

1.3. E.5 Compliance with Prison Rape Elimination Act Standards

I Policy Index:



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II Policy:

The South Dakota Department of Corrections (DOC) has a zero-tolerance policy relating to sexual abuse/harassment of an offender. The DOC will cooperate in the investigation, discipline, and prosecution of anyone involved in a sexual abuse or sexual harassment of an offender in a DOC facility or placement. This policy shall be followed in conjunction with DOC policy 1.1.C.3 [Reporting Abuse or Neglect](#) and mandatory reporting requirements. This policy does not apply to incidents of sexual assault/rape or harassment by an offender against an employee, visitor, volunteer or any other individual who has business with the DOC.

III Definitions:

Facility:

For the purpose of this policy, facility refers to individual adult inmate housing locations and campus within the South Dakota Department of Corrections. The adult facilities are:

- South Dakota State Penitentiary (including Jameson Prison Annex and Unit C).
- Mike Durfee State Prison
- Yankton Minimum Facility
- Rapid City Correctional Facility
- South Dakota Women's Prison (including E & H Units)

Facility also includes the State Treatment and Rehabilitation Academy (STAR) that houses adjudicated juvenile offenders committed to the Department of Corrections.

Offender:

For the purposes of this policy, an offender is an adult inmate in the custody of a DOC facility or a juvenile placed at STAR.

New Admission Offenders:

For the purposes of this policy, a new admission offender is any offender, parole violator, parole detainee or offender from another jurisdiction temporary housed at a DOC facility who at the time of admission does not currently have a PREA screen or assessment on file, or 90 days or more has elapsed since the screen/assessment was last complete.

Youthful Offender:

For the purpose of this policy, a youthful offender is any offender under the age of 18 at the time of sentence to the Department of Corrections as an adult.

PREA:

The Prison Rape Elimination Act of 2003. A federal act addressing the prevention, detection and punishment of prison sexual assaults.

Sexual Abuse-Offender on Offender:

Sexual abuse of an offender includes any of the following acts, if the offender 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-Staff on Offender:

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

- (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 offender, 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 offender by staff for reasons unrelated to official duties, such as peering at an offender who is using a toilet to perform bodily functions; requiring an offender to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an offender's naked body or of an offender performing bodily functions.

Sexual penetration by any person employed by the State of South Dakota or employed within any DOC facility with an offender who is housed at a DOC facility (See SDCL § 24-1-26.1 and SDCL § 22-22-7.6).

Sexual Harassment-Offender on Offender:

Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one offender directed toward another offender.

Sexual Harassment-Staff on Offender:

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

Note:

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

- Custodial or medical personnel gathering physical evidence, or engaging in other legitimate medical treatment, in the course of investigating a sexual assault/rape.
- The use of a health care provider's hands or fingers, or the use of medical devices in the course of appropriate medical treatment unrelated to a sexual assault/rape.
- The use of a health care provider's hands or fingers and the use of instruments to perform body cavity searches in order to maintain security and safety within a facility. This exemption is contingent upon the search being conducted in a manner consistent with constitutional requirements and DOC policies 1.3.A.5 [Searches – Adult Institutions](#) and 1.3.A.6 [Searches – Juvenile Institutions](#).
- Consensual sexual contact/activity between offenders. Although this type of behavior is prohibited (See Prohibited Act 4-3 in the [South Dakota Department of Corrections Inmate Living Guide](#) and Prohibited Act 5 in the [South Dakota Department of Corrections Juvenile Offender Living Guide](#)).

Sexual Incident

For the purpose of this policy, a sexual incident is an investigative event involving alleged or potential sexual abuse or sexual harassment of an offender.

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.

Juvenile Facility:

A juvenile facility is one that is primarily used for the confinement of juveniles where a majority (more than 50%) of the facility's residents is under the authority and jurisdiction of juvenile justice agencies. It excludes facilities where the majority of the residents are non-delinquent youth such as those placed by the Department of Social Services or privately placed. It also excludes psychiatric residential treatment facilities (PRTF) that provide inpatient psychiatric services to benefit Medicaid-eligible youth and intensive residential treatment facilities (IRT) that are licensed by the Department of Social Services to provide more intensive and frequent services and supervision of youth.

Unit Team:

A team of correctional staff assigned to a particular housing unit of an adult facility, usually consisting of a unit manager, case manager and unit coordinator.

IV Procedures:**1. Approach:**

- A. The Department of Corrections (DOC) has a zero tolerance for sexual abuse/sexual harassment in its facilities. Each facility shall investigate all allegations of sexual abuse/sexual harassment, offer services to all identified victims, and respond to every identified perpetrator – including referral to law enforcement and prosecutors.

B. PREA staffing.

1. The DOC will employ at least one PREA Coordinator for the juvenile and one for the adult facilities. PREA Coordinators will develop, implement, and oversee agency efforts to comply with PREA standards in all DOC facilities. PREA Coordinator duties include (but are not limited to):
 - a. Policy development, review and analysis to assure PREA compliance.
 - b. Develop compliance files and maintain documentation required by PREA standards.
 - c. Oversight and assistance with education and training for staff, offenders, contractors and volunteers.
 - d. Review of investigations into allegation of sexual abuse and sexual harassment of offenders.
 - e. Visiting DOC facilities to monitor compliance with PREA standards and assist the facility PREA Compliance Managers.
 - f. Facilitate data submission to U.S. Department of Justice (DOJ) and facilitate the agencies annual data review.
 - g. Develop and maintain agency MOU's for investigations, victim services and prosecutors.
 - h. Schedule and maintain documentation of facility PREA audits.
 - i. Have input concerning contracts with vendors that have contact with offenders.
 - j. Coordinate with outside entities, such as victim advocates, SANE's, medical and mental health providers, investigating agencies, prosecutors and others as needed to meet PREA compliance.
 - k. Work with the PREA auditor and preparing for PREA audit.
 - l. Communicate with administrative staff regarding progress and needs to assure PREA compliance.
 - m. Keep up-to-date with all new information concerning PREA standards.
2. Each DOC facility will designate a PREA Compliance Manager, who will have sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards. The PREA Compliance Manager duties include (but are not limited to):
 - a. Knowledge of PREA standards, compliance measures and audit requirements for PREA Compliance Managers.
 - b. Review facilities practices and procedures for compliance with PREA standards and DOC policy.
 - c. Develop facility level compliance files and maintain documentation required by PREA standards.
 - d. Documentation and tracking of all sexual abuse and sexual harassment allegations made within the facility.
 - e. Assist in developing a facility level staffing plan.
 - f. Assist in responding to allegations of sexual abuse in another facility.
 - g. Team Leader position in facility sexual incident reviews.
 - h. Prepare with the PREA Coordinator to develop a 'Pre-Audit' evaluation of the facility.

- i. Ensure offender PREA education is continuously and readily available to offenders at the facility.
 - j. Report and coordinate with PREA Coordinator on relative information and needs.
 - k. Facility level PREA contact person.
- C. Any unwanted sexual contact from an offender is sexual abuse. Sexual abuse does not have to be a violent act. If the victim feels they would be harmed or retaliated against if they refused to participate, it is sexual abuse. Sexual abuse is a violation of institutional rules. Incidents of sexual abuse may be referred to law enforcement and prosecutors (See DOC [Inmate Living Guide](#) and [Juvenile Offender Living Guide](#)).
 - 1. Consensual sexual contact from another offender is not sexual abuse but is a violation of institutional rules and may result in disciplinary action (See DOC policy 1.3.C.2 [Inmate Discipline System](#) and DOC policy 1.3.C.3 [Juvenile Discipline System](#)).
- D. Any sexual contact between a DOC staff member and an offender is expressly forbidden and is a violation of DOC policy and may be a violation on South Dakota law (See DOC policy 1.1.C.1 [Code of Ethics](#) and SDCL § 22-6-1).
 - 1. An offender may only be disciplined for sexual contact with staff if the staff member did not consent to the sexual contact.
- E. Sexual harassment from one offender to another is a violation of institutional rules and will not be tolerated.
 - 1. Staff are required to report all suspected incidents of offender on offender sexual harassment.
 - 2. All reported incidents of offender on offender sexual harassment will be investigated.
- F. Staff shall not engage, participate, or otherwise take part in any incident of sexual harassment of an offender.
 - 1. Sexual harassment of any offender by a staff member is expressly forbidden (See DOC policy 1.1.C.10 [Harassment](#)).
 - 2. Staff are required to report directly to their supervisor all suspected incidents of staff on offender sexual harassment.

2. Prevention of Sexual Abuse/Harassment:

- A. Offenders under the age of 18 will not be placed in a housing unit where the offender will have sight, sound, or physical contact with any adult offender through use of a shared dayroom or other common space, shower area, or sleeping quarters.
 - 1. When an offender under the age of 18 has sight, sound or physical contact with adult offenders, direct staff supervision is required.
- B. All contracts with public or private facilities for incarceration of adult offenders and contracts with juvenile facilities to provide confinement services will include the facility's obligation to adopt and comply with the PREA Standards.
 - 1. PREA Coordinators will ensure contracted facilities comply with applicable PREA standards.

- C. Each Warden or Superintendent will develop, document, and ensure the facility and its staff makes its best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect offenders against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring the following will be considered:
1. Generally accepted detention and correctional practices;
 2. Any judicial findings of inadequacy;
 3. Any findings of inadequacy from federal investigative agencies;
 4. Any findings of inadequacy from internal or external oversight bodies;
 5. All components of the facility's physical plant (including "blind-spots" or areas where staff or offenders may be isolated);
 6. The composition of the offender population;
 7. The number and placement of supervisory staff;
 8. Offender programs occurring during a particular shift;
 9. Any applicable state or local laws, regulations, or standards;
 10. The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
 11. Any other relevant factors.
- D. The Warden, Superintendent of each facility or his/her designee will consult with the PREA Coordinator on an annual basis to assess, determine, and document whether adjustments are needed at each DOC facility housing offenders. The following will be reviewed and adjusted as needed:
1. The staffing plan established pursuant to this policy;
 2. The facility's deployment of video monitoring systems and other monitoring technologies; and
 3. The resources available to ensure adherence to the facility's staffing plan.
- E. In circumstances where the facility is not compliant with the staffing plan, designated facility staff will document the reasons for the deviation from the approved staffing plan. A copy of this report will be sent to the Warden or Superintendent, the facility PREA Compliance Manager and PREA Coordinator.
- F. When designing or acquiring any new facility and in planning any substantial expansion or modification of existing DOC facilities or when installing or updating a video monitoring system, electronic surveillance system or other monitoring technology in a DOC facility housing offenders, the DOC will consider the effect of the design, acquisition, expansion, or modification upon the staff's ability to protect offenders from sexual abuse/harassment.

1. The physical plant manager will complete the Upgrades to Facilities and Technology form (See [Attachment 1](#)) describing any such installation, upgrade or modifications in monitoring equipment at the facility. A copy of this report will be sent to the Warden or Superintendent or his/her designee.
- G. When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology in a DOC facility where offenders are housed, staff will consider the impact potential changes in technology may have on the facility's ability to protect offenders from sexual abuse and report this on the Upgrades to Facilities and Technology form (See [Attachment 1](#)).
 1. A copy of this report/form will be sent to the Warden or Superintendent or his/her designee, the facility PREA Compliance Manager and the DOC PREA Coordinator.
- H. Each facility's staffing plan will be reviewed annually for any adjustments, additions or updates prior to the budget review (See [Attachment 5](#)).
 1. Once completed, the facility staffing plan recommendations will be forwarded to the Warden or Superintendent, Secretary of Corrections and other designated staff for review and approval.
 2. Once approved, the staffing plan will be forwarded to the Facility Compliance Manager and the DOC PREA Coordinator.

3. Screening for Risk of Sexual Victimization and Abusiveness:

- A. Within 72 hours of the offender's admission to a DOC facility, the facility's admissions and orientation unit shall obtain and use information about the offender's personal history and behavior to reduce the risk of sexual abuse by the offender or upon the offender (See DOC policy 1.4.B.16 [PREA Institutional Risk Screens](#) and STAR OM 5.3.E.4 [PREA Institutional Juvenile Assessment](#)).
 1. Assessments will be conducted using an objective screening instrument by trained DOC staff.
- B. For new admissions to an adult facility, the offender's behavior history will be assessed again within 30 days by staff trained in the PREA Screen to determine his/her potential risk of sexual vulnerability or potential to exhibit sexually assaultive behavior. The PREA Risk Screen Review will be used to determine the offenders institutional PREA Code.
 1. A PREA Risk Screen Review will be completed on adult offenders in accordance with DOC policy 1.4.B.16 [PREA Institutional Risk Screens](#).
 2. For juvenile offenders, risk screening will be reassessed periodically throughout a resident's confinement
- C. DOC staff will use the PREA Screen scores and relevant risk information to determine an offender's housing assignments, work assignments and educational and programming placement.
- D. Offenders determined through the PREA Screen to have a high risk of victimization will not be housed in involuntary segregation housing as a means of separation from potential abusers, unless a Protective Custody Hearing Board determines there is no alternative means of separation from likely abusers.
- E. Medical and Mental Health.

1. If the Admissions Risk Screening indicates an offender has either previously perpetrated sexual abuse, or has experienced prior sexual victimization, whether in an institutional setting or the community, staff will ensure the offender is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening.
2. Any information related to sexual victimization or abusiveness that occurred in an institutional setting will be strictly limited to medical and mental health practitioners and other DOC staff, as necessary. The information will be used to develop treatment plans and guide security and management decisions; i.e. housing, bunk, work, education, and program assignments.
3. Medical and mental health practitioners will obtain a signed informed consent form from the offender before reporting information about prior sexual victimization that did not occur within an institutional setting, unless the offender is under the age of 18. The signed informed consent form will be kept in the offender's medical file.

4. Offender Education:

- A. During the initial PREA Screen process, offenders will receive age appropriate information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.
 1. For adult offenders, this will be documented with the Acknowledgement of Prevention of Sexual Abuse/Harassment Information form (See [Attachment 2](#)).
 2. For juvenile offenders this will be documented with the STAR Academy Sexual Abuse/Sexual Harassment Information form (See [Attachment 3](#)).
- B. Staff assigned to the admissions and orientation (A&O) units will provide comprehensive education/information to offenders, either in person or through video, describing the offender's right to be free from sexual abuse and sexual harassment, freedom from retaliation for reporting such incidents, and information about DOC policies and facility procedures for responding to such incidents.
 1. For adult offenders, this education/information will be provided to the offender within thirty (30) days of admission.
 - a. This will be documented with the Acknowledgement of Prevention of Sexual Abuse/Harassment Information form (See [Attachment 2](#))
 2. For juvenile offenders this education/information will be provided within ten (10) days of intake.
- C. Current offenders who have not received information explaining the DOC's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment will receive the education/information from unit staff at the offenders' case planning and review (See DOC policy 1.1.E.6 [Case Management](#)).
 - a. Offenders who do not have a signed *Acknowledgement of Prevention of Sexual Abuse/Harassment Information* form on file will be offered a video presentation of the information.
 - b. Once completed, the offender will sign the *Acknowledgement of Prevention of Sexual Abuse/Harassment Information - Part 2 Comprehensive PREA Education* (See [Attachment](#)

- 2) and the information entered in COMS/Assessments/Assessment Type: PREA Admissions and Orientation class.
- c. All offenders housed at a DOC adult facility will have been offered a comprehensive PREA Education and have a signed *Acknowledgement of Prevention of Sexual Abuse/Harassment Information* form within six (6) months of the implementation date of this policy.
- D. The facilities will provide offender education in formats accessible to all offenders, including those who are limited English proficient, deaf, visually impaired, intellectually disabled, limited reading skills or otherwise disabled.
1. The DOC will take reasonable steps to ensure meaningful access to all safeguards in place to prevent, detect, and respond to sexual abuse and sexual harassment to offenders who are limited English proficient, including steps to provide qualified interpreters.
- a. The facility will not rely on offender interpreters, offender readers, or other types of offender assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the offender's safety.

5. Staff Training:

- A. All new staff hires, volunteers and contract staff that may have contact with offenders will have training in their responsibilities under PREA (See DOC policy 1.1.D.1 [Staff Training Requirements](#)).
- B. The annual staff in-service training will include a refresher PREA training to ensure all employees and others who may be required to attend the training know and are aware of the DOC's current sexual abuse and sexual harassment policies and procedures.
- C. DOC investigators who conduct sexual incident investigations will receive specialized training specific to conducting sexual incident investigations in a correctional/confinement environment.
1. Specialized training will include but is not limited to:
- a. Techniques for interviewing sexual abuse victims.
- b. Proper use of *Miranda* and *Garrity* warnings.
- c. Sexual abuse evidence collection in correctional/confinement settings.
2. The criteria and evidence required to substantiate a case for administrative action or prosecution referral.
3. The training specialist for each facility will maintain documentation that staff investigators have completed the required specialized training.
- D. All full-and part-time medical and mental health care practitioners will be trained in:
1. How to detect and assess signs of sexual abuse and sexual harassment;
2. How to preserve physical evidence of sexual abuse;
3. How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and
4. How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

6. Victim Advocate/Rape Crisis Centers:

- A. Offenders will have access to outside victim advocates. Offenders will be provided with the mailing addresses and telephone numbers (including toll-free hotline numbers where available) of local, state, or national victim advocacy or rape crisis organizations.
1. The facility will inform offenders, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws (See DOC policy 1.5.D.4 [Inmate Access to Telephones](#)).
 2. The facility will maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide offenders with confidential emotional support services related to sexual abuse. The facility will maintain copies of agreements or documentation showing attempts to enter into such agreements.
- B. The victim advocates provided by the rape crisis centers, qualified agency, qualified community-based organization through any agreement or memorandum with the DOC will have received specialized training from the DOC and will be sensitive to the issues surrounding abuse and sexual harassment.
1. The facilities will provide training on the victim advocate's responsibilities under the DOC's sexual abuse and sexual harassment prevention, detection, and response policies and procedures – including the DOC's zero-tolerance policy and how to report such incidents.
- C. All victim advocates requesting access to DOC adult institutions will apply for an Orange ID Card (See DOC policy 1.1.D.3 [Facility Access & ID Requirements](#)).

7. Gender Non-Conforming Offenders:

- A. Lesbian, gay, bisexual, transgender, or intersex offenders will not be housed in dedicated units or cells based solely on the basis of such identification or status.
- B. In making housing and programming assignments, staff will consider on a case-by-case basis whether a placement would ensure the offender's health and safety and whether the placement may compromise the safety and security of the facility, its staff and other offenders.
1. Placement and programming assignments for each transgender or intersex offender will be reassessed at least twice each year to review any threats to safety experienced by the offender.
 2. A transgender or intersex offender's own views with respect to his or her own safety will be considered when making placement and programming assignments.
 3. Each facility will document this process with the Individualized Gender Identity Determination Form (See [Attachment 6](#)).
- C. Transgender and intersex offenders will be given the opportunity to shower separately from other offenders.

8. Reporting:

- A. Each facility will provide multiple ways for offenders to privately report sexual abuse and sexual harassment, retaliation by other offenders or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents. The following are some (not all) of the ways an offender may report:
1. Verbal report from offender;
 2. Written report (kite) from offender;
 3. Anonymous report to staff; or
 4. Third party reports, including from other offenders, the public or a victim advocacy entity.
- B. Each facility will provide at least one way for offenders to report abuse or harassment to a public or private entity or office that is not part of the DOC and is able to receive and immediately forward offender reports of sexual abuse and sexual harassment to the DOC, allowing the offender to remain anonymous upon request.
- C. Staff are required to immediately report any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a DOC facility, retaliation against offenders or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. If a DOC staff member does not report it they may be subject to disciplinary action, including termination of employment (See DOC policy 1.1.C.1 [Code of Ethics](#)).
1. If an offender is subject to a substantial risk of imminent sexual abuse, staff will take immediate action to protect the offender.
 2. The DOC will have a method to receive third-party reports of sexual abuse and sexual harassment and will distribute publicly, information on how to report sexual abuse and sexual harassment on behalf of an offender.
- D. Upon receiving an allegation that an offender was sexually abused while confined at another facility, the Warden or Superintendent of the facility or his/her designee who received the allegation will notify the head of the facility or appropriate office of the agency where the alleged sexual abuse of the offender occurred.
1. Such notification will be provided as soon as possible, but no later than 72 hours after receiving the allegation.
 2. The agency will document that it has provided such notification. A copy of the notification shall be sent to the facility PREA Compliance Manager and the DOC PREA Coordinator.

9. Investigations:

- A. The DOC will respond to all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports. All allegations shall be promptly, thoroughly, and objectively investigated by designated staff (See DOC policy [Response and Investigation of Sexual Abuse/Sexual Harassment](#) and STAR OM 5.3.E.3 [Response and Investigation of Juvenile Sexual Abuse/Harassment](#)).

1. The sharing of information pertaining to the alleged sexual abuse/harassment and identity of the victim(s) will be limited to those who must know. Sharing information regarding the victim and/or incident will be conducted in a manner that is in accordance with all applicable policies, state statutes, and professional licensure and ethics standards.
- B. Each facility will follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.
- C. Each facility will ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The facility will document all such referrals.
- D. Offenders and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations will be protected from retaliation by other offenders or staff.
 1. Each facility will employ multiple protection measures; such as housing changes or transfers for offender victims or abusers, removal of alleged staff or offender abusers from contact with victims, and emotional support services for offenders or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.
 2. For at least ninety (90) days following a report of sexual abuse, the facility will monitor the conduct and treatment of offenders or staff who reported the sexual abuse and of offenders who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by offenders or staff. The Warden or Superintendent will act promptly to remedy any such retaliation.
 - a. Items the facility should monitor include any offender disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The facility shall continue such monitoring beyond ninety (90) days if the initial monitoring indicates a continuing need.

10. Response to Incidents:

- A. Any incident of alleged sexual abuse /harassment involving offenders, or offenders and staff will be reported to the DOC Administration in accordance with DOC policy 1.1.A.3 [Reporting Information to DOC Administration](#).
 1. Any media inquiries regarding an alleged or verified offender sexual abuse /harassment will be forwarded to the Communications & Information Manager.
 2. The Warden or Superintendent of each facility will assign a staff member who is responsible for the following:
 - a. Ensuring all investigations are completed thoroughly and in a timely manner.
 - b. All information relating to the investigation is accurately documented and recorded in a database.
 3. The Warden or Superintendent is responsible to ensure:
 - a. That investigations are completed appropriately and in a timely manner.
 - b. All tracking and logging of investigations is entered appropriately.
- B. Offenders may not be placed in involuntary segregation (protective custody) based solely on their

high risk of victimization, unless a review of all available alternatives has determined there are no other options available.

1. Following an investigation into an offender's allegation that he or she suffered sexual abuse/harassment in a facility, the offender will be informed as to the results of the investigation.
 2. Offenders are subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the offender engaged in offender to offender sexual abuse or sexual harassment or following a criminal finding of guilt for offender sexual abuse (See DOC policies 1.3.C.2 [Inmate Discipline System](#) and 1.3.C.3 [Juvenile Discipline System](#)).
- C. SDCL § 24-1-26.1 Any person, employed by the state, or employed within any state prison or other detention facility, who knowingly engages in an act of sexual penetration with another person who is in detention and under the custodial, supervisory, or disciplinary authority of the person so engaging, is guilty of a Class 6 felony.

SDCL § 22-22-7.6 Any person employed at any jail or juvenile correctional facility, who knowingly engages in an act of sexual contact or sexual penetration with another person who is in detention and under the custodial, supervisory, or disciplinary authority of the person so engaging, and which act of sexual contact or sexual penetration does not otherwise constitute a felony pursuant to the provisions of chapter 22-22, is guilty of a Class 6 felony if the victim is an adult and a Class 4 felony if the victim is a juvenile. A juvenile correctional facility pursuant to this section is a juvenile detention facility as defined in subdivision 26-7A-1(16) or a juvenile facility operated by the DOC under SDCL § 1-15-1.4.

1. Any staff member who engages in sexual contact with any offender, or who has knowledge of sexual contact between a staff member and an offender and does not report it or for violating agency sexual abuse or sexual harassment policies may be subject to disciplinary action, including termination of employment (See DOC policy 1.1.C.1 [Code of Ethics](#)).
- D. The facility shall conduct a sexual incident review at the conclusion of all sexual incident investigations where an allegation of offender sexual abuse concluded in a substantiated or unsubstantiated result.
1. The Warden or Superintendent of each DOC facility shall designate a Sexual Incident Review Team Leader.
 2. The facility's investigative office shall maintain documentation that agency investigators have concluded all sexual incident investigations regardless of the final determination of the investigation.
 - a. Such review shall ordinarily occur within thirty (30) working days of the administrative conclusion of the investigation.
 - b. The designated review team leader will receive a copy of all investigative forms and information from the facilities investigative office within three (3) working days from the conclusion of the investigation of a sexual incident report.
 - c. The review team will include the facility PREA Coordinator or PREA Compliance Manager (Team Leader), Warden, Superintendent or his/her designee, facility security supervisors, facility investigators and a representative each from Mental Health and Health Services.

3. The review team shall complete the Sexual Incident Review (See [Attachment 4](#)). The review will consider the following items:
 - a. Whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual incidents.
 - b. Whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
 - c. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
 - d. Assess the adequacy of staffing levels in that area during different shifts;
 - e. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
 - f. Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to this policy and any recommendations for improvement and submit such report to the Warden, Superintendent and PREA Coordinator.
4. The Warden, Superintendent or his/her designee will implement the recommendations for improvement and/or document reasons for not implementing the recommendations.

11. Recording Incidents:

- A. The DOC will collect accurate, uniform data for every allegation of a sexual incident at facilities under its direct control, using a standardized instrument and set of definitions.
 1. Each facility investigative office or designated staff will enter all sexual incident investigations information on a database.
 - a. The DOC will aggregate the incident-based sexual incident data at least annually.
 - b. The incident-based data collected will include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.
 - c. The DOC will maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual incident reviews.
 - d. The DOC will obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its offenders.
 - e. Upon request, the DOC will provide all such data from the previous calendar year to the Department of Justice no later than June 30.
- B. The DOC will review data collected and aggregated in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by:
 1. Identifying problem areas;

2. Taking corrective action on an ongoing basis; and
 3. Preparing an annual report of its findings and corrective actions for each facility, as well as the DOC as a whole.
 - a. Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.
 - b. The DOC's report shall be approved by the Secretary of Corrections and made readily available to the public through its website or, if it does not have one, through other means.
 - c. The DOC may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.
- C. The DOC will ensure data collected is securely retained.
1. The DOC will make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its website.
 2. Before making aggregated sexual abuse data publicly available, the DOC will remove all personal identifiers.
 3. The DOC will maintain sexual incident data collected for at least ten (10) years after the date of the initial collection, unless Federal, State, or local law requires otherwise.

V Related Directives:

DOC policy 1.1.A.3 -- [Reporting Information to DOC Administration](#)

DOC policy 1.1.C.1 -- [Code of Ethics](#)

DOC policy 1.1.C.3 -- [Reporting Abuse or Neglect](#)

DOC policy 1.1.C.10 -- [Harassment](#)

DOC policy 1.1.D.1 -- [Staff Training Requirements](#)

DOC policy 1.1.D.3 -- [Facility Access & ID Requirements](#)

DOC policy 1.1.E.6 -- [Case Management](#)

DOC policy 1.3.C.2 -- [Inmate Discipline System](#)

DOC policy 1.3.C.3 -- [Juvenile Discipline System](#)

DOC policy 1.4.B.16 -- [PREA Institutional Risk Screens](#)

DOC policy 1.5.D.4 -- [Inmate Access to Telephones](#)

STAR OM 5.3.E.3 -- [Response and Investigation of Juvenile Sexual Abuse/Harassment](#)

STAR OM 5.3.E.4 -- [PREA Institutional Juvenile Assessment](#)

DOC [Inmate Living Guide](#) and [Juvenile Offender Living Guide](#)

VI Revision Log:

July 2014: New Policy.

<i>Denny Kaemingk</i> (original signature on file)	08/14/2014
Denny Kaemingk, Secretary of Corrections	Date

Attachment 1: Upgrades to Facilities and Technology

The **Upgrades to Facilities & Technology Form** is located on the State WAN
Click [here](#).

Upgrades to Facilities and Technology PREA Standard Review

Facility / Unit / Area Click here to enter text. **Date** Click here to enter a date.

Upgrade is for: Choose an upgrade

Date range of design, modification, installation or upgrade :

From: Click here to enter a date. **To:** Click here to enter a date.

1) Brief Description of Upgrade(s).
Click here to enter text.

2) Has the design, modification, installation or update been reviewed to consider how it will affect the agency's ability to protect offenders from sexual abuse? Choose response

3) Brief Explanation of the projects effect (or not effect) the agency's ability to protect offenders from sexual abuse.
Click here to enter text.

Physical Plant Manager **Date** _____

Facility Administrator **Date** _____

Copy to Physical Plant Manager Copy to Facility PREA Compliance Manager / DOC PREA Coordinator

Attachment 2: Acknowledgement of Prevention of Sexual Abuse/Harassment Information

The **Acknowledgement of Prevention of Sexual Abuse/Harassment Information** form is located on the State WAN. Click [here](#).

South Dakota Department Of Corrections Policy Distribution: Public	Attachment: Acknowledgement of Prevention of Sexual Abuse / Harassment Information 1.4.B.16 PREA Institutional Risk Screens
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Acknowledgement of Prevention of Sexual Abuse/Harassment Information

PART 1 Initial PREA Risk Information: To be completed with the inmates Initial PREA Risk Screen (72 hrs) and initial briefing on PREA.

I acknowledge receiving information on the prevention of sexual abuse/harassment and the Department of Corrections policy on Zero Tolerance of sexual abuse/harassment.

INMATE NAME (PRINT) _____ NUMBER _____

INMATE SIGNATURE _____ DATE _____

STAFF WITNESS _____ DATE _____

PART 2 Comprehensive PREA Education: To be completed after the inmate has attended the in person or video presentation education regarding their rights to be free from:
1) Sexual abuse, 2) sexual harassment, and 3) retaliation.
In addition, how to report such incidents and the DOC's policy on Zero Tolerance.

Location: A&O PREA Education Class or PREA Housing Unit Education

I acknowledge receiving information on my rights to be free from sexual abuse/sexual harassment and to be free from retaliation for reporting such incidents.

I acknowledge reviewing information on the prevention of sexual abuse/harassment and the Department of Corrections policy on Zero Tolerance of sexual abuse/harassment.

INMATE NAME (PRINT) _____ NUMBER _____

INMATE SIGNATURE _____ DATE _____

Inmate was offered education and refused participation. Inmate was given PREA brochure.

STAFF WITNESS _____ DATE _____

Revised: 07/28/2014 Page 1 of 1

Attachment 3: STAR Academy Sexual Abuse/ Sexual Harassment Information

The **STAR Academy Sexual Abuse/ Sexual Harassment Information** is located on the WAN. Click [here](#).



DEPARTMENT OF CORRECTIONS
 Juvenile Division
State Treatment and Rehabilitation Academy
 12279 Brady Drive
 Custer, SD 57730-9647
 Phone: (605) 673-2521
 Fax: (605) 673-6004



STAR Academy Sexual Assault/Sexual Harassment Information

You have a right to free from sexual abuse and sexual harassment. STAR Academy has a **ZERO TOLERANCE** policy and all allegations will be investigated thoroughly. If you do report, you will be protected.

Most importantly, we want to make sure that if something happens to you or are aware of it happening to someone, you know how to report it. You can report to **ANYONE**. Some more specific ways to report are:

♦ Speak to a staff member you trust	♦ Your family can report on your behalf
♦ Note in Juvenile Corrections Monitor (JCM) box	♦ Speak with the JCM
♦ Sick Call slip to talk with Medical staff	♦ Yellow Ribbon to speak with Chaplain
♦ Put in a Grievance Form (Administrative Remedy)	♦ Ask for an advocate from W.E.A.V.E.
♦ Note to the PREA Coordinator	♦ Speak with the PREA Coordinator

A letter with the words PREA written on the outside of the envelope and addressed to an appropriate person such as your counselor, the Treatment Supervisor, the JCM, the PREA Coordinator, or to the WEAVE Advocate, will not be opened by anyone but the addressee. Reports are confidential and will only be shared with those necessary to take action. You can report anonymously.

DAY 1 BRIEFING – I acknowledge receiving information on the zero tolerance policy and how to report sexual assault and sexual harassment. Through my signature below I verify that I understand the information that I have received. If I do not understand any information as stated above, I have the responsibility to seek clarification prior to signing this document.

Juvenile Printed Name	Juvenile Signature	Date
Staff/Witness Printed Name	Staff/ Witness Signature	

When you first arrived the Admissions Counselor briefed you on our Zero Tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions. We understand that your first few hours here may have been somewhat overwhelming. Program staff are providing you more comprehensive information on your right to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents. They are also providing information on how STAR Academy responds in the event

Attachment 5: Facility Staffing Plan Form

The **Sexual Incident Report Form** is located on the WAN.

Click [here](#)



South Dakota Department of Corrections
Facility Staffing Plan

Annual Review of staffing plan, facility organizational chart and compliance review.

DOC Facility: Date:

Staffing Plan: Calculating staffing levels and determining need for video monitoring.

1) Are there any judicial findings of inadequacy? If yes-note below:
Note:

2) Any findings of inadequacy from Federal Investigative agencies? If yes-note below:
Note:

3) Any findings of inadequacy from Internal or external oversight bodies? If yes-note below:
Note:

4) Review all components of the facilities physical plant (including "blind-spots" or areas were staff or inmates may be isolated): Note Issues below. Note if video camera coverage.
Note:

5) Review and note any applicable State or local laws, regulations, or standards:
Note:

6) Review and note the prevalence of substantiated and unsubstantiated incidents of sexual abuse:
Note problem areas:

Facility Organizational Chart:

1) Attach and organizational chart that depicts all positions assigned to the facility.

2) Organizational Chart should, at a minimum, include the following:

- a. Composition of inmate population.
- b. Institutional work, programming, and educational areas
- c. Job description of each position: Job title, duties, full or part time, etc...
- d. Post description of each job: Description of post, shift hours (I.e. 6/2, 2/10/10/6; 5 day/7 day post, 8/10/12 hour post, etc...)
- e. Identify and note placement of supervisory staff.
- f. Identify any problem areas in post (blind spots, isolated, etc....)

Attachment 6: Individualized Gender Identity Determination

The **Sexual Incident Report Form** is located on the WAN.
 Click [here](#).

South Dakota Department of Corrections Individualized Gender Identity Determination							
_____ Adult Facility	_____ Juvenile Facility						
_____ TODAY'S DATE							
_____ OFFENDER'S NAME							
_____ OFFENDER'S ID							
<p>In deciding whether to assign a transgender or intersex offender to a facility for male or female offenders, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the offender's health and safety, and whether the placement would present management or security problems.</p>							
_____ ARRIVAL FACILITY	_____ MALE FACILITY						
_____ FEMALE FACILITY	_____ DATE OF JURNAL						
<p>1. The above in offender is being considered for an Individualized Gender Identity Determination because (check all that apply):</p> <p>_____ Offender presents gender non-conforming physical characteristics. Note characteristics: _____</p> <p>_____ Offender self identifies as a transgender or intersex individual.</p>							
<p>2. Available court documentation identifies the offender as:</p> <p style="text-align: center;">Male _____ Female _____ Not Available _____</p>							
<p>3. Health Services has completed an initial assessment of the above offender and does not identify any significant issues relating to offenders gender identity. (HS summary attached)</p> <p style="text-align: right;">Agree _____ Disagree _____</p>							
<p>3. Correctional Behavioral Health has completed an initial assessment of the above offender and does not identify any significant issues relating to offenders gender identity. (BH summary attached)</p> <p style="text-align: right;">Agree _____ Disagree _____</p>							
<p>3. Other considerations:</p> <p>Senior placement staff recommendation:</p>							
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Initial administrative recommendation is for placement in at:</td> <td style="width: 20%;">_____ Male Facility</td> <td style="width: 20%;">_____ Female Facility</td> </tr> <tr> <td colspan="3">_____ SENIOR PLACEMENT STAFF: _____ DATE</td> </tr> </table>		Initial administrative recommendation is for placement in at:	_____ Male Facility	_____ Female Facility	_____ SENIOR PLACEMENT STAFF: _____ DATE		
Initial administrative recommendation is for placement in at:	_____ Male Facility	_____ Female Facility					
_____ SENIOR PLACEMENT STAFF: _____ DATE							
<p>Chief Executive Office Determination:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Gender identity for the purpose of facility housing of this offender has been determined to be:</td> <td style="width: 50%;"> MALE _____ FEMALE _____ </td> </tr> <tr> <td colspan="2">_____ CHIEF EXECUTIVE OFFICER: _____ DATE</td> </tr> </table>		Gender identity for the purpose of facility housing of this offender has been determined to be:	MALE _____ FEMALE _____	_____ CHIEF EXECUTIVE OFFICER: _____ DATE			
Gender identity for the purpose of facility housing of this offender has been determined to be:	MALE _____ FEMALE _____						
_____ CHIEF EXECUTIVE OFFICER: _____ DATE							
<p>ORIGINAL: Unit File COPY: FACILITY PRGA Compliance Manager COPY: DOC PRGA Coordinator</p>							