

1.3.E.6 PREA Response and Investigation of Sexual Abuse/Harassment

I Policy Index:



Date Signed: 02/28/2020
Distribution: Public
Replaces Policy: N/A
Supersedes Policy Dated: 06/22/2017
Affected Units: All Institutions
Effective Date: 02/28/2020
Scheduled Revision Date: March 2021
Revision Number: 5
Office of Primary Responsibility: PREA Coordinator and DOC Administration

II Policy:

The South Dakota Department of Corrections (DOC) has a zero-tolerance policy relating to sexual abuse or harassment of an inmate. The DOC will cooperate in the investigation and prosecution of anyone involved in a sexual abuse of an inmate, including those housed in a DOC facility or other approved placement. This policy will be followed in conjunction with DOC policy 1.1.C.3 [Staff Reporting Abuse or Neglect](#) and other mandatory reporting requirements of the department. This policy is not intended to govern incidents of sexual abuse by an inmate against an employee, visitor, volunteer or any other individual who has business with the DOC.

III Definitions:

Consensual Sexual Act:

All participants of the sexual act are inmates and consented to participate without being coerced, under any type of threat or force, or in fear of retaliation.

Facility:

Refers to individual inmate housing locations and campuses within the South Dakota DOC. The facilities are:

- South Dakota State Penitentiary (including Jameson Prison Annex)
- Sioux Falls Community Work Center
- Mike Durfee State Prison
- Yankton Community Work Center
- Rapid City Community Work Center
- South Dakota Women's Prison (including Unit E and the PACT House)
- Pierre Community Work Center

Non-Consensual Sexual Act:

The inmate sexual contact was unwanted, coerced, or committed under threat of any type of force or retaliation by another inmate; or any sexual contact with staff.

PREA:

The Prison Rape Elimination Act of 2003 was enacted by Congress to ensure inmates in the custody of correctional agencies in the United States are protected from sexual abuse and sexual harassment perpetrated by other inmates and agency staff.

Rape Crisis Center

For the purpose of this policy, a rape crisis center refers to an entity that provides intervention and related assistance, such as:

- 24-hour hotline services providing crisis intervention services and referral;
- Accompaniment and advocacy through medical, criminal justice, and institutional support systems, including medical facilities, investigative and court proceedings;
- Crisis intervention, short-term individual and comprehensive service coordination and supervision to assist sexual abuse victims;
- Information and referral to assist the sexual abuse victim;
- Development and distribution of materials on issues related to services available.

Sexual Abuse-Inmate on Inmate:

Sexual abuse of an inmate by another inmate; which includes any of the following acts if the victim does not consent, is coerced into such an act by overt or implied threats of violence, or is unable to consent or refuse (See [Inmate Living Guide](#)):

- (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-Staff on Inmate:

Sexual abuse of an inmate by a staff member, volunteer or contractor. Includes any of the following acts with or without the consent of the inmate:

- (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, and
- (8) Voyeurism by a staff member, contractor, or volunteer.

Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; 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, either physically or via security cameras.

Sexual Harassment-Inmate on Inmate:

Repeated and unwelcome sexual advances, requests for sexual favors, verbal comments, gestures or actions of a derogatory or offensive sexual nature by one inmate directed toward another inmate (See [Inmate Living Guide](#)).

Sexual Harassment-Staff on Inmate:

Repeated verbal comments or gestures of a sexual nature to an inmate 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.

Staff Member:

For the purposes of this policy, a staff member is any person employed by the DOC, full or part time, including an individual under contract assigned to the DOC, an employee of another State agency assigned to the DOC, authorized volunteers and student interns.

Note:

The terms "Sexual Abuse or Sexual Harassment do not include:

- Custodial or medical personnel gathering physical evidence or engaging in other legitimate medical treatment
- The use of a health care provider's hands or fingers or medical devices in the course of appropriate medical treatment
- The use of a health care provider's hands or fingers and the use of instruments to perform body cavity searches. This exemption is contingent upon the search being conducted in a manner consistent with constitutional requirements and DOC policy 1.3.A.5 [Searches - Institutions](#).
- Consensual sexual contact/activity between inmates. Although, this type of behavior is prohibited (See [Inmate Living Guide](#)).

IV Procedures:**1. Response:****A. Staff Duties.**

1. Complaints or information provided to staff describing risk of sexual abuse of an inmate or information that an inmate is the victim of sexual abuse while in the DOC facility requires prompt action by the staff member receiving the complaint or information.
2. Upon learning such information/receiving the complaint or information, the staff member will promptly report the complaint or information to the Officer in Charge (OIC) or his/her supervisor. If a staff member witnesses sexual abuse or attempted sexual abuse of an inmate, he/she will directly report the information to the OIC or his/her supervisor. Report "directly" means the reporting staff member must speak directly to the OIC or supervisor by radio, telephone or in person.
 - a. The staff member witnessing the incident will separate the victim and abuser.

- b. The OIC or supervisor will gather information and evidence and document the incident on the *Sexual Incident Checklist: Officer in Charge* form (See [Attachment 1](#)).
 - 1) The incident will be reported directly to the Special Investigation Unit (SIU).
 - 1) The completed Checklist will be forwarded to the Special Investigations Unit, along with all relevant reports, evidence and information by the end of the shift when the incident was initially reported or discovered.
 - 2) The Special Investigations Unit is responsible for the preliminary investigation into the incident.
 3. Staff will preserve and protect any potential crime scene and evidence, in accordance with policy and approved practices, procedures and directives until appropriate steps can be taken to process the scene and collect evidence.
 - a. The chain of custody of evidence will be recorded and preserved, in accordance with all applicable DOC policies, institutional operational memorandums (OMs) and correctional best practice.
 - b. If the sexual abuse occurred within a time period that allows for the collection of physical evidence, including forensic evidence, staff will ensure the alleged abuser does not take any actions that could destroy physical evidence; including as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, drinking or eating.
 - c. Staff first responding to the scene/incident shall remain in the presence of the inmate(s) involved and instruct the inmate not to take any actions that could destroy potential physical evidence.
 4. Inmates committing sexual abuse may be placed in disciplinary housing under Investigative Purpose (IP) to allow staff to fully investigate the incident (See DOC policy 1.3.D.1 [Disciplinary Housing](#)).
 - a. Inmates making a complaint of sexual abuse to staff, or who notify staff they believe they are at risk of sexual abuse, shall be notified within 5 calendar days of staff's response to their complaint or risk concerns. Responses include, but are not limited to:
 - 1) Proceeding with a sexual incident investigation.
 - 2) Continuing with separation or monitoring of those involved.
 - 3) A finding based upon available evidence and information that there is insufficient reason to continue an investigation or proceed with or continue separation or monitoring.
 - b. Inmates are subject to disciplinary action for filing a false claim of sexual abuse or providing false testimony alleging sexual abuse has occurred (See [Inmate Living Guide](#)).
 5. All staff with information regarding an incident of sexual abuse or attempted sexual abuse/threat of sexual abuse of an inmate must document the information in COMS: Incident Report.
- B. Medical Response.
1. Health Service response.
 - a. Victims of sexual abuse will receive timely, unimpeded access to medical treatment and crisis intervention services; the nature and scope of which shall be determined by Health Services and Behavioral Health Services staff, consistent with

- professional judgment and best practices (See DOH policy P-F-06 [Response to Sexual Abuse](#) and DOC policy 1.4.E.1 [Health Care Services for Offenders](#)).
- b. Health Services staff will examine and provide for emergent medical needs of victims of sexual abuse. Health Service staff will not collect forensic evidence from the inmate. Inmates will be transported to an appropriate outside medical provider to facilitate the collection of any forensic evidence (See DOH policy P-G-04 [Therapeutic Relationship, Forensic Information, and Disciplinary Actions](#)).
2. When not contraindicated by the inmate's welfare, preservation and collection of forensic evidence shall be performed by a qualified medical provider.
 - a. If staff determine the alleged sexual abuse occurred less than one hundred and twenty hours prior to staff becoming aware of the incident, and there is reason/evidence to suggest the alleged sexual activity was not consensual, staff will:
 - 1) With consent from the victim, make arrangements to immediately transport the victim to the nearest hospital or emergency room equipped to administer a sexual assault forensic exam (rape kit), consistent with DOC policy 1.3.A.7 [Inmate Transport & Escort](#).
 - b. If staff determine the alleged sexual abuse occurred more than one hundred and twenty hours prior to becoming aware of the incident, and there is reason/evidence to suggest the alleged sexual activity was not consensual:
 - 1) Special Investigations Unit staff will investigate the incident, including interviewing those involved to determine the status of any potential physical evidence. If it is determined some evidence may be present, the victim will be provided the opportunity to consent to the administration of a sexual assault forensic exam, which shall be conducted by qualified outside medical provider.
 - c. Sexual assault examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) when and where possible. If SAFEs or SANEs cannot be made available, the examination may be performed by other qualified medical practitioners. The DOC will document its efforts to identify and access SAFEs or SANEs within proximity to each DOC facility housing inmates.
 3. Responsive services will be provided without financial cost (including medical co-payment) to the victim (See DOC policy 1.4.E.10 [Medical Services Copayments](#)). If convicted or upon entering a plea of guilt, the inmate abuser may be assessed the cost of the victim's medical examination, as set by the physician, hospital, clinic or Health Services (See SDCL § [22-22-26](#)).
 - a. Inmates who intentionally make a false claim of a sexual abuse which results in medical costs/fees, may be assessed the respective medical co-payment for services received (See DOC policy 1.4.E.10 [Medical Services Copayments](#)).
 4. Ongoing Medical Care.
 - a. Health Services and Behavioral Health Services will offer evaluation, testing and treatment as determined appropriate, to inmates in DOC custody who are victims of sexual abuse while in any DOC facility, jail, contract facility or juvenile facility.

- b. The evaluation, testing and treatment of victims will include, as appropriate, follow-up services, treatment plans, and when necessary, referrals for continued care following transfer to, or placement at other facilities.
- c. Victims shall be offered medical and mental health services consistent with the level of care and services typically provided to sexual abuse victims in the community.
- d. Victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.
- e. If pregnancy results from the sexual abuse, the victim shall receive timely and comprehensive information about available medical services and access to all lawful and licensed pregnancy medical services.
- f. Victims of sexual abuse will be offered tests for sexually transmitted infections/disease (STDs) as deemed medically appropriate, and in accordance with state statutes regarding the rights of victims and alleged perpetrator (See SDCL § [23A-35B-4](#) and DOC policy 1.4.E.8 [Blood-Borne Pathogens and Infectious Disease Management](#)).
- g. Treatment services, testing and follow-up care will be provided to victims by Health Services staff without financial cost to the victim, and regardless of whether the victim names the abuser/perpetrator or cooperates with the investigation arising out of the incident.
- h. As deemed appropriate by Sex Offender Management Program staff, a mental health evaluation will be offered to all known inmate-on-inmate abusers within 60 days of staff learning of such abuse. Programming and treatment may be offered, depending on the inmate's release date (See DOC policies 1.4.B.3 [Sex Offender Management Program](#) and 1.4.B.9 [Sexual Behavior Issue Review](#)).

C. Victim Advocates.

1. The facility will make available to the victim, an advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the facility will work to ensure qualified staff from a community-based organization or agency that is available to offer victim advocate services. The facility will document efforts to secure such services (See DOC policy 1.3.E.5 [PREA Compliance with Prison Rape Elimination Act Standards](#)).
2. As requested by the victim, the advocate, qualified DOC staff or qualified community-based organization staff member, may accompany and support the victim through the medical examination process, testing and investigatory interviews to provide emotional support, crisis intervention, information, and referral to the inmate victim.

2. Investigations:

A. Allegations.

1. All allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, will be promptly, thoroughly, and objectively investigated by designated staff, including but not limited to SIU staff.
2. After notification of an allegation of possible sexual abuse or sexual harassment, staff will start the *Sexual Incident Report: Investigator* form (See [Attachment 2](#)) and use this form to track progress of the investigation.

3. If the alleged victim chooses not to provide information or participate in the investigation, staff will document this information on the *PREA Sexual Abuse Victim Preference* form (See [Attachment 4](#)).
 4. If a staff member is the alleged perpetrator of a sexual abuse, the respective Warden will be notified immediately.
 - a. The Warden or his/her designee will initiate reporting in accordance with DOC policy 1.1.A.3 *Staff Reporting Information to DOC Administration*.
 - b. The Warden or Secretary of Corrections, at his/her discretion, may take any or all of the following action(s) against a staff member:
 - 1) Disciplinary action, including and up to termination.
 - 2) Ban the person from being on the premises of the facility or any DOC facility.
 - 3) Ban the person from having any telephone, written or electronic contact with the victim.
 - 4) Ban the person from having contact with other staff or discussing the incident with anyone but their attorney.
- B. Corrections Protocol for Responding to Sexual Abuse.
1. Staff will gather and preserve direct and circumstantial evidence, including physical evidence, DNA or forensic evidence and any electronic monitoring (evidence obtained through the telephone or messaging system or surveillance camera footage). Staff will interview victims, perpetrators and witnesses. Staff will review any prior complaints or reports of sexual abuse involving the suspected perpetrator or victim.
 2. In accordance with state law, if the sexual assault kit evidence is released to the DOC by the health care facility performing the examination, Special Investigation Unit staff will follow standard protocol for handling evidence and ensure the evidence is submitted to the Division of Criminal Investigations (DCI) within fourteen days of receipt.
 3. The credibility of a victim, perpetrator and witnesses will be assessed on an individual, case-by-case basis and will not be determined by the person's status, i.e. inmate, staff, citizen. Inmates alleging sexual abuse are not required to submit to a polygraph examination or other truth-telling device as a condition for the department to proceed with investigation of the incident.
 4. The DOC staff will follow the *Sexual Incident Protocol and Reference Book* (See [Attachment 5](#)) when responding to and coordinating actions taken in response to an incident of sexual abuse.
- C. Administrative investigations.
1. The Special Investigations Unit will investigate all reports of sexual incidents involving inmates to determine (See [Attachment 2](#)) the following:
 - a. If a reported sexual incident was an act of sexual abuse or sexual harassment.
 - b. If the reported sexual incident was consensual inmate-with-inmate. This is a violation of institutional rules but may not be a case of sexual abuse.
 - c. If the reported sexual incident was non-consensual and inmate-with-inmate. This is a violation of institutional rules and may be a case of sexual abuse. These cases may be referred to DCI for investigation.

- d. If the reported incident involved a sexual act between staff or other person employed within a correctional facility and an inmate. All such cases are considered non-consensual and shall be referred to DCI for investigation and possible prosecution (See SDCL § 24-1-26.1).
 2. In addition, the Special Investigations Unit (SIU) or DCI will determine if the reported sexual act was:
 - a. Substantiated – The investigation & evidence indicate that the incident did happen.
 - b. Unsubstantiated – Insufficient evidence to determine an outcome or positive finding.
 - c. Unfounded – The investigation and evidence indicate the incident did not happen.
 - d. Informational – Information does not contain an identified victim, or the incident was determined to be a consensual act between inmates.
 3. SIU will impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.
 4. The Special Investigations Unit will refer incidents involving possible criminal violations to the DCI.
 5. Within seven (7) calendar days of the conclusion of all sexual abuse investigations, SIU will send copies of the completed *PREA Sexual Incident Checklist- Officer in Charge* (See [Attachment 1](#)), COMS Incident and disciplinary reports to the facility PREA Compliance Manager and PREA Coordinator.
 - a. SIU will maintain documentation that the investigation is concluded and its findings, i.e. consensual, unfounded, informational, etc.
 - 1) Documentation shall include any staff actions, policies, directives, procedures, protocols, etc. or if staffs' failure to act may have contributed to the sexual abuse incident; and
 - 2) Written reports that include a description of the physical and testimonial evidence, reasoning behind credibility assessments, and investigative facts and findings.
 7. SIU will ensure any written reports/files or evidence under its control and authority is kept in a secure location and not accessible to unauthorized persons. Reports/files and evidence related to sexual abuse incidents shall be retained for as long as the alleged abuser is incarcerated. If the incident involves a staff member, the report/file shall be retained for as long as the staff member is employed by the DOC, plus five years.
 8. The sharing of confidential information pertaining to a sexual abuse incident shall be limited to those who must know. Sharing information regarding the victim or incident shall be conducted in a manner that is in accordance with all applicable policies, statutes regarding confidentiality, victim rights, and professional licensure and ethics standards.
 9. The departure of the abuser or victim from employment or custody will not be used as the basis for terminating an active investigation into a sexual abuse incident.
- D. Criminal Referrals.
1. The DCI will oversee the investigation of all reported sexual abuse determined by staff to possibly include criminal conduct. The chain of custody of evidence shall be recorded and preserved.
 - a. The DCI, in consultation with the respective Warden, will determine if criminal charges will be filed.

- 1) Substantiated allegations of conduct that appear to be criminal will be referred for prosecution.
- b. If criminal charges are filed, DCI will coordinate the prosecution with the Attorney General's Office and/or local county States Attorney office.
- c. Staff members must cooperate with the investigation.
 - 1) When the quality of evidence appears to support criminal prosecution, SIU staff will conduct compelled interviews only after consulting with DCI or prosecutors to determine if compelled interviews may be an obstacle for subsequent criminal prosecution.
 - 2) Facility staff will cooperate fully with DCI investigators. SIU shall remain informed about the progress of the investigation.
 - 3) Criminal investigations will be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence, where feasible.

3. Reaction to Incidents:

A. Protective Custody.

1. Inmates determined to be at high risk for sexual victimization through completion of the PREA assessment or those who are alleged to have suffered from sexual abuse in the facility will not be placed in involuntary protective custody, 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. Such placement shall be temporary until suitable housing can be identified. If an assessment cannot be conducted immediately, the inmate may be held in involuntary protective custody for a period not to exceed 24 hours while the assessment is completed.
2. Inmates placed in protective custody shall have access to approved programs, privileges, education, and work opportunities, as provided to inmates of the same classification. If the inmate's access to approved programs, privileges, education, or work opportunities are restricted, staff shall document:
 - a. The opportunities that have been limited;
 - b. The duration of the limitation; and
 - c. The reasons for such limitations.
3. Inmates shall be assigned to involuntary protective custody status only until an alternative means of separation from likely abusers can be arranged, consistent with the inmate's classification/risk and housing and programming needs. Temporary assignment shall not exceed 30 days without extension by the Warden.
4. If an inmate is assigned to involuntary protective custody status pursuant to paragraph (a) of this section, staff shall clearly document:
 - a. The basis for staff's concern for the inmate's safety; and
 - b. The reason why no alternative means of separation can be arranged.
5. At a minimum, staff shall afford each inmate on involuntary protective custody a status review every 30 days. The purpose of the review is to determine whether there is a continuing need for the inmate's separation from the general population and to verify no other less restrictive housing options can be identified. Each facility with protective custody status inmates shall maintain an

operational memorandum that includes documentation requirements, hearing procedures and identify staff who will direct the review.

- a. The inmate may appeal the findings of the review/decision of the Protective Custody Hearing Board through the Administrative Remedy process (See DOC policy 1.3.E.2 [Administrative Remedy for Inmates](#)).

B. Reporting to Inmates.

1. Following an investigation into an inmate's allegation he/she suffered sexual abuse or sexual harassment in a DOC facility, SIU staff or staff designated by the Warden, will inform the inmate as to results of the investigation into the allegation. Information shared with the inmate shall not jeopardize the legitimate penological interests of the DOC.
 - a. Sexual abuse and sexual harassment victim notifications shall be documented in the PREA investigation packet.
 - b. In addition, sexual abuse victim notifications shall also include a written notice to the alleged victim (See [Attachment 6: Notice of PREA Investigation Determination](#) form).
2. If SIU did not conduct the investigation, SIU will request the relevant information/results of the investigation from the respective investigative agency (usually DCI).
3. If the incident involves a staff member committing sexual abuse against an inmate, staff will inform the inmate whenever:
 - a. The staff member is no longer assigned to a post on the inmate's unit.
 - b. The staff member is no longer employed at the facility where the inmate is housed.
 - c. The staff member has been indicted on a charge related to sexual abuse within the facility.
 - d. The staff member has been convicted of a charge related to sexual abuse within the facility.
4. In the case of sexual abuse involving a staff member, DOC policy 1.1.C.13 [Screening of Staff Volunteers and Contractors for Prior Sexual Abuse](#) shall apply.
5. If another inmate committed the sexual abuse against an inmate, and the victim is housed in the same facility as the abuser, staff shall inform the victim whenever:
 - a. Staff learns the alleged abuser has been indicted on a charge related to sexual abuse within the facility.
 - b. Staff learns the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
6. All such notifications shall be conducted in a timely manner and documented in the SIU PREA investigation packet by the Special Investigations Unit.

C. Protection Against Retaliation.

1. At the completion of the investigation, the Special Investigations Unit will complete the initial protection measures and contact appropriate staff for information and follow-up. All such initial monitoring and status checks will be documented on the *PREA Sexual Incident Report Form – investigation* (See [Attachment 2](#)) by the Special Investigations Unit.

- a. The monitoring shall begin immediately after an allegation is made and will terminate if the allegation is determined by investigation to be unfounded.
- b. Special Investigations Unit shall investigate and response to all reports of retaliation.
 - 1)The Special Investigations Unit investigator will document the retaliation investigation on a Special Investigations Incident Report (See [Attachment 7: Special Investigations Unit: Incident Report](#)).
 - 2)The Special Investigations Unit investigator shall provide a copy of the retaliation investigation to the PREA Compliance Manager for inclusion in the retaliation status checklist.

2. For a minimum of 90 days following the report of the alleged sexual abuse, the facility PREA Compliance Manager shall monitor inmates or staff who report sexual abuse.

The monitoring shall be documented by the PREA Compliance Manager on the *PREA Retaliation Status Checklist* (See [Attachment 3](#)).

- a. Reports of retaliation by either staff or inmates will be reported directly to the Special Investigations Unit for investigation.
- c. Staff shall take appropriate measures to protect inmates against retaliation, including:
 - 1)Changes in unit or facility housing assignments for victims or abusers.
 - 2)Removal of alleged staff or inmate abusers from contact with victims and
 - 3)Providing victims information and free and confidential access to emotional support services

D. Disciplinary Sanctions for Inmates.

1. Inmates found guilty through an administrative finding or engaging in inmate-on-inmate sexual abuse or engaging in a consensual act are subject to disciplinary sanctions, pursuant to DOC policy 1.3.C.2 [Inmate Discipline System](#) and SDCL § 24-2-9.
2. Sanctions will be commensurate with the nature and circumstances of the violation committed, the inmate's disciplinary history, and sanctions imposed for comparable offenses committed by inmates with similar histories.
3. The Disciplinary Hearing Officer or Unit Disciplinary Committee will consider whether an inmate's mental disabilities or mental illness may have contributed to his/her behavior, and if so, consult with Behavioral Health Services about an appropriate response. Behavioral Health staff may administer a Behavioral Health assessment to help determine the inmate's level of functioning.
4. If therapy, counseling or other interventions designed to address and correct underlying reasons or motivations for sexual abuse are available, Behavioral Health Services may recommend the inmate participate in such interventions.
5. For the purpose of disciplinary action, a report of sexual abuse made in good faith by an inmate which is based upon a reasonable belief the alleged conduct occurred, shall not constitute false reporting of an incident and shall not result in the inmate being charged with Offense in Custody L-46 or L-42.

6. An inmate report of sexual abuse made in bad faith or containing falsified information or untruths be responded to with disciplinary action.

E. Disciplinary Sanctions for Staff, Volunteers or Contractors.

1. If a person employed by the state or person employed within a correctional facility engages in an act of sexual penetration with an inmate who is in custody and under the custodial, supervisory or disciplinary authority of the person (See SDCL § [24-1-26.1](#)), the person is guilty of a Class 6 felony, which is punishable by a maximum term of imprisonment of up to two (2) years in the state penitentiary or a fine of four thousand dollars (\$4000) or both (See SDCL § [22-6-1](#)).
2. Staff who commit sexual abuse of sexual harassment may be considered to be in violation of DOC policy 1.1.C.10 [Staff Anti-Harassment and Discrimination Policy](#), DOC policy 1.1.C.1 [Staff Code of Ethics](#) and DOC policy 1.1.C.2 [Staff Supervision of Offenders](#), in addition to other applicable state statutes and policies (BHR Handbook), and may be subject to disciplinary action, up to and including termination of employment.
 - a. Termination shall be the presumptive disciplinary sanction for staff found to have engaged in sexual abuse of an inmate or engaged in sexual contact with an inmate.
3. Disciplinary sanctions for persons violating DOC 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 person's disciplinary history, and the sanctions imposed for comparable offenses by others with similar histories.
4. All terminations for violation or resignation in lieu of termination for committing sexual abuse of an inmate or having sexual contact with an inmate shall be reported to DCI and to any relevant licensing bodies, unless the activity is determined not to be criminal.
5. Any staff member or contractor or volunteer who is found to have engaged in sexual abuse or sexual harassment of an inmate is subject to the provisions of DOC policy 1.1.C.13 [Screening of Staff Volunteers and Contractors for Prior Sexual Abuse](#).

V Related Directives:

SDCL §§ [22-6-1](#), [22-22-7.6](#), [22-22-26](#), [23A-35B-4](#) and [24-1-26.1](#).

DOC policy 1.1.A.3 – [Staff Reporting Information to DOC Administration](#)
 DOC policy 1.1.C.1 – [Code of Ethics](#)
 DOC policy 1.1.C.2 – [Staff Supervision of Offenders](#)
 DOC policy 1.1.C.3 – [Reporting Abuse or Neglect](#)
 DOC policy 1.1.C.10 – [Staff Anti-Harassment and Discrimination Policy](#)
 DOC policy 1.1.C.13 – [Screening of Staff Volunteers and Contractors for Prior Sexual Abuse](#)
 DOC policy 1.3.A.5 – [Searches, Adult Institutions](#)
 DOC policy 1.3.C.2 – [Inmate Discipline System](#)
 DOC policy 1.3.D.1 – [Disciplinary Housing](#)
 DOC policy 1.3.E.2 – [Administrative Remedy for Inmates](#)
 DOC policy 1.3.E.5 – [PREA Compliance with Prison Rape Elimination Act Standards](#)
 DOC policy 1.4.B.3 – [Sex Offender Management Program](#)
 DOC policy 1.4.B.9 – [Sexual Behavior Issue Review](#)
 DOC policy 1.4.E.1 – [Health Care Services for Offenders](#)
 DOC policy 1.4.E.8 – [Blood-Borne Pathogens and Infectious Disease Management](#)
 DOC policy 1.4.E.10 – [Medical Services Copayments](#)
 DOH policy P-F-06 – [Response to Sexual Abuse](#)
 DOH policy P-I-03 – [Forensic Information](#)

DOH policy P-G-04 – *Therapeutic Relationship, Forensic Information, and Disciplinary Actions*

Inmate Living Guide

VI Revision Log:

September 2014: New policy.

April 2014: **Deleted** reference to Special Security and **Replaced** with Special Investigations Unit. **Deleted** reference to Administrative Segregation.

April 2016: **Added** definition of “Inmate”. **Added** “with consent from the victim” and **Added** “equipped to administer” in Section 1 B. 2. a.1. Deleted “it is necessary to transport the inmate/victim to a hospital or emergency room” and **Replaced** with “the victim will be provided to opportunity to consent to the administration of” in Section 1 B. 2. b. 1. **Added** “If convicted, the defendant may be assessed the cost of the examination, as set by the physician, hospital or clinic” in Section 1 B. 3. **Added** new 2. in Section 2 B. **Added** “evidence obtained through the telephone system” in Section 2 B. 1. **Deleted** “may be” and **Replaced** with “shall be” in Section 2 C. 1. c. **Added** “inmate with inmate” in Section 2 C. 2. d. Added “determined by staff to possibly include criminal conduct” in Section 2 D. 1. **Added** “approved” in Section 3.A.2. **Added** “and the inmate victim is in DOC custody/housed in a DOC facility” in Section 3 B. 4. **Added** “at a minimum” and **Added** “The purpose of the review is to determine whether there is a continuing need for separation from the general population. Each facility with protective custody status inmates shall maintain an operational memorandum that includes documentation requirements, hearing procedures and identify staff who will direct the review” in Section 3 B. 5. **Added** B. to Section 3 B. 5. **Added** “Behavioral Health staff shall be consulted as deemed necessary” in Section 3 D. 3. **Deleted** 5.in Section 3 D. **Added** “shall not result in the inmate being charged with Prohibited Acts L-46 or L-42 in Section 3. D. 5.

April 2017: **Added** “as provided to inmates of the same classification and housing assignment” in Section 3 A. 2. **Added** “consistent with the inmate’s classification and housing requirements” in Section 3 A. 3. **Added** 6. in Section 3 E.

October 2018: Minor language and structure revisions to policy.

March 2020: **Deleted** 5. regarding SIU reporting the findings and conclusion of the investigation in COMS in Section 2 C. **Added** “or sexual harassment” and **Added** a. and b. to Section 3 B. 1. **Deleted** C. in Section 3 and **Replaced** with new Section C. **Updated** Attachments 2-6 and **Added** new Attachment 7.

Mike Leidholt (original signature on file)


Mike Leidholt, Secretary of Corrections

02/28/2020

Date


Attachment 1: PREA Sexual Incident Checklist: Officer in Charge

The PREA **Sexual Incident Checklist: Officer in Charge** form is located at:
<M:\DOC\DOC Policies\Agency\DOC Policies\Attachment Templates\PREA - OIC Incident Checklist.doc>

South Dakota Department Of Corrections Policy Distribution: Public		Attachment: Sexual Incident Checklist Response & Investigation of Sexual Abuse / Harassment Attachment 1: Sexual Incident Checklist		
		Sexual Incident Checklist OFFICER IN CHARGE		
NOTE: Any orange text below can be clicked on for a drop down selection or to enter text.				
OFFICER IN CHARGE Click here to enter text.		DATE / TIME reported to staff Drop down date Enter time		
INCIDENT RESPONSE CHECKLIST *CLICK ON BOX or QUESTION*				
Incident Type: Type of Incident	Who's Involved: Involvement	Who Reported: Who Reported	Report Type: Type of Report	
Facility incident occurred at: Facility Occurred at:	Incident Location at Facility Click here to enter text.	Identify Reporting staff or 3rd Party Click here to enter text.		
(WHO) Note: List all participants involved below. for inmates include full name / for staff list full name & position				
		<small>THIS AREA INMATE PARTICIPANTS ONLY</small>		
Status	Participants (for staff add job title also)	ID	PREA	Inmate housing at the time of the incident:
Click here	Name	ID	Code	Inmate Housing
Click here	Name	ID	Code	Inmate Housing
Click here	Name	ID	Code	Inmate Housing
Click here	Name	ID	Code	Inmate Housing
Click here	Name	ID	Code	Inmate Housing
Brief description of incident: [Identify when, where and what]				
(WHEN) did the incident happen?		Drop down date	Enter time	
(WHERE) did it happen at (additional detail if needed)?		Click here to enter text.		
(WHAT) Summary What is being reported to have happened (description) and who did what to whom?		Click here to enter text.		
Report directly to Special Investigations (Report directly means the reporting person must speak directly to the designated staff at the facility by radio, telephone or in person)				
Investigator	Identify date, time and how you notified them			
All relevant reports noted or included?	Yes/No	Identify any additional reports and where to access them (COMS, attached)		
Participants separated?	Yes/No	Additional information on response		
In incidents involving alleged or suspected sexual abuse:				
Any injuries?	Yes/No	Additional information on response		
Any weapons found/used?	Yes/No	Additional information on response		
Health Services notified?	Yes/No	Additional information on response		
Mental Health notified?	Yes/No	Additional information on response		
Crime Scene secure?	Yes/No	Additional information on response		
PREA INVESTIGATORS USE ONLY				
Date Checklist received:	Click here for date.	Received by: Investigator		
Checklist indicates allegation of SA/SH:	Click Y/N	If Yes: A Sexual Incident Investigators form must be completed also.		
		If No: Review for institutional violation/information only		
Additional Notes: Notes				

Attachment 2: PREA Sexual Incident Report Form: Investigator

The **PREA Sexual Incident Report Form: Investigator form** is located at:
[M:\DOC\DOC Policies\Agency\DOC Policies\Attachment Templates\PREA Sexual Incident Report Form \(2020\).doc](M:\DOC\DOC Policies\Agency\DOC Policies\Attachment Templates\PREA Sexual Incident Report Form (2020).doc)

South Dakota Department of Corrections Policy Distribution: Public				Attachment: Sexual Incident Checklist Response & Investigation of Sexual Abuse / Harassment Attachment 2: Sexual Incident Report Form				
 Sexual Incident Report Form INVESTIGATOR								
PART 1: OIC INFORMATION								
Facility Incident Occurred	Location Incident Occurred	Date / Time of Incident	Date / Time Reported	Initial Reporting Staff - staff the incident ? / reported to				
Fac occurred	Enter Loc detail.	Drop down date Enter time	Drop down date Enter time	Enter staff name here.				
Incident Type:		Who's Involved:	Who Reported:	Report Type:				
Type of Incident		Involvement	Who Reported	Type of Report				
PART 2: PARTICIPANT (S)								
INMATE PARTICIPATE INFORMATION								
STATUS	NAME	ID	AGE	RACE/ETHNIC	GNC Inmate	PREA	HOUSING	WORK
Click here	Click here to enter name.	ID. Click	Click	Choose	Choose	Code	Cell	Assign
Click here	Click here to enter name.	ID. Click	Click	Choose	Choose	Code	Cell	Assign
Click here	Click here to enter name.	ID. Click	Click	Choose	Choose	Code	Cell	Assign
Click here	Click here to enter name.	ID. Click	Click	Choose	Choose	Code	Cell	Assign
STAFF / OUTSIDER PARTICIPANT INFORMATION				COMPLETE SECTION FOR ALL SUBSTANTIATED INCIDENTS				
STATUS	NAME	RELATIONSHIP	AGE	RACE/ETHNIC	GENDER	POSITION	JOB LONGEVITY	
Click here	Click here to enter name.	Choose	Click	Choose	Choose	Post / Job	Time on job	
Click here	Click here to enter name.	Choose	Click	Choose	Choose	Post / Job	Time on job	
PART 3: ADMINISTRATIVE INVESTIGATION								
The PREA Investigator assigned to this case is:		Investigator	Date the Investigation started:		Drop down date			
Allegation Summary:								
Check definitions Administrative or criminal case - why								
Did DOC Investigators give any legal warnings to the alleged perpetrators (Miranda or Garrity warnings)?					Yes/No	Choose an item.		
Interview Summary:								
Victim / abuser / witness interview summaries.								

Attachment 3: PREA Retaliation Status Checklist

The **PREA Retaliation Status Checklist** form is located at:
<M:\DOC\DOC Policies\Agency\DOC Policies\Attachment Templates\PREA Retaliation Status Checklist.doc>

South Dakota Department of Corrections
RETALIATION STATUS CHECKLIST

Facility PREA Compliance Manager

- > Form to be completed on all victims / reporters of incidents of Substantiated or Unsubstantiated Sexual Abuse.
- > All reports of any type of retaliation from any source are to be reported directly to the Special Investigations Unit.

VICTIM / REPORTER NAME _____ INMATE ID _____
CURRENT HOUSING _____ INCIDENT DATE _____

30 Day Status Check Date of check: _____

Is the victim / reporter experiencing any issues with other inmates or staff related to this incident?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Does the victim / reporter feel safe in their current placement / housing assignment?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
For this review period – has staff reviewed inmate’s disciplinary reports, housing assignments and program changes?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Was the victim / reporter provided information on how to access help for emotional support services?	<input type="checkbox"/> YES	<input type="checkbox"/> NO

Summary of Status Check

60 Day Status Check Date of check: _____

Is the victim / reporter experiencing any issues with other inmates or staff related to this incident?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Does the victim / reporter feel safe in their current placement / housing assignment?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
For this review period – has staff reviewed inmate’s disciplinary reports, housing assignments and program changes?	<input type="checkbox"/> YES	<input type="checkbox"/> NO

Summary of Status Check

90 Day Status Check Date of check: _____

Is the victim / reporter experiencing any issues with other inmates or staff related to this incident?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Does the victim / reporter feel safe in their current placement / housing assignment?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
For this review period – has staff reviewed inmate’s disciplinary reports, housing assignments and program changes?	<input type="checkbox"/> YES	<input type="checkbox"/> NO

Summary of Status Check

Additional Time Status Check (if needed) Date of check: _____

Is the victim / reporter experiencing any issues with other inmates or staff related to this incident?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Does the victim / reporter feel safe in their current placement / housing assignment?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
For this review period – has staff reviewed inmate’s disciplinary reports, housing assignments and program changes?	<input type="checkbox"/> YES	<input type="checkbox"/> NO

Summary of Status Check

PREA COMPLIANCE MANAGER Summary Review

Facility PREA Compliance Manager _____ Date _____

PREA Compliance Manager save copy at M: PREA/Compliance Manager/Retaliation/[facility]Retaliation.
 Send copy to DOC PREA Coordinator.

Page 1 of 1

Attachment 4: PREA Sexual Abuse Victim Preference

The **PREA Sexual Abuse Victim Preference** form is located at:

<M:\DOC\DOC Policies\Agency\DOC Policies\Attachment Templates\PREA Victim Preference Statement.doc>

South Dakota Department of Corrections Policies Distribution: Public	1.3.E.6 PREA Response & Investigation of Sexual Abuse/Harassment Attachment 4:
--	--

SEXUAL ABUSE VICTIM PREFERENCE STATEMENT
South Dakota Department of Corrections
Special Investigations Office

Inmate Name: Last /First _____ Inmate ID _____

I have informed Department of Corrections (DOC) staff that I have been the victim of an act of sexual abuse.

I am aware that a victim advocate or staff counselor will provide me with information that may assist me in deciding whether to participate in the criminal investigation.

I have been offered the opportunity to consult with victim advocate, mental health staff, or other person(s) of my choosing before making the following decision:

At this time, I have decided not to provide additional information or participate in the investigation and prosecution of the suspect.

I understand that the investigation may not be able to be completed without my participation. Because the allegation will not have a complete investigation, it may be considered an unsubstantiated case.

DOC Staff have informed me of the following:

- > I understand the DOC may not take any actions; such as: housing transfer requests, separation or monitoring requests, or other administrative actions based solely upon an unsubstantiated allegation.
- > I further understand that I may change my mind and provide information for this investigation at a later time. In the event, however, I understand that the delay may affect the investigative findings and successful prosecution of the suspect.
- > The case may still be referred to the Division of Criminal Investigation for review.
- > I understand my rights as a crime victim under the DOC Policies & Procedures and South Dakota law, including my right to consult a victim advocate or staff counselor.

I make this decision freely and voluntarily.

Inmate Signature

Date

Witnessed by

Date

Title

Attachment 5: Sexual Incident Protocol and Reference Book

The book is available in facility control rooms.

Attachment 6: PREA Notice of PREA Investigation Determination

The **PREA Notice of PREA Investigation Determination** form is located at:
<M:\DOC\DOC Policies\Agency\DOC Policies\Attachment Templates\PREA Notice of Determination.doc>

Notice of PREA Investigation Determination
From the Special Investigations Office

Inmate: _____ ID# _____

This notice is to inform you that the allegation of Choose an item.
SEXUAL INCIDENT TYPE

you made (or made in your behalf) on Click here to enter a date. was determined to be:
INCIDENT DATE

Substantiated: This means there was **evidence** or information that the allegation **did happen**.
**Staff will contact you with additional information about the case and to follow-up on how you are doing.*

Unsubstantiated: This means there **not enough evidence** or information to **make a determination**.
**Based upon the information available to staff at the time, there was not information to say that the alleged incident happened or didn't happen.*

Unfounded This means there was **evidence** or information that the allegation **did not happen**.
**Unfounded means there is evidence/information that this allegation did not happen. If it was determined that this allegation was made in 'bad faith' an institutional rule violation may be written.*

PREA INVESTIGATOR

Click here to enter a date.
DATE



NOTICE: If you believe there was a procedural of policy error or omission in this investigation and determination you may file an Administrative Remedy (AR) with your Unit Staff. You do not need to go through the Informal Resolution step for this type of procedure. In the AR you must identify the procedural or policy error or omission.

Original: To inmate
Copy: To Investigators file

Attachment 7: PREA Special Investigations Unit Incident Report

The **PREA Special Investigations Unit Incident Report** form is located at:

<M:\DOC\DOC Policies\Agency\DOC Policies\Attachment Templates\PREA SIU Incident Report.doc>

	South Dakota Department of Corrections Special Investigations Unit	
Incident Report		
<input type="checkbox"/>	Date of Report: <input type="text"/>	Facility: <input type="text"/>
	Incident Date: <input type="text"/>	Case Number: <input type="text"/>
	Incident Type: <input type="text"/>	Offense: <input type="text"/>
	Investigator: <input type="text"/>	Subjects: <input type="text"/>
	Copy to: <input type="text"/>	<input type="text"/>
		<input type="text"/>
		<input type="text"/>
		<input type="checkbox"/>
Narrative		
<input type="text"/>		
SIU CONFIDENTIAL		DO NOT DISEMINATE
Page 1 of 1		