

<b>POLICY TITLE: SEXUAL MISCONDUCT (PREA AND MAINE STATUTES), PREVENTION</b>		<b>PAGE 1 OF 8</b>
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<b>CHAPTER 6: VICTIM SERVICES</b>		
	<b>STATE of MAINE DEPARTMENT of CORRECTIONS</b>  <b>Approved by Commissioner:</b> 	<b>PROFESSIONAL STANDARDS:</b>  <b>See Section VII</b>
<b>EFFECTIVE DATE:</b> May 19, 2008	<b>LATEST REVISION:</b> April 9, 2018	<b>CHECK ONLY IF</b> APA [ ]

**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 use all appropriate means to prevent sexual misconduct and sexual harassment.

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- Procedure F: Searches of Prisoners and Residents and Protection of Privacy
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**V. ATTACHMENTS**

- Attachment A: [Staff Acknowledgement of Prohibition on Sexual Misconduct](#)
- Attachment B: [Volunteer/Intern Acknowledgement of Prohibition on Sexual Misconduct](#)
- Attachment C: [Prisoner or Resident Acknowledgement of Prohibition on Sexual Misconduct](#)
- Attachment D: [Prisoner or Resident Safety Memo](#)

## VI. PROCEDURES

### Procedure A: Training of Staff, Volunteers, and Student Interns

1. The Department PREA Coordinator shall ensure that all staff, volunteers, and student interns who may have contact with a prisoner, resident, or person under supervision of the Department in the community receive initial training with respect to:
  - a. the Department's zero-tolerance policy for sexual misconduct and sexual harassment;
  - b. the right of prisoners, residents, and persons under supervision of the Department in the community to be free from sexual misconduct and sexual harassment;
  - c. the right of prisoners, residents, persons under supervision in the community, families, staff, volunteers, student interns, and others to be free from retaliation for reporting sexual misconduct and sexual harassment;
  - d. how staff, volunteers, and interns are to fulfill their responsibilities with respect to sexual misconduct and sexual harassment prevention, detection, reporting, and response;
  - e. how to comply with relevant laws related to mandatory reporting of sexual misconduct to outside authorities;
  - f. how to avoid inappropriate relationships with prisoners, residents, and persons under supervision in the community;
  - g. how to detect and respond to signs of threatened and actual sexual misconduct;
  - h. how to distinguish between consensual sexual acts, contact, and touching and nonconsensual sexual acts, contact, and touching between prisoners or between residents, including the relevant laws regarding the applicable age of consent;
  - i. how to communicate effectively and professionally with prisoners, residents, and persons under supervision in the community, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming persons;
  - j. the dynamics of sexual misconduct and sexual harassment and the common reactions of victims as these relate to each gender, as well as to lesbian, gay, bisexual, transgender, intersex, or gender nonconforming persons; and
  - k. the dynamics of sexual misconduct and sexual harassment and the common reactions of victims as these relate to juveniles.
2. The Department PREA Coordinator shall ensure that all staff, volunteers, and student interns who may have contact with a prisoner, resident, or person under supervision of the Department in the community, receive and sign the appropriate acknowledgment memo (Attachment A or B) at the time of the initial training.

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3. The Department PREA Coordinator shall ensure that all staff and volunteers receive refresher training on an annual basis.
4. The Department PREA Coordinator shall ensure that all facility correctional investigative officers and Inner Perimeter Security team members, as well as other staff likely to conduct sexual misconduct and sexual harassment investigation, receive additional training in conducting investigations of sexual misconduct and sexual harassment, especially in facility settings. This training shall include, at a minimum, techniques for interviewing victims of sexual misconduct and sexual harassment, including techniques specific to juvenile and female victims, proper use of Miranda and Garrity warnings, sexual misconduct evidence collection in facility settings, and the criteria and evidence required to substantiate a case for administrative action and/or referral for criminal prosecution.
5. All training shall be documented in the staff's, volunteer's, or intern's training file and shall include, at a minimum:
  - a. subject/topic areas covered;
  - b. date training received;
  - c. signature of person receiving training;
  - d. name of trainer/instructor; and
  - e. results of performance evaluations and/or testing, if applicable.

**Procedure B: Education of Prisoners and Residents**

1. Within ten (10) days of intake to the facility, each newly admitted prisoner or resident shall receive a comprehensive education concerning sexual misconduct and sexual harassment and shall receive the appropriate acknowledgement and safety memo (Attachments C and D).
2. This education shall be in formats accessible to all prisoners and residents, including, but not limited to, those who are limited English proficient, hard of hearing or deaf, visually impaired, developmentally disabled, or have limited reading skills. Receipt of this education shall be documented in CORIS for each prisoner or resident.

**Procedure C: Screening and Assessment**

1. The PREA monitor's duties with respect to screening and assessing prisoners or residents for risk of sexual vulnerability or sexual violence shall include, but are not limited to, the following:
  - a. ensuring the PREA screening of all prisoners admitted to a reception facility by a case manager or other staff trained to administer the screening or all residents admitted to a juvenile facility by the unit Social Worker, unit Juvenile Program Worker, or other staff trained to administer the screening, to assess the risk of sexual vulnerability or sexual violence, within twenty-four hours of intake;

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- b. ensuring the PREA screening of all prisoners or residents transferred to a facility by a case manager or other staff trained to administer the screening, to assess the risk of sexual vulnerability or sexual violence, within twenty-four hours of transfer;
  - c. ensuring that the PREA assessment of all prisoners or residents admitted to a reception facility is administered by a case manager or other staff trained to administer the assessment between five (5) days and fourteen (14) days after the PREA screening;
  - d. ensuring that the PREA assessment of all prisoners or residents transferred to a facility is administered by a case manager or other staff trained to administer the assessment between five (5) days and fourteen (14) days after the PREA screening;
  - e. ensuring that a prisoner’s or resident’s risk level is reassessed by the unit team using the relevant PREA assessment instrument when warranted due to a referral, request, incident of sexual misconduct, or receipt of additional information that bears on the prisoner’s or resident’s risk of sexual vulnerability or sexual violence;
  - f. ensuring that prisoners or residents are not disciplined for refusing to answer or for not disclosing complete information in response to any questions asked as part of screening or assessment for risk of sexual vulnerability or sexual violence;
  - g. ensuring that if a prisoner or resident is identified as possibly being at risk, security staff and other appropriate facility staff are notified to determine an appropriate housing assignment and to take any other necessary safety and security measures;
  - h. ensuring that information from the risk screening is reviewed and considered by appropriate staff when making housing and work, education and other program assignments so that those prisoners or residents at high risk of being sexually vulnerable are kept separate from those identified as being at high risk for sexual violence and ensuring that determinations about how to ensure the safety of each prisoner or resident are individualized; and
  - i. ensuring that information from the risk screening and risk assessments is otherwise kept confidential.
2. The PREA Monitor shall ensure that prisoners or residents, as applicable, are asked all screening and assessment questions in person.

**Procedure D: Substantial Risk of Imminent Sexual Misconduct**

- 1. If any volunteer or student intern learns that a prisoner or resident is at a substantial risk of being a victim of imminent sexual misconduct, the volunteer or student intern shall immediately notify security staff.
- 2. If any staff learns that a prisoner or resident is at a substantial risk of being a victim of imminent sexual misconduct, the staff shall take immediate action to protect the prisoner or resident. This may include immediately separating the

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potential victim and potential perpetrator and any other steps deemed necessary to prevent an incident of sexual misconduct.

3. The staff shall also immediately notify the facility Chief Administrative Officer, or designee, for a determination as to whether the prisoner or resident is subject to a substantial risk of being a victim of imminent sexual misconduct.
4. If there is determined to be such a risk, the Chief Administrative Officer, or designee, shall take additional preventative or remedial action. This action may include but is not limited to: changing the prisoner's or resident's housing, changing a program location; starting an investigation into the situation; and any other steps deemed necessary to prevent an incident of sexual misconduct.

**Procedure E: Special Management Housing and Protective Custody Housing**

1. Prisoners or residents screened or assessed as high risk for sexual vulnerability shall not be placed in a special management housing unit or protective custody housing unit due to this risk unless there has been a consideration of all possible available alternatives, and it is determined that there is no available alternative means of separation from likely perpetrators.
2. If such a determination cannot be made immediately, the prisoner or resident may be housed in a special management housing unit or protective custody housing unit for no more than twenty-four (24) hours, pending the determination.
3. If a determination has been made that there is no available alternative means of separation from likely perpetrators, the initial placement in a special management housing unit or protective custody housing unit shall only last until there is available an alternative means of separation and, in any case, the initial placement shall not exceed thirty (30) days.
4. The placement must be reviewed at least every thirty (30) days to verify whether it is necessary to retain the prisoner in a special management housing unit or protective custody housing unit.
5. Any placement or retention of a prisoner or resident in a special management housing unit or protective custody housing unit shall be documented in accordance with departmental policies and procedures.
6. Any prisoners or residents placed in a special management housing unit or protective custody housing unit due to this risk shall have access to programs, privileges, education, and work opportunities similar to prisoners or residents in the general population, except to the extent that they must be limited consistent with reasonable precautions designed to protect prisoner or resident safety, security and orderly management of the facility and shall otherwise receive treatment in accordance with departmental policies and procedures.
7. Any restrictions shall be documented in accordance with departmental policies.

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**Procedure F: Searches of Prisoners and Residents and Protection of Privacy**

1. Facility staff shall not conduct an opposite gender anal or genital body cavity search under any circumstances and all staff observing an anal or genital body cavity search shall be of the same gender as the prisoner or resident.
2. Facility staff shall not visually search an anal or genital body cavity unless the staff are of the same gender as the prisoner or resident and all staff observing a visual search of an anal or genital body cavity shall be of the same gender as the prisoner or resident, except in an emergency, or unless an examination is being performed by medical staff for a medical purpose.
3. Facility staff shall not conduct an opposite gender strip search and all staff observing a strip search shall be of the same gender as the prisoner or resident, except in an emergency.
4. Facility staff shall not conduct an opposite gender pat search of a female prisoner or resident and all staff observing an opposite gender pat search of a female prisoner or resident shall be of the same gender as the prisoner or resident, except in an emergency.
5. Facility staff shall document all opposite gender visual searches of an anal or genital body cavity, opposite gender strip searches and opposite gender pat searches of female prisoners or residents. The documentation shall include a description of the emergency justifying the opposite gender search.
6. Other than same gender pat searches and opposite gender pat searches of male prisoners, at least one staff shall observe searches, whenever possible.
7. A prisoner or resident being searched shall be treated with professionalism and respect by staff to minimize embarrassment and indignity. Other than same gender pat searches and opposite gender pat searches of male prisoners, searches shall be conducted in a location where the search cannot be observed by persons other than those staff involved in the search.
8. The decision whether male or female security staff will conduct and observe searches of a transgender or intersex prisoner or resident shall be made on a case by case basis by appropriate facility staff, as determined by the Chief Administrative Officer, or designee. The decision shall be made based on discussions with the prisoner or resident, security and safety needs, and, if appropriate, consultation with the PREA Coordinator and other Central Office staff.
9. The PREA Coordinator shall ensure that security staff are trained in how to conduct opposite gender pat and strip searches and searches of transgender and intersex prisoners or residents in a professional and respectful manner and in the least intrusive manner possible, consistent with security and safety needs.
10. The Chief Administrative Officer, or designee, shall implement practices that enable prisoners or residents to shower, perform bodily functions, and change

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clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in an emergency or when such viewing is incidental to routine cell or room checks.

11. Facility security staff of the same gender as the prisoner or resident shall be used to conduct a constant watch during showers or other times when there is a greater likelihood that genitalia can be exposed. Facility security staff of the same gender as the prisoner or resident shall be used to conduct a constant watch during other times, whenever possible.
12. The presence of staff or another person of the opposite gender from the prisoners or residents in any housing unit or other area with toilet or shower facilities shall be announced when the person enters the housing unit or other area with toilet or shower facilities, unless a person of the opposite gender is already present and an announcement has already been made. This will be recorded in the housing unit logbook.

**Procedure G: Lesbian, Gay, Bisexual, Transgender, or Intersex (LGBTI) Prisoners and Residents**

1. Facility staff shall not search or physically examine a transgender or intersex prisoner or resident for the sole purpose of determining the person's genital status. If the person's genital status is unknown, it may be determined by discussing the matter with the prisoner or resident, reviewing medical records, and, if necessary, by a health care provider performing a general physical health assessment that is not viewed by other staff.
2. The determination whether to assign a transgender or intersex prisoner or resident to a facility for male or female prisoners or residents and other housing and program assignments shall be individualized, take into account the views of the prisoner or resident, and be based on protecting the prisoner's or resident's safety and mental health and preventing security issues. These determinations shall be made in accordance with Department Policies (AF) 23.8 and (JF) 18.8, Management of Transgender and Intersex Prisoners and Residents, as applicable.
3. Facility, housing, and program assignments for a transgender or intersex prisoner or resident shall be reviewed through the facility classification process at least every six (6) months to consider any threats to safety experienced by the prisoner or resident.
4. If a facility does not have separate individual shower facilities for use by transgender and intersex prisoners or residents, then a transgender or intersex prisoner or resident shall be given the opportunity to shower at separate times from other prisoners or residents.
5. Lesbian, gay, bisexual, transgender, or intersex prisoners or residents shall not be housed in dedicated facilities, units, or wings solely on the basis of such identification or status.

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6. All housing decisions for lesbian, gay, bisexual, transgender, or intersex prisoners or residents shall be clearly documented in the prisoner's or resident's housing unit file and in CORIS.

**VII. PROFESSIONAL STANDARDS**

**ACA**

**ACI**

**5-ACI-3D-09** Written policy, procedure, and practice ensure that information is provided to offenders about sexual abuse/assault including:

- prevention/intervention
- self-protection
- reporting sexual misconduct/assault
- treatment and counseling

The information is communicated orally and in writing, in a language clearly understood by the offender, upon arrival at the facility.

**5-ACI-3D-10** Prisoners are screened within 24 hours of arrival at the facility for potential vulnerabilities or tendencies of acting out with sexually aggressive behavior. Housing assignments are made accordingly.

**4-JCF-3D-02** Information is provided to juvenile about sexual abuse/assault including:

- prevention/intervention
- self-protection
- reporting abuse/assault
- treatment and counseling

The information is communicated orally and in writing, in a language clearly understood by the juvenile, upon arrival at the facility.

**4-JCF-3D-03** Juveniles are screened within 24 hours of arrival at the facility for potential vulnerabilities or tendencies of acting out with the sexually aggressive behavior. Housing assignments are made accordingly.

**PREA:**

- 115.5 General definitions
- 115.6 Definitions related to sexual abuse
- 115.11 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator
- 115.13 Supervision and monitoring
- 115.14 Youthful inmates
- 115.15 Limits to opposite gender viewing and searches
- 115.16 Inmates with disabilities and inmates who are limited English proficient
- 115.17 Hiring and promotion decisions
- 115.18 Upgrades to facilities and technologies
- 115.33 Inmate Education

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