NEVADA DEPARTMENT OF CORRECTIONS
ADMINISTRATIVE REGULATION
421

CUSTODIAL SEXUAL MISCONDUCT, INMATE SEXUAL OFFENSES, AND PRISON RAPE ELIMINATION ACT (TEMPORARY)

Supersedes: AR 421 (12/17/12)
Effective: 07/17/14

AUTHORITY: NRS 200.366, NRS 201.210, NRS 201.220, NRS 201.230, NRS 209.131, NRS 212.187, 42 U.S.C. § 15601, *et seq.* and 28 C.F.R. Part 115

RESPONSIBILITY

It is the responsibility of all employees, inmates, volunteers, and contractors who are under the jurisdiction of or who conduct business with the Nevada Department of Corrections ("Department") to understand and follow this regulation.

421.01 ZERO TOLERANCE

1. The Department has a Zero Tolerance policy for any form of sexual misconduct to include staff/contractor/or volunteer on inmate or inmate on inmate 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 inmates 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.

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

421.02 PREA COORDINATOR

1. It is the responsibility of the Prison Rape Elimination Act (PREA) Coordinator to develop, implement, and oversee the Department's compliance with all PREA standards.

2. PREA Coordinator or designee will collect accurate, uniform data for every allegation of sexual abuse at institutions/facilities.

421.03 PREA COMPLIANCE MANAGERS

1. Each facility shall have a designated PREA Compliance Manager, (CM) with sufficient time and authority to coordinate the institution/facility's compliance with the PREA standards.

A. The CM will report directly to the Facility Warden.

2. The CM will facilitate the development of the confidential facility PREA operational policies.

3. The facility Warden and CM will oversee adherence to each specific PREA related rules, regulations and practices at the facility and document accordingly any need for adjustment and the implementation of adjusted policy, rule and practice.

421.04 Employee and contractor Criminal Records checks

1. All current employees and contractors will have criminal records checks done commencing with the first year of the Department's 3 year PREA Audit cycle.

421.05 STAFF DUTY TO REPORT MISCONDUCT

1. 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.

A. In the event that 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 a employee, contractor, or volunteer who is the subject of the accusation.

B. The information that the employee, contractor, or volunteer reports is confidential and must not be disseminated outside the need and right to know.

2. 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.

3. All facility allegations of sexual abuse and sexual harassment, including third-party and anonymous reports of allegations must be reported to the CM or designated employee.

A. All facility allegations of sexual abuse and sexual harassment will result in a Nevada Offender Tracking Information System (NOTIS) incident report (IR).

4. All agency allegations of sexual abuse and sexual harassment not generated from a facility, including third-party and anonymous reports of allegations must be reported to the Inspector General's Office.

421.05 EMPLOYEE TRAINING

1. All employees who may have contact with inmates will receive instruction on the requirements and

responsibilities of PREA in pre-service training.

A. All employees who may have contact with inmates will receive refresher training on the requirements and responsibilities of PREA every two (2) years.

B. In years which an employee does not receive PREA refresher training the employee, shall receive refresher information on current PREA policies.

2. The Inspector General shall ensure that investigative and other staff members assigned to investigate any allegation related to PREA have received training in conducting such investigations in confinement settings.

A. Specialized training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.

3. The Department shall maintain documentation that agency investigative staff have completed the required specialized training in conducting PREA related investigations.

4. The Department shall ensure that all full and part time medical and mental health service providers who work regularly in its facilities have received specialized PREA training.

5. The Department shall maintain documentation that all medical and mental health service providers have completed the required specialized PREA training. The facility Director of Nursing Services (DONS) and Psychologist 4's are responsible for ensuring this training is completed and documented.

6. All staff will be documented and confirmed by signature or electronic verification which will be maintained in employee's training files. The confirmation will include that the employee understands the training that they have received.

421.06 CONTRACTOR AND VOLUNTEER TRAINING

1. The Department shall ensure that all volunteers and contractors who have contact with inmates 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 inmates will receive training on their responsibilities under the department's zero tolerance policy and procedures.

2. The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with inmates, but all volunteers and contractors who have contact with inmates shall be notified of the Department's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.

3. Volunteers and contractors who have contact with inmates shall receive PREA training prior to entering any institution/facility.

4. The Department shall maintain documentation confirming that volunteers and contractors understand the training they have received.

421.07 INMATE EDUCATION

1. During initial intake orientation all inmates will receive information explaining the Department's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.

2. Within thirty (30) days of intake, the Department shall provide comprehensive education to inmates either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding Departmental policies and procedures for responding to such incidents.

3. All inmates will be afforded education in formats accessible to everyone, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills.

4. Documentation of inmate participation in these education sessions will be contained within the NOTIS case management module.

5. In addition to providing such education, key information will be continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats.

421.08 INMATE SCREENING

1. All inmates shall be assessed for their risk of being sexually abused by or abusive toward other inmates during an intake screening and upon transfer to another institution/facility..

A. The PREA risk screening assessment tool is confidential.

421.09 REPORTING

1. Inmates, visitors, inmate family members or associates, and other community members can privately report sexual abuse or sexual harassment, retaliation by other inmates or staff for reporting sexual abuse or sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.

A. Such reporting can include, but not limited to:

(1) Verbal complaints to any Departmental employee;

(2) Written complaints, which may be made through the following processes:

a. Inmate grievances

i. Grievances alleging staff on inmate sexual misconduct or inmate on inmate sexual abuse will be forwarded immediately to the Appointing Authority and followed by a confidential report completed in Nevada Offender Tracking Information System (NOTIS).

ii. A copy of the grievance will be forwarded to the PREA Management team in the Office of the Inspector General for review and investigation.

b. Inmate kites, written notes or letters to facility staff or administrators, or letters directed to the the Inspector General's Office.

(3) NDOC Family Services Office by phone or email at info@doc.nv.gov.

(4) Writing the Nevada Attorney General's Office.

421.10 MEDICAL AND MENTAL CARE

1. As required under PREA standard 115.81 the medical division for the Department and each facility will establish confidential medical procedures for reports of possible PREA related incidents.

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

421.11 REPORTING TO OTHER CONFINEMENT FACILITIES

1. All facilities will have policy and procedure in place that upon receipt of an allegation that an inmate was sexually abused while confined at another institution/facility, detention center, jail, or juvenile detention facility, the shift supervisors of the institution/facility that received the allegation shall notify the PREA Management team immediately and initiate an incident report.

A. Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.

B. The PREA coordinator shall document that they have received such notification and in turn notified the institution/facility, detention center, jail or juvenile detention facilty agency administrator.

2. The PREA coordinator will notify the institution/facility, detention center, jail or juvenile detention facility in which the inmate alleged the incident occurred.

3. The PREA coordinator will ensure the allegation is investigated in accordance with this standard by the other institution/facility, detention center, jail or juvenile detention facility.

421.12 CRIMINAL AND ADMISTRATIVE INVESTIGATIONS

1. NDOC Office of the Inspector General will investigate all allegations of staff on inmate sexual abuse, sexual harassment and inmate on inmate 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 departure of the alleged abuser or victim from the employment of the Department or control of the institution/facility shall not provide a basis for terminating an investigation.

3. All substantiated criminal cases shall be referred to the applicable prosecutorial authority for review of prosecution.

The investigative staff member assigned to investigate allegations of staff on inmate sexual abuse, and inmate on inmate sexual abuse will participate in the mandatory sexual abuse incident review panel at the conclusion of each investigation if the allegation is substantiated or unsubstantiated. Participation will include at a minimum, a written report indicating the findings of the investigation and specific related incident review questions related to the incident itself. The specific requested information 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.

5. Specifically identified facility staff who will also participate in the mandatory sexual abuse incident review will be upper-level management officials who will receive input from line supervisors, and medical or mental health professionals.

A. A report of its findings, including but not necessarily limited to determinations made pursuant to the incident review requirements and any recommendations for improvement should be submitted to the facility head and PREA Compliance Manager.

6. The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.

421.13 Agency Protection against Retaliation

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

A. Each facility and divisions shall designate which staff members are charged with monitoring for retaliation

2. For at least 90 days following a report of sexual abuse, the facility or division shall monitor the conduct and treatment of inmates or staff who reported the sexual abuse and/or of inmates who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by other inmates or staff. Any such action shall be immediately remedied.

A. Signs of possible retaliation to be monitored for include but are not limited to any inmate disciplinary reports not supported by proper reporting, housing, or program changes, or negative performance reviews or reassignments of staff.

B. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

C. Inmate reporters or inmates who have allegedly suffered sexual abuse, periodic status checks will be included in the monitoring.

3. If any facility staff member learns of or receives information that a person who cooperated with an investigation, other than an inmate or staff reporter, has expressed a fear of retaliation, the Inspector General's Office will be immediately notified.

A. The matter will be immediately reviewed by Supervisor or PREA management staff of the Inspector General's Office and contact made with the person by the assigned staff member of the Inspector General's Office.

B. Appropriate measures will be taken by the assigned investigator, including, follow up with the person who expressed the fear and if applicable referral to an outside law enforcement body or advocacy group.

4. The facility or division's responsibility to monitor for retaliation can be terminated if the facility or division is notified that the allegation is unfounded

421.14 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 to any relevant licensing bodies.

421.15 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 remedial 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.

421.16 DISCIPLINARY SANCTIONS FOR INMATES

1. If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to require the offending inmate to participate in such interventions as a condition of access to programming or other benefits.

A. Sanctions shall be commensurate with the nature and circumstances of the harassment, abuse, or activity committed, the inmate's disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories.

B. The disciplinary process shall consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.

C. Inmates shall be subject to disciplinary sanctions pursuant to Administrative Regulation 707, Inmate Disciplinary Process, following a finding that the inmate engaged in inmate-on-inmate sexual harassment. In the case(s) of possible criminal activity such as inmate on inmate sexual abuse or inmate consensual sexual activity, the Inspector General's Office and Attorney General's Office will be contacted and the matter reviewed for criminal prosecution referral prior to any Inmate Administrative disciplinary action. After review for possible criminal prosecution referral, inmates shall be subject to administrative disciplinary sanctions.

2. The Department may discipline an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact.

3. 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.

4. The Department prohibits all sexual activity between inmates. The Department may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

421.17 CONFIDENTIALITY ISSUES

1. All case records associated with claims of staff sexual abuse, sexual harassment, inmate sexual abuse or any attempt thereof including written reports, investigation reports, evidence, inmate 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.

421.18 GENERAL DEFINITIONS

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

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

3. **Substantiated allegation** means an allegation that was investigated and determined to have occurred.

4. **Unfounded allegation** means an allegation that was investigated and determined not to have occurred.

5. **Unsubstantiated allegation** 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.

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

7. **Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident includes any of the following acts:**

   A. Victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse.

   B. 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; penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

8. **Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the inmate, detainee, or resident:**

   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 instrument, that 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 the buttocks, that 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 inmate, detainee, or resident, and

H. Voyeurism by a staff member, contractor, or volunteer

(1) Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate, detainee, or resident by staff for reasons **unrelated to official duties**, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

9. **Sexual Activity**: Sexual contact including, but not limited to, sexual intercourse, deviant sexual behavior, kissing, fondling, and/or manipulation of the genitalia, buttocks, and breasts of another person in a manner which produces or is intended to produce sexual stimulation or gratification with the ***consent of both persons***. Sexual activity can occur when the parties involved are clothed or unclothed.

10. **Sexual Coercion/Pressuring**: Compelling or inducing another person to engage in sexual activity by deceit, threats, force, intimidation, or personal favors.

11. **Sexual Solicitation:** The solicitation of another person to engage in sexual activity.

12. **Sexual harassment:**

A. Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and

B. Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident 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.

APPLICABILITY

1. This Administrative Regulation requires a confidential manual to be utilized by all staff.

2. This Administrative Regulation requires data collection by the Inspector General's Office and the Institutional PREA Manager, in support of internal audits.

3. This Administrative Regulation requires compliance with the U.S. Attorney General's National Standard to Prevent, Detect and Respond to Prison Rape, including but not limited to external audits.

Director

Date 7/17/14