



STATE OF NEVADA  DEPARTMENT OF CORRECTIONS	PRISON RAPE ELIMINATION ACT (PREA) ADMINISTRATIVE REGULATION 421 MANUAL	
	ORIGINAL EFFECTIVE DATE: MAY 18, 2023	NEW EFFECTIVE DATE: FEBRUARY 8, 2024
	Approved by: Director James Dzurenda 	
	Owner: PREA Management Division	

**Background**

The Prison Rape Elimination Act (PREA) of 2003 was enacted to address sexual abuse and sexual harassment of persons in the custody of United States correctional agencies. PREA supports preventing, detecting, and responding to sexual abuse and sexual harassment within confinement settings. To achieve the goals of PREA, the National Prison Rape Elimination Commission developed a set of standards, which were published by the US Attorney General and became effective in 2012. All confinement facilities are required to comply with the standards and implement them accordingly.

**Purpose**

The Nevada Department of Corrections Prison Rape Elimination Act (PREA) Manual serves as a guide to implement policy and establish procedures outlined in: Administrative Regulation (AR) 421 Prison Rape Elimination Act, 42 U.S.C.A. §15601. Prison Rape Elimination Act 2003, and 28 C.F.R. § Part §115, et seq. National Standards to Prevent, Detect and Respond to Prison Rape.

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## General Definitions

*Agency* means the unit of a State, local, corporate, or nonprofit authority, or of the Department of Justice, with direct responsibility for the operation of any institution or facility that confines offenders, including the implementation of policy as set by the governing, corporate, or nonprofit authority.

*Appointing Authority* means the principal official of an agency.

*Contractor* means a person who provides services on a recurring basis pursuant to a contractual agreement with the Department.

*Department* means the Nevada Department of Corrections.

*Direct staff supervision* means that security staff are in the same room with, and within reasonable hearing distance of, the offender.

*Employee* means a person who works directly for the Department, institution, or facility.

*Exigent circumstances* mean any set of temporary and unforeseen circumstances that require immediate action to combat a threat to the security or order of an institution or facility.

*Facility* means a community correctional center, conservation camp, facility of minimum security, or other places of confinement, other than an institution, operated by the Department for the custody, care, or training of offenders.

*Full compliance* means compliance with all material requirements of each standard except for *de minimis* violations, or discrete and temporary violations during otherwise sustained periods of compliance.

*Gender nonbinary* means gender characteristics or behaviors that do not conform to the traditional gender binary of male or female.

*Gender nonconforming* means a person whose appearance or manner does not conform to traditional societal gender expectations.

*Inmate* means any person incarcerated or detained in a prison or jail. It should be noted that the Department uses this term interchangeably with the term "Offender."

*Institution* means a prison designed to house 125 or more offenders within a secure perimeter. It should be noted that for the purposes of PREA regulations and policies within the Department, the term Institution is used interchangeably with the term Facility as defined in NRS 209.071.

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*Intersex* means a person whose 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.

*A medical practitioner* means a health professional who, by education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A “qualified medical practitioner” refers to a professional who has also completed specialized training for treating sexual abuse victims.

*A mental health practitioner* means a mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A “qualified mental health practitioner” refers to a professional who has also completed specialized training for treating sexual abuse victims.

*Misgendering* means referring to someone using a word, especially a pronoun or form of address that does not correctly reflect the gender with which they identify.

*NRS 200.366 Sexual Assault* A person who subjects another person to sexual penetration, or who forces another person to make a sexual penetration on themselves or another, or a beast, against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of the perpetrator’s conduct, is guilty of sexual assault.

*NRS 212.188 Sexual Abuse of a Prisoner or unauthorized custodial conduct by an employee of or contractor or volunteer for prison; An employee of or a contractor or volunteer for a prison who voluntarily engages in, or attempts to engage in, with a prisoner who is in lawful custody or confinement, other than in the custody of the Division of Parole and Probation of the Department of Public Safety pursuant to NRS 209.4886 or 209.4888 or residential confinement.*

*Offender* means any person incarcerated or detained in a prison or jail. It should be noted that the Department uses this term interchangeably with the term “Inmate.”

*Pat-down search* means a running of the hands over the clothed body of an offender by an employee to determine whether the individual possesses contraband.

*Preponderance of evidence* means the burden of proof is met when there is a greater than 51% chance that the claim is true.

*Prison* means a facility or institution under Federal or State jurisdiction whose primary use is for the confinement of individuals convicted of a serious crime, usually in excess of one year in length, or a felony.

*Private facility or institution* means a facility or institution operated by a private organization to house prisoners.

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*Security staff* means employees primarily responsible for the supervision and control of offenders in housing units, recreational areas, dining areas, and other program areas of the facility.

*Staff* means employees.

*Strip search/unclothed search* means a search that requires a person to remove or arrange some or all clothing to permit a visual inspection of the person's breasts, buttocks, or genitalia.

*Transgender* means a person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth.

*Substantiated* means an allegation that was investigated and a preponderance of the evidence shows that the allegation has occurred

*Unsubstantiated* means an allegation that was investigated, and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

*An unfounded* allegation means an allegation that was investigated and determined not to have occurred.

*A volunteer* means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the Department.

*Youthful offender* means any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail.

### *Sexual abuse and sexual harassment definitions:*

*Sexual abuse of an offender by another offender* includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse.

- a) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- b) Contact between the mouth and the penis, vulva, or anus;
- c) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instruments; and
- d) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, excluding contact incidental to a physical altercation.

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*Sexual abuse of an offender by a staff member, contractor, or volunteer* includes any of the following acts, with or without consent of the offender:

- a) 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;
- b) 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;
- c) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instruments, which is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- d) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or buttocks, which is unrelated to official duties or
- e) Where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- f) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs A-E of this section;
- g) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an offender, and
- h) Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an offender by staff for reasons unrelated to official duties, such as peering at an offender who is using a toilet in his or her cell to perform bodily functions; requiring an offender to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an offender's naked body or of an offender performing bodily functions.

*Sexual harassment offender on offender:* Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one offender directed toward another.

*Sexual harassment staff, contractor, or volunteer on offender:* Repeated verbal comments or gestures of a sexual nature to an offender by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

### 1.0 Prevention Planning

1. The Department has a "Zero Tolerance" for any form of sexual misconduct including staff, contractors, or volunteers on an offender or offender-on-offender sexual harassment, sexual assault, and/or sexually abusive contact. Any staff member, contractor, or volunteer who engages in, fails to report, or knowingly condones sexual

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harassment or sexual contact with or between offenders shall be subject to disciplinary action and may be subject to criminal prosecution. (§115.11) (a)

- a. The Department prohibits retaliation against any person because of their involvement in the reporting or investigating of a complaint. (§115.11) (a)
  - b. All facilities will incorporate the Department's "Zero Tolerance" policy into applicable operational procedures.
2. The Director will designate a department-wide PREA Coordinator who will have sufficient time and authority to oversee the Department's efforts to comply with the PREA standards in all its facilities, including providing direction to all facility Wardens, Associate Wardens, and facility PREA Compliance Managers' efforts to comply with the PREA standards. (§115.11) (b)
- a. This position is assigned to the Office of the Inspector General, PREA Management Division, and supervised by the Inspector General. The PREA Coordinator will have direct access to the Director and the Department's executive leadership team.
  - b. The PREA Coordinator has the authority necessary to create and implement Department-wide policies, procedures, and practices.
  - c. The Department PREA coordinator or designee will act as the PREA liaison between the Department and outside agencies.
3. The Warden at each facility is responsible for designating a PREA Compliance Manager, (PCM) with sufficient time and authority to coordinate the facilities' compliance with the PREA standards. The PCM shall have direct access to the Warden, the facility's executive or senior leadership team, and the Department's PREA coordinator. (§115.11) (c)
- a. The PCM shall have comprehensive knowledge of the overall operations of the facility and the various divisions within the facility and full access to all relevant information related to the facility's compliance with the PREA standards, policies, and procedures.
  - b. All Wardens and PCMs will oversee adherence to all specific PREA-related rules, regulations, and practices at the institution or facility and document accordingly any need for adjustment and implementing adjusted policies, rules, and practices.
  - c. The institution and/or facility PCM shall ensure the Department's zero-tolerance policy and reporting information in the form of posters, flyers, and entrance authorization forms wherein signatures are required indicating an understanding of the policy is available and visible to all staff, contractors, volunteers, visitors, and offenders.
  - d. The PCM for each facility, under the direction of the Warden/designee, shall develop, annually review, and implement policies and practices in support of the Department's zero-tolerance policy, reporting practices, incident responses, screenings, training, and offender education.

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4. When the Department contracts for the confinement of offenders with private agencies or other entities, the Contract Administrator shall include in any new contract or contract renewal the entity's obligation to adopt and comply with the Department of Justice PREA standards. Requirements are further detailed in Administrative Regulation 212 – Contracts. (§115.12)
  - a. Any new contract or renewal shall provide for Department contract monitoring to ensure that the private agency or entity complies with PREA standards.
  - b. The Offender Management Division, PREA Correctional Casework Specialist III (CCSIII) is responsible for monitoring the contract for PREA compliance.
  - c. The CCSIII will notify and work collaboratively with the Department PREA Coordinator and provide on-site monitoring reviews, and final DOJ audit reports.
  - d. In the years when the contract facility is audited, the CCS will review the final audit report to ensure full compliance. In other years, monitoring may be done by conducting on-site inspections and reviewing documentation (e.g., assessments, case notes, offender, and staff training).
  - e. The CCSIII will provide written on-site audit checks and final audit determinations to the Department PREA coordinator.
  
5. In conjunction with this manual and Administrative Regulation 326 Posting of Shifts/Overtime, all facility Wardens or designees shall develop, document, and make their best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect offenders against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration: (§ 115.13)
  - a. Generally accepted detention and correctional practices;
  - b. Any judicial or Federal investigative agency findings of inadequacy;
  - c. Any findings of inadequacy from internal or external oversight bodies;
  - d. All components of the facility and applicable facility's physical plants, including identifying blind spots or areas where staff and/or offenders may be isolated;
  - e. The composition of the offender population;
  - f. The number and placement of supervisory staff on each shift;
  - g. Facility programs and work assignments occurring on each shift;
  - h. Any applicable State or local laws, regulations, or standards;
  - i. The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
  - j. Any other relevant factors.

In circumstances where the staffing plan is not complied with, the facility shall document and justify all deviations from the plan.

6. The Warden/designee from each institution shall, on an annual basis, arrange for a discussion, review, and documentation involving the PREA Coordinator and the Deputy Director of Operations regarding the staffing plan for the institution and any designated

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satellite facility for the institution, to ensure that the plan provides for adequate levels of staffing.

7. In February of each year, Wardens at all institutions and facilities shall complete the Annual Staffing Plan Review form, for the prior year, to determine whether adjustments are needed in the following areas:
  - a. The staffing plan
  - b. The deployment of monitoring technology.
  - c. The allocation of Agency/Institution or Facility resources to commit to the staffing plan to ensure PREA compliance.
8. On the last day of March each Warden shall submit a thoroughly completed Annual Staffing Plan Review to the Deputy Director of Operations. Once a completed Annual Staffing Plan Review has been received from each facility/institution, the Deputy Director of Operations, or designee, will forward the completed forms to the Agency PREA Coordinator.
8. Agency PREA Coordinator shall evaluate each plan, which shall include a discussion with the institution/facility staff and provide written results of the review to the institution/facility Warden or designee and the Deputy Director of Operations. This review shall be completed no later than thirty days from the date the forms were received by the PREA Coordinator.
9. All institutions and facilities in accordance with this manual and Administrative Regulation 400, General Supervision/Security Guidelines, shall have a policy and practice for intermediate-level or higher-level supervisors conducting and documenting unannounced tours to deter and/or identify any staff or offender sexual abuse and/or sexual harassment of offenders.
  - a. Such policy and practice shall be implemented for night shifts as well as day shifts.
  - b. Employees are prohibited from alerting other staff of the unannounced supervisor tours unless the tour is related to legitimate operational functions of the facility or institution.
  - c. All facilities shall implement policy and practice for supervisors to conduct regular tours of work and program areas with less supervision.
  - d. Supervisors will document unannounced rounds in the NOTIS shift log and/or in the housing unit, work, and program area logbooks.
  - e. Supervisors will use a red ink pen when documenting rounds in logbooks.
  - f. Supervisors of the opposite gender of offenders assigned to the facility are not exempt from the cross-gender announcement. Both cross-gender announcements and unannounced supervisor tours must be logged in NOTIS and/or unit logbooks.



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## 1.1 Youthful Offenders (§115.14)

1. The Offender Management Division (OMD) and facilities in conjunction with this manual and Administrative Regulation 502, Youthful Offender Classification, will implement policy and practice youthful offender (YO), defined by PREA as a person under the physical age of 18, shall not be placed in a housing unit where a YO will have sight, sound or physical contact with any offender over the age of 18, including use of a shared dayroom or other common space, shower area, or sleeping quarters.
  - a. The policy and practice will include any areas outside of housing units that:
  - b. Staff will maintain sight and sound separation between YO and adult offenders; or
  - c. Provide direct staff supervision when YO and adult offenders have sight, sound, or physical contact.
2. Any time the Department receives the notification of possible placement of a YO, special procedures will be enacted as previously developed by OMD and each impacted Division and facility Warden and PCM.
3. During any type of transportation of the YO, the YO will be under the direct supervision of staff while around any offender over the age of 18.
4. While housed at any institution or facility other than the designated and identified facility that currently maintains the male YO population, the YO will be housed in a manner that facilitates the requirements of this standard.
  - a. The YO(s) will be moved to the dedicated facility and housing unit for the male YO population as soon as possible, depending upon the needs of the current housing facility and the Department.
  - b. Any YO currently housed in the dedicated housing unit that turns 18, will be immediately removed from the dedicated unit and provided a classification review that will determine the best placement for that offender.
  - c. Any movement of a YO from their current location will result in official notifications that will include the Department PREA Coordinator, facility staff, and OMD.
  - d. Any notification of a pending female YO will be immediately reported to the OMD Chief, Deputy Director of Operations and Programs, FMWCC Warden, facility executive team, and, Department PREA Coordinator for housing arrangements.
  - e. Facilities will avoid placing YO in isolation where the YO would be denied daily large-muscle exercise and/or any legally required special education services to comply with this standard. Only exigent circumstances that are approved by the Warden and documented by the facility PCM shall be allowed; and
  - f. Facilities will also, to the extent possible, provide other programs and work opportunities for YO(s).

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## 1.2 Limits to Cross-Gender Viewing and Searches (§115.15)

1. All institutions and facilities will have an operation procedure in accordance with this manual and Administrative Regulations (AR) 422, Search and Seizure Standards, AR 430 Transportation of Offenders, and AR 432 Transportation of Offenders for Medical Treatments, shall develop, implement, and annually review the policies and procedures supporting compliance with PREA cross-gender viewing requirements. Policies and procedures shall include but not be limited to the following requirements:
  - a. Staff shall not conduct cross-gender strip searches or cross-gender visual body cavity searches except in exigent circumstances or when performed by medical practitioners.
  - b. All exigent cross-gender strip or cross-gender visual body cavity searches will be immediately reported to the Warden/designee and PCM in every instance. All exigent cross-gender strip or cross-gender visual body cavity searches will be documented in NOTIS for every instance.
  - c. Opposite-gender supervisors, staff, or other nonmedical personnel should not be permitted to observe the conduct of the same-gender strip search or visual body cavity search, absent exigent circumstances.
  - d. In cases where supervisors who are of the opposite gender to the offender being strip-searched, either live or via video monitoring, are required to supervise or observe the strip search, a privacy screen or other similar device to obstruct cross-gender viewing of an offender's breasts, buttocks, or genitalia.<sup>1</sup>
2. Each institution and facility, where applicable, shall have a policy requiring that all cross-gender pat-down searches of female offenders will be documented.
3. Each institution and facility shall implement policies and procedures that require an announcement when any person of the opposite gender enters an offender housing unit where there is not already another cross-gender staff present.<sup>2</sup> Announcements must be documented in the NOTIS shift log and/or unit logbook.
  - a. Intermediate-level or higher-level supervisors who are the opposite gender of offenders assigned to the facility and performing the unannounced supervisory rounds are not exempt from the cross-gender announcement and documentation requirement.
4. The policies and procedures implemented for cross-gender viewing and searches will also allow offenders to shower, perform bodily functions, and change clothing without a non-medical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except:
  - a. In exigent circumstances that are subsequently reported to the Warden/designee and PCM documented in NOTIS; or
  - b. When such viewing is incidental to unit tours and routine cell checks.

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<sup>1</sup> Updated PRC FAQ November 2014

<sup>2</sup> According to §115.51, "...Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an offender housing unit."

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5. Suicide watch and cross-gender viewing: The institution or facility shall have a policy and procedure in place that enable an offender on suicide watch to avoid exposing themselves to nonmedical opposite-gender staff. The institution or facility procedures shall adopt one or more of the following options:
  - a. Substituting same-gender correctional staff or medical staff to observe the periods when an offender is showering, performing bodily functions, or changing clothes.
  - b. If the suicide watch is being conducted via live video monitoring, by digitally obscuring an appropriate portion of the cell.
  - c. Any privacy accommodation must be implemented in a way that does not pose a safety risk for the individual on suicide watch.
  - d. If an immediate safety concern or offender conduct makes it impractical to provide same-gender coverage during a period in which the offender is undressed, such isolated instances of cross-gender viewing do not constitute a violation of the standards. Any such incidents should be rare and shall be documented in NOTIS using incident type "PREA Institution", and sub-incident type "Cross-Gender Viewing".
6. Investigations and cross-gender viewing: To maintain the ability to conduct thorough and effective investigations and incident reviews involving sexual abuse, sexual harassment, and other misconduct, Inspector General Investigators and designated facility custody supervisors are not prohibited from viewing any cross-gender recorded camera footage in conjunction with an investigation.
  - a. If made aware before reviewing recorded camera footage that an offender was unclothed in an area where the offender should have been clothed, supervisors or staff who are of the opposite gender of the offenders assigned to the facility shall attempt to have a staff of the same gender as the offender view recorded camera footage for incident review.
  - b. Cross-gender viewing will be documented in NOTIS using incident type "PREA Institution," and sub-incident type "Cross-Gender Viewing."
7. All Department non-medical staff is prohibited from searching or physically examining a transgender or intersex offender for the sole purpose of determining the offender's genital status.
8. All custody staff are required to conduct pat-down searches and shall receive training on how to conduct cross-gender pat-down searches for all offenders (universal pat search), and searches of transgender and intersex offenders in a professional, respectful, and least intrusive manner possible consistent with the security needs of each facility and facility.
  - a. Custody staff shall receive this training during the new hire Basic Training Academy, and
  - b. Annual In-Services Defensive Tactics Training.

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### 1.3 Offenders with Disabilities and Who Are Limited English Proficient (§115.16)

1. Each institution and facility will develop a procedure and utilize the necessary resources that are available to assist offenders who have disabilities to ensure those offenders have equal access to participate in or benefit from every aspect of the prevention, detection, and response to sexual abuse or sexual harassment. Those offenders identified as possibly being impacted are offenders that are or have:
  - a. Deaf or hard of hearing;
  - b. Blind or have low vision;
  - c. Cognitive impairment;
  - d. Intellectual, psychiatric, or speech disabilities;
  - e. Physical disabilities; and/or
  - f. Limited English Proficient (LEP)
2. The Department will have resources available for use through a contracted language bank for interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.
3. All institutions and facilities will have procedures for utilizing the Department contract language bank and will ensure that staff have sufficient knowledge and information related to the procedures for accessing interpretive services.
  - a. Instructions for using the Department contracted Language Line service shall be accessible to:
    - 1) Custody supervisors
    - 2) Case management staff
    - 3) Medical and Mental Health Practitioners
    - 4) IG Investigators
4. Institutions and facilities will have written materials in various formats or methods that allow for and ensure effective communication with all offenders, including those with the disabilities outlined above are available through contracted translation services.<sup>3</sup>
5. Staff shall not use and/or rely upon offender interpreters, offender readers, or other types of offender assistants.
6. The institution or facility PCM or designee will document and maintain the Department standardized tracking log for offenders who fall into the categories referenced above in paragraph (1) (a-f).

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<sup>3</sup> A facility/facility and the Department is not required to take actions that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens, as those terms are used in regulations promulgated under title II of the Americans with Disabilities Act, 28 CFR 35.164.

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## 1.4 Hiring and Promotion Decisions (§115.17)

1. The Department shall not hire or promote anyone who may have contact with offenders and shall not enlist the services of any contractor or volunteer who may have contact with an offender who:
  - a. Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other facilities<sup>4</sup>;
  - b. Has been convicted of engaging or attempting to engage in sexual activity 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; or
  - c. Has been civilly or administratively adjudicated to have engaged in the activity described above.
2. Before hiring new employees, who may have contact with offenders Human Resources (HR) shall:
  - a. Perform a National Criminal Information Center (NCIC) and FBI fingerprint criminal background records check; and
  - b. Consistent with Federal, State, and local law, make its best effort to contact all prior facility employers for information on substantiated allegations of sexual base or any resignation during a pending investigation of an allegation of sexual abuse a criminal background records check shall be performed.
3. The Department shall consider any incidents of sexual harassment in determining whether to hire or promote anyone or enlist the services of any contractor, who may have contact with offenders.
4. The Department shall also perform a criminal background record check before enlisting the services of any contractor employee who may have contact with offenders.
5. The Department will conduct criminal background records checks at least every five years of current employees and contractors who may have contact with offenders.
6. The Department shall ask all applicants and employees who may have contact with offenders directly about previous misconduct referenced above under 1. (a-c), in written applications or interviews for hiring and promotions.
7. All staff have an affirmative and immediate duty to disclose any sexual abuse conduct.
8. Any material omissions or false or misleading information shall be grounds for termination.

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<sup>4</sup> As defined in 42 U.S.C. 1997

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9. Unless prohibited by law, the department will provide information on substantiated allegations of sexual abuse and sexual harassment involving a former employee upon request from an institutional employer for whom such employee has applied to work.

### 1.5 Upgrades to Facilities and Technologies (§115.18)

1. When the Department is designing or acquiring any new institutions or facilities or planning any substantial expansion or modification to existing facilities the Director, Deputy Director(s), and designees shall consider the effect of the design, acquisition, expansion, or modification on the agency's ability to protect offenders from sexual abuse.
2. When installing or updating any video monitoring system, electronic surveillance system, or other types of monitoring technology, the Department shall consider the technology and how it may enhance the Department's ability to protect offenders from sexual abuse.

### 2.0 Responsive Planning Evidence Protocol and Forensic Medical Examinations (§115.21)

1. The Office of the Inspector General (OIG), Criminal Investigators is responsible for investigating all allegations of sexual abuse. Criminal investigators and facility supervisors shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecution.
  - a. The protocol shall be developmentally appropriate for youth where applicable, and as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011.<sup>5</sup>
2. As required by Nevada Revised Statute (NRS) 432B.220, all reports of sexual abuse of a Youthful Offender (YO), will be reported through established protocols to Child Protective Services.
3. Allegations of sexual abuse reported within 96 hours shall offer the victim access to a forensic medical examination, performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible.
  - a. Sexual abuse forensic exams will be conducted at a hospital or medical facility outside of the facility, without financial cost, where evidentiarily or medically appropriate.
  - b. If a SAFE or SANE cannot be made available, the examination can be performed by other qualified medical practitioners outside of the facility.

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<sup>5</sup> The most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents" can be found on the Stewart Shared drive, PREA Implementation Folder identified as §115.21(a)-3.

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- c. All forensic medical examinations that are done by someone other than a SANE of SAFE shall be documented.
4. The Department shall attempt to make available to the victim a victim advocate from a rape crisis center and will document efforts to secure services from a rape crisis center. Any services offered to offender victims from an outside agency shall not be connected to a law enforcement agency and at a comparable level of confidentiality as a non-governmental entity that provides similar victim services.
5. As requested by the victim, the victim advocate will accompany the offender victim through the forensic medical examination process and investigatory interviews and will provide emotional support, crisis intervention, information, and referrals.
6. All allegations of sexual abuse and sexual harassment will be referred to and investigated by the Office of the Inspector General Criminal Investigators. The Department will ensure administrative and/or criminal investigations are completed. (§115.22)

### 3.0 Employee Training (§115.31)

1. The Employee Development Division (EDD), with input from the PREA Coordinator, will develop, revise, and provide a block of instruction to all staff on the requirements and responsibilities related to PREA. The instruction will include, at a minimum:
  - a. The Department Zero tolerance policy for sexual abuse and sexual harassment;
  - b. How to fulfill their requirements under the Department sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
  - c. Offender's rights to be free from sexual abuse and sexual harassment;
  - d. The right of offenders and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
  - e. The dynamics of sexual abuse and sexual harassment victims;
  - f. The common reactions of sexual abuse and sexual harassment victims;
  - g. How to detect and respond to signs of threatened and actual sexual abuse;
  - h. How to avoid inappropriate relationships with offenders;
  - i. How to communicate effectively and professionally with offenders, including lesbian, gay, bisexual, transgender, intersex, or gender non-conforming offenders; and
  - j. How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.
2. The block of instruction will be tailored so that all staff will have the necessary and required skills, knowledge, and abilities to respond to the gender of the offenders at their assigned facility.

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3. All staff will receive training on how to communicate with all offenders using gender-neutral language.
  - a. Staff will verbally communicate with all offenders using their last names.
  - b. Repeated, intentional, and/or malicious misuse of pronouns (misgendering) when communicating with Transgender offenders will be referred for sexual harassment investigation and may result in disciplinary action.
4. At a minimum of every two years, all staff will receive full PREA training during even years as part of in-service training (IST). In odd years, all staff will receive information on the Department's current sexual abuse and sexual harassment policies.
  - a. In-service refresher training will be provided during in-class instruction or web-based computer training.
  - b. EDD will maintain a negative tracking report and provide a copy to facility Wardens to ensure staff has completed PREA training.
  - c. EDD will maintain signed training acknowledgment forms, training certificates, and/or electronic training verification for all employees. The signature or electronic verification is an affirmative acknowledgment that each staff member understands the training received.
5. In addition to required staff PREA training, all Office of the Inspector General, Criminal Investigators, and facility custody supervisors will complete specialized investigator training in conducting sexual abuse investigations in a confinement setting. Training shall include but not be limited to:
  - a. Techniques for interviewing sexual abuse victims;
  - b. Proper use of Miranda and Garrity warnings;
  - c. Sexual abuse evidence collection in confinement settings; and
  - d. The criteria and evidence required to substantiate a case for administrative action or prosecution referral. (§115.34)
6. OIG Investigators will complete this training within one month of the date of hire. Facility supervisors, Sergeant or above will complete within one month of hire/promotion date. Facility supervisors will complete a refresher course every three years and the facility PREA compliance manager will maintain the signed training acknowledgment forms, training certificates, and/or electronic training verification.
7. In addition to required staff PREA training, the Department shall ensure that all full-time and part-time medical and mental health care practitioners including contract medical practitioners who work in facilities have been trained in: (§115.35)
  - a. How to detect and assess signs of sexual abuse and sexual harassment;
  - b. How to preserve physical evidence of sexual abuse;
  - c. How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and



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- d. How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.
8. All full-time and part-time medical and mental health care practitioners, including contract medical practitioners, will complete this training as soon as they have received computer access and again every three years. The Department and/or institution and facility PREA compliance manager will maintain the signed training acknowledgment forms, training certificates, and/or electronic training verification.

### 3.1 Volunteer and Contractor Training (§115.32)

1. The Department shall ensure that all volunteers and contractors who have contact with offenders have been trained on their responsibilities under the Department's sexual abuse and sexual harassment prevention, detection, and response policies and procedures. All volunteers and contractors who have contact with offenders will receive training on their responsibilities under the Department's zero-tolerance policy and procedure.
2. The level and type of training provided to volunteers and contractors shall be based on the services they provide and the level of contact they have with offenders. At a minimum, all volunteers and contractors who may have contact with offenders shall be notified of the Department's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.
  - a. The Department will maintain all documentation confirming the training of the volunteers and contractors, which confirms their acknowledgment of understanding the training they have received.
  - b. All volunteers and contractors for the Department who have any amount of unsupervised contact with any offender will participate in the same and the full amount of the mandatory employee block of PREA instruction.
3. In those cases, involving a contractor who may have slight or no contact with an offender, supervision of the contractor will be maintained the full time the contractor is present in any facility, will be notified of the Department's zero-tolerance policy and how to report incidents of sexual abuse or sexual harassment.

### 3.2 Offender Education (§115.33)

1. Each institution and facility will develop and implement a policy and practice that upon intake of any new offender to the facility, that offender will receive information about the Department's zero-tolerance policy and how to report a suspicion or an incident of sexual abuse or sexual harassment.

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2. All institutions and facilities will develop and implement a process wherein every offender will receive a block of comprehensive education within 30 days of intake or reception to the institution or facility. The block of education will include:
  - a. Their rights to be free from sexual abuse and sexual harassment;
  - b. Their rights to be free from retaliation for reporting such incidents; and
  - c. The policies and procedures for responding to such incidents.
3. Offender education will be available in formats accessible to all offenders including those offenders that are:
  - a. Limited English proficiency;
  - b. Visually impaired;
  - c. Otherwise disabled; and
  - d. Limited in their reading skills.
4. Confirmation of all offenders participating in PREA offender education will be documented within the Nevada Offender Information Tracking System (NOTIS) case note each time the initial intake information or comprehensive education is provided to each offender.
5. Each facility PCM or designee will ensure PREA posters are in areas where staff and offenders are present and make readily available offender handbooks for all offenders.

### **4.0 Risk Screening Assessments** (§115.41)

1. All institutions and facilities in accordance with the manual and Administrative Regulation (AR) 573 – PREA Screening and Classification, will have an operational procedure.
2. All offenders shall be assessed during intake and again upon transfer between facilities for their risk of being sexually abused by or abusive toward other offenders.
3. Intake screening shall ordinarily take place within 72 hours of arrival at the facility and again within a set time period, not to exceed 21 days from the offender's arrival at the facility. (§115.41)
4. Department PREA risk screening instrument will include at a minimum:
  - a. Whether the offender has a mental, physical, or developmental disability;
  - b. The age of the offender;
  - c. The physical build of the offender;
  - d. Whether the offender has previously been incarcerated;
  - e. Whether the offender's criminal history is exclusively nonviolent;
  - f. Whether the offender has prior convictions for sex offenses against an adult or child;

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- g. Whether the offender is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
    - h. Whether the offender has previously experienced sexual victimization; and
    - i. The offender's own perception of vulnerability.
5. Department PREA risk screening assessment instrument will also include all offenders be reviewed at a minimum for:
  - a. Offender risk of being sexually abusive,
  - b. Prior acts of sexual abuse,
  - c. Prior convictions for violent offenses,
  - d. History of prior facility violence
  - e. Sexual abuse history that may be known or available to the Department
6. All offenders will be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that could impact the offender's risk of being sexually victimized or sexually abusive.
7. Offenders shall not be disciplined for refusing to answer or for failing to disclose complete information in response to questions asked on the intake screening related to:
  - a. Any mental, physical, or developmental disability.
  - b. Whether the offender is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender non-conforming.
  - c. Whether or not the offender has previously experienced sexual victimization; or
  - d. The offender's own perception of vulnerability.
8. All staff is prohibited from the dissemination of any of the PREA screening for risk of victimization and abusiveness except on a need and right-to-know basis.
  - a. The Department and facilities shall implement appropriate control on the dissemination within the facility of responses to the risk screening assessment questions.
  - b. Staff shall report all acts or suspicions of unauthorized and prohibited dissemination of PREA screening information.
  - c. Reports of the unauthorized dissemination of confidential information shall be investigated and may result in disciplinary action up to and including termination.

### 4.1 Use of Risk Screening Information (§115.42)

1. All institutions and facilities will have a procedure in accordance with this manual and Administrative Regulation 573.
2. The department, institutions, and facilities shall use the information from the risk screening assessment to inform and determine the best placement for each offender in housing, bed, education, and program assignments with the goal of keeping separate

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those offenders at high risk of being sexually victimized from those offenders at high risk of being sexually abusive.

3. The Department, institutions, and facilities shall make individualized determinations about how to ensure the safety of each offender.
4. The Department and facilities are prohibited from placing lesbian, gay, bisexual, transgender, intersex, gender non-conforming, or gender non-binary offenders in dedicated facilities, housing units, or wings solely based on their identification or status.
5. In deciding whether to assign a transgender or intersex offender to an institution or facility for male or female offenders and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the offender's health and safety and whether the placement would present management or security problems.
6. Placement and programming assignments for each transgender or intersex offender shall be reassessed at least twice per year or as needed. The reassessment will include a review of any threats to safety that may have been experienced by any offender.
7. The view of transgender or intersex offenders toward their safety will be given serious consideration. Institutions and facilities will utilize DOC 1918 when conducting risk screening assessments for all Transgender and Intersex offenders:
  - a. When completing intake risk screening assessment
  - b. When completing a 21-day follow-up risk screening assessment
  - c. During the six-month re-assessment meeting
  - d. Based upon any new information.
8. Transgender and intersex offenders shall be given the opportunity to shower separately from other offenders.
  - a. A Transgender or Intersex offender can request a review for a separate shower plan.
  - b. Institutions and facilities will implement a shower plan so long as they are able to accommodate the request and there are no safety and security concerns.
  - c. Any deviations from the plan will be documented.
  - d. Institutions and facilities may temporarily deviate from a shower plan in exigent circumstances.

### 4.2 Protective Custody/Segregation (§115.43)

1. All institutions and facilities in conjunction with this manual and AR 509 Protective Segregation will develop, implement, and periodically review policies to strictly prohibit any offender who is or was at high risk for sexual victimization from being placed into involuntary segregated housing unless:

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- a. An assessment has been completed and a determination made and documented that there are no available alternative means for housing the offender who is or was or is at high risk for sexual victimization from an abuser.
  - b. All placements of offenders into involuntary segregation for being a victim or a risk of victimization will be documented in NOTIS and shall clearly demonstrate the basis for the reason why no alternative was available.  
The institution or facility may place the offender in involuntary segregated housing for less than 24 hours while completing the assessment.
2. Institution and facility procedures involving involuntary segregated housing shall include for the offenders, to the extent possible, access to programs, privileges, education, and work opportunities.
- a. The procedures shall include that they document in NOTIS the opportunities that have been limited, the duration of the limitation, and the reason why the limitation.
  - b. Any offender placed into involuntary segregation due to having been a victim or at risk of victimization shall only remain in involuntary segregation only until an alternative housing arrangement is made but shall not ordinarily exceed 30 days.
  - c. Any offender placed into involuntary segregation due to being a victim or a risk of victimization shall provide for a 30-day review to determine and document the continued need for separation from the general population, if applicable.

### 5.0 Offender Reporting (§115.51)

1. The Department provides multiple ways for offenders to report allegations of sexual abuse, sexual harassment, or retaliation by other offenders or staff for reporting or cooperating with an investigation related to PREA, or any staff negligence or violation of responsibilities that may have contributed to sexual assault or sexual harassment.
  - a. Verbally report to any staff member, contractor, or volunteer;
  - b. A written report submitted via any staff member, contractor, or volunteer;
  - c. Filing a grievance, or
  - d. Calling the PREA hotline
2. Offenders may report anonymously or otherwise to an outside public agency, which is able to immediately report to the Department complaints from offenders about sexual abuse, sexual harassment, or retaliation by staff or other offenders.
3. Written notification to offenders of the outside public agency identifiers is included on PREA posters placed in all housing units, work, and program areas, and within the written intake/reception offender orientation packet.  
Offenders can write directly to the New Mexico Department of Corrections or request the outside agency reporting form DOC 2100 from any of the following staff:
  - a. Unit Officer
  - b. Case manager

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- c. Facility PCM
  - d. Law Library
4. Any offender who sends correspondence to the New Mexico Department of Corrections reporting a violation of sexual abuse, sexual harassment, or retaliation for filing a PREA report may not be charged for postage at their request and correspondence will be treated as confidential mail.
  5. The Department provides multiple options for staff to privately report sexual abuse and sexual harassment, these include but are not limited to the:
    - a. Department Executive Staff
    - b. Office of the Inspector General
    - c. Facility Warden
    - d. Attorney General
    - e. PREA Hotline
    - f. Department public website: PREA Incident Report Form

### 5.1 Grievances (§115.52)

1. The offender grievance process is a means that offenders can utilize to make a report of sexual abuse or sexual harassment by a staff member or another offender. Facilities will follow this manual and Administrative Regulation 740 - Offender Grievance Procedure.
2. Any grievance that has an allegation or report related to sexual abuse must be accepted without constraints, including:<sup>6</sup>
  - a. Grievances that are outside the accepted time frames for a filed grievance shall be accepted for any portion of the grievance that has a claim of sexual abuse;
  - b. The grievance process shall not be required to resolve or attempt to resolve the grievance with the accused staff member for any claim of sexual abuse;
  - c. The grievance shall not be referred to the accused or named staff member; and,
  - d. Grievances received by staff members that involve a family member or other staff that they have a close or intimate relationship with will be immediately forwarded to an impartial and designated staff member for review, response, and/or action.
  - e. Any grievance filed by another offender on behalf of the victim when sexual abuse is reported will be accepted and allowed to continue until a response from the IG's Office.
3. At any level that a grievance is filed with a claim or report of sexual abuse, that grievance will be scanned and emailed for review to the OIG, PREA Management Division.
  - a. The IG or Supervising Criminal Investigator or designee shall respond to the grievance within 90 days of the grievance being filed by the offender.
  - b. Computation of the 90-day period shall not include time consumed by the offender in preparing any administrative appeal.

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- c. If a NOTIS incident report has not been generated related to or associated with the claims in the grievance or surrounding the date of the incident itself, the OIG or designee will generate a NOTIS Incident report and reference the grievance to the IR for documentation purposes.
  - d. The sexual abuse grievance will indicate whether the matter was assigned for official investigation or clearly document why it was not.
  - e. The IG or designee will respond, via email, to the facility grievance coordinator acknowledging handling and a response to the grievance. The IG or designee may, if applicable, claim an extension of up to 70 days to respond to the grievance if the original 90 days are not sufficient to process the grievance and complaint. The offender shall be notified in writing of any extension, providing a date by which a decision will be made.
  - f. If the offender does not receive a response within the time frame allotted for a reply, including a properly noticed extension, and at any level, the offender may consider the absence of a response to be a denial at that level.
4. For Any grievance that reports or claims sexual abuse, third parties shall be permitted to assist and/or file on behalf of the offender's request for administrative remedies. If a third party does file a request on behalf of an offender, the facility may require the alleged victim to agree with the request filed on his/her behalf.
  - a. If a third party does file a request on behalf of an offender, the facility may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process. If the alleged victim declines to have the request by the third party processed, the facility shall document the offender's decision in NOTIS. Third parties include:
    - 1) Fellow offenders;
    - 2) Staff members;
    - 3) Family members;
    - 4) Attorneys; and
    - 5) Outside advocates.
5. An offender may utilize the emergency grievance process to report that they are, or another offender may be at substantial risk of imminent sexual abuse.

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6. Institution or facility staff who receive an emergency grievance, or any portion of an emergency grievance alleging an offender is at substantial risk of imminent sexual abuse, staff shall immediately deliver the grievance to the appropriate shift commander or available supervisor who:
  - a. Will review and take immediate corrective action as deemed appropriate.
  - b. Shall document the receipt of the emergency grievance and actions in NOTIS;
  - c. Will ensure the grievance has an initial response within 24 hours;
  - d. Will issue the final Department decision about the sexual abuse emergency grievance within 5 days; and
  - e. Will review and respond unless the grievance involves a family member or other staff that they have a close or intimate relationship with, will be immediately forwarded to an impartial and designated staff member for review and response.
7. Department, institutions, and facility staff have the affirmative and immediate duty to respond and take immediate action when they learn that an offender is subject to a substantial risk of imminent sexual abuse.
8. The Department, institutions, and facilities are prohibited from applying disciplinary action against an offender for filing any level of a grievance unless it is clearly demonstrated and documented that the offender filed the grievance in bad faith.

### **5.2 Offender Access to Outside Confidential Support Services (§115.53)**

1. The Department, institutions, and facilities will provide offenders with access to outside victim advocates for emotional support services related to sexual abuse. Information on how to contact the community rape crisis center is posted within housing units and intake orientation packets.
  - a. Information includes the mailing address and telephone numbers available for local and state victim advocacy and/or rape crisis organizations. Each facility will develop a procedure for scheduling meetings with the victim advocate.
2. Calls to the designated victim advocate phone line are at no cost to the offender and are treated as legal calls (not recorded)
3. Offender victims or community victim advocates can request a private telephonic meeting through the facility PREA Compliance Manager.
4. These services offered to offender victims from an outside agency are not connected to a law enforcement agency and are at a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.
5. The institution or facility shall inform offenders, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded in accordance with mandatory reporting laws.



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### 5.3 Third-Party Reporting (§115.54)

1. The Department provides and maintains at least one method to receive third-party reports of sexual abuse or sexual harassment on behalf of offenders. Information related to the methods of reporting shall be maintained on the Department's public website.
2. If a third-party reporter expresses a fear of retaliation, the matter will be immediately reported to the OIG.
  - a. The IG or designee will contact the third-party reporter to ensure referral information to an outside law enforcement agency is provided and documented within the NOTIS entry.
  - b. The IG or designee will make contact, if applicable, with the Warden and/or PREA Compliance Manager of the facility wherein the offender is housed.

### 6.0 Staff Reporting (§115.61)

1. All staff is required to immediately report any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the department; retaliation against offenders or staff who reported such incidents; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. (§115.61(a))
  - a. In the event that the allegations of sexual abuse or sexual harassment concern the staff member's immediate supervisor, the report shall be made to another supervisor, Warden, or OIG.
2. Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in Department policy, to make treatment, investigation, and other security and management decisions. (§115.61(b))
3. Medical and mental health practitioners shall report all allegations of sexual abuse and sexual harassment and inform offenders of the practitioner's mandatory duty to report, and the limitations of confidentiality, at the initiation of services. (§115.61(c))
4. If the sexual abuse victim is a Youthful Offender (under the age of 18) or considered an older person or vulnerable adult, the Department or facility will report the allegation as required by the State of Nevada mandatory reporting laws. (§115.61(d))
  - a. Youthful Offender Nevada Revised Statute (NRS) 432B.220.
  - b. Older persons and vulnerable offenders defined in NRS 200.5092 and 200.5093
5. All staff are required to report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports through their facility chain of command and/or OIG, PREA Management Division. (§115.61(e))

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6. When the Department, institution, or facility learns that an offender is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the offender (§115.62)

### 6.1 Reporting to Other Confinement Facilities (§115.63)

1. Institutions and facilities will have a procedure for reporting to other confinement facilities and actions to be taken when a report has been received from another confinement facility/agency. At a minimum, procedures will include:
  - a. Upon receiving an allegation that an offender was sexually abused while confined at another facility, the Warden shall notify the facility Warden or the appropriate office of the agency where the abuse occurred.
  - b. Appropriate Individuals outside of the Department that may be appropriate recipients of the allegation notifications may be sent to the agency's PREA Coordinator or the Department Head.
2. Within 72 hours of the offender reporting, the Warden will complete and send the written notification. (§115.63 (b)(c))
3. When the Department, institution, or facility receives such notifications, they shall ensure that the allegation is investigated if not already investigated.

### 6.2 First Responder Duties §115.64

1. Upon learning of an allegation that an offender was sexually abused, the first security staff member to respond to the report shall:
  - a. Separate the alleged victim and abuser;
  - b. Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;
  - c. If the abuse occurred within a time period (96 hours) that still allows for the collection of physical evidence, request that the alleged victim ensures that the alleged abuser does not take any action that could destroy physical evidence including as appropriate:
    - 1) Washing/showering,
    - 2) brushing teeth,
    - 3) changing clothes,
    - 4) urinating,
    - 5) defecating,
    - 6) drinking or
    - 7) eating.

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2. If the first staff responder is not a custody staff member, the first responder shall request that the alleged victim not take any actions that could destroy physical evidence, and then immediately notify the first custody staff member available.

### 6.3 Coordinated Response §115.65

1. All institutions and facilities will develop and follow a coordinated response procedure for reported incidents of sexual abuse. The procedure will include staff first responders, medical and mental health practitioners, investigators, and facility leadership.
2. Procedures will include the custody supervisor utilizing Coordinated response forms DOC 2092, DOC 2093, or DOC 2094.

### 6.4 Collective Bargaining §115.66

1. Neither the agency nor any other governmental entity responsible for collective bargaining on the agency's behalf shall enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff sexual abusers from contact with any offenders pending the outcome of an investigation or of a determination of whether, and to what extent, discipline is warranted.
2. Nothing in this standard shall restrict the entering into or renewal of agreements that govern:
  - a. The conduct of the disciplinary process, as long as such agreements are not inconsistent with the evidentiary standard for administrative investigations and disciplinary sanctions for staff outlined in standard 115.76; or
  - b. Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated.

### 6.5 Department Protection Against Retaliation (§115.67)

1. All institutions and facilities will have a procedure to protect all offenders and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other offenders or staff.
2. The Department, institutions, and facilities will employ multiple protection measures, such as; housing changes or transfers for offender victims or abusers, removal of alleged staff or offender abusers from contact with victims, and emotional support services for offenders or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.
3. For at least 90 days following a report of sexual abuse, the PCM or designee shall monitor and document the conduct and treatment of offenders or staff who reported the

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sexual abuse and of offenders who were reported to have suffered sexual abuse to determine if there are changes that may suggest possible retaliation by offenders or staff; and shall act promptly to remedy any such retaliation.

4. The PCM or designee monitoring will include reviewing:
  - a. offender disciplinary reports,
  - b. housing or program changes,
  - c. negative performance reviews, or
  - d. reassignments of staff
5. In the case of offenders, such monitoring shall also include periodic status checks.
6. If any other individual who cooperates with an investigation expresses a fear of retaliation, the Department, institution, or facility shall take appropriate measures to protect that individual against retaliation.
7. The obligation to monitor will terminate if the Department determines that the allegation is unfounded.
8. The 90-day monitoring will continue past 90 days if the need continues.
9. In instances of offender transfer at any point in the retaliation monitoring process, the sending facility PREA Compliance Manager will notify the receiving facility of the 90-day retaliation monitoring. This notification will be made via the telephone with a follow-up e-mail to the PCM at the receiving facility. This e-mail should be maintained, for audit purposes, as proof of notification
10. The sending facility PREA Compliance Manager will maintain the offender on their PREA retaliation monitoring log to ensure that the retaliation monitoring is completed. The PREA Compliance Manager will follow up with the PREA Compliance Manager at the Receiving Facility, in 30, 60, and 90 days, to ensure the required monitoring has been completed.

### 6.6 Post-Allegation Protective Custody (§115.68)

1. All institutions and facilities will develop, implement, and periodically review policies to strictly prohibit any offender who is or was at high risk for sexual victimization from being placed into involuntary segregated housing unless:
  - a. An assessment has been done and a determination made and documented that there is no available alternative means for housing the offender who is or was or is at high risk for sexual victimization from an abuser.
2. All placements of offenders into involuntary segregation for being a victim or a risk of victimization will be documented in NOTIS and shall clearly demonstrate the basis for the reason why no alternative was available.

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3. The institution or facility may place the offender in involuntary segregated housing for less than 24 hours while completing the assessment.
4. Institution and facility procedures and practice involving involuntary segregated housing shall include for the offenders, to the extent possible, access to programs, privileges, education, and work opportunities.
5. The institution or facility will document in NOTIS the opportunities that have been limited, the duration of the limitation, and the reason why the limitation.
6. Any offender placed into involuntary segregation due to having been a victim or at risk of victimization shall only remain in involuntary segregation only until an alternative housing arrangement is made but shall not ordinarily exceed 30 days.
7. Any offender placed into involuntary segregation due to being a victim or a risk of victimization shall provide for a 30-day review to determine and document the continued need for separation from the general population, if applicable.

### 7.0 Criminal and Administrative Investigations (§115.71)

1. The Department Office of the Inspector General Criminal Investigators are responsible for investigating all allegations of staff-on-offender sexual abuse and sexual harassment and offender-on-offender sexual abuse.
  - a. Investigators assigned to investigate allegations of sexual abuse or sexual assault shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.
  - b. The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011.
2. The Warden or designee is responsible for assigning a facility supervisor who has completed specialized training to conduct offender-on-offender sexual harassment investigations as assigned by the Office of the Inspector General.
3. Investigations will be completed promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.
4. Investigators shall gather and preserve direct and circumstantial evidence, including:
  - a. Any available physical and DNA evidence;
  - b. Any available electronic monitoring data;

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- c. Shall interview alleged victims, suspected perpetrators, and witnesses; and
  - d. Shall review prior complaints and reports of sexual abuse involving the suspected perpetrators.
5. When the quality of evidence appears to support a criminal prosecution, the assigned criminal investigator shall conduct compelled interviews only after consulting with the Nevada Attorney General as to whether compelled interviews may be an obstacle to subsequent criminal prosecution.
6. The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as an offender or staff. The Department will not require an offender who alleges sexual abuse to submit to a polygraph examination or other truth-telling devices as a condition of proceeding with the investigation of such an allegation.
  - a. Administrative investigations shall include an effort to determine whether staff actions or failures to act contributed to the abuse and be documented in written reports to include a description of the physical, and testimonial evidence, and the reasoning behind credibility assessments and investigative facts and findings.
  - b. Criminal investigations shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence with copies of all documentary evidence attached, where feasible.
7. Substantiated sexual abuse and/or sexual harassment allegations of conduct that appear to be criminal will be referred to the Attorney General's Office pursuant to AR 708 [referral for criminal prosecution].
  - a. At a minimum, the following Nevada Revised Statutes (NRS) apply: (115.71) (h)
    - i. NRS 212.188: Sexual Abuse of a prisoner or unauthorized custodial conduct by an employee of or contractor or volunteer for prison.
    - ii. NRS 200.571 Harassment
    - iii. NRS 200.366 Sexual Assault
8. The departure of the alleged abuser or victim from the employment or control of the facility or Department shall not provide a basis for terminating an investigation.
9. The Department shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.
  - a. within the Department.

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### 9.1 Reporting to Offenders [§115.73]

1. Following an investigation into an offender's allegation that they suffered sexual abuse, the Department, institution, or facility will inform the offender victim as to whether the allegation has been determined to be substantiated, unsubstantiated, unfounded, or did not meet a violation of sexual abuse or harassment.
2. Following an offender's allegation that a staff member has committed sexual abuse against the offender, and the allegation was shown to be substantiated the offender will be notified by the Department, institution, or facility whenever:
  - a. The staff member is no longer posted within the offender's unit;
  - b. The staff member is no longer employed at the facility;
  - c. The Department learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or
  - d. The Department learns that the staff member has been convicted on a charge related to sexual abuse within the facility.
3. Following an offender's allegation that they had been sexually abused by another offender and the allegation was shown to be substantiated the Department, institution, or facility shall subsequently inform the alleged victim whenever:
  - a. The Department learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
  - b. The Department learns that the alleged abuser has been convicted of a charge related to sexual abuse within the facility.
4. The institution or facility shall document all such notifications or attempted notifications on the Offender PREA Report Notification form DOC 2095. The facility's obligation to provide notification shall terminate if the offender is released from the Department's custody. (§115.73 e, f)

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### **7.2 Disciplinary Sanctions for Staff** [§115.76]

1. Staff shall be subject to disciplinary sanctions up to and including termination for violating the Department's sexual abuse and sexual harassment policy.
2. Termination shall be a presumptive disciplinary sanction for staff who have engaged in sexual abuse.
3. Disciplinary sanctions against staff members for any violation of the agency's policy prohibiting acts of sexual abuse and sexual harassment (other than engaging in sexual abuse) against an offender will be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed against other staff members for comparable offenses in similar circumstances.
4. All terminations of any staff member for violations of the sexual harassment policy, or resignations by staff, who would have been terminated if not for their resignation, shall be reported to law enforcement agencies and any relevant licensing body. Unless the activity was clearly not criminal

### **7.3 Corrective Action for Contractors and Volunteers** [§115.77]

1. Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with offenders and shall be reported to law enforcement agencies unless the activity was clearly not criminal, and to relevant licensing bodies.
2. The facility shall take appropriate remedial measures and shall consider whether to prohibit further contact with offenders, in the case of any other violation of Department sexual abuse, sexual harassment, or over-familiarity policies by a contractor or volunteer.

### **7.4 Disciplinary Sanctions for Offenders** [§115.78]

1. Upon completion of a criminal investigation which results in a substantiated finding for sexual abuse will result in a criminal referral to the Nevada Attorney General and may be subject to criminal charges under Nevada Revised Statute (NRS) 200.366 Sexual Assault and in accordance with Administrative Regulation (AR) 707, offender discipline MJ19 sexual assault/sexual abuse.
2. Upon completion of an administrative investigation which results in a substantiated finding for offender-on-offender sexual harassment will result in administrative disciplinary charges in accordance with AR 707 offender discipline MJ50 sexual harassment.
3. The institution or facility disciplinary hearing officer will ensure sanctions are commensurate with the nature and circumstances of the abuse committed, the offender's disciplinary history, and the sanctions imposed for comparable offenses by other offenders with similar histories.



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4. The disciplinary hearing officer shall consider whether an offender's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanctions, in any, should be imposed.
5. For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

### **10.0 Medical and Mental Health Screenings; History of Sexual Abuse.** [§115.81]

1. All institutions and facilities will outline procedures in conjunction with this manual and applicable Administrative Regulations.
2. During the intake or reception screening that indicates an offender has experienced prior sexual victimization or has previously perpetrated sexual abuse, whether it occurred in an institutional setting or the community, staff shall ensure that the offender is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening. [§115.81(a, b)]
3. Any information related to sexual victimization or abusiveness that occurred in a confinement facility setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law. [§115.81 c]
4. Medical and mental health practitioners shall obtain informed consent from offenders before reporting information about prior sexual victimization that did not occur in a facility setting unless the offender is under the age of 18. [§115.81 d]

### **8.1 Access to Emergency Medical and Mental Health Services.** [§115.82]

1. Offender victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment. [§115.82. a]
2. If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, custody staff first responders shall take preliminary steps to protect the victim and immediately notify the appropriate medical and mental health practitioners. [§115.82. b]
3. Offender victims of sexual abuse, while incarcerated, shall be 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. [§115.82. c, §115.83. f]

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4. Treatment services shall be provided to the victim without financial cost regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. [§115.82 d – §115.83. g]

### 8.2 Ongoing Medical and Mental Health Care for Sexual Abuse Victims and Abusers. [§115.83]

1. The institution or facility shall offer medical and mental health evaluation and, as appropriate, treatment to all offenders who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility. [§115.83 a.]
2. 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. [§115.83 b.]
3. The institution or facility shall provide such victims with medical and mental health services consistent with the community level of care. [§115.83 c.]
4. Offender victims of sexually abusive vaginal penetration, while incarcerated, shall be offered pregnancy tests. If pregnancy results, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services. [§115.83 c]
5. Offender victims of sexual abuse, while incarcerated, shall be offered tests for sexually transmitted infections as medically appropriate. [§115.83 (f)]
6. Treatment services shall be provided to the victim without financial cost regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. [§115.83 (g)]
7. Facilities shall attempt to conduct a mental health evaluation of all known offender-on-offender abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners. [§115.83 b]

### 8.3 Sexual Abuse Incident Reviews [§115.86]

1. The Department PREA Coordinator or designee will notify the facility PCM when a sexual abuse investigation has been officially closed.
2. The facility shall conduct a Sexual Abuse Incident Review (SAIR) at the conclusion of every substantiated sexual abuse investigation, including where the allegation has not been substantiated unless the allegation has been determined to be unfounded. (§115.86)
3. The SAIR shall ordinarily occur within 30 days of the conclusion of every substantiated and unsubstantiated sexual abuse investigation, whether administrative or criminal. The incident review team shall include at a minimum:
  - a. Upper-level facility supervisor

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- b. Line supervisors,
  - c. Investigators<sup>6</sup>, and
  - d. Medical or Mental Health practitioner
4. The SAIR team shall utilize DOC 1925 and document their review for the following criteria:
    - a. Considered whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse.
    - b. Considered whether the incident or allegation was motivated by race, ethnicity, gender identity, lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
    - c. Examined the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
    - d. Assessed the adequacy of staffing levels in that area during different shifts.
    - e. Assessed whether monitoring technology should be deployed or augmented to supplement supervision by staff.
  5. A report of the committee's findings shall include determinations made and any recommendations for improvement. The committee chair shall submit the report to the PCM and Warden unless they are part of the committee review.
  6. The Warden shall consider implementing recommendations for improvement or document the reasons for not doing so.

### 8.4 Data Collection [§115.87]

1. The Department shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and a set of definitions.
2. The Department shall aggregate the incident-based sexual abuse data at least annually.
3. The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.
4. The Department shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.
5. The Department shall also obtain incident-based and aggregated data from every private facility should the Department contract for the confinement of its offenders.

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<sup>6</sup> Investigative report, findings, and information related to evidence.

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6. Upon request, the Department shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

### 8.5 Data review for corrective action [§115.88]

1. The Department shall review data collected and aggregated to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by:
  - a. Identifying problem areas;
  - b. Taking corrective action on an ongoing basis; and
  - c. Preparing an annual report of its findings and corrective actions for each facility, as well as the Department as a whole.
2. Such reports shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the Department's progress in addressing sexual abuse.
3. The agency's report shall be approved by the Director and made readily available to the public through its website.
4. The Department 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.

### 8.6 Data storage, publication, and destruction [§115.89]

1. The Department shall ensure that data collected pursuant to §115.87 are securely retained.
2. The Department shall make all aggregated sexual abuse data, from facilities under its direct control, and any facilities it contracts with, readily available to the public at least annually through its website.
3. Before making aggregated sexual abuse data publicly available, the Department shall remove all personal identifiers.
4. The Department shall maintain sexual abuse data collected pursuant to §115.87 for at least 10 years after the date of the initial collection unless federal, State, or local law requires otherwise.