

		Chapter:	Administration
		Policy Name:	Prison Rape Elimination Act Response and Investigation
		Effective Date:	November 17, 2022
Sections covered			Policy Number:  100-13
DCJ:	CS – O7O Prison Rape Elimination Act (PREA)		
PREA:	§115.6 §115.221-222 §115.261-267 §115.271-273 §115.282-283	§115.286-289 §115.293 §114.401-405 §115.501	

Policy: It is the policy of Embrace. to have zero tolerance towards all forms of sexual abuse and sexual harassment and staff, interns, contractors, and volunteers will prevent, detect, and immediately report all appearances of a violation or allegations. Embrace will assign an appropriately trained staff to promptly investigate all allegations.

Procedure:

A. Reporting Duties: Upon learning of any allegation, suspicion, or information that a client was sexually abused, sexually harassed, or is at risk to be sexually abused or harassed, staff will immediately:

1. Separate the alleged victim and abuser;
2. Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence.
  - a. Alleged Victim: If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.
    - 1) Allow the victim to go to the hospital for a forensic medical examination and to Ensure the victim has access to emergency timely access to emergency contraception, and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.
    - 2) Distribute to the alleged victim the contact information for a victim advocate. The victim's advocate will be allowed to accompany the alleged victim to the forensic medical examination and investigative interviews.
  - b. Alleged Abuser: If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

Policy Title:	Policy Number	Effective Date
Prison Rape Elimination Act Response and Investigations	100-13	11/17/2022

- c. Identify and separate any witnesses.
  - d. Call Colorado Springs Police Department or 911 if the situation warrants. Notify supervisor or on call if after business hours.
- 3. Upon receiving an allegation that a resident was sexually abused while confined at another facility:
  - a. The head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred.
  - b. Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation.
  - c. The agency shall document that it has provided such notification.
  - d. The facility head or agency office that receives such notifications shall ensure that the allegation is investigated in accordance with these standards.

B. Investigation: The PREA coordinator will assign a qualified and trained investigator to complete the PREA investigation.

- 1. All Embrace staff are required to cooperate with any PREA investigation
- 2. Referral for Investigation by the Colorado Springs Police Department: The assigned PREA investigator in coordination with the PREA coordinator and vice president of operations will determine if the allegation should be reported to the Colorado Springs Police Department for investigation as a criminal offense.
  - a. The administrative investigation will be suspended until the Colorado Springs Police Department has made a determination on whether the incident will be referred for criminal charges.
  - b. Once a determination has been made the assigned investigator will document that decision in the internal report and proceed with the administrative investigation.
- 3. Administrative Investigation: When completing the internal administrative investigation, the investigator will determine whether staff actions or failures to act contributed to the abuse; and will document that finding in a written report.
  - a. The report will include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.
  - b. The investigator will ensure the credibility of an alleged victim, suspect, or witness is assessed on an individual basis and not be determined by the person's status as client or staff.
  - c. The investigator will not require a client who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.
  - d. The investigator will impose a standard of evidence no higher than a preponderance of the evidence in determining if sexual abuse or sexual harassment are substantiated. The report findings will either be determined as:
    - 1) Unfounded: A determination of unfounded means an allegation that was investigated and determined not to have occurred.
    - 2) Unsubstantiated: A determination of unsubstantiated means an allegation that was

Policy Title:	Policy Number	Effective Date
Prison Rape Elimination Act Response and Investigations	100-13	11/17/2022

investigated, and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

- 3) Substantiated A determination of substantiated means an allegation that was investigated and determined to have occurred
  - e. The departure from employment of the alleged abuser does not provide a basis to

Policy Title:	Policy Number	Effective Date
Prison Rape Elimination Act Response and Investigations	100-13	11/17/2022

- terminate the investigation.
- f. All terminations or resignations by staff who would have been terminated if not for their resignation, will be reported to law enforcement agencies, unless the activity was clearly not criminal, and to all referral and oversight agencies.
  - g. This report will be held for as long as the alleged abuser is incarcerated or employed plus a period of 5 years.
4. Investigation Results: At the conclusion of the investigation into a client's allegation of sexual abuse suffered in Embrace the investigator will inform the resident as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.
- a. Investigations Regarding Staff: If the investigation determination was substantiated or unsubstantiated, the investigator will also inform the client:
    - 1) The staff member is no longer posted within the client's unit;
    - 2) The staff member is no longer employed at the facility;
    - 3) If the investigator learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or
    - 4) If the investigator learns that the staff member has been convicted on a charge related to sexual abuse within the facility.
  - b. Investigations Regarding Other Clients: Following a client's allegation that he or she has been sexually abused by another resident, the assigned investigator will subsequently inform the alleged victim whenever:
    - 1) The investigator learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
    - 2) All such notifications or attempted notifications will be documented in the alleged victim's client placement.
    - 3) The investigator is not required to inform the victim once they have left the supervision of Embrace.
  - c. The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
  - d. Ongoing Access to Medical and Mental Health Services: The assigned investigator will ensure the victim has access to medical and mental health services including access if transferred to another facility or released from Embrace custody. This included access to pregnancy test and info on lawful medical services and testing for sexually transmitted infections.
  - e. Mental Health Evaluation for Abusers: The investigator will arrange for a mental health evaluation for all known client on client abusers within 60 days and offer treatment when appropriate.
- C. Retaliation Monitoring: Embrace will protect all clients and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other clients or staff.
- 1. In situations involving client claims, the facility director or designee will monitor the conduct and treatment of residents in who reported the sexual abuse and of residents who were reported

Policy Title:	Policy Number	Effective Date
Prison Rape Elimination Act Response and Investigations	100-13	11/17/2022

to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by clients or staff.

2. In situations involving staff and client claims, the PREA coordinator will monitor the conduct and treatment of residents in who reported the sexual abuse and of residents who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by clients or staff.
3. The assigned monitor will conduct periodic status checks and review any resident disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. All retaliation monitoring documentation will be forward for record keeping to the PREA coordinator.
4. The assigned retaliation monitor will act promptly to remedy any such retaliation which may include utilization of the client or staff disciplinary process.
5. The assigned retaliation monitor will continue such monitoring for a minimum of 90 day and beyond if the initial monitoring indicates a continuing need.
6. Retaliation monitoring will occur on the attached Retaliation Monitoring Form.

D. Sexual Abuse Incident Review: The PREA investigator will conduct a Sexual Abuse Incident Review within 30 days of the conclusion of the investigation. The review committee will be multi-disciplinary and include line level staff and management.

1. The review committee will:
  - a. Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
  - b. 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 facility;
  - c. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
  - d. Assess the adequacy of staffing levels in that area during different shifts; and
  - e. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff.
2. The PREA coordinator will prepare a report of the committee's findings, including but not necessarily limited to determinations made pursuant of this section, and any recommendations for improvement, and submit such report to the vice president of operations.
3. The facility will implement the recommendations for improvement or will document reasons for not doing so.

E. Data Collection and Annual Report:

1. The PREA coordinator will collect annual data including reports, investigative files, and Sexual Abuse Incident Review documentation for all allegations of sexual abuse or sexual harassment in Embrace facilities annually. The PREA coordinator will retain these records for 10 years.

Policy Title:	Policy Number	Effective Date
Prison Rape Elimination Act Response and Investigations	100-13	11/17/2022

2. The PREA coordinator will prepare an annual report that identifies problem areas and plans for corrective action. The report will compare current year data to previous year's data and make this report public through the website. The PREA auditor and Embrave staff will jointly develop a corrective action plan, if necessary, and fully implement.

F. Audits: Embrave will ensure each facility is has a PREA audit conducted by a qualified PREA auditor. All Embrave staff is required to fully comply with the requests of the PREA auditor. Embrave will publish each facilities audit findings through the website

G. Confidentiality: Staff will maintain the confidentiality of all allegations of sexual abuse or sexual harassment and only discuss to the extent necessary for an investigation, future treatment decisions, and other security and management decisions.

#### Definitions:

A. 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.

B 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.

C. 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;

Policy Title:	Policy Number	Effective Date
Prison Rape Elimination Act Response and Investigations	100-13	11/17/2022

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.

D. 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.

E. 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.

History:

01-27-15  
04-14-14  
07-16-13  
08-26-10  
12-31-18

## Retaliation Monitoring Form

Victim/Witness: \_\_\_\_\_ ID: \_\_\_\_\_ Unit \_\_\_\_\_

Facility: \_\_\_\_\_ Date of PREA Violation: \_\_\_\_\_ Date Violation Reported: \_\_\_\_\_

Retaliation Monitor Name: \_\_\_\_\_ Title: \_\_\_\_\_

*Note: All inmate/resident/detainee monitoring must include periodic status checks*

[illegible]