

<b>TITLE</b>	Prison Rape Elimination Act
<b>NUMBER</b>	14.34
<b>ORIGIN DATE</b>	2015
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<b>REPLACES</b>	N/A
<b>ASSIGNED TO</b>	<b>Director of Residential Services</b>

**POLICY STATEMENT:**

Tompkins Rehabilitation Center (TRC) has zero-tolerance towards all forms of sexual abuse and sexual harassment. TRC will follow PREA community confinement standards and procedures in the treatment of all TRC clients.

**PURPOSE:**

To clarify procedural requirements that must be followed regarding Prison Rape Elimination Act.

**SCOPE:**

All Tompkins Rehabilitation Center clients and staff.

**DEFINITIONS:**

- A. Abuse: The improper use or treatment of a client that directly or indirectly affects the client negatively; any intentional act that causes physical, mental or emotional injury to a client.
- B. Contractor: A person who provides services on a recurring basis pursuant to a contractual agreement with the agency.
- C. Deoxyribonucleic Acid or DNA: A nucleic acid that contains the genetic instructions used in the development and functioning of all known living organisms.
- D. Gender Non-Conforming: A person whose appearance or manner does not conform to traditional societal gender expectations.
- E. Intersex: A person who's 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.
- F. Medical Practitioner: Any person practicing medicine to include the North Dakota State Hospital physicians, nurse practitioners, and physician assistants.
- G. Mental Health Practitioner: A person who by education and experience is professionally qualified to provide counseling interventions designed to facilitate individual achievement of human development goals and remediate mental, emotional, or behavioral disorders, and associated distresses which interfere with mental health and development.
- H. NDHP: North Dakota Highway Patrol
- I. NDSH: North Dakota State Hospital
- J. Prison Rape Elimination Act of 2003 (PREA): Federal law that prohibits and seeks to eliminate sexual assaults and sexual misconduct in correctional institutions and community corrections settings.

- K. Prison Rape Elimination Act Coordinator: A senior-level position that reports directly to the superintendent. The Prison Rape Elimination Act coordinator's responsibilities include developing, implementing, and overseeing the agency's plan to comply with the Prison Rape Elimination Act standards. He or she is also responsible for ensuring the completion of the assessment checklists in compliance with Prison Rape Elimination Act standards.
- L. Client: A person housed in the Tompkins Rehabilitation Center.
- M. QM: Quality Management Committee
- N. SAFE: Sexual Assault Forensic Examiner
- O. SANE: Sexual Assault Nurse Examiner  
Sexual Abuse of a Client by another Client: 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 which may include: persuasion, inducement, enticement or forcible compulsion, subjecting to sexual contact another person who is incapable of giving consent by reason of custodial status; subjecting another person to sexual contact who is incapable of consenting by reason of being physically helpless, physically restrained or mentally incapacitated; prostituting or otherwise sexually exploiting another person.
- P. Sexual Abuse: includes:
1. Sexual abuse of a client by another client; and
  2. Sexual abuse of a client by a staff member, contractor, or volunteer.
- Q. Sexual abuse of a client by another client 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.
- R. Sexual Abuse of a Client by a Staff Member, Contractor, or Volunteer: Includes any of the following acts, with or without consent of the client:
1. Contact between the penis and vulva or the penis and 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 of another person, however slight, by a hand, finger, object or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

5. Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
  6. Any attempt, threat or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs 1-5. of this section;
  7. Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of a client and;
  8. Voyeurism by a staff member, contractor, or volunteer.
- S. Sexual Harassment: Includes:
1. Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and
  2. Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.
- T. Substantiated Allegation: Allegation that was investigated and determined to have occurred.
- U. TASC: Female housing unit of the TRC program
- V. Transgender: A person whose gender identity (internal sense of feeling male or female) is different from the person's assigned sex at birth.
- W. TRC: Tompkins Rehabilitation Center
- X. Unfounded Allegation: Allegation that was investigated and determined not to have occurred.
- Y. Unsubstantiated Allegation: Allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.
- Z. Volunteer: An individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency.
- AA. Voyeurism by a Staff Member, Contractor, or Volunteer: An invasion of privacy of a client by staff for reasons unrelated to official duties, such as peering at a client who is using a toilet in his or her room to perform bodily functions; requiring a client to expose their buttocks, genitals, or breasts; or taking images of all or part of a client's naked body or of a client performing bodily functions.

## **RESPONSIBILITIES:**

- A. The TRC PREA Coordinator will:
1. Have sufficient time and authority to implement and oversee efforts to comply with PREA standards.
  2. Assist with the development and implementation of PREA-related policies.
  3. Develop and coordinate procedures to triage allegations received and identify, monitor, and track incidents of sexual abuse.
  4. Identify and track referrals of allegations to law enforcement and prosecutors.
  5. Develop and implement a comprehensive system to audit compliance with PREA policies and applicable laws.

6. Oversee monitoring of PREA compliance with volunteers and contractors.
7. Keep executive council informed on PREA-related issues.
8. Maintain an agreement for external victim advocacy.
9. Maintain PREA content for the department website, including publication of required information and documents.
10. Serve as the PREA liason for the NDSH
11. Oversee completion of scheduled PREA vulnerability assessments.
12. Coordinate audit preparations.
13. Coordinate corrective action plans and ensure follow up.
14. Track completion of PREA Risk Assessments for substantiated allegations of client-on-client sexual abuse or sexual harassment and staff-on-client sexual abuse or sexual harassment.
15. Ensure checks are performed to verify the PREA telephone numbers posted on or near all client telephones.
16. Perform functionality test of a random sample of client telephones to verify the toll-free number is operational.
17. Perform checks to verify posters and brochures provided by the TRC are posted in areas accessible to clients and the public.
18. Monitor and provide technical resources to the PREA investigator.

**PROCEDURES:**

**A. SUPERVISION AND MONITORING:**

1. NDSH staffing office utilizes a staffing formula to determine appropriate staffing levels.
2. Video monitoring is utilized as a secondary form of monitoring to supplement staff presence.
3. Annually, the Director of Nursing will assess and determine through Nursing QM if adjustments are needed to staffing patterns.
4. Annually, the Security Director will assess and determine through Environment of Care Committee adjustments needed for video monitoring.

**B. CROSS-GENDER VIEWING AND SEARCHES**

1. The NDSH shall not search or physically examine a transgender or intersex client for the sole purpose of determining the client's genital status. If the client's genital status is unknown, it may be determined during conversations with the client, 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.

**C. HIRING AND PROMOTION**

1. The NDSH shall not hire or promote anyone who may have contact with clients, and shall not enlist the services of any contractor who may have contact with clients, who—
  1. Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. § 1997);

2. Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or
3. Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph (a)(2) of this section.

2. The NDSH considers any incidents of sexual harassment in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with clients.

3. Before hiring new employees who may have contact with clients, the NDSH:

1. Performs a criminal background records check; and
2. Consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.

4. NDSH performs a criminal background records check before enlisting the services of any contractor who may have contact with clients.

5. The NDSH shall either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with residents or have in place a system for otherwise capturing such information for current employees.

6. The NDSH asks all applicants and employees who may have contact with clients directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of reviews of current employees. The NDSH also imposes upon employees a continuing affirmative duty to disclose any such misconduct.

7. Material omissions regarding such misconduct, or the provision of materially false information, shall be grounds for termination.

8. Unless prohibited by law, the NDSH shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work.

#### **D. UPGRADES TO FACILITY AND TECHNOLOGY**

1. When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the NDSH shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect clients from sexual abuse.

2. When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the NDSH shall consider how such technology may enhance the ability to protect clients from sexual abuse.

#### **E. EVIDENCE COLLECTION AND FORENSIC EVALUATIONS**

1. The NDSH shall offer all victims of sexual abuse access to forensic medical examinations whether at JRMC, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by a Sexual Assault Nurse Examiners (SANEs) where possible. The NDSH shall document its efforts to provide SANEs.

2. The NDSH shall attempt to make available to the victim a victim advocate from Safe Shelter or Protection and Advocacy. The NDSH shall document efforts to secure services from Safe Shelter or Protection and Advocacy.

3. As requested by the victim, the victim advocate, shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.

4. The NDSH shall refer investigations to the North Dakota Highway Patrol.

5. The NDSH will ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.

**F. EMPLOYEE TRAINING:**

1. All staff who may have contact with clients will be trained during new employee orientation and every two years thereafter. Training topics will include the following:

- Zero-tolerance policy for sexual abuse and sexual harassment;
- How to fulfill employee responsibilities under TRC sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
- Clients' right to be free from sexual abuse and sexual harassment;
- The right of clients and employees to be free from retaliation for reporting sexual abuse and sexual harassment;
- The dynamics of sexual abuse and sexual harassment in confinement;
- The common reactions of sexual abuse and sexual harassment victims;
- How to detect and respond to signs of threatened and actual sexual abuse;
- How to avoid inappropriate relationships with clients;
- How to communicate effectively and professionally with clients, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming clients; and
- How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

- a. Each employee will be required to sign a receipt after completion of orientation training, stating that they understand PREA laws and guidelines.
- b. PREA refresher training will be offered throughout the year. The training will be logged on PeopleSoft. Training records including names, dates, and topics will be kept in the training directors files.
- c. Specialized training will be provided for sexual abuse investigators, mental health professionals and medical staff assigned to provide care to victims of sexual assault. Training will be logged on PeopleSoft. Training records including names, dates, and topics.

**G. VOLUNTEER AND CONTRACTOR TRAINING:**

1. The PREA coordinator will ensure that all contract employees and volunteers who may have contact with clients are trained on their responsibilities regarding sexual abuse and sexual harassment with clients. This training will be repeated every two years. The training material will be mailed to renewing volunteers, along with their application, every two years, as required. Training

material will be maintained by the Residential Services Administrative staff confirming that volunteer and contractors understand the training they have received

**H. CLIENT EDUCATION:**

1. Admission staff will hand out the Client Handbook describing the zero-tolerance policy, definitions and reporting. Clients will sign an acknowledgement of receiving and understanding the information.
2. Within 15 days of intake, TRC will provide comprehensive education to clients during the orientation process in person and through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.
3. The orientation will consist of viewing the PREA training video along with signing that they have read and understand the requirements on the PREA compliance acknowledgement form.
4. Key information is continuously and readily available or visible to clients through posters, brochures and the Client Handbook.

**I. SPECIALIZED INVESTIGATION TRAINING:**

1. Investigators will have completed and will maintain assigned training .
2. Training will be logged in PeopleSoft including names and dates.

**J. MEDICAL AND MENTAL HEALTH CARE:**

1. TRC full-time and part-time medical and mental health care practitioners will be trained in.
  - How to detect and assess signs of sexual abuse and sexual harassment;
  - How to preserve physical evidence of sexual abuse;
  - How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and
  - How and to whom to report allegations or suspicions of sexual abuse and sexual harassment;
  - TRC will maintain documentation that medical and mental health practitioners have received the training referenced in this standard.
2. All medical staff will complete the assigned electronic training.
3. Training will be logged on PeopleSoft. An acknowledgement of training completion and understanding will be kept by the Residential Administrative Assistants.

**K. SCREENING FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS.**

1. Clients will be screened within 72 hours of arrival at TRC for potential vulnerabilities or tendencies of acting out with sexually aggressive behavior. Housing assignments are made accordingly.
2. Within 72 hours of arrival the Direct Care Supervisor will conduct the PREA Screening for Risk on all admissions to TASC. This information will be disseminated to team members within that 72 hours period to determine

housing. Prior to this determination any client will only be in a room or adjoining room with other clients that score a PREA rating of unrestricted. If an initial screening has previously been completed, this score should be compared against the original. The PREA rating will be provided to team and work coordinator.

3. Within 30 days of arrival the Direct Care Supervisor will complete another PREA Screening for Risk and disseminate the information to team members.
4. Upon completion of the screening, clients may be identified as being vulnerable or sexually aggressive according to their responses to specific questions on the screening form.
5. A client's risk level will be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the client's risk of sexual victimization or abusiveness.
6. Clients may not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked during screening or assessment.
7. Information obtained during assessment and screening will be used on a need to know basis and will not be exploited to the client's detriment by staff or other clients

**L. USE OF SCREENING INFORMATION:**

1. TRC will use information from the risk screening to inform housing, bed, work, education, and program assignments with the goal of keeping separate those clients at high-risk of being sexually victimized from those at high-risk of being sexually abusive.
2. The TRC will make individualized determinations about how to ensure the safety of each client.
3. A transgender or intersex client's own views with respect to his or her own safety will be given serious consideration.
4. Clients identified as high-risk with a history of sexually assaultive behavior will be assessed by a qualified staff member. Clients with a history of sexually assaultive behavior are identified, monitored, and counseled.
5. Clients identified as at risk for sexual victimization, will be assessed by a qualified staff member. Clients at risk for sexual victimization will be identified, monitored, and counseled.
6. Clients screened as Sexual Vulnerable shall be housed only with other Sexual Vulnerable or Unrestricted clients.
7. Clients screened as Unrestricted can be housed with any other client.
8. Clients screened as Sexual Aggressive shall be housed only with other Sexual Aggressive or Unrestricted clients.
9. Clients screened as Sexual Aggressive shall never be housed with Sexual Vulnerable clients.
10. Sexual Aggressive clients may participate in programming and work assignments with Sexual Vulnerable clients as long as there is adequate staff supervision (visual observation at all times).



**M. CLIENT REPORTING:**

1. Clients who are victim of sexual abuse have the option to report the incident to staff or the North Dakota Highway Patrol.
2. Clients may report incidents of sexual abuse, sexual harassment, or retaliation by staff or clients to any employee, contractor, or volunteer. They may do this verbally, by writing a client consumer concern form, or by using the client phone system to contact TRC Director, or the Crisis Help line. This information is given to the PREA coordinator, as soon as possible, after the report is made in order to begin the investigation and to preserve the crime scene and any potential evidence.
3. Staff will accept reports that are made from clients, anonymously, staff, or third parties.
4. When the PREA coordinator receives a report of any of the above types of sexual conduct, they must determine the type of sexual contact that occurred, according to definitions found under the definitions section of these procedures, and begin the investigation as outlined below.

**N. CLIENT ACCESS TO OUTSIDE CONFIDENTIAL SUPPORT SERVICES**

1. TRC will inform clients, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.
2. TRC has an agreement with Safe Shelter to provide clients with confidential emotional support services related to sexual abuse.
3. TRC provides phone and written contact information to Safe Shelter provide clients with confidential emotional support services related to sexual abuse.

**O. STAFF AND AGENCY REPORTING DUTIES**

1. TRC staff will report immediately 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 North Dakota State Hospital; retaliation against clients or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.
2. Staff will report to immediate supervisor. Staff will not reveal any information related to a sexual abuse report to anyone other than to the extent necessary. Information will be limited to making treatment, investigation, and other security and management decisions.
3. Mental Health and Medical practitioners report as required by law.

**P. REPORTING TO OTHER CONFINEMENT FACILITIES**

1. Upon receiving an allegation a client was sexually abused while confined at another facility, the PREA coordinator will notify the head of the facility or appropriate office of the agency where the alleged abuse occurred no later than 72 hours after receiving the allegation.
2. TRC will document using an incident report that it has provided notification.

**Q. STAFF FIRST RESPONDER DUTIES**

- A. Upon learning of an allegation that a client was sexually abused, the first staff member to respond to the report shall be required to:
  - a. Separate the alleged victim and abuser;
  - b. Notify immediate supervisor of the alleged incident
  - c. Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;
  - d. If the abuse occurred within the last 92 hours, 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
  - e. If the abuse occurred within the last 92 hours, 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.

**R. COORDINATED RESPONSE**

1. For penetration events occurring within 92 hours or less the first responders will:
  - a. Ensure safety of alleged victim;
  - b. Request alleged victim not to take any actions that could destroy physical evidence including washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating until he/she is seen by the investigator;
  - c. Secure crime scene when applicable
  - d. Make immediate notification to Supervisor.
2. Supervisor will make immediate telephone notifications to the following, utilizing the PREA Allegation Event Data Checklist:
  - a. Administrator on Call
  - b. Investigators
  - c. The investigator will notify local law enforcement
3. If the facility needs to have the alleged perpetrator removed from the premises immediately, they should contact law enforcement and inform the investigator of such.
4. The alleged victim should be held in the treatment room until law enforcement arrives.
5. Medical [notify hospital of sexual assault and transport to the JRMC Emergency Room. SANE/SAFE from Central Valley Health will be notified by Emergency Room staff to report to JRMC.
6. If the client refuses to undergo a forensic examination this should be documented in the client record.
7. The refusal will be indicated on the PREA Allegation Event Data Checklist
8. Mental health and advocacy services will be contacted and provided.
9. Mental health professional through the physician or LIP on call. Inform of sexual assault and schedule an emergency assessment
  - a. Unit Supervisor
  - b. PREA Site Coordinator/Director of TRC
10. For Penetration Events occurring over 92 hours and sexual abuse and sexual harassment the first responder will:

- a. Ensure safety of alleged victim;
- b. Make immediate notification to the Supervisor.
- c. Supervisor will make immediate notifications to the following in the manner described below utilizing the PREA Allegation Event Data Checklist:
- d. Administrator on Call
- e. Investigator
11. The investigator will notify local law enforcement for incidents that may be criminal in nature.
12. The investigator will conduct an investigation of incidents that are not criminal in nature.
13. If the facility needs to have the alleged perpetrator removed from the premises immediately, they should contact law enforcement and inform the investigator of such.
14. On call physician contact Mental Health Provider for a mental health assessment
15. PREA Coordinator- email
16. Unit Supervisor- email

**S. AGENCY PROTECTION AGAINST RETALIATION**

1. TRC will protect all clients and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other clients or staff.
  - a. This will be monitored through:
    - i. housing changes or transfers for client victims or abusers
    - ii. removal of alleged staff or client abusers from contact with victims
    - iii. emotional support services for clients or staff that fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.
    - iv. For at least 90 days (typically until discharge) following a report of sexual abuse, Direct Care Supervisors on each unit will monitor the conduct and treatment of clients or staff who reported the sexual abuse and of clients who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by clients or staff. Supervisors will act promptly to remedy any perceived retaliation.
    - v. In the case of clients, monitoring will also include periodic status checks.
    - vi. Documentation will be completed in pass on reports to describe monitoring and any action taken. Documentation will also be kept in the PREA Allegation Event Data Checklist.
2. If any other individual who cooperates with an investigation expresses a fear of retaliation, the agency will take appropriate measures to protect that individual against retaliation using the same procedures noted above.
3. TRC's obligation to monitor will terminate if the investigation determines that the allegation is unfounded.

**T. CRIMINAL AND ADMINISTRATIVE AGENCY INVESTIGATIONS**

1. TRC conducts its own investigations into allegations of sexual harassment. TRC cooperates with local law enforcement in investigations into sexual abuse allegations. Investigations will be done promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.
- b. Where sexual abuse is alleged, TRC will contact the highway patrol who will conduct the investigation. The NDSH investigators will cooperate with outside investigators and will remain informed about the progress of the investigation.
- c. Investigators will not complete evaluations on clients in their assigned work areas.
- d. Investigators will gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; will interview alleged victims, suspected perpetrators, and witnesses; and will review prior complaints and reports of sexual abuse involving the suspected perpetrator.
- e. When the quality of evidence appears to support criminal prosecution, the TRC investigator may proceed with the administrative investigation at the same time the criminal investigation is conducted, unless directed otherwise by the Director. Information obtained during the investigation will not be shared between the criminal and administrative investigators.
- f. The credibility of an alleged victim, suspect, or witness will be assessed on an individual basis and will not be determined by the person's status as client or staff. The TRC will not require a client who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.
- g. Administrative investigations:
  - i. Will include an effort to determine whether staff actions or failures to act contributed to the abuse; and
  - ii. Will be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.
8. Criminal investigations will be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.
  - i. Substantiated allegations of conduct that appears to be criminal will be referred to the ND Highway Patrol for investigation and for prosecution.

- ii. TRC will retain all administrative and criminal written reports referenced for as long as the alleged abuser is a resident or employed by the agency, plus five years or in accordance with state statute.
- iii. The departure of the alleged abuser or victim from employment or control of the facility will not provide a basis for terminating an investigation.

**U. EVIDENTIARY STANDARD FOR ADMINISTRATIVE INVESTIGATIONS AND EMPLOYEE COMPLIANCE.**

- 1. The TRC will impose no standard higher than a preponderance (51 percent) of the evidence in determining whether allegations of sexual abuse are substantiated
- 2. The PREA investigator will meet with the client and review the client's statement. If a crime may have been committed, the staff investigator will request assistance from the NDHP and work, as a liaison, with the investigative agency in the investigation.
- 3. Employees will cooperate fully by providing all pertinent information during the investigation.
- 4. Any sexual contact or sexual harassment between staff and client, volunteer and client, or contract personnel and client, regardless of consensual status, is prohibited, and subject to administrative disciplinary and criminal sanctions.

**V. REPORTING TO CLIENTS**

- 1. Following an investigation, the PREA investigator, or staff member designated by the PREA investigator will inform the client verbally whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.
- 2. If the investigation was conducted by the ND Highway Patrol, the PREA coordinator will request relevant information from the agency and inform the client.
- 3. If there has been a substantiated or unsubstantiated complaint of sexual abuse committed by a staff member against a client, the TRC will inform the client whenever:
  - i. The staff member is no longer posted within the clients unit
  - ii. The staff member is no longer employed at the facility
  - iii. The TRC learns that the staff member has been charged or convicted on an offense related to sexual abuse within the facility
- 4. Following a clients allegation that he or she has been sexually abused by another client, the TRC subsequently will inform the alleged victim whenever:
  - i. The TRC learns that the alleged abuser has been charged or convicted for sexual abuse within the facility.
- 5. All notifications will be documented in the clients medical record.

6. The TRC obligation to report terminates if the client is discharged.

**V. DISCIPLINARY SANCTIONS FOR STAFF**

1. Staff will be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.
2. Termination will be the presumptive disciplinary sanction for staff who engaged in sexual abuse with a client of the North Dakota State Hospital.
3. Disciplinary sanctions for violations of TRC policies relating to sexual abuse or sexual harassment (other than engaging in sexual abuse) will 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.
4. All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, will be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

**W. CORRECTIVE ACTION FOR CONTRACTORS AND VOLUNTEERS.**

1. Any contractor or volunteer who engages in sexual abuse will be prohibited from contact with clients and will be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.
2. TRC will take appropriate measures, and will consider whether to prohibit further contact with clients, in the case of any other violation of NDSH sexual abuse or sexual harassment policies by a contractor or volunteer.

**X. DISCIPLINARY SANCTIONS FOR CLIENTS**

1. Following an administrative finding that the client engaged in client-on-client sexual abuse or following a criminal finding of guilt for client-on-client sexual abuse, clients will be discharged from the TRC and subject to disciplinary sanctions as seen fit by referral source.

**Y. ACCESS TO EMERGENCY MEDICAL AND MENTAL HEALTH SERVICES**

1. Client victims of sexual abuse will 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.
2. If a sexual assault examination is determined appropriate, explain the necessity and process of a sexual assault examination to the victim.

3. Contact the supervisor to make arrangements for transporting the client to the outside medical facility.
4. Ensure qualified mental health staff is available to provide services to the client, if requested.
5. The client will be taken to the James River Medical Center for a sexual assault examination. The examination will be performed by a trained SANE or SAFE.
6. Treatment services will be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation.

**Z. ONGOING MEDICAL AND MENTAL HEALTH CARE FOR SEXUAL ABUSE VICTIMS AND ABUSERS.**

1. The evaluation and treatment of such victims will 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.
2. TRC will provide such victims with medical and mental health services consistent with the community level of care.
3. Client victims of sexually abusive vaginal penetration will be offered pregnancy tests.
4. If pregnancy results from the conduct described above in this section, such victims will receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.
5. Client victims of sexual abuse while incarcerated will be offered tests for sexually transmitted infections as medically appropriate.
6. Treatment services will 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.

**AA. DATA COLLECTION AND INCIDENT REVIEWS**

1. A PREA incident review will ordinarily occur within 30 days of the conclusion of the investigation at the Residential Supervisors meeting.
2. It will consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
3. It will consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
4. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;

5. Assess the adequacy of staffing levels in that area during different shifts;
6. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
7. Prepare a report of its findings, including but not necessarily limited to determinations and any recommendations for improvement and submit such report to the Superintendent of the NDSH.
8. The facility will implement the recommendations for improvement, or will document its reasons for not doing so.

**BB. DATA COLLECTION**

1. TRC will collect accurate, uniform data for every allegation of sexual abuse using a standardized instrument and set of definitions
2. All completed PREA investigations will be uploaded in a data base by PREA coordinator after completion of the investigation.
3. The TRC will aggregate the incident-based sexual abuse data. An annual report will be completed in January for the previous year. Results will be posted on the TRC website.
4. The TRC will maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.

**CC. DATA REVIEW FOR CORRECTION ACTION**

1. The TRC will review data collected and aggregated pursuant to PREA Standard 115.287 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training to include:
2. Problem areas will be identified in Residential Supervisors meetings.
3. Corrective action will be documented in the Residential Supervisors minutes as needed.
4. Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.
5. The TRC's report will be approved by the Director of TRC and made readily available to the public through its website.

**DD. DATA STORAGE, PUBLICATION AND DESTRUCTION**

1. The TRC will ensure that data collected pursuant to this policy and procedures are securely retained.
2. Before making aggregated sexual abuse data publicly available, the TRC will remove all personal identifiers.
3. The agency will maintain sexual abuse data collected pursuant to state law.
4. All case records associated with claims of sexual abuse, including incident reports, investigation reports, client information, case



disposition, medical and counseling evaluation findings, and recommendations for post-release treatment and counseling will be retained, in accordance with North Dakota statute.

5. The PREA coordinator will review the case history files and compile data and statistics on the number of sexual abuse and sexual harassment incidents that occurred the prior calendar year. This information will be reviewed with the Superintendent.

**EE. AUDITS OF STANDARDS**

1. Starting on November, 2014 and during each three-year period thereafter, the TRC will ensure it is audited at least once.
2. The TRC will bear the burden of demonstrating compliance with the standards.
3. The TRC will ensure that the auditor's report is published on the TRC website or provide other means so the report is readily available to the public.

**REFERENCES:**

Prison Rape Elimination Act, 2003 Community Confinement Standards

**ATTACHMENTS:**