

 <p><b>KENTUCKY CORRECTIONS</b> Policies and Procedures</p>	Policy Number	Total Pages
	14.7	16
	Date Filed	Effective Date
	**	May 20, 2020
Authority/References  KRS 196.035, 197.020 34 U.S.C. §§ 30301 through 30309 ACA 5-ACI-3D-09 through 5-ACI-3D-16, 28 CFR §115.5, 28 CFR §115.6, 28 CFR § 115.11, 28 CFR § 115.15-16, 28 CFR § 115.21-22, 28 CFR § 115.31-35, 28 CFR § 115.41-42, 28 CFR § 51-52, 28 CFR § 115.61- 64, CFR § 115.67, 28 CFR § 115.71-73, 28 CFR § 78, 28 CFR § 115.81-83, 28 CFR § 115.86, 28 CFR § 115.89	Subject  <b>SEXUAL ABUSE PREVENTION AND INTERVENTION PROGRAMS</b>	

## I. DEFINITIONS

“28 C.F.R. § 115” is a reference to the Prison Rape Elimination Act (PREA) federal law that codified the PREA standards referenced in this policy.

“Contractor” means a person who provides services on a recurring basis pursuant to a contractual agreement with the agency as established in 28 C.F.R. § 115.5.

“Exigent circumstances” means any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility as established in 28 C.F.R. § 115.5.

“Gender nonconforming” means a person whose appearance or manner does not conform to traditional societal gender expectations as established in 28 C.F.R. § 115.5.

“Intersex” means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female as established in 28 C.F.R. § 115.5.

“Offender” means any person who is:

- A. Confined in a correctional institution;
- B. Under the probation or parole supervision of the Department of Corrections, including any person on inactive supervision who has not received a final discharge;
- C. Less than one (1) year beyond the date of his date of serve-out or release from supervision; or
- D. Adjudicated guilty or has entered a guilty plea, but is still pending final sentencing.

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“Sexual abuse” means:

- A. The behavior described by KRS 510.120(1)(c); or
- B. As established in 28 C.F.R. § 115.6:

- 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;
- 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) through (5) of this definition;
- 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.

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“Sexual contact” means any touching or physical contact of the sexual or other intimate parts of a person, including the genitalia, anus, groin, breasts, inner thighs or buttocks, either directly or through clothing, that is unrelated to official duties or done for the purpose of arousing or gratifying the sexual desire of any person or humiliating, harassing or degrading any person.

“Sexual harassment” means any 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, as established in 28 C.F.R. § 115.6 or any 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 inmate, detainee or resident.

“Sexual offense” means any behavior or act of a sexual nature directed toward an offender by a staff member, visitor or other offender. This includes completed, attempted, threatened or requested acts including sexual abuse, sexual harassment, voyeurism, sexual contact, conduct of a sexual nature or implication, obscenity and unreasonable invasion of privacy. Sexual offense also includes conversations or correspondence, which suggest a romantic or sexual relationship between an offender and a staff member.

“Staff member” for purposes of this policy only, means full-time, part-time and interim employees, interns, students, volunteers, and contractors doing business on a recurring basis with the Department of Corrections.

“Substantiated” means an allegation that was investigated and determined to have occurred as established in 28 C.F.R. § 115.5.

“Transgender” means a person whose gender identity (i.e., internal sense of feeling male or female) is different from the person’s assigned sex at birth as established in 28 C.F.R. § 115.5.

“Unfounded” means an allegation that was investigated and determined not to have occurred as established in 28 C.F.R. § 115.5.

“Unsubstantiated” means an allegation that was investigated, and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred as established in 28 C.F.R. § 115.5.

“Volunteer” means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the department, as established in 28 C.F.R. § 115.5.

“Voyeurism” means:

- A. The behavior described by KRS 531.090; or

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B. 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, as established in 28 C.F.R. § 115.6.

## II. POLICY and PROCEDURE

- A. This policy applies to all offenders, full time employees, part-time employees, interim employees, interns, students, volunteers, and contractors doing business with the Department of Corrections.
- B. Any sexual act, sexual contact or sexual offense between an offender and a staff member, visitor or other offender shall be prohibited. No offender, either incarcerated or under the supervision of the Department of Corrections, can give consent to any sexual relationship with a staff member. Any acts as defined in this policy that are conducted outside of the staff member's normal duties shall be considered a violation of this policy. The Department of Corrections has zero tolerance toward all forms of sexual abuse and sexual harassment.
- C. Training
  - 1. Training shall be tailored to be gender specific to the facility of each staff member. As required by 28 C.F.R. § 115.31, all employees shall receive training annually in the following:
    - a. The Department's zero-tolerance policy for sexual abuse and sexual harassment.
    - b. Their responsibilities of sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures.
    - 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 an offender, including lesbian, gay, bisexual, transgender, intersex or gender nonconforming offenders.

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- j. How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.
2. As required by 28 C.F.R. § 115.32, all Volunteers and Contractors who have contact with offenders shall be trained annually on the following:
- a. The Department's policy of zero-tolerance regarding sexual abuse and sexual harassment and how to report such incidents.
  - b. Their responsibilities under the department's sexual abuse and sexual harassment prevention, detection, and response policies and procedures.
  - c. Training shall be based on the level and amount of contact the Volunteer or Contractor has with offenders.
3. All employees who conduct sexual abuse investigations shall receive specialized training in conducting such an investigation in a confinement setting. The 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.
4. All full and part-time medical and mental health care practitioners who work regularly in the facility shall receive specialized training on the following:
- 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.
  - d. How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.
5. Staff members completing the training listed in C (1) and (2) shall sign a document acknowledging that they understand the training they have received. All training documentation shall be maintained in accordance with the provisions of CPP 4.7.

#### D. Offender Education

1. During orientation at the Assessment and Classification Center and at each institution, an offender shall receive oral and written information about the department's zero-tolerance policy regarding sexual abuse and sexual

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harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.

2. Within thirty (30) days of intake at the Assessment and Classification Center and at each institution, comprehensive education shall be provided to offenders either in person or through video regarding their rights to be free from sexual abuse and sexual harassment, free from retaliation for reporting such incidents, how to prevent sexual abuse and self-protection measures, treatment and counseling availability and policies and procedures for responding to such incidents.
3. Each facility shall provide offender education in formats accessible to all offenders, including those who are limited English proficient, deaf, visually impaired or otherwise disabled, and for offenders who have limited reading skills. Use of offender interpreters for assistance in offender education on aspects of the department's efforts to prevent, detect and respond to sexual abuse and sexual harassment shall be prohibited except in circumstances where extended delays in obtaining an effective interpreter could compromise the offender's safety.
4. Each facility shall maintain documentation of participation in offender education.
5. Each facility shall ensure that key information is continuously and readily available or visible to offenders, such as posters and inmate handbook materials that explain the zero-tolerance policy and different ways to report.

#### E. General Provisions

1. Offenders shall be permitted to shower, perform bodily functions and change clothing without staff of the opposite gender viewing their breasts, buttocks or genitalia except in exigent circumstances or when such viewing is incidental due to routine cell checks.
2. Youthful offenders - If a youthful offender is committed to an adult institution operated by the Department of Corrections the requirements of PREA 115.14 and CPP 18.3 shall be followed.
3. All offenders who have been victims of sexual abuse in any correctional facility shall be offered medical and mental health evaluations and as deemed appropriate, any necessary treatment related to the sexual abuse. This includes timely and 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

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their professional judgment. This also includes timely and comprehensive information about emergency contraception, pregnancy testing, sexually transmitted infection testing and prophylaxis, and lawful pregnancy-related medical services deemed appropriate by the medical practitioner.

4. Mental health practitioners shall attempt to conduct an evaluation on all known offender-on-offender perpetrators within sixty (60) days of learning of such abuse and provide treatment as deemed appropriate.
5. Current and previous victims of sexual abuse shall receive any medical and mental health services related to the sexual abuse at no cost to the offender.

#### F. Offender Risk Assessment

1. An offender shall be assessed during intake screening within seventy-two (72) hours of arrival at the Assessment and Classification Center and upon each transfer to another facility. Each objective risk screening shall include a review of any history of sexual abuse-victimization or sexually predatory behavior. The assessment report shall be completed in the Kentucky Offender Management System (KOMS). Housing concerns shall be documented in the comments section on the assessment in KOMS.
2. The intake screening shall consider, at a minimum, the following criteria to assess an inmate for risk of sexual victimization:
  - a. Whether the offender has a mental, physical, or developmental disability;
  - b. The age of the offender;
  - c. The physical build of the offender;
  - d. Whether the offender has previously been incarcerated;
  - e. Whether the offender's criminal history is exclusively nonviolent;
  - f. Whether the offender has prior convictions for sex offenses against an adult or child;
  - g. Whether the offender is or is perceived to be lesbian, gay, bisexual, transgender, intersex, or gender nonconforming;
  - h. Whether the offender has previously experienced sexual victimization; and
  - i. The offender's own perception of vulnerability.
3. The intake screening shall consider, at a minimum, the following criteria to assess an offender for risk of being sexually abusive:
  - a. Prior acts of sexual abuse,
  - b. Prior convictions for violent offenses, and
  - c. History of prior institutional violence or sexual abuse, as known to the Department of Corrections.

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4. The information gleaned from the intake screening shall be used to make housing, bed, program and work assignment decisions with the goal of keeping separate those offenders who are prone to sexual victimization from those who are prone to sexual aggression.
5. Within 30 days of arrival to each facility, the offender's risk level shall be reassessed based upon any additional information received since the intake screening. A reassessment shall also occur when any new information is learned that bears on an offender's propensity for sexual victimization or abusiveness, such as an incident or new disclosure of sexual abuse. Reassessments shall include consultation with the inmate.
6. When an assessment indicates an offender has experienced victimization or previously been a perpetrator, staff shall ensure the offender has been offered a follow-up for counseling and monitoring with the appropriate medical or mental health professional within fourteen (14) days of the assessment.
7. The dissemination of information related to and resulting from the assessment shall be controlled and limited to staff necessary to inform treatment plans and make security and management decisions regarding housing, beds, work, education and program assignments.
8. Medical and mental health professionals shall obtain informed consent from the offender prior to reporting information related to a prior sexual victimization that did not occur in a facility, unless the offender is under 18 years old.
9. Offenders shall not be disciplined for refusal or nondisclosure of complete information in response to questions 1, 7, 8 or 9 asked in the risk assessment.
10. Placement decisions regarding lesbian, gay, bisexual, transgender and intersex (LGBTI)offenders shall be individualized.

#### G. Initial Reporting and Staff First Responder Duties

1. An offender may report a sexual offense to any staff member and may also report using any of the listed multiple internal and external reporting methods, whether verbally, in writing, anonymously or a via a third party. If at any time it is learned that an offender is subject to a substantial risk of imminent sexual abuse, immediate action shall be taken to protect the offender.

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2. Offenders who report sexual abuse via the offender grievance system shall have their report immediately forwarded to the warden and it shall be assigned to a designated trained investigator for a full investigation. The DOC does not have administrative procedures to address offender grievances regarding sexual abuse through the grievance system.
  
3. Staff members shall immediately report all knowledge, suspicions or information of an incident of a sexual offense within a Kentucky or other correctional facility. They shall also report any retaliation against someone who has reported such an incident and any knowledge of staff who neglect to report the above incidents or who, through neglect of duty or violation of responsibilities, may have contributed to an incident occurring. Staff can privately report offender sexual abuse and sexual harassment directly to the warden or deputy warden of the facility, or by contacting the PREA hotline at the number posted in staff break areas.
  
4. Upon learning that an offender was sexually abused, the staff member shall immediately ensure the safety of the alleged victim while reporting the information to the shift supervisor. The shift supervisor shall activate the coordinated response plan and ensure the following steps have been taken:
  - a. The separation of the alleged victim and perpetrator.
  - b. The security and protection of any crime scene to keep potential evidence in place for examination and investigation.
  - c. Notifications made to the warden, investigator, and other designated agency and facility leadership and all required incident reporting procedures.
  - d. The only persons permitted to enter a secured crime scene shall be Kentucky State Police, the assigned investigator or medical staff as needed.
  - e. A log shall be maintained of anyone entering the crime scene and at what time he entered and exited. Anyone entering the crime scene shall be videotaped as additional documentation.
  - f. The area shall remain secured as a crime scene until verification of a completed investigation and released by the investigating authority.
  
5. If the incident occurred within the previous ninety-six (96) hours, the alleged victim and alleged perpetrator shall not take any actions that could

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destroy physical evidence which includes: washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating.

6. The Medical Department shall promptly make arrangements for the alleged victim to be transported to an outside facility for an examination that may include: collection of forensic evidence, testing for sexually transmitted diseases, prophylactic treatment, follow-up and mental health assessment.
  - a. In preparation of transporting the inmate to the hospital's emergency room, the offender shall be provided and instructed to undress over a clean sheet, in order to collect any potential forensic evidence that may fall from the offender's person. The sheet along with the offender's clothing shall be collected as evidence and placed in a paper bag with an appropriate chain of evidence form attached.
  - b. In coordination with the hospital, the Medical Department shall request the forensic medical examination be performed by a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) or other qualified medical practitioner. The efforts to provide SAFEs or SANEs shall be documented. The examination shall be at no cost to the offender.
  - c. Medical care and forensic medical examinations are separate and different procedures. Offenders shall have a right to refuse either. Alleged victims may be encouraged, but shall not be forced to consent to a forensic medical examination. However, offenders may refuse consent to the forensic medical examination and still consent to and receive medical care.
7. The alleged victim shall be offered victim advocate services. If requested, the advocate service shall be contacted and given the appropriate information in order to assist the victim through the forensic examination and investigation process.
8. The alleged offender perpetrator shall be placed in a dry cell to preserve forensic evidence and observed continuously to ensure the alleged perpetrator does not destroy evidence on his or her person until a trained investigator is available to collect evidence. An offender placed in a dry cell, per this policy, shall not remain in this status longer than sixteen hours.
9. Victims of sexual abuse or those at high risk for abuse shall not be placed in involuntary protective custody or segregation unless all available

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alternatives have been assessed and documented and are not available. The facility may only hold the offender for twenty –four (24) hours in involuntary segregation while completing the assessment, and if the placement has to continue, must document why there are no other available alternatives and provide access to programs, education, work and other privileges to the extent possible.

10. An incident report shall be completed in the Kentucky Offender Management System (KOMS) before the end of the shift and forwarded to the appropriate facility and central office staff.
11. Notifications for the purpose of an investigation shall be immediately made to the designated facility or agency investigator. In addition, all allegations of sexual abuse that involve potentially criminal behavior shall be referred for criminal investigation to the Kentucky State Police (KSP).
12. Within seventy-two (72) hours of receiving an allegation that an offender was sexually abused while confined at another facility, the Warden shall notify the head of the facility where the alleged incident occurred. The notification shall be documented. All allegations received from other facilities shall be investigated. The incident report and investigation shall be completed by the facility where the alleged incident occurred.

#### H. Investigations

1. All allegations of sexual abuse and sexual harassment shall be promptly, thoroughly and objectively investigated, including third-party and anonymous reports.
2. A PREA investigation shall be initiated within twenty-four (24) hours of the incident upon report to the facility or agency investigator or as soon as possible if referred for investigation to the Kentucky State Police (KSP).
3. Investigators shall:
  - a. Gather and preserve all direct and circumstantial evidence, including any available physical and DNA evidence, and any available electronic monitoring data;
  - b. Interview the alleged victim, suspected perpetrators, and witnesses; and
  - c. Review prior complaints and reports of sexual abuse involving the suspected perpetrator.

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4. Investigations shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, the review of prior complaints and reports of sexual abuse involving the suspected perpetrator, and investigative facts and findings.
5. Investigations shall normally be completed within ninety (90) days of initiation. If circumstances cause the investigation to extend past ninety (90) days, the cause shall be documented in the investigation.
6. No standard higher than a preponderance of the evidence shall be imposed in determining whether allegations of sexual abuse or sexual harassment are substantiated for administrative investigations.
7. The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the individual's status as an offender or staff member. An offender who alleges sexual abuse shall not be required to submit to a polygraph examination or other truth-telling device as a condition to proceed with the sexual abuse investigation.
8. Administrative investigations that result in a substantiated case of sexual abuse shall include an effort to determine whether staff actions or failures to act contributed to the abuse.
9. The departure of the alleged perpetrator or victim from the employment or control of the facility or department shall not provide a basis for terminating an investigation.
10. All Adult Institution PREA investigations shall be referred to the Warden or their designee for review and approval upon completion. Once approved by the Warden or designee they shall be referred to the PREA Coordinators office for final review.
11. All Probation and Parole PREA investigations, including those from community confinement facilities, shall be referred to the designated Assistant Director or their designee for review and approval upon completion. Once approved by the Assistant Director or designee they shall be referred to the PREA Coordinators office for final review.
12. Following an investigation where the alleged victim has reported the case of sexual abuse, the alleged victim shall be informed within thirty (30) days of the conclusion of the investigation. It shall be documented when the:

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- a. Allegation has been determined to be substantiated, unsubstantiated or unfounded.
  - b. Alleged perpetrator is no longer posted within the offender's unit.
  - c. Alleged perpetrator is no longer employed.
  - d. Alleged perpetrator has been indicted or convicted on a charge related to sexual abuse.
13. The obligation to inform the alleged victim shall terminate if the offender is released from custody.

#### I. Sexual Abuse Incident Review

All facilities shall conduct a review, ordinarily within thirty (30) days, of the conclusion of every sexual abuse investigation unless the allegation was determined to be unfounded. An investigation shall be deemed to be concluded upon the review and approval of the investigation report by the Warden in Adult Institutions, Assistant Director in Probation and Parole or their designee. The review team shall consist of upper-level management officials with input from line supervisors, investigators, and medical or mental health practitioners. The review team shall:

1. Consider whether the allegation or investigation indicated a need to revise policies or practices 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; gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility.
3. Examine the area in the facility 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.
6. Prepare a report of its findings, including determinations made from sections 1-5 and any recommendations for improvement and submit the report to the facility head and PREA compliance manager.
7. The facility shall implement the recommendations for improvement or shall document its reasons for not doing so.

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#### J. Confidentiality

All information in an intake screening, incident report or investigation of a sexual offense shall be kept confidential except to the extent necessary to report to an appropriate supervisor, adequately investigate, provide treatment, or make security or management decisions. An individual interviewed in the course of resolving the complaint shall be cautioned to treat the information as confidential. Breach of this confidentiality shall be grounds for disciplinary action. Due to the sensitive nature of a sexual offense incident as outlined in this policy, all investigative reports, incident reports, KOMS created incident reports (IRT), sexual abuse incident reviews, and investigative notes and documents on sexual offense incidents shall remain confidential and shall not be subject to open records.

#### K. Retaliation

Retaliation by or against any party, staff or offender, involved in a complaint or report of sexual abuse or sexual harassment shall be strictly prohibited. Retaliation in and of itself, shall be grounds for disciplinary action and will be investigated.

1. The PREA Compliance Manager at each facility shall be responsible for monitoring retaliation.
2. Monitoring shall occur for at least ninety (90) days following an allegation of sexual abuse or sexual harassment. Monitoring shall occur beyond ninety (90) days if the initial monitoring indicates a continuing need. Monitoring shall cease if the investigation determines that the allegation is unfounded.
3. In cases when monitoring offenders, periodic status checks shall be conducted by the PREA Compliance Manager as needed, but at least once every thirty (30) days. Status checks shall be conducted more often if concerns are expressed by the offender.
4. Emotional support services shall be provided as well as appropriate measures taken to protect any individual who expresses a fear of retaliation.

#### L. Offender Discipline and False Allegations

1. Offenders may be disciplined for substantiated incidents of offender-on-offender sexual abuse according to CPP 15.2. If an offender has pending disciplinary sanctions for alleged offender-on-offender sexual abuse, consideration shall be given as to whether the offender's mental disabilities or mental illness contributed to his or her behavior when determining what level of sanction, if any, will be imposed.

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2. Offenders may not be disciplined for sexual abuse of a staff member if the staff member consented.
3. An offender may be disciplined for reporting a false allegation of sexual abuse or sexual harassment only where the facility can demonstrate the false allegation was knowingly made in bad faith. A report made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute a false report or lying even if an investigation does not establish evidence sufficient to substantiate the allegation.

#### M. Staffing Plan

1. Each facility shall develop, document and make its best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring, to protect offenders from sexual abuse.
2. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration:
  - a. Generally accepted detention and correctional practices;
  - b. Any judicial findings of inadequacy;
  - c. Any findings of inadequacy from Federal investigative agencies;
  - d. Any findings of inadequacy from internal or external oversight bodies;
  - e. All components of the facility's physical plant, including blind spots or area where staff or offenders may be isolated;
  - f. The composition of the offender population;
  - g. The number and placement of supervisory staff;
  - h. Institution programs occurring on a particular shift;
  - i. Any applicable state or local laws, regulations or standards;
  - j. The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
  - k. Any other relevant factors.
3. In circumstances where the staffing plan is not complied with, the facility shall document and justify all deviations from the staffing plan.
4. Whenever necessary, but no less frequently than once each year, each facility, in consultation with the PREA Coordinator, shall assess, determine and document whether adjustments are needed to:
  - a. The staffing plan established pursuant to this section;

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- b. The facility's deployment of video monitoring systems and other monitoring technologies; and
- c. The resources the facility has available to commit to ensure adherence to the staffing plan.

**N. Sexual Abuse Data Collection and Records Retention**

- 1. Data shall be collected for every allegation of sexual abuse using the PREA investigating screens in KOMS designed to contain the data necessary to answer all questions for the Survey of Sexual Violence requested annually from the Department of Justice for the set of definitions established in 28 C.F.R. §115.5 and 28 C.F.R. §115.6. All data collected shall be securely retained.
- 2. Each facility shall document the number of allegations, completed investigations, Sexual Abuse Incident Reviews, offender notifications and outside SANE or SAFE exams on a monthly report. The monthly report shall be submitted monthly to the central office PREA Coordinator along with the facilities tracking spreadsheet.
- 3. All data from available incident-based documents related to allegations of sexual abuse shall be collected, reviewed, and maintained as needed.
- 4. Data shall be obtained from each private facility which contracts for the confinement of Department of Corrections offenders.
- 5. Aggregated data collected shall be made available to the public annually through the Department of Corrections website.
- 6. All case records associated with claims of sexual offenses, including incident reports, investigation reports, offender information, case disposition, and medical and counseling evaluation findings and recommendations for post-release treatment or counseling, shall be retained in accordance with the records retention schedule.