

	Chapter:	Administration
	Policy Name:	Prison Rape Elimination Act Response and Investigation
	Effective Date:	July 6, 2023
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, including third-party and anonymous reports, or is at risk to be sexually abused or harassed, staff will immediately:
1. If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not to take any actions that could destroy physical evidence and then notify security staff.
 2. Separate the alleged victim and abuser;
 3. 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 Memorial 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.

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- available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.
- c. 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.
 - d. 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.
 - e. 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 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
 - f. The departure from employment of the alleged abuser does not provide a basis to terminate the investigation.
 - g. 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.
 - h. Any contractor or volunteer who engages in sexual abuse be reported to law enforcement agencies (unless the activity was clearly not criminal) and to relevant licensing bodies. Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with residents. This report will be held for as long as the alleged abuser is incarcerated or employed plus a period of 5 years.
 - i. The facility takes appropriate remedial measures and considers whether to prohibit further contact with residents in the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer.
 - j. Residents shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the resident engaged in resident-on-resident sexual abuse or following a criminal finding of guilt for resident-on-resident sexual abuse.
 - k. Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the resident's disciplinary history, and the sanctions imposed for comparable offenses by other residents with similar histories.
 - l. The disciplinary process shall consider whether a resident's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.
5. 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.

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- 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. These 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.
 - 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 and report to the PREA coordinator, 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.
 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

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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.
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 Embrace staff will jointly develop a corrective action plan, if necessary, and fully implement.

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

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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.

H. Privacy: Embrace shall implement policies and procedures that enable residents to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks

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;
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,

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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
11-17-22
12-15-22
06-02-23

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

Behaviors Monitored:	Comments (Detail as much as possible):
Did staff involved receive any negative performance reviews since Incident?	
Was staff reassigned based on incident?	
Negative behavior evaluations	
Classification changes	
Earned time changes	
Grievance filed	
Work assignment changes needed	
Program changes needed	
Housing changes needed	
Resident disciplinary reports/COPD charges	
Within 3 days	
Within 15 days	
Within 45 days	
Within 60 days	
Within 75 days	
Within 90 days	