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EXECUTIVE DIRECTIVE # 72

Subject: Sexual Abuse and Sexual Harassment in Confinement (PREA)

I. Authority

42 U.S.C.A. §15601. Prison Rape Elimination Act of 2003.
 28 C.F.R § Part 115, *et seq.* National Standards to Prevent, Detect and Respond to Prison Rape
 Wisconsin Administrative Code Chapter DOC 306 *Security*
 Wisconsin Administrative Code Chapter DOC 310 *Complaint Procedures*
 Executive Directive 2, Employee Discipline
 Executive Directive 16, Fraternization
 Executive Directive 16A, Staff Sexual Assault of Offenders
 Executive Directive 17, Non-Discrimination and Reasonable Accommodation for Inmates,
 Offenders, Juveniles and Members of the Public Who are Qualified Individuals with Disabilities
 Executive Directive 42, Arrest and Conviction Policy for Applicants and Current Employees
 Executive Directive 71, Language Assistance Policy and Implementation for Addressing Needs
 of Offenders with Limited English Proficiency

II. Background

The Prison Rape Elimination Act (PREA) of 2003 was enacted to address sexual abuse and sexual harassment of persons in the custody of United States correctional agencies. PREA supports preventing, detecting and responding to sexual abuse and sexual harassment within confinement settings. To achieve the goals of PREA, the National Prison Rape Elimination Commission developed a set of standards, which were published by the US Attorney General and became effective in 2012. All confinement facilities are required to comply with the standards and implement accordingly.

III. Definitions and Acronyms

“Contractor” means a person who provides services in a DOC operated facility on a recurring basis pursuant to a contractual agreement with the agency and has contact with offenders.

“Department” or “DOC” means the Wisconsin Department of Corrections.

“Employee” means any staff member, contractor or volunteer who performs work inside of a DOC-operated facility.

“Exigent Circumstances” means any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.

“Facility” means a place, institution, center, building (or part thereof), set of buildings, structure or area (whether or not enclosing a building or set of buildings) that is operated by the Wisconsin Department of Corrections for the confinement of individuals.

“Gender Nonconforming” means a person whose appearance or manner does not conform to traditional societal gender expectations.

“Intersex” means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

“Juvenile” means any person who is confined in a juvenile facility.

“Medical Practitioner” means a health professional who, by virtue of education, credentials and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice.

“Mental Health Practitioner” means a mental health professional who, by virtue of education, credentials and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice.

“Offender” means any person who is confined in a Wisconsin Department of Corrections facility.

“PREA” means the Prison Rape Elimination Act.

“PREA Compliance Manager” means a designated facility-based staff member who has the authority to coordinate the facility’s efforts to comply with PREA standards.

“PREA Director” means a designated upper-level, department-wide staff member who has the authority to develop, implement and oversee Wisconsin Department of Corrections efforts to comply with PREA standards in all of its facilities. PREA Director is synonymous with the title “PREA Coordinator” as referenced in *National Standards to Prevent, Detect, and Respond to Prison Rape*.

“Restricted Housing Status” (referred to within the PREA standards as “segregated housing”) means a secured housing unit where inmates are separated from the general population. Privileges and property are limited.

“Security Staff” means a staff member primarily responsible for the supervision and control of offenders in housing units, recreational areas, dining areas and other program areas of the facility.

“Sexual Abuse” as established in 28 CFR 115.6 means

- A. Sexual abuse of an offender by another offender 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.

- B. Sexual abuse of an offender by an employee includes any of the following acts, with or without consent of the offender:
 - 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 employee 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 employee 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 buttock, that is unrelated to official duties or where the employee has the intent to abuse, arouse, or gratify sexual desire;
 - 6. Any attempt, threat, or request by an employee to engage in the activities described in paragraphs (1)-(5) of this section;
 - 7. Any display by an employee of his or her uncovered genitalia, buttocks, or breast in the presence of an offender; and/or
 - 8. Voyeurism by an employee.

“Sexual Harassment” as established in 28 CFR 115.6 means

- A. Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one offender directed toward another; and/or
- B. Repeated verbal comments or gestures of a sexual nature to an offender by an employee, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

“Staff Member” or “Staff” means a person employed by the department as permanent, project or limited term employee.

“Substantiated allegation” means an allegation that was investigated and determined to have occurred.

“Transgender” means a person whose gender identity (i.e. internal sense of feeling male or female) is different from the person’s assigned sex at birth.

“Unfounded Allegation” means an allegation that was investigated and determined not to have

occurred.

“Unsubstantiated Allegation” 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.

“Volunteer” means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the Wisconsin Department of Corrections and has contact with offenders.

“Voyeurism” means an invasion of privacy of an offender by an employee for reasons unrelated to official duties, such as peering at an offender who is using a toilet in his or her cell to perform bodily functions; requiring an offender to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an offender’s naked body or of an offender performing bodily functions.

“Youthful Inmate” means any person under the age of 18 who is under adult court supervision and confined to an adult facility.

IV. Scope

This policy applies to all staff, contractors and volunteers with the Wisconsin Department of Corrections.

V. Policy

The Wisconsin Department of Corrections has zero tolerance for sexual abuse, sexual harassment and report-related retaliation in its facilities, including those with which it contracts for the confinement of offenders. Further:

- The DOC provides a coordinated victim-centered response to reports of sexual abuse and sexual harassment. This includes providing medical and mental health services to victims of sexual abuse and sexual harassment while investigating all allegations.
- The DOC provides multiple avenues to report allegations of sexual abuse and sexual harassment and, further, recognizes the right of employees and offenders to be free from retaliation for reporting sexual abuse and sexual harassment.
- The DOC trains all staff members, contractors and volunteers to recognize, respond to and report sexual abuse and sexual harassment.
- The DOC provides offenders with a comprehensive orientation that details their right to be free from sexual abuse, sexual harassment and report-related retaliation.
- The DOC employs a data collection method to accurately track and aggregate sexual abuse and sexual harassment incidents, identify core causal factors and take corrective action so as to align with a zero tolerance environment.

VI. Personnel

A. Hiring and Promotion Decisions

1. The DOC shall not hire or promote anyone who has engaged in sexual abuse in a confinement facility; has been convicted of engaging or attempting to engage in nonconsensual sexual activity in the community; or has been civilly or administratively adjudicated to have engaged in activity described above. The DOC shall consider any incidents of sexual harassment when determining whether to hire, promote or enlist the services of any employee [§115.17(a, b), §115.317(a, b)].

2. All applicants shall be required to disclose instances of sexual misconduct as described above. Applicants who fail to disclose such information shall be ineligible for hire for the current vacancy and, if applicable, may be grounds for termination [§115.17(f, g), §115.317(f, g)].
 3. Prior to hiring new staff members and enlisting the services of any employee who may have contact with offenders, the DOC shall perform a criminal background records check [§115.17(c, d), §115.317(c, d)].
 - a. The DOC shall make its best effort to obtain (and, when requested, provide) reference information from all prior institutional employers on substantiated allegations of sexual abuse or sexual harassment or any resignation during a pending investigation of a sexual abuse allegation [§115.17(c, h), §115.317(c, h)].
 - b. The DOC shall conduct a criminal background records check every five years for current employees [§115.17(e), §115.317(e)].
- B. Neither the DOC nor any other governmental entity responsible for collective bargaining on the DOC's behalf shall enter into or renew any collective bargaining agreement or other agreement that limits the DOC's ability to remove alleged staff sexual abusers from contact with any offenders pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted [§115.66(a), §115.366(a)].
- C. The DOC shall employ or designate a PREA Director to oversee department efforts to comply with PREA standards. This position shall have sufficient time and authority to develop, implement and oversee DOC's efforts to comply with PREA standards in all of its facilities [§115.11(b), §115.311(b)].
- D. The appointing authority or designee at each facility shall assign one employee as the facility-based PREA Compliance Manager with sufficient time and authority to coordinate the facility's efforts to comply with PREA standards as set forth by DOC [§115.11(c), §115.311(c)].
- E. The appointing authority or designee at each facility shall assign the facility-based Victim Services Coordinator the responsibility of connecting victims of sexual abuse in confinement to outside support services.

VII. Contracts

All new or renewed contracts for the confinement of the DOC offenders not within a DOC-operated facility shall include a provision regarding the contractor's obligation to adopt and comply with PREA standards. In addition, any new contract or contract renewal shall provide for contract monitoring to ensure that the contractor is complying with PREA standards [§115.12, §115.312].

VIII. Facility

- A. When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the DOC shall consider the effect of the design, acquisition, expansion or modification upon the DOC's ability to protect offenders from sexual abuse [§115.18(a), §115.318(a)].
- B. When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the DOC shall consider how such technology may enhance the DOC's ability to protect offenders from sexual abuse [§115.18(b), §115.318(b)].

IX. Supervision and Monitoring

- A. Each facility shall develop, document and make its best efforts to comply with a staffing plan that provides for adequate levels of employees and, where applicable, video monitoring, to protect offenders against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall consider [§115.13(a), §115.313(a)]:
 1. Generally accepted correctional practices;
 2. Any judicial, federal investigative and internal/external oversight agency findings of inadequacy;
 3. The facility's physical plant including blind-spots or areas where employees or offenders may be isolated;
 4. The composition of the offender population;
 5. The number and placement of security staff;
 6. Institution programs occurring on a particular shift;
 7. The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and
 8. Applicable State or local laws, regulations, standards and other relevant factors.

- B. In circumstances where the staffing plan is not complied with, the facility shall document in written form and justify all deviations from the plan [§115.13(b), §115.313(b)].

- C. Whenever necessary, but not less frequently than once each year each facility, in consultation with the PREA Coordinator, shall assess, determine and document whether adjustments are needed to [§115.13(c), §115.313(d)]:
 1. The facility's staffing plan;
 2. The facility's deployment of video monitoring systems and other monitoring technologies; and
 3. The resources the facility has available to ensure adherence to the staffing plan.

- D. Supervisory staff shall conduct and document unannounced rounds, covering all shifts to identify and deter employee sexual abuse and sexual harassment. The DOC employees are prohibited from alerting other employees that these supervisory rounds are occurring unless such announcement is related to the legitimate operational functions of the facility [§115.13(d), §115.313(e)].

- E. In order to enable offenders to shower, perform bodily functions and change clothing without nonmedical employees of the opposite gender viewing their breasts, buttocks or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks, employees of the opposite gender shall announce their presence when entering an offender housing unit. If opposite gender status quo changes during that shift then another announcement is required. Facilities shall not restrict access to regularly available programming or other out-of-cell or housing unit opportunities in order to comply with this provision [§115.15(d), §115.315(d)].

X. Cross-Gender Searches

- A. Except in exigent circumstances, adult facilities shall not permit cross-gender pat-down searches of female offenders nor shall juvenile facilities permit cross-gender pat-down searches of either gender [§115.15(b), §115.315(b)].

- B. Facilities shall not permit cross-gender strip or body cavity searches except in exigent

circumstances or when performed by medical practitioners [§115.15(a), §115.315(a)].

- C. All cross-gender strip and body cavity searches, in addition to cross-gender pat-down searches of females, shall be documented [§115.15(c), §115.315(c)].
- D. Facilities may not search or physically examine a transgender or intersex offender for the sole purpose of determining the offender's genital status. If the offender's genital status is unknown, it may be determined during conversations with the offender, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner [§115.15(e), §115.315(e)].

XI. Training and Education

A. Employee Training

1. The DOC shall train all new staff members on the department's zero-tolerance policy for sexual abuse and sexual harassment. All staff members shall receive training every two years; in years in which a staff member does not receive such refresher training, the DOC shall provide refresher information on current sexual abuse and sexual harassment policies. The training shall include, but is not limited to the subparts listed below. Each staff member shall acknowledge and certify to the DOC, through signature or electronic verification, that they understand the training they received [§115.31, §115.331].
 - a. The DOC's zero tolerance policy for sexual abuse and sexual harassment;
 - b. How to fulfill staff responsibilities under the DOC sexual abuse and sexual harassment prevention, detection, reporting and response policies and procedures;
 - c. Offenders' right to be free from sexual abuse and sexual harassment;
 - d. The right of offenders and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
 - e. The dynamics of sexual abuse and sexual harassment in confinement;
 - f. The common reactions of sexual abuse and sexual harassment victims;
 - g. How to detect and respond to signs of threatened and actual sexual abuse;
 - h. How to avoid inappropriate relationships with offenders;
 - i. How to communicate effectively and professionally with offenders, including lesbian, gay, bisexual, transgender, intersex or gender nonconforming offenders;
 - j. How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities;
 - k. Relevant laws regarding the applicable age of consent;
 - l. Instruction tailored to male and female offenders; and
 - m. Instruction specific to the unique needs and attributes of juveniles.
2. All volunteers and contractors who have contact with offenders shall be trained, in accordance with the type of service and level of contact they have with offenders, on the DOC's zero-tolerance policy as it relates to sexual abuse and sexual harassment. They shall, additionally, be trained on their responsibilities under the DOC's sexual abuse and sexual harassment prevention, detection and response policies and procedures. Each volunteer or contractor shall acknowledge and certify to the DOC, through signature or electronic verification, that they understand the training they received [§115.31, §115.331].
3. All security staff shall be trained on how to conduct cross-gender pat-down searches and searches of transgender and intersex offenders to ensure professionalism and to utilize the least intrusive manner possible consistent with security needs [§115.15(f), §115.315(f)].

4. Staff who investigate incidents of sexual abuse and sexual harassment shall receive specialized training on techniques for interviewing sexual abuse victims, proper use of *Miranda*, *Garrity* and *Oddsens* warnings, sexual abuse evidence collection in confinement settings and the criteria and evidence required to substantiate a case for administrative action or prosecutorial referral. The DOC shall maintain documentation of training completion [§115.34, §115.334, §115.71(b), §115.371(b), §115.371(b)].
5. All medical and mental health care practitioners who work regularly in a DOC facility(ies) shall be trained on the subparts below. The DOC shall maintain documentation that such training has been received [§115.35, §115.335].
 - a. How to detect and assess signs of sexual abuse and sexual harassment;
 - b. How to preserve physical evidence of sexual abuse;
 - c. How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and
 - d. How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

B. Offender Education

1. At intake, offenders shall receive information detailing the DOC's zero tolerance policy regarding sexual abuse and sexual harassment and how to report such incidents or suspicions [§115.33(a), §115.333(a)].
2. Within 30 days of intake at adult facilities and within 10 days at juvenile facilities, the facility shall provide a comprehensive education to offenders either in person or through video regarding [§115.33(b), §115.333(b)]:
 - a. The DOC's zero tolerance policy, including offenders' right to be free of sexual abuse, sexual harassment and disclosure-related retaliation; and
 - b. The DOC's policies and procedures for responding to such incidents.
3. Upon transfer to another facility, offenders shall receive education specific to the facility's sexual abuse, sexual harassment and report-related retaliation policies and procedures to the extent they differ from the previous facility [§115.33(c), §115.333(c)].
4. Offenders with disabilities or who have limited English proficiency shall have an equal opportunity to participate in or benefit from all aspects of the DOC's efforts to prevent, detect and respond to sexual abuse and sexual harassment. This includes providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, in addition to the provision of offender education in formats accessible to all. Written materials shall be provided in formats or methods that ensure effective communication with offenders with disabilities [§115.16(a, b), §115.316(a, b), §115.33(d), §115.333(d)].
5. Each facility shall maintain documentation of offender participation in these education sessions [§115.33(e), §115.333(e)].
6. Each facility shall ensure that key information is continuously and readily available or visible to offenders through posters, handbooks or other written formats [§115.33(f), §115.333(f)].

XII. Risk Assessment

- A. Offenders shall be assessed during an initial screening within 72 hours of arrival at the facility, and again upon transfer to another facility, for risk of being sexually abused by other offenders or sexually abusive towards other offenders. The objective screening instrument shall include, at minimum, the following criteria [§115.41(a-e), §115.341(a-c)]. Offenders may not be disciplined for refusing to answer or for failing to disclose information in regards

to the assessment questions [§115.41(h)].

1. The presence of a mental, physical or developmental disability;
 2. Level of emotional and cognitive development (juveniles facilities only)
 3. Age;
 4. Physical build;
 5. Previous incarcerations;
 6. Exclusively nonviolent criminal history;
 7. Prior convictions for sex offenses against an adult or child;
 8. Is, or is perceived to be, gay, lesbian, bisexual, transgender, intersex or gender nonconforming;
 9. Previously experienced sexual victimization;
 10. Prior acts of sexual abuse, prior convictions for violent offenses and/or history of prior institutional violence or sexual abuse; and
 11. Offender's perception of vulnerability
- B. Facilities shall not consider lesbian, gay, bisexual, transgender or intersex identification or status as an indicator or likelihood of being sexually abusive [§115.342(c)].
- C. **Juvenile Facility-Based Intake Screening**
For juveniles, in addition to information gleaned from the initial screening referenced above, risk shall be ascertained through conversations with the offender during the intake process and medical and mental health screenings; during classification assessments; and by reviewing court records, case files, facility behavioral records, and other relevant documentation from the offender's files [§115.341(d)].
- D. **Adult Facility-Based Intake Screening**
In addition to the initial screening, within 30 days of arrival, the facility shall reassess the offender's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the initial screening [§115.41(f)]. Thereafter, an offender's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse or receipt of additional information that bears on the offender's risk of sexual victimization or abusiveness [§115.41(g)].
- E. If either the initial or follow-up screening indicates an offender has previously experienced prior sexual victimization or has perpetrated sexual abuse, whether it occurred in an institutional setting or in a community setting, employees shall ensure the offender is offered a follow-up meeting with a mental health provider within 14 days of the initial or follow-up screening [§115.81(a-c), §115.381(a, b)].
- F. Appropriate controls shall be placed on the dissemination of information gathered from the initial and follow-up screenings to ensure that sensitive information is not exploited to the offender's detriment by employees or other offenders [§115.41(i), §115.341(e)]. Further, any information related to sexual victimization or abusiveness occurring in an institutional setting shall be confidential and strictly limited to medical and mental health clinicians and other employees, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education and program assignments or as otherwise required by law [§115.81(d), §115.381(c)]. Medical and mental health practitioners shall obtain informed consent from offenders before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the offender is under the

age of 18 [§115.81(e), §115.381(d)].

XIII. Placement

- A. Information obtained from the initial or follow-up screening shall inform housing, bed, work, education and program assignments with the goal of keeping separate those offenders at high risk of being sexually victimized from those at high risk of being sexually abusive. For the purposes of education, programming, work, and recreation activities, line-of-sight monitoring by DOC staff is sufficient to maintain separation [§115.42(a), §115.342(a)]. Individualized placement determinations shall be made for each offender [§115.42(b)].
- B. Offenders at High Risk of Sexual Victimization
1. Offenders at high risk for sexual victimization shall not be separated from the general population unless an assessment of all available alternatives has been made and a determination has been made that there is no available alternative means of separation from likely abusers. If an assessment cannot be conducted immediately, the facility may separate the offender involuntarily from the general population for less than 24 hours while completing the assessment [§115.43(a)].
 2. If an offender is involuntarily separated from the general population the facility shall document the basis for the facility's concern for the offender's safety and the reason an alternate placement cannot be arranged [§115.43(d)].
 3. Involuntary separation from the general population shall only be until alternative means of separation from likely abusers can be arranged and shall not ordinarily exceed 30 calendar days [§115.43(c)]. Every 30 days, the facility shall review the offender's circumstances to determine whether there is a continuing need for separation from the general population and document accordingly [§115.43(e)].
 4. Offenders separated from the general population for this purpose shall have access to programs, privileges, education or work opportunities to the extent possible. If the facility restricts access to programs, privileges, education or work opportunities the facility shall document the opportunities limited, the reason for such limitations and the duration of the limitation [§115.43(b)].
- C. Youthful Inmates
- Youthful inmates shall not be placed in a housing unit in which they have sight, sound or physical contact with any adult offender through use of a shared dayroom or other common space, shower area or sleeping quarters. In areas outside of housing units, DOC shall either: maintain sight and sound separation between youthful inmates and adult offenders or provide direct staff supervision when youthful inmates and adult offenders have sight, sound or physical contact. Adult facilities shall make best efforts to avoid isolating youthful inmates to comply with this provision. Absent exigent circumstances, adult facilities shall not deny youthful inmates daily large muscle exercise and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible. Such exigent circumstances leading to the denial of large-muscle exercise, legally required education services and/or other programming shall be documented [§115.14].
- D. Juveniles
- Juveniles may be separated from the general population as a result of the risk assessment only as a last resort when less restrictive measures are inadequate to keep them and other juveniles safe, and then only until an alternative means of keeping all juveniles safe can be

arranged. During any period of separation, juvenile facilities shall not deny juveniles daily large-muscle exercise and any legally required educational programming or special education services. Juveniles who are separated from the general population shall receive daily visits from a medical or mental health care clinician. Juveniles shall also have access to other programs and work opportunities to the extent possible [§115.342(b)].

- E. Lesbian, Gay, Bisexual, Transgender and/or Intersex Offenders
1. Lesbian, gay, bisexual, transgender or intersex offenders shall not be placed in dedicated facilities, wings or units solely on the basis of such identification or status [§115.42(g), §115.342(c)].
 2. When making facility, cell/unit housing and programmatic assignments for transgender or intersex offenders the DOC shall consider on a case-by-case basis whether a placement would ensure the offender's health and safety and whether the placement would present management or security problems [§115.42(c), §115.342(d)], in addition to serious consideration of the offender's own views with respect to their own safety [§115.42(e), §115.342(f)].
 3. Placement and programming assignments for each transgender or intersex offender shall be reassessed at least twice each year to review any threats to the safety experienced by the offender [§115.42(d), §115.342(c)].
 4. Transgender and intersex offenders shall be given the opportunity to shower separately from other offenders [§115.42(f), §115.342(g)].

XIV. Reporting Sexual Abuse, Sexual Harassment and Retaliation

A. Offender Reporting

The DOC shall provide multiple ways for offenders to privately report sexual abuse and sexual harassment, retaliation by other offenders or employees for reporting sexual abuse and sexual harassment, and employee neglect or violation of responsibilities that may have contributed to such incidents. In addition, the DOC shall provide at least one way for offenders to report sexual abuse and sexual harassment to a public or private entity that is not part of the DOC [§115.51(a, b), §115.351(a, b)].

B. Third Party Reporting

The DOC shall provide a method for third-parties to report sexual abuse and sexual harassment on behalf of an offender. Information on how to report sexual abuse and sexual harassment on behalf on an offender shall be posted publicly [§115.54, §115.354].

C. Employee Reporting

1. Employees shall accept reports made verbally, in writing, anonymously, and from third parties; promptly document any verbal reports [§115.51(c), §115.351(c)]; and immediately report [§115.61(a), §115.361(a)]:
 - a. Any knowledge, suspicion or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the DOC;
 - b. Any incidents of retaliation against offenders or employees who reported such an incident; and/or
 - c. Any employee neglect or violation of responsibilities that may have contributed to an incident or retaliation.
2. Reports shall be immediately reported to a supervisor who is not the subject of the allegation, unless reporting to such person compromises the safety of the alleged victim, witness(es) or reporter. In those instances a report shall be made to the Office of Special

Operations, the PREA Office, local law enforcement or submitted electronically via the DOC's internet site.

3. The DOC shall provide a method for employees to privately report sexual abuse and sexual harassment of offenders [§115.51(d), §115.351(e)].
4. All allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, shall be reported [§115.61(e), 115.361(f)].
5. Employees shall not reveal any information related to a sexual abuse or sexual harassment report to anyone other than to supervisors, investigators and designated officials. Such information shall be limited to information necessary to make treatment, investigation and other security and management decisions [§115.61(b), §115.61(c)].
6. Medical and mental health practitioners shall be required to report sexual abuse and to inform offenders of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services [§115.61(c), §115.361(d)].
7. If the alleged victim is under the age of 18 or considered a vulnerable adult in accordance with State or local statute, the DOC shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws [§115.61(d), §115.361(b)].
8. In addition, if the alleged victim is under the age of 18 the facility shall promptly (within 14 days) report the allegation to the alleged victim's [§115.361(e)]:
 - a. Parents or legal guardians, unless the facility has official documentation showing the parents or legal guardians should not be notified; or
 - b. Child welfare caseworker, if the alleged victim is under the guardianship of the child welfare system; or
 - c. Attorney or other legal representative, if a juvenile court has jurisdiction over the alleged victim.
9. Within 72 hours of receiving an allegation that an offender was the victim of sexual abuse while confined at another facility, the information shall be reported by the head, or designee, of the facility to the head, or designee, of the facility where the alleged abuse occurred [§115.63(a, b), §115.363(a, b)]. In the event the alleged victim is a juvenile, facility employees shall also notify the appropriate investigative agency [§115.363(a)]. All notifications shall be documented and the appointing authority that receives such notification shall ensure that the allegation is investigated [§115.63(c, d), §115.363(c, d)].

XV. Administrative Complaints

All sexual abuse and sexual harassment complaints filed through the Inmate Complaint Review System shall be immediately redirected and referred for sexual abuse and/or sexual harassment investigation. See Investigations (section XVII.) for guidelines. Inmates shall be notified within 30 days of the initial complaint that an investigation into the portion of the complaint alleging sexual abuse or sexual harassment has commenced and the Inmate Complaint Review process has concluded. Further:

- A. A time limit shall not be imposed on when an offender may submit a complaint regarding an allegation of sexual abuse or sexual harassment though other applicable time limits may still apply to any portion of the complaint that does not allege an incident of sexual abuse or sexual harassment. All appeals shall be made in accordance with Wisconsin State statutory time limits and referred to the appropriate reviewing authority [§115.52(b), §115.352(b)].
- B. The complaint process shall not include a mandatory informal resolution requirement [§115.52(b), §115.352(b)].

- C. Each facility shall ensure that an offender who alleges sexual abuse or sexual harassment may submit a complaint without submitting it to an employee who is the subject of the complaint and that such a complaint is not referred to an employee who is the subject of the complaint. The offender may use an alternate method of filing [§115.52(c), §115.352(c)].
- D. Third parties, including fellow offenders, employees, family members, attorneys and outside advocates, shall be permitted to assist an offender in filing complaints related to allegations of sexual abuse or sexual harassment. Complaints filed shall be referred for sexual abuse and/or sexual harassment investigation [§115.52(e), §115.352(e)].
- E. If an offender alleges that he or she is subject to a substantial risk of imminent sexual abuse, the offender may contact any employee who is not the subject of the allegation. Staff shall immediately forward the allegation to facility leadership for immediate corrective action. Facility leadership shall provide an initial response within 48 hours and issue a final decision within 5 calendar days. The initial response and final facility decision shall document the facility's determination whether the inmate is in substantial risk of imminent sexual abuse and the action taken in response to the emergency complaint. Further response shall be in accordance with Employee Reporting (section XIV. C.) [§115.52(f)].
- F. The DOC may discipline an offender for a complaint filed alleging sexual abuse or sexual harassment only where the DOC demonstrates that the complaint was filed in bad faith [§115.52(g), §115.352(g)].

XVI. Initial Response and Care

When the department or facility learns that an offender is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the offender [§115.62, §115.362]. Each facility shall develop a written institutional plan to coordinate actions taken in response to an incident of sexual abuse, among employee first responders, medical and mental health practitioners, investigators and facility leadership [§115.65, §115.365].

A. First Responder

1. Upon learning of an allegation that an offender was sexually abused, the first security staff member to respond to the report shall be required to, at a minimum [§115.64(a), §115.364(a)]:
 - a. Separate the alleged victim and abuser;
 - b. Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;
 - c. 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; and
 - d. 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.
2. If the first employee responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff [§115.64(b), §115.364(b)].

3. First responders shall immediately notify the appropriate medical and mental health practitioner [§115.82(b), §115.382(b)].
4. The facility shall not rely on offender interpreters, offender readers or other types of offender assistants except in exigent circumstances where an extended delay in obtaining an effective interpreter could compromise the offender's safety, the performance of first-responder duties or the investigation of the offender's allegations. The exigent circumstances in which offender assistants are used shall be documented [§115.16(c), §115.316(c)].
5. Any use of restricted status housing to protect an offender who is alleged to have suffered sexual abuse shall be subject to the requirements of §115.43 and §115.343 as found within Placement (section XIII.) [§115.68, §115.368].

B. Treatment, Services and Advocacy

1. Victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment [§115.82(a), §115.382(a)]. In the event that no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim and shall immediately notify the appropriate medical and mental health employee(s) [§115.82(b), §115.352(b)].
2. All medical and mental health treatment services shall be provided to the victim without financial cost, regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident, and in a manner consistent with the community level of care [§115.82(d), §115.382(d), §115.83(c, g), §115.383(c, g)].
3. The DOC's medical response shall include the timely dissemination of information and access to emergency contraception and sexually transmitted infections prophylaxis [§115.82(c), §115.382(c)]. Further, all victims shall be offered access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiary or medically appropriate. Such examinations shall be performed by Sexual Assault Nurse Examiners (SANEs) where possible. If SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The facility shall document its efforts to provide SANEs [§115.21(c), §115.321(c)].
4. The facility shall attempt to make available to the victim an advocate from a local sexual assault service provider to accompany and support the victim through the forensic medical examination process and investigatory interviews. As requested by the victim, such a person shall also provide emotional support, crisis intervention, information and referrals. If a sexual assault service provider is not available to provide victim advocate services, the DOC shall make available a member who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues. Facilities shall document efforts to secure services from a local sexual assault service provider [§115.21(d, e, h), §115.321(d, e, h)].
5. Thereafter, the facility shall provide offenders with access to outside victim advocates, with whom the DOC shall maintain or attempt to enter into memoranda of understanding with, for emotional support services related to sexual abuse. Access includes giving offenders mailing addresses and telephone numbers, including toll-free hotline numbers where available. The facility shall enable reasonable communication between offenders and these organizations and agencies, in as confidential a manner as possible and, in advance, provide notification to offenders of the extent to which such conversations will be monitored and the extent to which reports of abuse will be

forwarded to authorities in accordance with mandatory reporting laws [§115.53, §115.353(a-c)]. Juveniles shall be provided reasonable and confidential access to their attorneys or other legal representation and reasonable access to parents or legal guardians [§115.353(d)].

6. The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all offenders who have been victimized by sexual abuse in any confinement setting. The evaluation and treatment of such 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 [§115.83(a, b), §115.383(a, b)].
7. Victims of sexual abuse shall be offered tests for sexually transmitted infections. Victims of sexually abusive vaginal penetration shall be offered pregnancy tests, in addition to timely and comprehensive information about and timely access to lawful pregnancy-related medical services [§115.83(d-f), §115.383(d-f)].
8. Further, facilities shall attempt to conduct a mental health evaluation of all known offender-on-offender abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners [§115.83(h), §115.383(h)].

XVII. Investigations

- A. The DOC shall ensure that an investigation is completed for all allegations of sexual abuse and sexual harassment, including those received from third-parties and anonymous sources. DOC shall maintain a policy(ies) that governs the conduct of such investigation [§115.22(a, d), §115.322(a, d), [§115.71(a), §115.371(a)].
- B. Allegations of sexual abuse or sexual harassment that involve potentially criminal behavior shall be referred for investigation to local law enforcement. All referrals to law enforcement shall be documented. The policy describing such referrals, in addition to the investigative responsibilities of the DOC and local law enforcement, shall be published and maintained on the DOC's website [§115.22(b, c), §115.322(b, c), §115.71(h), §115.371(i)].
- C. The DOC shall follow a uniform evidence protocol that maximizes the potential for preserving and/or collecting usable physical evidence for administrative proceedings and criminal prosecutions. Such protocol shall be developmentally appropriate for youth, where applicable, and adapted from a comprehensive and authoritative protocol developed after 2011 [§115.21(a, b), §115.321(a, b)]. When the DOC is not responsible for investigating allegations of sexual abuse, the DOC shall request that the investigating law enforcement agency follow the requirements outlined in §115.21(a-e) and §115.321(a-e) [§115.21(f), §115.321(f)].
- D. Investigators shall preserve and/or collect direct and circumstantial evidence, including any 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 [§115.71(c), §115.371(c)].
- E. 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 offender or employee. The DOC shall not require an offender 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 [§115.71(e), §115.371(f)].

- F. Administrative investigations shall include an effort to determine whether employee actions or failures to act contributed to the abuse [§115.71(f), §115.371(g)].
- G. The DOC shall impose no standard higher than a preponderance of the evidence in determining whether the allegations of sexual abuse or sexual harassment are substantiated [§115.72, §115.372].
- H. Administrative and criminal investigations shall be documented in a written report to be retained for as long as the alleged abuser is incarcerated or employed by the DOC, plus ten years. Administrative investigative reports shall include a description of the physical and testimonial evidence, the reasoning behind credibility assessments and the investigative facts and findings [§115.71(f, i), §115.371(g, j)].
- I. The departure of an alleged abuser or victim from the employment or control of the facility or the DOC, or the recantation of the allegation, shall not provide a basis for terminating an investigation [§115.71(j), §115.371(d, k)].
- J. When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall work to remain informed about the progress of the investigation [§115.71(l), §115.371(m)].
- K. Following an investigation of an allegation that an offender suffered sexual abuse in a DOC facility, the facility shall inform the alleged victim, and document such notification, as to whether the allegation has been determined to be substantiated, unsubstantiated or unfounded. If the DOC did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the alleged victim. The DOC's obligation to report shall terminate if the alleged victim is released from custody [§115.73(a, b, e, f), §115.373(a, b, e, f)].
- L. Following an offender's allegation that an employee committed sexual abuse against an offender and the findings are substantiated or unsubstantiated, the DOC shall subsequently inform the alleged victim, and document such notification, whenever the employee is no longer posted within the alleged victim's unit; the employee is no longer employed at the facility; or the DOC learns that the employee has been indicted or convicted on a charge related to the initial allegation of sexual abuse [§115.73(c, e), §115.373(c, e)].
- M. Following an offender's allegation that he or she has been sexually abused by another offender, the DOC shall subsequently inform the alleged victim, and document such notification, whenever the DOC learns that the alleged abuser has been indicted or convicted on a charge related to the initial allegation of sexual abuse [§115.73(d, e), §115.373(d, e)].

XVIII. Retaliation

- A. Each facility shall designate an employee(s) to monitor retaliation to ensure that all offenders and employees involved in the reporting or investigation of sexual abuse and/or sexual harassment are protected [§115.67(a), §115.367(a)].

- B. For at least 90 days following a report of sexual abuse, the designated facility-based employee(s) shall monitor the conduct and treatment of the offender(s) or employee(s) who reported the sexual abuse and the offender(s) who was reported to have experienced sexual abuse to determine if retaliation occurred. For offenders, such monitoring shall include periodic status checks. Employees shall act promptly to remedy any such retaliation. Monitoring beyond 90 days shall continue if the initial monitoring indicates a continuing need [§115.67(c, d), §115.367(c, d)].
- C. For offenders or employees who express fear of retaliation, the facility shall take appropriate protective measures. [§115.67(b, e), §115.367(b, e)].
- D. The DOC's obligation to monitor shall terminate if DOC determines that the allegation is unfounded [§115.67(f), §115.367(f)].

XIX. Administrative Sanctions

A. Employees

- 1. Staff members who are found to have violated the DOC sexual abuse, sexual harassment and retaliation policies shall be subject to disciplinary sanctions up to and including termination [115.76(a), §115.376(a)].
- 2. Sanctions shall be commensurate with the nature and circumstances of the violation, the staff member's disciplinary history and the sanctions imposed for comparable offenses by other staff with similar histories [§115.76(c), §115.376(c)].
- 3. Termination is the presumptive sanction for a staff member who engaged in sexual abuse. All terminations for violations of the DOC sexual abuse and sexual harassment policies, including resignations that would have resulted in termination if not for the resignation, shall be reported to any relevant licensing bodies [§115.76(b, d), §115.376(b, d)].
- 4. Any volunteer or contractor who engages in sexual abuse shall be prohibited from contact with offenders and shall be reported to relevant licensing bodies. Appropriate remedial measures shall be taken by the facility to ensure the safety of offenders in contact with volunteers and contractors [§115.77, §115.377)].

B. Offenders

- 1. Offenders who have committed offender-on-offender sexual abuse are subject to disciplinary sanctions pursuant to a formal disciplinary process [§115.78(a), §115.378(a)]. Sanctions shall be commensurate with the nature and circumstances of the violation, the offender's disciplinary history and the sanctions imposed for comparable offenses by other offenders with similar histories [§115.78(b), §115.378(b)].
- 2. Juveniles who have been removed from general population shall not be denied daily large-muscle exercise, access to educational programming or special education services and should include, to the extent possible, access to other programming and work opportunities. Juveniles who have been removed from general population shall receive daily visits from a medical or mental health clinician [§115.378(b)].
- 3. The disciplinary process shall consider whether a perpetrating offender's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed [§115.78(c), §115.378(c)].
- 4. The facility shall consider requiring perpetrating offenders to participate in interventions, such as therapy or counseling, to address and correct underlying reasons or motivations for the abuse [§115.78(d)]. For juveniles, the DOC may require participation in such

interventions as a condition of access to any rewards-based behavior management system or other behavior-based incentives, but not as a condition to general programming or education [§115.378(d)].

5. An offender may only be disciplined for sexual contact with an employee upon a finding that the employee did not consent to such contact [§115.78(e), §115.378(e)].
6. Reports of sexual abuse or sexual harassment 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 to substantiate the allegation [§115.78(f), §115.378(f)].
7. While consensual sexual activity between offenders is prohibited in the DOC facilities, the DOC may not deem consensual sexual activities as sexual abuse if it is determined that the activity is not coerced [§115.78(g), §115.378(g)].

XX. Sexual Abuse Incident Reviews

- A. All facilities shall conduct a review within 30 days of the conclusion of every sexual abuse investigation unless the allegation was determined to be unfounded. The team shall consist of upper level management officials with input from supervisors, investigators and medical and mental health practitioners [§115.86(a-c), §115.386(a-c)]. The review team shall [§115.86(d), §115.386(d)]:
 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 may enable abuse;
 4. Assess the adequacy of staffing levels in that area during different shifts;
 5. Assess whether monitoring technology should be deployed or augmented to supplement supervision by employees; and
 6. Prepare a report of its findings, including but not necessarily limited to determinations made in the above items, and any recommendations for improvement and submit such report to the facility head and PREA Compliance Manager.
- B. The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so [§115.86(e), §115.386(e)].

XXI. Data Collection and Monitoring

- A. Data
 1. The DOC shall collect accurate, uniform data from incident-based documents such as reports, investigation files and sexual abuse incident reviews for every allegation of sexual abuse within facilities, including facilities with which it contracts for the confinement of offenders, using a standardized instrument and set of definitions. The extracted data, at minimum, shall include the information to answer all questions from the most recent version of the Department of Justice Survey of Sexual Victimization. This data shall be aggregated annually, reported to the Department of Justice as requested and, with personal identifiers removed, posted publicly to the DOC's website annually [§115.87, §115.387, §115.89(b, c), §115.389(b, c)].

2. The data collected and aggregated shall be analyzed to assess and improve effectiveness of the DOC's sexual abuse prevention, detection and response policies, practices and training by identifying problem areas; taking corrective action on an ongoing basis; and preparing an annual report of its findings and corrective actions for each facility as well as the DOC as a whole. The report shall, additionally, include a comparison of the current year's data and corrective actions with those from previous years and shall provide an assessment of the DOC's progress in addressing sexual abuse. Corrective action reports shall also be posted publicly to the DOC's website. The DOC may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted [§115.88, §115.388].
3. All data shall be securely retained and maintained for at least 10 years after the date of initial collection [§115.89(a, d), §115.389(a, d)].

B. Audits

The DOC shall conduct audits pursuant to §115.401-§115.405.