

	PREA 27.00	<b>PREA Prohibition of Sexual Abuse, Sexual Harassment, and Definitions</b>	Effective Date:	August 1, 2019
			Revised Date:	May 3, 2019

**Purpose:**

The purpose of this policy is to develop uniform definitions to be used throughout all PREA policies and to establish the outline of MDC’s zero-tolerance policy towards all forms of sexual abuse and sexual harassment between inmates, and staff, contractors, volunteers and other inmates.

**Field of Application:**

New Mexico, Bernalillo County, Metropolitan Detention Center.

**Policy:**

The policy of the Bernalillo County Metropolitan Detention Center (MDC) is to provide a safe and secure environment for all inmates that is free from the threat of any form of sexual abuse and sexual harassment by establishing definitions of prohibited conduct and developing a program for the prevention, detection, response and investigation of such claims. MDC maintains a zero tolerance toward any form of sexual abuse and sexual harassment between inmates, and staff, contractors, volunteers and other inmates, and enforces this policy by ensuring MDC complies with the Prison Rape Elimination Act (PREA) Standards.

**Definitions:**

1. **Aggressor** – A person that committed an act of sexual abuse, sexual harassment, or retaliation.
2. **Alleged Aggressor** - A person accused of any act of sexual abuse, sexual harassment or retaliation.
3. **Alleged Victim** - An inmate who has alleged to have been harmed or adversely affected by, and/or tricked or exploited into, participating in sexual abuse, or sexual harassment.
4. **Consent** – Words or overt actions indicating a freely given agreement to the sexual act or contact in question. Lack of verbal or physical resistance or submission by the complainant, resulting from use of force, threats, or coercion by the respondent shall not constitute consent.
5. **Contractor** - Any person who provides services for MDC on a recurring basis to enhance the activities and programs of the agency pursuant to any formal or informal arrangement, intergovernmental services agreement, contractual agreement or other type of agreement with MDC to provide services to the agency.
6. **Community Custody Program** – an alternative to incarceration whereby the inmate is returned to his or her home, job and neighborhood with intensive supervision by MDC staff.
7. **Exigent Circumstances** - Any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of the facility.
8. **False Allegation** - An allegation that is completely false in that the events that were alleged did not occur.
9. **Gender Nonconforming** - A person whose appearance or manner does not conform to traditional societal gender expectations.
10. **Indecent Exposure** - The display by an employee, contractor, volunteer, or inmate of his

- or her uncovered genitalia, buttocks, or breast in the presence of another inmate.
11. **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.
  12. **Juvenile** – any person under the age of 18, unless under adult court supervision and confined or detained in a prison or jail shall be referred to as a Youthful Inmate.
  13. **Office of Professional Standards (OPS)** - Office of Professional Standards, a division within the MDC that conducts administrative investigations into alleged policy violations.
  14. **PREA Administrator** - A staff member responsible for the development, implementation, and overseeing of MDC’s plan to comply with the PREA standards, ensure the completion of the PREA standards, monitor MDC training programs to ensure they comply with PREA training standards, monitor inmate screening procedures, administrative investigations, and medical and mental health treatment according to the PREA standards, supervise MDC’s PREA data collection, and provide appropriate access and materials to auditors.
  15. **PREA Administrative Captain** – A staff member responsible for reviewing all PREA allegations to determine whether the allegation meets the definition of sexual abuse or sexual harassment and conduct preliminary investigations and PREA investigation.
  16. **PREA Compliance Officer** - A staff member responsible for assisting the PREA Administrator with the development, implementation, and overseeing of MDC’s plan to comply with the PREA standards, ensure compliance with the PREA standards, monitor MDC training programs to ensure they comply with PREA training standards, monitor inmate screening procedures, investigations, and medical and mental health treatment according to the PREA standards, supervise MDC’s PREA data collection, and provide appropriate access and materials to auditors.
  17. **PREA Allegation** – An allegation of sexual abuse, sexual harassment, or retaliation.
  18. **Predatory Inmate** - An inmate whose past behavior indicates they are prone to victimize other inmates, especially in regard to sexual behavior.
  19. **Preliminary Inquiry** - An informal, fact finding inquiry directed or conducted by the Security Unit Supervisor and Captain to gather information and document the initial response, when there has been a PREA allegation reported.
  20. **Preponderance of the Evidence** – This standard is met when evidence has convinced the fact finder (investigator) that there is greater than 50% probability that the incident has occurred.
  21. **Qualified Health Care Professional (QHCP)** - Any person who by virtue of their education, credentials, and experience is permitted by law to evaluate and care for patients. This includes, but is not necessarily limited to, physicians, physician assistants, nurses, nurse practitioners, dentists, and mental health professionals.
  22. **Qualified Mental Health Professional (QMHP)** - Any person with professional training, experience, and demonstrated competence in the treatment of mental illness, who is a physician, psychiatrist, psychologist, social worker, nurse, psychiatric nurse practitioner, or other qualified person eligible for licensure in the MDC as a mental health clinician.
  23. **Reporting Party** – the person that reported a PREA allegation.
  24. **Retaliation** - Any act of vengeance, covert or overt action or threat of action taken against an individual in response to their reporting or cooperation in an investigation of sexual abuse or harassment.
  25. **Sexual Abuse** – Sexual abuse includes the sexual abuse of an inmate by another inmate, and sexual abuse of an inmate by an employee, contractor, or volunteer.
    - a. Sexual abuse of an inmate by another inmate includes any of the following acts, if

the victim does not consent, is coerced into such an 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 inmate by staff, contractor, or volunteer includes any of the following acts, with or without consent of the inmate:
1. Contact between the penis and the vulva, or the penis and the anus, including penetration, however, slight;
  2. Contact between the mouth and the penis, vulva, or anus;
  3. Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
  4. Penetration of the anal or genital opening, however slight, by 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 an employee, contractor, or volunteer to engage in the activities described in paragraphs 1-5 above;
  7. Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate; and
  8. Voyeurism by a staff member, contractor or volunteer.
26. **Sexual Assault Nurse Examiner (SANE)** - A registered nurse (RN) who has advanced education and clinical preparation in forensic examination of sexual assault victims.
27. **Sexual Harassment**
- 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 inmate directed toward another; and
  - b. Repeated verbal comments or gestures of a sexual nature to an inmate by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.
28. **Staff Member/Employee** - A person who works directly for Bernalillo County and or MDC.
29. **Sexual Misconduct** – any prohibited sexual activity at MDC not defined in the above definitions of sexual abuse or sexual harassment (i.e. inmate-on-inmate consensual sexual acts, inmate-on-staff sexual abuse, and inmate-on-staff sexual harassment).
30. **Transgender** – a person whose gender identity (i.e., internal sense of feeling male or female) is different from the person’s assigned sex at birth.

31. **Substantiated** - The allegation was investigated and determined to have occurred.
32. **Unsubstantiated** - The allegation was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.
33. **Unfounded** - The allegation was investigated and determined not to have occurred.
34. **Victim** - An inmate who is harmed or adversely affected by, and/or tricked or exploited into, participating in sexual abuse, or sexual harassment.
35. **Volunteer** - An individual who donates time and effort to enhance the activities and programs of MDC.
36. **Voyeurism** - (by a staff employee, contractor, or volunteer) - An invasion of privacy of an inmate by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.
37. **Vulnerable Inmate** - An inmate who is at high risk to become a victim of sexual abuse by another inmate due to characteristics related to age, physical stature, criminal history, and physical or mental disabilities, or past history of being victimized.
38. **Youthful Inmate** - Any person under the age 18 who is under adult court supervision and/or incarcerated or detained in MDC or the MDC Community Custody Program.

### **Responsibility:**

The requirements and processes described in this document apply to all staff members, volunteers, contractors, and inmates at MDC. Area Managers and Supervisors are responsible for, ensuring that staff members have access to up-to-date information and policies, ensuring that staff members are trained in all policy updates; and ensuring all staff members login in to PowerDMS on a regular basis and to acknowledge and/or complete items in their inbox.

### **Procedure:**

#### **A. Prohibition of Sexual Abuse and Sexual Harassment**

1. Any form of sexual abuse, sexual harassment, and sexual misconduct as defined above, whether committed by inmates, staff, contractors, or volunteers is strictly prohibited and this provision shall be strictly enforced.

**Standards & References:****A. ACA:**

1. N/A

**B. Court Order:**

1. N/A

**C. Cross-Referenced Documentation:**

1. 42 U.S.C. § 15601, et seq., Prison Rape Elimination Act
2. 28 C.F.R. Part 115, Prison Rape Elimination Act National Standards

**D. Forms:**

1. N/A

**F. Other:**

1. PREA 115.5
2. PREA 115.6
3. PREA 115.11