
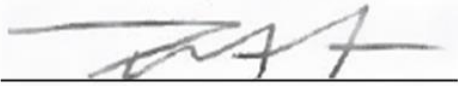


<b>POLICY TITLE: SEXUAL MISCONDUCT (PREA AND MAINE STATUTES), GENERAL</b>		<b>PAGE 1 OF 8</b>
<b>POLICY NUMBER: 6.11</b>		
<b>CHAPTER 6: VICTIM SERVICES</b>		
	<b>STATE of MAINE</b> <b>DEPARTMENT of CORRECTIONS</b> <b>Approved by Commissioner:</b> 	<b>PROFESSIONAL STANDARDS:</b>  <b>See Section VIII</b>
	<b>EFFECTIVE DATE:</b> <b>May 19, 2008</b>	<b>LATEST REVISION:</b> <b>March 16, 2021</b>

**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-10 & 4-JCF-3D-07**

In accordance with the United States Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. Sections 15601 *et seq.*, and 17-A M.R.S.A Sections 251, 253, 254, 255-A, 260, and 760, it is the policy of the Department of Corrections to prohibit staff, volunteers, and student interns from engaging in sexual misconduct with an adult resident, juvenile resident, adult community corrections client, or juvenile community corrections client or sexual harassment of any of these persons. It is also the policy of the Department to prohibit any resident from engaging in sexual misconduct with another resident. It is also the policy of the Department to require the reporting of any sexual misconduct or sexual harassment or suspicion of either.

Any staff, volunteer, or student intern who engages in or threatens to engage in, fails to report, or otherwise fails to take appropriate steps in response to sexual misconduct with a resident or community corrections client or sexual harassment of a resident or community corrections client by any staff, volunteer, or student intern is subject to appropriate action, up to possible criminal prosecution. Any staff, volunteer, or student intern who fails to report or otherwise fails to take appropriate steps in response to sexual misconduct between residents is subject to appropriate action, up to possible criminal prosecution.

The Department has zero tolerance toward all forms of sexual misconduct or sexual harassment, regardless of whether there is a violation of federal or state law.

#### 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.

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- Procedure A: Sexual Misconduct and Sexual Harassment, General  
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#### VII. PROCEDURES

##### **Procedure A: Sexual Misconduct and Sexual Harassment, General**

1. This policy and related policies implement the U.S. Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. Sections 15601 *et seq.*, and the Maine Criminal Code, 17-A M.R.S.A Sections 251, 253, 254, 255-A, 260, and 760, by, among other things, prohibiting sexual misconduct and sexual harassment toward adult or juvenile residents and adult or juvenile community corrections clients and requiring the reporting of any such sexual misconduct and sexual harassment.
2. All departmental sexual misconduct policies shall be posted on the Department's website.
3. The following constitute PREA violations by staff, volunteers, or student interns:
  - a. Staff, Volunteer, or Student Intern Sexual Misconduct - Any act of a sexual nature directed toward an adult or juvenile resident by staff, volunteer, or student intern. Sexual relationships of a romantic nature with a resident is included in this definition. Prohibited acts, whether consensual or nonconsensual, include: contact with or intentional touching of, directly or through clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks that is unrelated to official duties or with the intent to abuse, arouse, or gratify sexual desire. It includes such acts regardless of whether the contact or touching is by a body part or through the use of an instrument or animal and regardless of whether there is any penetration. PREA prohibits completed, attempted, threatened, or requested sexual acts. Also prohibited is indecent exposure, invasion of the privacy of an unclothed or partially clothed resident, or voyeurism for reasons unrelated to official duties or for the purpose of arousing or gratifying sexual desire.
  - b. Staff, Volunteer, or Intern Sexual Harassment - Repeated verbal statements, comments, or gestures of a sexual nature directed to a resident by staff, volunteer, or student intern. Prohibited acts, whether or

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not welcome, include: demeaning references to a gender, sexually suggestive or derogatory comments about body or clothing, or repeated obscene language or gestures.

4. The following constitute PREA violations by adult or juvenile residents:
  - a. Nonconsensual Sexual Acts - Contact between the penis and the vulva or the penis and the anus, with penetration, however slight; contact between the mouth and the penis, vulva or anus; or penetration of the anal or genital opening of another resident, however slight, by a hand, finger, object, or other instrument. PREA prohibits completed, attempted, threatened, or requested sexual acts.
  - b. Abusive (Nonconsensual) Sexual Contact - Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another resident, without penetration. PREA prohibits completed, attempted, threatened, or requested sexual contact.
  - c. Sexual Harassment - Repeated or unwanted 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.
  
5. The following constitute violations of Maine criminal law by staff with supervisory or disciplinary authority over an adult or juvenile resident or adult or juvenile community corrections client (regardless of whether they also constitute PREA violations):
  - a. Gross Sexual Assault - A sexual act directed toward a resident or community corrections client by staff with supervisory or disciplinary authority over the person. Prohibited sexual acts, whether consensual or nonconsensual, include: any act between person involving direct physical contact between the genitals of one and the mouth or anus of the other or direct physical contact between the genitals of one and the genitals of the other; any act between a person and an animal being used by another person involving direct physical contact between the genitals of one and the mouth or anus of the other or direct physical contact between the genitals of one and the genitals of the other; and direct physical contact between the genitals or anus of one person and an instrument being used by another person for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact. It includes such acts regardless of whether there is any penetration. Maine criminal law prohibits completed or attempted sexual acts, as well as solicitation, conspiracy, and participation as an accessory.
  - b. Unlawful Sexual Contact - Any other intentional touching, consensual or nonconsensual, of the genitals or anus, directly or through clothing, directed toward a resident or community corrections client by staff with supervisory or disciplinary authority over the person for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact. It includes such contact regardless of whether there is any penetration. Maine criminal law prohibits completed

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or attempted unlawful sexual contact, as well as solicitation, conspiracy, and participation as an accessory.

- c. Unlawful Sexual Touching - Any intentional touching, consensual or nonconsensual, of the groin, breast, inner thigh, or buttocks, directly or through clothing, directed toward a resident or community corrections client by staff with supervisory or disciplinary authority over the person for the purpose of arousing or gratifying sexual desire. Maine criminal law prohibits completed or attempted unlawful sexual touching, as well as solicitation, conspiracy, and participation as an accessory.
6. The following constitute violations of Maine criminal law by staff without supervisory or disciplinary authority over a resident or community corrections client, as well as by volunteers or student interns (regardless of whether they also constitute PREA violations): sexual act, sexual contact, or sexual touching as defined above, provided it is nonconsensual. Maine criminal law prohibits completed or attempted gross sexual assault, unlawful sexual contact, or unlawful sexual touching, as well as solicitation, conspiracy, and participation as an accessory.
  7. The following constitute violations of Maine criminal law by residents (regardless of whether they also constitute PREA violations): sexual act, sexual contact, or sexual touching as defined above, provided it is nonconsensual. Maine criminal law prohibits completed or attempted gross sexual assault, unlawful sexual contact, or unlawful sexual touching, as well as solicitation, conspiracy, and participation as an accessory.
  8. The following constitute violations of Maine criminal law by staff, volunteers, student interns, or residents (regardless of whether they also constitute PREA violations): indecent conduct (exposure of genitals with the intent it be seen by another person under circumstances that the person knows are likely to cause affront or alarm); and invasion of privacy (installing or using a device to observe, hear, photograph, or record any other person, without that person's consent, in a bathroom, dressing or changing room, shower, or other place where the person can reasonably expect to be free from surveillance for reasons unrelated to official duties). Maine criminal law prohibits completed or attempted indecent conduct or invasion of privacy, as well as solicitation, conspiracy, and participation as an accessory.
  9. All of the above acts are violations of this Department policy, regardless of whether they are consensual or nonconsensual. In addition to the above, the following constitute violations of this policy by staff, volunteers, or student interns, regardless of whether they are consensual or nonconsensual: any act done for the purpose of arousing or gratifying sexual desire, including, but not limited to, exposure of buttocks or of female breasts; kissing; and romantic acts, sexual and nonsexual, directed toward a resident or community corrections clients. Department policy prohibits completed or attempted violations, as well as solicitation, conspiracy, and participation as an accessory.

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10. All of the above acts are violations of this Department policy, regardless of whether they are consensual or nonconsensual. In addition to the above, the following constitute violations of Department policy by residents: consensual sexual act, sexual contact, or sexual touching. The following also constitute violations of Department policy by residents, regardless of whether they are consensual or nonconsensual: any act done for the purpose of arousing or gratifying sexual desire, including, but not limited to, exposure of buttocks or of female breasts; kissing; and romantic acts, sexual and nonsexual, directed toward another resident. Department policy prohibits completed or attempted violations, as well as solicitation, conspiracy, and participation as an accessory.
11. Although violations of Maine criminal law by adult or juvenile community corrections clients are not violations of PREA and are not violations of this Department policy, they do constitute violations of supervision conditions, and adult probation officers and juvenile community corrections officers are expected to take action in response in accordance with other, applicable Department policies.
12. Each Chief Administrative Officer, or designee, and Regional Correctional Administrator, or designee, shall ensure that all staff, volunteers, and student interns are informed and acknowledge that sexual misconduct and sexual harassment between residents is prohibited, that sexual misconduct with and sexual harassment of a resident or community corrections client is prohibited, that a claim of consent shall not be accepted as an excuse for engaging in any form of sexual misconduct, and that a resident or community corrections client has a right to report if sexual misconduct or sexual harassment occurs.

**Procedure B: Department PREA Coordinator and Facility PREA Monitors**

1. The Department PREA Coordinator shall develop, implement, and oversee the Department's efforts to comply with PREA standards in all its adult and juvenile facilities and shall receive reports and track responses to reports of sexual misconduct elsewhere in the Department.
2. Duties of this position include, but are not limited to:
  - a. serving as the primary contact and resource for the Department on PREA related inquiries;
  - b. collaborating with the Department's Policy Development Coordinator to develop policy and procedures in compliance with federal and state statutes, national standards, and Departmental goals concerning PREA issues;
  - c. receiving reports of complaints and alleged incidents of PREA violations from the facility PREA monitors;
  - d. reviewing PREA investigations as well as the resolution of complaints and alleged incidents;

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- e. assisting in the development, implementation, and evaluation of all PREA related training;
  - f. collaborating with the Department's Policy Development Coordinator to provide updates regarding law, policy, or services related to PREA;
  - g. collaborating with the Department's Director of Operations to ensure that all new contracts and contract renewals for the confinement of adult or juvenile residents outside the Department includes the other facility's obligation to adopt and comply with PREA Standards and monitoring by the Department for compliance;
  - h. collaborating with the Department's Director of Operations to ensure that when a new facility is designed or an existing facility is expanded or modified or facility monitoring technology is installed or updated, consideration is given to ways of enhancing protection of residents from sexual misconduct and harassment;
  - i. collaborating with the Department's Director of Health Services and Director of Training to ensure that all facility health care staff have been trained in the prevention of, detection of, preservation of evidence of, response to, and reporting of sexual misconduct; and
  - j. maintaining a memorandum of understanding with the Maine Coalition Against Sexual Assault for the provision of support services to residents.
3. Each facility's Chief Administrative Officer shall designate a PREA monitor to coordinate the facility's compliance with PREA standards.
4. The facility PREA monitor's duties shall also include, but are not limited to, the following:
- a. ensuring that all residents are screened for risk of sexual victimization or abusiveness, in accordance with the timeframes set out in departmental policy;
  - b. ensuring that all residents are provided timely, comprehensive education, through written materials and/or video, regarding their rights to be free from sexual misconduct and sexual harassment and to be free from retaliation for reporting such incidents, as well as departmental policies for reporting and responding to such incidents. This education shall also include prevention, self-protection, and the availability of treatment and counseling;
  - c. ensuring that key information is continuously and readily available to residents through posters, resident handbooks, or other written materials;
  - d. reporting or ensuring the reporting of all PREA related complaints and alleged incidents to the PREA Coordinator within twenty-four (24) hours of the complaint or allegation;
  - e. working with the facility's correctional investigative officer (detective) and other staff who have received specialized training in handling sexual misconduct allegations to ensure that all complaints or allegations of PREA violations are appropriately investigated;

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- f. submitting a detailed report to the PREA Coordinator within three (3) weeks from the date of the complaint or allegation, to include a thorough description of the alleged incident, as well as any investigative steps taken;
- g. tracking each complaint or allegation of sexual misconduct on an ongoing basis using the PREA Supervisor and Monitor Checklist (Attachment A);
- h. ensuring that unannounced rounds to identify and deter staff sexual misconduct and sexual harassment are conducted by supervisory staff. These rounds shall be conducted on all shifts and shall be documented in unit logbooks. The PREA monitor shall ensure that staff are not alerted that these rounds are occurring;
- i. assisting in review and data collection relating to alleged incidents of sexual misconduct;
- j. developing and, as necessary, revising a plan, to be reviewed at least once a year with the PREA Coordinator, to protect residents against sexual misconduct. When developing the facility's plan, the following shall be considered:
  - 1) generally accepted correctional practices;
  - 2) any findings of inadequacy by courts or by federal or state investigative or oversight agencies;
  - 3) all components of the facility's physical plant (including "blind-spots" or areas where staff or residents may be isolated) and availability of video monitoring;
  - 4) the composition of the resident population;
  - 5) the number and placement of staff, including supervisory staff;
  - 6) facility programs occurring on a particular shift;
  - 7) any applicable state laws, regulations, or standards; and
  - 8) the prevalence of substantiated and unsubstantiated incidents of sexual misconduct; and any other relevant factors.
- k. developing a written facility plan to coordinate actions taken in response to an incident of sexual misconduct or sexual harassment among security staff, first responders, medical and mental health staff, the correctional investigative officer (detective) and other staff who have received specialized training in handling sexual misconduct allegations, and facility management; and
- l. monitoring compliance with the plans to ensure that they are not deviated from except in emergencies and to ensure that the reasons for any deviations are documented.

## VIII. PROFESSIONAL STANDARDS

### ACA

- 5-ACI-3D-10** 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:**

- § 115.11 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator**
- § 115.12 Contracting with other entities for the confinement of inmates**
- § 115.13 Supervision and monitoring**
- § 115.15 Limits to cross-gender viewing and searches**
- § 115.16 Inmates with disabilities and inmates who are limited English proficient**
- § 115.18 Upgrades to facilities and technologies**
- § 115.22 Policies to ensure referrals of allegations for investigations**
- § 115.31 Employee training**
- § 115.33 Inmate education**
- § 115.41 Screening for risk of victimization and abusiveness**
- § 115.42 Use of screening information**
- § 115.43 Protective custody**
- § 115.51 Inmate reporting**
- § 115.61 Staff and agency reporting duties**
- § 115.62 Agency protection duties**
- § 115.66 Preservation of ability to protect inmates from contact with abusers**
- § 115.67 Agency protection against retaliation**
- § 115.81 Medical and mental health screenings; history of sexual abuse**
- § 115.82 Access to emergency medical and mental health services**
- § 115.86 Sexual abuse incident reviews**
- § 115.87 Data collection**
- § 115.88 Data review for corrective action**
- § 115.89 Data storage, publication, and destruction**
- § 115.501 State determination and certification of full compliance**

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