

	PREA 27.07	<b>PREA Investigation</b>	Effective Date:	July 31, 2019
			Revised Date:	July 31, 2019

**Purpose:**

The purpose of this policy is to have a uniform protocol and procedures to ensure that administrative investigations for all PREA related allegations are conducted pursuant to the Prison Rape Elimination Act (PREA) of 2003.

**Field of Application:**

New Mexico, Bernalillo County, Metropolitan Detention Center.

**Policy:**

The policy of the Bernalillo County Metropolitan Detention Center (MDC) is to ensure all allegations of sexual abuse, sexual harassment, and retaliation are thoroughly, promptly, and objectively investigated, including third-party and anonymous reports involving inmates. The objective of this policy is to ensure all reports of sexual abuse, sexual harassment, or retaliation will be immediately investigated whether:

1. The inmate who is the alleged perpetrator is in custody or not;
2. Staff members named in the allegation are currently employed or not;
3. The report of the allegation was made in a timely manner or not;
4. The inmate reporting the allegation is known to have made past false allegations;
5. The reporting party is willing to cooperate with the investigation or not.

**Definitions:**

Definitions used in this policy are defined in PREA Policy 27.00 [Prohibition of Sexual Abuse, Sexual Harassment, and Definitions.](#)

**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, staff are trained in all policy updates; and all staff members login in to PowerDMS on a regular basis and to acknowledge and/or complete items in their inbox.

**Procedure:**

**A. Designation of Authority**

1. The PREA Captain and PREA Investigators have the authority to conduct PREA related administrative investigations, interviews and make determinations based upon preponderance of the evidence within the provisions of this policy and PREA Standards.

**B. Investigator Training**

1. PREA investigators shall be specially trained in sexual abuse and sexual harassment investigations in addition to general PREA training to include:
  - a. Conducting sexual abuse investigations in confinement settings;
  - b. Appropriate and effective interviewing techniques;

- c. The proper use of Miranda and Garrity warnings;
  - d. Sexual abuse evidence collection and preservation in confinement settings; and
  - e. The criteria and quality of evidence required to substantiate a case for administrative action and referral to BCSO for a criminal investigation.
2. All specialized investigators training, to include all contract investigators training, shall be documented and maintained and be the responsibility of the PREA Captain to conform with PREA Standard requirements.
  3. All PREA investigators shall participate in specialized PREA investigations related training every two (2) years.

### **C. Evidentiary Standard**

1. PREA investigations shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse, sexual harassment and/or retaliation are substantiated, unsubstantiated, or unfounded.

### **D. Preliminary Investigation**

1. All allegations no matter the type sent to the PREA department by any method shall be reviewed by the PREA Captain to ensure the allegation meets the definition of sexual abuse, sexual harassment, or retaliation.
2. The PREA Captain will follow the following steps while conducting a preliminary investigation:
  - a. Review all actions taken by the first responder, front line staff, and security supervisors in response to receiving and responding to the allegation to ensure policy and procedures were followed and take appropriate action to address any failure to follow policy and procedure.
  - b. Review and collect all preliminary evidence (preliminary inquiry report, video footage, written statements, etc.) to determine if the allegation meets the definition of sexual abuse, sexual harassment, or retaliation outline in policy [insert policy number].
    1. If it is determined the allegation does not meet the definition of sexual abuse, sexual harassment or retaliation, the PREA Captain will provide a cover letter outline his/her reasoning.
      - a. The PREA Captain will refer the allegation back to the Captain of the unit the allegation originated from, if he/she identifies other potential policy violation.
      - b. The alleged victim and reporting party shall be notified of this decision if still employed or in custody at MDC.
    2. If it is determined the allegation does meet the definition of sexual abuse, sexual harassment, or retaliation the PREA Captain will:
      - a. Issue all appropriate notices according to policy PER. 3.35-2 Office of Professional Standards Investigations;
      - b. Ensure appropriate actions are taken to separate the alleged aggressor from the alleged victim. The alleged aggressor shall be moved and not the alleged victim unless the move is the only way to ensure the safety of the alleged victim.
      - c. The PREA Captain shall assign a PREA investigator to the allegation.

- d. The PREA Captain shall notify the Chief of Corrections or Designee of serious allegations.
- e. At the direction of the Chief of Corrections or designee, the PREA investigator shall have the responsibility of informing BCSO or other law enforcement of the potential of criminal activity.

#### **E. PREA Investigation**

1. The PREA investigator shall conduct a thorough, prompt and objective investigation into the allegation of sexual abuse, sexual harassment, retaliation.
2. For allegations involving a contractor the managing entity shall be notified by the PREA investigator.
3. For allegations involving a volunteer the MDC Chaplain shall be notified by the PREA investigator.
4. Investigations involving represented employees shall be conducted in accordance with applicable provisions of the Collective Bargaining Agreement (CBA).
5. At no time during the investigation shall the alleged aggressor be provided the name of the reporting party, unless the investigation requires it.
6. The PREA investigator shall assess the credibility of the victim, suspect, and witness on an individualized basis, rather than relying on an individual's status as an inmate or staff member. Documentation of the credibility assessment in the investigative report is required.
7. The PREA investigator shall document any findings related to staff actions or failures to act that may have contributed to the alleged allegation or if there was a failure to follow policy and procedures or if policy or procedures need to be changed.
8. The PREA investigator shall review any and all prior PREA allegations involving the alleged aggressor and alleged victim. Documentation of this review shall be required.
9. If preliminary information appears to support potential criminal charges against an MDC employee, staff, contractor, volunteer or inmate, the PREA Investigator shall immediately notify the Chief of Corrections or designee, so prompt coordination between the PREA investigator and the appropriate law enforcement entity conducting the criminal investigation is achieved.
  - a. At the direction of the Chief of Corrections or designee, the PREA Captain shall have the responsibility of informing BCSO or other law enforcement of the potential of criminal activity.
  - b. At the direction of the Chief of Corrections or designee, the PREA Captain shall also have the responsibility of contacting the Bernalillo County District Attorney's Office to determine whether compelled interviews may interfere with a subsequent criminal prosecution.
10. PREA investigator shall continue to work closely with the law enforcement entity while conducting the administrative investigation unless it is determined that the continuation of the administrative investigation seriously jeopardizes the criminal investigation.
11. In no case shall a PREA investigator furnish criminal investigators with statements or information that would violate the Garrity rights of MDC employees.
12. The rationale for postponement of any PREA administrative investigation at any

time shall be documented by PREA investigator.

#### **F. PREA Investigation Interviews**

1. The PREA investigator shall interview alleged victims, alleged aggressors, and witnesses, and review prior complaints and reports of sexual abuse, sexual harassment, or retaliation involving the alleged aggressor and alleged victim.
2. Interviews shall be conducted in a thorough, professional and non-threatening manner consistent with acceptable practices for potentially traumatized victims.
3. Interviews shall be conducted in a private location when possible, as determined by the PREA investigator. If a private location is not feasible, the PREA investigator shall document the circumstances and all efforts made to conduct the interview in a private location.
4. Alleged victims may request a victim advocate at any time during an interview to provide emotional support, crisis intervention, or other assistance. The PREA Investigator is obligated to inform the alleged victim of this requirement. If a victim advocate is requested by the alleged victim, the interview shall cease until the requested victim advocate is present.
5. An inmate alleging sexual harassment or sexual abuse shall not be required to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation.
6. If a staff is identified as the alleged aggressor the Investigator shall follow the procedures for interviewing a subject employee outlined in policy PER 3.35-2 Office of Professional Standards Investigations.

#### **G. Evidence Collection**

1. An evidence collection professional (i.e., a SANE) or BCSO's Special Victim's Unit (SVU) will collect and preserve any forensic evidence (e.g., DNA evidence when available).
2. To ensure the integrity of the evidence and chain of custody, investigators will collaborate with the agency collecting and preserving evidence, including any available DNA evidence and any available electronic monitoring data.
3. If not otherwise conducted by an evidence collection professional or BCSO's SVU, the PREA investigators shall collect and preserve any direct and circumstantial evidence (including physical and DNA evidence when available) according to policy PER 3.35-2 Office of Professional Standards Investigations.
4. For forensic medical examinations and evidence collection, processing, and storage refer to Policy #4 Medical/Mental Health.

#### **H. Report Format**

1. The final investigative report shall include, at a minimum, the following:
  - a. The alleged victim and aggressor's name, inmate identification number or employee identification number;
  - b. A statement from the alleged victim and alleged aggressor indicating the date, time, location and circumstances surrounding the alleged incident. If provision of statement is refused, it will be documented in the report.
  - c. A detailed summary of the alleged incident;
  - d. A credibility assessment regarding the truthfulness of the alleged victim(s), alleged aggressor(s), and any witnesses;

- e. Any discrepancies between accounts of the incident;
- f. A description of any injuries sustained and any medical attention given;
- g. A summary of all evidence collected, including any corroborating evidence such as telephone records, gifts, letters and similar items;
- h. The results of any forensic examinations conducted, including whether any DNA evidence was yielded as a result, any treatment provided and plans for follow-up services;
- i. Any supporting or media obtained or created documentation as part of the investigation, including witness statements and transcripts of any interviews conducted;
- j. A determination as to whether any staff actions or failures to act may have contributed to the abuse;
- k. A determination as to whether any policy, procedure, directive, or post order may have contributed to the abuse; and
- l. A summary of any prior complaints of sexual abuse, sexual harassment, retaliation and disciplinary findings pertaining to the alleged aggressor and alleged victim.

#### **I. Findings**

1. At the conclusion of the investigation, the PREA investigator shall recommend the allegation is:
  - a. Substantiated: The allegation was investigated and determined to have occurred by a preponderance of the evidence,
  - b. Unsubstantiated: The allegation was investigated and the evidence was insufficient to make a final determination that the allegation occurred or not, or
  - c. Unfounded: The allegation was investigated and determined not to have occurred.

#### **J. Post Investigation Procedures**

1. The PREA Investigator shall submit the final written report to the PREA Captain within thirty (30) business days (i.e., excluding weekends, and legal holidays) of the incident being received by the PREA Captain.
2. The PREA Captain will review the Investigation Report to ensure it meets all aspect of this policy.
  - a. If corrections are deemed necessary to the investigation report, it shall be returned to the PREA Investigator and corrections shall be made within a reasonable amount of time. After the correction have been completed, the PREA Captain shall complete the review.
3. If potential misconduct is discovered that does not fall under any PREA policy, the PREA Captain will immediately inform the Deputy Chief, Director, or Designee of the department the potential misconduct falls under to be addressed.
4. The Investigative Report shall be forwarded to the PREA Administrator for a compliance review and approval signature.
  - a. If corrections are deemed necessary to the investigation report, it shall be returned to the PREA Captain to inform the PREA investigator and corrections shall be made within a reasonable amount of time. After the correction have been completed, the PREA Administrator shall complete the review.

5. Upon the completion of the compliance review by the PREA Administrator, the case in its entirety shall be forward to County Legal (if deemed necessary by the Chief of Corrections or designee) for review.
  - a. If deemed not necessary by the Chief of Corrections or designee to forward the case to County Legal, route the case to the Chief of Corrections and move to step seven (7) in this section.
6. County Legal shall review the investigative report and forward their review to the Chief of Corrections, or designee. Should questions as to the investigation arise, they shall be answered within a reasonable amount of time prior to routing to the Chief.
7. The Chief of Corrections shall conduct a final review and approval on every case.
8. If discipline is warranted for anyone involved in the PREA investigations refer to the procedures outlined in PREA policy – Disciplinary, Sexual Abuse Incident Review, and Data Collection.
9. The PREA Captain shall notify the alleged aggressor if a staff member in writing of the final disposition within ten (10) days after the final decision is made by the Chief of Corrections or designee.
10. If the findings conclude that the allegation of sexual abuse, sexual harassment or retaliation is substantiated, the PREA Captain shall forward a copy of the report to County Legal for further action.
11. All original PREA investigation material shall be sent to the Office of Professional Standards (OPS) to be kept. OPS shall provide a copy of any and all disciplinary action taken against a staff member to the HR department.
12. No one shall be permitted to review any PREA investigation material without authorization from the Chief of Corrections or designee, the County Manager or designee, or pursuant to court order.

#### **K. Inmate Notification**

1. Following an investigation into an inmate's allegation that he or she suffered sexual abuse or sexual harassment, the PREA Administrator or Designee shall inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.
2. Following an inmate's allegation that a staff member, volunteer, or contractor has committed sexual abuse or sexual harassment against the inmate, the PREA Administrator or Designee shall subsequently inform the inmate (unless the agency has determined that the allegation is unfounded) whenever:
  - a. The staff member, contractor, or volunteer is no longer posted within the inmate's unit;
  - b. The staff member, contractor, or volunteer is no longer employed at the facility;
  - c. If MDC learns the staff member, contractor, or volunteer has been indicted on a charge related to sexual abuse; or
  - d. If MDC learns the staff member, contractor, or volunteer has been convicted on a charge related to sexual abuse.
3. Following an inmate's allegation that he or she has been sexually abused by another inmate, the PREA Administrator or Designee shall subsequently inform the alleged victim whenever:
  - a. If MDC learns the alleged abuser has been indicted on a charge related to

- sexual abuse within the facility; or
  - b. If MDC learns the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
4. All such notifications or attempted notifications shall be documented.
  5. MDC's obligation to report to the inmate shall terminate if the inmate is released from custody.

#### **L. Confidentiality**

1. Information related to investigations of sexual abuse, sexual harassment, and retaliation is confidential and shall be disclosed only when necessary for related treatment, security, audits, and management reviews.
2. Strict confidentiality shall be maintained throughout all phases of the investigation
3. Any staff member violating confidentiality can be subject to corrective and/or disciplinary action.
4. Only the Chief of Corrections or designee, or the County Manager or designee, is empowered to release publicly the details of a PREA investigation or disciplinary actions.

#### **M. PREA Investigations Records Maintenance**

1. All case records associated with allegations of sexual abuse, sexual harassment, or retaliation, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment and/or counseling shall be retained by Office of Professional Standards (OPS) for as long as the accused staff member is employed at MDC, contractor providing a services at MDC, volunteer is volunteering at MDC, or inmate is in custody, plus a minimum of five (5) years.
2. Tracking of PREA investigation shall follow the tracking procedure outlined in policy PER 3.35-2 Office of Professional Standards Investigations.

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

1. 4-ALDF-4D-22-2
2. 4-ALDF-4D-22-5
3. 4-ALDF-4D-22-6
4. 4-ALDF-4D-22-8

**B. Court Order:**

1. Legally generated – Negotiated Policy – Non-editable without County Legal Consent

**C. Cross-Referenced Documentation:**

1. PER 3.35 Investigations into Complaints of Employee Misconduct
2. PER 3.35-1 Supervisory Preliminary Inquiries and Summary Action
3. PER 3.35-2 Office of Professional Standards Investigations

**D. Forms:**

1. N/A

**E. Other:**

1. PREA §115.21
2. PREA §115.22
3. PREA §115.34
4. PREA §115.61
5. PREA §115.65
6. PREA §115.67
7. PREA §115.71
8. PREA §115.72