

CAMERON / WILLACY COUNTIES  
COMMUNITY CORRECTIONS FACILITY



COURT RESIDENTIAL TREATMENT CENTER  
531 South Iowa Avenue  
Brownsville, Texas 78520

**PRISON RAPE ELIMINATION ACT (PREA) MANUAL**

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## PRISON RAPE ELIMINATION ACT (PREA)

### I. PREA COVERAGE

- A. The Community Supervision and Corrections Department (CSCD)/Facility is committed providing a safe and healthy environment for residents, staff, visitors, contractors and volunteers. The CSCD is committed to protecting residents from sexual abuse and sexual harassment. Sexual abuse and sexual harassment compromise the safety of everyone in our facility and will not be tolerated. The Facilities policy will serve as a mechanism for complying with the Prison Rape Elimination Act (PREA) and the PREA National Standards. [115.211 (a), 115.262]
- B. The facility has mandated a zero-tolerance policy relating to any sexual misconduct and sexual harassment between staff, volunteers, contractors, and residents or their family members. All allegations, regardless of the source, of coercive, or consensual sexual misconduct/harassment occurring among residents will be fully investigated, sanctioned (if authority to do so exists), and referred for prosecution if the prohibited conduct violates state criminal laws.
- C. The Prison Rape Elimination Act (PREA) covers incidents involving staff, residents, volunteers, and collateral contacts.
  - 1. Prohibited behaviors include, but are not limited to the following: touching, hugging, kissing, sexual assault, penetration, fondling, inappropriate viewing, sexual conduct, sexual harassment, sexual abuse, sexual gratification, romantic relationships, relationships between staff/residents, volunteers/residents or outside the agency involvement between staff and resident.
  - 2. Resident on Resident Sexual Abuse: Sexual contact between residents without the resident's consent, or in which the resident is unable to consent or refuse.
  - 3. Staff Sexual Misconduct: Any behavior or act of a sexual nature whether it be consensual or non-consensual directed toward a resident by an employee, volunteer, contractor, visitor or other agency representative. Termination from employment shall be the presumptive disciplinary sanction for staff who engaged in sexual misconduct.

### II. DEFINITIONS

- A. Definitions
  - 1. ***Community confinement facility*** means a community treatment center, residential re-entry center, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including Alternative to Incarceration Programs), other than a juvenile facility, in which individuals reside as part of a term of imprisonment or as a condition of pre-trial release or post-release supervision, while participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during nonresidential hours.

1. **Contractor** means a person who provides services on a recurring basis pursuant to a contractual agreement with the agency.
2. **Employee** – A person employed by Cameron/Willacy Counties an approved full-time or part-time position that is designated as such in the authorized staffing pattern.
3. **Exigent Circumstances** – Temporary unforeseen circumstance(s) that require immediate action in order to combat a threat to the security or institutional order of the facility.
4. **Gender nonconforming** means a person whose appearance or manner does not conform to traditional societal gender expectations.
5. **Intersex** means a 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.
6. **LGBTI** – Lesbian, Gay (Homosexual), Bisexual, Transgender, and Intersex. This acronym will include the term Gender Non-confirming.
7. **Miranda and Garrity Warnings** – Instructions provided at the start of an interview informing the interviewee of rights and liabilities outlined by the court decisions *Miranda v. Arizona* and *Garrity v. New Jersey*.
8. **PREA Compliance Manager** – An Administrative level manager (Operations Manager) appointed by the Facility Director who maintains responsibility for the facility’s Sexual Abuse Response and Prevention Program [(115.211 (c))]
9. **PREA Coordinator**: The Facility has designated the PREA Coordinator to develop, implement and oversee agency efforts to comply with PREA requirements. The staff responsible for the coordination and compliance monitoring of PREA at Cameron/Willacy Counties Court Residential Treatment Center [(115.211 (b))]
10. **PREA Team** – A committee comprised of senior management, human resources, investigators and mental health professionals who review issues related to PREA reporting, incident response, investigation, and prevention.
11. **PREA National Standards** – Part 115 of Title 28 of the code of Federal Regulations, the Prison Rape Elimination Act National Standards specific to Community Confinement Facilities.
12. **PREA Staffing Plan** – An approved plan for staffing the facility in accordance with PREA guidelines developed by the facility in conjunction with the PREA Coordinator.
13. **PREA Staffing Plan Deviation** – When any position designated as a part of the PREA Staffing Plan is vacant for the period of an entire shift.
14. **Preponderance of the Evidence Standard** – An evidentiary standard under which an allegation is deemed substantiated if the weight of the available evidence indicates that the allegation is more likely than not to be truthful or correct.
15. **Qualified Health Care Professional (QHCP)** – Includes physicians, physician assistants, nurse practitioners, nurses, dentists, mental health professionals, and others who, by virtue of their education, credentials, and experience are permitted by law within the scope of their professional practice to evaluate and care for patients.
16. **Qualified Mental Health Professionals (QMRP)** – Includes psychiatrists, psychologists, psychiatric social workers, psychiatric nurses and others who, by virtue of their education, credentials, and experience are permitted by law within the scope of their professional practice to evaluate and care for the mental health needs of patients.

17. **Rape Crisis Center** – An entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(c), to victims of sexual assault.
18. **Resident** means a person residing in the facility or participating in the Home Confinement Program
19. **SAFE/SANE Provider** – A sexual assault forensic examiner (SAFE) or sexual assault nurse examiner (SANE) is a specifically trained registered nurse, physician assistant, or physician who provides comprehensive care, and timely collection of forensic evidence and testimony in sexual assault cases
20. **Sexual Abuse:**
  - a. Sexual abuse of a resident by another resident.
  - b. Sexual abuse of a resident by another resident includes any of the following acts with or without consent:
    - Contact between the penis and the vulva or the penis and the anus, including
    - 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.
  - c. Sexual abuse of a resident by a staff member, volunteer, visitor or contractor.
  - d. Sexual abuse of a resident by a staff member, volunteer, visitor or contractor, includes any of the following acts, with or without consent of the resident:
    - 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, 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, volunteer, visitor or contractor 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, volunteer, visitor or contractor has the intent to abuse, arouse, or gratify sexual desire;
    - Any attempt, threat, or request by a staff member, volunteer, visitor or contractor to engage in the activities described in paragraphs (a)-(e) of this section;
    - Any display by a staff member, volunteer, visitor or contractor of his or her uncovered genitalia, buttocks, or breast in the presence of a resident and,
    - Voyeurism by a staff member, volunteer, visitor or contractor.
21. **Sexual Abuse Response Team (SART)** – A team comprised of four (4) or more individuals having a primary role in responding to reported incidents of sexual abuse, victim assessment and support needs, and ensuring policy and procedures are carried out that ensure resident safety.
22. **Sexual Contact:** Sexual contact between residents is prohibited, deemed to be non-consensual due to the fact that they are persons in custody and therefore, deemed to be sexual abuse.

23. **Sexual Harassment:**
  - a. 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; and
  - b. Repeated verbal comments or gestures of a sexual nature to a resident by a staff member, volunteer, visitor or contractor, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.
24. **Transgender:** A **person** whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth.
25. **Volunteer** means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency.
26. **Voyeurism** by a **staff** member, volunteer, visitor or contractor means an invasion of privacy of a resident by staff or reasons unrelated to official duties, such as peering at a resident who is showering or using a toilet to perform bodily functions; requiring a resident to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a resident's naked body or of a resident performing bodily functions.

### III. CONFIDENTIALITY

- A. All information concerning an event of resident sexual abuse or sexual harassment is to be treated as confidential. Aside from reporting to designated supervisors or officials, employees shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, and as specified in this policy, to make treatment, investigation and other security and management decisions. This information should never be shared with other residents. (115.261(b)).
- B. Appropriate controls shall be in place to safeguard the responses to questions asked during the screening for risk of victimization and abusiveness so that sensitive information is not exploited to the resident's detriment by staff or other residents. (115.241(i)).
- C. Security and management of documentation containing PREA information will be in accordance with facility policy regarding records management, records retentions, HIPPA, etc.

### IV. HIRING AND PROMOTION

- A. Any incident of sexual harassment shall be considered in determining whether to hire or promote any individual or to enlist the services of any contractor, who may have contact with residents. (115.217 (b))
- B. To the extent permitted by law, this facility shall not hire or promote and may terminate employment based on material omission regarding such misconduct of anyone and may not enlist the services of any contractor/volunteer who may have (115.217 (g)):
  1. contact with residents who have engaged in sexual abuse in a prison, jail, lock up, community confinement facility, juvenile facility, or another jurisdiction;

2. been convicted of engaging or attempting to engage in any type of 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
  3. been civilly or administratively adjudicated to have engaged in any type of sexual misconduct. [(115.217 (a)(1-3)]
- C. Before hiring new employees or enlisting the service of any contractor/volunteer that may have contact with residents, the agency shall:
1. perform a criminal background records check;
  2. contact any former institutional employers for any information regarding sexual misconduct or alleged sexual misconduct;
  3. ask all applicants and employees about previous sexual misconduct;
  4. *best efforts* are made to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse in consistent with federal, state, and local laws; and
  5. the information shall be documented on a form completed during the initial interview and kept in the personnel file.
- D. All employees who may have direct contact with residents shall be asked about previous misconduct either in the written or in interviews for promotions and in any written self-evaluations conducted as part of reviews of current employees. [115.217 (f)]
1. The Employment Application Supplement form will be completed upon application for employment and as part of the promotional interview process.
  2. The Conditions of Employment document shall also serve as verification of an employee's fulfillment of his / her continuing affirmative duty to disclose any sexual misconduct as described in this policy. (115.217 (c)(1-2))
- E. Material omissions or the provision of materially false information regarding sexual misconduct shall be grounds for termination (115.217 (g))
- F. Unless prohibited by law the agency shall provide information on substantiated allegations of sexual misconduct involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work (115.217(h)).
- G. The Facility also imposes upon all employees a continuing affirmative duty to disclose any such misconduct.
- H. The Facility shall preform a criminal background check on each employee who has contact with the residents annually, using the date of employment. (115.217 (h))
- I. The Facility shall also perform a criminal background records check before enlisting the services of any unescorted contractor who may have contact with the residents. (115.217 (d))
- J. The Facility shall conduct criminal background record checks at least every five years for current employees and contractors who may have contact with residents. (115.217 e-1)

## V. TRAINING AND EDUCATION

- A. Zero Tolerance training shall be tailored to the gender of the residents at the facility (115.231(a)(1)(b)). All staff members will be trained on the following (115.231(c)):
1. The zero-tolerance policy on sexual misconduct and sexual harassment (115.231(a)(1));
  2. How to fulfill their responsibilities of prevention, detection, reporting, and response to sexual misconduct;
  3. Resident rights to be free from sexual misconduct;
  4. The right of residents and employees to be free from retaliation for reporting sexual misconduct;

5. The dynamics of sexual misconduct in confinement;
  6. The common reactions of sexual misconduct victims;
  7. How to detect and respond to signs of threatened and actual sexual misconduct;
  8. How to avoid inappropriate relationships with residents;
  9. How to communicate effectively and professionally with residents, including LGBTI and gender non-conforming residents;
  10. How to comply with relative laws related to mandatory reporting of sexual misconduct;
  11. State and local laws imposing criminal liability for the sexual abuse of a person held in custody;
  12. Location, situations and circumstances in which sexual abuse may occur; and
  13. How to comply with laws relevant to mandatory reporting of sexual abuse to outside authorities (115.231 (a)(1-10).
- B. Current staff members will receive and acknowledge PREA training within one year of hire, refresher training will be provided every two years to ensure all employees understand the agency's current sexual misconduct policies and procedures.
  - C. Security staff shall receive additional training on the following:
    1. how to conduct cross-gender pat-down searches and searches of transgender and intersex residents, in a manner that is professional, respectful and the least intrusive possible while being consistent with security needs (115.215 (f));
    2. how to utilize the Guidance in Cross-Gender and Transgender Pat Searches training curriculum from the PREA Resource Center to educate and train security staff.
  - D. The PREA Coordinator shall ensure that more than one (1) person at the facility receives training as a sexual abuse investigator. This will ensure that a trained investigator is available as a back-up during employee absences (e.g., leave, paid time off, sickness, offsite training, etc.) from work. Investigators shall receive training in conducting sexual abuse investigations in confinement settings (115.234 (a)). Or The PREA Coordinator shall ensure all staff are trained to call the law enforcement to investigate the allegations.
  - E. Specialized training shall include techniques for interviewing sexual abuse victim, 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 or prosecution referral (115.234 (b)).
  - F. Documentation confirming that investigators have completed the required specialized training in conducting sexual abuse investigations shall be maintained in accordance with facility record retention policies. (115.234 (c))
  - G. There are no Qualified Mental Health Professionals working in this facility; however, if one would be employed, shall receive specialized medical training as outlined below:
    1. how to detect and assess signs of sexual abuse and sexual harassment;
    2. how to preserve physical evidence of sexual abuse;
    3. how to respond effectively and professionally to victims of sexual abuse and sexual harassment; and
    4. how and to whom to report allegations of sexual abuse and sexual harassment (115.235 (a)(1-4)).
  - H. Employees transferring to a facility that houses a population whose gender is different from their previously assigned facility shall receive additional training specific to the population of the newly assigned facility. (115.231 (d))
  - I. Employees shall be required to confirm, by either electronic or manual signature, their understanding of the received training. Signed documentation will be maintained in the employee's training file. (115.231 (d))
  - J. Volunteers and contractors will be trained and acknowledge by electronic or manual signature, their understanding of the received training. Training shall include their



- responsibilities under the agency's zero-tolerance policy of sexual misconduct/harassment prevention, detection, reporting and responding (115.232 (a)(b));
- K. Signed documentation will be maintained in the volunteer or contractor's file. (115.232 (c));
  - L. Volunteers/contractors who have contact with residents on a recurring basis shall be provided a copy of this policy prior to admission to the facility to begin their assignment or task.
  - M. The PREA Acknowledge of Understanding form serves as verification of the volunteers or contractor's review and understanding of the contents of this policy and shall be completed by each volunteer or contractor who has contact with residents on a recurring basis. A newly signed PREA Acknowledge of Understanding form will be required for future revisions of this policy.

## VI. RESIDENT SCREENING

- A. Before or upon admission or no later than 72 hours to the facility, and upon transfer to another facility, residents shall be screened by staff assigned to perform the initial intake screening process in order to obtain information relevant to:
  - 1. housing, counseling and groups with the goal of keeping separate those residents at high risk of being sexually victimized from those at high risk of being sexually abusive; and
  - 2. identify past victims and/or predators and assess vulnerability to sexual abuse victimization. [115.262, 115.241 (a)(b) and 115.242 (a)].
- B. Screenings shall include interview questions and a review of the resident's computerized record which must be completed within seventy-two (72) hours of admission to the facility. Prior criminal history will be considered.
- C. Screenings will be completed and documented using the Abusiveness Risk Screening Form, which will be shared with resident's Counselor for proper treatment planning and monitoring. (115.241 (c))
- D. Should any risk factors be identified at this time, Clinical Supervisor will consult with Operations Manager and Facility Director to determine a housing assignment that ensures the safety of all Residents. (115.262)
- E. All completed screening tool forms will be maintained in the Counselor's/CSO's office. Screening of residents should only be used as a guideline for determining appropriate housing and services and should never be used as the sole reason for the deprivation of a program or privilege.
- F. Counselors will monitor any Resident who has the potential for violating other residents (aggressors) and Residents who may be at risk for victimization. Any evidence that this is occurring must be immediately reported to the appropriate Supervisor.
- G. Reassessment of the resident's risk level of victimization or abusiveness will be conducted by the appropriate staff member designated by the Director. The reassessment shall occur:
  - 1. Within thirty (30) days of the resident's arrival at the facility. The reassessment will include any additional relevant information received by the facility since the initial intake screening; and (115.241 (f))
  - 2. When warranted, due to a referral, request, incident of sexual abuse, or receipt of additional information that may impact the resident's risk of victimization or abusiveness. (115.241 (g))
- H. Residents may not be disciplined for refusing to answer, or for not disclosing complete information, in response to questions asked pursuant to the following: (115.241 (h) 1)
  - 1. Whether the resident has a mental, physical, or developmental disability;

2. Whether the resident is, or is perceived to be, LGBTI or Gender Non-Conforming;
  3. Whether the resident has previously experienced sexual victimization; or
  4. The resident's own perception of vulnerability. (115.241 (h))
- I. Appropriate controls shall be implemented within the facility regarding the dissemination of responses to questions asked in order to ensure that sensitive information is not exploited by employees or other residents to the resident's detriment. (115.241 (i))
  - J. The agency shall not place lesbian, gay, bisexual, transgender, or intersex residents in dedicated dorms on the basis on such identification or status, unless such placement is in a dedicated dorm with a consent decree, legal settlement, or legal judgment for the purpose of protecting such resident. (115.242 (f)).

## **VII. RESIDENT ORIENTATION AND EDUCATION**

- A. During the intake/orientation process, all residents shall receive information regarding sexual abuse prevention and reporting in a manner that is understandable regardless of individual limitations explaining: (115.233 (a)-1(b)). All Residents, even those who have transferred from another Facility, shall receive comprehensive educational information about the following:
  1. The agency's zero-tolerance policy regarding sexual abuse and sexual harassment;
  2. How to safely report incidents, threats or suspicions of sexual misconduct/harassment;
  3. Their rights to be free from sexual misconduct and retaliation for reporting such incident (115.233(a));
  4. Agency policies and procedures for responding to such incidents; and
  5. Consequences of false allegations.
- B. Staff will document verification of resident orientation and education on PREA by completing the Resident PREA Acknowledgement Form. Staff will maintain the original signed acknowledgement form in the resident's probation file, maintained by the Residential Community Supervision Officer. (115.233 (d))
- C. In the event a resident has difficulty understanding provided information or procedures outlined in this policy, employees must ensure that such information is effectively communicated to such residents on an individual basis. (115.216 (b))
- D. Clinical Supervisor will assign individuals to Counselors based on the needs of the resident including those with limited English skills, reading or writing abilities. Documents available in Spanish and large font.
- E. Auxiliary aids that are reasonable, effective, and appropriate to the needs of the resident shall be provided when simple written or oral communication is not effective. (215.216 (b))
- F. Residents will not be relied upon to provide interpretation services, act as readers, or provide other types of communication assistance except in limited circumstances where a extended delay in obtaining an effective interpreter could compromise the resident's safety, the performance of first-responder duties, or the investigation of the resident's allegations. (115.216 (c))
- G. The facility shall maintain documentation of resident participation in educational sessions pertaining to sexual abuse and sexual harassment. (115.233 (d))
- H. In addition to providing such education, the facility shall ensure that key information is continuously and readily available or visible to residents through posters, resident handbooks, or other written formats. (115.233 (e))

## **VIII. STAFFING PLAN**

- A. The facility has developed a staffing plan that provides for expected levels of program supervision and monitoring to ensure the facility is safe and secure.
- B. The location of video monitoring systems will be considered when determining adequate levels of staffing (115.231 (a)). In calculating staffing levels and determining the need for video monitoring, the following factors shall be taken into consideration:
  - 1. The physical layout of each building;
  - 2. The composition of the resident population;
  - 3. the prevalence of substantiated and unsubstantiated incident of sexual abuse; and
  - 4. any other relevant factors (115.231 (a)(1-4)).
- C. The Compliance Manager is responsible for reviewing the staffing plan in conjunction with the daily Residential Monitor Schedule. If a staffing pattern falls below the staffing plan due to absence, the Shift Supervisor shall notify the Compliance Manager of the deviation. The Compliance Manager shall:
  - 1. Document and describe the deviation along with a thorough justification for the deviation; and
  - 2. Notify the PREA Coordinator of the deviation within seven (7) calendar days; to include a description of any corrective actions that were taken to resolve the deviation.
- D. Whenever necessary, but no less frequently than once each year, the staffing plan assessment will be completed.
- E. The Coordinator, Director and the Compliance Manager will complete an Annual Staffing Plan Assessment to assess, determine, and document whether adjustments are needed to the prevailing staffing patterns.
- F. The facility shall make its best effort to comply on a regular basis with the staffing plan and shall document and justify all deviations (115.231 (b)). Deviations shall be documented and notification made to the Facility Director.
- G. When designing or acquiring any new facility and in planning any substantial expansions or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agencies ability to protect residents from sexual abuse. (115.218)
- H. When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how much technology may enhance the agency's ability to protect residents from sexual abuse. (115.218)

## **IX. STAFF RESPONSIBILITIES**

- A. Employees shall conduct unannounced facility rounds to identify and deter sexual abuse and sexual harassment. The occurrence of such rounds shall be documented as an unannounced round in the applicable log. This practice shall be implemented for all shifts and all areas where residents are permitted.
- B. All staff and residents will be alert to signs of potential situations in which sexual misconduct might occur. Staff shall:
  - 1. Utilize video monitoring of residents;
  - 2. Perform unannounced rounds of the facility at different times throughout the day and night with the intent of identifying and deterring sexual abuse and harassment;
  - 3. Look for signs which may include:
    - a. Staff/resident being overly friendly

- b. Offering money, gifts, favors, etc., and
    - c. Security threat group activity (i.e., gangs, mafia affiliation, religious zealots, etc.).
  - 4. If a deviation ever occurs in the staffing plan, it is documented and the reason for noncompliance is justified.
  - 5. Every year the facility will review the staffing plan to see whether adjustments are needed:
    - a. in prevailing staffing patterns;
    - b. the deployment of video monitoring systems and other monitoring technologies
    - c. the allocation of facility/agency resources to commit to the staffing plan to ensure compliance with the staffing plan.
- C. The PREA coordinator and is responsible for the oversight of all PREA related activities.
- D. The PREA coordinator will:
  - 1. coordinate and develop procedures to identify, monitor, and track sexual misconduct incidents occurring at the FACILITY;
  - 2. maintain related statistics (see Data Collection section);
  - 3. coordinate with the PREA investigator;
  - 4. conduct audits to ensure compliance with FACILITY policy and the Prison Rape Elimination Act of 2003; and
  - 5. ensure facility compliance with training requirements.
- E. The law enforcement will act as the PREA investigator and will conduct investigations of all incidents of sexual misconduct. (Brownsville Police Department).

## **X. PREVENTION AND HOUSING**

- A. The PREA Coordinator is responsible for oversight of all PREA related activities.
- B. The PREA Coordinator will:
  - 1. Develop, implement, audit and oversee the Facility is following PREA standards;
  - 2. Maintain related statistics of incidents of sexually abusive behavior;
  - 3. Track and report PREA statistical data to the Facility Director.
- C. The PREA Compliance Manager is responsible to:
  - 1. Report all PREA related incidents to the PREA Coordinator;
  - 2. Use the information from the Risk Screening Form for housing assignments (115.241);
  - 3. Monitor the programs to reduce and prevent PREA violations;
  - 4. Coordinate training activities with the PREA coordinator.
- D. In deciding whether to house a transgender or intersex resident in a male housing unit or a female housing unit, or when making other housing and programming assignments for such residents, the facility shall consider the transgender or intersex resident's own views with respect to his/her own safety and shall consider (115.242 (d)) on a case-by-case basis whether such a placement would ensure the Resident's health and safety. Consideration should also be given as to whether the placement would present management or security problems. (115.242 (c))
- E. The establishment of a unit solely dedicated to the housing of LGBTI and/or Gender Non-Conforming residents is strictly prohibited unless required by consent decree, legal settlement, or legal judgment for the purpose of protecting that resident (115.242 (f))

## **XI. RESIDENT SEARCHES AND OBSERVATIONS**

- A. The facility shall not conduct cross-gender strip searches except in exigent circumstances or when performed by medical practitioners.
- B. Searches or physical examination of a transgender or intersex resident for the sole purpose of determining the resident's genital status is prohibited. If the resident's genital status is unknown, it may be determined during conversations with the resident, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner. (115.215 (e))
- C. Pat and strip searches of transgender/Intersex residents will be completed by a staff member of the same sex for which the resident has been classified by referring agency.
- D. Making accommodations, if necessary, to search individuals according to gender identity would not violate the prohibitions on cross-gender searches. Searches of breasts will be completed using the back and or side of the hand.
- E. Residents may shower, perform bodily functions, and change clothing without non-medical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine living quarter checks. (115.215 (d))
- F. Employees of opposite gender must announce their presence when entering an area where residents are likely to be showering, performing bodily functions, or changing clothes. (115.215 (d))
- G. Transgender and intersex residents shall be given the opportunity to shower separately from other residents. (115.242 (e))

## **XII. REPORTING SEXUAL MISCONDUCT**

- A. Residents who are victims of or have knowledge of sexual misconduct shall be encouraged to immediately report the incident. They shall also be encouraged to immediately report any pressure, threats or possible retaliation by other residents or employees for reporting sexual abuse/harassment and staff neglect or violation of responsibilities that may have contributed to such incidents. (115.251 (a)(b)) Resident Reporting:
  - 1. Residents may utilize the formal grievance procedure to report sexual misconduct.
  - 2. Residents are not required to go through the informal resolution step to report allegations of sexual misconduct. Grievances will be given high priority in accordance with established facility policy.
  - 3. Residents are not required to file written reports.
- B. Staff shall report in the following:
  - 1. Staff members who receive verbal reports from residents are required to immediately file written incident reports, notify their supervisor, and the PREA Coordinator.
  - 2. Staff shall accept all allegation seriously including verbal, written, anonymously, and from third parties and shall document any verbal reports. (115.521(c))
  - 3. Staff shall report incidents regardless of its source, staff members who receive information concerning resident on resident sexual misconduct, or who observe an incident of resident on resident sexual contact, or have a reasonable cause to suspect sexual misconduct must immediately report the incident to their supervisor, the facility investigator (115.261(e)) and the Director or designee. Employee having contact with alleged victim should behave in a manner that is sensitive, supportive and non-judgmental.

4. Regardless of its source, staff who receive information concerning staff on resident sexual misconduct, observe staff on resident sexual misconduct, or have reasonable cause to suspect a resident is the victim of sexual misconduct, must immediately report the incident to their immediate supervisor and the Director or designee.
  5. Any employee's neglect or violation of responsibilities that may have contributed to an incident or retaliation. (115.261 (a))
  6. Any employee who fails to report an allegation, coerces or threatens another person to submit inaccurate, incomplete or untruthful information with the intent to alter a report may face disciplinary action up to and including dismissal even on the first offense.
  7. Unfounded, deliberately malicious or false reports by residents or other parties will result in disciplinary action up to and including unsuccessful discharge and/or dismissal for employees.
- C. Apart from reporting to designated PREA-trained team members, employees shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, and as specified in this policy, to make treatment, investigation, and other security and management decisions. (115.261 (b))
  - D. When it is learned that a resident is subject to a substantial risk of imminent sexual abuse, immediate action shall be taken to protect the resident. (115.262 (a)-1
  - E. Employees may privately report sexual abuse and sexual harassment of residents by forwarding a letter, sealed and marked "confidential", to the facility Director. (115.251 (d)). Employees can also make an anonymous report to the Friendship of Women toll free number: 956-544-7412
  - F. Unless otherwise precluded by federal, state, or local law, medical and mental health professionals shall be required to follow reporting procedures.
  - G. At the initiation of providing medical care, both medical and mental health professionals will inform residents of their professional duty to report and the limitations of confidentiality. (115.261
  - H. Medical and mental health practitioners shall 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. (115.281 (e))
  - I. If the alleged victim is under the age of eighteen (18) or considered a vulnerable adult under a state or local vulnerable person's statute, the allegation shall be reported to the designated state or local services agency under applicable mandatory reporting laws (115.61 (d)) At this facility, the designated state and /or local reporting agencies are: Friendship of Women.
  - J. The facility shall provide at least one way for residents to report abuse or harassment to a public or private entity or office that is not a part of the facility and is able to receive and immediately forward the residents report of sexual misconduct to facility officials, allowing the resident to remain anonymous upon request. Locked Drop Box
  - K. The facility has established a method to receive third-party reports of sexual misconduct and shall post this information on the facility posters. (115.254)

### **XIII. FIRST RESPONDER DUTIES**

- A. Any employee who discovers/learns of any sexual misconduct/abuse/harassment or allegation of sexual abuse shall ensure the following actions are accomplished:
  1. ensure that the victim is safe and kept separate (with no contact) from the alleged aggressor to protect them from the abuser; (115.266 (a) 1)
  2. notifies the Director and/or one of the members of the PREA team and the Director or designee shall notify the investigating agency if appropriate; (115.264(a)(1))

3. take steps to preserve and protect any crime scene until appropriate steps can be taken to collect any evidence; (115.264(a)(2))
  4. if the abuse occurred in a time frame that still allows for the collection of physical evidence, request that the alleged victim and alleged abuser not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; (115.264 (a)(3))
  5. call for an ambulance to transport the victim to the nearest hospital;
  6. if the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged abuser not take any actions that could destroy physical evidence including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking drinking, or eating; (115.264 (a)(4))
  7. photograph the scene and any visible evidence and seal access to the immediate area of the scene if possible; and
  8. all required information concerning the allegation is kept confidential by discussing the information with only those employees who have a direct need to know.
- B. If the first responder is not a 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 the appropriate facility staff.
- C. Ask the resident and document the questions listed below.
1. What type of alleged sexual misconduct occurred?
  2. Who was involved in the misconduct?
  3. When did the misconduct occur?
  4. Where did the misconduct occur?
- D. The first responder will immediately notify the PREA coordinator who will immediately notify the investigating authority.
- E. The investigating authority is recommended to follow the National Protocol for Sexual Assault Medical Forensic Examinations ([www.ncjrs.gov/pdffiles1/ovw/206554.pdf](http://www.ncjrs.gov/pdffiles1/ovw/206554.pdf)).
- F. Resident victims of sexual abuse shall receive timely, unimpeded, and ongoing access to emergency medical treatment and crisis intervention services as recommended by medical and mental health practitioners according to their professional judgment and shall be provided treatment services without cost.
- G. The PREA coordinator will act as an ongoing liaison between the facility and the investigating authority.
- H. if the allegations of sexual misconduct took place while the alleged victim was housed at another facility, the PREA coordinator shall:
1. contact the outside entity where the alleged abuse took place within seventy-two hours after receiving the allegations; (115.263(a)(b))
  2. If the allegation was reported and investigated by the appropriate officials, the facility shall document the allegation, name and title of the person contacted, and that the allegation has already been addressed. Under this circumstance, further investigation and notification need not occur.
  3. If the allegation was not reported or not investigated, a copy of the statement of the resident shall be forwarded to the appropriate official at the location where the incident was reported to have occurred.
  4. All such contacts and notifications shall be documented including the allegation, any details learned from contact with the site where the alleged abuse took place, and the facility's response to the allegation. (115.263 (c))

5. If an allegation is received from another facility, the Facility Director will ensure that allegation is investigated. (115.263 (d))
- I. The facility has developed a written institutional plan to coordinate actions taken in response to an incident of sexual abuse among staff first responders, medical and mental health practitioners, investigators, and facility leadership. (115.265 (a)-1)

#### **XIV. RESPONSE PROCESS**

- A. The PREA Coordinator shall ensure following coordinated response process is completed upon receipt of a reported sexual abuse incident:
- B. Immediately report all allegations of rape, sexual assault, or employee on resident sexual misconduct to state or local law enforcement agencies for criminal investigation if the allegation (if proven true) would be considered a criminal act under federal, state, or local law. The reporting party should request guidance from the law enforcement agency(ies) in preserving the crime scene and coordinating an investigation.
- C. If the allegation involves an employee, ensure steps are taken to place this person in a role that does not involve contact with residents.
- D. Ensure that medical and mental health referrals are completed (when appropriate).
- E. Ensure that an investigation is initiated and documented. Investigations into allegations of sexual abuse must be investigated by an employee who has received training in the investigation of sexual abuse cases.
- F. Ensure appropriate incident reports are completed in accordance with facility PREA policy and procedure.
- G. Review any video recordings of the alleged crime scene from the time period implicated by the allegation. Ensure all video recordings are secured and preserved from the time period implicated in the allegation.
- H. A preliminary review of the incident and the facility's response shall be conducted forty-eight (48) to seventy-two (72) hours following a reportable PREA incident. The review will be convened by the Facility Director or designee. At a minimum, the review shall include:
  1. Discussion of the incident, and whether the incident response meets applicable standards;
  2. Appropriate categorization of the incident report;
  3. Completion of required notifications;
  4. A request for law enforcement involvement (if appropriate); and
  5. Whether employee actions or failures to act contributed to the sexual abuse.

#### **XV. POST INVESTIGATION REVIEW**

- A. The Facility Director will ensure that a post investigation review of a sexual abuse incident is conducted at the conclusion of every sexual abuse investigation, unless the allegation has been determined to be unfounded. (115.286 (a))



- B. In addition to the Facility Director, the incident review team shall include input from all parties involved including any referral sources for medical and/or mental health practitioners. (115.286 (c)) Such review shall ordinarily occur within thirty (30) days of the conclusion of the investigation. (115.286 (b)) The review team shall:
  - 1. consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect or respond to sexual abuse;
  - 2. consider whether the incident or allegation was motivated by race; ethnicity; gender identity; LGBTI and/or Gender Non-Conforming identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
  - 3. examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
  - 4. assess the adequacy of staffing levels in that area during different shifts; and
  - 5. assess whether monitoring technology should be deployed or augmented to supplement supervision by staff. (115.286 (d)(1-5))
- C. All findings and recommendations for improvement will be documented on the Sexual Abuse Incident Review Report. Completed Incident reports will be forwarded to the Facility Director.
- D. The facility shall implement the recommendations for improvement or shall document reasons for not doing so. (115.286 (e))

## **XVI. ADMINISTRATIVE AND CRIMINAL INVESTIGATIONS**

- A. The Facility Director shall ensure that an administrative investigation and a referral for a criminal investigation, where appropriate, are completed for all allegations of sexual abuse and sexual harassment. (115.222 (a))
- B. The administrative investigation shall include an effort to determine whether staff actions or failures to act contributed to the abuse. Such investigations shall be documented and shall detail the following components: (115.271 (f)(1))
  - 1. Investigative facts (i.e., specific details about what actually happened);
  - 2. Physical evidence (e.g., clothes collected, medical evidence, etc.);
  - 3. Testimonial evidence (e.g., witness statements);
  - 4. Reasoning behind credibility assessments (i.e., why is the person deemed credible or not credible. Credibility shall be assessed on an individual basis and not be determined by the person's status as a resident or employee.); (115.271 (f)(2))
  - 5. Investigative findings (i.e., discovery or outcome of the investigation); and
  - 6. Whether actions and/or failures of staff to act contributed to the incident, including an explanation as to what determined the conclusion.
- C. Whenever feasible, the facility shall enter into a written Memorandum of Understanding (MOU) with the outside agency investigating agency or entity outlining the roles and responsibilities of both the facility and the investigating entity in performing sexual abuse investigations (Brownsville Police Department; (956) 548-7000; 600 E. Jackson; Brownsville, Texas 78520.

- D. When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation. (115.271 (l))
- E. The facility investigator, as delegated by the Facility Director, shall establish a relationship with local law enforcement agencies and prosecutors to develop a clear understanding of the investigative guidelines and procedures used during a criminal investigation of an alleged sexual abuse incident.
- F. Discussions with state or local law enforcement should define the roles of the facility investigator and the law enforcement investigator.
- G. Facility employees will assist the state or local law enforcement by preserving the integrity of the evidence so that successful prosecution can take place.
- H. Responsibilities of the Investigating Entity Investigations conducted by a facility employee for allegations of sexual abuse will be handled in accordance with the Code of Federal Regulations, Title 28, Part 1151.221, Evidence Protocol and Forensic Medical Examinations, as outlined below. If the facility is not responsible for investigating such allegations, the facility shall request that the responsible outside agency or entity (i.e., state or local law enforcement, contracting agency, etc) comply with these requirements. (115.221 (f))
- I. The investigating entity shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. (115.221 (a))
- J. The protocol shall be, as appropriate, adapted from or otherwise based on the most recent edition of the Department of Justice's Office on Violence against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults" or similarly comprehensive and authoritative protocols developed after 2011. (115.221 (b))
- K. The investigating entity shall offer all victims of sexual abuse access to forensic medical examinations, whether onsite or at an outside facility, without financial cost, where evidentiary or medically appropriate. Such examinations shall be performed by a SAFE or SANE where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The investigating entity shall document its efforts to provide SAFEs or SANEs. (115.221 (c))
- L. The investigating entity shall attempt to make available to the victim a victim advocate from a rape crisis center. The investigating entity may utilize a rape crisis center that is part of a government unit as long as the center is not part of the criminal justice system (such a law enforcement agency) and offers a comparable level of confidentiality as a non-governmental entity that provides similar victim services. (115.221 (d))
- M. If a rape crisis center is not available to provide victim advocate services, the investigating entity shall make available a qualified investigating entity staff member, to provide these services.
- N. The investigating entity shall document efforts to secure services from rape crisis centers.
- O. As requested by the victim, either the victim advocate, a qualified investigating entity staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory

interviews and shall provide emotional support, crisis intervention, information and referrals. (115.221 (e))

- P. In any sexual abuse or sexual harassment investigation in which the facility is the primary investigating entity, the facility shall utilize a preponderance of the evidence standard for determining whether sexual abuse or sexual harassment has taken place. (115.272)

## **XVII. INCIDENT CLASSIFICATION**

- A. Following completion of the investigation, the allegation will be classified as follows:
  - 1. Substantiated – An incident shall be classified as substantiated if the results of the Investigation determine that the allegation did occur.
  - 2. Unsubstantiated – An incident shall be classified as unsubstantiated if the results of the investigation determine that the evidence was insufficient to make a final determination of whether or not the allegation occurred.
  - 3. Unfounded – An incident shall be classified as unfounded if the results of the investigation determine the allegation did not occur.
- B. The Facility Director or designee shall determine the appropriate classification of the incident and ensure that the PREA Reporting Form is completed and maintained with the incident packet.

## **XVIII. REPORTING INVESTIGATION FINDINGS**

- A. Following an investigation into a resident's allegation of sexual misconduct suffered in a facility, the facility shall be informing the resident as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.
- B. If the facility did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the resident. (115.273 (a)(b))
- C. Following a resident's allegation that a staff member has committed sexual misconduct against the resident, the facility shall subsequently inform the resident (unless the agency has determined that the allegation is unfounded) whenever:
  - 1. The staff member is no longer posted within the resident's area;
  - 2. The staff member is no longer employed at the facility; and/or
  - 3. The facility learns that the staff member has been indicted or convicted of a charge related to sexual misconduct within the facility. (115.237 (c)(1-4))
- D. Following a resident's allegation that he or she has been involved in an incident of sexual misconduct by another resident, the facility shall subsequently inform the alleged victim whenever:
  - 1. The facility learns that the alleged abuser has been indicted or convicted on a charge related to sexual misconduct within the facility; or
  - 2. The facility learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility. (115.273 (d)(1, 2))
  - 3. All such notifications or attempted notifications shall be documented. The resident shall sign the forms, verifying that such notification has been received. The signed forms shall be kept in the Resident's file.
- E. The facility's obligation to report under this standard shall terminate if the resident is released from the facility's custody. (115.273(f))

## **XIX. DISCIPLINARY PROCEDURE**

- A. All residents found guilty of sexual abuse shall be institutionally disciplined in accordance with the facility disciplinary procedures. (115.278 (a))
- B. Because the burden of proof is substantially easier to prove in a resident's disciplinary case than in a criminal prosecution, a resident may be institutionally disciplined even though law enforcement officials decline to prosecute.
- C. Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the resident's disciplinary history, and the sanctions imposed for comparable offenses by other residents with similar histories. (115.278 (b))
- D. The disciplinary process shall consider whether a resident's mental disabilities or mental illness contributed to his/her behavior when determining what type of sanction, if any, should be imposed. (115.278 c)
- E. A resident may be disciplined for sexual conduct with an employee only upon finding that the employee did not consent to such contact. (115.278 (e))
- F. Residents who deliberately allege false claims of sexual abuse can be disciplined.
- G. The Facility Director or designee should contact law enforcement to determine if a deliberately false accusation may be referred for prosecution.
- H. The facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to require the alleged perpetrator to participate in such interventions as a condition of access to programming or other benefits. (115.278 (d))
- I. Employees shall be subject to disciplinary sanctions up to and including termination for violating facility sexual abuse or sexual harassment policies. Termination shall be the presumptive disciplinary sanction for employees who have engaged in sexual abuse. (115.276 (a)(b)) An employee will adhere to the following disciplinary sanctions for violating PREA policy.
  - a. The staff member shall receive a verbal written reprimand.
  - b. The staff member shall receive a suspension determined by the Director.
  - c. The staff member shall be terminated from employment.
  - d. All criminal findings will be referred for prosecution.
- J. Disciplinary sanctions for violations of facility sexual abuse or sexual harassment policies (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the employee's disciplinary history, and the sanctions imposed for comparable offenses by other employees with similar histories. (115.276 (c))
- K. All terminations for violations of the facility sexual abuse or sexual harassment policies, or resignations by employees 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. (115.276 (d))
- L. Any civilian or contractor who engages in sexual abuse shall be prohibited from contact with residents and shall be reported to law enforcement agencies and to any relevant licensing body. Any other violation of the facility sexual abuse or sexual harassment policies by a civilian or contractor will result in further prohibitions. (115.277 (a)(b))
- M. Once the investigation is complete, the necessity of keeping the victim and perpetrator separated will be evaluated, such that the victim and perpetrator or potential perpetrator are kept separate while housed at the facility (or until any recommended transfer is completed).

- N. The agency prohibits disciplinary action for a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred, even if an investigation does not establish evidence sufficient to substantiate the allegation. (115.278 (f)-1)
- O. The agency prohibits all sexual activity between residents. (115.278 (g)-1)
- P. If the agency prohibits all sexual activity between residents and disciplines residents for such activity, the agency deems such activity to constitute sexual abuse only if it determines that the activity is coerced. (115.278 (g)-2)

## **XX. RETALIATION**

- A. Retaliation against residents, employees, or other parties for reporting sexual misconduct will not be tolerated. Those who retaliate may face disciplinary action up to and including unsuccessful discharge for residents and dismissal for employees. Protection measures by the FACILITY include but are not limited to the following:
  - 1. Housing changes or transfer for resident victims or abuser;
  - 2. Removal of alleged staff or resident abusers from contact with victims;
  - 3. Emotional support services will be provided for residents or staff who fear retaliation for reporting sexual misconduct or for cooperating with investigations;
  - 4. Monitor the conduct and treatment of residents or staff who reported the sexual misconduct, any individual expressing a fear of retaliation, and of residents who were reported to have suffered sexual misconduct to see if there are changes that may suggest possible retaliation for at least 90 days;
  - 5. Promptly act to remedy any such retaliation, included but not limited to:
    - A. Resident disciplinary reports;
    - B. Housing changes;
    - C. Program changes;
    - D. Negative performance reviews of staff; and/or
    - E. Reassignment of staff.
  - 6. In the case of residents, such monitoring shall also include periodic status checks.
  - 7. Continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need; and
  - 8. The obligation to monitor shall terminate if the allegation is determined to be unfounded.

## **XXI. SEXUAL MISCONDUCT GRIEVANCE PROCESS**

- A. There is no time limit on when a resident may submit a grievance regarding an allegation of sexual misconduct or risk of imminent sexual misconduct.
- B. No formal grievance process is required nor is the resident required to attempt to resolve the incident with staff regarding an allegation of sexual misconduct.
- C. Nothing in this policy shall restrict the facility's ability to defend against a lawsuit filed by a resident on the grounds that the application statute of limitations has expired.
- D. The agency shall ensure:
  - 1. A resident who alleges sexual misconduct may submit a grievance without submitting it to a staff member who is the subject of the complaint;
  - 2. Such grievance is not referred to a staff member who is the subject of the complaint;
  - 3. The facility shall issue a final decision on the merits of any portion of a grievance alleging sexual misconduct within 90 days of the initial filing of the grievance;

4. Computation of the 90-day time period shall not include time consumed by the residents in preparing any appeal;
5. The agency 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 facility shall notify the resident in writing of any such extension and provide a date by which a decision will be made;
6. At any level of the grievance process, including any properly noticed extension, the resident may consider the absence of a response to be a denial at any level;
7. Third parties, including fellow residents, staff members, family members, attorneys, and outside advocates, shall be permitted to assist residents in filing requests for a grievance relating to allegations of sexual misconduct, and shall also be permitted to file such requests on behalf of residents;
8. If a third-party file such a request on behalf of a resident, the facility 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 grievance process; and
9. If the resident declines to have the request processed on his or her behalf, the agency shall document the resident's decision.
10. The agency has a policy and established procedures for filing an emergency grievance alleging that a resident is subject to a substantial risk of imminent sexual abuse. (115.252 (f)-1)
11. After receiving an emergency grievance alleging a resident is subject to a substantial risk of imminent sexual abuse, the agency shall immediately 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 agency decision within 5 calendar days. The initial response and final agency decision shall document the agency's determination whether the resident is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance. (115.252 (f) 2)

## **XXII. DATA COLLECTION AND REVIEW**

- A. Within 30 days of the conclusion of the investigation, the PREA Team will convene a review team who shall:
  1. Consider whether the allegation or investigation indicates a need to change policy or practice;
  2. Where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.
  3. Consider whether the incident or allegation was motivated by race, ethnicity, gender identity, lesbian, gay, bi-sexual, transgender, intersex identification, status or perceived status, gang affiliation, or otherwise caused by other group dynamics at the facility;
  4. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
  5. Assess the adequacy of staffing levels in that area during different shifts;
  6. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
  7. Compile a report of the findings to include implementing recommendations for improvement or document reasons for not doing so. (115.288 (a) 1)

- B. The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.
- C. The agency shall collect, maintain, and review accurate uniformed data for every allegation of sexual misconduct using the Survey of Sexual Violence by the Department of Justice. This data should be compiled annually and maintained for a minimum of ten years from the date after its initial collection. (115.287 (a) / (c) 1)
- D. Upon receiving an allegation that a resident was sexually abused while confined at another facility, the head of the facility that received the allegation shall document and notify the head of the facility or appropriate office of the agency within seventy-two hours where the alleged abuse occurred.
- E. The facility shall ensure that data collected pursuant to 115.287 are securely retained. (115.289)
- F. The Facility Director shall make all aggregated sexual abuse data readily available to the public at least annually through its website and all data shall not have any personal identifiers. The facility is currently in the process of creating a website. (115.289)
- G. The facility PREA Coordinator shall maintain sexual abuse data collected for at least 10 years after the date of the initial collection.
- H. The facility PREA Coordinator shall destroy all data collected after the 10 year anniversary of the initial collection. (115.289 (c) 2)
- I. The agency reviews data collected and aggregated pursuant to §115.287 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, response policies, and training, including: Identifying problem areas; Taking corrective action on an ongoing basis; and Preparing an annual report of its findings from its data review and any corrective actions for each facility, as well as the agency as a whole. (115.288 (a)-1)
- J. The annual report includes a comparison of the current year's data and corrective actions with those from prior years. (115.288 (b)-1)
- K. The annual report provides an assessment of the agency's progress in addressing sexual abuse. (115.288 (b)-2)
- L. The agency makes its annual report readily available to the public at least annually through its website which is currently in the process. (115.288 (c)-1)
- M. Upon request, the agency shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.
- N. The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.

### **XXIII. RESIDENT ACCESS TO OUTSIDE CONFIDENTIAL SUPPORT SERVICES.**

- A. The facility provides residents with access to outside victim advocates for emotional support services related to sexual abuse by: Friendship of Women. (115.253 (a) 1)
- B. The facility informs residents, prior to giving them access to outside support services, of the mandatory reporting rules governing privacy, confidentiality, and/or privilege that apply to disclosures of sexual abuse made to outside victim advocates, including any limits to confidentiality under relevant federal, state, or local law. (115.253 (b) 2)
- C. The agency or facility maintains memoranda of understanding (MOUs) or other agreements with community service providers that are able to provide residents with emotional support services related to sexual abuse. (115.253 (c) 1)

#### **XXIV. MEDICAL AND MENTAL HEALTH CARE**

- A. Resident victims of sexual abuse receive timely, unimpeded access to emergency medical treatment and crisis intervention services. (115.282 (a) 1)
- B. The nature and scope of such services are determined by medical and mental health practitioners according to their professional judgment. (115.282 (a)-2)
- C. Medical and mental health staff will maintain secondary materials documenting The timeliness of emergency medical treatment and crisis intervention services that were provided; The appropriate response by non-health staff in the event health staff are not present at the time the incident is reported; and the provision of appropriate and timely information and services concerning contraception and sexually transmitted infection prophylaxis. (115.282(a)-3)
- D. Resident victims of sexual abuse while incarcerated are offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate. (115.282 (c)-1)
- E. Treatment services are provided to every victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. (115.282(d)-1)
- F. The facility does not offer medical and mental health evaluation and, as appropriate, treatment to all residents who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility. (115.283 (a)-1)
- G. Resident victims of sexual abuse while incarcerated are not offered tests for sexually transmitted infections as medically appropriate. The facility does not attempt to conduct a mental health evaluation of all known resident-on-resident abusers within 60 days of learning of such abuse history and offers treatment when deemed appropriate by mental health practitioners.

#### **XXV. ONGOING MEDICAL AND MENTAL HEALTH CARE**

- A. The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all residents who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.
- B. 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.
- C. The facility shall provide such victims with medical and mental health services consistent with the community level of care.
- D. Resident victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.
- E. If pregnancy results from conduct specified in paragraph (d) of this section, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.
- F. Resident victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.
- G. 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.
- H. The facility shall attempt to conduct a mental health evaluation of all known resident-on-resident abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners.



## **XXVI. AUDITS**

- A. Information will be made available to TDCJ-CJAD as requested for audit purposes. (115.401-405)

R01-07-19

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