
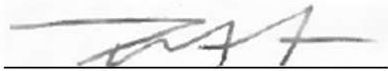


POLICY TITLE: PREA - SEXUAL MISCONDUCT/HARASSMENT REPORTING AND INVESTIGATION		PAGE 1 OF 9
POLICY NUMBER: 6.11.3		
CHAPTER 6: VICTIM SERVICES		
	STATE of MAINE	PROFESSIONAL STANDARDS: See Section VIII
	DEPARTMENT of CORRECTIONS	
	Approved by Commissioner: 	
EFFECTIVE DATE: May 19, 2008	LATEST REVISION: November 6, 2024	CHECK ONLY IF 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 require the reporting of any sexual misconduct or sexual harassment or suspicion of either and to refer all reports for investigation.

5-ACI-3D-11 & 4-JCF-3D-04

IV. DEFINITIONS

1. Staff - for purposes of this policy, Department employee or a person in a facility providing services to an adult resident or a juvenile resident by agreement with or under contract with the Department (e.g., facility health care staff), but not including a volunteer, student intern, delivery person, etc.

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VII. PROCEDURES

Procedure A: Means for Reporting Sexual Misconduct or Sexual Harassment

1. The Chief Administrative Officer, or designee, shall provide multiple internal means for 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 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 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 resident. *5-ACI-3D-15 & 4-JCF-3D-08*

Procedure B: Reports of Sexual Misconduct or Sexual Harassment

1. A resident may report to any Department staff, volunteer, or student intern that they have been a victim of sexual misconduct or sexual harassment by a staff person, volunteer, or student intern or another resident.
2. If a staff person, volunteer, or student intern observes, receives a report of, suspects, or otherwise discovers what appears to be sexual misconduct or sexual harassment between residents or sexual misconduct or sexual harassment by a staff person, volunteer, or student intern against a resident, that person shall immediately verbally report the incident to a security supervisor, followed by a written report to that supervisor prior to leaving the facility.
3. The security supervisor shall complete the steps outlined on the PREA Allegation Checklist (Attachment A). The completed checklist shall be retained by the facility PREA Monitor.
4. If the report is of alleged sexual misconduct or sexual harassment of a resident while confined at another Department facility, the facility PREA Monitor, or designee, shall forward a copy of the report to the Department’s PREA Coordinator and 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. The PREA Monitor, or designee, shall document that notification was provided.

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5. If the report is of alleged sexual misconduct or sexual harassment of a resident while confined at a jail or another jurisdiction's facility, the facility PREA Monitor, or designee, shall forward a copy of the report to the Department's PREA Coordinator and the jail administrator or the head of the facility where the alleged sexual misconduct or sexual harassment occurred, no later than seventy-two (72) hours after receipt of the report. The PREA Monitor, or designee, shall document that notification was provided.
6. If the victim of the alleged sexual misconduct or sexual harassment 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 ensure the allegation is reported 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.
7. Upon receiving an allegation that a resident under the age of 18 was subjected to sexual misconduct or sexual harassment, 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)/guardian/legal custodian or attorney.
8. The Chief Administrative Officer, or designee, shall forward a copy of any report containing an allegation of sexual misconduct or sexual harassment to an investigator to make a determination if the allegation meets the definition of sexual misconduct or sexual harassment under Department Policy 6.11, Sexual Misconduct (PREA and Maine Statutes), General. The investigator must have received special training in sexual misconduct and sexual harassment investigations.
9. If the investigator determines that the allegation does not meet either definition, they shall so notify the facility Chief Administrative Officer, or designee, PREA Manager, and PREA Monitor. The PREA Monitor shall then close out the case.
10. If the investigator determines that the allegation does meet either definition, they shall so notify the facility Chief Administrative Officer, or designee, PREA Manager, and PREA Monitor and the processes set out in all of the following procedures shall be followed.
11. If any report is of alleged sexual misconduct or sexual harassment by a staff person, volunteer, or student intern with a resident, the Department's PREA Coordinator shall forward a copy of the written report to the Department's Director of the Office of Professional Review, or designee.
12. The reporting staff person, volunteer, student intern, security supervisor, and other staff 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 or juvenile criminal proceedings.
13. 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.
14. The PREA Coordinator shall forward a copy of any written report or a summary of any report made via the hotline to the appropriate facility Chief Administrative Officer, or

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designee, PREA Manager, and PREA Monitor. The PREA Monitor shall complete, as applicable, the PREA Allegation Checklist.

15. 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 resident or staff, volunteer, or student intern who reports sexual misconduct or sexual harassment and the resident who is alleged to have been the victim of the sexual misconduct or sexual harassment is monitored for ninety (90) days, and longer if appropriate, for any signs of possible retaliation, including, but not limited to, monitoring of disciplinary reports, housing status changes, program changes, and negative performance evaluations, as applicable. Monitoring shall include monthly contact directly with the person monitored.
2. The Chief Administrative Officer, or designee, shall also ensure that any resident or staff, volunteer, or student intern who cooperates with an investigation into alleged sexual misconduct or sexual harassment 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 an adult resident is being monitored, the Unit Manager, or other designated facility staff, shall be responsible for the monitoring. If a juvenile resident is being monitored, the Juvenile Program Manager, or other designated facility staff, shall be responsible for the monitoring.
6. If a staff person is being monitored, the facility Human Resources Manager, or other designated facility staff, shall be responsible for the monitoring.
7. If a volunteer is being monitored, the facility Volunteer Coordinator, or other designated facility staff, shall be responsible for the monitoring.
8. If a student intern is being monitored, the intern’s supervisor, or other designated facility staff, shall be responsible for the monitoring.
9. For each person being monitored, the monitoring staff shall document the monitoring weekly on a PREA Retaliation Monitoring form (Attachment B) and forward the completed form to the facility PREA Monitor and the Department’s PREA Coordinator at the end of the monitoring period. The completed form shall be retained by the facility PREA Monitor.

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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 alleged sexual misconduct against a resident rising to the level of a criminal offense or juvenile criminal offense to the Commissioner, or designee.
2. If the allegation is of sexual misconduct by a staff person, volunteer or student intern against a resident rising to the level of a criminal offense or juvenile criminal offense, it shall be assigned by the Commissioner, or designee, to a facility correctional investigative officer (detective) for a criminal investigation. The investigator assigned must have received special training in sexual misconduct investigations.
3. If the allegation is of sexual misconduct between residents, whether or not rising to the level of a criminal offense or juvenile criminal offense, it shall be assigned by the facility Chief Administrative Officer, or designee, to a facility Special Investigations and Intelligence Unit (SII) 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, as applicable, secure the place where the incident occurred (if not already secured); secure any evidence, both direct and circumstantial, including any available physical and DNA evidence; interview the alleged victim, alleged perpetrator, and witnesses; and review prior complaints and reports of sexual misconduct involving the alleged victim and alleged perpetrator. The investigating officer shall assess credibility on an individual basis without regard to the person’s status as a resident, staff, volunteer, student intern, or otherwise.
5. The investigation of a report of sexual misconduct against a resident rising to the level of a criminal offense or juvenile criminal offense shall be conducted in accordance with Department Policy 7.1, Criminal Investigations.
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, Reporting of Allegations of Abuse or Neglect of Residents at Juvenile Facilities.
7. An investigation shall not be terminated due to the release from custody of the alleged victim. If the alleged perpetrator is a 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 their position.
9. The investigator shall forward a copy of the Sexual Misconduct and Sexual Harassment Investigation Report (Attachment C) and all supporting documents to the facility Chief Administrative Officer, or designee, the SII Captain, if applicable, and the Department’s PREA Coordinator within three (3) weeks of the date of the allegation, unless extenuating circumstances require a lengthier investigation.
10. If there is a disciplinary violation by a resident, the SII Officer shall initiate the disciplinary process within the time frame specified in Department Policy (AF) 20.1, Adult Resident Discipline or Department Policy (JF) 15.3, Resident Discipline System.

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11. If the investigator determines that a 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 disciplinary action or other appropriate action and may also refer the matter for criminal or juvenile criminal prosecution.
12. 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 prosecutor's office and shall notify the Commissioner, or designee, the facility Chief Administrative Officer, or designee, and the Department's PREA Coordinator of the referral.
13. Any alleged sexual misconduct by a staff person, volunteer, or student intern against a resident, whether or not rising to the level of a criminal offense or juvenile criminal offense, shall be assigned by the Director 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.
14. The APCI shall forward a copy of the Sexual Misconduct and Sexual Harassment Investigation Report (Attachment C) and all supporting documents to the Director of the Office of Professional Review, 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. If appropriate, personnel or administrative action shall be taken in accordance with the applicable Department policy.
15. If there has been a referral of a corrections officer to a prosecutor's office or there is a substantiated 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) days of a report of sexual misconduct that is referred for criminal prosecution or is found to be substantiated or unsubstantiated, whether as a result of a criminal investigation or an administrative or personnel investigation, the facility Chief Administrative Officer, or designee, shall convene a sexual misconduct review team for the purposes of reviewing the circumstances surrounding the incident and making recommendations for improvement, if appropriate.
17. The review team shall include the facility PREA Monitor, the facility PREA Manager, the detective or SII officer who conducted the investigation or other facility law enforcement officer, a facility security supervisor, a member of the facility mental health staff, the facility Health Services Administrator, or designee, and any other facility staff deemed appropriate by the Chief Administrative Officer, or designee.
18. The Chief Administrative Officer, or designee, shall ensure that the Sexual Misconduct Review form (Attachment D) is completed and forwarded to the facility PREA Manager and the facility PREA Monitor. The facility PREA Monitor shall then forward the form to the Department's PREA Coordinator. The completed form shall be retained by the facility PREA Monitor.

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19. If there are recommendations for improvement as a result of the review, and they are approved by the Chief Administrative Officer, or designee, the facility PREA Manager shall complete the Sexual Misconduct Review Corrective Action Plan (Attachment E) and ensure the corrective actions are completed. The completed form and any supporting documentation shall be forwarded to and retained by the facility PREA Monitor.
20. If a report of sexual misconduct is determined to be unfounded, there shall be no sexual misconduct review.

Procedure E: Investigation of a Report of Sexual Harassment

1. Any alleged sexual harassment by a staff person, volunteer, or student intern against a resident shall be assigned by the Director 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.
2. The APCI shall forward a copy of the Sexual Misconduct and Sexual Harassment Investigation Report (Attachment C) and all supporting documents to the Director of the Office of Professional Review, 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. If appropriate, personnel or administrative action shall be taken in accordance with the applicable Department policy.
3. Any alleged sexual harassment between residents shall be assigned by the facility Chief Administrative Officer, or designee, to a facility SII officer for possible reporting as a disciplinary violation.
4. The SII officer shall forward a copy of the Sexual Misconduct and Sexual Harassment Investigation Report (Attachment C) and all supporting documents to the facility Chief Administrative Officer, or designee, the SII Captain, and the Department’s PREA Coordinator within three (3) weeks of the date of the allegation, unless extenuating circumstances require a lengthier investigation.
5. If there is a disciplinary violation by a resident, the SII Officer shall initiate the disciplinary process within the time frame specified in Department Policy (AF) 20.1, Adult Resident Discipline or Department Policy (JF) 15.3, Resident Discipline System.

Procedure F: Follow-up with Resident

1. Following an investigation into a resident’s allegation that they were the victim of sexual misconduct or sexual harassment in a Department facility, the Chief Administrative Officer, or designee, shall inform the resident in writing using the Notification to Resident Regarding the Outcome of a PREA Investigation (Attachment F) as to whether the allegation was substantiated, unsubstantiated, or unfounded.
2. If the allegation is unfounded, additional information shall not be provided.
3. Unless the allegation is unfounded, if the alleged perpetrator is a staff person, volunteer, or student intern, the Chief Administrative Officer, or designee, shall also inform the resident, in writing whether:

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- a. the individual, if a staff person, is still assigned to the resident’s housing unit;
 - b. the individual is still working at the facility;
 - c. the individual has been charged with a crime arising out of the allegation;
 - d. the individual has been convicted of a crime arising out of the allegation; and
 - e. the relevant prosecutor’s office or the grand jury declined to indict the individual based on the allegation.
4. Unless the allegation is unfounded, if the alleged perpetrator is another resident, the Chief Administrative Officer, or designee, shall also inform the resident, in writing whether:
- a. the individual is still housed at the facility;
 - b. the individual has been charged with a crime or juvenile crime arising out of the allegation;
 - c. the individual has been convicted of a crime or juvenile crime arising out of the allegation; and
 - d. the relevant prosecutor’s office or the grand jury declined to indict the individual based on the allegation.
5. The notification form shall be delivered to the resident by designated staff, who shall meet with the resident without unnecessary delay and provide them with the form. The resident and the staff shall sign and date the form. If the resident refuses to sign, the staff shall note that on the form. The staff shall return the original of the signed form to the Chief Administrative Officer, or designee, and provide a copy to the resident.
6. The Chief Administrative Officer, or designee, shall provide a copy of the signed notification form to the PREA Monitor. The copy shall be retained by the PREA monitor and the original filed in the resident’s administrative record.
7. In addition, if charges are brought against the alleged perpetrator, the Chief Administrative Officer, or designee, shall provide a copy of the signed notification form to the Department’s Director of Victim Services, or designee, who shall take the necessary actions to ensure the resident is offered appropriate victim services.

Procedure G: Documentation

1. An 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 retained in accordance with applicable Department policies for the retention of records and evidence. *5-ACI-3D-16*
2. All forms and other documentation shall be retained in accordance with applicable Department policies for the retention of records and evidence.

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VIII. PROFESSIONAL STANDARDS

ACA

- 5-ACI-3D-11** Written policy, procedure, and practice require that an investigation is conducted and documented whenever a sexual assault or threat is reported.
- 5-ACI-3D-15** Written policy, procedure, and practice provide that inmates who are victims of sexual abuse have the option to report the incident to a designated staff member as well as others: duty officer/3rd party reporting/or safe helpline.
- 5-ACI-3D-16** 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 of document retention.
- 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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