

First Judicial District Department of Correctional Services  Department Policy and Procedure	MANUAL:	PERSONNEL	12-13-2013	PER 52
	TITLE:	PREA/Reporting & Investigations	REFERENCES: PREA STANDARDS	

**POLICY** In 2003 Congress enacted the Prison Rape Elimination Act (PREA) to address the problem of sexual abuse of persons in the custody of United States correctional agencies. In 2012, specific PREA standards and requirements were approved by the United States Department of Justice.

In accordance with these PREA Standards, the First Judicial District Department of Correctional Services is committed to maintaining a work environment free of sexual harassment, sexual misconduct, and sexual abuse.

## DEFINITIONS

***Sexual abuse*** includes—

- (1) Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident; and
- (2) Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer.

***Sexual abuse of an inmate, detainee, or resident by another inmate, 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:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- (4) 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.

***Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer*** includes any of the following acts, with or without consent of the inmate, detainee, or resident:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;

- (3) 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;
- (4) 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;
- (5) 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;
- (6) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1)-(5) of this section;
- (7) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and
- (8) Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

***Sexual harassment*** includes—

- (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 inmate, detainee, or resident directed toward another; and
- (2) Repeated verbal comments or gestures of a sexual nature to an inmate, 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.

## PROCEDURES

1. All staff are required to immediately report to a supervisor, any type of sexual harassment, sexual misconduct, or sexual abuse involving staff, offenders, or any other persons. This includes any third-party or anonymous reports. Staff who fail to report such information may be subject to disciplinary action. (PREA 115.261 a, b, e).
2. All reports, including third party or anonymous reports, of sexual harassment, sexual misconduct, or sexual abuse will be investigated by Management staff in accordance with Department policies PER 26, PER 27, and any other applicable policies. (PREA 115.271 a, b).

3. The standard used by the Department for determining whether allegations of sexual harassment, sexual misconduct, or sexual abuse are substantiated shall be by a “Preponderance of the Evidence.” (PREA 115.272).
4. In all cases of reported sexual harassment, sexual misconduct, or sexual abuse, Management staff will complete an investigation and issue a final decision within 90 days of the incident being reported. (PREA 115.252 d).
5. Within 30 days after rendering the final decision and closing an investigation, an Incident Review will be completed by the Management staff who completed the investigation, with input from the PREA Compliance Manager, the Assistant Director, the District Director, and other appropriate staff. Form PER-78F (PREA Incident Review Form) will be used to complete the Incident Review and all findings shall be documented in the report. (PREA 115.286 a, b, c, d, e).
6. Allegations of sexual harassment, sexual misconduct, or sexual abuse which involve criminal behavior will be referred to the proper criminal investigating authority as appropriate and determined by Department Management staff, and any such referrals will be documented. (PREA 115.222 & 115.271).
7. At the conclusion of an investigation for sexual harassment, sexual misconduct, or sexual abuse involving a resident as the alleged victim, the Management staff who completed the investigation will notify the resident of the results of the investigation. All notifications shall be documented in the investigation file.
  - A. Further, if the allegation was founded and involved a staff member, the resident will be notified of the following:
    - 1) The staff member is no longer posted in the resident’s facility/unit.
    - 2) The staff member is no longer employed at the facility.
    - 3) The Department learns that the staff member has been indicted on or convicted of a charge related to sexual abuse within the facility.
  - B. If the allegation was founded and involved another resident, the resident (victim) will be notified of the following:
    - 1) The Department learns that the resident (perpetrator) has been indicted on or convicted of a charge related to sexual abuse within the facility.
  - C. The notifications as listed in A and B above will no longer be required after the resident (victim) is released from the Department’s custody. (PREA 115.273).
8. All investigation reports and associated documents shall be retained by the Department for as long as an alleged abuser is incarcerated or employed by the agency, plus 5 years. (PREA 115.271).
9. Uniform data from all sexual harassment, sexual misconduct, or sexual abuse allegations which occurred in DCS Residential Facilities will be collected and securely maintained

by Management staff. This data shall contain all necessary information as required by the most recent U.S. Department of Justice Survey instrument and will be aggregated on an annual basis. This data may be provided to IDOC Central Office for reporting as well. (PREA 115.287).

10. The data, as noted above, will be reviewed annually to assess and improve the effectiveness of the Department's sexual abuse prevention, detection, and response policies, practices, and training. An Annual PREA Report shall be completed which includes the following:
  - A. Identification of problem areas.
  - B. Any corrective action taken for each facility and the Department as a whole.
  - C. Comparison of current data to data collected in previous years.
  - D. An assessment of the Department's progress in addressing sexual abuse.

The Annual PREA Report shall be approved by the District Director and made available on the Department's website. However, any material which presents a clear and specific threat to the safety and security of a Residential Correctional Facility will not be included in the report. The nature of any redacted material will, however, be noted in the report. (PREA 115.288).

11. All data, as noted above, shall be securely retained for a period of at least 10 years after the date it was collected. Aggregated data, with any personal identifying information and confidential information removed, will be posted on the Department website on an annual basis with the Annual PREA Report. (PREA 115.289).