



NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION

**PRISON RAPE ELIMINATION ACT
ADMINISTRATIVE REGULATION – 421**

SUPERSEDES: AR 421 (12/17/12); AR 421 (Temporary 07/17/14); AR 421 (09/16/14); AR 421 (Temporary 12/17/15); AR 421 (01/14/16); AR 421 (Temporary 08/09/22)

EFFECTIVE DATE: August 30, 2022

AUTHORITY: NRS 200.366, NRS 201.210, NRS 201.220, NRS 201.230, NRS 209.131, NRS 212.188, 42 U.S.C. § 15601, *et seq.* and 28 C.F.R. Part 115

RESPONSIBILITY

The Director of the Nevada Department of Corrections (NDOC and Department) is responsible for the implementation of this Administrative Regulation (AR).

The Warden of each institution/facility is responsible for ensuring compliance with the Prison Rape Elimination Act (PREA) at their respective institution/facility and ensuring Operational Procedures (OP) are developed; and staff is trained on the procedures.

All employees, offenders, volunteers, and contractors who are under the jurisdiction of or who conduct business with the Department have a personal responsibility to understand and follow this regulation and the PREA manual.

For the purposes of all PREA related policies and procedures, "facility" and "institution" are to be considered interchangeable to mean both definitions as described in NRS 209.

421.01 ZERO TOLERANCE POLICY

1. The Department has a Zero Tolerance policy for any form of sexual misconduct to include staff/contractor/or volunteer on offender or offender on offender sexual harassment, sexual assault, sexual abusive contact, and consensual sex. Any staff member/contractor/volunteer who engages in, fails to report, or knowingly condones sexual harassment or sexual contact with or between offenders shall be subject to disciplinary action and may be subject to criminal prosecution. The Department shall take a proactive approach regarding the prevention, detection, response, and punishment of any type of sexual contact.

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2. The Department prohibits retaliation against any person because of his/her involvement in the reporting or investigation of a complaint.

421.02 DEPARTMENT PREA COORDINATOR

1. The Director will designate a Department PREA Coordinator with sufficient time and authority to oversee the Department's efforts to comply with the PREA standards for the Department and in all facilities including providing direction to facility Wardens and PREA Compliance Managers. This position is assigned to the Office of the Inspector General, PREA Management Division, and supervised by the Inspector General with direct access to the Director and the Department's executive leadership team. The PREA Coordinator has the authority necessary to create and implement Department-wide policies, procedures, and practices.

421.03 FACILITY PREA COMPLIANCE MANAGERS

1. The Warden at each institution/facility will designate a PREA Compliance Manager, (PCM) with sufficient time and authority to coordinate the institution/facility compliance with the PREA standards. The PCM will have direct access to the Warden, the facility's executive or senior leadership team, and the Department PREA coordinator.
2. The PCM shall have comprehensive knowledge of the overall operations of the facility, and full access to all relevant information related to the facility's compliance with the PREA standards, policies, and procedures.

421.04 HIRING AND PROMOTION DECISIONS

1. The Department shall not hire or promote anyone who may have contact with offenders, and shall not enlist the services of any contractor who may have contact with offenders who;
 - A. Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility; juvenile facility, or other confinement facilities;
 - 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 in the above paragraph.
2. The Department shall consider any incidents of sexual harassment when determining whether to hire, promote or enlist the services of any employee.

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3. Before hiring new employees who may have contact with offenders the Department will;
 - A. Perform a criminal background records check; and
 - B. Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.
 - C. When requested by other institutional employers, the Department will provide information on substantiated allegations of sexual abuse.
 4. The Department shall also perform a criminal background records check before enlisting the services of any contractor who may have contact with offenders.
 5. The Department shall conduct criminal background records checks at least every five (5) 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 described above in paragraph (1) of this section in written applications or interviews for hiring or promotions. Applicants who fail to disclose such information shall be ineligible for hire for the current vacancy and, if applicable, may be grounds for termination.
 7. Neither the NDOC nor any other governmental entity responsible for collective bargaining on the NDOC's behalf shall enter into or renew any collective bargaining agreement or other agreement that limits the NDOC's ability to remove staff alleged to be 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.

421.05 TRAINING

1. Employee training: the Department shall train all new employees on the Department's zero-tolerance policy for sexual abuse and sexual harassment. All employees shall receive training every two years. In years in which an employee does not receive such refresher training, the NDOC shall provide refresher information on current sexual abuse and sexual harassment policies.
2. Each employee shall acknowledge training received through signed or electronic verification, that they understand the training which shall include, but is not limited to:
 - A. The Department's zero-tolerance policy for sexual abuse and sexual harassment;
 - B. How to fulfill staff responsibilities under the NDOC sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;

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- C. Offenders' right 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 in confinement;
 - 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 all offenders, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming offenders;
 - J. How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities
- 3. All staff will receive training on communicating with all offenders and shall use gender-neutral terms such as referring to offenders by their last name.
 - 4. All volunteers and contractors who have contact with offenders shall be trained, in accordance with the type of service and level of contact they have with offenders, on the DOC's Zero-Tolerance policy as it relates to sexual abuse and sexual harassment. They shall, additionally, be trained on their responsibilities under the NDOC's sexual abuse and sexual harassment prevention, detection and response policies, and procedures.
 - 5. Each volunteer or contractor shall acknowledge and certify to the NDOC, through signature or electronic verification, that they understand the training they received.
 - 6. The Department employee training is tailored to address all genders of offenders in a correctional facility; therefore, additional training is not required when a staff member transfers to a different gender facility.
 - 7. All custody staff shall be trained on how to conduct cross-gender pat-down searches (universal pat search) and searches of transgender and intersex offenders to ensure professionalism and to utilize the least intrusive manner possible consistent with security needs.
 - 8. Staff who investigate incidents of sexual abuse and sexual harassment shall receive specialized training on techniques for interviewing sexual abuse victims, proper use of *Miranda*, *Garrity* warning, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecutorial referral. The NDOC shall maintain documentation of training completion.

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9. All full and part-time medical and mental health care practitioners shall be trained on the subparts below. The NDOC shall maintain documentation that such training has been received.

- 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
- D. How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

421.06 REPORTING

1. Offender Reporting

- A. The Department shall provide multiple ways for offenders to privately report sexual abuse and sexual harassment, retaliation by other offenders or employees for reporting sexual abuse and sexual harassment, and employee neglect or violation of responsibilities that may have contributed to such incidents.
- B. The Department will also provide at least one way for offenders to report abuse or harassment to a public or private entity or office that is not part of the Department and that can receive and immediately forward offender reports of sexual abuse and sexual harassment to Department officials, allowing the offender to remain anonymous upon request.

2. Third-Party Reporting

- A. The Department shall provide a method for third parties to report sexual abuse and sexual harassment on behalf of an offender. Information on how to report sexual abuse and sexual harassment on behalf of an offender shall be posted publicly.

3. Staff, Contract Employee, or Volunteer Reporting

- A. Any employee, contractor, or volunteer who has any knowledge, suspicion, information or becomes aware of any alleged act of sexual abuse or sexual harassment by another employee, contractor, or volunteer is required to immediately report the knowledge, suspicion, or information to his or her immediate supervisor.
 - 1) If the allegations of misconduct concern the employee, contractor, or volunteer's immediate supervisor, the report should be made up the

chain of command. The report of the alleged act of misconduct will not be referred to an employee, contractor, or volunteer who is the subject of the accusation.

- 2) The information that the employee, contractor, or volunteer reports is confidential and must not be disseminated outside the need and right to know.
- B. Any employee shall immediately report any other employee's neglect or violation of responsibilities that may have contributed to an incident of sexual abuse, sexual harassment, or retaliation.
 - C. All institutional/facility allegations of sexual abuse and sexual harassment, including third-party and anonymous reports of allegations must be reported to the PCM or designated employee. All institutional/facility allegations of sexual abuse and sexual harassment will result in a Nevada Offender Tracking Information System (NOTIS) incident report (IR).
 - D. The Department will provide a method for staff to privately report sexual abuse and sexual harassment of offenders.

421.07 OFFENDER ACCESS TO OUTSIDE CONFIDENTIAL SUPPORT SERVICES

1. Each facility will provide the offender with access to outside victim advocates for emotional support services related to sexual abuse. Mailing addresses and telephone numbers will be readily available to offenders including toll-free numbers where available.
2. Each facility shall enable reasonable communication between a victim of sexual abuse and the community victim advocate in as confidential a manner as possible.
3. The facility shall inform offenders, before giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.

421.08 REPORTING TO OTHER CONFINEMENT FACILITIES

1. All facilities will have a policy and procedure in place that upon receiving an allegation that an offender was sexually abused while confined at another facility, the facility Warden that received the allegation shall notify the head of the facility or appropriate office of the Department where the alleged abuse occurred.
 - A. Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.
 - B. The facility shall document that it has provided such notification.

421.09 COORDINATED RESPONSE

1. All facilities will develop an Operational Procedure to coordinate actions among first responders, medical and mental health practitioners, investigators, and facility leadership to be taken in response to an incident of sexual abuse.

421.10 DEPARTMENT PROTECTION AGAINST RETALIATION

1. No staff member or offender who reports sexual abuse/sexual harassment or cooperates with sexual abuse/sexual harassment investigations will be subjected to any form of retaliation from other staff members or offenders of the Department.

421.11 CRIMINAL AND ADMINISTRATIVE INVESTIGATIONS

1. The Department Office of the Inspector General Criminal Investigators is 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 to assign 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;
 - C. Shall interview alleged victims, suspected perpetrators, and witnesses; and

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- 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, 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 allegations of conduct that appear to be criminal shall be referred for prosecution.
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.
10. Following an investigation into an offender's allegation that he or she suffered sexual abuse in the Department, the offender shall be informed whether the allegations have been determined substantiated, unsubstantiated, or unfounded. The DOC's obligation to report shall terminate if the alleged victim is released from custody.
11. Following an offender's allegation that a staff member has committed sexual abuse against the offender, whether the allegation was shown to be substantiated or unsubstantiated, the offender will be notified if:
- A. The staff member is no longer posted within the offender's unit;
- B. The staff member is no longer employed at the facility;

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- C. The staff member has been indicted on a charge related to sexual abuse within the Department; or
 - D. The Department learns that the staff member has been convicted on a charge related to sexual abuse within the Department.
12. Following an offender's allegation that he or she has been sexually abused by another offender, the Department shall subsequently inform the alleged victim whenever;
- A. The alleged abuser has been indicted on a charge related to sexual abuse within the Department; or
 - B. The alleged abuser has been convicted of a charge related to sexual abuse within the Department.
13. The investigative staff member assigned to investigate allegations of staff-on-offender sexual abuse, and offender-on-offender sexual abuse will participate in the mandatory Sexual Abuse Incident Review (SAIR) Committee at the conclusion of each investigation if the allegation is substantiated or unsubstantiated. The SAIR Committee review will include:
- A. Whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
 - B. Whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
 - C. Whether physical barriers in the area where the incident allegedly occurred may enable abuse;
 - D. Whether staffing levels in that area during different shifts are adequate; and
 - E. Whether monitoring technology should be deployed or augmented to supplement supervision by staff.
14. Specifically identified facility staff who will also participate in the SAIR review include an upper-level management official who will receive input from line supervisors, investigators, PCM, and medical or mental health professionals. A report of SAIR review findings, including but not necessarily limited to determinations made according to the incident review requirements and any recommendations for improvement should be submitted to the Warden. The Warden responsible for the institution/facility shall implement the recommendations for improvement or shall document reasons for not doing so.

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15. The Department shall retain all Administrative and Criminal reports for as long as the alleged abuser is incarcerated or employed by the Department, plus five (5) years.

421.12 DISCIPLINARY SANCTIONS FOR STAFF

1. All Departmental staff shall be subject to disciplinary sanctions up to and including termination for violating Departmental sexual abuse or sexual harassment policies.
2. All terminations for violations of Departmental sexual abuse or sexual harassment policies, 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 bodies.

421.13 CORRECTIVE ACTION FOR CONTRACTORS AND VOLUNTEERS

1. Any contractor or volunteer who engages in an activity that could be interpreted as sexual abuse shall be prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.
2. The institution/facility shall take appropriate measures and shall consider whether to prohibit further contact with inmates, in the case of any other violation of Departmental sexual abuse or sexual harassment policies by a contractor or volunteer.
 - A. Discussions regarding corrective action up to and including termination of contract or volunteer agreement will include the Inspector General, PREA Coordinator, and any others deemed appropriate by the NDOC.

421.14 DISCIPLINARY SANCTIONS FOR OFFENDERS

1. Offenders shall be subject to disciplinary sanctions according to Administrative Regulation 707, Offender Disciplinary Process, following an administrative finding that the offender engaged in offender-on-offender sexual abuse or offender-on-offender sexual harassment.
2. Disciplinary sanctions will be 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.
3. The disciplinary process shall consider whether an offender's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction if any, should be imposed.
4. The Department may discipline an offender for sexual contact with staff pursuant to Administrative Regulation 707, Offender Disciplinary Process only upon a finding that the staff member did not consent to such contact.

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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.
 6. The Department prohibits all sexual activity between offenders and may discipline offenders for such activity.
 - A. The Department will not deem such activity to constitute sexual abuse if it determines that the activity was not coerced.
 - B. Offenders who are deemed to be engaging in consensual sexual activity will be disciplined pursuant to Administrative Regulation 707, Offender Disciplinary Process.

421.15 ACCESS TO EMERGENCY MEDICAL AND MENTAL HEALTH SERVICES

1. Facilities will ensure that offender victims of sexual abuse 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.
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 shall immediately notify the appropriate medical and mental health practitioner.
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 the professionally accepted standard of care, where medically appropriate.
4. Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

421.16 MEDICAL AND MENTAL CARE

1. As required under PREA standards 115.81 and 115.83 the medical and mental health division for the agency and each facility will establish confidential medical procedures for reports of possible PREA-related incidents.
2. Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff as necessary.

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3. In accordance with the Department of Justice information related to PREA, any investigative or PREA audit team member has need of and a right to medical information, and reports during authorized Department activities.

421.17 CONFIDENTIALITY

1. All case records associated with claims of staff sexual abuse, sexual harassment, offender sexual abuse, or any attempt thereof including written reports, investigation reports, evidence, offender information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment and/or counseling are confidential.
2. Any violation of confidentiality regulations and procedures will result in disciplinary action.

APPLICABILITY

1. This Administrative Regulation requires a Department manual.
2. This Administrative Regulation requires an Operational Procedure at each institution/facility.
3. This regulation requires an audit pursuant to the Prison Rape Elimination Act.

REFERENCES

Prison Rape Elimination Act, Prisons and Jail Standards 42 U.S.C. § 15601, *et seq.* and 28 C.F.R. Part 115



Charles Daniels, Director



Date