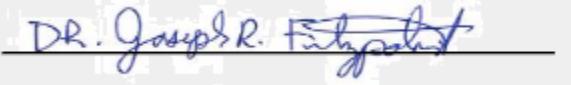


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| <b>POLICY NUMBER:</b> 6.11.3   |   |                              |
| <b>CHAPTER 6: VICTIM SERVICES</b>  |   |                              |
|     | <b>STATE of MAINE<br/>DEPARTMENT OF CORRECTIONS</b><br><b>Approved by Commissioner:</b><br> |                              |
| <b>EFFECTIVE DATE:</b><br>May 19, 2008   | <b>LATEST REVISION:</b><br>May 23, 2018   | <b>CHECK ONLY IF APA [ ]</b> |

## I. AUTHORITY

The Commissioner of Corrections adopts this policy pursuant to the authority contained in 34-A M.R.S.A. Section 1403.

## II. APPLICABILITY

Entire Department of Corrections

## III. POLICY

It is the policy of the Department to require the reporting of any sexual misconduct or sexual harassment or suspicion of either and to refer all reports for investigation.

## IV. CONTENTS

- Procedure A: Means for Reporting Sexual Misconduct or Sexual Harassment
- Procedure B: Reports of Sexual Misconduct or Sexual Harassment
- Procedure C: Monitoring Reporting Parties and Alleged Victims
- Procedure D: Investigation of a Report of Sexual Misconduct
- Procedure E: Investigation of a Report of Sexual Harassment
- Procedure F: Follow-up with Prisoner or Resident

## V. ATTACHMENTS

- Attachment A: PREA Retaliation Monitoring form
- Attachment B: Investigation Check List
- Attachment C: Sexual Misconduct Review

## **VI. PROCEDURES**

### **Procedure A: Means for Reporting Sexual Misconduct or Sexual Harassment**

1. The Chief Administrative Officer, or designee, shall provide multiple internal means for prisoners or residents to report sexual misconduct or sexual harassment; attempts to deter them from reporting sexual misconduct or sexual harassment; retaliation for reporting sexual misconduct or sexual harassment; and staff, volunteer or student intern neglect or violation of responsibilities that may have contributed to such incidents. These multiple internal means shall include verbally, in writing, anonymously, and by way of third parties.
2. The Chief Administrative Officer, or designee, shall provide the means for prisoners or residents to make reports directly to the Department's PREA Coordinator, either by writing to or calling the hotline number for the PREA Coordinator.
3. The Chief Administrative Officer, or designee, shall also provide the means for prisoners or residents to make reports of sexual misconduct to sexual assault agencies in the community by providing the contact information for local agencies.
4. The Department's PREA Coordinator shall establish a method to receive third-party reports of sexual misconduct or sexual harassment and shall distribute through the Department's website information on how to report sexual misconduct or sexual harassment on behalf of a prisoner or resident.

### **Procedure B: Reports of Sexual Misconduct or Sexual Harassment**

1. A prisoner or resident may report to any Department staff, volunteer or student intern that he or she has been a victim of sexual misconduct or sexual harassment by a staff person, volunteer or student intern or another prisoner or resident.
2. If a staff person, volunteer or student intern observes, receives a report of, or otherwise discovers what appears to be sexual misconduct or sexual harassment between prisoners or between residents or sexual misconduct or sexual harassment by a staff person, volunteer or student intern against a prisoner or resident, that person shall immediately verbally report the incident to the facility Chief Administrative Officer, or designee, and as soon as possible, to the facility PREA Monitor, who shall then immediately report it to the Department's PREA Coordinator.
3. The reporting staff person, volunteer or student intern shall then make a written report prior to leaving the facility and forward it to the facility Chief Administrative Officer, or designee, with a copy to the facility PREA Monitor, who shall immediately forward a copy to the Department's PREA Coordinator.
4. If the report is of alleged sexual misconduct or sexual harassment of a prisoner or resident while confined at another detention or correctional facility, regardless of

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whether it was a Department facility, in addition to forwarding a copy of the report to the Department's PREA Coordinator, the Chief Administrative Officer, or designee, of the facility where the allegation was made shall forward a copy of the written report to the Chief Administrative Officer, or designee, of the facility where the alleged sexual misconduct or sexual harassment occurred, no later than seventy-two (72) hours after receipt of the report by the Chief Administrative Officer, or designee. The Chief Administrative Officer, or designee, shall document that notification was provided.

5. If the victim of the alleged sexual misconduct is under the age of 18 or is considered a dependent or incapacitated adult under 22 M.R.S.A Section 3472, the Chief Administrative Officer, or designee, shall report the allegation to the Department of Health and Human Services. If the Chief Administrative Officer, or designee, is uncertain as to whether the allegation is required to be so reported, the Chief Administrative Officer, or designee, shall contact the Department's legal representative in the Attorney General's Office for advice.
6. Upon receiving an allegation that a resident under the age of 18 was subjected to sexual misconduct, the Chief Administrative Officer, or designee, shall contact the Department's legal representative in the Attorney General's Office for advice on whether or not to notify the resident's parent(s) or legal guardian or attorney.
7. If any report is of alleged sexual misconduct or sexual harassment by a staff person, volunteer or student intern with a prisoner or resident, the Department's PREA Coordinator shall forward a copy of the written report to the Department's Manager of the Office of Professional Review.
8. The reporting staff person, volunteer or student intern shall otherwise keep the report and its contents confidential, except as necessary to facilitate any investigation of the report and any administrative, personnel, or criminal proceedings.
9. As an alternative, a staff person, volunteer or student intern may make a report directly to the Department's PREA Coordinator, either by writing to or calling the hotline number for the PREA Coordinator.
10. A staff person, volunteer or student intern shall not attempt to deter any person from reporting sexual misconduct or sexual harassment and shall not take retaliatory action against any person who reports sexual misconduct or sexual harassment or who otherwise provides information related to an allegation of sexual misconduct or sexual harassment.

#### **Procedure C: Monitoring Reporting Parties and Alleged Victims**

1. The Chief Administrative Officer, or designee, shall ensure that a prisoner or resident or staff, volunteer or student intern who reports sexual misconduct and the prisoner or resident who is alleged to have been the victim of the sexual misconduct is monitored for ninety (90) days, and longer if appropriate, for any signs of possible retaliation, including, but not limited to, monitoring of disciplinary

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reports, housing status changes, or program changes, and negative performance evaluations, as applicable. Monitoring shall include periodic contact directly with the person monitored.

2. The Chief Administrative Officer, or designee, shall also ensure that any prisoner or resident or staff, volunteer or student intern who cooperates with an investigation into alleged sexual misconduct is similarly monitored if the person expresses a fear of retaliation or it is otherwise deemed appropriate.
3. If an allegation is determined, after investigation, to be unfounded the monitoring process shall cease even if ninety (90) days has not yet passed.
4. Any possible retaliatory action shall be reported and investigated, and, if found to have occurred, shall be remedied, as set out in the applicable Department policy.
5. If a prisoner is being monitored, the Unit Manager, or other designated facility staff, shall be responsible for the monitoring. If a resident is being monitored, the Juvenile Program Manager, or other designated facility staff, shall be responsible for the monitoring.
6. For each prisoner or resident being monitored, the monitoring staff shall document the monitoring weekly on a PREA Retaliation Monitoring form (Attachment A) and forward the completed form to the facility PREA Monitor and the Department's PREA Coordinator at the end of the monitoring period.
7. If a staff person is being monitored, the facility Human Resources Manager, or other designated facility staff, shall be responsible for the monitoring.
8. If a volunteer is being monitored, the facility Volunteer Coordinator, or other designated facility staff, shall be responsible for the monitoring.
9. If a student intern is being monitored, the intern's supervisor, or other designated facility staff, shall be responsible for the monitoring.
10. For each staff person, volunteer, or student intern being monitored, the monitoring staff shall report the results of the monitoring to the facility PREA Monitor and the Department's PREA Coordinator at the end of the monitoring period.

#### **Procedure D: Investigation of a Report of Sexual Misconduct**

1. The facility Chief Administrative Officer, or designee, shall immediately forward a copy of a written report of suspected sexual misconduct against a prisoner or resident rising to the level of a criminal offense or juvenile criminal offense to the Commissioner, or designee.
2. All alleged sexual misconduct by a staff person, volunteer or student intern against a prisoner or resident shall be assigned by the Commissioner, or designee, to a facility Correctional Investigator for a criminal investigation. The

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investigator assigned must have received special training in sexual misconduct investigations.

3. All alleged sexual misconduct between prisoners or between residents shall be assigned by the facility Chief Administrative Officer, or designee, to a facility Inner Perimeter Security Officer for a criminal investigation and/or possible reporting as a disciplinary violation. The investigator assigned must have received special training in sexual misconduct investigations.
4. The investigating officer shall secure the place where the incident occurred (if not already secured), and secure any evidence, both direct and circumstantial, including any available physical and DNA evidence; shall interview the alleged victim, suspected perpetrator, and witnesses; and shall review prior complaints and reports of sexual misconduct involving the alleged victim and suspected perpetrator. The investigating officer shall assess credibility on an individual basis without regard to the person's status as a prisoner or resident, staff, volunteer, student intern, or otherwise.
5. The investigation of a report of sexual misconduct against a prisoner or resident shall be conducted in accordance with Department Policy 7.1, Investigations by Correctional Investigative Officers.
6. The investigation of a report of sexual misconduct against a resident of a juvenile facility shall also be handled as set out in Department Policy 7.2, Allegations of Abuse or Neglect.
7. An investigation shall not be terminated due to the release from custody of the alleged victim. If the alleged perpetrator is a prisoner or resident, an investigation shall not be terminated due to that person's release from custody.
8. If the alleged perpetrator is a staff person, volunteer, or student intern, an investigation shall not be terminated due to that person's leaving his or her position.
9. An investigation shall not be terminated due to the release from custody of the alleged victim. If the alleged perpetrator is a prisoner or resident, an investigation shall not be terminated due to that person's release from custody.
10. The investigator shall forward a copy of the investigation report, all supporting documents, and the Investigation Check List (see Attachment B) to the Department's Commissioner, or designee, the facility Chief Administrative Officer, or designee, and the Department's PREA Coordinator within three (3) weeks of the date of the allegation, unless extenuating circumstances require a lengthier investigation.
11. The investigator shall ensure that the report of the investigation and all evidence relating to the investigation, including, but not limited to, physical evidence, test results, and supporting documents (including photographs of injuries or videos of the incident), audio or video recordings of interrogations or interviews, summaries or transcriptions of interrogations or interviews, and investigative notes, are

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retained in accordance with applicable Department policies for the retention of records and evidence.

12. If the investigator determines that a prisoner, resident, staff person, volunteer or student intern has knowingly made a false report of sexual misconduct or knowingly made a false statement related to a report of sexual misconduct, the investigator shall refer the matter for sanctions or other appropriate action and may also refer the matter for criminal prosecution.
13. If the investigator determines that there has been sexual misconduct rising to the level of a criminal offense or juvenile criminal offense, the investigator shall refer the matter to the appropriate criminal or juvenile criminal prosecuting authority, i.e., the Attorney General's office or a District Attorney's office and shall notify the Commissioner, or designee, the Chief Administrative Officer, or designee, and the Department's PREA Coordinator of the referral.
14. All alleged sexual misconduct by a staff person, volunteer or student intern against a prisoner or resident shall also be assigned by the Manager of the Office of Professional Review to an Administrative/Personnel Complaint Investigator (APCI) for a personnel or administrative investigation. This investigation shall be conducted in accordance with Department Policy 7.3, Administrative and Personnel Complaint Investigations.
15. If there has been a referral of a corrections officer to a criminal prosecuting authority or there is a sustained finding resulting from a personnel investigation of a corrections officer for sexual misconduct, the Chief Administrative Officer, or designee, shall also refer the report to the Maine Criminal Justice Academy.
16. Within thirty (30) working days of a report of sexual misconduct that is referred for criminal prosecution or is found to be sustained or not sustained, whether as a result of a criminal investigation or an administrative or personnel investigation, the Chief Administrative Officer, or designee, shall conduct a sexual misconduct review with staff, including a member of the facility security staff, a member of the facility mental health staff, the facility PREA Monitor, the Health Services Administrator, or designee, and any other staff deemed appropriate. The Chief Administrative Officer, or designee, shall ensure that the Sexual Misconduct Review form (Attachment C) is completed and forwarded to the facility PREA monitor, who shall then forward the form to the Department's PREA Coordinator.
17. If a report of sexual misconduct is determined to be unfounded or the person is exonerated there shall be no sexual misconduct review.

#### **Procedure E: Investigation of a Report of Sexual Harassment**

1. All alleged sexual harassment by a staff person, volunteer or student intern against a prisoner or resident shall be assigned by the Manager of the Office of Professional Review to an Administrative Personnel Complaint Investigator (APCI) for a personnel or administrative investigation. This investigation shall be

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conducted in accordance with Department Policy 7.3, Administrative and Personnel Complaint Investigations.

2. All alleged sexual harassment between prisoners or between residents shall be assigned by the facility Chief Administrative Officer, or designee, to a facility Inner Perimeter Security Officer for possible reporting as a disciplinary violation.

#### **Procedure F: Follow-up with Prisoner or Resident**

1. Following an investigation into a prisoner's or resident's allegation that he or she suffered sexual misconduct or sexual harassment in a Department facility, the Chief Administrative Officer, or designee shall inform the prisoner or resident in writing as to whether the allegation has been determined to be sustained, not sustained, unfounded, or exonerated, if the alleged perpetrator is a prisoner, resident, volunteer, student intern or staff person who is not a state employee.
2. Following an investigation into a prisoner's or resident's allegation that he or she suffered sexual harassment or sexual misconduct by a staff person who is a state employee, the Commissioner, or designee, or Chief Administrative Officer, or designee, as applicable, shall inform the prisoner or resident in writing that the investigation has been completed and shall also inform the prisoner or resident whenever the staff person is no longer posted within the prisoner's or resident's unit or the staff person is no longer employed at the facility.
3. The Chief Administrative Officer, or designee, shall also inform the prisoner or resident whenever any alleged perpetrator has been indicted on a charge related to the alleged sexual misconduct or has been convicted on a charge related to the sexual misconduct.

## **VII. PROFESSIONAL STANDARDS**

ACA:

- 4-[4281-3](#) Written policy, procedure, and practice require that an investigation is conducted and documented whenever a sexual assault or threat is reported.
- 4-[4281-7](#) Written policy, procedure, and practice provide that prisoners who are victims of sexual misconduct have the option to report the incident to a designated staff person other than an immediate point-of-contact line officer.
- 4-4281-8 Written policy, procedure and practice provide that all case records associated with claims of sexual abuse, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment and/or counseling are retained in accordance with an established schedule.
- 4-JCF-[3D-04](#) An investigation is conducted and documented whenever a sexual assault is alleged, threatened, or occurs.
- 4-JCF-[3D-08](#) Juveniles who are victims of sexual misconduct have the option to report the incident to a designated staff person other than an immediate point of contact line staff person.

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**PREA:**

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[115.61](#) **Staff And agency reporting duties**  
[115.63](#) **Reporting to other confinement facilities**  
[115.67](#) **Agency protection against retaliation**  
[115.71](#) **Criminal and administrative agency investigations**  
[115.73](#) **Reporting to inmates**  
[115.351](#) **Inmate reporting**  
[115.354](#) **Third-party reporting**  
[115.361](#) **Staff and agency reporting duties**  
[115.362](#) **Agency protection duties**  
[115.363](#) **Reporting to other confinement facilities**  
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[115.368](#) **Post-allegation protective custody**  
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