

TITLE: SEXUAL MISCONDUCT	POLICY #: 66
Department: Program/Services	Effective Date: 06/25/01
	Applicable Standards:
	3-JCRF-3D-04-2 through 3D-04-10
Revisions: 7-30-03; 8-15-05; 12-28-07; 7-3-08; 11-1-10; 12-9-13; 4-21-17	

Policy: McCrossan Boys Ranch has a zero tolerance toward all forms of sexual misconduct including sexual abuse/assault and sexual harassment. All acts of sexual misconduct against a resident by another resident or by a staff member, contractor, or volunteer are prohibited. (115.311 a & 115.378 g)

Definitions:

Sexual Abuse/Assault of a Resident by Another Resident – any of the following acts, if the victim does not consent, is coerced into such an act by overt or implied threats of violence, or is unable to consent or refuse:

- contact between the penis and 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
- any other intentional touching, either directly or through the clothing of genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation

Sexual Abuse/Assault of a Resident by a Staff, Contractor, or Volunteer – any of the following acts, with or without the consent of the resident:

- contact between the penis and 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, or volunteer has the intent to abuse, arouse, or gratify sexual desire
- 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, or volunteer 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 or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire
- any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in the bulleted points above
- any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of a resident
- voyeurism by a staff member, contractor, or volunteer

Voyeurism – invasion of privacy of a resident by a staff member, contractor, or volunteer for reasons unrelated to official duties, such as peering at a resident who is using the restroom,

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requiring a resident to expose his buttocks or genitals, or taking images of all or part of a resident's naked body or of a resident who is using the restroom.

Sexual Harassment of a Resident by Another Resident – repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one resident directed toward another

Sexual Harassment of a Resident by a Staff, Contractor, or Volunteer - repeated verbal comments or gestures of a sexual nature to a resident 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 – all sexual acts, advances, requests, comments, gestures, or actions (including sexual abuse/assault and sexual harassment) whether welcome or unwelcome between a resident and another resident or between a resident and a staff, contractor, or volunteer

Substantiated Allegation – an allegation that was investigated and determined to have occurred

Unfounded Allegation – an allegation that was investigated and determined not to have occurred

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

Procedures:

1. Program Coordination & Elements

- A. The Admissions and Program Manager serves as the facility's Prison Rape Elimination Act (PREA) Coordinator. (115.311 b)
- B. The PREA Coordinator coordinates the sexual misconduct program. He/she is responsible for implementing and monitoring the program which includes:
 - Preventing sexual misconduct through screening and educating residents and training staff
 - Investigating and reporting allegations and acts of sexual misconduct
 - Intervening when acts of sexual misconduct occur
 - Safeguarding, assessing, treating, and managing residents who are the victims of sexual misconduct
 - Investigating, disciplining and/or referring for prosecution (if the act is criminal) perpetrators of sexual misconduct

2. Resident Access to the Program (115.316 a-c)

- A. Residents with disabilities will have an equal opportunity to participate in or benefit from all aspects of the sexual misconduct prevention, detection, and response program.

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- B. When necessary, the Ranch will provide access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.
 - C. The Ranch will also ensure that written materials are provided in formats or through methods that ensure effective communication with residents with disabilities, including residents who have intellectual disabilities, limited reading skills, or who are blind or have low vision.
 - D. The Ranch will not take actions that would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens under the Americans with Disabilities Act.
 - E. The Ranch will take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual misconduct to residents who are limited English proficient, including steps to provide interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.
 - F. The Ranch will not rely on resident interpreters, resident readers, or other types of resident assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the resident's safety, the performance of first-response duties, or the investigation of the resident's allegations.
3. Screening
- A. All potential residents being considered for admission will be assessed by program staff to determine their suitability for placement. If a prospective resident represents a serious risk to the general resident population at the Ranch, admission will be denied with an explanation provided to the appropriate referral worker. When interviewing and reviewing the past history of transgender or intersex residents, admissions staff in consultation with the Associate Director will determine on a case-by-case basis whether placement in the facility would ensure the resident's health and safety and whether the placement would present management or security problems. (115.342 d)
 - B. Within 24 hours of admission and prior to being assigned a room, a resident will be assessed by program staff for potential vulnerabilities to sexual victimization and the potential of acting out with sexually aggressive or sexually violent behavior using an objective screening instrument. If during the screening, staff feels that the resident represents a serious risk to the general resident population at the Ranch, the resident will be discharged and if possible, sent to another program/facility that will better meet his needs. (115.341 a & b)
 - C. At a minimum, the assessment will take into consideration the following:
 - Prior sexual victimization or abusiveness
 - Gender nonconforming appearance or manner or identification as lesbian, gay, bisexual, transgender, or intersex (This identification or status will not be used as a way to determine that a resident is a likely sexual aggressor, but it will be used to determine a resident's potential to be a victim.)
 - Current charges and offense history

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- Age
 - Level of emotional and cognitive development
 - Physical size and stature
 - Mental illness or mental disabilities
 - Intellectual or developmental disabilities
 - Physical disabilities
 - Resident's own perception of vulnerability (A transgender or intersex resident's own view with respect to his own safety will be given serious consideration.) (115.342 f)
 - Other specific information about the resident that may indicate heightened needs for supervision, additional safety precautions, or separation from certain other residents (115.341 c)
- D. Information for the assessment will be gathered through conversations with the resident and by reviewing the resident's history/past records. (115.341 d)
- E. The assessment will distribute residents into one of four categories.
- V (Victim Potential): Residents designated by the assessment as having characteristics of a person with a higher than normal likelihood to be sexually abused/assaulted or harassed inside an institution
 - A (Aggressor Potential): Residents designated by the assessment as having characteristics of a person with a higher than normal likelihood to be sexually aggressive towards other residents inside an institution
 - M (Mixed): Residents designated by the assessment as having both an aggressor potential (A) and a victim potential (V).
 - N (Neither): Residents that did not fit into the criteria in the assessment to be designated as V, A, or M.
- F. The PREA Coordinator in consultation with the Associate Director has the power to override the category assigned to a resident using the assessment. The PREA Coordinator will document the reason for the override on the assessment.
- G. The assessment will be placed in the resident's permanent file.
- H. The information obtained from the assessment will be disseminated to designated staff who work with residents in order to ensure that sensitive information is not exploited to the resident's detriment by staff or other residents. (115.341 e)
- I. The resident's category (V, A, M, or N) determined using the assessment will be shared with all staff who supervise resident's alone as part of their job responsibilities.
- J. The results of the screen will be used to establish room assignments and to increase direct care staff's awareness of potential safety concerns when supervising resident's during school, work, and program assignments. (115.342 a)
- K. Categories will be used as follows to determine resident room assignments:
- Residents in the A category can room with residents in the A or N category.
 - Residents in the V category can room with residents in the V or N category.
 - Residents in the N category can room with residents in any category.
 - Residents in the M category can room with residents in the M or N category.

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- L. Room assignments will be made with the intent of separating victims and aggressors. Under no circumstances will those in the A category room with residents in the V or M category.
- M. Lesbian, gay, bisexual, transgender, or intersex residents will not be placed in a particular room solely on the basis of such identification or status. (115.342 c)
- N. McCrossan Boys Ranch is an all male facility, so transgender or intersex residents who are accepted for admission will be assigned to an all male housing unit. (115.342 d)
- O. Isolation and segregated housing will not be used as a means to keep residents safe from sexual misconduct. (115.342 b & 115.368)
- P. Residents will be reassessed periodically throughout their stay at the facility. (115.341 a)
- Q. Placement and programming assignments for each transgender or intersex resident will be reassessed at least twice each year to review any threats to safety experienced by the resident. (115.342 e)
- R. A resident whose screening indicates that he has experienced prior sexual victimization will be offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening. (115.381 a) A resident who is identified as at risk for sexual victimization will be assessed by a mental health or other qualified professional. Such residents are identified, monitored, and counseled. (3D-04-6) Any information related to sexual victimization or abusiveness that occurred in an institutional setting will be strictly limited to medical and mental health practitioners and other staff, as necessary, to create 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. (115.381 c)
- S. All residents who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility will be offered medical and mental health evaluation and, as appropriate, treatment. The evaluation and treatment of such victims will 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. Medical and mental health services that are consistent with the community level of care will be provided to victims. Tests for sexually transmitted infections will be offered as medically appropriate to victims of sexual abuse. Treatment services will 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. (115.383 a-g)
- T. A resident whose screening indicates that he has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, will be offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening. (115.381 b) A resident identified as high risk with a history of assaultive behavior will be assessed by a mental health or other qualified professional. Such residents are identified, monitored, counseled, and provided appropriate treatment. (3D-04-5) Failure to participate in counseling/treatment may lead to discharge from the facility.

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- U. An attempt will be made to conduct a mental health evaluation of all known resident-on-resident abusers within 60 days of learning of such abuse history and treatment will be offered when deemed appropriate by mental health practitioners. (115.383 h)
- V. The nurse will also be available to talk to residents about sexual issues, questions, and concerns as part of the intake health screening.
- 4. Staff, Contract Staff, & Volunteer Training
 - A. All employees who may have contact with residents and all contract employees and volunteers who supervise residents alone will receive the following training as part of their orientation within their first week of employment or volunteer service and prior to having unsupervised contact with residents:
 - Zero-tolerance policy for sexual misconduct
 - How to fulfill their responsibilities under agency sexual misconduct prevention, detection, reporting, and response policies and procedures
 - Residents' right to be free from sexual misconduct
 - The right of residents, employees, contract employees, and volunteers to be free from retaliation for reporting sexual misconduct
 - The dynamics of sexual misconduct in residential facilities
 - The common reactions of victims of sexual misconduct
 - How to detect and respond to signs of threatened and actual sexual abuse/assault and how to distinguish between consensual sexual contact and sexual abuse/assault between residents
 - How to avoid inappropriate relationships with residents
 - How to communicate effectively and professionally with residents, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming residents
 - How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities
 - Relevant laws regarding the applicable age of consent
 - B. The training will be tailored to the unique needs and attributes of residents at the facility and to the gender of the residents. (115.331 b)
 - C. Staff will receive refresher training every two years. In years in which an employee does not receive refresher training, the agency will provide refresher information on current sexual misconduct policies. (115.331c)
 - D. All volunteers and contract staff who have contact with residents will be trained on their responsibilities under the agency's policies and procedures regarding sexual misconduct including sexual abuse/assault and sexual harassment prevention, detection, and response. They will also be notified of the agency's zero-tolerance policy regarding sexual misconduct and will be informed how to report such incidents. The level and type of training provided to volunteers and contract staff will be based on the services they provide and the level of contact they have with residents. Volunteers and contract staff who have unsupervised contact with residents will receive the same training as employees who may have contact with residents. (115.332 a & b)

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- E. Facility staff who investigate incidents of sexual misconduct that are not referred to an outside agency for investigation will receive the training provided to all employees who may have contact with residents as well as specialized training on how to conduct investigations in juvenile confinement settings. This specialized training will include:
- Techniques for interviewing juvenile sexual abuse victims
 - Proper use of Miranda and Garrity warnings
 - Sexual abuse evidence collection in confinement settings
 - The criteria and evidence required to substantiate a case for administrative action or prosecution referral (115.334 a & b)
- F. All full-time and part-time medical and mental health care practitioners who work regularly in the facility have been training in the following:
- How to detect and assess signs of sexual misconduct
 - How to preserve physical evidence of sexual abuse/assault
 - How to respond effectively and professionally to residents who are victims of sexual misconduct
 - How and to whom to report allegations or suspicions of sexual misconduct
 - Medical and mental health care practitioners will also receive the training mandated for employees or for contractors and volunteers depending upon the practitioner's status at the agency. (115.335 a & d)
- G. Medical and mental health care practitioners who regularly work in the facility, employees, contract employees, and volunteers will sign a document to indicate that they understood the training they received. (115.331 d; 115.332 c; 115.335 c)
- H. Documentation will be maintained in the facility to document that agency investigators have completed the required specialized investigator training. (115.334 d)
5. Resident Education
- A. As part of the intake process, staff will provide information to residents about sexual misconduct. The information will be provided orally and in writing, in an age appropriate fashion, upon arrival at the facility. At a minimum, the information provided to residents will cover the following information:
- Zero-tolerance policy regarding sexual misconduct
 - Prevention and intervention
 - Self-protection methods
 - Reporting procedures (including a discussion with Federal residents regarding filing an administrative remedy directly to the FBOP Regional Office when the issue is considered sensitive in accordance with the Program Statement).
 - Treatment and counseling
 - Protection against retaliation
 - Disciplinary action(s) for making false allegations. (115.333 a)
- B. Within ten days of intake, the resident will receive age-appropriate education either in person or through video regarding the following:
- Right to be free from sexual misconduct
 - Right to be free from retaliation for reporting incidents involving sexual misconduct

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- Agency policies and procedures for responding to incidents involving sexual misconduct (115.333 b)
 - C. Resident education will be provided in formats clearly understandable to all residents, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled or those who have limited reading skills. (115.333 d)
 - D. Each resident will sign an acknowledgment that he received information pertaining to sexual misconduct and participated in these education sessions. The signed forms will be maintained in the resident's permanent file. (115.333 e)
 - E. Key information regarding sexual misconduct will be continuously and readily available or visible to residents through posters, resident handbooks, or other written formats. (115.333 f)
 - F. Residents will have access to an outside victim advocate from a local rape crisis center. The mailing address, telephone number, and hotline number will be provided in resident education materials and posted in resident living units. Reasonable communication between residents and this organization will be allowed in as confidential manner as possible. Residents will be informed, prior to having access to an advocate, 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. (115.353 a & b)
6. Resident Initial Reporting
- A. Residents should immediately report incidents of sexual misconduct to any staff member, their therapist, placing agent, or the local sexual abuse/assault crisis center.
 - B. Residents may also utilize the locked boxes located in the facility to report incidents in writing and anonymously or they may use the formal grievance procedure to report any sexual misconduct. Paper, pens/pencils, and grievance forms will be available to all residents. (115.351 a, b, & d)
7. Third Party Reporting
- A. Third parties may report incidents of sexual misconduct to the Executive Director, Associate Director, or designee. Reports can also be made to local law enforcement or the Department of Social Services. They may also utilize the locked boxes located in the facility or use the formal grievance procedure to report incidents of sexual misconduct. (115.354)
 - B. Information regarding how to report sexual misconduct on a behalf of a resident will be posted on the agency's website. (115.354)
8. Staff, Contract Staff, & Volunteer Initial Response & Reporting
- A. Staff will take seriously all statements regarding incidents of sexual misconduct and respond supportively and non-judgmentally.
 - B. Staff, contract staff, or volunteers including medical and mental health professionals will report any knowledge, suspicion, or information regarding an incident of sexual misconduct that occurred in any facility or that involves a current resident or current staff, contract staff, or volunteer to the shift supervisor or other supervisory direct care

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staff immediately and if needed, will immediately work to ensure the safety of current residents and staff. (115.361 a & d1)

- C. Medical and mental health professionals will obtain informed consent from residents before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the resident is under the age of 18. (115.381 d)
- D. Reports made verbally or in writing will be accepted from residents, other staff, contract staff, volunteers, third parties, or anonymously. Reports made verbally will be promptly documented. (115.351 c)
- E. Staff, contract staff, and volunteers may also utilize the locked boxes located in the facility or the formal grievance procedures to report incidents of sexual misconduct. (115.351 e)
- F. If the Ranch receives notification from another facility of an allegation that a resident was sexually abused/assaulted while at the Ranch, the Executive Director will ensure that the allegation is investigated as outlined in this policy. (115.363 d)
- G. Supervisory staff will contact a facility PREA investigator for all allegations of sexual misconduct including third-party and anonymous reports. If the situation is a critical sexual misconduct incident, a facility PREA investigator will be contacted immediately. (115.361 f)
- H. If no qualified medical or mental health practitioners are on duty at the time a report of recent sexual abuse is made, staff will take preliminary steps to protect the victim and immediately notify the appropriate medical and mental health practitioners.
- I. Staff will not reveal any information related to a sexual misconduct report to anyone other than to the extent necessary to make treatment, investigation, and other security and management decisions. (115.361c & 115.381c)

9. Protection

- A. As soon as someone at the facility becomes aware that a resident is subject to a substantial risk of imminent sexual abuse/assault, the facility will take immediate action to protect the resident. (115.362)
- B. Any resident who is an alleged victim of sexual misconduct during his stay at the Ranch will be offered immediate protection from the perpetrator, as soon as someone at the facility is made aware of the incident. For incidents involving allegations of sexual abuse/assault, the alleged victim and the alleged perpetrator will be separated. (115.364 a1)
- C. The alleged victim as well as the alleged perpetrator will be closely supervised if they are both residents living on Ranch. One or more of the following may also be done to enhance the safety and security of the alleged victim: calling in additional staff, a change in rooms within the cottage, a change in cottages and discharging the alleged perpetrator.
- D. If the alleged perpetrator is a staff, contract staff, or volunteer who is currently on Ranch at the time the incident is reported, he/she will be separated from the resident population and monitored by supervisory staff until an initial investigation is started. He/she will be suspended from work with pay or suspended from contract or volunteer duties until the results of the investigation are known.

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10. Securing the Area & Preserving Evidence

- A. If the alleged incident could be criminal, the first staff, contract staff, or volunteer to respond to the report will preserve and protect the crime scene until appropriate steps can be taken to collect any evidence. (115.364 a2)
- B. If the alleged incident of sexual abuse/assault occurred within a time period that still allows for the collection of physical evidence, the first staff, contract staff, or volunteer to respond will request that the alleged victim does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating. (115.364 a3)
- C. If the alleged incident of sexual abuse/assault occurred within a time period that still allows for the collection of physical evidence, the first staff, contract staff, or volunteer to respond will 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. (115.364 a4)
- D. If the first staff, contract staff, or volunteer to respond to an alleged incident of sexual abuse/assault is not trained to supervise residents alone, the responder will request that the alleged victim not take any action that could destroy physical evidence and then notify someone in the facility who is trained to supervise residents alone. (115.364 b)

11. Investigations

- A. Whenever an act of sexual misconduct is threatened, alleged, or occurs an investigation is conducted. (115.322 a)
- B. As soon as it is determined that the act may be criminal, law enforcement will be called to investigate. (115.322 b)
- C. All alleged incidents involving sexual abuse/assault that fall under the scope of South Dakota's mandatory reporting law or that may be criminal will also be reported to the Department of Social Services. The Department of Social Services will determine whether they will investigate the report.
- D. All reports of sexual misconduct including third-party and anonymous reports that are not investigated by law enforcement or the Department of Social Services will be investigated promptly, thoroughly, and objectively by staff who received specialized PREA investigator training. (115.371 a)
- E. Incidents investigated by the facility will include an effort to determine whether staff actions or failures to act contributed to the abuse and that will 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. (115.371 g1 & g2)
- F. McCrossan Boys Ranch will request that all external investigating agencies of incidents of sexual abuse/assault or sexual harassment including State entities and Department of Justice components will have a policy in place for conducting administrative or criminal investigations of sexual abuse/assault or sexual harassment in juvenile facilities. For investigations of sexual abuse/assault incidents, these external agencies will follow PREA standards 115.321, 115.322, 115.334, and 115.371. (115.321 f & g; 115.322 c-e; 115.334 d; 115.371 b & c)

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- G. Information concerning the identity of a resident reporting an act of sexual abuse/assault or sexual harassment and the facts of the report will be limited to those who have a need-to-know in order to make decisions concerning the resident-victim's welfare and for law enforcement/investigative purposes.
- H. The agency will not terminate an investigation solely because the source of the allegation recants the allegation. (115.371 d)
- I. The agency will not terminate an investigation because the alleged abuser or victim is no longer a resident of the facility or is no longer an employee, contract employee, or volunteer at the facility. (115.371 k)
- J. The agency will cooperate with outside agencies and their investigators and will endeavor to remain informed about the progress of the investigation. (115.371 m)
- K. For each incident that is investigated by the agency, the agency will determine if the allegation is substantiated, unsubstantiated, or unfounded. The agency will impose no standard higher than a preponderance of the evidence in determining whether allegations are substantiated. (115.372; 115.373 a)
- L. For incidents investigated by external agencies, the agency will request information regarding the outcome of the investigation in order to inform the resident. (115.373 b)
- M. The agency will inform the resident(s) involved regarding the outcome of the investigation conducted by the agency or by an external agency. (15.373 a)
- N. Following a resident's allegation that an employee, contract employee, or volunteer has committed sexual misconduct against the resident, the agency will subsequently inform the resident (unless the agency has determined that the allegation is unfounded) whenever:
- The employee, contract employee, or volunteer is no longer posted within the resident's unit.
 - The employee or contract employee is no longer employed at the facility.
 - The volunteer no longer volunteers at the facility.
 - The agency learns that the employee, contract employee, or volunteer has been indicted or convicted on a charge related to sexual misconduct within the facility.
- All such notifications or attempted notifications will be documented. (115.373 c1-4 & e)
- P. Following a resident's allegation that he has been the victim of sexual misconduct by another resident, the agency will subsequently inform the alleged victim whenever the agency learns that the alleged perpetrator has been indicted or convicted on a charge related to sexual misconduct within the facility. All such notifications or attempted notifications will be documented.
- Q. The agency's obligation to report information to a resident regarding an allegation of sexual misconduct will terminate if the resident is discharged from the facility. (115.373 f)
12. Documentation
- A. An incident report or a PREA investigation report will be filled out prior to the end of the shift by a staff involved in the incident.
- B. All facility investigations will be documented in a written report.

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C. All case records associated with claims or acts of sexual misconduct including incident reports, investigative reports, resident information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment and/or counseling are confidential and are retained as outlined in the personnel records and resident records policies (115.371 j)

13. External Reporting

A. For alleged incidents of sexual abuse/assault, supervisory staff will:

- Notify the Department of Social Services.
- Immediately notify the Minnehaha County Sheriff's Department (if the alleged or known incident is criminal).
- Notify placing agencies of the alleged victim and the alleged perpetrator immediately after ensuring that the residents in care are safe unless specific requests are given not to call immediately. Notify the Community Corrections Office if the resident is placed by the Federal Bureau of Prisons. (115.361 e2)
- Notify the parents or legal guardians of the alleged victim and the alleged or perpetrator, unless the facility has official documentation showing the parents or legal guardians should not be notified. (115.361 e1)
- If a juvenile court retains jurisdiction over the alleged victim, notify the alleged victim's attorney or other legal representative of record within 14 days of receiving the allegation. (115.361 e3)

B. For other alleged incidents of sexual misconduct, supervisory staff will:

- Notify placing agencies of the residents involved depending on the severity of the incident.
- Unless the facility has official documentation showing the parents or legal guardians should not be notified, contact the parents or legal guardians of the residents involved depending on the severity of the incident.

C. All contacts or attempts to contact external agencies or people will be documented.

D. Upon receiving an allegation that a resident was sexually abused/assaulted while confined at another facility, the Executive Director will be notified. The Executive Director will notify the head of the facility or appropriate office of the agency where the alleged abuse occurred and will also notify the appropriate investigative agency. Such notification will be made as soon as possible, but no later than 72 hours after receiving the allegation. The notification will be documented. (115.363 a-c)

14. Referral/Services for Victim

A. Any resident that alleges that he has been sexually abused/assaulted may be referred for a medical examination as well as a clinical assessment of the potential for suicide or other related mental health symptoms depending on the nature of the incident. Any resident placed by the FBOP that alleges he has been a victim of sexual abuse/assault will be referred for a medical examination and counseling by a clinical psychologist within 24 hours of the incident.

B. All residents who experience sexual abuse/assault will be offered a forensic medical examination at an off Ranch medical facility, without financial cost to the resident, where

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evidentiarily or medically appropriate. The forensic examination will be provided by a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) when possible. If SAFEs or SANEs cannot be made available, the examination will be performed by another qualified medical practitioner and efforts to provide SAFEs or SANEs will be documented. (115.321 c)

- C. All residents who experience sexual abuse/assault will also be offered the services of a victim advocate from a local rape crisis center. (115.321 d)
 - D. As requested by the victim, the victim advocate will accompany and support the victim through the forensic medical examination process and investigatory interviews and will provide emotional support, crisis intervention, information, and referrals. (115.321 e)
 - E. All residents who experience sexual abuse/assault will 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 their professional judgment. (115.382 a)
 - F. All residents who experience sexual abuse/assault will be offered timely information about and timely access to sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate. (115.382 c)
 - G. Treatment services will be provided to all residents who experience sexual abuse/assault without financial cost and regardless of whether the victim names the abuser or cooperate with any investigation arising out of the incident. (115.382 d)
 - H. Refusal to participate in recommended services will be documented and placed in the medical section of the resident's permanent file.
15. Referral Services/Discipline for Resident Perpetrator
- A. If an investigation indicates that an alleged act of sexual misconduct is substantiated, the resident may receive consequences for his actions pursuant to a formal disciplinary process. (115.378 a & g)
 - B. Any disciplinary sanctions will be commensurate with the nature and circumstances of the acts committed, the resident's disciplinary history, and the sanctions imposed for comparable offenses by other residents with similar histories. (115.378 b)
 - C. Isolation will not be used as a disciplinary sanction. (115.378 b)
 - D. The discipline process will consider whether a resident's mental disabilities or mental illness contributed to his behavior when determining what type of sanction, if any, should be imposed. (115.378 c)
 - E. If an investigation determines that a staff, contract staff, or volunteer consented to a sexual act with a resident, the resident will not be disciplined. (115.378 e)
 - F. The resident may be discharged from the Ranch program depending on the severity of the incident.
 - G. If the resident perpetrator remains at the facility, he will receive counseling regarding the incident. Additional assessment and treatment may also be recommended.
 - H. Refusal to participate in treatment, when it is determined to be necessary, may lead to the resident's discharge from the facility. A resident may also be denied access to behavior based rewards or incentives but will not be denied access to general programming or

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education. This will be documented and placed in the resident's permanent file. (115.378 d)

- I. A report of sexual misconduct made in good faith based upon a reasonable belief that the alleged misconduct occurred will not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

16. Discipline for Staff, Contract Staff, & Volunteers

- A. The Associate Director or designee will determine what disciplinary action if any will be taken for violating the agency sexual misconduct policy. If the Associate Director violated the policy, the Executive Director will determine what disciplinary action if any will be taken and if the Executive Director violated the policy the Board of Directors will determine the disciplinary action. Disciplinary action will be determined based on the nature and circumstances of the acts committed, the employee, contract employee, or volunteer's disciplinary history, and the discipline imposed for comparable offenses by other staff, contract staff, or volunteers with similar histories. (115.376 a & c; 115.377 b)
- B. If the investigation indicates that an alleged act of sexual abuse/assault is substantiated, the staff, contract staff, or volunteer will be terminated from employment or from providing contract or volunteer services at the facility. (115.376 b; 115.377 a)
- C. All terminations of employment or contract or volunteer services for violations of agency sexual misconduct policies or resignations by staff, contract staff, or volunteers who would have been terminated if not for their resignation, will be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant regulatory bodies. (115.376 d; 115.377 a)

17. Retaliation/Neglect

- A. Residents should immediately report retaliation by other residents or staff, contract staff, or volunteers for reporting sexual misconduct or staff neglect or violation of responsibilities that may have contributed to incidents of sexual misconduct or retaliation. Residents may also utilize the locked boxes located in the facility to report incidents in writing and anonymously or they may use the formal grievance procedure to report these incidents.
- B. Third parties may also report incidents of retaliation or neglect or violation of responsibilities that may have contributed to incidents of sexual misconduct or retaliation.
- C. Staff, contract staff, and volunteers are required to immediately report any knowledge, suspicion, or information they receive of:
 - a. retaliation against residents, staff, contract staff, or volunteers who reported an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency
 - b. any staff, contract staff, or volunteer neglect or violation of responsibilities that may have contributed to an incident of sexual abuse, sexual harassment, or retaliation. (115.361 a)
- D. All residents, staff, contract staff, and volunteers who report sexual misconduct, retaliation, or staff neglect or violation of responsibilities that may have contributed to

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incidents of sexual misconduct or retaliation, or who cooperate with sexual misconduct investigations will be protected. Management team members are responsible for monitoring retaliation. Protection will include one or more the following: (115.367 a)

- Housing changes or transfers for resident who reported sexual misconduct, retaliation, or cooperated with sexual misconduct investigations
- Removal of alleged staff or resident abusers from contact with residents or staff who reported sexual misconduct, retaliation, or cooperated with sexual misconduct investigations
- Emotional support services for residents or staff who fear retaliation for reporting sexual misconduct or retaliation or for cooperating with sexual misconduct investigations (115.367 b)

E. For at least 90 days following a report of sexual abuse, the agency will monitor the conduct or treatment of residents or staff who reported the sexual abuse and of residents who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by residents or staff. The agency will act promptly to remedy any such retaliation. The agency will monitor:

- Resident disciplinary reports
- Housing
- Program changes
- Negative performance reviews or reassignments of staff
- Periodic status checks of residents (115.367 c & d)

F. The agency will continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need. (115.367 c)

G. If any other individual who cooperates with a sexual misconduct investigation expresses a fear of retaliation, the agency will take appropriate measures to protect that individual against retaliation. (115.367 e)

H. An agency's obligation to monitor will terminate if the agency determines that the allegation is unfounded. (115.367 f)

18. Sexual Abuse/Assault Incident Review

A. At the conclusion of every sexual abuse/assault investigation, the facility will conduct a sexual abuse incident review unless the allegation has been determined to be unfounded. (115.386 a)

B. The review will occur within 30 days of the conclusion of the investigation. (115.386 b)

C. The review team will include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners. (115.386 c)

D. The review team will:

- 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; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility.

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- 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 different shifts.
 - Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff.
 - Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to the bullet points listed above, and any recommendations for improvement and submit the report to the facility head and PREA compliance manager. (115.386 d)
- E. The facility will implement the recommendations for improvement or will document its reasons for not doing so. (115.386 e)
19. Data Collection
- A. The PREA Coordinator will be responsible for tracking alleged acts and acts of sexual misconduct including sexual abuse/assault and sexual harassment.
- B. The agency will collect accurate, uniform data for every sexual abuse incident at its facility using a standardized instrument and set of definitions. (115.387 a)
- C. The agency will aggregate the incident-based sexual abuse data at least annually. (115.387 b)
- D. The incident-based data collected will 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. (115.387 c)
- E. The agency will maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews. (115.387 d)
- F. Upon request, the agency will provide all such data from the previous calendar year to the Department of Justice no later than June 30th. (115.387 f)
- G. Data collected and aggregated will be reviewed in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including:
- Identifying problem areas
 - Taking corrective action on an ongoing basis
 - Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole (115.388 a)
- H. The annual report will include a comparison of the current year's data and corrective actions with those from prior years and will provide an assessment of the agency's progress in addressing sexual abuse. (115.388 b)
- I. The annual report will be approved by the agency head and made readily available to the public through the agency website. (115.388 c)
- J. Specific material may be redacted from the reports when publication would present a clear and specific threat to the safety and security of the facility, but the nature of the redacted material must be indicated. (115.388 d)
- K. Data collected will be securely retained. (115.389 a)

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- L. All aggregated sexual abuse data will be readily available to the public at least annually on the agency website. (115.389 b)
- M. The agency will remove all personal identifiers before making aggregated sexual abuse data publicly available. (115.389 c)
- N. The agency will maintain sexual abuse data for at least 10 years after the date of its initial collection unless Federal, State, or local law requires otherwise. (115.389 d)

20. PREA Audit

- A. The facility will be audited every three years with the first audit occurring between August 20, 2013 & August 19, 2014. (115.393; 115.401 a)
- B. The audit will be conducted by an auditor who is certified by the Department of Justice. (115.402 b)
- C. The auditor's final report will be published on the agency's website. (115.403 f)