
Policy Number: 202.056
Title: Sexual Harassment Prevention, Reporting, and Response
Effective date: ~~11/07/23~~ To Be Determined

PURPOSE: To ensure system-wide prevention, detection, reporting, response, and retention of records relating to incidents of sexual harassment of any incarcerated person by another incarcerated person or a staff person, intern, contractor, or volunteer within the Minnesota Department of Corrections (DOC).

APPLICABILITY: Department-wide

DEFINITIONS:

Incarcerated person – for purposes of this policy, any adult inmate or juvenile resident confined in a DOC correctional facility.

Sexual harassment – includes:

- A. Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one incarcerated person directed toward another; and
- B. Repeated verbal comments or gestures of a sexual nature to an incarcerated person by a staff person, contractor, intern, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

Substantiated allegation – an allegation that was investigated and determined to have occurred.

Unfounded allegation – an allegation that was investigated and determined not to have occurred or not to be related to the Prison Rape Elimination Act (PREA).

Unsubstantiated allegation – an allegation that was investigated, and the investigation produced insufficient evidence to make a final determination as to whether the event occurred.

PROCEDURES:

A. Zero Tolerance

The DOC maintains a zero-tolerance policy on sexual harassment against incarcerated persons to promote a safe and humane environment.

- 1. All staff, contractors, interns, and volunteers must immediately report any knowledge, suspicion, or information regarding an incident of sexual harassment which occurred in a facility or community services area. This includes medical and mental health practitioners, regardless of any established professional privilege, unless otherwise precluded by law. Staff, contractors, interns, and

volunteers must report the incident immediately to the watch commander or their supervisor, and complete an incident report before the end of their shift.

2. All incidents or allegations of sexual harassment against incarcerated persons are documented in the Prison Rape Elimination Act (PREA) Incident Management database, which is monitored by the PREA compliance manager.
3. The DOC vigorously investigates and documents all alleged incidents of sexual harassment through its office of special investigation (OSI), the facility discipline unit, PREA trained investigators, and outside law enforcement, as appropriate to the incident.
4. Incarcerated persons, staff, contractors, interns, volunteers, and any other individuals who have business with the DOC are subject to disciplinary action and/or criminal sanctions, including dismissal or termination of contracted services, if determined to have engaged in sexual harassment of an incarcerated person. A violation of this policy may result in termination from the DOC.
5. Staff must always maintain confidentiality and professionalism. The identity of an alleged victim of sexual harassment is private information. To protect the victim from possible retaliation, DOC staff must limit the release of information to those staff who must know in accordance with policy, state statute, federal law, professional licensure, and ethical standards.

B. Prevention

1. Training for staff/individuals with direct contact with incarcerated persons.
 - a) During orientation, all staff, volunteers, contractors, interns, or any other individuals who will have direct contact with incarcerated persons receive information regarding sexual harassment, the potential consequences for engaging in prohibited conduct, and their responsibilities in preventing, reporting, and responding to incidents.
 - b) The DOC employee development unit offers periodic training on sexual harassment, which includes the following:
 - (1) Staff must know and enforce DOC policies prohibiting sexual harassment against incarcerated persons.
 - (2) Staff must always act professionally, must treat any allegation of sexual harassment seriously, and must report it immediately.
 - (3) Failure to report information about sexual harassment may result in disciplinary action, up to and including termination.
 - (4) Sexual harassment can occur in any DOC area, especially those areas which are not always and directly supervised by staff. Staff must comply with all policies of surveillance, including sight and sound supervision of incarcerated persons, conducting frequent and random area checks, providing supervision, and maintaining communication with incarcerated persons. Staff must provide sight

and sound supervision of youthful incarcerated persons whenever they are interacting with adult incarcerated persons.

- (5) Staff must understand factors which may increase an incarcerated person's likelihood of being sexually victimized, including experiencing their first incarceration; being youthful or elderly; having a mental illness or developmental disability; being gender diverse, gay, lesbian, bi-sexual, transgender, intersex, or nonbinary; having a small physical stature; or having committed a sex offense or previously been victimized.
- (6) Staff must be aware of and report possible warning signs that an incarcerated person has been sexually victimized, including isolation, depression, lashing out at others, refusing to shower, suicidal or self-injurious behavior, seeking protective custody, or refusing to leave a segregation unit.
- (7) Staff must be aware of and report incarcerated persons who exhibit sexually aggressive behavior. Characteristics of a sexually aggressive incarcerated person may include pairing up with or associating with a person who meets the profile of a potential victim, a history of strong-arming or extorting, a prior history of predatory behavior, voyeuristic or exhibitionist behavior, or a demonstrated inability to control anger.
- (8) Staff must not engage in any form of retaliation against an incarcerated person who makes an allegation of sexual harassment. Staff must not retaliate in any way against persons who intervene in, report, or provide evidence about incidents of sexual harassment against incarcerated persons.

- c) All staff training must be documented and retained in the agency-approved electronic training management system.

2. Incarcerated person education

At each facility, staff must provide comprehensive education to incarcerated persons within 30 days of their intake, either in person or through video, regarding their rights to be free from sexual harassment and retaliation for reporting such incidents, and agency policies and procedures for responding to such incidents. Incarcerated persons must receive written and verbal information regarding:

- a) The DOC's zero-tolerance policy on sexual harassment;
- b) How to avoid sexual contact in prison;
- c) The risks and potential consequences of engaging in any type of sexual activity while incarcerated, which may include criminal sanctions or discipline;
- d) How to identify and report an incident of sexual harassment;
- e) What defines a false accusation and the consequences for making a false accusation; and
- f) How to obtain counseling services and advocacy.

C. Reporting

All incarcerated persons are encouraged to report to staff if they have suffered sexual harassment or have knowledge of sexual harassment within the DOC.

1) Methods for reporting:

- a) The DOC maintains multiple ways for incarcerated persons and staff to report allegations of sexual harassment against an incarcerated person by another incarcerated person or a staff member, contractor, volunteer, or intern.
 - (1) A qualified interpreter is provided for an incarcerated person who has a disability that impacts their ability to communicate (such as a hearing or vision impairment).
 - (2) Incarcerated persons who do not speak and understand English are provided language interpretive services. Incarcerated person interpreters are not used unless a delay could cause immediate safety or security issues.
- b) Direct report:
Any staff person who receives a verbal or written report of sexual harassment must immediately notify the watch commander and complete a confidential incident report. Staff must report any communication, including rumors, that may indicate sexual harassment has occurred, regardless of any established professional privilege, unless otherwise precluded by law.
- c) Anonymous or third-party reporting:
Staff may receive an anonymous kite, hear a rumor, or obtain other third-party information (including from an incarcerated person's family member or friend) that an incarcerated person has been the victim of sexual harassment. Staff must immediately report all information in a confidential incident report to the watch commander who must then confer with the office of special investigations (OSI). OSI determines whether, and how, an investigation will proceed.
- e) DOC sexual abuse hotline:
Anyone may contact the sexual abuse hotline by dialing (651) 603-6798 and following the prompts. Prompts are provided in English and Spanish. Incarcerated persons making the call from a DOC incarcerated person telephone may use the collect call option and are not charged for the call. The hotline is advertised in all DOC facilities in programming, living units, and other areas frequented by incarcerated people. OSI staff review any messages received on the hotline. All hotline calls are documented in the PREA database. OSI determines whether, and how, an investigation will proceed.
- f) Outside agencies:

Incarcerated persons may report sexual harassment to an outside agency directly or through a third party.

2. Incident in progress:
If a staff person observes suspected sexual harassment in progress, they must verbally direct the behavior to stop. Staff must also write an incident report to document the directive and contact the watch commander.
3. False reporting
If an investigation reveals an incarcerated person has made a false allegation of sexual harassment that the person, in good faith, could not have believed to be true, they will be held accountable through all means available, including discipline and/or criminal sanctions.
4. Retaliation
Staff must not engage in any form of retaliation against an incarcerated person who makes an allegation of sexual harassment. Staff must not retaliate in any way against staff, witnesses, or others who intervene in, report, or provide evidence about incidents of sexual harassment.

D. Responding to reports of sexual harassment

In cases of sexual harassment, incarcerated persons have access to psychological services, advocacy, and educational materials. Designated staff must complete the responsibilities below when sexual harassment is reported.

1. Correctional facility
 - a) Staff must intervene if they observe, or have reason to suspect, that an incarcerated person is being sexually harassed. In addition, the staff must:
 - (1) Inform the watch commander of the alleged sexual harassment; and
 - (2) Complete and forward a confidential incident report to the watch commander.
 - b) The watch commander reviews the allegation and determines the appropriate course of action, which may include such actions as:
 - (1) If the incident occurs during business hours, notifying behavioral health staff. If the incident occurs during non-business hours, notifying the on-call behavioral health staff. The on-call staff determines the necessity to provide crisis counseling during non-business hours; and
 - (2) Ensuring that the alleged victim and the alleged perpetrator (if an incarcerated person) has been offered a behavioral health referral.
 - c) All cases are reviewed by the facility OSI special investigator for any criminal violations. If no criminal violation occurred, the allegation is provided to the PREA compliance manager.

- d) The PREA compliance manager:
 - (1) Consults with the watch commander, OSI, human resources, or other relevant administration if the alleged perpetrator is a staff person, intern, volunteer, or contractor, and considers whether to prohibit further contact with incarcerated persons.
 - (2) Assigns the case for further investigation; and
 - (3) Within five business days, opens the case in the PREA database and notifies the PREA coordinator.

- e) Behavioral health staff:
 - (1) Offer psychological services to the alleged victim. Behavioral health staff, prior to the initiation of services, inform the alleged victim of the behavioral staff person's duty to report and the limits of confidentiality. If services are accepted, behavioral health staff must obtain a signed Behavioral Health Services Agreement outlining the limits of confidentiality before services are provided.
 - (2) Assess the incarcerated person's mental health needs, provide any necessary counseling, and document in their behavioral health file.
 - (3) Consult with the staff responsible for investigating the alleged incident regarding any clinical issues which may be relevant to an investigative interview of the alleged victim.
 - (4) Report the incident and the alleged victim's needs to the director of behavioral health services, who decides on a case-by-case basis whether department staff or an external professional should provide support services.
 - (5) Report the identity of the alleged perpetrator to the facility behavioral health supervisor, who must also offer the incarcerated person perpetrator support services.
 - (6) Document all follow-ups in the PREA database.

- f) A PREA-trained investigator must:
 - (1) Follow established procedures when investigating incidents of sexual harassment.
 - (a) Explain the investigative process and interview all parties (the alleged victim, perpetrator, reporter, and all witnesses).
 - (b) Offer victim advocacy and a mental health referral.
 - (c) Obtain additional evidence or facts by reviewing relevant files, videos, J-Pay, visiting records, phone lists, recordings, documentation, and any other evidence.
 - (e) Include a credibility assessment in the investigation report. This may include information obtained from interviews, videos, work schedules, living/work assignments, communications, kites, photos, medical/behavioral health data, or other relevant data sources. The credibility of an alleged victim, suspect, or witness must be assessed on an

individual basis and must not be determined by the person's status as an incarcerated person or staff member.

- (f) Also include an effort to determine whether alleged staff actions or failures to act contributed to the harassment; and
- (g) Prepare a thorough, objective, written report (administration investigation report) of the findings.

- (2) Complete the investigation and report within 45 days of assignment, unless reasonable cause for delay exists. If timelines must be extended due to unavoidable circumstances, the reasons must be documented in the report, and approved by the PREA compliance manager or OSI supervisor/manager.
- (3) Submit the written administrative investigation report to the PREA compliance manager or the deputy director of OSI for review for completeness. If incomplete, the PREA compliance manager or deputy director of OSI returns it to the investigator for additional information. If the investigation is complete and needs no additional follow-up, the PREA compliance manager or deputy director of OSI forwards the final report to the facility, HR director, and appointing authority for determination of further action.
- (4) Communicate with the PREA compliance manager/PREA coordinator if the investigation reveals an incarcerated person has made a false accusation that the person, in good faith, could not have believed to be true. If in agreement, forward the report to the discipline unit at the facility for possible disciplinary action against the incarcerated person.
- (5) The PREA compliance manager/designee must:
 - (a) Document all findings in the PREA database;
 - (b) Upload evidence into Clearance;
 - (c) Complete the outcome memo to the victim;
 - (d) Update the screening with new information; and
 - (e) Set up retaliation monitoring.

2. Field services

- a) A staff person must intervene if they observe, or have reason to suspect, that a supervisee is being sexually harassed. In addition, staff must:
 - (1) Inform their supervisor of the alleged sexual harassment; and
 - (2) Complete and forward a confidential incident report to the supervisor.
- b) The supervisor reviews the allegation and forwards any potential criminal investigation to the deputy director of OSI, the PREA compliance manager, and/or the PREA coordinator.

- c) If a sexual harassment investigation reveals anything criminal, the criminal investigation is supervised by the deputy director of OSI and assigned accordingly.
- d) All non-criminal investigations are forwarded to, and reviewed by, the PREA compliance manager and/or the PREA coordinator who assigned the investigation to a PREA-trained investigator.
- e) All allegations must be investigated and entered in the PREA database as outlined in sections D.1.d) and f), above.

E. Retaliation Monitoring Requirements

- 1. The PREA compliance manager designates someone from the sexual abuse response team (SART) to perform all aspects of retaliation monitoring and to clearly document it in the database in a timely fashion.
- 2. For at least 90 days following a report of sexual harassment, the designated SART member must monitor the conduct and treatment of all people who reported the sexual harassment to see if there are changes that may suggest possible retaliation and must act promptly to remedy any such retaliation. Items to monitor include any disciplinary reports, housing changes, program changes, negative performance reviews, or reassignments of staff. In the case of incarcerated persons, such monitoring must also include periodic status checks.
- 3. If any other individual who cooperates with an investigation expresses a fear of retaliation, the facility must take appropriate measures to protect them against retaliation.
- 4. The designated SART member must continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need. The obligation to monitor terminates if the allegation is determined to be unfounded.

F. Record Retention

- 1. All documentation relating to allegations of sexual harassment against incarcerated persons must be filed in the PREA database.
- 2. If the alleged perpetrator is a staff person, documentation must also be retained in their human resources file.

INTERNAL CONTROLS:

- A. All staff training must be documented and retained in the agency-approved training management system.
- B. The PREA database maintains the relevant PREA standards/requirements.

REFERENCES: [Prison Rape Elimination Act \(PREA\), 28 C.F.R. §115 \(2012\)](#)
[Policy 202.057, “Sexual Abuse Prevention, Reporting, and Response”](#)
[Policy 202.040, “Offender Intake Screening and Processing”](#)
[Policy 202.050, “Offender/Resident Orientation”](#)
[Policy 202.105, “Multiple Occupancy Cell/Room Assignment”](#)
[Policy 202.120, “Offender Incompatibility”](#)
[Policy 301.085, “Administrative Segregation”](#)
[Policy 500.303, “Mental Health Assessment”](#)
[Policy 101.010 “Information Program and Dissemination”](#)
[Policy 103.410, “In-Service Training”](#)
[Policy 103.420, “Pre-Service and Orientation Training”](#)
[Policy 106.210 “Providing Access to and Protecting Government Data”](#)
[Policy 106.220 “Offender/Resident Case Records”](#)
[Policy 107.007, “Criminal Investigations”](#)
[Policy 202.045, “Management and Placement of Incarcerated People Who Are Transgender, Gender Diverse, Intersex, or Nonbinary”](#)
[Policy 301.140, “Incident Command System”](#)
[Policy 303.010, “Offender Discipline”](#)
[Policy 302.120, "Reporting Maltreatment of Minors"](#)
[Policy 500.050, “Health Screenings and Full Health Appraisals”](#)
[Policy 500.190 “Health Care Data Practices”](#)
[Policy 500.3071 “Behavioral Health Data Practices”](#)
[Division Directive 202.041, “Juvenile Facility Admissions”](#)
[Instruction 202.041-2RW, “Intake Screening and Admissions”](#)

REPLACES: Policy 202.057, “Sexual Abuse/Harassment Prevention, Reporting, and Response,” sexual harassment portions only, 7/1/18.
All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS: None

APPROVALS:

Deputy Commissioner, Chief of Staff
Deputy Commissioner, Client Services and Supports
Assistant Commissioner, Agency Services and Supports
Assistant Commissioner, Facilities
Assistant Commissioner, Facilities
Assistant Commissioner, Health, Recovery, and Programming