
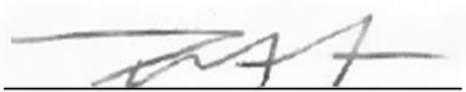


POLICY TITLE: SEXUAL MISCONDUCT (PREA AND MAINE STATUTES) ADMINISTRATIVE SANCTIONS AND GRIEVANCES.		PAGE 1 OF 8
POLICY NUMBER: 6.11.4		
CHAPTER 6: VICTIM SERVICES		
	STATE of MAINE DEPARTMENT of CORRECTIONS Approved by Commissioner: 	PROFESSIONAL STANDARDS: See Section VIII
EFFECTIVE DATE: May 19, 2008	LATEST REVISION: March 30, 2021	CHECK ONLY IF APA []

I. AUTHORITY

The Commissioner of Corrections adopts this policy pursuant to the authority contained in 34-A M.R.S.A. Section 1403.

II. APPLICABILITY

Entire Department of Corrections

III. POLICY

5-ACI-3D-14 & 4-JCF-3D-07

It is the policy of the Department to impose appropriate sanctions and take other appropriate actions in response to sexual misconduct and sexual harassment.

It is also the policy of the Department to provide a special process by which adult and juvenile residents may grieve sexual misconduct constituting a PREA violation or a violation of Maine criminal law. Adult and juvenile community corrections clients may grieve such sexual misconduct using the regular grievance process.

IV. DEFINITIONS

1. Staff - for purposes of this policy, Department employee or a person in a facility providing services to an adult resident or a juvenile resident by agreement with or under contract with the Department (e.g., facility health care staff), but not including a volunteer, student intern, delivery person, etc.
2. Sexual misconduct - See Policy 6.11, Sexual Misconduct (PREA and Maine Statutes) for an explanation of what constitutes sexual misconduct within the Department of Corrections.

V. CONTENTS

- Procedure A: Sanctions and Other Actions in Response to Sexual Misconduct or Sexual Harassment by a Department Employee
- Procedure B: Sanctions and Other Actions in Response to Sexual Misconduct or Sexual Harassment by Other Staff, Volunteer or Student Intern
- Procedure C: Sanctions and Other Actions in Response to Sexual Misconduct or Sexual Harassment by Adult or Juvenile Resident
- Procedure D: Adult and Juvenile Resident Grievances about Sexual Misconduct

VI. ATTACHMENTS

None

VII. PROCEDURES

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

1. The burden of proof for determining whether there is substantiated an allegation concerning sexual misconduct, sexual harassment, or another violation of a departmental sexual misconduct policy by a Department employee is preponderance of the evidence.
2. The Chief Administrative Officer, or designee, or the Regional Correctional Administrator, or designee, or other designee of the Commissioner, as applicable, shall ensure that appropriate steps are taken in response to a substantiated allegation of a violation.
3. Disciplinary sanctions for a violation of a departmental sexual misconduct policy by a Department employee shall be commensurate with the nature and circumstances of the employee's act or failure to act, the employee's disciplinary history, and the sanctions imposed for comparable violations by other employees with similar histories, in accordance with applicable collective bargaining agreements or civil service rules.
4. If the violation is that a Department employee engaged in, attempted, threatened, or requested an act constituting sexual misconduct, termination of the employment of the employee shall be the presumptive disciplinary sanction.
5. Termination of employment for a violation of a departmental sexual misconduct policy, or the resignation by a Department employee who would have been terminated if not for his or her resignation, shall be reported to the appropriate criminal prosecuting authority, i.e., the Attorney General's office or a District Attorney's office, unless the activity was clearly not criminal, and to any relevant licensing or certifying bodies.

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

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

1. The standard for taking action against staff person who is not a Department employee or against a person who is a volunteer or student intern is the best interests of the Department, as determined in the complete discretion of the appropriate departmental official.
2. The Chief Administrative Officer, or designee, or the Regional Correctional Administrator, or designee, or other designee of the Commissioner, as applicable, shall ensure that appropriate steps are taken in response to a violation.
3. Actions taken for a violation of departmental sexual misconduct policy by a staff person who is not a Department employee or by a person who is a volunteer or student intern shall be commensurate with the nature and circumstances of the person’s act or failure to act, the person’s history, and the actions taken for comparable violations by other persons with similar histories, or as otherwise determined appropriate in the complete discretion of the appropriate departmental official.
4. If the violation is that such a person engaged in, attempted, threatened, or requested an act constituting sexual misconduct, barring that person from Department property and from contact with residents and, if possible, community corrections clients shall be the presumptive action.
5. The barring of such a person for a violation of a departmental sexual misconduct policy shall be reported to the appropriate criminal prosecuting authority, i.e., the Attorney General’s office or a District Attorney’s office, unless the activity was clearly not criminal, to relevant licensing and certifying bodies, and, if determined appropriate after consultation with the Department’s legal representative in the Attorney General’s office, to the person’s employer or entity with which the person is affiliated, if any.
6. Appropriate action may be taken against a staff person who is not a Department employee or against a person who is a volunteer or student intern for knowingly making or soliciting a false report of sexual misconduct, sexual harassment, or another violation of a departmental sexual misconduct policy or otherwise

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

Procedure C: Sanctions and Other Actions in Response to Sexual Misconduct or Sexual Harassment by Adult or Juvenile Resident

1. The burden of proof for determining whether there is substantiated, for disciplinary purposes, an allegation concerning sexual misconduct, sexual harassment, or another violation of a departmental sexual misconduct policy by an adult or juvenile resident is preponderance of the evidence.
2. The standard for taking other action against a resident for a violation, including, but not limited to, as applicable, placement on administrative status, transfer to another facility, change in housing or program, change in custody, and drop in privilege level, is as set out in the applicable policy.
3. The Chief Administrative Officer, or designee, shall ensure that appropriate steps are taken in response to a violation.
4. Disciplinary sanctions for a violation of a departmental sexual misconduct policy by a resident shall be commensurate with the nature and circumstances of the resident's act, the resident's disciplinary history, and the sanctions imposed for comparable violations by other residents with similar histories, in accordance with the applicable Department disciplinary policy.
5. A resident may not be disciplined for sexual activity with a staff person, volunteer, or student intern, except upon a finding that the other person did not consent to such activity.
6. A resident may be disciplined for knowingly making or soliciting a false report of sexual misconduct, sexual harassment, or another violation of a departmental sexual misconduct policy or otherwise knowingly making or soliciting a false statement related to a report of sexual misconduct, sexual harassment, or another violation of a departmental sexual misconduct policy. A statement made or solicited in good faith shall not constitute making a false statement, even if an investigation does not establish evidence sufficient to substantiate the statement.

Procedure D: Adult and Juvenile Resident Grievances about Sexual Misconduct

1. An adult or juvenile resident who is alleging that he or she has been a victim of sexual misconduct constituting a PREA violation or a violation of Maine criminal law by staff or a victim of sexual misconduct constituting a PREA violation or a violation of Maine criminal law by a volunteer, student intern, or another resident

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for which he or she believes staff is responsible, in addition to, or as an alternative to, making a report of sexual misconduct, may file a grievance about the alleged sexual misconduct with the facility Grievance Review Officer as set out below. It is anticipated that prior to filing a lawsuit, a resident will attempt to resolve his or her allegation by using this grievance process.

2. The resident may be assisted in filing the grievance by any staff or by any other person with whom the resident is permitted to have contact. Such a person may also file the grievance on behalf of the resident, provided that the resident consents to the filing. If there is any question about consent, the Grievance Review Officer may personally speak to the resident to ascertain whether he or she consents to the filing of the grievance on his or her behalf. If he or she does not consent, the Grievance Review Officer shall document that fact and shall not respond to the grievance.
3. A parent or legal guardian of a juvenile resident who is a minor shall be allowed to file a grievance and grievance appeals on behalf of the resident regarding an allegation of sexual misconduct. Such a grievance shall not be conditioned upon the resident agreeing to have the grievance or grievance appeals filed on his or her behalf.
4. The grievance, which may be submitted by a letter or other writing, must be clearly marked as a grievance about sexual misconduct. It must be addressed to the facility Grievance Review Officer and may be submitted in a sealed envelope or by another means that does not reveal its content or subject matter to a casual observer. If the facility Grievance Review Officer is the subject of the grievance, it must be submitted to the Chief Administrative Officer, or designee.
5. No subject other than sexual misconduct constituting a PREA violation or a violation of Maine criminal law may be brought up in the grievance. The grievance must describe the nature of the alleged sexual misconduct and must name or sufficiently describe the perpetrator of the alleged sexual misconduct. If the alleged perpetrator is not staff, the grievance must explain the basis for believing that staff is responsible for the alleged sexual misconduct and must name or sufficiently describe the staff believed responsible.
6. If the information provided is not sufficient, the Grievance Review Officer shall immediately return the grievance to the resident (or to the parent or legal guardian of a juvenile resident, if applicable), along with a note outlining what is missing. The Grievance Review Officer shall make a copy of the grievance and the note for the file. The missing information must be provided within thirty (30) days of the date the Grievance Review Officer signs the note and sends out the note and the grievance. Sexual misconduct alleged in a grievance that is dismissed for failure to supply the missing information within this timeline may be the subject of a later grievance.

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7. There is no time limit on the filing of the grievance, and there is no requirement that the resident attempt an informal resolution of the grievance. The investigation and other steps in the formal resolution of the grievance must be undertaken only by those staff not named or described in the grievance as a perpetrator or as a person responsible for alleged sexual misconduct by another.
8. If the matter being grieved might also be the subject of or otherwise involve a criminal investigation, the Grievance Review Officer shall, as appropriate, contact the Department's legal representative in the Attorney General's Office for instruction as to how to respond to the grievance. The Grievance Review Officer shall not inform the resident (or the parent or legal guardian of a juvenile resident, if applicable) that the subject has been referred to the Attorney General's Office and shall not provide any other information to the resident prior to receiving this instruction.
9. The Grievance Review Officer shall send to the resident (or to the parent or legal guardian of a juvenile resident, if applicable) a response to the grievance, in writing, within thirty (30) days of its receipt. If a response cannot be made within the thirty (30) days, the Grievance Review Officer shall so advise the resident (or the parent or legal guardian of a juvenile resident, if applicable) in writing and shall indicate when the response will be made, which must not be later than an additional ten (10) days.
10. If the resident (or the parent or legal guardian of a juvenile resident, if applicable) is not satisfied with the response from the Grievance Review Officer, he or she may file a clearly marked appeal, by letter or other writing, to the facility Chief Administrative Officer within fifteen (15) days of the date the Grievance Review Officer signs and sends out the response. The resident must file the grievance appeal on his or her own behalf except as set out above for a juvenile resident who is a minor.
11. The facility Chief Administrative Officer, or designee, shall send to the resident (or to the parent or legal guardian of a juvenile resident, if applicable) a response to the appeal, in writing, within thirty (30) days of its receipt. If a response cannot be made within the thirty (30) days, the facility Chief Administrative Officer, or designee, shall so advise the resident (or the parent or legal guardian of a juvenile resident, if applicable) in writing and shall indicate when the response will be made, which must not be later than an additional ten (10) days.
12. If the resident (or the parent or legal guardian of a juvenile resident, if applicable) is not satisfied with the response from the facility Chief Administrative Officer, or designee, he or she may file a clearly marked appeal, by letter or other writing, to the Commissioner within fifteen (15) days of the date the facility Chief Administrative Officer, or designee, signs and sends out the response. The resident must file the grievance appeal on his or her own behalf except as set out above for a juvenile resident who is a minor.

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13. The Commissioner, or designee, shall send to the resident (or to the parent or legal guardian of a juvenile resident, if applicable) a response to the appeal, in writing, within thirty (30) days of its receipt. If a response cannot be made within the thirty (30) days, the Commissioner, or designee, shall so advise the resident (or the parent or legal guardian of a juvenile resident, if applicable) in writing and shall indicate when the response will be made, which must not be later than an additional ten (10) days.
14. If the grievance contains a claim that the resident is at a substantial risk of being a victim of imminent sexual misconduct, the grievance must be clearly marked as an emergency grievance. If the facts alleged support the claim, the Grievance Review Officer shall immediately notify and forward the claim to the Chief Administrative Officer, or designee, for a determination as to whether the resident is subject to such a risk. If the Chief Administrative Officer, or designee, determines there is such a risk, he or she shall take immediate preventative or remedial action. The Chief Administrative Officer, or designee, shall make an initial written response to the claim within forty-eight (48) hours of its receipt and a final written response to the claim within five (5) days of its receipt. The rest of the grievance shall be processed in the ordinary way.
15. If the Grievance Review Officer otherwise learns that a resident is at a substantial risk of being a victim of imminent sexual misconduct, the Grievance Review Officer shall immediately notify the Chief Administrative Officer, or designee, for a determination as to whether the resident is subject to such a risk. If the Chief Administrative Officer, or designee, determines there is such a risk, he or she shall take immediate preventative or remedial action.
16. No resident or other person using this grievance process in good faith shall be subjected to retaliation in the form of an adverse action or the threat of an adverse action for using this grievance process. However, a resident may have his or her access to this grievance process suspended and/or may be subjected to disciplinary action for abuse of this grievance process.
17. A resident may file a grievance about any other grievable matter, including, but limited to, sexual harassment; an act that is a violation of Department policy but does not constitute a PREA violation or a violation of Maine criminal law; and failure to report or otherwise take appropriate steps in response to sexual misconduct or sexual harassment, deterring reporting, and retaliation, only by using the applicable regular resident grievance process.

VIII. PROFESSIONAL STANDARDS

ACA

- 5-ACI-3D-14** Written policy, procedure, and practice ensure that sexual conduct between staff and inmates, volunteers, or contract personnel and inmates, regardless of consensual status, is prohibited and subject to administrative and criminal disciplinary sanctions.

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4-JCF-3D-07 Sexual conduct between staff and juveniles, volunteers, or contract personnel and juveniles, regardless of consensual status, is prohibited and subject to administrative and criminal disciplinary sanctions.

PREA:

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

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