.
 - (ii) Designated staff at each facility shall review the web-based security search tool weekly, or more often as deemed appropriate, to monitor any high-risk abusers assigned to their facility.
 - (iii) Facilities shall take appropriate action to ensure all job assignments are appropriate for high-risk abusers.
- (D) The following procedures will be followed to manage program and education assignments:
- (i) Designated staff at each facility shall review the web-based security search tool weekly, or more often as deemed appropriate, to monitor any high-risk abusers assigned to their facility.
 - (ii) Facilities shall take appropriate action to ensure all program assignments are appropriate for high-risk abusers.
- (E) In deciding whether to assign a transgender or intersex offender to a facility for male or female offenders, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the offender's health and safety, and whether the placement would present management or security problems.
- (F) Placement and programming assignments for each transgender or intersex offender shall be reassessed by the case manager at least twice each year to review any threats to safety experienced by the offender.
- (G) A transgender or intersex offender's own views with respect to his or her own safety shall be given serious consideration.

- (H) Transgender and intersex offenders shall be given the opportunity to shower separately from other offenders.
 - (I) ***The agency shall not place lesbian, gay, bisexual, transgender, or intersex offenders in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such offenders (5-ACI-4B-34).***
 - (J) The agency shall implement appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the offender's detriment by staff or other offenders.
 - (K) Each facility shall ensure that staff interact professionally and respectfully toward transgender and intersex offenders.
 - (L) Intentional misuse of gender pronouns and titles is prohibited. Transgender and intersex offenders shall be referred to by their preferred pronoun or a gender-neutral form of address. Unprofessional and derogatory references toward offenders are not acceptable under any circumstances.
- (4) Protective Custody:
- (A) ***Offenders at high risk for sexual victimization shall not be placed in restrictive housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers (5-ACI-4B-34).*** If a facility cannot conduct such an assessment immediately, the facility may hold the offender in restrictive housing for less than 24 hours while completing the assessment.
 - (B) Offenders placed in restrictive housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document:
 - (i) The opportunities that have been limited;
 - (ii) The duration of the limitation; and
 - (iii) The reasons for such limitations.

- (C) The facility shall assign such offenders to restrictive housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.
- (i) Alternative placements can include, but are not limited to, the following temporary options:
- Relocation to a different housing unit;
 - Placement in a cell or bed closer to the Corrections Officer's desk within the unit;
 - Any other housing area that the facility head or designee deems appropriate to separate from likely abusers.
- (D) If a restrictive housing assignment is made pursuant to paragraph (a) of this section, the facility shall clearly document:
- (i) The basis for the facility's concern for the offender's safety; and
- (ii) The reason why no alternative means of separation can be arranged.
- (iii) The other alternative means for separation that were explored;
- (E) Every 30 days, the facility shall afford each such offender a review to determine whether there is a continuing need for separation from the general population.
- (5) ***Youthful Offenders (5-ACI-5B-17):***
- (A) A youthful offender shall not be placed in a housing unit in which the youthful offender will have sight, sound, or physical contact with any adult offender through use of a shared dayroom or other common space, shower area, or sleeping quarters.
- (B) In areas outside of housing units, the facility shall either:
- (i) maintain sight and sound separation between youthful offenders and adult offenders, or
- (ii) provide direct staff supervision when youthful offenders and adult offenders have sight, sound, or physical contact.
- (C) The agency shall make best efforts to avoid placing youthful offenders in isolation to comply with this provision. Absent exigent circumstances, agencies shall not deny youthful offenders daily large-muscle exercise and any legally required special education services to comply with this

provision. Youthful offenders shall also have access to other programs and work opportunities to the extent possible.

(6) Opposite Gender Announcements

Each facility shall implement a policy and practice for Wardens and/or the Facility Associate Wardens to conduct and document unannounced rounds to identify and deter sexual abuse and sexual harassment. Such rounds shall occur on all shifts weekly. The policy shall prohibit staff from alerting other staff members that these rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility. When making unannounced rounds, an intermediate, or higher, level supervisor must make a cross-gender announcement (e.g. male or female on the block) upon entering the housing unit.

(f) REPORTING AND INVESTIGATION OF SEXUAL ABUSE AND SEXUAL HARASSMENT:

(1) Reporting:

(A) Offender reporting:

- (i) Multiple internal ways shall be provided for offenders to privately report sexual abuse and sexual harassment, retaliation by other offenders or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.
- (ii) At least one way shall be provided for offenders to report abuse or sexual harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward offender reports of sexual abuse and sexual harassment to agency officials, allowing the offender to remain anonymous upon request. There shall also be no time limit on when an offender may report sexual misconduct.
- (iii) Offenders detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the US Department of Homeland Security.
- (iv) ***Ways of reporting incidents of sexual abuse and harassment (5-ACI-3D-15):***
 - To any Department of Public Safety employee;
 - Administrative remedy process;

- PREA/Grievance locked box where applicable; and
 - Toll free telephone number for reporting directly to an external agency or entity, incidents of sexual abuse and sexual harassment.
- (B) Third Party Reporting: can be made via email, phone or letter.
- (C) Staff and Agency Reporting Duties:
- (i) All staff are required to report immediately any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency.
 - (ii) Staff has a duty to report any allegations that offenders are having sexual relationships with other offenders or with staff.
 - (iii) Any retaliation against offenders or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
 - (iv) Staff may report allegations privately. Ways to report include but are not limited to:
 - The DPS PREA office by email at PREA@ncdps.gov, or by telephone at (919) 825-2754.
 - Anonymously by contacting the Fraud, Waste, Abuse & Misconduct Hotline at (844) 208-4018.
 - Local law enforcement agency.
 - (v) All reports of sexual abuse and sexual harassment, however made, are to be reported to the Warden and the DPS PREA Office.
 - (vi) Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners shall be required to report sexual abuse to inform offenders of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services.
 - (vii) If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable person's statute, reporting such allegation to the local NC Department of Social Services is required.

- (viii) The facility shall report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators.
 - (ix) Local law enforcement shall be notified if there is evidence or suspicion that criminal conduct may have occurred.
 - (x) Failure of staff to report alleged incidents of sexual abuse and sexual harassment will subject the non-reporting staff member to disciplinary action.
- (D) Reporting to other agencies or facilities
- (i) Upon receiving an allegation that an offender was sexually abused while confined at another facility, the Warden of the facility that received the allegation shall notify the Warden of the facility or appropriate office of the agency where the alleged abuse occurred.
 - (ii) Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.
 - (iii) The Warden shall document such notification by completing a memorandum to file, and uploading into the correspondence tracking system (CTS).
 - (iv) Upon receiving notification from another facility or agency that an allegation of sexual abuse or sexual harassment has been reported, the Warden shall ensure that the allegation is investigated in accordance with these standards.
- (2) Protection Duties: When the staff learns that an offender is subject to a substantial risk of imminent sexual abuse immediate action shall be taken to protect the offender.
- (3) First Responder
- (A) Upon learning of an allegation that an offender was sexually abused, the first security staff member to respond to the report shall be required to:
 - (i) Take necessary steps to separate the alleged victim and abuser. If the Warden, in consultation with the PREA Support Person, determines that the safety of the offender victim requires placement in restrictive housing for administrative purposes, then:

- Such restrictive housing shall be administered in accordance with the applicable policies and procedures for restrictive housing for administrative purposes.
- The Warden has the discretion regarding how separation occurs, who is moved, and where. Should the alleged victim be placed in restrictive housing, then an analysis of 1) information from the Preliminary Review to include the type of allegation, 2) prior complaints filed against the alleged abuser, 3) will the movement appear punitive toward an alleged victim shall be considered, and 4) documentation of the decision to move the alleged victim.
- The Region Director and the DPS PREA Office shall be notified of the use of restrictive housing and the reasons therefore.
- To the maximum extent possible, the offender victim while in restrictive housing for administrative purposes shall have the same privileges of access to the canteen, telephone, visitation and property as they were afforded prior to reporting.
- Within 3 business days of the offender victim's release from restrictive housing for administrative purposes, the Warden or designee will return the offender victim to the gain time job assignment the offender victim had prior to period of restrictive housing for administrative purposes, if available. If, for operational reasons, the offender victim's prior job assignment is unavailable, the Warden or designee will place the offender victim in another gain time job assignment that is at least equal to the prior gain time job assignment.
- The Warden or designee will notify the Region Director in writing, that the offender victim has either been returned to prior job assignment or placed in equivalent one.
- Within three business days of the receipt of the written notification from the Warden or designee, the Region Director, or their designee will request in writing to the Director of Rehabilitative Services that the offender victim's gain time be restored.
- When offender victim is released from restrictive housing, whenever possible shall be allowed to return to previously

assigned housing unit unless, in the discretion of the Warden, doing so exposes the offender to an increased risk to the offender victim's safety and security or the orderly operation of the facility.

- (ii) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;
 - (iii) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and
 - (iv) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.
- (B) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.
- (4) Medical Services:
- (A) If an alleged act of sexual abuse has occurred and there may be forensic medical evidence, the offender may need medical assistance, or other circumstances dictate, arrangements shall be promptly made to have the alleged offender-victim examined by medical services.
 - (B) Medical Services will follow medical protocol, which includes provisions for examination, documentation and transport to the local emergency department when appropriate, where the following will occur: collection of forensic evidence, testing for sexually transmitted diseases, counseling, and prophylactic treatment. Medical Services will ensure that the offender receives medical follow-up and is offered a referral for mental health services.
 - (i) In preparation for transporting the offender to the hospital's emergency room medical protocol shall be followed in order to preserve any possible evidence with an appropriate chain of evidence form attached.

- (ii) Forensic evidence collected by the emergency room hospital will only be released to law enforcement. Facility staff should not attempt to retrieve this evidence from the hospital.
 - (iii) When the alleged victim returns from the emergency room, he or she shall be placed in restrictive housing for administrative purposes for protective housing if necessary. If the facility does not have restrictive housing available, the offender shall be placed in another designated single cell or transferred, if necessary, to a facility with a single cell available. Placement in protective housing under this provision does not require that the offender be placed on watch status unless such a status has been otherwise initiated. The offender shall be listed as a protective control pending the investigation. Care should be taken by staff not to penalize the victim because of the allegations.
- (5) Victim Support shall be offered by a PREA Support Person (PSP). The PSP shall:
- (A) Be made available to provide victim advocate services.
 - (B) Offender victim of alleged sexual abuse by an employee, contractor, or volunteer, the PSP shall consult with the Warden on a weekly basis for three weeks following the report of sexual abuse to update the victim on the progress of the investigation, answer any questions of the offender victim and provide support.
 - (C) As requested by the victim, the PREA support person, of the same gender, shall accompany and support the victim through the forensic medical examination process.
 - (D) As requested by the victim, the PREA support person shall accompany and support the victim through the investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.
 - (E) Offender victim shall be provided access to outside victim advocates for emotional support services related to sexual abuse by giving the offenders mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations. The facility shall enable reasonable communication between offenders and these organizations and agencies, in as confidential a manner as possible.
 - (F) The facility shall inform the offenders, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

- (G) Not obstruct or interfere in the course of the investigation in any manner.
- (H) Not be designated as the facility's PREA Compliance Manager.
- (I) Monitor for Retaliation:
- (i) The PSP shall monitor retaliation against the victim and the offender who either report allegations, or cooperate with investigations, of sexual abuse or sexual harassment.
 - (ii) Upon notification of a Sexual Abuse or Sexual Harassment allegation the PSP will initiate monitoring the alleged victim and offender who reported the allegation or cooperated with officials during the investigation.
 - (iii) In the case of offenders, such monitoring shall also include periodic status checks.
 - (iv) Continue monitoring for a minimum of 90 days or beyond 90 days if the initial monitoring indicates a continuing need.
 - (v) Termination of monitoring prior to minimum of 90 days requires:
 - Allegation to be determined unfounded
 - Approval by Warden
 - (vi) Upon completion of the monitoring period, complete and document the results on Form OPA-I24 Retaliation Monitoring - Offender & Juvenile.
 - (vii) Forward Form OPA-I24 Retaliation Monitoring - Offender & Juvenile to the PREA Compliance Manager (PCM).
- (J) Inform victim of disposition of PREA Investigation:
- (i) Following an investigation into an offender's allegation that he or she suffered sexual abuse in a facility, the PSP shall inform the offender as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. Notification shall be documented on Form OPA-I30 Support Services.
 - (ii) If the Department of Public Safety did not conduct the investigation, the PSP shall request, through the chain of

command, the relevant information from the investigative agency in order to inform the offender.

- (iii) Following an offender's allegation that a staff member has committed sexual abuse against the offender, the PSP shall subsequently inform the offender (unless the allegation is unfounded) whenever:
- The staff member is no longer posted within the offender's unit;
 - The staff member is no longer employed at the facility;
 - The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or
 - The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.

Notification shall be documented on Form OPA-I30A PREA Support Person Services.

- (iv) Following an offender's allegation that they have been sexually abused by another offender, the agency shall subsequently inform the alleged victim whenever:
- The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
 - The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
- (v) All such notifications or attempted notifications shall be documented.
- (vi) Obligation to report shall terminate if the offender is released from NC Department of Public Safety custody.
- (6) PREA Compliance Manager (PCM) shall:
- (A) Monitor for Retaliation:
- (i) The PCM shall monitor for retaliation against staff that either report or cooperate with investigations, of sexual abuse or sexual harassment.

- (ii) Upon notification of a Sexual Abuse or Sexual Harassment allegation the PCM will initiate monitoring of staff that reported the allegation or cooperated with officials during the investigation.
 - (iii) Continue monitoring for a minimum of 90 days or beyond 90 days if the initial monitoring indicates a continuing need.
 - (iv) Termination of monitoring prior to minimum of 90 days requires:
 - Allegation to be determined unfounded
 - Approval by Warden
 - (v) Upon completion of the monitoring period, complete and document the results on Form OPA-I22 Retaliation Monitoring - Staff.
 - (vi) All completed retaliation report forms will be forwarded through chain of command to the Region Director.
 - (vii) A copy of the form will be provided to the DPS PREA Office indicating completion of the monitoring period.
- (B) Post Incident Review (PIR)
- (i) A PIR shall be completed for all substantiated and unsubstantiated allegations of sexual abuse, and documented on Form OPA-I10 Post Incident Review (PIR).
 - (ii) The PIR is completed with input from upper-level management officials, investigators, and medical or mental health practitioners.
 - (iii) The review team shall consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse; consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status or perceived status; or gang affiliation; or motivated or otherwise caused by other group dynamics in the facility; examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse; assess the adequacy of staffing levels in that area during the different shifts; and assess whether monitoring technology should be deployed or augmented to supplement supervision by staff and prepare a report of its findings pursuant to

standards, and any recommendations for improvement. Submit such reports to the Warden and PREA compliance manager.

- (iv) The PIR shall be completed by the facility within 30 days of the conclusion of the sexual abuse investigation.
 - (v) Upon completion, the PIR will be forwarded through chain of command to the Region Director.
 - (vi) Upon completion, a copy of the PIR will be attached to the OPUS incident report for data collection and analysis.
- (C) Not be designated as the facility's PREA Support Person.
- (7) Investigations:
- (A) General Provisions
 - (i) ***Investigations into allegations of sexual abuse and sexual harassment, shall be conducted promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports (5-ACI-3D-11).***
 - (ii) The facility shall develop a written institutional plan, consistent with the agency's plan, to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership.
 - (iii) Conflict of Interest: Investigators must not have and must not be perceived to have any conflict of interest in relation to the persons being investigated or other involved staff, the conduct or the policies and procedures that are the subject of investigation.
 - (iv) If an alleged act of sexual abuse or sexual harassment is reported or discovered, an immediate preliminary review shall be conducted to determine if the incident meets the standards of PREA.
 - (v) Alleged victim and abuser shall remain separated.
 - Alleged offender abuser - A determination shall be made, based upon the amount of time that has passed since the alleged incident and the possibility of evidence still existing, as to whether the alleged offender abuser, if known, should be placed in a restrictive housing cell to preserve forensic evidence. If an offender is placed in a

restrictive housing cell for purposes of preserving forensic evidence, the offender shall be strip searched in accordance with the policies set forth in section F.0100, et seq. of Prisons Policy and Procedure Manual and all possessions taken from him or her and a paper gown issued.

- If there is evidence that Sexual Abuse of an Offender by Another Offender may have occurred, the Warden shall be immediately notified.
- The alleged abuser shall be held in restrictive housing until the investigation is complete, unless other circumstances require the transfer of the alleged abuser. During the course of the investigation the alleged victim and the alleged abuser shall remain separated.

(vi) Alleged staff abuser

- Shall remain separated from the victim until the conclusion of the investigation. This may require reassignment or placement on investigative status pending the investigation.
- Allegations involving staff shall be reported to the Office of Special Investigations in accordance with the DPS-SI-100 OSI Authority to Conduct Investigations policy.

(vii) Sexual abuse and sexual harassment investigations shall be conducted by staff that has received special training in sexual abuse investigations.

(viii) ***Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data including video and/or audio recordings; shall interview alleged victims, suspected perpetrators, and witnesses (5-ACI-3D-17).***

- In order to preserve the integrity of the investigation, one person, or a specific team, shall be designated to investigate an incident, and only that person (or team) shall be involved in the collection of evidence and interviewing of potential witnesses. A thorough investigation is necessary to ensure the potential for prosecution if it is determined that a crime has been committed.

- The only persons that should be entering a secured crime scene are law enforcement personnel, the investigator, or medical staff, as needed.
 - A log shall be maintained of anyone entering the crime scene and at what time they entered. Anyone entering the crime scene should be videotaped as additional documentation.
 - The area shall remain secured as a crime scene until law enforcement releases it.
 - In the event photography of any portion of an alleged victim's body is deemed necessary by the Warden, to document injuries attributed to a sexual aggressor by the alleged victim, those photographs shall be taken by custody staff of the same gender with a NC DPS issued camera, and labeled as evidence.
- (ix) A determination shall be made, based upon the amount of time that has passed since the alleged incident and other factors, whether there is a possibility of evidence still existing at the crime scene. If it is determined that evidence may still exist, when possible, the crime scene shall be secured and any potential evidence shall remain in place for law enforcement examination and investigation. If the crime scene cannot be secured, the crime scene shall be photographed and/or videotaped, and the evidence, if any, collected, and placed in an evidence bag with an evidence form attached.
- (x) Review prior complaints and reports of sexual abuse involving the suspected perpetrator, included in the incident package and considered when determining credibility of the allegations.
- (xi) When the quality of evidence appears to support criminal prosecution, the Department of Public Safety sexual abuse and harassment investigators shall only be permitted to continue interviews after consulting with local law enforcement agency as to whether interviews may be an obstacle for subsequent criminal prosecution.
- (xii) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as offender or staff. No agency shall require an offender who alleges sexual abuse to submit to a polygraph

examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

- (xiii) Shall include an effort to determine whether staff actions or failures to act contributed to the abuse.
- (xiv) Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings. Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.
- (xv) ***All written reports referenced in paragraph (g) of this section shall be retained for as long as the alleged abuser is incarcerated or employed by the agency, plus five years (5-ACI-3D-16).***
- (xvi) The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation.
- (xvii) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.

(B) Investigation Documentation

- (i) Reported allegations, including persons involved and preliminary steps taken, shall be documented in OPUS on the PR (PREA) Incident Report within 72 hours of receiving the report. All PREA investigations shall be consulted (referred) to the Region level for final decision.
- (ii) Sexual abuse and sexual harassment investigator shall submit the investigation report to Warden.
- (iii) The PREA investigation shall be completed and decided upon (approved) by the Region Director within 30 days of the initial PREA report. An extension of an additional 30 day maximum may be given by the Region Director in instances where the investigation requires additional time for the collection of evidence or determination of validity. Any PREA investigation that extends beyond the 60 maximum days must have prior approval by the NCDPS PREA Director.
- (iv) A copy of the complete investigation packet, to include audio and/or video will be maintained for audit purposes.

- (C) Substantiated Allegations
 - (i) Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.
 - (ii) All substantiated reports of staff on offender sexual abuse or sexual harassment shall be reported in writing to the Region Director who will in turn forward the report to the Commissioner of Prisons. The written report shall include evidence to support the substantiation. The Commissioner of Prisons will forward all substantiated incidents of sexual abuse of an offender by staff to the Secretary of the Department of Public Safety, or designee, for referral to the State Bureau of Investigation (SBI) or other law enforcement agency for further investigation.
 - (iii) In cases where forensic evidence may be available, or injury has occurred and there is not sufficient time to forward the report to the Commissioner of Prisons for referral to the SBI, local law enforcement may be contacted to conduct the initial criminal investigation. Local law enforcement may be asked to bring the SBI into the investigation as soon as practical. The incident information shall be forwarded to the Commissioner of Prisons as soon as possible for delivery to the Secretary of the Department of Public Safety, or designee, for referral to the SBI.

- (g) RETALIATION: Retaliation against staff or offenders making an allegation of offender sexual abuse or sexual harassment is prohibited.
 - (1) Offender monitoring – see section .3406 (f)5 victim support.
 - (2) Staff monitoring – see section .3406 (f)6 PREA compliance manager.

- (h) DISCIPLINARY SANCTIONS:
 - (1) General
 - (A) All disciplinary actions must be approved through the Warden
 - (2) **Employees (5-ACI-3D-14):**
 - (A) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.

- (B) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.
 - (C) Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.
 - (D) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.
- (3) ***Volunteers/Contracting agents (5-ACI-3D-14):***
- (A) Any contractor or volunteer who engages in sexual abuse shall be immediately prohibited from contact with offenders and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.
 - (B) Appropriate remedial measures shall be considered whether to prohibit further contact with offenders in the case of any other violation of sexual abuse or sexual harassment policies.
 - (C) If an allegation of sexual abuse is which a volunteer or contracting agent is the alleged abuser is substantiated the volunteer or contracting agent shall be terminated from the relationship with NCDPS.
- (4) **Offenders:**
- (A) Shall be subject to disciplinary sanctions pursuant to formal disciplinary process following an administrative finding that the offender engaged in offender-on-offender sexual abuse or following a criminal finding of guilt for offender-on-offender sexual abuse.
 - (B) Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the offender's disciplinary history, and the sanctions imposed for comparable offenses by other offenders with similar histories.
 - (C) The disciplinary process shall consider whether an offender's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.

- (D) A mental health evaluation shall be conducted after a substantiated incident and the offender shall be offered treatment when deemed appropriate by mental health practitioners. If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to require the offending offender to participate in such interventions as a condition of access to programming or other benefits.
 - (E) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.
 - (F) The agency may not discipline an offender victim for sexual contact with staff unless a finding that the staff member did not consent to such contact.
 - (G) False Reporting: Offenders will be held accountable for knowingly making false reports of unfounded incidents of sexual abuse against staff or another offender. If it is clearly established that a false accusation has been made, the offender may be subject to disciplinary action.
- (i) PROSECUTIONS: Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution. The facility investigator shall work with law enforcement and the district attorney's office to ensure appropriate criminal prosecution of cases of sexual abuse.
 - (j) RECORD RETENTION AND DATA COLLECTION:
 - (1) *All written investigation reports will be retained as long as the alleged abuser is incarcerated or employed by the agency, plus five years; or sexual abuse data collected for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise, whichever is greater (5-ACI-3D-16).*
 - (2) Accurate, uniform data for every allegation of sexual abuse shall be documented in OPUS by all facilities.
 - (3) Ensure that data is securely retained.
 - (k) CONFIDENTIALITY: The Facility Investigator and all others involved in the PREA process, to the extent possible, will ensure the confidentiality of PREA complaints as well as all data collected through the investigation of those complaints except as required in the following circumstances: (1) to cooperate with law enforcement in any investigation and prosecution of the incidents alleged in such complaints; (2) to take and enforce disciplinary action against any staff member as a result of the incidents alleged in

the complaints; (3) to defend against claims brought by the offender for violation of the offender's rights for having been subjected to sexual abuse; and (4) to otherwise comply with the law.



Commissioner of Prisons

June 09, 2022

Date

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