

New Berlin Police Department Directives Manual		Directive Title: Prison Rape Elimination Act			
Issue Date: 02/16/15	Effective Date: 02/23/16	Next Review Date: 12/01/19	Total Pages: Page 1 of 7	Directive Number: 7401	WILEAG Standards:

Purpose

The purpose of this policy is to ensure full compliance with the 2003 Federal Prison Rape Elimination Act (PREA) which applies to all federal, state and local prisons, jails and police lockups, private and residential correctional facilities.

Policy

The Department recognizes the seriousness of prison rape, the impact on the victim, department, community and society as a whole. All reported incidents of sexual abuse and sexual harassment including detainee-on-detainee and staff misconduct will be reported and investigated. Employees who violate or fail to report sexual abuse or sexual harassment as outlined in this directive will be subject to disciplinary action up to and including termination of employment. All substantiated criminal cases, and cases where it has been determined a false complaint was filed, will be referred to the District Attorney’s Office for review and prosecution.

This policy establishes a zero-tolerance standard toward all forms of sexual abuse and sexual harassment as defined in this policy and strictly prohibits:

1. Adult and juvenile detainees from engaging in any type of sexual behavior with each other while in custody;
2. Any staff member from engaging in any sexual behavior with detainees while under the custody and control of the Department.

Definitions

PREA Coordinator: The designated department official responsible for the oversight of PREA standards, compliance with standards, training, data collection and inspection.

Prison Rape: Sexual assault, sexual abuse and sexual contact as defined in this directive.

Contractor: A person who provides services on a recurring basis pursuant to a contractual agreement with the department.

Detainee: Any person detained in a lockup, regardless of adjudication status.

Employee: A person who works directly for the department.

Facility: A place, institution, building (or part thereof), set of buildings, structure or area (whether or not enclosing a building or set of buildings) that is used by an agency for the confinement of individuals.

Full Compliance: 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 Nonconforming: A person whose appearance or manner does not conform to traditional societal gender expectations.

Intersex: A person who’s 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.

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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.

Juvenile: Any person under the age of 18, unless under adult court supervision and confined or detained in a prison or jail.

Law Enforcement Staff: Employees responsible for the supervision and control of detainees in lockups.

Lockup: A facility that contains holding cells, cell blocks or other secure enclosures that is:

1. Under the control of a law enforcement, court, or custodial officer; and
2. Primarily used for the temporary confinement of individuals who have recently been arrested, detained, or are being transferred to or from a court, jail, prison, or other agency.

Strip Search: A search in which a detainee's genitals, pubic area, buttocks or anus, or a female's breasts are uncovered and either exposed to view or touched by the person conducting the search.

Substantiated Allegation: An allegation investigated and determined to have occurred.

Unfounded Allegation: An allegation investigated and determined not to have occurred.

Unsubstantiated Allegation: An allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

Volunteer: An individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency.

Definitions Related to Sexual Abuse

Sexual Abuse: Sexual abuse includes:

1. Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident; and
2. Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer.

Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident: 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:

1. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
2. Contact between the mouth and the penis, vulva, or anus;
3. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
4. 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.

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:

1. Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

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2. Contact between the mouth and the penis, vulva, or anus;
3. 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;
4. 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;
5. 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;
6. Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1)-(5) of this section;
7. 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
8. 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.

Sexual Harassment includes:

1. 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
2. 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.

Standards for Lockups

Prevention Planning:

1. The Department has adopted a zero tolerance standard toward all forms of sexual abuse and sexual harassment as defined in this directive.
2. The Chief of Police shall designate a PREA coordinator to ensure consistent compliance with PREA standards.
3. Adequate staffing in the lock-up facility shall be mandatory when detainees are in the department's custody.
 - a. At least annually, the department will assess, determine and document whether adjustments are needed to the staffing plan.
4. Officers will provide vulnerable detainees with heightened protection, to include continuous direct sight and sound supervision.
5. Juveniles shall be held separately from adult detainees.
6. Strip searches shall be conducted in accordance with directive [1705](#), which is PREA compliant. It is a violation of this policy to conduct a strip search for the sole purpose of identifying gender. The department shall train law enforcement staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex detainees, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs
7. The department shall take reasonable steps to ensure detainees with disabilities and detainees with limited English language skills are aware of its commitment to PREA and maintaining a safe lock-up facility.

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8. A person who has engaged in sexual abuse as defined by this directive shall not be hired. Employees who have engaged in sexual abuse as defined by this directive will not be eligible for promotion.
9. The protection of detainees from sexual abuse shall be considered when modifications are planned for the lock-up facility. Video and other monitoring technology should also be considered as a means of protecting detainees from sexual abuse, and employees from false claims.

Responsive Planning:

1. The department shall follow a uniform evidence protocol for juveniles and adults that maximize the potential for obtaining usable physical evidence for administrative proceeding and criminal prosecutions. In cases requiring medical examination, all examinations shall be performed by Sexual Assault Forensic Examiners (SAFE’s) or Sexual Assault Nurse Examiners (SANE’s). The examinations will be conducted without cost to the victim for evidentiary and medical purposes related to the allegation of sexual abuse.
2. All allegations of sexual abuse or sexual harassment made by a detainee will immediately be reported to the highest ranking officer on the shift who shall cause the allegations to be promptly investigated. In incidents of staff-on-detainee contact in which it is alleged the staff member has committed sexual abuse or sexual harassment against a detainee, and preliminary investigation shows criminal charges against the staff member may result, the investigation shall be turned over to an authorized outside agency as soon as possible.
3. All allegations of sexual abuse or sexual harassment as defined by this directive will be reported to the PREA Coordinator as soon as practical, and in any case within 4 hours.
4. This directive shall be accessible to the public from the department’s website.

Training and Education

The department shall train all employees and volunteers who may have contact with lockup detainees to be able to fulfill their responsibilities under agency sexual abuse prevention, detection, and response policies and procedures, including training on:

1. The department’s zero-tolerance policy and detainees’ right to be free from sexual abuse and sexual harassment;
2. The dynamics of sexual abuse and harassment in confinement settings, including which detainees are most vulnerable in lockup settings;
3. The right of detainees and employees to be free from retaliation for reporting sexual abuse or harassment;
4. How to detect and respond to signs of threatened actual abuse;
5. How to communicate effectively and professionally with all detainees;
6. How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

All current employees and volunteers who may have contact with lock up detainees shall be trained on the PREA standards. The department shall provide annual refresher information to all such employees and volunteers to ensure that they know the department’s current sexual abuse and sexual harassment policies and procedures. The department shall document that employees understand the training they have received. Advocates shall not be permitted to have any physical contact with detainees and will be advised at the outset of the ‘no touch rule’.

Screening for Risk of Sexual Victimization and Abusiveness

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Before placing any detainees together in the holding room (#3), staff shall consider whether, based on the information before them, a detainee may be at a high risk of being sexually abused, and when appropriate, shall take necessary steps to mitigate such danger to the detainee. The intake screening process should be used to determine a detainee's risk of victimization.

Reporting

An employee shall accept all reports of sexual abuse or sexual harassment of detainees made verbally, in writing, anonymously, or from third parties who may file a complaint on behalf of a detainee. Detainees who want to file a complaint with an outside agency should be instructed to contact the Sheriff's Department.

Official Response Following a Detainee Report

The department shall ensure that all reports of sexual abuse and sexual harassment are immediately investigated according to this policy and PREA standards, and state and federal law. In cases involving juvenile detainees the department shall comply with all applicable mandatory child abuse reporting laws.

The department shall take immediate action to protect a detainee who is subject to substantial risk of imminent sexual abuse within its lockup facility.

If, while in the custody of the department, a detainee alleges being sexually abused while they were confined at another facility, the on-duty supervisor will notify a ranking official at the facility within 72 hours. Notification must be documented in a report.

First responding staff shall immediately separate the alleged victim and abuser while protecting and preserving evidence. Investigation and collection of evidence will be done according to this directive, established department standards, and training.

Employees will take immediate action to protect detainees from imminent sexual abuse.

If a victim is transferred from the department's lockup to another facility, the agency, as permitted by law, will inform the receiving facility of the incident and the potential need for medical or social services, unless the victim requests otherwise.

The department shall not enter into a collective bargaining agreement that limits the department's ability to remove alleged staff sexual abusers from contact with detainees pending the outcome of an investigation.

The department has a zero-tolerance standard toward retaliation of alleged victims and abusers, witnesses, and persons who report sexual abuse and sexual harassment. Further legal action or disciplinary action will be taken if it is determined that retaliation has occurred.

Investigations

The department will conduct prompt, thorough, and objective investigations into all allegations of sexual abuse or sexual harassment. The department will seek outside assistance if it believes it cannot conduct the investigation according to the guidelines set forth and will cooperate fully with the outside agency authorized to conduct the investigation.

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In all cases where criminal charges have been substantiated through investigation, such charges shall be referred for prosecution.

The alleged abuser shall not be permitted contact with detainees until the investigation is complete and the allegations have been determined to be unfounded or unsubstantiated.

Discipline

Employees shall be subject to disciplinary action up to and including termination of employment for violations of this directive. Disciplinary action that results in termination for criminal behavior, or a resignation preceding termination, shall be reported to law enforcement agencies and any relevant licensing bodies.

If it is determined that a complaint filed by a detainee is clearly false, criminal charges shall be referred to the District Attorney’s office against the detainee for violation of [942.01 Wisconsin Statutes](#), and the employee against whom the complaint was made will be exonerated.

In all reported cases of sexual abuse where criminal charges are substantiated by the department or outside investigative agency, the matter will be referred to the appropriate prosecuting authority.

Medical and Mental Health Care

Victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services.

Treatment services shall be provided to the victim without financial cost arising out of a substantiated incident of sexual abuse and regardless of whether the victim names the abuser or cooperates with any investigation.

Data Collection and Review

All incidents of sexual abuse will be reviewed within 30 days of the conclusion of the investigation by a review team consisting of management officials, supervisors, investigators, and medical or mental health practitioners.

The review team shall consist of upper management officials with input from supervisors and investigators. The review team shall:

1. Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
2. Consider 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 lockup;
3. Examine the area in the lockup where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
4. Assess the adequacy of staffing levels in that area during different shifts;
5. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and

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6. Prepare a report of its findings and any recommendations for improvement and submit such report to the lockup head and agency PREA coordinator.

The department shall implement the recommendations for improvement, or document the reasons for not doing so.

The department will collect accurate, uniform data for every allegation of sexual abuse which will be provided to the Department of Justice upon request.

The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Local Jail Jurisdictions Survey of Sexual Violence conducted by the Department of Justice, or any subsequent form developed by the Department of Justice and designated for lockups.

Data shall be reviewed by the PREA Coordinator to identify problem areas and take corrective action. The data shall be retained for ten years.

Audits, Auditing and Corrective Action

The department's lock up facility is not subject to the audit requirements under this section. While formal audits are not required, the PREA coordinator will ensure compliance with PREA standards on a continual basis.

By Order of:  _____
Joseph Rieder Chief of Police