

C 612

Prison Rape Elimination Act

C 612.1 PURPOSE AND SCOPE

This policy provides guidance for compliance with the Prison Rape Elimination Act of 2003 (PREA) and the implementing regulation that establishes standards (PREA Rule) to prevent, detect and respond to sexual abuse and sexual harassment.

C 612.1.1 DEFINITIONS

Definitions related to this policy include:

Intersex - 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.

Sexual abuse - Any of the following acts, if the inmate does not consent, is coerced into such act by overt or implied threats of violence or is unable to consent or refuse:

- 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
- 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 (28 CFR 115.6)

Sexual abuse also includes abuse by a staff member, contractor or volunteer as follows, with or without consent of the inmate, detainee or resident:

- 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
- 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
- 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
- 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 where the staff member, contractor or volunteer has the intent to abuse, arouse or gratify sexual desire
- Any attempt, threat or request by a staff member, contractor or volunteer to engage in the activities described above
- Any display by a staff member, contractor or volunteer of his/her uncovered genitalia, buttocks or breast in the presence of an inmate, detainee or resident
- Voyeurism by a staff member, contractor or volunteer (28 CFR 115.6)

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Sexual harassment - Repeated and unwelcome sexual advances; requests for sexual favors; verbal comments, gestures or actions of a derogatory or offensive sexual nature by one inmate, detainee or resident that are directed toward another; 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 (28 CFR 115.6).

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

C 612.2 POLICY

This office has zero tolerance with regard to sexual abuse and sexual harassment in this facility and will take appropriate affirmative measures to protect all inmates from sexual abuse and harassment and to promptly and thoroughly investigate all allegations of sexual abuse and sexual harassment (28 CFR 115.11).

C 612.3 PREA COORDINATOR

The Chief Criminal Deputy shall appoint an upper-level manager to be responsible for the implementation and oversight of compliance with PREA standards. The PREA Coordinator shall review facility policies and practices and make appropriate compliance recommendations to the Chief Criminal Deputy (28 CFR 115.11).

The PREA Coordinator's responsibilities shall include:

- (a) Developing a written plan to coordinate response among staff first responders, medical and mental health practitioners, investigators and facility management to an incident of sexual abuse (28 CFR 115.11).
- (b) Developing a staffing plan to provide adequate levels of staffing and video monitoring, where applicable, in order to protect detainees from sexual abuse. This includes documenting deviations and the reasons for deviations from the staffing plan, as well as reviewing the staffing plan a minimum of once per year (28 CFR 115.13).
- (c) Ensuring that, when designing, acquiring, expanding or modifying facilities, or when installing or updating a video-monitoring system, electronic surveillance system or other monitoring technology, consideration is given to the office's ability to protect inmates from sexual abuse (28 CFR 115.18).
- (d) Ensuring that any contract for the confinement of Pacific County Sheriff's Office detainees or inmates includes the requirement to adopt and comply with the PREA standards including obtaining incident-based and aggregated data, as required in 28 CFR 115.187 (28 CFR 115.12).
- (e) Making reasonable efforts to enter into agreements with community service providers to provide inmates with confidential, emotional support services related to sexual abuse (28 CFR 115.53).
- (f) Ensuring the protocol describing the responsibilities of the Office and of another investigating agency, if another law enforcement agency will be responsible for conducting any sexual abuse or sexual harassment investigations, is published on the facility website (28 CFR 115.22).
- (g) Implementing a process by which inmates may report sexual abuse and sexual harassment to a public or private entity or office that is not part of the Office and that the outside entity or office is able to receive and immediately forward inmate reports

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of sexual abuse and sexual harassment to the Chief Criminal Deputy, allowing the inmate anonymity (28 CFR 115.51).

- (h) Establishing a process to ensure accurate, uniform data is collected for every allegation of sexual abuse at facilities under the direct control of this office, using a standardized instrument and set of definitions (28 CFR 115.87).
 - 1. The 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 U.S. Department of Justice (DOJ).
 - 2. The data shall be aggregated at least annually.
- (i) Establishing a process to monitor the conduct and treatment of detainees or staff who have reported sexual abuse and the conduct and treatment of detainees who were reported to have suffered sexual abuse.
- (j) Ensuring that the following are published on the office website or by other means, if no website exists:
 - 1. Office policy governing investigations of allegations of sexual abuse and sexual harassment or the referral of such investigations of sexual abuse or sexual harassment (unless the allegation does not involve potentially criminal behavior) (28 CFR 115.22); and
 - 2. Information on how to report sexual abuse and sexual harassment on behalf of an inmate (28 CFR 115.54).
- (k) Ensuring audits are conducted pursuant to 28 CFR 401-405 (28 CFR 115.93).
- (l) Implementing a protocol requiring mid-level or higher-level supervisors to conduct and document unannounced inspections to identify and deter sexual abuse and sexual harassment. The protocol shall prohibit announcing when such inspections are to occur, unless it is necessary for operational considerations (28 CFR 115.13).

C 612.4 REPORTING SEXUAL ABUSE, HARASSMENT AND RETALIATION

Any employee, agency representative, volunteer or contractor who becomes aware of an incident of sexual abuse, sexual harassment or retaliation against inmates or staff shall immediately notify a supervisor, who will forward the matter to a sexual abuse investigator (28 CFR 115.61). Staff may also privately report sexual abuse and sexual harassment of inmates (e.g., report to the Chief Criminal Deputy) (28 CFR 115.51).

The facility shall provide information to all visitors or third parties on how they may report any incident, or suspected incident, of sexual abuse or sexual harassment to a staff member (28 CFR 115.54).

Inmates may report sexual abuse or sexual harassment incidents anonymously or to any staff member they choose. Staff shall accommodate all inmate requests to report allegations of sexual abuse or harassment. Staff shall accept reports made verbally, in writing, anonymously or from third parties and shall promptly document all verbal reports (28 CFR 115.51).

Threats or allegations of sexual abuse and sexual harassment, regardless of the source, shall be documented and referred for investigation. Sexual abuse and sexual harassment reports shall only be made available to those who have a legitimate need to know, and in accordance with this policy and applicable law.

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C 612.4.1 REPORTING TO OTHER FACILITIES

If there is an allegation that an inmate was sexually abused while he/she was confined at another facility, the Chief Criminal Deputy shall notify the head of that facility as soon as possible but not later than 72 hours after receiving the allegation. The Chief Criminal Deputy shall ensure that the notification has been documented (28 CFR 115.63).

C 612.5 RETALIATION

All inmates and staff who report sexual abuse or sexual harassment or who cooperate with sexual abuse or sexual harassment investigations shall be protected from retaliation.

Protective measures, including housing changes, transfers, removal of alleged abusers from contact with victims, administrative reassignment or reassignment of the victim or alleged perpetrator to another housing area, and support services for inmates or staff who fear retaliation shall be utilized (28 CFR 115.67).

The Chief Criminal Deputy or the authorized designee shall assign a supervisor to monitor, for at least 90 days, the conduct and treatment of inmates or staff who report sexual abuse or sexual harassment and inmates who were reported to have suffered sexual abuse to determine if there is any possible retaliation. The supervisor shall act promptly to remedy any such retaliation. The assigned supervisor should consider inmate disciplinary reports, housing or program changes, or negative performance reviews or reassignment of staff members. Monitoring may continue beyond 90 days if needed. Inmate monitoring shall also include periodic status checks. The Chief Criminal Deputy should take reasonable steps to limit the number of people with access to the names of individuals being monitored and should make reasonable efforts to ensure that staff members who pose a threat of retaliation are not entrusted with monitoring responsibilities.

If any other individual who cooperates with an investigation expresses a fear of retaliation, the facility shall take reasonable measures to protect that individual against retaliation (28 CFR 115.67).

C 612.6 FIRST RESPONDERS

If an allegation of inmate sexual abuse is made, the first corrections officer to respond shall (28 CFR 115.64):

- (a) Separate the parties.
- (b) Request medical assistance as appropriate. If no qualified health care or mental health professionals are on-duty when a report of recent abuse is made, staff first responders shall take preliminary steps to protect the victim and shall immediately notify the appropriate qualified health care and mental health professionals (28 CFR 115.82).
- (c) Establish a crime scene to preserve and protect any evidence. Identify and secure witnesses until steps can be taken to collect any evidence.
- (d) If the time period allows for collection of physical evidence, request that the alleged victim, and ensure that the alleged abuser, do not take any actions that could destroy physical evidence (i.e., washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating).
- (e) Consider whether a change in classification or housing assignment for the victim is needed or whether witnesses to the incident need protection, both of which may include reassignment of housing.

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- (f) Determine whether the alleged perpetrator should be administratively segregated or administratively transferred during the investigation.

If the first responder is not a corrections officer, the responder shall request the alleged victim to refrain from any actions that could destroy physical evidence and then immediately notify a corrections officer.

Should an investigation involve inmates who have disabilities or who have limited English proficiency, the first responder shall not rely on inmate interpreters, inmate readers or other types of inmate assistants, except in limited circumstances where an extended delay in obtaining an interpreter could compromise inmate safety, the performance of first responder duties or the investigation of sexual abuse or sexual harassment allegations (28 CFR 115.16).

C 612.7 SEXUAL ABUSE AND SEXUAL HARASSMENT INVESTIGATIONS

An administrative investigation, criminal investigation or both shall be completed for all allegations of sexual abuse and sexual harassment (28 CFR 115.22). Administrative investigations shall include an effort to determine whether the staff's actions or inaction contributed to the abuse (28 CFR 115.71). Only investigators who have completed office-approved training on sexual abuse and sexual harassment investigation shall be assigned to investigate these cases.

When practicable, an investigator of the same sex as the victim should be assigned to the case. Sexual abuse and sexual harassment investigations should be conducted promptly and continuously until completed. Investigators should evaluate reports or threats of sexual abuse and sexual harassment without regard to an inmate's sexual orientation, sex or gender identity. Investigators should not assume that any sexual activity among inmates is consensual.

If the investigation is referred to another agency for investigation, the referral shall be documented.

If criminal acts are identified as a result of the investigation, the case shall be presented to the appropriate prosecutor's office for filing new charges.

Evidence collection shall be based on a uniform evidence protocol that is developmentally appropriate for youth, if applicable, and adapted from or otherwise based on the most recent edition of the DOJ'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 (28 CFR 115.21).

Inmates alleging sexual abuse shall not be required to submit to a polygraph examination or other truth-telling device as a condition for proceeding with an investigation.

If a victim is under 18 or considered a vulnerable adult under state law, the assigned investigator shall report the allegation to the designated social services agency as required (28 CFR 115.61).

C 612.7.1 INVESTIGATIVE FINDINGS

All completed investigations shall be forwarded to the Chief Criminal Deputy or if the allegations may reasonably involve the Chief Criminal Deputy, to the County Commissioner. The Chief Criminal Deputy, County Commissioner or county administrator shall review the

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investigation and determine whether any allegations of sexual abuse or sexual harassment have been substantiated by a preponderance of the evidence (28 CFR 115.72).

The staff shall be subject to disciplinary sanctions, up to and including termination, for violating this policy. Termination shall be the presumptive disciplinary sanction for staff members who have engaged in sexual abuse. All discipline shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

All terminations for violations of sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to the law enforcement agency that would handle any related investigation and to any relevant licensing bodies (28 CFR 115.76).

C 612.7.2 REPORTING TO INMATES

The Chief Criminal Deputy or the authorized designee shall inform a victim inmate whether an allegation has been substantiated, unsubstantiated or unfounded (28 CFR 115.73).

If a staff member is the accused (unless the Office has determined that the allegation is unfounded), the inmate shall also be informed whenever:

- (a) The staff member is no longer assigned to the inmate's unit or employed at the facility.
- (b) The Office learns that the staff member has been indicted or convicted on a charge related to sexual abuse within the facility.

If another inmate is the accused, the alleged victim shall be notified whenever the Office learns that the alleged abuser has been indicted or convicted on a charge related to sexual abuse within the facility.

All notifications or attempted notifications shall be documented.

C 612.8 SEXUAL ABUSE AND SEXUAL HARASSMENT BETWEEN STAFF AND INMATES

Sexual abuse and sexual harassment between staff, volunteers or contract personnel and inmates is strictly prohibited. The fact that an inmate may have initiated a relationship or sexual contact is not a defense to violating this policy.

Any incident involving allegations of staff-on-inmate sexual abuse or sexual harassment shall be referred to the Undersheriff for investigation.

C 612.8.1 SEXUAL ABUSE BY CONTRACTOR OR VOLUNTEER

Any contractor or volunteer who engages in sexual abuse within the facility shall be immediately prohibited from having any contact with inmates. He/she shall be promptly reported to the law enforcement agency that would investigate such allegations and brought to the attention of any relevant licensing bodies (28 CFR 115.77).

C 612.9 SEXUAL ABUSE VICTIMS

Inmates who are victims of sexual abuse shall be transported to the nearest appropriate location to handle the treatment of injuries, the collection of evidence and to receive crisis intervention services (28 CFR 115.82). Depending on the severity of the injuries, transportation may occur by a staff member or by ambulance, in either case with appropriate security to protect the staff, the inmate and the public, and to prevent escape.

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A victim advocate from a rape crisis center should be made available to the victim. If a rape crisis center is not available, the Office shall make available a qualified member of a community-based organization, or a qualified health care or mental health professional from this facility. Efforts to secure services from a rape crisis center shall be documented. A rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 USC § 14043g(b)(2)(C), to victims of sexual assault of all ages. A rape crisis center that is part of a government unit may be used as long as it is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a non-governmental entity that provides similar victim services.

C 612.10 EXAMINATION, TESTING AND TREATMENT

Examination, testing and treatment shall include the following:

- (a) Examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs), where possible. If SAFEs or SANEs are not available, the examination can be performed by other qualified medical practitioners. The Office shall document its efforts to provide SAFEs or SANEs (28 CFR 115.21).
- (b) If requested by the victim, a victim advocate, qualified office staff member or a qualified community organization's staff member shall accompany the victim through the forensic medical examination process and investigatory interviews. That person will provide emotional support, crisis intervention, information and referrals.
- (c) Provisions shall be made for testing the victim for sexually transmitted diseases (28 CFR 115.82).
- (d) Counseling for the treatment of sexually transmitted diseases, if appropriate, shall be provided (28 CFR 115.21).
- (e) Victims shall be offered information about, and given access to, emergency contraception and sexually transmitted infections prophylaxis and follow-up for sexually transmitted diseases (28 CFR 115.82). This shall be done in a timely manner.
- (f) Victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests. If pregnancy results, such victims shall receive comprehensive information about, and access to, all lawful pregnancy-related medical services (28 CFR 115.83). This shall be done in a timely manner.
- (g) Victims shall be provided with follow-up services, treatment plans and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities or release from custody (28 CFR 115.83).
- (h) 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 (28 CFR 115.83).

C 612.11 PROTECTIVE CUSTODY

Inmates at high risk for sexual victimization shall not be placed in involuntary protective custody unless an assessment of available alternatives has been made and it has been determined that there is no reasonably available alternative means of separation. Inmates may be held in involuntary protective custody for less than 24 hours while an assessment is completed.

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If an involuntary protective custody assignment is made because of a high risk for victimization, the Chief Criminal Deputy shall clearly document the basis for the concern for the inmate's safety and the reasons why no alternative means of separation can be arranged (28 CFR 115.43).

The facility shall assign these inmates to involuntary protective custody only until an alternative means of separation from likely abusers can be arranged, not ordinarily in excess of 30 days.

Inmates placed in temporary protective custody shall continue to have reasonable access to programs, privileges, education and work opportunities. If restrictions are put in place, the Chief Criminal Deputy shall document the following:

- (a) The opportunities that have been limited
- (b) The duration of the limitation
- (c) The reasons for such limitations

Every 30 days, the Chief Criminal Deputy shall afford each such inmate a review to determine whether there is a continuing need for protective custody (28 CFR 115.43).

C 612.12 SEXUAL ABUSE INCIDENT REVIEW

An incident review shall be conducted at the conclusion of every sexual abuse investigation, unless the allegation has been determined to be unfounded (28 CFR 115.86). The review should occur within 30 days of the conclusion of the investigation.

The review team shall include upper-level management officials and seek input from line supervisors, investigators and qualified health care and or mental health professionals, as appropriate:

- (a) Consider whether the investigation indicates a need to change policy or practice in order to better prevent, detect or respond to sexual abuse.
- (b) Consider whether the incident or allegation was motivated by race, ethnicity, gender identity or lesbian, gay, bisexual, transgender or intersex identification status or perceived status, by gang affiliation, or was motivated or otherwise caused by other group dynamics at the facility.
- (c) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers may enable abuse.
- (d) Assess the adequacy of staffing levels in the area during different shifts.
- (e) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff.
- (f) Prepare a written report of the team's findings, including, but not limited to, determinations made pursuant to paragraphs (a)-(e) of this section, and any recommendations for improvement. The report should be submitted to the Chief Criminal Deputy and the PREA Coordinator.

The Chief Criminal Deputy or the authorized designee shall implement the recommendations for improvement or document the reasons for not doing so.

C 612.13 DATA REVIEWS

This office shall conduct an annual review of collected and aggregated incident-based sexual abuse data. The purpose of these reviews is to assess and improve the

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effectiveness of sexual abuse prevention, detection and response policies, practices and training by:

- (a) Identifying problem areas.
- (b) Identifying corrective actions taken.
- (c) Recommending corrective actions.
- (d) Comparing current annual data and corrective actions with those from prior years.
- (e) Assessing the office's progress in addressing sexual abuse.

The reports shall be approved by the Chief Criminal Deputy and made available through the office website. Material may be redacted from the reports when publication would present a clear and specific threat to the safety and security of the facility. However, the nature of the redacted material shall be indicated (28 CFR 115.88).

All aggregated sexual abuse data from Pacific County Sheriff's Office facilities and private facilities with which it contracts shall be made available to the public at least annually through the office website. Before making aggregated sexual abuse data publicly available, all personal identifiers shall be removed (28 CFR 115.89).

C 612.14 RECORDS

All case records and reports associated with a claim of sexual abuse and sexual harassment, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment or counseling, shall be retained in accordance with confidentiality laws.

The Office shall retain all written reports from administrative and criminal investigations pursuant to this policy for as long as the alleged abuser is held or employed by the Office, plus five years (28 CFR 115.71).

All other data collected pursuant to this policy shall be securely maintained for at least 10 years after the date of the initial collection, unless federal, state or local law requires otherwise (28 CFR 115.89).