

FRESNO COUNTY SHERIFF'S OFFICE
JAIL DIVISION POLICIES AND PROCEDURES

TITLE: SEXUAL MISCONDUCT AND ABUSE
FILE: SEXUAL ABUSE

NO: D-360

EFFECTIVE DATE: 02-01-12

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REFERENCE: Prison Rape Elimination Act of 2003 (42 USC 15601); 28 CFR 115; Penal Code Sections 264.2, 286(e), 288a(e), 289.6, 293, 679.04 11160.1, 13516, 13823.5, and 13823.11; Fresno County Sheriff's Office Policy and Procedure Manual Section 102.

PURPOSE:

The purpose of this policy is to maintain a program of education, prevention, detection, investigation, punishment for the perpetrator, treatment and support for the victim, and data collection, in order to protect the inmate population from inmate-on-inmate sexual assault and staff sexual abuse, sexual misconduct, and sexual harassment.

POLICY:

It is the policy of the Fresno County Sheriff's Office to maintain a zero-tolerance for inmate-on-inmate sexual assault and staff sexual abuse, sexual misconduct, and sexual harassment toward inmates. This policy provides a response plan universal for all instances of sexual abuse, sexual assault and sexual misconduct.

It is the policy of the Fresno County Sheriff's Office to thoroughly investigate every allegation of sexual abuse, and where warranted by evidence, proportional sanctions, up to and including criminal prosecution, are implemented.

It is the policy of the Fresno County Sheriff's Office that retaliatory measures against employees or inmates who report incidents of sexual abuse shall not be tolerated and shall result in disciplinary action and/or criminal prosecution. Retaliatory measures include, but are not limited to, coercion, threats of punishment, or any other activities intended to discourage or prevent an employee or inmate from reporting the sexual abuse.

This policy applies to all inmates and persons employed by the Fresno County Sheriff's Office, including volunteers and independent contractors.

Consensual sodomy and oral copulation among inmates is prohibited by law (Penal Code Sections 286(e) and 288a(e), respectively). Without repealing those provisions, the increased scrutiny provided by this policy shall apply only to *nonconsensual* sexual contact among inmates and custodial sexual misconduct.

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PROCEDURES:

I. OVERVIEW

In 2012, the U.S. Department of Justice (DOJ) issued standards that jails must meet to protect inmates from sexual violence and harassment. The standards implement the Prison Rape Elimination Act (PREA) of 2003.

- A. PREA requires jails to prevent sexual abuse from occurring, and requires that staff report and intervene whenever they learn an inmate is being victimized. Jails must screen each inmate's risk level for sexual assault and make efforts to house them safely. Jails also have to minimize opportunities for sexual assault by having sufficient staffing, rounds, and video monitoring.
- B. When sexual assaults do occur, jails must provide inmates with appropriate medical and mental health services, confidentially, and at no cost, in a manner consistent with the level of care in the community. Inmates must receive urgent trauma care, which includes treatment of injuries, sexually transmitted infection testing, post-exposure prophylaxis (i.e., action taken to prevent disease), and for those who need it, emergency contraception and pregnancy testing. Prompt forensic exams must also be provided to inmates who want them, in order to preserve evidence for possible prosecution. Jails have to provide inmates with access to outside victim advocates and rape crisis organizations.
- C. There must be clear mechanisms to report sexual assault and those who report must be protected from retaliation. Real investigations must happen, with uniform protocols, and evidence preserved.

This policy has been written in compliance with the DOJ standards.

II. DEFINITIONS

SEXUAL ABUSE includes sexual abuse by another inmate and sexual abuse of an inmate by a staff member, contractor, or volunteer.

- A. **SEXUAL ABUSE BY ANOTHER INMATE** 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:

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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.
 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.**
- B. **SEXUAL ABUSE BY A STAFF MEMBER, CONTRACTOR, OR VOLUNTEER** includes any of the following acts, with or without consent of the inmate:
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 any part of the body of one person, or of any object, substance, instrument or device, 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 this section [B(1-5)].
 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.
 8. Voyeurism by a staff member, contractor, or volunteer.

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C. **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 directed toward another; and
2. Repeated verbal comments or gestures of a sexual nature to an inmate 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.

D. **SEXUAL MISCONDUCT**

1. As it relates to inmates, includes acts of indecent exposure, sexual disorderly conduct and exhibitionist masturbation. Any inmate who "willfully and lewdly" exposes their private parts or who touches (without exposing) their genitals, buttocks, or breasts in a manner that demonstrates it is for the purpose of sexual arousal, gratification, annoyance, or offense will be subject to a rule violation and/or to criminal prosecution.
2. As it relates to employees, any sexual behavior by a departmental employee directed toward an inmate as defined in Penal Code Section 289.6. The legal concept of "consent" does not exist between employees and inmates; any sexual behavior between them constitutes sexual misconduct and shall subject the employee to disciplinary action and/or to prosecution under the law. Sexual misconduct also includes, but is not limited to, conversations or correspondence that suggests a romantic relationship.

E. **EXONERATED** – the incident under investigation occurred, but was lawful and proper.

F. **GENDER NONCONFORMING** – a person whose appearance or manner does not conform to traditional societal gender expectations.

G. **INTERSEX** - a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female.

H. **NOT SUSTAINED ALLEGATION** – also referred to as an *unsubstantiated allegation*. An allegation that was investigated and produced insufficient evidence to make a final determination as to whether or not the event occurred.

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- I. **SEXUAL SOLICITATION** – the solicitation of another person to engage in sexual activity.
- J. **SUSTAINED ALLEGATION** – also referred to as a *substantiated allegation* – an allegation that was investigated and determined to have occurred.
- K. **TRANSGENDER** – a person whose gender identity (i.e., internal sense of feeling male or female) is different from a person's assigned sex at birth.
- L. **UNFOUNDED ALLEGATION** – an allegation that was investigated and determined not to have occurred.
- M. **VICTIM SUPPORT PERSON** – means any person of the alleged victim's choosing, which could include another inmate, personal friend, chaplain, or family member.
- N. **VOYEURISM** by a staff member, contractor, or volunteer means an invasion of privacy of an inmate 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.

III. PREVENTION PLANNING

- A. All staff is to be trained to recognize the signs of sexual abuse and sexual harassment and understand their responsibility in the detection, prevention, response and reporting of an alleged sexual abuse or sexual harassment.
- B. The Sheriff's Office has developed and makes its best effort to comply on a regular basis with a staffing plan that provides for adequate levels of staffing to protect inmates against sexual abuse. Deviations from the staffing plan are documented via Telestaff and/or the Watch Commander's Summary, noting the reason for the staffing deviation (e.g., emergency, etc.).
- C. Sergeants are responsible to conduct and document unannounced rounds on all shifts to deter sexual abuse and sexual harassment. The checks shall be documented via the Safety Check System. Staff is prohibited from alerting other staff members that the supervisory rounds are occurring.

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- D. Inmates are able 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 to routine cell checks.
1. In order to minimize cross gender exposure, staff of the opposite biological sex shall announce their presence when entering the housing unit. This announcement is required at the beginning of each shift and/or when the status quo within the housing unit changes (e.g., an officer of the opposite sex relieves an assigned officer). An advisement of this policy will be included in the *Inmate Orientation Handbook* so as to allow the inmate to take into consideration that staff of the opposite gender may be present when performing bodily and bathing functions.
 2. If a security concern exists, officers will NOT announce their presence.

IV. RESPONSIBILITIES

- A. The Services Lieutenant shall be assigned as the designated PREA Coordinator. The PREA Coordinator is responsible to oversee efforts to comply with the PREA standards in all facilities, and assess facility compliance with PREA policies and applicable laws.
- B. The designated Sergeant assigned as the PREA Compliance Manager shall be responsible to:
 1. Review all allegations, determine which allegations fall within the definition of sexual abuse or sexual misconduct, and forward those allegations for investigation, as appropriate. (Emergency incidents requiring immediate action will be referred to the Persons Crimes Unit via the Watch Commander and/or by the responding deputy.)
 - a. Ensure that the inmate is referred for medical/mental health evaluation.
 - b. Coordinate and track referrals of allegations to the Persons Crimes Unit, Internal Affairs Unit, and prosecutors.

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- c. Ensure that any allegation of sexual abuse that occurred at another facility is reported to the appropriate office of the agency where the alleged abuse occurred.
 - d. For allegations determined *not* to fall within the definition of sexual misconduct, the PREA Compliance Manager will ensure the reporting party is notified and any necessary action is taken. The notification shall be documented.
 - e. Investigate (or cause to be investigated) all allegations of sexual harassment, including third-party and anonymous reports.
 - f. Conduct (or cause to be conducted) an administrative investigation to determine whether staff actions or inactions contributed to an act of abuse.
 - i. Substantiation shall be based on a preponderance of the evidence.
 - ii. The departure of the alleged abuser or victim from the employment or control of the Sheriff's Office shall not provide a basis for terminating an investigation.
 - g. Ensure that the inmate is informed as to whether the allegation has been determined to be sustained, not sustained, or unfounded, as well as any subsequent actions (e.g., indictments, convictions). (Refer to Section XXI.)
2. Ensure that the conduct and treatment of inmates or staff who have reported sexual abuse or cooperated with investigations are monitored for signs of retaliation for at least ninety (90) days following their report or cooperation.
 3. Keep the PREA Coordinator and Command Staff informed on PREA-related issues.
 4. Conduct an annual vulnerability assessment for each facility. Staffing and monitoring systems shall be assessed for adjustments and documented on a *PREA Vulnerability Assessment* form. Copies of the forms shall be forwarded to the PREA Coordinator and the Jail Division Bureau Commanders.

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5. Track, monitor, and ensure that recommendations for improvement made by Command Staff (subsequent to a sexual abuse incident review) are implemented, or document the reason for not doing so.
 6. Maintain, review, and collect data from all incident-based documents, including reports, investigation files, and sexual abuse incident reviews.
 7. Ensure that required documents are prepared on an annual basis and published on the Sheriff's website, to include:
 - a. The aggregated incident-based sexual abuse data.
 - b. A report of findings and corrective actions for each facility, as well as the agency as a whole.
 - c. A copy of this policy.
- C. The Facility Sergeants shall ensure compliance with policy and PREA in each of their respective assigned facilities. The Facility Sergeants shall be responsible to:
1. Verify the presence of the required Sexual Assault/PREA posters in all housing units and other appropriate common areas (i.e., medical rooms, gymnasiums, and program classrooms) during the weekly cleanliness inspections.
 2. Assist in monitoring the conduct and treatment of inmates or staff who have reported sexual abuse or cooperated with investigations for signs of retaliation.
 3. Assist in the implementation of any corrective action plan.
- D. Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document all reports.
1. Employees shall maintain a professional demeanor when interacting with an alleged victim of sexual abuse, and display sensitivity to the potential emotional impact of the situation.
 2. Incident-specific information shall be treated as confidential, and disclosure made only to staff who have a "need to know" and to persons and entities as permitted or required by law.

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3. Staff shall not discriminate in their response to inmates who are gay, bisexual, transgender, intersex, or gender nonconforming who report that they have experienced sexual abuse.

V. EMPLOYEE TRAINING

- A. All employees who may have contact with inmates shall be trained on the Sheriff's Office zero-tolerance policy for sexual abuse and sexual harassment. The training shall include instruction related to the prevention, detection, reporting, and response to inmate sexual abuse.
 1. This training will be conducted during new employee orientation, and included in the curriculum of the Correctional Training Academy.
 2. All employees shall receive refresher training every two (2) years.
 3. In years in which an employee does not receive refresher training, the Sheriff's Office shall provide refresher information on current sexual abuse and sexual harassment policies.
- B. In addition to general training provided to all employees, the Sheriff's Office shall ensure that specialized training is provided to Health Services personnel, sex crime investigators, and other staff identified by the department.
- C. All volunteers and contractors who have contact with inmates shall be notified of the zero-tolerance policy regarding sexual abuse and sexual harassment, and trained on their responsibilities regarding sexual abuse prevention, detection, and response. The level and type of training provided shall be based on the services they provide and level of contact they have with inmates.

VI. INMATE EDUCATION

- A. All inmates will be provided with a copy of the *Inmate Orientation Handbook* during the intake process.
 1. The handbook informs the inmates of the zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.
 2. Appropriate provisions shall be made to ensure effective education for inmates who are not fluent in English, are deaf, visually impaired, or

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otherwise disabled, as well as to inmates who have limited reading skills. The Booking Officer should notify the ADA Coordinator or the Booking Sergeant if alternative arrangements need to be made.

- C. An educational video will be provided to the inmates on a weekly basis in both English and Spanish.
- D. Key information is continuously and readily available and visible to inmates. In addition to the *Inmate Orientation Handbook* and the weekly video showings, posters are displayed in appropriate locations throughout the facilities, to include all housing units and common areas (i.e., medical rooms, gymnasiums, program classrooms and court holding). The posters are designed to inform inmates:
 - 1. That all inmates have a right to be safe and free from sexual harassment and sexual assaults.
 - 2. The telephone numbers and current methods available for reporting sexual abuse, retaliation, or sexual harassment.

VII. SCREENING FOR APPROPRIATE PLACEMENT

- A. All inmates shall be assessed during the initial classification process for their risk of being sexually abused by other inmates or sexually abusive *toward* other inmates.
- B. The intake screening shall consider, but is not limited to, the following criteria to assess inmates for risk of sexual victimization:
 - 1. Age
 - 2. Physical stature
 - 3. Mental, physical, or developmental disability
 - 4. First time offender status
 - 5. Sex offender status (per criminal history and previous incarcerations)
 - 6. Past history of victimization
 - 7. Inmate's own perception of vulnerability

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8. Perception of inmate to be lesbian, gay, bisexual, transgender, intersex, or gender nonconforming
- C. An inmate may be identified for vulnerability if one or more of these factors apply with sufficient documentation by the Population Management Officer to warrant concern. The information shall be used to determine housing and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.
- D. Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives determines that there is no available alternative means of separation from likely abusers. If unable to conduct such an assessment immediately, the inmate may be placed in involuntary segregated housing for less than twenty-four (24) hours while completing the assessment.
 1. Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If restricted from access to programs, privileges, education, or work opportunities, the following shall be documented by the Offender Programs Manager:
 - a. The opportunities that have been limited.
 - b. The duration of the limitation.
 - c. The reasons for such limitation.
 2. The inmate may be assigned to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged. Such an assignment shall not ordinarily exceed a period of thirty (30) days, and documentation shall include:
 - a. The basis for the concern for the inmate's safety.
 - b. The reason why no alternative means of separation can be arranged.
 3. Every thirty (30) days, Population Management shall afford each involuntarily segregated inmate a review to determine whether there is a continuing need for separation from the general population.

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- E. Inmates are evaluated to specifically determine if there are indications that he/she is a sexually abusive inmate, prone to victimize other inmates, especially in regard to sexual behavior. Indications include the following:
 - 1. History of sexually abusive crimes and prior convictions for violent offenses (per previous arrests and criminal history).
 - 2. History of prior institutional violence or sexually abusive behavior (per previous incarcerations).
- F. In deciding inmate housing and programming assignments for transgender or intersex inmates, the Population Management Unit shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.
- G. Inmates may not be disciplined for refusing to answer, or for not disclosing complete information in response to questions asked concerning victimization and vulnerability.

VIII. PRIOR SEXUAL ABUSE DISCLOSED DURING INTAKE SCREENING

- A. If an inmate discloses prior sexual victimization, whether it occurred in an institutional setting or in the community, the Population Management Officer shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner. This is true regardless of whether the victimization has been previously reported upon a prior admission.
- B. The Population Management Officer shall be responsible to document the information in an incident report and to:
 - 1. Document the inmate's acceptance or rejection to the offer of the follow-up meeting on the *Inmate Classification Questionnaire* form.
 - 2. Notify Health Services if the inmate wishes to have a follow-up meeting. Document how and/or to whom the notification was made on the *Inmate Classification Questionnaire* form.
 - 3. Forward a copy of the pertinent section of the form that indicates prior sexual victimization to the PREA Compliance Manager (regardless of whether or not the inmate wishes to have a follow-up meeting). The

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form may be scanned and emailed, or sealed in an envelope and forwarded.

4. A corresponding email shall be sent to the PREA Compliance Manager and a "courtesy copy" (CC) to the supervising Population Management Sergeant. "PREA" shall be referenced on the Subject line and the email should contain any additional information, as was disclosed. In cases involving other facilities, additional notifications must be made. (See VIII(D), as follows.)
- C. If the prior sexual victimization occurred in a **Fresno County Sheriff's Office facility**, the PREA Compliance Manager will be responsible to determine if enough information is available to involve the Persons Crime Unit in a criminal investigation.
- D. If the prior sexual victimization occurred while confined at **another facility**, the other agency must be notified as soon as possible, but no later than seventy-two (72) hours after receiving the allegation. To ensure timely compliance, copies of the *Inmate Classification Questionnaire* and corresponding email shall also be forwarded to the Services Lieutenant and on-duty Watch Commander, in addition to the PREA Compliance Manager. The email should be flagged as "High Importance."
1. The PREA Compliance Manager will be responsible to make the notification.
 2. If the PREA Compliance Manager is not available to make the notification, the PREA Coordinator shall do so. If neither are available, the Watch Commander shall ensure that the notification is made. The date, time, telephone number and name of the person notified shall be memorialized in an email and forwarded to the PREA Compliance Manager. (Refer also to XII(D).)
- E. If the prior sexual victimization occurred while in the **community** (i.e., NOT in an institutional setting) and the offense is contemporaneous and/or the inmate requests to press charges, the supervising Population Management Sergeant shall notify the appropriate law enforcement agency.

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- F. For those inmates who so desire, the follow-up meeting with a medical or mental health practitioner shall be provided within fourteen (14) days of the intake screening.

IX. REASSESSMENT

- A. Within a set time period, not to exceed thirty (30) days, Population Management shall reassess each inmate's risk of victimization or abusiveness based upon any additional, relevant information received since the intake screening.
- B. An inmate's risk level shall be reassessed when warranted due to a referral, request, or incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness. The Population Management Unit shall be immediately notified in the following circumstances:
1. If an employee has significant concern that an inmate may be subject to sexual victimization.
 2. If an inmate displays predatory behavior.
- C. Transgender and intersex inmates shall be reassessed at least twice each year to review any threats to safety experienced by the inmate.

X. DETECTION OF SEXUAL ASSAULT

- A. All employees have a responsibility to protect the inmates in their custody. Staff shall immediately report any knowledge, suspicion, or information regarding sexual abuse, sexual misconduct, sexual solicitation, sexual harassment, retaliation by inmate or staff for reporting, or staff neglect or violation of responsibility that may have contributed to such incidents occurring while incarcerated. Staff shall, except as noted elsewhere in this policy, promptly report the information to their immediate supervisor and document the report. The supervisor shall notify the Watch Commander, who will notify the designated PREA Compliance Manager. In addition to this reporting, employees have a responsibility to assist the inmate and refer him/her to Health Services for evaluation. (Unless the need is immediate, this will most commonly be accomplished by the PREA Compliance Manager.)

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- B. An inmate may report sexual abuse that occurs under the jurisdiction of the Sheriff's Office to any employee, volunteer, or contractor. If the person who receives the report is a non-custody employee, he/she shall promptly notify their supervisor and report the information to the Watch Commander. If immediate action is required, *any* correctional staff member may be notified.
- C. Employees are reminded that victims of sexual abuse may be seriously traumatized both physically and/or mentally. Employees are expected to be sensitive to the inmate during their interactions with him/her.

XI. SEXUAL ACTIVITY BETWEEN INMATES AND EMPLOYEES

- A. There is no consensual sex in a custodial/supervisory relationship. Any sexual activity between employees and inmates is inconsistent with the professional ethical principles and policies of the Sheriff's Office. All such allegations will be investigated.
- B. Acts of sexual abuse, sexual misconduct, sexual solicitation, or sexual harassment against inmates, retaliation against inmates who refuse to submit to sexual activity, or intimidation of a witness, may be a crime. Retaliation against individuals because of their involvement in the reporting or investigation of sexual abuse, sexual misconduct or sexual harassment is prohibited.
- C. All cases involving sexual abuse, sexual misconduct, sexual solicitation, or sexual harassment will be referred to the appropriate investigating unit, and if appropriate, such cases will be referred to the District Attorney for prosecution. The involved Lieutenant shall be responsible to notify the PREA Compliance Manager upon completion of the investigation (if not previously aware), for tracking purposes.
- D. All incidents of sexual abuse, sexual misconduct, sexual solicitation, sexual harassment, and retaliatory acts against individuals for reporting incidents will result in corrective and/or disciplinary action, up to and including termination. Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.
 - 1. 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 law enforcement agencies (unless the activity was clearly not criminal) and to any

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relevant licensing bodies.

2. Failure of employees to report incidents will result in corrective and/or disciplinary action.

XII. REPORTING

- A. Inmates may privately report sexual abuse, sexual misconduct, sexual solicitation, and sexual harassment; retaliation by other inmates or staff for reporting sexual abuse and sexual harassment; and staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse to any employee, volunteer or contractor. Inmates are encouraged to report when either they are the victim, or they have knowledge or suspicion of an act having occurred or occurring in a correctional institution, or any staff neglect or violation of responsibilities that may have contributed to such an incident.
 1. Such allegations shall be treated with discretion and, to the extent permitted by law, confidentially. Staff shall, except as noted elsewhere in this policy, promptly report the information to their immediate supervisor and document the report. The supervisor shall notify the Watch Commander and the PREA Compliance Manager.
 2. Apart from reporting to their immediate supervisor, or discussing with the PREA Coordinator or PREA Compliance Manager, employees shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in this policy, to make treatment, investigation, and other security and management decisions.
 3. Due to the sensitivity involved when an allegation involves another employee, the receiving employee should report the violation directly to their Watch Commander. Employees not comfortable with reporting violations of this policy to their Watch Commander may bypass the chain of command and report the allegation to any supervisor. The chain of command does NOT need to be followed and an incident report will not be written via OffenderTrak. The employee shall document the incident as instructed by the Watch Commander.
- B. Additionally, inmates may report abuse, retaliation, or harassment by writing to the Sheriff's Office Internal Affairs Unit, or by contacting the local Rape Crisis Center at (559) 222-7273. The inmate may remain

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- anonymous upon request. Even though an anonymous report may not allow for a full investigation into the incident, providing information about an incident without the identity of the victim will still alert staff to potential concerns and may help reveal unsafe areas within the facility.
- C. Employees shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document all reports.
1. If the PREA Compliance Manager is available, the reporting person should be referred or transferred to speak directly to the PREA Compliance Manager.
 2. If the PREA Compliance Manager is not available, the employee contacted shall document the information in an email and forward to the PREA Compliance Manager (or notify the Watch Commander, if immediate response is indicated).
- D. Upon receiving an allegation that an inmate was sexually abused while confined at another facility, the PREA Compliance Manager shall email and notify the head of the agency (or appropriate office of the agency) where the alleged abuse occurred.
1. Such notification shall be provided as soon as possible, but no later than seventy-two (72) hours after receiving the allegation.
 2. The PREA Compliance Manager shall ensure that documentation is made indicating that such notification was provided.
 3. Any facility receiving such notification shall ensure that the allegation is investigated.
- E. Inmate interpreters, inmate readers, or other types of inmate assistants should not be used except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first-response duties, or the investigation of the inmate's allegations.

XIII. CREDIBILITY

- A. The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff. The Sheriff's Office will not require an inmate 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

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an allegation.

- B. If it is determined that an inmate's allegations are false, the inmate may be subject to disciplinary action. A charge of "making a false report of a crime" is appropriate if evidence discovered during the investigation would support that charge.

XIV. INITIAL (IMMEDIATE) RESPONSE

- A. Upon learning of an allegation that an inmate was sexually abused, the employee shall immediately notify the Facility Sergeant and:
1. Separate the alleged victim and abuser.
 2. Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence.
 3. Immediately notify the on-duty Charge Nurse. Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services.
- B. If the abuse occurred within a time period that still allows for the collection of physical evidence (and where appropriate, given the incident alleged), the employee shall request that the victim not take any actions that could destroy physical evidence, including:
1. Showering or washing
 2. Brushing teeth
 3. Changing or removing clothes
 4. Using the restroom facilities
 5. Drinking or eating
- C. Obtain only the necessary information (e.g., victim's identity, location and time of the incident, name and/or description of alleged offender(s) and any possible witnesses) but **do not interview the victim further**. Do not ask detailed questions or pressure the victim for responses or information about the incident.
- D. Do not attempt to interrogate the alleged suspect, unless circumstances make it unavoidable. If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged

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abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, drinking, or eating.

- E. If the person notified is a volunteer or contractor, the volunteer or contractor shall be required to request the victim not take any actions that could destroy physical evidence, and then notify correctional staff.
- F. The provision of safe housing options, medical care, and the like shall not be contingent upon the victim's willingness to press charges.

XV. DOCUMENTATION

- A. A report shall be written that documents the incident, using only necessary, basic information. Reference should be made to the criminal report, which should contain the incident-specific information. Apart from reporting to designated supervisors, the PREA Compliance Manager, the PREA Coordinator, or investigators, incident-specific information shall be treated as confidential, and disclosure made only to staff who have a "need to know" in order to make treatment, investigation, and other security and management decisions.
- B. The Facility Sergeant shall ensure that the victim of a sex offense (pursuant to GC 6254(f)(2)) is informed that his/her name will become a matter of public record unless he/she requests that it *not* become a matter of public record, pursuant to PC 293(a).
 - 1. The advisement and the victim's response shall be memorialized in the incident report.
 - 2. If the victim has requested confidentiality, *****CONFIDENTIAL***** shall be typed on the first line in the body of the report. The inmate's name will still be used, but cannot be released except to specified persons as authorized by law. Any written report concerning the offense must indicate that the victim requested confidentiality of his/her name pursuant to PC 293(a).
- C. The Watch Commander shall ensure that a copy of the report is forwarded to the PREA Compliance Manager.

XVI. COORDINATED RESPONSE

- A. The discovering employee shall (except as noted elsewhere in this policy)

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promptly report the information to their immediate supervisor and document the report. The supervisor shall be responsible to notify the Watch Commander.

- B. The Watch Commander shall ensure that:
1. A deputy is dispatched to the Jail.
 2. The PREA Coordinator is notified in all cases, and copies of associated reports are forwarded.
 3. The Bureau Commander is notified. If the victim alleges he/she was involved with or assaulted by staff, the Bureau Commander shall notify the Internal Affairs Lieutenant.
- C. The responding deputy (or the PREA Compliance Manager or PREA Coordinator) shall refer all in-custody sexual assaults to the Persons Crimes Unit for investigation.
- D. The investigators shall be responsible to:
1. Gather and preserve evidence, including any available physical and biological evidence and any available electronic monitoring data.
 2. Interview alleged victims, suspects, and witnesses.
 3. Review prior complaints and reports of sexual abuse involving the suspect.
 4. Assess the credibility of the alleged victim, suspect, or witness on an individual basis and not by the person's status as inmate or staff.
 5. Document in written reports a description of physical, testimonial, documentary and other evidence.
 6. Refer substantiated allegations of conduct that appears to be criminal to the District Attorney for possible prosecution.
- E. Health Services staff shall assess the inmate's acute medical needs.
1. If any life-threatening injuries exist, response may include the need to request emergency transportation (i.e., ambulance). When the call is made to request an ambulance, the dispatcher should be informed that the injured inmate is the victim of sexual assault.
 2. Health Services staff shall be cognizant to maintain intact any physical

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evidence which may be found on the victim's person or clothing.

- F. The inmate will be transported to the hospital and offered a forensic examination.
- G. The inmate shall be assigned a custody escort who will remain with the victim for the entire process, whenever possible.
 - 1. Gender preference should be considered when assigning a custody escort to the victim. The custody escort will ensure effective communication (i.e., complexity of the issues, language barriers, and literacy).
 - 2. The escort shall not be present in the examination room during the sexual assault examination, unless requested by the victim or hospital staff, or ordered by the Watch Commander.
- H. At the time the victim is sent to the hospital, the Watch Commander or designee shall contact the Rape Crisis Center to request a Victim Sexual Assault Advocate be dispatched to the hospital. The Victim Advocate will provide emotional support, crisis intervention, information, and referrals. Depending on the crime, the inmate may also have a right to a Victim Support person (refer to Section XVII).
- I. The examination will be performed by a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE).
 - 1. If SAFE's or SANE's cannot be made available, the examination can be performed by other qualified medical practitioners. In such circumstances, the effort to provide a SAFE or SANE shall be documented.
 - 2. 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.
 - 3. The hospital will provide emergency contraception when medically appropriate.
- J. Upon return to the Jail, all victims of a sexual assault shall be referred to Health Services for an urgent suicide risk assessment. Health Services staff shall evaluate the victim within one (1) hour of referral. Until that time, the inmate shall be placed under constant and direct supervision to

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ensure he/she does not attempt to hurt him/herself or someone else.

1. Health Services staff shall be responsible to monitor victims for suicidal impulses, post-traumatic stress disorder, depression, and other mental health consequences.
 2. The victim shall be offered crisis intervention counseling, appropriate to the individual needs of the victim.
 3. The victim's information will be referred to the suicide prevention multi-disciplinary meeting to ensure follow-up care/housing considerations were made.
- K. Follow-up testing for pregnancy, sexually transmitted infections/diseases and HIV will be offered as clinically indicated and will be the responsibility of the hospital. If pregnancy results, victims shall receive timely and comprehensive information about, and timely access to, all lawful pregnancy-related medical services.
- L. Evaluation and treatment of victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.

XVII. VICTIM ADVOCATE AND SUPPORT PERSON

- A. Victims of the crimes listed below have the right to a Victim Advocate and Victim Support person for both the medical examination and the investigatory interview:
1. PC 261 (rape)
 2. PC 286 (sodomy)
 3. PC 288a (oral copulation)
 4. PC 289 (forcible acts of sexual penetration)
- B. In incidents where an inmate has alleged sexual assault, the Watch Commander/designee or detective shall immediately notify the local Rape Crisis Center whenever a victim of a sexual assault is transported to a hospital for any forensic examination.
- C. The victim has a right to have a Victim Advocate present and a Victim

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Support person of the victim's choosing at the examination. In most cases, the Victim Advocate will be from the Rape Crisis Center.

- D. The Victim Support person may be excluded from the examination if the Watch Commander/designee, detective, or medical provider determines that the presence of the Victim Support person would be detrimental to the purpose of the examination or poses a threat to the safety and security of the facility or the hospital. If a Victim Support person is excluded, the Watch Commander/designee, or detective shall document the reason (e.g., if time for the support person to attend would result in a significant delay and/or the person requested would present a risk to the safety/security of the facility/hospital).
- E. Victims of the crimes listed in Section XVII(A) have the right to have a Victim Advocate and Victim Support person of their choosing present at any interview by law enforcement, the district attorney, or defense attorneys. The victim must be notified verbally or in writing of this right by the attending investigator or the district attorney prior to the interview.
 - 1. If the investigator or district attorney determines that the presence of the Victim Support person would be detrimental to the interview, the Victim Support person may be excluded from the interview.
 - 2. Reasons for exclusion of the Victim Support person are the same as identified in the medical examination process (refer to XVII(D)).
 - 3. An initial investigation by law enforcement to determine whether a crime has been committed and the identity of the suspects shall not constitute a law enforcement interview for purpose of this section.

XVIII. SUSPECT PROCESSING

- A. Staff shall ensure that there is no physical, verbal, or visual contact between the victim and suspect, whenever possible. Correctional staff shall not interrogate the alleged suspect unless circumstances make it unavoidable.
 - 1. The investigating detectives will provide a *Miranda* warning and interview the suspect to obtain his/her account of the incident.
 - 2. The suspect will be transported to the designated medical location for the forensic examination.

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3. The suspect must consent to the forensic examination or the deputy/detective will take steps necessary to obtain a search warrant.
 4. Upon completion of the forensic medical examination, the suspect will be transferred to an administrative segregation unit. The alleged aggressor shall be held in segregation pending investigation until the investigation is complete.
- B. The Persons Crimes Unit will be responsible for all phases of the criminal investigation if the allegations are against an employee.
1. Immediate efforts shall be made to eliminate contact between the victim and the staff member.
 2. The Watch Commander shall determine if the employee should be placed on administrative leave consistent with departmental policy during the course of the investigation.
- C. Substantiated allegations of conduct that appear to be criminal shall be referred for prosecution.
- D. The departure of the alleged abuser or victim from the employment or control of the Sheriff's Office shall not provide a basis for terminating an investigation.

XIX. DELAYED REPORTING OF SEXUAL ABUSE – MORE THAN 72 HOURS

- A. If the alleged sexual assault is reported or discovered more than 72 hours after the incident, the employee shall notify their supervisor, who shall notify the Watch Commander. The Watch Commander shall notify the PREA Compliance Manager.
- B. The alleged crime scene shall be secured (if feasible) and the alleged suspect (if identified) shall be placed into administrative segregation.
- C. A medical opinion shall be obtained to determine whether the victim is to be taken for a forensic examination. In addition, the victim should be asked if he/she retained any evidence of the assault (e.g., soiled bedding, clothing, etc.).
- D. Hospital medical staff will be responsible to conduct an examination of the victim and alleged suspect to determine the presence or absence of physical trauma, and perform follow-up testing for sexually transmitted diseases and pregnancy testing, as appropriate.

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- E. The victim shall be referred to Health Services for evaluation and counseling.

XX. RETALIATION

- A. Retaliation against any employee or inmate for reporting or cooperating with a sexual abuse investigation is strictly prohibited.
- B. Retaliation is a form of employee misconduct. Any evidence of retaliation shall be considered a separate violation of this policy.
- C. The PREA Coordinator, with assistance from the PREA Compliance Manager, shall ensure that the conduct and treatment of inmates or staff who have reported sexual abuse or cooperated with investigations are monitored for signs of retaliation for at least ninety (90) days following their report or cooperation. Items that should be monitored include any inmate disciplinary reports, housing or program changes, or negative performance reviews or reassignments of staff.
1. All actions taken to remedy any such retaliation shall be documented and forwarded to the affected Watch Commander. If necessary, the Watch Commander shall act promptly to remedy any such retaliation.
 2. Monitoring shall continue beyond ninety (90) days if the initial monitoring indicates a continuing need.
 3. The obligation to monitor shall terminate if the allegation is determined to be unfounded.
- D. If any other individual who cooperates with an investigation expresses a fear of retaliation, appropriate measures shall be taken to protect that individual against retaliation.
1. The individual should report their concern to a Watch Commander (or higher authority).
 2. The Watch Commander (or higher authority) shall act promptly to protect the individual from any such retaliation.

XXI. REPORTING TO INMATES

- A. Following an investigation into an inmate's allegation that they suffered sexual abuse in a Sheriff's Office facility, the inmate shall be informed in writing as to whether the allegation has been determined to be

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sustained/substantiated, not sustained/unsubstantiated, or unfounded.

- B. Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, the inmate shall be informed in writing (unless the allegation is determined to be unfounded) whenever any of the following occur:
1. The staff member is no longer posted within the inmate's housing unit.
 2. The staff member is no longer employed by the Sheriff's Office.
 3. The staff member has been indicted on a charge related to sexual abuse within the facility.
 4. The staff member has been convicted on a charge related to sexual abuse within the facility.
- C. Following an inmate's allegation that they have been sexually abused by another inmate, the inmate/victim shall be informed in writing whenever:
1. The alleged abuser has been indicted on a charge related to the sexual abuse within the facility.
 2. The abuser has been convicted on a charged related to sexual abuse within the facility.
- D. All such notifications or attempted notifications shall be documented.
- E. The obligation to notify the inmate/victim shall terminate if the inmate is released from the Sheriff's custody.

XXII. DISCIPLINARY SANCTIONS FOR INMATES

- A. Inmates who are found guilty of committing sexual assault will be punished to the highest degree in accordance with the Jail Division's inmate discipline policy, up to and including criminal prosecution.
- B. An inmate's mental disabilities or mental illness shall be considered when determining what type of discipline, if any, should be imposed.
- C. An inmate may be disciplined for sexual contact with staff only upon a finding that the staff member did not consent to such contact.

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- D. For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.
- E. All sexual activity between inmates is prohibited and any sexual activity between inmates may result in discipline. However, any such activity that is not determined to be coerced shall not be deemed to constitute sexual abuse.

XXIII. DISCIPLINARY SANCTIONS FOR EMPLOYEES

- A. Employees shall be subject to disciplinary sanctions up to and including termination for violating this policy.
- B. Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.
- C. Disciplinary sanctions for violations of policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) 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.
- D. Any incident of sexual harassment shall be considered in determining whether to promote an employee. Any employee who has been civilly or administratively adjudicated to have engaged or attempted to engage in sexual misconduct shall not be promoted.
- E. All terminations for violations of sexual abuse, sexual misconduct, or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

XXIV. DISCIPLINARY SANCTIONS FOR CONTRACTORS AND VOLUNTEERS

- A. Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with inmates and shall be reported to law

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enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.

- B. The Sheriff's Office shall take appropriate remedial measures, and shall consider whether to prohibit further contact with inmates, in the case of any other violation of sexual abuse or sexual harassment policies by a contractor or volunteer.

XXV. SEXUAL ABUSE INCIDENT REVIEWS

- A. The Jail Command Staff (Captains and Lieutenants) shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including when the allegation has not been sustained/substantiated, unless the allegation has been determined to be unfounded.
- B. Such review shall ordinarily occur within thirty (30) days of the conclusion of the investigation, and include input from line supervisors, investigators, and medical or mental health practitioners.
- C. The review 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; 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 enabled the 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 and any recommendations for improvement and submit such report to the Bureau Commander, the

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PREA Coordinator, and the PREA Compliance Manager.

- D. The recommendation(s) for improvement shall be implemented, or the reason(s) for not doing so shall be documented by the PREA Compliance Manager.

XXVI. DATA COLLECTION AND AUDIT

- A. The PREA Compliance Manager shall collect accurate, uniform data for every allegation of sexual abuse at the Sheriff's Office facilities.
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 Department of Justice (DOJ). Upon request, the data for the previous calendar year shall be provided to the DOJ no later than June 30.
 2. The data collected shall be maintained for at least ten (10) years after the date of the initial collection. Destruction after that time may only be authorized by the Fresno County Board of Supervisors pursuant to Government Code Section 26202.
- B. An annual report shall be prepared by the PREA Compliance Manager, and shall include a comparison of the current year's data and corrective actions with those from prior years, and shall provide an assessment of the progress made in addressing sexual abuse. The report shall be made available on the Sheriff's website.
- C. During each one-year period, at least one-third of all Sheriff Office detention facilities shall be audited. The auditor's final report shall be published on the Sheriff's website, or otherwise made readily available to the public.

XXVII. GRIEVANCES – EXHAUSTION OF ADMINISTRATIVE REMEDIES

- A. Inmates are not required to use any informal procedure or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse.
- B. There is no time limitation on when an inmate may submit a grievance

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regarding an allegation of sexual abuse.

1. The grievance shall be investigated and processed for review within ninety (90) days of the initial filing of the grievance.
 2. Computation of the 90-day time period shall not include time consumed by inmates in preparing any administrative appeal.
 3. The response time may be extended up to seventy (70) days, if the normal time period is insufficient to make an appropriate decision. The inmate shall be notified in writing of any such extension and provide a date by which a decision will be made.
 4. At any level of the administrative process, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial at that level.
- C. Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of inmates.
1. If a third party files such a request on behalf of an inmate, the inmate must agree to have the request filed on their behalf, and must personally pursue any subsequent steps in the administrative remedy process.
 2. If the inmate declines to have the request processed on their behalf, that decision shall be documented.
- D. An inmate may file an emergency grievance when the inmate is subject to a substantial risk of imminent sexual abuse
1. After receiving such an emergency grievance, the form shall be forwarded to a level of review at which corrective action may be taken, provide an initial response within forty-eight (48) hours, and a decision made within five (5) calendar days.
 2. The initial response and final decision shall document the determination whether the inmate is in substantial risk of imminent

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sexual abuse and the action taken in response to the emergency grievance.

3. An inmate may be disciplined for submitting a grievance related to alleged sexual abuse only when it can be demonstrated that the inmate filed the grievance in bad faith.

XXVIII. SEXUAL DISORDERLY CONDUCT

- A. By choosing to work in a jail environment, corrections personnel have acknowledged and accepted the probability that they will face inappropriate and socially deviant behavior. While it is not possible to stop all obscene comments and conduct by inmates, neither shall it be accepted or condoned. Acts of indecent exposure, sexual disorderly conduct and exhibitionist masturbation will not be tolerated. Any inmate who engages in indecent exposure or sexual disorderly conduct shall be reported and disciplined in an attempt to eliminate and reduce the opportunity to repeat the behavior.
- B. If counseling and progressive discipline fails to result in a modification of the inmate's behavior, an additional charge of PC 314.1 (indecent exposure) or PC 647 (disorderly conduct) shall be added after the inmate's third violation.
- C. **Sexually hostile conduct shall not be ignored.** Every incident shall be documented by the observing employee. If the exposure or inappropriate touching of one's genitals is considered to be unusual and bizarre behavior, a referral for a mental health evaluation shall be included in the rule violation report process.
- D. If an inmate's continued behavior requires additional security precautions, such steps shall be taken, which may include, but not be limited to the following:
 1. Transfer to an administrative housing unit (if the behavior occurs in a group setting or inside the cell/bed area in a general population housing unit).
 2. Window coverings (to limit the inmate's ability to observe staff while engaging in the behavior). If window coverings are used, hourly security checks shall be conducted and documented.

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3. Posted notification, alerting staff to the inmate's propensity to engage in indecent exposure or sexual disorderly conduct.
4. Temporary restriction from the exercise yard or other settings which may provide a venue for the behavior.
5. Substitution of activity setting to reduce the possibility of the behavior impacting staff.

XXIX.

ADDENDUMS

Sexual Misconduct and Abuse Policy Outline ([Addendum A](#))

Sexual Assault Victim Assistance Checklist ([Addendum B](#))

Sexual Assault Response Flow Chart ([Addendum C](#))

Sexual Assault Posters (Addendums D – [English](#), [Spanish](#), [Hmong](#))

Policy Acknowledgement (Addendums E – [Volunteer](#), [Contractor](#), [Employee](#))

PREA Vulnerability Assessment form ([Addendum F](#))