



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

Policy No. DOC 1.3.14	Subject: <b>PRISON RAPE ELIMINATION ACT OF 2003 (PREA)</b>
Chapter 1: ADMINISTRATION AND MANAGEMENT	Page 1 of 5 and Attachments
Section 3: Human Resource Bureau	Effective Date: Sept. 12, 2007
Signature: /s/ Mike Ferriter, Director	Revised: 05/18/12

## **I. POLICY**

The Department of Corrections has zero tolerance relating to nonconsensual acts, offender on offender sexual abuse, sexual misconduct, and staff sexual harassment in accordance with the standards set forth in the [Prison Rape Elimination Act of 2003](#) (PREA).

## **II. APPLICABILITY**

All divisions, facilities, and programs Department-owned and contracted, as specified in contract.

## **III. DEFINITIONS**

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.

Department Employee – Means a person employed by the Department of Corrections. This term does not include service providers.

Incarcerated Offender – Any individual detained in a Department-owned, operated, or contracted facility who is sentenced or committed to Department of Corrections supervision.

Nonconsensual Sexual Act – A sexual act upon an incarcerated offender perpetrated by another offender if the victimized offender does not consent or is mentally incapable of consent or when the perpetrator is an employee, contractor, or volunteer, unless the act is part of a lawful search.

Nonconsensual Sexual Contact - Touching of an incarcerated offender directly or through clothing of the genitalia, anus, groin, breast, inner thigh, or buttocks for sexual gratification perpetrated by another offender if the victimized offender does not consent or is mentally incapable of consent or perpetrated by an employee, contractor, or volunteer, unless the act is part of a lawful search.

Service Providers - This term includes contracted persons, volunteers, interns, temporary employees, or other vendors providing service whose assignment is primarily on Department premises, e.g. facility or program office.

Sexual Act – Contact between the penis and the vagina or the penis and the anus involving penetration, however slight; contact between the mouth and the penis, vagina, or anus; or penetration of the vagina or anus of another person by hand, finger, or other object.

Staff Sexual Harassment - Repeated statements or comments of a sexual nature to an offender by an employee, volunteer, contractor, official visitor, or other agency representative; includes

Subject: **PRISON RAPE ELIMINATION ACT OF 2003 (PREA)**

demeaning references to gender or derogatory comments about body or clothing; and repeated profane or obscene language or gestures.

Staff Sexual Misconduct - Nonconsensual sexual contact or acts directed toward an offender by an employee, volunteer, contractor, official visitor, or other agency representative, including completed, attempted, threatened, or requested sexual acts and occurrences of indecent exposure, invasion of privacy, or staff voyeurism for sexual gratification.

#### **IV. DEPARTMENT DIRECTIVES**

##### **A. General Requirements**

1. Facility administrators, or designees, will immediately respond to allegations of nonconsensual sexual acts and contact and staff sexual misconduct and harassment, fully investigate reported incidents in accordance with [DOC Policy 3.1.19, Investigations](#), pursue disciplinary action, and refer for investigation and prosecution those who violate the requirements set forth in this policy.
2. During facility orientation staff will communicate to offenders, verbally and in writing, information about the Department's zero tolerance of nonconsensual acts and contact and staff sexual misconduct and harassment and provide information including this policy, [1.3.12, Staff Association and Conduct with Offenders](#), and [3.3.3, Offender Grievance Program](#); offenders are required to complete the [Offender PREA Acknowledgement](#) form and submit to staff for filing.
3. The Department director, or designee, will appoint a Department PREA coordinator responsible for the following:
  - a. coordinate and develop procedures to identify, monitor, and track staff sexual misconduct and harassment and nonconsensual sexual acts and contact;
  - b. conduct audits to ensure compliance with Department policy, applicable state or federal laws, and PREA standards; and
  - c. compile records and report statistical data to the Federal Bureau of Justice on an annual basis as required by PREA standards.
4. Each facility administrator, or designee, will assign a PREA liaison responsible for the following:
  - a. coordinate facility PREA-related activities with the PREA coordinator;
  - b. ensure facility compliance with training requirements; and
  - c. track and report related statistics to the PREA coordinator.

##### **B. Offender Reporting**

1. Offenders who are victims of or have knowledge of nonconsensual sexual acts or contact or staff sexual misconduct or harassment should immediately report the incident by one of the following methods:
  - a. report the incident to a staff member;
  - b. utilize the "locked box" formal grievance procedure in accordance with [DOC Policy 3.3.3, Offender Grievance Program](#); or
  - c. use a Department-approved free confidential telephone hotline.

Subject: **PRISON RAPE ELIMINATION ACT OF 2003 (PREA)**

2. Substantiated deliberately malicious or false reports by offenders or other parties will result in disciplinary action or criminal charges.
3. The Department will not tolerate retaliation against offenders, employees, or other parties for reporting sexual misconduct, individuals that retaliate may face disciplinary action.

#### **C. Prevention and Intervention**

1. Staff and offenders must be alert to situations in which nonconsensual sexual acts or contact, or staff sexual misconduct or harassment might occur and be capable of identifying the following indicators:
  - a. overly friendly behavior of staff and/or offenders;
  - b. the exchange of money, canteen, favors, etc.; and
  - c. security threat group activity as defined in [DOC Policy 3.1.24, Security Threat Group Identification and Management](#).
2. All facilities will identify, assess, and manage offenders with special needs, including those who are potentially vulnerable or 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](#).

#### **D. Victim Services Provided**

1. The facility administrator, or designee, will develop procedures for providing victim services to offenders who allege that they are victims of nonconsensual sexual acts or contact or staff sexual misconduct or harassment, services must include, at minimum:
  - a. medical examination, documentation, and treatment of injuries;
  - b. mental health crisis intervention and treatment; and
  - c. social, family, and peer support.
2. Department employees will adhere to the following standards for examination of victims of nonconsensual sexual acts or staff sexual misconduct:
  - a. if the victim refuses medical or mental health attention, staff will document the refusal on the [Medical Treatment Refusal](#) form;
  - b. if reported within 72 hours of the incident, employees will, with the victim's permission, immediately transport the victim to a medical facility equipped to evaluate and treat sexual assault/rape victims; and
  - c. if reported more than 72 hours after the incident, employees will, with the victim's permission, adhere to the following:
    - 1) refer victims to in house health care providers responsible for treatment and follow up care for sexually transmitted or other communicable diseases, completing a patient history, and conducting an examination to document the extent of physical injury and determine whether referral to another medical facility is required; and
    - 2) upon request from law enforcement, transport the victim to a community medical facility for evidence collection.
3. Mental health staff or established outside providers will provide services, e.g., crisis intervention and trauma-specific treatment, for offenders victimized by nonconsensual

**Subject: PRISON RAPE ELIMINATION ACT OF 2003 (PREA)**

sexual acts or contact or staff sexual misconduct or harassment and for offenders affected other than the victimized offender.

**E. Staff Reporting**

1. Department employees and service providers with reasonable cause to suspect a nonconsensual act or contact or staff sexual misconduct or harassment, must submit an incident report before the end of the shift; if a youth offender has been victimized, the administrator, or designee, must report to the Department of Public Health and Human Services in accordance with [41-3-201, MCA](#).
2. Staff who receive a report of nonconsensual act or contact or staff sexual misconduct or harassment will ensure that the initial evidence is verified and, following verification:
  - a. separate the victim from the alleged perpetrator to protect the victim and prevent violence; and
  - b. promptly intervene on the victim's behalf to ensure prompt medical and psychological assistance including an assessment for potential risk of suicide.
3. Department employees and service providers will report confirmed sexual assault by an employee or offender in accordance with [DOC Policy 1.1.6, Priority Incident Reporting and Acting Director System](#).
4. Any employee or service provider who fails to report an allegation, or coerces or threatens another person to submit inaccurate, incomplete, or untruthful information may face disciplinary action, up to and including dismissal.

**F. Investigative Protocols**

1. The shift commander, or designee, will initiate and complete the [Sexual Assault Response and Containment Checklist](#) and ensure designated staff follow appropriate security procedures outlined in [DOC Policy 3.1.28, Crime Scene and Physical Evidence Preservation](#).
2. The facility administrator, or designee, will establish procedures for the administrative and unit investigations of alleged nonconsensual sexual acts and contact and staff sexual misconduct and harassment; individuals assigned to investigate administratively or at the unit level will work in cooperation with the Investigations Bureau.

**G. Staff Training**

1. Prior to working with offenders, all Department staff with direct and/or incidental contact with offenders must sign the [Staff PREA Acknowledgement](#) form and receive documented PREA training during orientation and/or Correctional Detention Officer Basic (CDOB), and biannually thereafter. 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. the Department's zero tolerance stance;
  - d. recognition of sexual misconduct, predatory offenders, potential victims, and/or

Subject: **PRISON RAPE ELIMINATION ACT OF 2003 (PREA)**

- staff involvement;
- e. facility procedures on sharing confidential information;
- f. reporting procedures;
- g. an offender's right to be free from sexual misconduct;
- h. offender and employee rights to be free from retaliation for reporting sexual abuse;
- i. the dynamics of sexual abuse in confinement; and
- j. common reactions of sexual abuse victims.

## 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](#); [45-5-501, MCA](#); [45-5-502, MCA](#); [45-5-503, MCA](#)
- 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, Priority Incident Reporting and Acting Director System; 1.5.5, Case Records Management; 1.3.12, Staff Association and Conduct with Offenders; 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

[Offender PREA Acknowledgement](#)

[Medical Treatment Refusal](#)

[Sexual Assault Response and Containment Checklist](#)

[Staff PREA Acknowledgement](#)

[PDF](#)

[PDF](#)

[PDF](#)