



<i>Chapter I</i>   <b>Administration &amp; Management</b>	<i>Policy #:</i>  <b>S 241</b>	<i>References:</i> GL c.124, §1, c.268, §21A 103 CMR 915.03 28 CFR 115.5 et seq. ACI 3-4054-1 ALDF 1C-07-01	Page 1 of 13
<i>Personnel</i>  <b>Prevention of Inmate Sexual Abuse/Harassment</b>	<i>Date of Issue:</i>  August 19, 2013	<i>Approved:</i>   <hr/> Steven W. Tompkins, Sheriff	
	<i>Effective</i>  November 2015		

## PURPOSE

To strengthen and better enforce the Department's zero tolerance policy for any sexual conduct in accordance with the Prison Rape Elimination Act (PREA) of 2003, which prohibits the sexual abuse/harassment of inmates /detainees (hereinafter referred to as inmates).

## DEFINITIONS

- **Allegation:** an oral, written or electronic statement that sexual abuse/harassment has occurred or might occur that is provided to a staff member or outside agency.
- **Substantiated Allegation:** an allegation that was investigated and the investigation determined that the event occurred.
- **Unsubstantiated allegations:** an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether the event occurred.
- **Unfounded Allegation:** an allegation that was investigated and the investigation determined that the event did not occur.
- **Credibility Assessment:** an investigator's process of conducting interviews and weighing the evidence to determine the truthfulness of victim, witness and suspect statements.
- **Exigent Circumstances:** any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.
- **Gender Expression:** a person's expression of his/her gender identity including appearance, dress, mannerisms, speech and social interactions.

- **Gender Identity:** a person's internal, deeply felt sense of being male or female, regardless of the person's sex at birth.
- **Gender Nonconforming:** a person whose gender identity and/ or expression do not conform to gender stereotypes generally associated with his or her biological sex.
- **Intersex:** a condition usually present at birth that involves reproductive, genetic, or sexual anatomy that does not seem to fit the typical definitions of female or male.
- **LGBTI:** acronym meaning lesbian, gay, bi-sexual, transgender and intersex
- **Need to know:** a criterion limiting access of certain information to individuals who require the information to make decisions or take action with regard to an inmate's safety or treatment or to the investigative process.
- **No Inmate Contact:** an administrative status whereby a staff member is prohibited from assignment to any duties which would involve physical proximity to, or verbal/written communication with, an inmate.
- **PREA Coordinator:** the manager designated to monitor agency compliance.
- **PREA Compliance Managers:** the manager at each facility designated to monitor policy implementation.
- **PREA Review Committee:** individuals appointed by the institution Superintendents and responsible for conducting assessments of Department responses to allegations of sexual abuse/harassment.
- **Predator:** an inmate either convicted of sexual abuse/harassment or identified as having engaged in such activity in the past
- **Sexual Abuse:** the subjection of another person, who is incapable of giving consent by reason of his/her custodial status, to sexual contact in any degree by persuasion, inducement, enticement, or forcible compulsion.
- **Sexual Contact:** any touching (either directly or through the clothing) of the genitalia, anus, groin, breast, inner thigh, or buttocks that is unrelated to official duties, or penetration of the anal or genital opening of another person by a hand, finger or other object. This term shall include, but not be limited to, carnal knowledge, oral sodomy, sexual assault with an object, sexual fondling or molestation of a person, rape, or sexual exploitation (e.g. prostitution).
- **Sexual Harassment:** repeated and unwelcome sexual advances or requests for sexual favors, as well as verbal comments or gestures of a sexual nature, including demeaning reference to gender, sexually suggestive derogatory comments about body or clothing, or obscene language or gestures, verbal comments, or gestures or actions of a derogatory or offensive sexual nature.

- **Indecent Exposure:** the display of uncovered genitalia, buttocks, or breast(s) in the presence of an inmate.
- **Voyeurism:** an invasion of the inmate's privacy (for reasons unrelated to official duties or when otherwise not necessary for safety and security reasons), such as peering at an inmate who is using the toilet, requiring an inmate to expose his or her buttock, genitals, or breast, or taking images of all or part of an inmates naked body or of an inmate performing bodily functions and distributing or publishing them.
- **Sexual Relations:** contact (either directly or through clothing) with the genitalia, anus, groin, breast, inner thigh, mouth or buttocks with intent to arouse or gratify the sexual desire of any person.
- **Staff:** any employee, contractor, intern or volunteer of the Department.
- **Transgender:** a term describing persons whose gender identity and/or expression do not conform to the gender roles assigned them at birth.
- **Victim Advocate:** a person who has received education concerning sexual abuse and forensic examination issues in general and has been screened for appropriateness to serve in this role.

## **POLICY STATEMENTS**

1. The Department is committed to the prevention and elimination of sexual abuse/harassment of inmates by staff members or other inmates.
2. The Department has a zero tolerance policy for sexual abuse/harassment of inmates.
3. The Department has a zero tolerance policy for discrimination or mistreatment of inmates on the basis of sexual orientation or gender identity.
4. The Department shall appoint a PREA Coordinator and PREA Compliance Managers for each housing facility.
5. Sexual abuse of inmates is prohibited and a violation of criminal law.
6. Department policy mandates that inmates cannot consent to sexual relations.
7. All acts of retaliation against inmates who refuse, report, or cooperate in an investigation of sexual abuse/harassment are prohibited.
8. The Shift Commander will immediately notify the Superintendent of any allegations of sexual abuse/harassment.
9. All reports of alleged violations of this policy will be investigated pursuant to Department policy.
10. The Department will take appropriate disciplinary action against any inmate or staff who make false allegations or material statements that s/he could not have believed in good faith were true.

11. Inmates shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the inmate engaged in inmate on inmate sexual abuse/harassment or following a criminal finding of guilt for inmate on inmate sexual abuse.
12. Violations of this policy by staff will result in disciplinary action, up to and including termination, as well as any other appropriate action necessary to ensure that such activity does not recur. Termination will be the presumptive disciplinary sanction for staff involved in sexual abuse of inmates.
13. The Department shall not conduct cross-gender strip searches or cross-gender body cavity searches except in exigent circumstances or when performed by medical practitioners.
14. The Department shall not conduct cross-gender pat down searches except in exigent circumstances.
15. Inmates shall be able to shower, perform bodily functions, and change clothing without non-medical staff of the opposite gender viewing their breasts, buttocks, or genitalia except in exigent circumstance or when such view is incident to routine cell checks.
16. Facility technology (e.g. camera footage, institution telephone records, e-mail history, GPS tracking records) shall be used to review all allegations of sexual abuse/harassment.
17. Unit officers (HOC) or Housing Control officers (Jail), when granting access to a staff member of the opposite sex from the inmates in that unit, will announce “female (or male) on the unit” loud enough to be heard by unit occupants.
18. Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.
19. The Department shall not physically examine a transgender or intersex inmate for the sole purpose of determining the inmate’s genital status unless it is done as part of a broader medical examination conducted, in private, by a medical practitioner.
20. The Department shall take appropriate steps to ensure that inmates with 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/harassment.
21. The Department shall take reasonable steps to ensure meaningful access to all aspects of the Department’s efforts to prevent, detect, and respond to sexual abuse/harassment of inmates who are limited English proficient.
22. The Department shall train all staff on dealing with LGBTI inmates.
23. The Department shall perform an intake screening to obtain and use information about the inmate’s history to reduce the risk of sexual abuse/harassment of the inmate within seventy-two (72) hours of him/her being booked.

24. An inmate's risk level shall be reassessed within a set time period, not to exceed thirty (30) days from the inmate's arrival, due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of being sexually abused or harassed.
25. The Department shall attempt to ascertain whether an inmate with any gender-nonconforming appearance or identification as LGBTI may be vulnerable to sexual abuse/harassment.
26. The Department shall use all relevant information to make classification and programming decisions with the goal of keeping all inmates safe and free from sexual abuse/harassment.
27. Inmates shall be segregated from others only as a last resort when less restrictive measures are inadequate to keep them and others safe. This segregation shall only last until alternative measures to keep inmates safe can be arranged. Inmates so segregated shall receive the opportunity to exercise daily and shall receive any legally-required educational programming. Segregated inmates shall also receive daily visits from a medical or mental health clinician, and shall have access to the other programs and work details to the extent that is operationally possible.
28. LGBTI inmates shall not be classified based solely on such identification or status.
29. LGBTI status shall not be an indicator of the likelihood of being sexually abusive.
30. Vulnerable inmates shall be classified in the least restrictive environment that is operationally feasible to ensure their safety.
31. All LGBTI inmates shall have access to health care that addresses their specific needs.
32. Searches will be conducted in accordance with the gender identification included in the court mittimus. If an inmate announces self-identification as transgender or intersex, strip searches will be conducted in a professional and respectful manner, in the least intrusive manner possible consistent with security needs.
33. The Department shall conduct thorough background investigations on all potential staff and shall not hire anyone who had engaged in sexual abuse/harassment in a correctional environment, who had been convicted of engaging in or attempting to engage in sexual activity facilitated by force, or who had been civilly or administratively adjudicated in these types of activities (Form 241-3).
34. The Department shall not enter a collective bargaining agreement that limits its ability to remove any staff member alleged to have committed sexual abuse/harassment from contact with inmates during the investigation, or limits the level of discipline it may impose. Nothing in this policy precludes the application of progressive discipline in an appropriate case.
35. The Department will attempt to establish relationships with community service providers able to provide inmates with confidential support services related to sexual abuse/harassment.
36. The Department shall immediately report any possible criminal conduct of staff involving sexual abuse to law enforcement agencies for potential prosecution, to any relevant licensing bodies for

potential administrative action, and, if relevant, to the head of the agency where the abuse allegedly occurred.

37. An inmate who alleges sexual abuse/harassment may file a grievance without submitting it to any staff member who is the subject of the complaint. The grievance will also not be referred to any staff member who is the subject of the complaint.
38. Third parties, including staff members, attorneys, and outside advocates, may assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse/harassment. If such third parties file a request on behalf of the inmate, the Department requires that the inmate certify, in writing, his/her agreement or refusal to the filing of a request on his/her behalf. If the inmate certifies his/her agreement, then s/he must personally pursue any subsequent steps in the administrative remedy process.
39. The Department shall not rely on inmate interpreters except where an extended delay could compromise inmate safety, the performance of first-responder duties, or the investigation of the inmate's allegations.
40. The Department shall take immediate action when an inmate is at substantial risk of imminent sexual abuse/harassment.
41. If allegations of sexual abuse involve potentially criminal behavior, the matter may be referred to the Boston Police Department (BPD), the Suffolk County District Attorney's (DA) office or the Attorney General's (AG) office.
42. If an inmate from Suffolk County is being housed at another facility and is sexually abused or harassed, the Department will work with that agency to ensure that their investigation conforms to PREA standards.
43. When the quality of the evidence appears to support criminal prosecution, a compelled interview will not be conducted without first consulting with the BPD, the DA or the AG.
44. The Department shall collect accurate, uniform data from every allegation of sexual abuse and will review aggregate data on these allegations at least annually.

## **PROCEDURES**

### **I. General**

- A. All allegations and incidents of sexual abuse/ harassment of inmates shall be immediately reported by staff to either the Shift Commander (if uniformed) or a member of the command staff (if non-uniformed).

- B. During regular business hours, the Shift Commander will immediately notify the Superintendent and Assistant Superintendent of Operations (AS/OPS), who shall advise SID and the PREA Coordinator.
- C. During non-business hours, the Shift Commander shall contact the duty officer, who shall immediately notify the Superintendent, the SID duty officer, and the PREA Coordinator.
- D. Failure to report these allegations or incidents by staff may result in disciplinary action up to and including termination.

## **II. Prevention**

- A. All staff is responsible for the prevention of sexual abuse/harassment perpetrated by staff on inmates or inmates on inmates.
- B. The command staff, captains, lieutenants, and sergeants shall make unannounced rounds to identify and deter sexual abuse/harassment on every shift.
- C. Inmates shall receive PREA information during intake, at orientation, and from the inmate guide. Inmates shall be responsible for familiarizing themselves with the information provided, and for reporting allegations to staff in a timely manner.
- D. The Department does not impose a time limit on when an inmate may submit an institutional grievance regarding an allegation of sexual abuse/harassment.
- E. The Department shall strive to create an environment free from sexual abuse/harassment by planning and implementing preventative measures.
- F. The PREA Coordinator shall work with the command staff and the Training Division to develop a plan to educate and inform inmates about sexual abuse/ harassment. The plan will include oral and written information regarding prevention, intervention, self-protection, reporting sexual abuse/harassment, and treatment and counseling.
- G. The Training Division shall develop a plan to train staff in their responsibilities pursuant to this policy.
- H. Inmates identified from any source as being at risk of sexual abuse/harassment, and/or who have previously been sexually abused or harassed, shall be referred to a mental health clinician for assessment, monitoring and counseling. Such reports will be kept confidential, but the inmate's name will be added to the Superintendent's victims/predators list.
- I. All inmates shall be assessed (using an objective screening instrument) within seventy-two (72) hours upon booking or transfer into the facility by a qualified medical professional for any history of, and risk for, sexual abuse/harassment.

- J. Inmates may not be disciplined for refusing to answer, or for not disclosing complete information, in response to questions asked during assessment. In such instances, the inmate will be treated as if s/he answered in the negative.
- K. Upon learning that an inmate has been identified as either a victim or a predator, or is at risk for such, the ADS/CAD shall be notified so that appropriate housing decisions can be made.
- L. A vulnerability assessment of the Jail and the HOC shall be conducted annually.
- M. The Superintendent shall conduct an annual PREA assessment, consisting of staff and inmate interviews to determine how operational practice can be improved.
- N. The Department shall check all staff telephone numbers against the inmate telephone database annually.
- O. Inmates shall be advised that they may call the SID hotline at (617) 704-6666 to report allegations of sexual abuse/harassment.
- P. The Department shall provide inmates with the ability to contact a 3<sup>rd</sup> party public or private entity or office to report sexual abuse/harassment.

### **III. Public Education**

The Office of Community and External Affairs shall work with the PREA Coordinator to develop and implement a plan to educate inmate family members, constituents, other state agencies, and the general public on PREA and how they can support its enforcement.

### **IV. Data Collection/ Analysis**

- A. All incidents or allegations of sexual abuse/harassment shall be documented to ensure a source for historic data.
- B. The Department shall collect accurate, uniform data from every allegation of sexual abuse/harassment and will review aggregate data at least annually in order to assess and improve the effectiveness of its sexual abuse/harassment prevention, detection, and response policy, practices, and training.
- C. The Department shall prepare an annual report of its findings and corrective actions for each facility, as well as the Department as a whole.
- D. The Department shall make all aggregated sexual abuse/harassment data and its annual report readily available to the public at least annually through the Department website.



- E. The Department shall maintain, review, and collect data as needed from all available incident based documents, including reports, investigation files, and sexual abuse/harassment incident reviews.
- F. Other sources of information may be probed to develop intelligence information which may become useful to prevent sexual abuse/harassment. These may include, but not be limited to, inmate correspondence, inmate grievances, inmate disciplinary reports and institutional reports.
- G. A list of all known victims and predators shall be developed and kept up to date by the ADS/CAD, together with a procedure to monitor their behavior

## **V. Intervention**

- A. The Shift Commander shall immediately be notified in the event of a sexual abuse/harassment allegation.
- B. The scene shall be secured for possible crime-scene processing.
- C. The inmate's behavior and appearance shall be noted and documented by the supervisor on scene, as well as a list of potential witnesses.
- D. The inmate victim shall be taken to the infirmary for emergency medical care and mental health treatment.
- E. The inmate victim and the perpetrator shall be separated immediately.
- F. Inmates who are possible victims of sexually abusive vaginal penetration shall be offered a pregnancy test. If pregnancy results, victims shall receive comprehensive information about, and timely access to, all lawful pregnancy-related medical services.
- G. Inmates who are possible victims of sexual abuse/harassment shall be offered tests for sexually-transmitted diseases as needed, regardless of whether the inmate cooperates with an investigation.
- H. Inmate victims of sexual abuse/harassment shall be offered timely information about and timely access to emergency contraception and sexually-transmitted infections prophylaxis, in accordance professionally accepted standards of care, where medically appropriate.
- I. Inmates who are the victims of sexual abuse/harassment shall be offered medical and mental health evaluations and treatment services, including follow-up services, treatment plans, and referrals for post-release aftercare.
- J. Upon initiation of services, medical providers shall inform the inmates of their duty to report and the limitations of confidentiality unless otherwise precluded by law.

- K. Detailed report(s) shall be filed with the Shift Commander no later than the end of the shift.
- L. A medical staff member shall evaluate and document the extent of the physical injury and provide emergency treatment as needed.
- M. A determination of possible referral to an outside hospital with a rape crisis unit shall be made by the medical staff.
- N. If the determination is made that the inmate should be sent to an outside hospital and s/he consents, the inmate shall be sent to a hospital with a Sexual Assault Nurse Examiner (SANE) program where s/he will receive preventative treatment.
- O. Upon return from the outside hospital, the inmate shall be brought to the infirmary for appropriate follow-up care and mental health screening.
- P. The inmate shall be seen no later than the next business day unless at risk of harming him/herself, in which case s/he will be seen immediately by the mental health staff.
- Q. Once cleared by medical and mental health staff, the ADS/CAD shall determine an appropriate housing assignment.
- R. If the inmate elects to refuse rape crisis intervention treatment, the mental health staff shall attempt to persuade him/her to receive this treatment. If this attempt is unsuccessful, the inmate must sign a refusal of treatment form.
- S. A victim advocate will meet with the victim at the request of a PREA Compliance Manager.
- T. The victim advocate shall keep the inmate informed of his/her status, the progress of any disciplinary actions, and the status of any criminal prosecution of the perpetrator(s).
- U. The victim advocate shall make the victim aware of short-term and long-term services available.

## **VI. Investigations / Evidence**

- A. The Department shall investigate third party reports of sexual abuse/harassment. All investigations shall be conducted in accordance with policy S-134 and the relevant articles contained in various collective bargaining agreements, and completed even if the alleged abuser or victim has left the control of the Department.
- B. When evidence is collected at an outside hospital, the transporting officer(s) shall retrieve it and coordinate with SID to transport it either to the facility for refrigerated storage or to the BPD crime lab. If the alleged perpetrator is a staff member, the hospital will retain the evidence.

- C. If the Superintendent believes that a crime may have been committed, s/he will contact the BPD, the DA or the AG.
- D. The ADS/CAD shall be notified of the incident or alleged incident.
- E. If an inmate alleges that s/he was sexually abused or harassed, the alleged victim and perpetrator(s) shall be separated. If the alleged attack happened within a time frame that will allow for the collection of evidence, a request will be made to the alleged victim to refrain from taking any actions that could destroy physical evidence (e.g. showering, urinating or defecating). Steps shall be taken to preserve and protect any crime scene until appropriate steps can be taken to collect evidence.
- F. Any inmate who is suspected of sexually abuse/harassment shall be placed in a special management unit or the medical unit pending the investigation.
- G. Physical evidence of the victim and perpetrator(s) shall be collected and maintained in accordance with policy **S134, Department Investigations**.
- H. Any potential witnesses shall be interviewed to corroborate the victim's statement or identify suspect(s). Steps shall be taken to prevent any retaliatory actions, such as changing housing units or accelerated classification for possible transfer.
- I. The Superintendent, SID, and the PREA Coordinator shall review and assess all reports regarding instances of sexual abuse/harassment within seventy-two (72) hours.
- J. SID will produce an investigative report within thirty (30) days of the incident unless the deadline is extended by the Superintendent.
- K. Following an investigation into an inmate's allegation that s/he suffered sexual abuse/harassment in a Department facility, the Department shall inform the inmate as to whether the allegation was substantiated, unsubstantiated, or unfounded (Form 241-1). The Department shall also inform the inmate if a substantiated allegation results in an indictment or a conviction (Form 241-2). Any reporting obligation ceases once the inmate has been released from Department custody.
- L. Any staff accused of sexual abuse/harassment may be placed on "no inmate contact" status or administrative leave with pay pending an investigation. Contractors, volunteers or interns shall be barred from the facility until the completion of the investigation.
- M. If the investigation determines that any staff member retaliated against other staff or an inmate for reporting sexual abuse/harassment, s/he will be disciplined up to and including termination.
- N. A PREA Review Committee shall be appointed by the Superintendent after the investigation is complete to conduct a critical assessment of the Department's response.

- O. Staff is prohibited from revealing any information related to sexual abuse/harassment to anyone other than to the extent necessary to make treatment, investigation, and other security and management decisions. This in no way precludes a staff member accused of such misconduct from sharing relevant information with his/her Union representative, attorney, or medical provider.
- P. Unless unfounded, the Department shall monitor the conduct and/or treatment of all staff and inmates following a report of sexual abuse/harassment to see if there are changes that suggest possible retaliation, and take prompt action to remedy the situation. This monitoring shall include a review of negative staff performance reviews, reassignments, inmate disciplinary reports, housing changes, and program changes.
- Q. SID shall investigate sexual abuse/harassment complaints, gather and preserve evidence, interview alleged victims, perpetrator(s) and witnesses, and review any prior complaints involving the suspected perpetrator(s).
- R. When the quality of the evidence appears to support criminal prosecution, compelled interviews will not be conducted without first consulting with the DA, the AG, or BPD.
- S. Credibility of an alleged victim shall be assessed on an individual basis and not solely determined by the person's status as an inmate or staff member.
- T. The Department shall use a *preponderance of the evidence* standard when determining whether allegations of sexual abuse/harassment can or cannot be substantiated.
- U. Department investigations shall address whether staff actions /inactions contributed to the abuse/harassment.
- V. Department investigation reports shall include the physical, testimonial and documentary evidence, the reasoning behind the credibility assessment, and the investigative findings.

## **VII. Training**

- A. All staff shall be trained in detecting sexual abuse/harassment, preserving physical evidence of sexual abuse, responding effectively and professionally to victims of sexual abuse/harassment and required reporting when such allegations or suspicions arise.
- B. All staff with inmate contact shall be trained in the following:
  - 1. The Department's zero tolerance policy for sexual abuse/harassment;
  - 2. Detection, prevention, reporting and response to sexual abuse/ harassment;
  - 3. Inmates' rights to be free from sexual abuse/harassment;

4. The rights of staff and inmates to be free from retaliation for reporting sexual abuse/harassment;
  5. The dynamics of sexual abuse/harassment in confinement;
  6. The common reactions of victims of sexual abuse/harassment;
  7. How to detect and respond to signs of threatened and actual sexual abuse/harassment;
  8. How to avoid inappropriate relationships with inmates;
  9. How to communicate effectively and professionally with inmates including LGBTI inmates; and
  10. How to comply with laws related to mandatory reporting of sexual abuse/harassment to outside authorities.
- C. The Department shall document staff training on this policy.
- D. Security staff shall be trained in how to conduct cross-gender pat-down searches, and the searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.
- E. Department investigators shall be trained to properly investigate sexual abuse/harassment complaints, to properly use *Miranda* and *Garrity* warnings, to gather and preserve direct, circumstantial, and DNA evidence, and how to properly interview alleged victims, suspected perpetrator(s), and witnesses.

## **VIII. EXCEPTIONS**

- A. If the Superintendent believes that an emergency exists that would require the suspension of the rules for some or all of this policy, s/he may order such suspension with notice to the Sheriff. All staff will be advised which portion(s) of the policy are affected.
- B. The Sheriff must authorize any suspension lasting beyond forty-eight (48) hours.

## **IX. CONTACTS**

- A. The PREA Coordinator is Yolanda Smith, extension 6511.
- B. The PREA Compliance Managers are as follows:
1. HOC: Monique Twitty, extension 6537 and Lisa Enos, extension 6501
  2. Jail: Sheila Mehigan, extension 6675