

103 ECSD 981.00 PRISON RAPE ELIMINATION ACT

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**981.01 Purpose**

The purpose of this document is to establish guidelines for the prevention, detection, reporting, response, investigation and tracking of all sexual assaults.

**981.02 Cancellation**

103 ECSD 981.00 cancels all previous rules and regulations, policy statements, bulletins, directives, orders and notices regarding PREA

**981.03 Applicability**

This policy applies to all employees, contractors, vendors, volunteers and student interns of the Essex County Sheriff’s Department (hereinafter referred to as “Department”) which encompasses the Essex County Pre-Release Center in Lawrence, Massachusetts (hereinafter referred to as “ECPRC”) and the Woman in Transition in Salisbury, Massachusetts (hereinafter referred to as “WIT”).

**981.04 Access to Regulations**

103 ECSD 981.00 shall be maintained within the department’s central policy file and accessible to all staff and inmate/residents.

**981.05 Policy**

It is the policy of the department to be in compliance with the Prison Rape Elimination Act (PREA). To that end, the department is committed to a zero tolerance policy regarding sexual assaults to include sexual harassment, whether inmate/resident on inmate/resident or staff on inmate/resident. All intentional acts of a sexually abusive behavior (to include sexual harassment) or intimacy between an inmate/resident and a department employee, vendor, volunteer, or between an inmate/resident and another inmate/resident regardless of consent, are prohibited and the perpetrator shall be subject to administrative, criminal and/or disciplinary sanctions. The department is committed to investigating, disciplining and referring for prosecution department employees, vendors/contractors, volunteers and inmate/residents who

engage in sexually abusive behavior. This policy will outline the department's approach to preventing, detecting and responding to such conduct.

This policy is intended to:

- Increase the timely reporting of incidents of sexual abuse;
- Develop and maintain a process to identify and manage inmate/residents that are identified as potentially at risk;
- Provide training to department employees, vendors, contractors, volunteers outlining their responsibilities toward prevention, intervention and reporting when incidents are observed or brought to their attention;
- Provide effective and ongoing orientation to inmate/residents to avoid being victimized and how to report incidents of sexual abuse; and
- Provide treatment for victims.

The department shall designate an upper-level, agency wide PREA coordinator and provide him/her with sufficient time and authority to develop, implement, and oversee the department's efforts to comply with the PREA standards in all of its facilities.

The department shall also designate two (2) PREA compliance managers. One (1) will be assigned to the Jail/House of Corrections in Middleton, Massachusetts and the other will be assigned to supervise the ECPRC and WIT. Each PREA compliance manager will be provided with sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards. Each PREA compliance manager will report to the department's PREA coordinator.

#### **981.06 Contracting with other entities for the confinement of inmate/residents**

The department contracts for the confinement of its inmate/residents with private agencies or other entities, including other government agencies, and shall include in any new contract or contract renewal, the entity's obligation to adopt and comply with the PREA standards.

Any new contract or contract renewal shall provide contract monitoring to ensure the contractor is complying with the PREA standards.

The ECPRC and the WIT, only in emergency circumstances in which all reasonable attempts to find a private agency or other entity in compliance with the PREA standards have failed, may they enter into a contract with an entity that fails to comply with these standards. In such case, the ECPRC and WIT shall document its unsuccessful attempts to find an entity in compliance with the standards. (This clause does not apply to the Essex County Jail/House of Corrections in Middleton, Massachusetts.)

#### **981.07 Definitions**

Agency: The unit of a state, local, corporate or nonprofit authority, of the Department of Justice with direct responsibility for the operation of any facility that confines inmate/residents, detainees, or residents including the implementation of policy as set by the governing, corporate or nonprofit authority.

Agency head: Principal official of the Essex County Sheriff's Department is the Essex County Sheriff.

Allegation: A statement made claiming that sexual abuse has occurred or might occur.

Substantiated: an allegation that was investigated and determined to have occurred.

Unfounded: an allegation that was investigated and determined not to have occurred.

Unsubstantiated: an allegation that was investigated and the investigation produced insufficient evidence to make a determination as to whether or not the event occurred.

At Risk: Inmate/residents who exhibit characteristics consistent with potential victims or perpetrators of sexually abusive behavior.

Community Confinement Facility: any community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehab center, or other community correctional facility in which individuals reside as part of a term of imprisonment or as a condition of pre-trial release or post-release while participating in gainful employment.

Contractor: any person who provides services on a recurring basis pursuant to a contractual agreement with the department.

Detainee: any person detained in a lockup.

Direct staff supervision: security staff are in the same room with and within reasonable hearing distance of the inmate/resident.

Employee: any person who works directly for the department.

Exigent circumstances: any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security of the facility.

Facility: a place, institution, building, set of buildings, structure or area that is used by the department for the confinement of individuals.

Facility Head: the principal official of a facility within the department.

Full compliance: compliance with all material requirements of each standard except for de minimis violations, or discrete and temporary violations during otherwise sustained periods of compliance.

Gender non-conforming: a person whose appearance or manner does not conform to traditional societal gender expectations.

Inmate/resident: any person incarcerated or detained in a jail or prison.

Intersex: any person who's sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

Jail: confinement facility of a Federal, state or local law enforcement agency whose primary use is to hold persons pending adjudication of criminal charges, persons committed to confinement after adjudication of criminal charges for sentences of one year or less, or persons adjudicated guilty who are awaiting transfer to a correctional facility.

Juvenile: any person under the age of 18, unless under adult court supervision and confined or detained in a prison or jail.

Juvenile facility: facility primarily used for the confinement of juveniles pursuant to the juvenile justice system or criminal justice system.

LGBTI: a common acronym for a lesbian, gay, bisexual, transgender or intersex person.

Lockup: means a facility that contains holding cells, cell blocks or other secure enclosures that are:

- under the control of a law enforcement officer
- primarily used for the temporary confinement of individuals who have recently been arrested, detained or are being transferred to or from court.

Massachusetts Staff Sexual Misconduct: MGL c268 § 21A – This law removes the ability of an inmate/resident in any correctional institution to consent to engage in sexual relations with any department employee, contractor/vendor or volunteer. Violation of this statute is a felony with a term imprisonment of up to five years or a fine of up to \$10,000.

Medical practitioner: any health professional who by virtue of education, credentials and experience, is permitted to evaluate and care for patients within the scope of his/her professional practice. A qualified medical practitioner refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

Mental Health Practitioner: any mental health professional who by virtue of education, credentials and experience is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A qualified mental health practitioner refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

Pat-down Search: means a running of the hands over the clothed body of an inmate/resident/detainee by an employee to determine whether the individual possesses contraband.

Prison: an institution under Federal or State jurisdiction whose primary use is for the confinement of individuals convicted of a serious crime, usually in excess of one year in length, or a felony.

Resident: means any person confined or detained in a juvenile facility or in a community confinement facility.

Security Staff: means employees primarily responsible for the supervision and control of inmate/residents/detainees in housing units, recreational areas, dining areas and other programs areas of the facility.

SANE: (Sexual Assault Nurse Examiner): Provides necessary medical care and ensures medical intervention to victims of assault who are examined at designated emergency hospital.

Sexual abuse – includes:

- Sexual abuse of an inmate/resident/detainee by another inmate/resident/detainee.
- Sexual abuse of an inmate/resident/detainee by staff member, contractor, volunteer or intern.

Sexual abuse of an inmate/resident/detainee by another inmate/resident/detainee includes of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- Contact between the mouth and the penis, vulva or anus;
- Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument, and
- 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 of an inmate/resident/detainee by a staff member, contractor, intern or volunteer includes any of the following acts, with or without consent of the inmate/resident/detainee.

- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- Contact between the mouth and the penis, vulva or anus;
- Contact between the mouth and any body part where the staff member, contractor, volunteer or intern has the intent to abuse, arouse or gratify sexual abuse;
- 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, volunteer or intern has the intent to abuse, arouse or gratify sexual desire;
- 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 of where the staff member, contractor, volunteer or intern has the intent to abuse, arouse, or gratify sexual desire;
- Any attempt, threat, or request by a staff member, contractor, volunteer or intern to engage in the activities in this section;

- Any display by a staff member, contractor, volunteer or intern of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate/resident/detainee; and
- Voyeurism by a staff member, contractor, volunteer or intern.

Sexual Assault Investigator: department employee assigned by the Superintendent to investigate allegations of sexually abusive behavior.

Sexual conduct: means intercourse between male and female; anal intercourse, fellatio, and cunnilingus between person regardless of sex. Penetration, however slight, of any part of the body, or instrument, apparatus, or other object into the vaginal/anal cavity of another.

Sexual contact: includes but is not limited to carnal knowledge, sodomy, sexual assault with an object or sexual fondling or molestation of a person.

Sexual Harassment: repeated verbal comments or gestures of a sexual nature to an inmate/resident/detainee 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.

Sexual Misconduct: includes any sexual behavior that is directed towards any person. It includes, but is not limited to, any acts or attempts to commit acts which involve sexual contact, intimate relationships, sexual abuse, or assault, harassing or an invasion of privacy.

Staff sexual misconduct: any verbal, physical or offensive conduct of a sexual nature by a department employee, vendor/contractor, or volunteer directed toward an inmate/resident under the care, custody and supervision of the department. Prohibited sexual acts include attempt, threat, request or the completed act of touching of the genitalia, anus, groin, breast, inner thigh, or buttocks either directly or through clothing, with the intent to abuse, arouse, or sexually gratify. Examples of sexual harassment include, but are not limited to, demeaning references to inmate/resident's gender, derogatory comments about inmate/resident's body, jokes about sex or gender specific traits, abusive, threatening, profane or degrading sexual comments, touching, or conduct of a sexual nature or threats of retaliation for refusing sexual advances. All sexual contact between an inmate/resident and employee, contractor, vendor, volunteer is considered sexual misconduct even if the inmate/resident "consents" because inmate/residents are incapable of consent.

Voyeurism: An invasion of an inmate/resident's privacy by staff for reasons unrelated to official duties or when otherwise not necessary for safety and security reason, such as peering at an inmate/resident who is using the toilet.

## **981.08 Supervision and Monitoring**

The Essex County Jail/House of Corrections shall conduct an annual staff analysis that shall provide adequate levels of staffing and where applicable, video monitoring to protect inmates

against sexual abuse. In calculating adequate staffing levels and determining needs for video monitoring the following, along with any other relevant factors, shall be taken into consideration

- Generally accepted correctional practices;
- Any judicial findings of inadequacy;
- Any findings of inadequacy from federal investigative agencies;
- Any findings of inadequacy from internal or external oversight bodies;
- All components of the physical plant;
- Composition of the inmate population;
- Number and placement of supervisory staff;
- Institutional programs occurring on a particular shift;
- Applicable state or local laws, regulations or standards;
- The prevalence of substantiated or unsubstantiated incidents of sexual misconduct; and
- Any other relevant factors.

Any deviations shall be documented by the Shift Supervisor.

The ECPRC and the WIT shall conduct an annual staff analysis that shall provide adequate levels of staffing and where applicable, video monitoring to protect residents against sexual abuse. In calculating adequate staffing levels and determining needs for video monitoring the following, along with any other relevant factors, shall be taken into consideration

- The physical layout of each facility;
- The composition of the resident population;
- The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
- Any other relevant factors.

Any deviations shall be documented by the Shift Supervisor.

The PREA Coordinator in consultation with all three (3) department facilities shall annually assess, determine and document whether adjustments to the plan are needed to:

- Modify the staffing plan;
- Deploy the facility video monitoring systems and other monitoring technologies;
- Prevailing staffing patterns; and
- Assess the resources that the department has available to accomplish adherence to the staffing plan and ensure adequate staffing levels.

Intermediate-level or higher-level supervisors shall conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. This practice shall be implemented for night shift as well as day shift and shall prohibit staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

## **981.09            Cross-gender searches and viewing**



Cross-gender strip searches and cross-gender visual body cavity searches will NOT be conducted except in exigent circumstances or by a medical practitioner. The department shall document all cross-gender strip searches, cross-gender visual body cavity searches and cross-gender pat-down searches of female inmate/residents.

No transgender or intersex inmate/residents shall be searched for the sole purpose of determining the inmate/resident's genital status. If an inmate/resident's genital status is unknown, it may be determined by conversation with the inmate/resident, review of medical records, or by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

All inmate/residents shall be able to shower, perform bodily functions and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia except in exigent circumstances or when such viewing is incidental to routine cell checks. Staff of the opposite gender shall announce their presence when entering an inmate/resident housing unit.

Security staff shall be trained in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmate/residents, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

#### **981.10 Inmate/residents with Disabilities**

The department shall take appropriate steps to ensure that inmate/resident's with disabilities (including deaf, hard of hearing, blind or have low vision or those who intellectual, psychiatric or speech disabilities) have an equal opportunity to participate in or benefit from all aspects of the department's efforts to prevent, detect and respond to sexual abuse and sexual harassment. Such steps shall include, when necessary to ensure effective communication with inmate/residents who are deaf or hard of hearing, providing access to interpreters who can interpret effectively, accurately and impartially using any necessary specialized vocabulary. The department shall ensure that written materials are provided in formats or through methods that ensure effective communication with inmate/residents with disabilities, including inmate/residents who have intellectual disabilities, limited reading skills, or who are blind or have low vision. The department is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program or activity, or in undue financial and administrative burdens, as those terms are used in regulations promulgated under title II of the Americans with Disabilities Act, 28 CFR 35.164.

The department shall not rely on inmate/resident interpreters, inmate/resident readers, or other types of inmate/resident assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate/resident's safety, the performance of first-response duties under §115.64 and/or §115.264 of the PREA standards, or the investigation of the inmate/resident's allegations.

#### **981.11 Hiring and Promotion**

The department shall not hire or promote anyone who may have contact with inmate/residents, and shall not enlist the services of any contractor, intern, or volunteer who may have contact with inmate/residents who has:

- Engaged in sexual misconduct in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution;
- Been convicted of engaging or attempting to engage in sexual misconduct in the community facilitated by force, overt, or implied threats of force or coercion, or if the victim did not consent or was unable to consent or refuse; and/or
- Been civilly or administratively adjudicated to have engaged in sexual misconduct.

The department shall consider any incidents of sexual harassment before hiring or promoting anyone and before enlisting the services of any contractor who may have contact with inmate/residents.

Before hiring any new employees and as part of any promotional process, the department shall conduct appropriate background checks on all applicants and employees. A criminal background records check (CORI) shall be conducted before enlisting the services of any contractor who may have contact with inmate/residents.

Consistent with governing law, the department shall contact all former institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.

At least every five years, the department shall conduct a criminal background check of those current employees and contractors who may have contact with inmate/residents.

The department shall ask all employees and applicants who may have contact with inmate/residents about previous sexual misconduct, as described above, in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The department shall also impose to all employees a duty to disclose any such misconduct.

Any material omissions regarding such misconduct shall be grounds for termination.

Unless prohibited by law, the department provides information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

## **981.12 Upgrades to Facilities and Technologies**

When designing or acquiring any new facility and in planning any substantial expansion or modification (including electronic monitoring systems) of existing facilities, the department shall consider the effect of the design, acquisition, expansion, or modification upon the ability to protect inmate/residents from harm including sexual abuse.

When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the department shall consider how such technology may enhance the agency's ability to protect inmate/residents from sexual abuse.

### **981.13 Evidence Protocol and Forensic Medical Examinations**

To the extent the department is responsible for investigating allegations of sexual abuse, the department shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.

The department shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiary or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFE) or Sexual Assault Nurse Examiners (SANE) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The department shall document its efforts to provide SAFEs or SANEs.

The department shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the department shall make available to provide these services from a qualified staff member of a community-based organization, or a qualified staff member. The department shall document efforts to secure services from rape crisis centers. A rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in the 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The department may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.

As requested by the victim, the victim advocate, qualified staff member, or qualified community based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews shall provide emotional support, crisis intervention, information and referrals.

To the extent the department itself is not responsible for investigating allegations of sexual abuse, the department shall request the investigating agency follow the requirements of this section.

The requirements of this section shall also apply to:

- Any State entity outside of the department that is responsible for investigating allegations of sexual abuse in prisons or jails; and
- Any Department of Justice component that is responsible for investigating allegations of sexual abuse in prisons or jails.

For the purposes of this section, a qualified staff member or a qualified community based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.

#### **981.14 Policies to ensure referrals of allegations for investigations**

The department shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.

The department shall ensure that allegations of sexual abuse or sexual harassed are investigated by Security Investigations or referred to the Essex District Attorney's Office and the Massachusetts State Police when warranted, unless the allegation does not involve potentially criminal behavior. The department shall document all such referrals and publish such policy on its website.

If a separate entity is responsible for conducting criminal investigations, such publication shall describe the responsibilities of both the department and the investigation authority.

#### **981.15 Employee Training**

The department shall train all employees who may have contact with inmate/residents on:

- Zero-tolerance for sexual abuse and sexual harassment;
- How to fulfill their responsibilities under the department's sexual abuse and sexual harassment prevention, detection, reporting and response policies and procedures;
- Inmate/resident's rights to be free from sexual abuse and sexual harassment;
- The rights of inmate/residents and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
- The dynamics of sexual abuse and sexual harassment in confinement;
- The common reactions of sexual abuse and sexual harassment victims;
- How to detect and respond to signs of threatened and actual sexual abuse;
- How to avoid inappropriate relationships with inmate/residents;
- How to communicate effectively and professionally with inmate/residents, including lesbian, gay, bisexual, transgender, intersex (LGBTI) or gender nonconforming inmate/residents; and
- How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

All current employees shall be trained and the department shall provide each employee with refresher training every two years to ensure that all employees know the current sexual abuse and sexual harassment policies and procedures. In years in which an employee does not receive refresher training, the department shall provide refresher information on current sexual abuse and sexual harassment policies.

The department shall document, through employee signature or electronic verification that employees understand the training they have received.

## **981.16 Contractors, Interns and Volunteers**

The department shall ensure that all contractors, interns and volunteers who have contact with inmate/residents have been trained on their responsibilities under the sexual abuse and sexual harassment prevention, detection and response policies and procedures.

The level and type of training provided to contractors, interns and volunteers shall be based on the services they provide and level of contact they have with inmate/residents, but all contractors, interns and volunteers who have contact with inmate/residents shall be notified of the department's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.

The department shall maintain documentation confirming that contractor's, interns and volunteers understand the training they have received.

## **981.17 Inmate/resident Education**

During the intake process, inmate/residents shall receive information explaining the department's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.

Residents at the ECPRC and WIT shall also receive information explaining their rights to be free from sexual abuse and sexual harassment and to be free from retaliation from reporting such incidents, and regarding agency policies and procedures for responding to such incidents.

Residents at the ECPRC and WIT shall be provided refresher information whenever a resident is transferred to a different facility.

Inmates at the Essex County Jail/House of Corrections, within 30 days of intake shall be provided comprehensive education either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding the department's policies and procedures for responding to such incidents.

Current inmates who have not received such education shall be educated within one year of the effective date of the PREA standards, and shall receive education upon transfer to a different facility to the extent that the policies and procedures of the inmate's new facility differ from those of the previous facility.

The department shall provide inmate/residents education in formats accessible to all inmate/residents including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmate/residents who have limited reading skills.

The department shall maintain documentation of inmate/resident participation in these education sessions.

In addition to providing such education, the department shall ensure that key information is continuously and readily available or visible to inmate/residents through posters, inmate/resident handbooks, or other written formats.

#### **981.18 Specialized Training: Investigations**

In addition to the general training provided to all employees, the department shall ensure, to the extent the department itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.

Specialized training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action of prosecution referral.

The department shall maintain documentation that the department's investigators have completed the required specialized training in conducting sexual abuse investigations.

Any State entity of Department of Justice component that investigates sexual abuse in confinement settings shall provide such training to its agents and investigators who conduct such investigations.

#### **981.19 Specialized Training: Medical and Mental Health Care**

The department shall ensure that all full and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in:

- How to detect and assess signs of sexual abuse and sexual harassment;
- How to preserve physical evidence of sexual abuse;
- How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and
- How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

If medical employed by the department conduct forensic examinations, such medical staff shall receive the appropriate training to conduct such examinations.

The department shall maintain documentation that medical and mental health practitioners have received the training either from the department or from elsewhere.

Medical and mental health practitioners shall also receive the training mandated for employees under §115.35 and/or §115.235, or for contractors and volunteers under §115.32 and/or §115.232 of the PREA standards, depending upon the practitioners status at the department.

#### **981.20 Screening for Risk Victimization and Abusiveness**

All inmate/residents shall be assessed during their intake screening and upon transfer to another facility for their risk of being sexually abused by other inmate/residents or sexually abusive toward other inmate/residents.

Intake screening shall ordinarily take place within 72 hours of arrival at the facility. Such assessments shall be conducted using an objective screening instrument.

The intake screening shall consider, at a minimum, the following criteria to assess inmate/residents at risk for sexual victimization:

- Whether the inmate/resident has a mental, physical, or developmental disability;
- The age of the inmate/resident;
- The physical build of the inmate/resident;
- Whether the inmate/resident has previously been incarcerated;
- Whether the inmate/resident's criminal history is exclusively nonviolent;
- Whether the inmate/resident has prior convictions for sex offenses against an adult or child;
- Whether the inmate/resident is or is perceived to be gay, lesbian, bisexual, transgender, intersex (LGBTI) or gender nonconforming;
- Whether the inmate/resident has previously experienced sexual victimization;
- The inmate/resident's own perception of vulnerability; and
- Whether the inmate/resident is detained solely for civil immigration purposes.

The initial screening shall consider prior acts of sexual abuse, prior convictions for violent offenses, and history of prior institutional violence of sexual abuse, as known to the department, in assessing inmate/resident for the risk of being sexually abusive.

Within 30 days from the inmate/resident's arrival at the facility, the inmate/resident will be assessed for their risk of victimization or abusiveness based upon any additional, relevant information received since the intake screening.

An inmate/resident's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate/resident's risk of sexual victimization or abusiveness.

Inmate/residents may not be disciplined for refusing to answer, or for not disclosing complete information in response to questions asked above.

The department shall control the dissemination within the various facilities of responses to questions asked during this screening in order to ensure that sensitive material is not exploited to the inmate/resident's detriment by staff or other inmate/residents.

## **981.21 Use of Screening Information**

The department shall use information from the risk screening required by §115.41 and/or §115.241 of the PREA standards to inform housing, bed, work, education and program

assignments with the goal of keeping separate those inmate/residents at high risk of being sexually victimized from those at high risk of being sexually abusive.

The department shall make individualized determinations about how to ensure the safety of each inmate/resident.

In deciding whether to assign a transgender or intersex inmate/resident to a housing unit and in making other housing and programming assigned, the department shall consider on a case-by-case basis whether a placement would ensure the inmate/resident's health and safety, and whether the placement would present management or security problems.

Placement and programming assignments for each transgender or intersex inmate/resident shall be reassessed at least twice each year to review any threats to safety experienced by the inmate/resident.

A transgender or intersex inmate/resident's own views with respect to his or her own safety shall be given serious consideration.

Transgender and intersex inmate/residents shall be given the opportunity shower separately from other inmate/residents.

The Essex County Jail/House of Corrections shall not place lesbian, gay, bisexual, transgender (LGBTI) or intersex inmates in dedicated units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmate.

## **981.22 Protective Custody**

Inmates at high risk for sexual victimization shall not be placed in involuntary segregation housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers. If the department cannot conduct such an assessment immediately, the inmate may be held in involuntary segregated housing for less than 24 hours while completing the assessment.

Inmates placed in involuntary segregation for this purpose shall have access to programs, privileges, education and work opportunities to the extent possible. If the department restricts access to programs, privileges, education, or work opportunities, the department shall document:

- The opportunities that have been limited;
- The duration of the limitation; and
- The reasons for such limitation.

The department shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.



If an involuntary segregated housing assignment is made pursuant to paragraph (1) of this section, the department clearly document:

- The basis for the department's concern for the inmate's safety; and
- The reason why no alternative means of separation can be arranged.

Every 30 days, the department shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population.

### **981.23 Inmate/resident Reporting**

The department provides multiple internal ways for inmate/residents to privately report sexual abuse and sexual harassment, retaliation by other inmate/residents or staff for reporting sexual abuse and sexual harassment and staff neglect or violation of responsibilities that may have contributed to such incidents.

The department provides at least one way for inmate/residents to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward inmate/resident reports of sexual abuse and sexual harassment to department officials, allowing the inmate/resident to remain anonymous upon request. Inmate/residents detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.

#### **Internal reports (to the department)**

Inmate/residents may report sexual abuse or sexual harassment to any staff member. Staff shall accept reports verbally, in writing, anonymously, and from third parties and shall document in writing such reports.

Inmate/residents may privately report any sexual abuse or sexual harassment on the department Tip Hotline. On any inmate/resident authorized telephone, the inmate/resident must first choose a language when asked. The inmate/resident will then choose option 8 and then be requested to enter their PIN number. Finally, the inmate/resident must enter 321 when asked to do so.

#### **External Reporting (to entities which are not part of the department)**

Inmate/residents may report sexual abuse or sexual harassment by calling the National Sexual Assault Hotline at 800-656-4673.

Inmate/residents may also report sexual abuse or sexual harassment by telephone or in writing to the below address:

The Essex District Attorney's Office  
Family Crimes and Sexual Assault Unit  
10 Federal Street

Salem, MA 01970

On any inmate/resident authorized telephone, inmate/residents may confidentially call the Essex District Attorney's Office at no charge by dialing \*599 as soon as they pick up the telephone. No language needs to be selected.

Department staff members may also privately report sexual abuse and sexual harassment of inmate/residents to the Essex District Attorney's Office by calling (978) 599-1699 on any staff or personal telephone.

#### **981.24 Exhaustion of Administrative Remedies**

The department shall not impose a time limit on when an inmate/resident may submit a grievance regarding an allegation of sexual abuse. However, otherwise applicable time limits may be applied to any portion of a grievance that does not allege an incident of sexual abuse.

The department shall not require an inmate/resident to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse.

Nothing in this section shall restrict the department's ability to defend against an inmate/resident lawsuit on the ground that the applicable statute of limitations has expired.

The department shall ensure that –

- An inmate/resident who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint; and
- Such grievance is not referred to a staff member who is the subject of the complaint.

A final decision on the merits of any portion of a grievance or complaint alleging sexual abuse shall be issued within 90 days of the initial filing of the grievance or complaint.

Computation of the 90 day time period shall not include time consumed by inmate/residents in preparing any administrative appeal.

The department may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The department shall notify the inmate/resident in writing of any such extension and provide a date by which a decision will be made.

At any level of the administrative process, including the final level, if the inmate/resident does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate/resident may consider the absence of a response to be a denial at that level.

Third parties, including fellow inmate/residents, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmate/residents in filing requests for

administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of inmate/residents.

If a third party files such a request on behalf of an inmate/resident, the department may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.

If the inmate/resident declines to have the request processed on his or her behalf, the department shall document the inmate/resident's decision.

The department has established procedures for the filing of an emergency grievance alleging that an inmate/resident is subject to a substantial risk of imminent sexual abuse.

After receiving an emergency grievance alleging an inmate/resident is subject to a substantial risk of imminent sexual abuse, the department shall forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken, shall provide an initial response within 48 hours, and shall issue a final decision within 5 calendar days. The initial response and final decision shall document the department's determination whether the inmate/resident is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

The department may discipline an inmate/resident for filing a grievance related to alleged sexual abuse only where the department demonstrates that the inmate/resident filed the grievance in bad faith.

#### **981.25 Inmate/resident Access to Outside Confidential Support Services**

The department shall provide inmate/residents with access to outside victim advocates for emotional support services related to sexual abuse by giving inmate/residents mailing addresses and telephone numbers, including toll free hotline numbers where available, of local, state, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies. The department shall enable reasonable communication between inmate/residents and these organizations and agencies, in as confidential a manner as possible.

The department shall inform inmate/residents, 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.

The department shall maintain or attempt to enter into memoranda of understanding or other agreements with community services providers that are able to provide inmate/residents with confidential emotional support services related to sexual abuse. The department shall maintain copies of agreements or documentation showing attempts to enter into such agreements.

#### **Victim Advocate**

Inmate/residents may confidentially contact, 24 Hour Rape Counseling and Support Services located at the Greater Lawrence YWCA Rape Crisis Center. This service is for sexual assault victims/survivors and anyone affected by it. On any inmate/resident authorized telephone, the inmate/resident must immediately dial \*333 as it will directly connect them, at no charge, to the Rape Crisis Center. No language needs to be selected.

The Rape Crisis Center may also be contacted, at no charge, on any department staff telephone or by using a personal telephone by calling (877) 509-9922.

### **981.26 Third Party Reporting**

Third Party Reporters (Friends and Family) may report sexual abuse of sexual harassment to the Essex District Attorney's Office, Family Crimes and Sexual Assault Unit, 10 Federal Street, Salem, MA 01970. Their number is 978-745-6610 ext. 5088.

### **981.27 Staff and Department Reporting Duties**

The department shall require all staff to immediately report to the Shift Supervisor, any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency; retaliation against inmate/residents or staff who reported such an incident, and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

Staff shall not reveal any information related to a sexual abuse report to anyone than when necessary to make treatment, investigation and other security and management decisions.

Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners shall be required to report sexual abuse pursuant to this section and to inform inmate/residents of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services.

If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable person's statute, the department shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

The department shall report all allegations of sexual abuse and sexual harassment, including third party and anonymous reports, to the designated investigators.

### **981.28 Department protection duties**

When the department learns that an inmate/resident is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the inmate/resident.

### **981.29 Reporting to other Confinement Facilities**

Upon receiving an allegation that an inmate/resident was sexually abused while confined at another facility, the Superintendent shall notify the head of that facility or appropriate office where the alleged abuse occurred.

Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.

The Superintendent will document that notification was provided.

Upon receiving an allegation that an inmate/resident was sexually abused while confined within this department, the Superintendent shall ensure that the allegation is investigated.

### **981.30 Staff First Responder Duties**

Upon learning of an allegation that an inmate/resident was sexually abused, the first security staff member to respond to the report shall be required to:

- Separate the alleged victim and abuser;
- Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;
- If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and
- If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating.

If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.

### **981.31 Coordinated response**

The department shall follow the institutional plan to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioner's investigators, and facility leadership.

### **981.32 Preservation of Ability to Protect Inmate/residents from Contact with Abusers**

Neither the department nor any other governmental entity responsible for collective bargaining on the department's behalf shall enter into or renew any collective bargaining or other agreement that limits the department's ability to remove alleged staff sexual abusers from contact with any

inmate/residents pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.

Nothing shall restrict the entering into or renewal of agreements that govern:

- The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of §115.72/§115.272 or §115.76/§115.276 of the PREA standards; and
- Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated.

### **981.33 Department's Protection Against Retaliation**

The department shall protect all inmate/residents and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmate/residents or staff, and shall designate which staff members or facilities are charged with monitoring retaliation.

The department's PREA Coordinator and the PREA compliance managers will be designated as the PREA retaliation monitors.

The department shall employ multiple protection measures, such as housing changes or transfers for inmate/resident victims or abusers, removal of alleged staff or inmate/resident abusers from contact with victims, and emotional support services for inmate/residents or staff that fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

For at least 90 days following a report of sexual abuse, the department shall monitor the conduct and treatment of inmate/residents or staff who reported the sexual abuse and of inmate/residents who reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by inmate/residents or staff, and shall act promptly to remedy any such retaliation. Items to be monitored include, but not limited to any inmate/resident disciplinary reports, housing, or program changes, or negative performance reviews or reassignments by staff. Monitoring will continue beyond 90 days if the initial monitoring indicates a continuing need.

The documentation of monitoring for retaliation must be recorded in the investigative file.

In the case of inmate/residents, such monitoring shall also include periodic status check.

If any other individual who cooperates with an investigation expresses a fear of retaliation, the department shall take appropriate measures to protect that individual against retaliation.

The obligation to monitor for retaliation shall terminate if the department determines the allegation is unfounded.

#### **981.34 Post-allegation Protective Custody**

Any use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse shall be subject to the requirements of §981.22.

#### **981.35 Criminal and Administrative Investigations**

When the department conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly and objectively for all allegations, including third party and anonymous reports.

Where inmate/resident-on-inmate/resident sexual abuse is alleged, the department shall use investigators who have received specialized training in sexual abuse investigations pursuant to §115.34 or §115.234 of the PREA standards. Where staff-on-inmate/resident sexual abuse is alleged, the department shall use investigators who have received specialized training in sexual abuse investigations pursuant to §115.34 or §115.234 of the PREA standards, or when warranted, the Essex District Attorney's Office and the Massachusetts State Police.

Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data, shall interview alleged victims, suspected perpetrators, and witnesses, and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

When the quality of evidence appears to support criminal prosecution, the investigators shall conduct compelled interviews, only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate/resident or staff. No agency shall require an inmate/resident who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

Administrative or Internal Affairs investigations:

- Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and
- Shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings

Criminal investigations shall be documented in a written report that contains a thorough description of evidence and attaches copies of all documentary evidence where feasible.

Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.

The department shall retain all written reports referenced in this section for as long as the alleged abuser is incarcerated or employed by the department, plus five years.

The departure of the alleged abuser or victim from the employment or control of the department shall not provide a basis for terminating an investigation.

Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.

### **981.36 Evidentiary Standard for Administrative Investigations**

The department shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

### **981.37 Reporting to Inmate/residents**

Following an investigation into an inmate/resident's allegation that he or she suffered sexual abuse within the department, the department shall inform the inmate/resident as to whether the allegation has been determined to be substantiated, unsubstantiated or unfounded.

If the department did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the inmate/resident.

Following an inmate/resident's allegation that a staff member has committed sexual abuse against the inmate/resident, the department shall subsequently inform the inmate/resident whenever:

- The staff member is no longer posted within the inmate/resident's unit;
- The staff member is no longer employed by the department;
- The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; and
- The department learns that the staff member has been convicted on a charge related to sexual abuse within the facility.

Following an inmate/resident's allegation that he or she has been sexually abused by another inmate/resident, the agency shall subsequently inform the alleged victim whenever:

- The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; and
- The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.

All such notifications or attempted notifications shall be documented.

The obligation to report shall terminate if the inmate/resident is released from the department's custody.



### **981.38            Disciplinary Sanctions for Staff**

Staff shall be subject to disciplinary sanctions up to and including termination for violation the department sexual abuse or sexual harassment policies. Termination shall be presumptive disciplinary sanction for staff who engaged in sexual abuse.

Disciplinary sanctions for violating department policies relating to sexual abuse or sexual harassment shall be commensurate with the nature and circumstance of the acts committed, the staff member's disciplinary history and the sanctions imposed for comparable offenses by other staff with similar history.

All terminations for violation of department sexual abuse of sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

### **981.39            Corrective Action for Contractors, Interns and Volunteers**

Any contractor, intern or volunteer who engages in sexual abuse shall be prohibited from contact with inmate/residents and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.

The department shall take appropriate remedial measures, and shall consider whether to prohibit further contact with inmate/residents, in the case of any other violation of department sexual abuse or sexual harassment policies by a contractor, intern or volunteer.

### **981.40            Disciplinary Sanctions for Inmate/residents**

Inmate/residents shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the inmate/resident engaged in inmate/resident-on-inmate/resident sexual abuse or following a criminal finding of guilt for inmate/resident-on-inmate/resident sexual abuse.

Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the inmate/resident's disciplinary history, and the sanctions imposed for comparable offenses by other inmate/residents with similar histories.

The disciplinary process shall consider whether an inmate/resident's mental disabilities or mental illness contributed to his or behavior when determining what type of sanction, if any, should be imposed.

If the department offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the department shall consider whether to require the offending resident to participate in such interventions as a condition of access to programming or other benefits.

The department may discipline an inmate/resident for sexual contact with staff only upon a finding that the staff member did not consent to such contact.

For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

The department shall prohibit all sexual activity between inmate/residents and may discipline inmate/residents for such activity. The department may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

#### **981.41 Medical and Mental Health Screenings; History of Sexual Abuse**

If the screening pursuant to §115.41 of the PREA standards indicates that a prison inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of intake screening.

If the screening pursuant to §115.41 of the PREA standards indicates that an inmate has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening.

Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State or local law.

Medical and mental health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18.

#### **981.42 Access to Emergency Medical and Mental Health Services**

Inmate/resident victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to the professional judgment.

If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim pursuant to §115.62 or §115.262 of the PREA standards and shall immediately notify the appropriate medical and mental health practitioners.

Inmate/resident victims of sexual abuse while incarcerated shall be offered timely information about and time access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.

Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

#### **981.43            Ongoing Medical and Mental Health Care for Sexual Abuse Victims and Abusers**

The department shall offer medical and mental health evaluation and, as appropriate, treatment to all inmate/residents who have been victimized by sexual abuse in any prison, jail, lockup or juvenile facility.

The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans and when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.

The department shall provide such victims with medical and mental health services consistent with the community level of care.

Female inmates/residents that are victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.

If a pregnancy results from the conduct specified above, such victims shall receive timely and comprehensive information

Inmate/resident victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.

Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

The department shall conduct a mental health evaluation of all known inmate/resident-on-inmate/resident abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners

#### **981.44            Sexual Abuse Incident Reviews**

The department shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including allegations which have not been substantiated, unless the allegation has been determined to be unfounded. Such reviews shall occur within 30 days of the conclusion of the investigation.

The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical and mental-health practitioners.

The review team shall:

- Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
- Consider whether the incident or allegation was motivated by race, ethnicity, gender identity, lesbian, gay, bisexual, transgender or intersex identification, status or perceived status;
- Gang affiliation, or was motivated or otherwise caused by other group dynamics at the facility;
- Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
- Assess the adequacy of staffing levels in that area during difficult shifts;
- Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
- Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to this section and any recommendations for improvement and submit such report to the facility head and PREA compliance manager

The department shall implement the recommendations for improvement, or shall document its reasons for not doing so.

#### **981.45            Data Collection**

The PREA Coordinator and Manager(s) shall collect accurate, uniform data for every allegation of sexual abuse at each individual facility under its direct control using a standardized instrument and set of definitions.

The department shall aggregate the incident based sexual abuse data at least annually.

The incident-based data collected shall 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.

The department shall maintain, review and collect data as needed from all available incident-based documents, including reports, investigation files and sexual abuse incident reviews.

The department shall also obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmate/residents.

Upon request, the department shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

#### **981.46 Data collection for Corrective Action**

The PREA Coordinator and Manager shall review data collected and aggregated pursuant to §115.87 and §115.287 of the PREA standards in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices and training, including by:

- Identifying problem areas;
- Taking corrective action on an ongoing basis; and
- Preparing an annual report of its findings and corrective actions for the individual facility, as well as the department as a whole.

The annual report shall include a comparison to the current year's data and corrective actions with those from prior years and shall provide an assessment of the department's progress in addressing sexual misconduct.

The department's report shall be approved by the Superintendent and made readily available to the public.

Redactions to the public report shall be limited to specific materials where publication would present a clear and specific threat to the safety and security of the department, and/or the confidentiality of the alleged victims and/or perpetrators. The redaction must indicate the nature of the material redacted.

#### **981.47 Data Storage**

The department shall ensure that data collected pursuant §115.87 and §115.287 of the PREA standards are securely retained.

The department shall 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 or, if it does not have one, through other means.

Before making aggregated sexual abuse data publicly available, the department shall remove all personal identifiers.

The department shall maintain sexual abuse data collected pursuant to §115.87 and §115.287 of the PREA standards for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.

This incident-based data collected shall 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.

The department shall provide such data from the previous calendar year to the Department of Justice no later than June 30<sup>th</sup> of the current calendar year.

The PREA Coordinator and Manager shall review collected data to assess and improve the effectiveness of sexual misconduct prevention, detection, response policies, procedures and training by:

- Identifying problem areas and take corrective action; and
- Preparing an annual report of its findings and corrective actions for the department.

The data collected shall be securely retained. Such data shall be readily available to the public at least annually through the department website. Personal identifiers shall be removed.

Sexual misconduct data shall be maintained for at least 10 years.

#### **981.48 Audits of Standards**

The department shall conduct audits pursuant to §115.401 through §115.405 of the PREA standards.

#### **981.49 Auditing and Corrective Action**

Frequency and scope of audits:

- The department shall ensure that each of its facilities are audited within a three year period.
- The department will utilize the Department of Justice's audit instrument that will provide guidance on the conduct of and contents of the audit.
- The department will bear the burden of demonstrating compliance with the standards.
- The audit will review, at a minimum, a sampling of relevant document, policies, and other records and information for the most recent one-year period.
- The auditor will interview a representative sample of inmate/residents, residents, and detainees, and of staff, supervisors, and administrators on each shift.
- The auditor will be permitted to conduct private interviews with inmate/residents, residents and detainees.
- Inmate/residents and detainees will be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel.

#### **981.50 Auditor Qualifications**

An audit shall be conducted by:

- A member of a correctional monitoring body that is not part of, or under the authority of the department (but may be part of, or authorized by, the relevant state or local government) or
- Other outside individuals with relevant experience.

All auditors shall be certified by the Department of Justice. The Department of Justice shall develop and issue procedures regarding the certification process, which shall include training requirements.

No audit may be conducted by an auditor who has received financial compensation from the department being audited (except for compensation received for conducting prior PREA audits) within the three years prior to the department's retention of the auditor.

The department shall not employ with, contract with, or otherwise financially compensate the auditor for three years subsequent to the department's retention of the auditor, with the exception of contracting for subsequent PREA audits.

### **981.51 Audit Contents and Findings**

Each audit shall include a certification by the auditor that no conflict of interest exists with respect to his or her ability to conduct an audit of the department under review.

Audit reports shall state whether department policies and procedures comply with relevant PREA standards.

For each PREA standard, the auditor shall determine whether the audited facility reaches one of the following findings: Exceeds standard (substantially exceeds requirement of standard); Meets standard (substantial compliance, complies in all material ways the standard for the relevant review period); Does not meet standard (requires corrective action). The audit summary shall indicate, among other things, the number of provisions the facility has achieved at each grade level.

Audit reports should describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each audited facility, and shall include recommendations for any required corrective action.

Auditors shall redact any personally identifiable inmate/resident or staff information from their reports, but shall provide such information to the department upon request, and may provide such information to the Department of Justice.

The department shall ensure that the auditor's final report is published on the department's website, if it has one, or is otherwise made readily available to the public.

### **981.52 Audit Corrective Action Plan**

A finding of "does not meet standard" with one of more standards shall trigger a 180-day corrective action period.

The auditor and the department shall jointly develop a corrective action plan to achieve compliance.

The auditor shall take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of a facility.

After the 180-day corrective action period ends, the auditor shall issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action.

If the department does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it has achieved compliance.

### **981.53            Audit Appeals**

The department may lodge an appeal with the Department of Justice regarding any specific audit finding that it believes to be incorrect. Such appeal must be lodged within 90 days of the auditor's final determination.

If the Department determines that the agency has stated good cause for a re-evaluation, the agency may commission a re-audit by an auditor mutually agreed upon by the Department and the agency. The department shall bear the cost of this audit.

The findings of this audit shall be considered final.