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 impose appropriate sanctions and take other appropriate actions in response to sexual misconduct and sexual harassment.

It is also the policy of the Department to provide a special process by which prisoners or residents may grieve sexual misconduct constituting a PREA violation or a violation of Maine criminal law.

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V. ATTACHMENTS

None
VI. PROCEDURES

Procedure A: Sanctions and Other Actions in Response to Sexual Misconduct or Sexual Harassment by a Department Employee

1. The burden of proof for determining whether there is substantiated an allegation concerning sexual misconduct, sexual harassment, or another violation of a departmental sexual misconduct policy by a Department employee is preponderance of the evidence.

2. The Chief Administrative Officer, or designee, or the Regional Correctional Administrator, or designee, or other designee of the Commissioner, as applicable, shall ensure that appropriate steps are taken in response to a substantiated allegation of a violation.

3. Disciplinary sanctions for a violation of a departmental sexual misconduct policy by a Department employee shall be commensurate with the nature and circumstances of the employee’s act or failure to act, the employee’s disciplinary history, and the sanctions imposed for comparable violations by other employees with similar histories, in accordance with applicable collective bargaining agreements or civil service rules.

4. If the violation is that a Department employee engaged in, attempted, threatened, or requested an act constituting sexual misconduct, termination of the employment of the employee shall be the presumptive disciplinary sanction.

5. Termination of employment for a violation of a departmental sexual misconduct policy or the resignation by a Department employee who would have been terminated if not for his or her resignation, shall be reported to the appropriate criminal prosecuting authority, i.e., the Attorney General’s office or a District Attorney’s office, unless the activity was clearly not criminal, and to any relevant licensing bodies.

6. A Department employee may be disciplined for knowingly making or soliciting a false report of sexual misconduct, sexual harassment, or another violation of a departmental sexual misconduct policy or otherwise knowingly making or soliciting a false statement related to a report of sexual misconduct, sexual harassment, or another violation of a departmental sexual misconduct policy. A statement made or solicited in good faith shall not constitute making a false statement, even if an investigation does not establish evidence sufficient to substantiate the statement.

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Procedure B: Sanctions and Other Actions in Response to Sexual Misconduct or Sexual Harassment by Other Staff Person, Volunteer or Student Intern

1. The standard for taking action against a staff person who is not a Department employee (i.e., a person providing services in a Department facility by agreement with or under contract with the Department) or by a person who is a volunteer or student intern is the best interests of the Department, as determined in the complete discretion of the appropriate departmental official.

2. The Chief Administrative Officer, or designee, or the Regional Correctional Administrator, or designee, or other designee of the Commissioner, as applicable, shall ensure that appropriate steps are taken in response to a violation.

3. Actions taken for a violation of this or related policies by a staff person who is not a Department employee or by a person who is a volunteer or student intern shall be commensurate with the nature and circumstances of the person’s act or failure to act, the person’s history, and the actions taken for comparable violations by other persons with similar histories, or as otherwise determined appropriate in the complete discretion of the appropriate departmental official.

4. If the violation is that such a person engaged in, attempted, threatened, or requested an act constituting sexual misconduct, barring that person from Department property and from contact with prisoners or residents and, if possible, persons under supervision of the Department in the community shall be the presumptive action.

5. The barring of such a person for a violation of a departmental sexual misconduct policy shall be reported to the appropriate criminal prosecuting authority, i.e., the Attorney General’s office or a District Attorney’s office, unless the activity was clearly not criminal, to relevant licensing bodies, and, if determined appropriate after consultation with the Department’s legal representative in the Attorney General’s office, to the person’s employer or entity with which the person is affiliated, if any.

6. Appropriate action may be taken against a staff person who is not a Department employee or by a person who is a volunteer or student intern for knowingly making or soliciting a false report of sexual misconduct, sexual harassment, or another violation of a departmental sexual misconduct policy or otherwise knowingly making or soliciting a false statement related to a report of sexual misconduct, sexual harassment, or another violation of a departmental sexual misconduct policy. A statement made or solicited in good faith shall not constitute making a false statement, even if an investigation does not establish evidence sufficient to substantiate the statement.
Procedure C: Sanctions and Other Actions in Response to Sexual Misconduct or Sexual Harassment by Prisoner or Resident

1. The burden of proof for determining whether there is substantiated, for disciplinary purposes, an allegation concerning sexual misconduct, sexual harassment, or another violation of a departmental sexual misconduct policy by a prisoner or resident is preponderance of the evidence.

2. The standard for taking other action against a prisoner or resident for a violation, including, but not limited to, as applicable, placement on emergency observation status, placement on administrative segregation status, placement in the Prison Administrative Control Unit, transfer to another facility, change in housing or program, change in custody, and drop in privilege level, is as set out in the applicable policy.

3. The Chief Administrative Officer, or designee, shall ensure that appropriate steps are taken in response to a violation.

4. Disciplinary sanctions for a violation of a departmental sexual misconduct policy by a prisoner or resident shall be commensurate with the nature and circumstances of the person’s act, the person’s disciplinary history, and the sanctions imposed for comparable violations by other prisoners or residents with similar histories, in accordance with the applicable Department disciplinary policy.

5. A prisoner or resident may not be disciplined for sexual activity with staff, except upon a finding that the staff person did not consent to such activity.

6. A prisoner or resident may be disciplined for knowingly making or soliciting a false report of sexual misconduct, sexual harassment, or another violation of a departmental sexual misconduct policy or otherwise knowingly making or soliciting a false statement related to a report of sexual misconduct, sexual harassment, or another violation of a departmental sexual misconduct policy. A statement made or solicited in good faith shall not constitute making a false statement, even if an investigation does not establish evidence sufficient to substantiate the statement.

Procedure D: Prisoner or Resident Grievances about Sexual Misconduct

1. A prisoner or resident who is alleging that he or she has been a victim of sexual misconduct constituting a PREA violation or a violation of Maine criminal law by a Departmental staff person or a victim of sexual misconduct constituting a PREA violation or a violation of Maine criminal law by a volunteer, student intern, or another prisoner or resident for which he or she believes a Departmental staff person is responsible, in addition to, or as an alternative to, making a report of sexual misconduct, may file a grievance about the alleged sexual misconduct with the facility Grievance Review Officer as set out below. It is anticipated that...
prior to filing a lawsuit, a prisoner or resident will attempt to resolve his or her allegation by using this grievance process.

2. The prisoner or resident may be assisted in filing the grievance by any Departmental staff person or by any other person with whom the prisoner or resident is permitted to have contact. Such a person may also file the grievance on behalf of the prisoner or resident, provided that the prisoner or resident consents to the filing. If there is any question about consent, the Grievance Review Officer may personally speak to the prisoner or resident to ascertain whether he or she consents to the filing of the grievance on his or her behalf. If he or she does not consent, the Grievance Review Officer shall document that fact and shall not respond to the grievance.

3. A parent or legal guardian of a resident who is a minor shall be allowed to file a grievance and grievance appeals on behalf of the resident regarding an allegation of sexual misconduct. Such a grievance shall not be conditioned upon the resident agreeing to have the grievance or grievance appeals filed on his or her behalf.

4. The grievance, which may be submitted by a letter or other writing, must be clearly marked as a grievance about sexual misconduct. It must be addressed to the facility Grievance Review Officer and may be submitted in a sealed envelope or by another means that does not reveal its content or subject matter to a casual observer. If the facility Grievance Review Officer is the subject of the grievance, it must be submitted to the Chief Administrative Officer, or designee.

5. No subject other than sexual misconduct constituting a PREA violation or a violation of Maine criminal law may be brought up in the grievance. The grievance must describe the nature of the alleged sexual misconduct and must name or sufficiently describe the perpetrator of the alleged sexual misconduct. If the alleged perpetrator is not a Department staff person, the grievance must explain the basis for believing that a Department staff person is responsible for the alleged sexual misconduct and must name or sufficiently describe the person believed responsible. If the information provided is not sufficient, the Grievance Review Officer shall immediately send the grievance to the prisoner or resident, along with a note outlining what is missing. The Grievance Review Officer shall make a copy of the grievance and the note for the file. The missing information must be provided by the prisoner or resident within thirty (30) days of the date the Grievance Review Officer signs the note and sends out the note and the grievance. Sexual misconduct alleged in a grievance that is dismissed for failure to supply the missing information within this timeline may be the subject of a later grievance.

6. There is no time limit on the filing of the grievance, and there is no requirement that the prisoner or resident attempt an informal resolution of the grievance. The investigation and other steps in the formal resolution of the grievance must be
undertaken only by those staff not named or described in the grievance as a perpetrator or a person responsible for alleged sexual misconduct by another.

7. If the matter being grieved might also be the subject of or otherwise involve a criminal investigation, the Grievance Review Officer shall immediately contact the Department’s Assistant Attorney General for instruction as to how to respond to the grievance. The Grievance Review Officer shall not inform the prisoner or resident that the subject has been referred to the Attorney General’s Office and shall not provide any other information to the prisoner or resident prior to receiving this instruction.

8. The Grievance Review Officer shall send to the prisoner or resident a response to the grievance, in writing, within thirty (30) days of its receipt. If a response cannot be made within the thirty (30) days, the Grievance Review Officer shall so advise the prisoner or resident in writing and shall indicate when the response will be made, which must not be later than an additional ten (10) days.

9. If the prisoner or resident is not satisfied with the response from the Grievance Review Officer, he or she may file a clearly marked appeal, by letter or other writing, to the facility Chief Administrative Officer within fifteen (15) days of the date the Grievance Review Officer signs and sends out the response. The prisoner or resident must file the grievance appeal on his or her own behalf except as set out above for a resident who is a minor.

10. The facility Chief Administrative Officer, or designee, shall send to the prisoner or resident a response to the appeal, in writing, within thirty (30) days of its receipt. If a response cannot be made within the thirty (30) days, the facility Chief Administrative Officer, or designee, shall so advise the prisoner or resident in writing and shall indicate when the response will be made, which must not be later than an additional ten (10) days.

11. If the prisoner or resident is not satisfied with the response from the facility Chief Administrative Officer, or designee, he or she may file a clearly marked appeal, by letter or other writing, to the Commissioner within fifteen (15) days of the date the facility Chief Administrative Officer, or designee, signs and sends out the response. The prisoner or resident must file the grievance appeal on his or her own behalf except as set out above for a resident who is a minor.

12. The Commissioner, or designee, shall send to the prisoner or resident a response to the appeal, in writing, within thirty (30) days of its receipt. If a response cannot be made within the thirty (30) days, the Commissioner, or designee, shall so advise the prisoner or resident in writing and shall indicate when the response will be made, which must not be later than an additional ten (10) days.

13. If the grievance contains a claim that the prisoner or resident is at a substantial risk of being a victim of imminent sexual misconduct, the grievance must be
clearly marked as an emergency grievance. If the facts alleged support the claim, the Grievance Review Officer shall immediately forward the claim to the Chief Administrative Officer, or designee, for a determination as to whether the prisoner or resident is subject to such a risk. If the Chief Administrative Officer, or designee, determines there is such a risk, he or she shall take immediate preventative or remedial action. The Chief Administrative Officer, or designee, shall make an initial written response to the claim within forty-eight (48) hours of its receipt and a final written response to the claim within five (5) days of its receipt. The rest of the grievance shall be processed in the ordinary way.

14. If the Grievance Review Officer otherwise learns that a prisoner or resident is at a substantial risk of being a victim of imminent sexual misconduct, the Grievance Review Officer shall immediately notify the Chief Administrative Officer, or designee, for a determination as to whether the prisoner or resident is subject to such a risk. If the Chief Administrative Officer, or designee, determines there is such a risk, he or she shall take immediate preventative or remedial action.

15. No prisoner or resident using this grievance process in good faith shall be subjected to retaliation in the form of an adverse action or the threat of an adverse action for using this grievance process. However, a prisoner or resident may have his or her access to this grievance process suspended and/or may be subjected to disciplinary action for abuse of this grievance process.

16. A prisoner or resident may file a grievance about any other grievable matter, including, but limited to, sexual harassment, an act that is a violation of Department policy but does not constitute a PREA violation or a violation of Maine criminal law, failure to report or otherwise take appropriate steps in response to sexual misconduct or sexual harassment, deterring reporting, and retaliation, only by using the applicable regular prisoner or resident grievance process. A person under supervision in the community may file a grievance only by using the applicable community corrections grievance process.

VII. PROFESSIONAL STANDARDS

ACA:

4-4281-6 Written policy, procedure, and practice ensure that sexual conduct between staff and prisoners, volunteers, or contract personnel and prisoners, regardless of consensual status, is prohibited and subject to administrative and criminal disciplinary sanctions.

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 misconduct, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings, and recommendations for post-release.
4-JCF-3D-07 Sexual conduct between staff and juveniles, volunteers, or contract personnel and juveniles, regardless of consensual status, is prohibited and subject to administrative and criminal disciplinary sanctions.

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.

4-JCF-3D-09 All case records associated with claims of sexual misconduct, including incident reports, investigative reports, juvenile 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-3C-16 When a juvenile allegedly commits an act covered by criminal law, the case is referred to appropriate court or law enforcement officials for consideration for prosecution.

PREA:

115.52 Exhaustion of administrative remedies
115.76 Disciplinary sanctions for staff
115.77 Corrective action for contractors and volunteers
115.78 Disciplinary sanctions for inmates