

NH DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE DIRECTIVE	CHAPTER <u>Enforcement</u> STATEMENT NUMBER <u>5.19</u>
SUBJECT: <b>PRISON RAPE ELIMINATION ACT PROCEDURES</b>  PROPONENT: <u>Colon Forbes,</u> <u>Director of Professional Standards</u> <i>Name/Title:</i>  <u>Commissioner's Office 271-5604</u> <i>Office Phone #</i>	EFFECTIVE DATE <u>9/22/2015</u>  REVIEW DATE <u>4/1/2017</u>  SUPERSEDES PPD# <u>5.19</u>  DATED <u>3/12/2014</u>
ISSUING OFFICER:  <hr/> <i>William Wrenn, Commissioner</i>	DIRECTOR'S INITIALS _____ DATE _____  YES _____ NO _____
REFERENCE NO: See reference section on last page of PPD.	

**IF THE ASSAULT HAS JUST OCCURRED, REFER TO ATTACHMENT #1 NOW.**

**I. PURPOSE:**

This policy establishes uniform guidelines and procedures to prevent, deter, and respond to all types of prison sexual assault, sexual victimization and staff sexual misconduct aimed at persons under the care and custody of the NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS (NHDOC). In keeping with the intent of the federal statute (PREA, P.L. 108-79), NHDOC is committed to a zero-tolerance standard for prison sexual assault and sexual victimization, including offender-on-offender sexual victimization, staff-on-offender sexual misconduct, and sexual assault by any other person working with or having contact with offenders under departmental control or supervision. This policy makes the prevention of offender-on-offender sexual assault and staff sexual misconduct a top priority. The Department will immediately respond to, investigate, and support the prosecution of sexual assault, victimization and misconduct through both internal and external processes in partnership with state police, local law enforcement, county prosecutors and the NH Office of the Attorney General.

The Department is also committed to preserving the safety of offenders, offering all available services to those who have been sexually victimized, and to protecting victims and witnesses from retaliation for reporting an incident of sexual assault or misconduct. This policy dictates that all reports of acts covered under PREA will be investigated. For a more detailed discussion of acts covered by PREA please refer to Attachment #5, the definition section of this policy "TYPES OF SEXUAL ABUSE AND VICTIMIZATION COVERED BY PREA."

**II. APPLICABILITY:**

A. This policy applies to the following people:

1. To NHDOC staff, volunteers and contract personnel working with offenders under departmental control or supervision;
2. To anyone entering NHDOC facilities for any official purpose, including visitors;

3. To anyone having contact with NHDOC offenders at offsite work assignments; and
  4. To all offenders living in NHDOC correctional facilities.
- B. All contracts, contract amendments, renewals and agreements with outside agencies that pertain to workers who enter into NHDOC facilities, or have on-site or off-site contact with offenders under departmental supervision, will include requirements that such adhere to the PREA policy. Memoranda of Understanding will be developed to accommodate collaborative arrangements pertaining to the mandates of this policy. These memoranda may include, but are not limited to:
1. Local hospital or emergency rooms equipped with Sexual Assault Nurse Examiners or other qualified medical personnel;
  2. Local domestic and sexual violence crisis centers and the statewide coalition of these service providers;
  3. Other community service organizations;
  4. The Office of the Attorney General and local prosecutors, where applicable;
  5. County law enforcement and county Houses of Correction; and
  6. State Police.
- C. All contracts, contract amendments, renewals and agreements with outside agencies that pertain to the confinement of NHDOC inmates will include requirements that such adhere to the PREA policy and provide departmental contract monitoring to ensure that the agency is complying with the PREA policy.

### **III. POLICY:**

- A. It is the policy of the NHDOC to protect persons under departmental control or supervision from all forms of sexual abuse and sexual harassment. The Department has a zero tolerance policy and investigates all allegations of sexual assault and misconduct whether reported by staff, offender, family member, Chaplain, contractor, volunteer, member of the public or any other source. The Department investigates allegations against staff members with the same vigilance it investigates allegations against offenders. It takes a proactive approach to preventing sexual abuse and sexual misconduct by offender and by staff. It addresses the needs of offenders who have been sexually victimized. Any and all violators of this policy shall be subject to disciplinary action and potential criminal prosecution, as appropriate. All applicable NHDOC policies will be revised to include appropriate references to PREA requirements as outlined in this policy during annual policy reviews.
- B. The Department will ensure that inmates with disabilities, including for example, hearing, vision, intellectual, psychiatric or speech impairment have an equal opportunity to participate in or benefit from all aspects of the Department's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. The Department will not rely on inmate interpreters, readers or other types of inmate assistants except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first response duties, or the investigation of the inmate's allegations.
- C. Quality improvement will be achieved through a review by a multi-disciplinary Sexual Assault Resource Team (SART) consisting of trained and experienced NHDOC staff and other designated community members.

### **IV. PROCEDURES:**

#### **IF THE ASSAULT HAS JUST OCCURRED REFER TO ATTACHMENT #1 NOW.**

##### **A. Institutional/Facility Response**

1. Upon receipt of a complaint, report or information regarding an incident of offender-on-offender sexual victimization, staff-on-offender sexual misconduct, or sexual assault by any other person working with or having contact with offenders under departmental control or supervision the following occurs:
  - a. Render emergency first aid if appropriate;
  - b. Secure the crime scene and protect the victim as per departmental policy ( PPD 5.10 *Crime Scene Search, Evidence Collection, Major Crime Scene Search*); and
  - c. Notify the Shift Commander who will refer to the PREA Emergency Response Worksheet (see Attachment # 1) and will notify:
    - 1) Health Services;
    - 2) The Investigations Bureau, who will notify the PREA Victim Advocate, and if appropriate, the State Police Major Crimes Unit;
    - 3) Mental Health; and

- 4) The Warden, facility head or designee who will notify the Bureau of Victim's Services right away during business hours or the morning of the next business day.
2. If mental health staff is not on duty, the Shift Commander will notify nursing to evaluate the victim's safety and needs for emergency measures according to PPD 6.10 *Suicide Prevention and Intervention*. For more detailed procedures see the mental health section of this policy.
3. If a recent sexual assault is reported, occurring in the last 120 hours (5 days), trace evidence will be collected from the victim's body and the victim's clothes. All staff are responsible for evidence preservation, but only investigators or personnel who have had evidence collection training will be responsible for evidence collection. Procedures below are guidelines for evidence preservation:
  - a. Explain to the offender victim that in order to preserve evidence of the assault they must not shower, change clothes, brush teeth, use the toilet, smoke, eat, or drink until after evidence collection is completed.
  - b. **NOTE:** If a past sexual assault is reported, occurring more than 120 hours (5 days) prior, trace evidence will not be collected from the victim's body and the above restrictions on the victim's activities are not necessary.
  - c. Secure all bedding, towels, clothing or other materials at the crime scene that may contain traces of body fluids.
  - d. Be aware of any fluids on surfaces or floors. Do not track through or wipe up any fluids.
  - e. Investigations has primary responsibility for crime scene evidence collection and for coordinating with the victim advocate.
  - f. In cases of recent sexual assaults, Health Services will determine if the offender should be transported to the nearest hospital for specialized evidence collection by a Sexual Assault Nurse Examiner or other qualified medical personnel. Applicable hospital protocols for responding to sexual assault take effect.
  - g. The offender has the right to decline the examination and medical treatment. Health Services will inform security staff if this is the case and will document the victim's right to decline services appropriately.
  - h. Strip searches conducted prior to the transport should be conducted with utmost sensitivity and the lowest level of intrusion possible by same gender security staff. All victim strip searches will be conducted by security staff at Health Services. Refer to your FACILITY ADDENDUM for location of designated nearest hospital and other emergency contacts.
  - i. If the first staff 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.
4. The interview with the victim is an important piece of evidence and its integrity should also be preserved. If you are a *first responder* to a PREA incident, you will interview the victim to obtain basic information. Limit your questions to those listed in the Emergency Response Worksheet (see Attachment #1). The first responder shall not request a written statement from the victim. The first responder will document the victim's answers to the questions in accordance with PPD 5.25 *Processing Spot, Disciplinary, Incident & Intelligence Reports*. Investigators are trained and qualified in effective interviewing techniques; victims should not repeat the details of the sexual assault to multiple parties prior to the investigator's interview.
5. Once you have isolated the victim, your questions should generally be limited to the questions below. This information should be reported to investigations and recorded on the incident report (PPD 5.25 *Processing Spot, Disciplinary, Incident & Intelligence Reports*).
  - a. When did the sexual assault occur? (Determine if the sexual assault was recent.)
  - b. Where did the sexual assault occur? (If recent, ensure the area(s) is secured as a crime scene.)
  - c. Who assaulted you? (If recent, ensure that the alleged perpetrator(s) is secured as a crime scene)
  - d. Was the sexual assault anal, vaginal, oral or other?
  - e. When was the last time you showered?
  - f. Have you changed clothes since the sexual assault?
  - g. If yes, where is the clothing?
  - h. Have you brushed your teeth since the sexual assault?
  - i. If yes, what is the location of the toothbrush?
  - j. Were there witnesses?

6. All offender victims should be segregated in Health Services until a medical and mental health assessment can be conducted. This allows time for determination of an appropriate housing assignment that ensures the safety of the victim and isolation from the perpetrator(s). Perpetrators and victims should not be within sight or sound distance of each other at anytime.
7. Health Services staff will take a brief history and determine if the offender will be transferred to a community hospital where an examination and a specialized evidence collection procedure will be completed. Health Services staff will inform victims that a victim advocate will be contacting them as soon as possible.
  - a. Offenders reporting a recent sexual assault will be sent to a community hospital for specialized evidence collection.
  - b. Offenders reporting a past sexual assault do not need to be transferred.
  - c. Health Services staff will ensure forensic evidence is preserved. Photographs of external injuries will be taken at the facility. In cases of recent sexual assault, photographs will be taken after the completion of the specialized evidence collection procedure at the community hospital.
  - d. The offender has the right to decline the examination, transfer to the hospital and medical treatment. Health Services will inform security staff if this is the case and will document the refusal appropriately.
  - e. All victims of sexual abuse will be offered a provider appointment to access emergency contraception and sexually transmitted infectious prophylaxis in accordance with professional standards as clinically indicated. Victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests. Refusal of indicated treatment will be documented.
  - f. Medical staff will document the offender's medical history to include:
    - 1) Date and time of reported assault;
    - 2) Date and time of interview in medical department;
    - 3) Identity of the perpetrator if known, by initials only;
    - 4) Demeanor of victim (crying, depressed, flat affect, inability to concentrate, angry);
    - 5) Summary of trauma involved with incident, if bleeding occurred with incident;
    - 6) Whether the offender has smoked, eaten, or drank, showered, brushed teeth, used mouthwash, douched (for females), urinated, defecated, vomited, or changed clothes; and
    - 7) All Health Services staff working with the victim will use gloves for preservation of forensic evidence.
8. In a recent sexual assault the alleged offender perpetrator(s) will be escorted to an appropriate area within the facility and his/her clothing will be confiscated for evidentiary purposes. Perpetrator(s) must be housed on separate tiers on single movement for the duration of the investigation.
  - a. If an alleged assault takes place at the Northern Correctional Facility (NCF) the perpetrator(s) will be held in a secure area and kept separate until he/she is transported to NH State Prison for Men (NHSP/M), if appropriate. Each perpetrator will be transported in separate vehicles. Unless another location is specified by Classifications and/or the Warden, the alleged perpetrator(s) will remain in the Special Housing Unit (SHU) until the investigation is complete and they are determined to no longer pose a threat to others in general population.
  - b. If an alleged assault takes place at NH Correctional Facility for Women, (NHCF/W) female perpetrators will be placed in a secure tier and kept separate from general population.
  - c. If the alleged assault takes place in a Transitional Housing Unit or Community Correction Center, male perpetrator(s) will be sent to NHSP/M and the procedures outlined above will remain the same. If an alleged assault takes place at Shea Farm, female perpetrator(s) will be sent to NHCF/W.
  - d. Investigators will keep the Director of Professional Standards informed, and he will inform the Commissioner, and if appropriate, the State Police Major Crimes Unit.
  - e. The Officer-in-Charge will complete an incident report with attached narrative statements from each officer/employee involved in the incident describing the circumstances.
  - f. A protective custody review will be conducted for the safety of the offender.
  - g. The same procedure will be followed when the alleged perpetrator is a staff member, contractor or volunteer with the following additions/ modifications:
    - 1) NHDOC staff will be notified in accordance with the applicable Collective Bargaining Agreement;
    - 2) The facility head will consult with the Commissioner and take additional steps to reassign or remove the person from the worksite, if appropriate; and

3) Final findings of the investigation report will be directed to the Commissioner.

**B. Field Services Procedures:**

1. Upon receipt of a complaint made to any NHDOC staff that a probationer/parolee or offender under Field Services supervision has been sexually assaulted while living in the community, the Chief Probation/Parole Officer (CPPO) will be notified immediately, and will be responsible for making the appropriate notifications.
2. If the alleged perpetrator is a member of the public the CPPO will notify local law enforcement and will act as a liaison with the law enforcement agency. The CPPO will keep the Director of Field Services informed of the progress of the police investigation.
  - a. All victims should be offered the full array of services available, as appropriate, regardless of whether the sexual assault is recent or past, perpetrated by a member of the public, another parolee or a staff member.
  - b. The victim should be provided with contacts for victims services available in the community and should be referred for medical services and a mental health evaluation. Counselor/Case Managers in district offices are responsible for ensuring all appropriate referrals are made.
3. If the alleged perpetrator is another offender, the CPPO will notify local law enforcement, the Director of Field Services and the Director of Professional Standards. The CPPO will also notify Victims' Services.
4. If the alleged perpetrator is a NHDOC staff member, the CPPO will notify the Director of Field Services and the Director of Professional Standards. The Director of Professional Standards will notify the Commissioner.
5. Section 2.a. and 2.b. above will still apply.
6. In cases of recent sexual assault within 120 hours (5 days), the procedures for evidence preservation for recent sexual assaults should be followed.
7. The interview with the victim is an important piece of evidence and its integrity should also be preserved. Law enforcement and NHDOC Investigators are trained and qualified in effective interviewing techniques; victims should not repeat the details of the assault to multiple parties prior to the investigator's interview.
8. As a first responder, once you have isolated the victim, your questions should generally be limited to the questions below. This information should be reported to local law enforcement and/or investigations and recorded on the incident report (*PPD 5.25 Processing Spot, Disciplinary, Incident & Intelligence Reports*).
  - a. When did the sexual assault occur? (Determine if assault is recent);
  - b. Where did the sexual assault occur? (If recent, ensure that the area is secured as a crime scene);
  - c. Who assaulted you? (If recent, ensure that the alleged perpetrator is secured as a crime scene);
  - d. Was the sexual assault anal, vaginal, oral or other?
  - e. When was the last time you showered?
  - f. Have you changed clothes since the sexual assault?
  - g. If yes, where is the clothing?
  - h. Have you brushed your teeth since the sexual assault?
  - i. If yes, what is the location of the toothbrush?
  - j. Were there witnesses?
9. If the alleged victim is at-risk of coming into contact with the alleged perpetrator while at the District Office, the CPPO will be responsible for ensuring the victim is kept separate from the perpetrator. Safety planning services and information about orders of protection should be available to all victims whose suspected perpetrator remains at large.
10. If a staff member is the subject of a NHDOC administrative investigation of alleged staff sexual misconduct, the staff member will be notified in accordance with the applicable collective bargaining agreement.
11. The Director of Field Services will consult with the Commissioner and take additional steps to reassign or remove the person from the worksite, if appropriate.

**C. Behavioral Health.** It is the policy of the NHDOC Behavioral Health services to provide assessment, monitoring and treatment in cases involving prison rape and/or sexual misconduct.

1. Mental Health Assessment:
  - a. Every offender newly booked into the prison facilities under the control of the NHDOC, receives an initial mental health screening that includes Attachment # 2 (PREA Risk Assessment New Hampshire

Department of Corrections). The intake screening will be conducted within 72 hours of arrival at the facility.

- b. For offenders returning on parole violations in less than 90 days from their release date, their initial mental health screens are updated with only new information. If they have record of an already completed Attachment # 2 (PREA Risk Assessment New Hampshire Department of Corrections) within the last 30 days, mental health will complete Attachment # 2a (Potential Perpetrator/Victim 30-Day Mental Status Examination). All others, who have been in the community for more than 90 days, go through the initial mental health screen and Attachment # 2 in its entirety upon entering our facilities again.
  - c. For offenders transferred between facilities, Attachment # 2 will be completed if one does not exist in the record; this will be audited by Nursing when completing the intrasystem transfer form. If Attachment # 2 is completed, the clinician assigned will transfer the case to the receiving Behavioral Health staff for on-going continuity as indicated by the screening results.
  - d. All individuals assessed with potential using Attachment # 2, be it at an initial, transfer, or follow-up assessment, will be referred to Classifications to triage as it relates to the necessity for a room/housing unit change and other recommendations as indicated by the Mental Health (MH) clinician and may be added to the Behavioral Health client caseload through a completed referral with assessment results attached.
  - e. If the offender is assessed at the high-risk level by MH at initial booking or upon transfer to another facility, treatment options, including individual counseling or other appropriate interventions, are communicated to the offenders during establishment of their treatment plan. The staff member who counsels the offender subsequently reports results of the MH evaluation to Classifications for continued safety and housing management.
  - f. Classifications will make note of their on-going housing recommendations in CORIS Notes and will notify the Shift Commander. MH will make notification to the Facility's Nursing Coordinator of a given offender's high-risk status by providing a copy of the progress note and will refer him/her to the completed Attachment 2 in the Medical Record. Classifications will add an appropriate Alert in CORIS identifying the high-risk status of the offender.
  - g. MH staff will complete a re-assessment on high-risk offenders post their intake within 30 days of the initial screening. Results of this re-assessment will be reported on the Potential Perpetrator/Victim 30-Day Mental Status Examination (30-MSE; Attachment # 2a). This re-assessment should take into consideration previous reports, a complete file review, consultation with staff familiar with the offender's behavioral presentation and a clinical interview.
  - h. The clinical interview shall be documented in a CHOICES Progress note. If potential perpetrators refuse to participate in the scheduled review sessions and/or counseling regardless of their decision on whether to participate in the review process, tracking will continue as planned/scheduled using the same approach and the completion of Attachment # 2 will occur through record reviews described above and staff consultation. Inmates will not be disciplined for refusing to answer (or not disclosing complete information related to) the questions asked concerning the assessment.
2. Mental Health Response
- a. If the offender victim is not sent to the hospital, they will be placed on 15-minute checks immediately. If the offender is sent to the hospital he or she will be placed on fifteen-minute check status while awaiting transport to the hospital and after being returned from the hospital to the facility in accordance with instructions provided in PPD 5.19 *Prison Rape Elimination Act Procedures*, Section V.F.
  - b. The offender will remain on fifteen-minute check status until evaluated by mental health staff. If the offender is returned from the hospital to the facility after daytime business hours, nursing staff will contact the on-call psychiatric provider immediately using the procedure below, outlined in PPD 6.10 *Suicide Prevention and Intervention*.
  - c. Security staff will provide this notification if medical staff are not available. The on-call psychiatric provider will make determinations regarding current disposition and instruct medical staff on post-incident psychological assessment and/or other interventions as recommended for the offender.
  - d. For after-hours mental health assessment:
    - 1) NHSP/M will call MH at 271-1850, if no answer pager # 564-5701.
    - 2) NHSP/W will call on-site mental health staff.

- 3) NCF will secure the offender in reception and then will call health services at 752-0345.
- 4) FOR ALL SITES: After MH on-duty hours, weekends and holidays, call the on-site health services (if you do not maintain 24-hour nursing staff, contact the NHSP/M health services).
- 5) Health Services NHSP/M 271-1853 or 271-6064
- 6) Health Services at NCF 752-0345
- e. The on-call mental health responder will also be available for assistance with questioning of victims and perpetrators. Investigations, medical staff, and security will use the system described in PPD 6.10 *Suicide Prevention and Intervention* (see above) to access this support. If the alleged perpetrator is a member of the mental health staff, the victim should be offered support through the Victim Advocate's office and outside mental health supports will be arranged pending the outcome of the investigation.
- f. Medical staff will make an immediate phone referral to the on-call mental health responder for assessment upon the offender's return, if sent to the hospital. Security staff will provide this notification if medical staff are not available.
- g. A mental health staff person will meet with the offender within one business day if a referral is written as a result of the alleged assault to determine the need for on-going intervention and/or long-term counseling as well as recommendations on disposition for either the victim or perpetrator. These will be documented per Behavioral Health services guidelines outlined in PPD 6.05 *Behavioral Health Services*.
- h. Mental health 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.

#### **D. Investigations**

1. Offender-on-Offender Sexual Abuse Investigation Procedure
  - a. The Bureau of Investigations will be responsible for the timely investigation of all reported incidents of sexual abuse between offenders.
  - b. The Director of Professional Standards, the Commissioner, or their designee will determine whether an investigation is opened in response to any report of offender-on-offender sexual abuse, and if appropriate, will notify the State Police Major Crimes Unit. If a State Police criminal investigation is opened, the Director of Professional standards will be responsible for providing the State Police with NHDOC assistance as requested.
  - c. The NHDOC offender disciplinary process may proceed prior to the conclusion of a criminal investigation. Offenders who are found to have committed sexual abuse, or have been found to intentionally provide false information to investigators will be disciplined in accordance with PPD 5.25 *Processing Spot, Disciplinary, Incident and Intelligence Reports*. Administrative disciplinary action in accordance with PPD 5.25 *Processing Spot, Disciplinary, Incident and Intelligence Reports* will not be taken against the reported victim of sexual abuse until after the investigation of the sexual abuse allegation is completed.
  - d. All staff will cooperate with the criminal investigators to ensure that the evidence obtained or seized by NHDOC staff is secured and preserved.
2. Staff-on-Offender Sexual Assault Investigations
  - a. Any report of sexual misconduct by a NHDOC staff member aimed at persons under the care and custody of the NHDOC (except as provided in Section b. below) will be immediately reported to the Warden, Director, or designee who will notify the Director of Professional Standards or designee. The Director of Professional Standards or designee will notify the Commissioner, and if appropriate, the State Police Major Crimes Unit of the allegations and the known facts.
  - b. The Director of Professional Standards or designee shall cooperate with the investigators assigned to the criminal investigation and will ensure that all evidence obtained or seized by NHDOC staff is secured and preserved.
  - c. The Attorney General's Office will review all investigations of staff-on-offender sexual assault perpetrated against persons under the care and custody of the NHDOC. The Attorney General's office will determine whether there is sufficient evidence to forward the investigation to the county attorney with jurisdiction for their review for possible prosecution.

3. Administrative Investigation Process
  - a. A NHDOC administrative investigation of allegations of staff sexual assault and/or misconduct towards an offender will proceed whether or not a criminal investigation is opened. If a criminal investigation is opened, the Director of Professional Standards or designee will coordinate with those members of the State Police Major Crimes Unit assigned to the criminal investigation as to the timing and process of the investigations to protect the integrity of the administrative and criminal investigations. The decision to refer a criminal case for prosecution shall be made by the Office of the NH Attorney General.
  - b. The issue of Garrity Rights in the course of an administrative investigation of staff sexual assault and/or misconduct aimed at persons under the care and custody of the NHDOC shall be coordinated with the criminal investigators to ensure that evidence is not obtained in a manner which may compromise the criminal investigation.
  - c. The NHDOC may take appropriate action involving staff accused of sexual assault and/or misconduct prior to the conclusion of a criminal investigation or criminal proceedings, including disciplinary action, if infractions of NHDOC policies are substantiated, and actions are necessary to ensure the continued safety of offenders.
  - d. The NHDOC shall take whatever personnel actions it deems appropriate, up to and including termination, based on the results of its investigation, regardless of the outcome of any criminal investigation or proceeding. Staff found to have committed a sexual assault will be terminated from employment.
  - e. The Warden, Director, Commissioner, or their designee shall take appropriate action as to staff and offender placement during any investigation. Consideration will be given to the nature of the allegations, the safety of the alleged victim, and preservation of the integrity of the investigation. Placement should ensure the alleged victim is kept separate from the accused, regardless of whether the accused is staff or another offender. In all cases, the victim should be protected from intimidation and retaliation.
  - f. Additional information on investigative procedures applicable to PREA investigations can be found in PPD 5.10 *Crime Scene Search, Evidence Collection, Major Crime Scene Search*; PPD 5.25 *Processing Spot, Disciplinary, Incident and Intelligence Reports*; PPD 5.40 *DNA Collection Procedures*; PPD 5.43 *Protective Custody*; PPD 5.10 *Crime Scene Search, Evidence Collection, Major Crime Scene Search*; PPD 5.77 *Searches and Inspections* and PPD 5.62 *Searches, Handcuffing and Transporting Offenders*.
4. Reporting to inmates
  - a. Following the investigation, an investigator shall inform the inmate as to whether the allegation was determined to be substantiated, unsubstantiated or unfounded. If the investigation was conducted by another police agency, an investigator shall request relevant information from that agency in order to inform the inmate.
  - b. Following an inmate's allegation of staff-on-offender sexual abuse, an investigator shall subsequently inform the inmate (unless the investigation determined that the allegation was unfounded) whenever: the staff member is no longer posted within the inmate's unit; the staff member is no longer employed at the facility; the staff member was indicted or convicted on a charge related to the sexual abuse.
  - c. Following an inmate's allegation of offender-on-offender sexual abuse, an investigator shall subsequently inform the alleged victim if the abuser is indicted or convicted of the sexual abuse.
  - d. The investigator will document such notifications or attempted notifications in the investigative reports.
  - e. The reporting to inmates requirements terminate if the inmate is released from NHDOC custody and supervision.
5. PREA Victim Advocate
  - a. In both offender-on-offender and staff-on-offender investigations, the investigator will notify the PREA Victim Advocate and/or Victim Services (Headquarters) immediately upon being made aware of a reported sexual assault and/or sexual misconduct. Notification to the PREA Victim Advocate must be made even where there is delayed reporting of sexual assault.
  - b. The investigator shall also notify the PREA Victim Advocate when a victim interview is scheduled. Prior to the interview, the Victim Advocate may review the PREA Interview Form with the victim. At the conclusion of the interview, the PREA Victim Advocate may debrief with the victim (i.e. safety planning, referrals, assistance regarding intimidation/threats). The PREA Victim Advocate may remain present during the interview for emotional support of the victim only.



- c. The PREA Victim Advocate may:
  - 1) Assist in assuring that all proper agencies have been contacted (i.e. health services, community-based crisis center, etc).
  - 2) Ensure that the victim is treated with fairness, compassion and respect to maintain his/her dignity and privacy throughout the investigative process.
  - 3) Provide emotional support and information to the offender victim.
  - 4) Offer the victim information about available resources, including the local rape crisis service, mental health services, and victim compensation.
  - 5) Inform the victim about the general investigative process and how it progresses.
  - 6) Promote reasonable protection for the victim throughout the investigative process through the security measures of protective custody; keep away notices and re-classification boards.
  - 7) The PREA Victim Advocate will conduct periodic status checks with inmates who have reported sexual abuse for the purpose of identifying indicators of retaliation.
  - 8) Ensure an MOU with the New Hampshire Coalition Against Domestic and Sexual Violence is in effect within six months of the effective date of this policy that details ways victims can access member agency services and logistics of NH DOC and member agency collaboration.
- d. If the PREA Victim Advocate is not available, Victim Services will advise the investigator of alternative arrangements in a timely fashion.

#### **E. Reporting Sexual Abuse**

1. All reports of sexual assault, sexual solicitation or sexual coercion are investigated by NHDOC Investigators and/or NH State Police. Reporting these behaviors is critical to timely delivery of supportive services to offender victims and holding perpetrators accountable for their behavior.
2. When confidential community-based victims' services are available to the offender, access to those services should not be dependent on the victim's full disclosure of the details of the incident.
3. Offenders are encouraged to report whenever either of the following exists:
  - a. An offender has been, or is currently, a victim of sexual assault, sexual solicitation or sexual coercion while in the custody of the NHDOC, whether the perpetrator is another offender, a staff person, volunteer, contractor, or visitor; and/or
  - b. Other offenders or staff have knowledge of anyone being sexually victimized while in NHDOC custody.
4. Offenders should report any sexual victimization, verbally or in writing, to any one of the following:
  - a. Any staff member;
  - b. Investigations Bureau;
  - c. Victim Services Bureau;
  - d. Medical and Mental Health Services;
  - e. Privileged mail to Commissioner of Corrections or the Office of the NH Attorney General (see PPD 5.26 *Inmate Mail Service*);
  - f. Other NHDOC available authorized Sexual Abuse reporting mechanisms, including but not limited to, locked drop boxes, tip lines or sexual assault hotlines; and/or
  - g. Privileged mail to a domestic and sexual violence service provider.
  - h. An inmate may report sexual abuse or sexual harassment to the New Hampshire (NH) Attorney General's Office via privileged mail. The NH Attorney General's office will forward the report to NHDOC officials, allowing the inmate to remain anonymous upon request.
5. Any reported allegation or suspicion of sexual victimization reported by a collaborating outside agency will be directed to the immediate attention of the Director of Professional Standards.
6. Any reported allegation of sexual victimization of an inmate while confined at another correctional facility will be directed to the immediate attention of the Director of Professional Standards. The Director of Professional Standards shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred and shall document the notification. Such notification shall be provided as soon as possible, but no later than 72 hours.
7. When an offender reports verbally or in writing to any staff member, the staff member shall immediately contact the facility's Shift Commander. The Shift Commander will initiate immediate action to minimize:
  - a. Further harm to the offender victim and reporter (if different); and
  - b. Damage to potential crime scenes or evidence.

8. All staff, volunteers, and contractors have a duty to immediately report any information regarding a sexual assault, sexual solicitation or sexual coercion known to them. Failure to report shall result in disciplinary action in accordance with PPD 2.16 *Rules and Guidance for DOC Employees*.
  9. Staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in departmental policy.
  10. In the absence of a signed release or waiver, information provided in confidential communications to any of the following shall be shared/reported in accordance with the standards required by state statute and/or professional licensure, including and not limited to:
    - a. Chaplains/Clergy;
    - b. Medical staff or contractors (RSA 326-B, RSA 329);
    - c. Mental health staff or contractors (RSA 330-A, RSA 330-C); and
    - d. Rape Crisis Centers (RSA 173-C).
  11. Retaliation against any offender or staff member who reports sexual misconduct or cooperates with a sexual misconduct investigation is prohibited and is subject to administrative or criminal action. The Investigations Bureau shall investigate all reports of retaliation and will employ all protection measures warranted such as housing changes or transfers for victims or abusers, removal of alleged staff members or inmate/resident abusers from contact with victims, and emotional support services for inmate/resident or staff who fear retaliation for reporting sexual misconduct or for cooperating with investigations. The conduct and treatment of inmates/residents or staff who reported sexual misconduct or who were reported to have suffered sexual misconduct will be monitored by the investigator or the PREA Victim Advocate assigned to the case for at least 90 days following the report of sexual misconduct to ensure that they were not victims of retaliation. The monitoring will continue beyond the 90 days if the initial monitoring indicated a continuing need. Such monitoring will include periodic status checks by the PREA Victim Advocate. The investigator and the PREA Victim Advocate will document their monitoring responsibilities as part of the investigative report.
  12. Offenders who allege sexual misconduct by staff/contractors/volunteers or by another offender and whose allegations are proven through investigation to be false can be held accountable administratively in accordance with NHDOC Policy 5.25 and criminally in accordance with New Hampshire law Title LXII Criminal Code Chapter 641:4 Falsification in Official Matters. Administrative sanctions shall be commensurate with the nature and circumstances of the abuse committed, the inmate/resident's disciplinary history, and the sanctions imposed for comparable offenses by other inmates/residents with similar histories. A report by an inmate/resident of sexual misconduct 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 the investigation did not establish evidence sufficient to substantiate the allegation. Inmates/residents who have sexual contact with staff may be disciplined only upon a finding that the staff member did not consent to such conduct.
  13. Any contractor or volunteer who engages in sexual misconduct shall be prohibited from contact with inmates/residents. Pursuant to the NH Attorney General's review of the investigation, the case could be forwarded to the respective County Attorney for review for possible prosecution, and if clearly not criminal, to relevant licensing bodies.
  14. Staff may privately report sexual abuse and sexual harassment of inmates to the Director of Professional Standards via mail, telephone, or email through the NHDOC website; Victim Services- PREA reporting section.
  15. Staff shall accept reports of sexual abuse and sexual harassment verbally, in writing, anonymously, and from third parties and shall promptly document the reports. All oral reports are to be followed by a written incident report prior to the completion of the employee's workday. One written report is required with attached narrative statements from each officer/employee involved describing the circumstances.
- F. Classification.** Through classification, assessment, available technologies and improvements to institutional design where feasible, the NHDOC will attempt to separate and carefully monitor both sexually abusive and vulnerable offenders and past sexual abusers and victims to reduce the incidence of sexual assault and/or misconduct.
1. The NHDOC's objective classification plan for all offenders is guided by PPD 7.14 *Classification and Orientation Procedures*. That PPD is augmented by the approved NHDOC Classification Manual, as revised, documenting detailed protocols and procedures.

2. The 30-day Orientation and Intake process for new offenders entering NHDOC facilities shall include offender education consisting of verbal and written information about preventing and reporting sexual assault. The inmate handbook shall include the same information.
3. A brief review of the same information shall be made available to offenders upon transfer to each facility, within 15 days of arrival at the new facility.
4. The Initial Classification process is designed to minimize risk of offender sexual assault and sexual victimization while in NHDOC custody. Mental Health screenings and Risk and Needs assessments at intake include questions to determine whether the offender may be vulnerable to sexual victimization or are at-risk for perpetrating sexual assault. As new offenders are assessed for housing assignment, the Classification Board shall consider their level of vulnerability and risk.
5. As offenders are assessed for Re-Classification, the Classification Board shall consider mental health screenings, risk and needs assessments, case records, PREA investigations records and collateral information in determining whether the offender may be vulnerable to victimization or at risk for perpetrating sexual assault.
6. Classifications shall consider the protection needs of offenders who are vulnerable to sexual victimization when making housing and work assignments.
7. When an offender is reported as a victim of sexual assault, sexual solicitation, or sexual coercion, an immediate temporary housing change for that offender or for the alleged perpetrator shall be made to prevent or stop further sexual victimization and to protect the offender victim from retaliation during the investigation.
8. In all cases, disruption of the victim's privileges, level of security, programs and routines should be minimized. Whenever possible alleged perpetrators should be removed from the victim's housing unit.
9. In deciding whether to assign a transgender or intersex inmate to a facility and in making housing and program assignments, classification should consider on a case-by-case basis whether the placement will ensure the inmate's health and safety, and whether the placement would present management or security problems. Placement and program assignments shall be reassessed at least twice each year to review any threats to safety experienced by the inmate. The inmate's own views with respect to his or her own safety shall be given serious consideration.
10. Lesbian, gay, bisexual, transgender or intersex inmates shall not be placed in dedicated facilities or housing units solely on the basis of such identification or status.
11. Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.

**G. Staff Training.**

1. The NHDOC is committed to the prevention of sexual victimization through staff training and offender education. All staff, volunteer and contractor training will include information on this policy and the Prison Rape Elimination Act. The goal of all PREA training requirements, updates, and materials is to ensure that staff know their responsibilities for preventing, reporting and detecting sexual assault.
2. Training should outline staff response to sexual assault according to this policy and the details of NH RSA 632, other relevant state and federal law and PREA Standards. Training should highlight or review an offender's right to be free from sexual victimization and the right of all persons in the prison environment to be free from retaliation as a result of reporting a PREA violation.
3. Information on professional communication skills, the legal sanctions for staff-on-offender sexual assault and/or misconduct and offenders' inability to consent should be stressed along with the dynamics of prison sexual assault and common reactions of victims. The details of training requirements are outlined below:
  - a. All new NHDOC staff will receive instruction related to the prevention, detection, reporting, and investigation of offender sexual victimization during orientation, along with a copy of the PREA Policy PPD 5.19 *Prison Rape Elimination Act* Procedures and information on NH RSA 632 and other related laws, including the requirements of PPD 5.10 *Crime Scene Search, Evidence Collection and Major Crime Scene Search*.
  - b. All appropriate staff will be trained on the requirements of first responders to incidents of sexual assault. Staff will be given an opportunity to review this information and ask questions. This will be documented through Human Resources.
  - c. All security staff will be trained in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

- d. NHDOC staff will receive training and/or updates on offender sexual victimization each year during required annual in-service training. These may be delivered in a variety of formats including computer-based modules and PREA first responders' drills at the facility level. All staff will be given a chance to ask questions, and verification that they understand the policy should be documented.
- e. Additional specialized training shall be offered periodically (at the recommendation of the PREA Coordinator or designee) to Mental Health professionals, SART members, Health Services professionals, Chaplains, NHDOC investigators and other staff identified by the PREA Coordinator or designee to update them on recent developments in the area of prison sexual victimization. Their participation in and understanding of the training should be documented.
- f. The PREA Coordinator or designee will be responsible for researching, acquiring or developing PREA course materials and for managing the documentation of adherence to this training policy in collaboration with the Director of Security and Training. The PREA Coordinator or designee and Victims' Services staff will also arrange train-the-trainer classes as needed for PREA courses and/or facilitate staff training as needed.
- g. All training will be approved by the Director of Security and Training. The NHDOC Bureau of Training will be responsible for the implementation of curricula for new employee orientation, pre-service academy and all in-service trainings.
- g. Volunteers working closely with offenders are required to complete the NHDOC "Orientation for Citizen Involvement" program before they have direct contact with offenders. The instruction reviews the NHDOC PREA policy, relevant laws and reporting sexual misconduct.
- h. All contracts, MOUs, RFPs and written agreements with entities whose employees enter NHDOC facilities or have off-site contact with work release offenders will require the contracting agency to document a review of the PREA policy and any other material provided by NHDOC. Signed agreements to adhere to this policy from each employee must be obtained and provided to NHDOC.

**H. Offender Education.** The NHDOC will offer offender education that will increase awareness of safe reporting mechanisms and available services to victims in order to create an institutional reporting culture and decrease the incidence of sexual victimization. The Department provides all offenders with information about sexual assault, sexual solicitation, sexual coercion, reporting, investigations and responses to sexual victimization as well as information on the penalties for violations of the PREA policy and related laws. Initial offender orientation and other ongoing educational opportunities are strategies to prevent sexual abuse and encourage safe reporting of sexual victimization whenever it occurs.

1. All offenders shall be informed about:
  - a. Federal law known as the Prison Rape Elimination Act and the New Hampshire Department of Corrections' Zero Tolerance policy;
  - b. New Hampshire criminal laws related to sexual assault, sexual solicitation and sexual coercion and the penalties for violations of those laws;
  - c. Departmental policy and procedures related to staff-on-offender and offender-on-offender sexual victimization and penalties for violation of the PREA policy;
  - d. Facts about sexual abuse and instructions for reporting incidents;
  - e. Information about investigations, medical care, disease prevention and support services available for victims;
  - f. Safety guidelines (avoiding risk situations) for preventing sexual victimization; and
  - g. Guidelines on intentional false reporting, including the disciplinary penalties and assurances that they will only be disciplined if it is proven that the offender knew the allegation was false at the time they made it.
1. The above information shall be provided to all offenders through each of the following means:
  - a. Inmate Orientation during the 30-day "Reception & Diagnostic" process, including signed documented receipt of "*Overview of Sexual Misconduct.*" (Attachment #5);
  - b. Inmate Handbook provided at each correctional facility;
  - c. Facility-specific orientation provided upon transfer between facilities;
  - d. Informational brochure and fact sheet about sexual abuse in prison;
  - e. Recorded presentations displayed on each facility's Closed Circuit Television, as CCTV is available to offenders;

- f. Information on confidential victims' services available in the community and information on how to contact them while in a NHDOC facility and upon re-entry;
- g. Additional educational workshops made available to offenders in each facility; and
- h. Other means that may become available.

- I. Data Collection and Data Reporting.** The Department will use data collection systems to accurately track sexual assaults and sexual misconduct and to facilitate identification of the core risk and causal factors. The Director of Professional Standards will review the data and will compile a yearly report with recommendations for quality improvement measures based on the information. With the approval of the Commissioner, the report will be made available to the public on the department's web site. The Director of Professional Standards will ensure adherence to PREA standards including coordinating any required audits.
1. Records from these investigations will be retained for 10 years and then destroyed.
  2. All requests for reports that can be generated from the electronic data base of PREA tracking information will be approved by the Commissioner or designee in accordance with NHDOC policies and the NH Right to Know Law.
  3. Information from PREA investigations pertaining to classification, housing assignments, risk of perpetration or safety of victims shall be integrated into CORIS as needed for the prevention of sexual assault and victimization.
  4. All NHDOC PREA cases will be reviewed by the NHDOC Sexual Assault Resource Team (SART). The Case Review Protocol is Attachment # 7.
  5. It is the responsibility of the Director of Professional Standards or designee to file yearly PREA census information to the Bureau of Justice Statistics in a timely manner and to respond to any request for data from the Department of Justice in accordance with federal PREA guidelines.
  6. The Director of Professional Standards may enlist the assistance of the Director of Research and Planning to compile summative reports on PREA investigations and PREA data.

## References:

### Criminal Statutes and Policies Referenced and Additional Sources

PPD 5.10 Crime Scene Search, Evidence Collection and Major Crime Scene Search  
 PPD 2.16 Rules and Guidance for DOC Employees  
PPD 7.14 Classification and Orientation Procedures  
 PPD 5.26 Confidential Mail  
 PPD 1.16 Grievances and Complaints by Persons Under DOC Supervision  
 PPD 5.25 Processing Spot, Disciplinary, Incident and Intelligence Reports  
 PPD 5.40 DNA Collection Procedures  
 PPD 5.43 Protective Custody  
 PPD 5.55 Evidence Gathering, Preservation and Asset Forfeiture  
 PPD 5.62 Searches, Handcuffing and Transporting Offenders  
 PPD 5.77 Searches and Inspections  
 PPD 6.05 Behavioral Health Services Guidelines  
 PPD 6.10 Suicide Prevention and Intervention  
 NHDOC Classification Manual  
 Article XXVII (27.22) of the Collective Bargaining Agreement  
 RSA 326-B Nurse Practice Act  
 RSA 329 Physicians and Surgeons  
 RSA 632-A: 2 – Aggravated Felonious Sexual Assault (Felony)  
 RSA 632-A: 3 – Felonious Sexual Assault (Felony)  
 RSA 632-A: 4 – Sexual Assault (Misdemeanor)  
 RSA 645:1 – Indecent Exposure and Lewdness (Misdemeanor)  
 RSA 641:5 – Tampering with Witnesses and Informants (Felony)  
 Title XII Public Safety and Welfare RSA 173-C Confidential Communication Between Victims and Counselors  
 Title LXII Criminal Code 641:4 Falsification in Official Matters  
 Title I Chapter 21-M8-K -NH Rights of Crime Victims  
 The Prison Rape Elimination Act (PREA, P.L. 108-79)

*Standards for the Prevention, Detection, Response, and Monitoring of  
Sexual Abuse in: Adult Prisons and Jails, National Prison Rape Elimination Commission, August 2009  
Sexual Assault: Protocol for Law Enforcement Response & Investigation of Adult Sexual Assault Cases, NH  
Governor's Commission on Domestic & sexual Violence*

FORBES/jc  
Attachments

## **Emergency Response Worksheet**

### **Recent Sexual Assault (Within 120 hours/5 days)**

*This worksheet is a guideline and provided to assist in the response to a reported sexual assault.*

#### **Officer in Charge/First Responder Responsibilities**

Evaluate the safety for the victim and any other person at potential risk

Activate emergency medical services as needed

Segregate the victim in health services, if possible

- Do not segregate the victim within sight or sound distance of other victims, witnesses or perpetrators
- Document victim spontaneous utterances
- The victim(s)'s clothing should only be collected by an investigator or a person trained in evidence collection
- Written statements should not be taken from the victim(s)

Interview the victim to obtain basic information about the sexual assault

When did the sexual assault occur?

Where did the sexual assault occur?

Who assaulted you?

Was the sexual assault anal, vaginal, oral or other?

When was the last time you showered?

Have you changed your clothes since the sexual assault?

If yes, where is the clothing?

Have you brushed your teeth since the sexual assault?

If yes, what is the location of the toothbrush?

Were there witnesses?

Secure the scene(s) of the sexual assault as a crime scene

- Designate a staff member to secure the crime scene
- The officer will complete the in/out log and document the scene at the time of arrival to when relieved; this should include any changes to the scene resulting from the intrusion of individuals entering or leaving the scene

Ensure that the collection of evidence is only completed by an investigator or a person trained in evidence collection

Identify the perpetrator(s)

Segregate and secure the perpetrator(s) as a crime scene in a dry cell

- Do not segregate within sight or sound distance of victim(s), witnesses or other perpetrators
- Document the perpetrator(s) spontaneous utterances but do not interview
- The perpetrator(s)'s clothing should only be collected by an investigator or a person trained in evidence collection

Segregate witnesses

- Do not segregate witnesses within sight or sound distance of victim(s), perpetrator(s) or other witnesses
- Document witness(s) spontaneous utterances but do not interview
- Written statements should not be taken from the witnesses

Secure all offenders at the scene and gather their identification cards

Notify the Shift Commander

Promptly complete an incident report with attached narrative statements from all staff involved in the incident

Promptly submit any evidence collected and all reports to the Investigations Bureau

**Shift Commander Responsibilities**

Ensure that the Officer in Charge/First Responder responsibilities are completed

Ensure that the collection of evidence is only completed by an investigator or a person trained in evidence collection

Notify health services

- Health services will determine whether or not the victim will be transported to the nearest community hospital for specialized evidence collection (If this is a past assault, more than 120 hours/5 days prior, trace evidence will not be collected from the victim's body)

If the victim consents, transport the victim to a community hospital for specialized evidence collection

- The transport will be conducted with utmost sensitivity and the lowest level of intrusion
- All strip searches will be conducted at health services when possible
- Transport team members will document a time log and any spontaneous utterances made by the victim
- Transport team members will not interview the victim

Notify the Investigations Bureau

- The investigator will notify the PREA Victim Advocate upon being made aware of a reported sexual assault and/or sexual misconduct.

Notify the warden, facility head or designee

Notify mental health

- If mental health staff are not on duty, notify nursing to evaluate the victim's safety and needs for emergency measures according to PPD 6.10



## PREA Risk Assessment New Hampshire Department of Corrections



Offender Name:		Doc #:	Date:
Reason for Assessment:	Initial:	Gender:	Institution:

### SEXUAL VICTIMIZATION POTENTIAL

	Comments
<input type="checkbox"/> Yes(2) <input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	First incarceration (Adult, prison only)
<input type="checkbox"/> Yes(1) <input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Age less than 21 years or over 65 years
<input type="checkbox"/> Yes(1) <input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Size & Stature Male: less than 5'6" and/or 130 lbs. Females: less than 5'0" and/or 80 lbs
<input type="checkbox"/> Yes(3) <input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Previous or current commitment for sex offense/crime with sexual motivation in which the victim was a child of 13 years or younger or elderly person of 65 years or older (If 'Yes', narrative required)
<input type="checkbox"/> Yes(8) <input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Mental impairment-developmentally or intellectually disabled, mentally ill, or physical disability(If 'Yes' narrative required in medical record)
<input type="checkbox"/> Yes(8) <input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	History of sexual abuse-victimization
<input type="checkbox"/> Yes(11) <input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Victim of sexual abuse in confinement verified by investigative or incident reports to include jails and county correctional facilities. (If 'Yes', narrative required)
<input type="checkbox"/> Yes(6) <input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Behavior characteristics or display of sexual orientation in a way that projects vulnerability (is perceived to be gay, lesbian, transgender, intersex, or gender non-conforming) (If 'Yes', narrative required)
<input type="checkbox"/> Yes(1) <input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Criminal history is exclusively non-violent
<input type="checkbox"/> Yes(1) <input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Offender perceives themselves as vulnerable (If 'Yes', narrative required)
<b>Score:</b>	
Risk Level for Sexual Victimization Potential	A score of 11 or more is at risk for Sexual Victimization

**SEXUAL PREDATION POTENTIAL**

<input type="checkbox"/> Yes(8) <input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Previous sexual abuse, sexual harassment or sexual solicitation in confinement verified by investigative or disciplinary reports to include jails and county correctional facilities.
<input type="checkbox"/> Yes(2) <input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	One or more prior incarcerations(s) (Adult, Prison Only)
<input type="checkbox"/> Yes(2) <input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Prior violence in prison, to include other state prisons with equivalent behavior descriptions
<input type="checkbox"/> Yes(2) <input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Convictions for sexual offense/crimes with motivation in which the victim was 14 years or older (If 'Yes', narrative required)
<input type="checkbox"/> Yes(2) <input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Previously or currently assessed as high violence potential (If 'Yes', narrative required)
<b>Score:</b>	
<b>Risk Level for Sexual Predation Potential</b>	A score of 8 or more is a Potential Predator

\_\_\_\_\_  
Reviewer's Signature\_\_\_\_\_  
Reviewer's Name (Print)\_\_\_\_\_  
Date

Follow up required    YES    or    NO	Next scheduled appointment date
---------------------------------------	---------------------------------

Distribution: Original- Intuitional File; Copies-Mental Health file, Classifications

**VICTIM SERVICES PROTOCOL SUPPLEMENT**  
**New Hampshire Department of Corrections**  
**Victim Services Protocol for Sexual Assault/Misconduct**

**I. Purpose**

To coordinate efforts between DOC staff, law enforcement and community providers to implement best practices and offer services to victims of sexual assault under the care and supervision of the New Hampshire Department of Corrections.

**II. Support Services:**

**A. The role of the crisis center advocate:**

*The New Hampshire Coalition Against Domestic and Sexual Violence* is a statewide network of independent member programs committed to ending domestic and sexual violence by:

- ensuring that quality services are provided to victims/survivors of domestic and sexual violence;
- preventing future violence by educating the public;
- influencing public policy;
- encouraging the provision of services for perpetrators.

The N.H. Coalition is comprised of 14 independent programs throughout the state that provide services to survivors of sexual assault and domestic violence. Their services are free, confidential, and available to all victims regardless of age, race, gender, religion, sexual orientation, physical ability or financial status. The services include:

- Emergency shelter and transportation
- Legal advocacy in obtaining restraining orders against abusers
- Hospital, police, and court accompaniment
- Information about and help in obtaining public assistance

Immediate inclusion of crisis center advocates is recognized as a crucial service for the victim of a sexual assault. For a sexual assault victim, being at the hospital or involved in the criminal justice system can be extremely difficult. Crisis center advocates provide victims with emotional support, information and referrals. Victims are usually more cooperative and better able to assist law enforcement when they feel supported, believed, and safe.

Advocates offer victims a support person whose only goal is to help them make decisions about what has and is happening to them. The role of the advocate is to provide support and information, and then to support the victim in whatever way she or he chooses. Advocates are trained on the sexual assault medical examination and the criminal justice system. They can give sexual assault victims complete information, so that they are aware of their options and can make informed decisions.

Crisis center advocates are not a part of the criminal justice system. It is not the advocate's goal to find out the details of what happened to the victim. The information discussed between victim and advocate is focused on the victim's feelings and emotional needs. While advocates do not solicit details, they periodically hear specific information about the assault. Police should be assured that the sole purpose of the advocate is to support the victim's efforts to articulate emotional concerns.

Sexual assault victims seeking support from a crisis center advocate have privileged communication under NH RSA 173-C. This statute prohibits advocates from disclosing any information shared by the victim without a waiver or release. In order to be covered under the Confidential Communications statute, each of the advocates has completed a minimum of 30 hours of training through one of the 14 bona fide Crisis Centers in New Hampshire.

Because there is no time frame on the healing process, crisis center advocates provide support not just at the hospital or police station, but in the weeks or months that follow. The advocate who supports the sexual assault victim through the criminal justice system sets up the necessary relationship and access to 24-hour support and information.

## B. **The role of the victim/witness advocate and types of victim advocates**

The role of a **prosecution-based** victim/witness advocate is to provide support, information and referrals to sexual assault victims once an arrest has been made and the case has been sent to the County Attorney or Attorney General's Office for possible prosecution. Unlike the crisis center advocates, victim/witness advocates are part of the prosecution team and do not have a confidentiality privilege. They provide services through the criminal, not the civil, process. A victim/witness advocate's role is to ensure that the rights of victims of crime are protected, and that they are treated sensitively and fairly throughout the often confusing and frightening criminal justice process. The goal is to reduce the impact that crime and the resulting involvement in the criminal justice system has on the lives of victims and witnesses.

Advocates also promote victim rights through public awareness and training. Victim/Witness Assistance Programs throughout the state provide services to victims of felony level crimes. The Attorney General's Office provides services in all of the state's homicide cases; and each of the County Attorney's Office provides services to victims of other felony crimes, including sexual assault. The NH Department of Corrections provides post sentencing Victim Services, including victim support, notification and services to incarcerated individuals who report sexually abuse in correctional facilities.

The New Hampshire Crime Victims Bill of Rights, RSA 21-M: 8-k assures victims of crime certain rights and services. Victim Advocates are available to provide support and assistance through the entire criminal investigation, prosecution and corrections process and to ensure that those rights are protected.

Some services provided by the Victim Advocate include:

- Orientation to the criminal justice system.
- Case status information.
- Notification regarding court dates, motions filed, court rulings, bail and bail restrictions, dispositions, appeals, and parole hearings.
- Emotional support and accompaniment during court and parole hearings.
- Information and consultation regarding possible witness tampering.
- Assistance in obtaining witness fees.
- Referrals for mental health treatment, address confidentiality and other needed services.
- Assistance with compensation claims to the Victims' Assistance Commission.
- Information on restitution and other forms of financial entitlements.
- Assistance with property return.
- Employer, school, landlord, and creditor intercession services.
- Victim/witness waiting and reception areas separate from defendant's areas.
- Information on the victim's rights to have input at court and parole board hearings.

## C. **The role of the PREA Victim Advocate PREA Victim Advocate**

- a. In both offender-on-offender and staff-on-offender investigations, the Investigator will notify the PREA Victim Advocate and/or Victim Services (Headquarters) immediately upon being made aware of a reported sexual assault and/or sexual misconduct. Notification to the PREA Victim Advocate **must** be made even where there is delayed reporting of sexual assault.
- b. The investigator shall also notify the DOC Victim Advocate when a victim interview is scheduled. Prior to the interview, the Victim Advocate may review the DOC PREA Interview Form with the victim. At the conclusion of the interview, the Victim Advocate may debrief with the victim (i.e. safety planning, referrals, assistance regarding intimidation/threats). The PREA Victim Advocate may remain present during the interview for emotional support of the victim only.
- c. The Victim Advocate may:
  1. Assist in assuring that all proper agencies have been contacted (i.e. health services, community-based crisis center, etc).
  2. Ensure that the victim is treated with fairness, compassion and respect to maintain for his/her dignity and privacy throughout the investigative process.
  3. Provide emotional support and information to the offender victim.

4. Offer the victim information about available resources, including the local rape crisis service, mental health services, and victim compensation.
  5. Inform the victim about the general investigative process and how it progresses.
  6. Promote reasonable protection for the victim throughout the investigative process through the security measures of protective custody; keep away notices and re-classification boards.
  7. Ensure an MOU with the New Hampshire Coalition Against Domestic and Sexual Violence is in effect within six months of the effective date of this policy that details ways victims can access member agency services and logistics of NH DOC and member agency collaboration.
- d. If a NHDOC Victim Advocate is not available, Victim Services will advise the PREA investigator of alternative arrangements in a timely fashion.

**D. Community Based Advocacy (Crisis Centers & Hospitals)**

The NHDOC PREA Victim Advocate will collaborate with the local rape crisis center serving the jurisdiction where the assault took place. Consistent with approved security measures, the offender victim can choose whether he or she will access the services of the crisis center.

If an offender victim is transported to the hospital emergency room for a forensic Sexual Assault medical exam, the appropriate crisis center will be called to have an advocate present to offer services. A crisis center advocate will report to the hospital to be available to the offender for crisis intervention and support. Calls from NHDOC staff to the appropriate crisis center are to request an advocate meet them at the hospital. An offender's personal information need not be shared during these calls.

# NHDOC PREA ADVOCATE

## Sexual Activity Observed/Reported (Sexual assault/abuse or Sexual misconduct)

### Standard Procedure

- PREA Advocate notified by Investigations by phone and PREA notification form
- PREA Advocate contacts investigator to assess case/forensic interview
- PREA Advocate and Investigator schedule time for forensic interview
- Pre-interview: PREA Advocate reviews Interview Form with victim
- Forensic Interview: PREA Advocate present for emotional support only
- Post-interview: PREA Advocate debriefs with victim (i.e. safety planning, referrals, intimidation/threats )

### Role of PREA Victim Advocate

- Treat the victim with fairness and compassion
- Respect for their dignity and privacy throughout the investigative process
- Inform the victim of the PREA Victim Advocate’s limits of confidentiality
- Provide emotion support and information
- Offer the victim information about available resources, financial assistance, mental health services
- Inform the victim about the investigative process and how it progresses
- Ensure that the victim is reasonably protected from the accused throughout the investigative process through the security measures of protective custody, keep separates, and re-classification boards

### **Unsubstantiated/Unfounded**

#### **Administrative & Criminal Code**

- PREA Advocate with/without Investigator to explain the decision to not progress with either an administrative finding and/or criminal case
- Refer victim to supportive services
- Inform prison staff (need to know basis) that victim may be “vulnerable”
- If appropriate, inform victim that there may be a further investigation if their report was deemed false

### **Substantiated**

#### **Administrative Finding**

- Informed as to the outcome of administrative case (i.e. will be transferred/no longer at facility; will be transferred to another housing unit)

#### **Criminal Case**

- Ensure that victim understands their rights under the NH Crime Victims’ Bill of Rights
- Continued emotional support
- Introductions with Attorney General’s Office or County Attorney’s Office
- Transfer of case to appropriate V/W advocate

**OFFENDER ON OFFENDER PREA TRACKING FORM**

Date \_\_\_\_\_ Filed by \_\_\_\_\_

**2. Victim: last name:** \_\_\_\_\_ **first:** \_\_\_\_\_ **CORIS ID** \_\_\_\_\_

Ht & Wt.	Sex	Age	Custody level at time of incident	Housed at time of incident	Race	Sexual Orientation Reported	Diagnose d MH Disorder	Previous PREA	Housed after Move due to PREA? <input type="checkbox"/> yes <input type="checkbox"/> No
H _____ W _____	<input type="checkbox"/> M <input type="checkbox"/> F	<input type="checkbox"/> Under 18 <input type="checkbox"/> 18 – 24 <input type="checkbox"/> 25 – 29 <input type="checkbox"/> 30 – 34 <input type="checkbox"/> 35 – 39 <input type="checkbox"/> 40 – 44 <input type="checkbox"/> 45 +	<input type="checkbox"/> C1 <input type="checkbox"/> C2 <input type="checkbox"/> C3 <input type="checkbox"/> C4 <input type="checkbox"/> C5 <input type="checkbox"/> Paroled <input type="checkbox"/> AHC	<input type="checkbox"/> NCF (unit) _____ <input type="checkbox"/> SP/M (unit) _____ <input type="checkbox"/> THU (unit) _____ <input type="checkbox"/> SP/W (unit) _____ <input type="checkbox"/> N/A _____	<input type="checkbox"/> White <input type="checkbox"/> Hispanic <input type="checkbox"/> Black <input type="checkbox"/> Native Hawaiian/ Pacific Islander <input type="checkbox"/> Asian <input type="checkbox"/> Native Am./Alaska <input type="checkbox"/> Other	<input type="checkbox"/> heterosexual <input type="checkbox"/> homosexual <input type="checkbox"/> bisexual <input type="checkbox"/> transgender <input type="checkbox"/> not sure	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> not sure	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> not sure	<input type="checkbox"/> NCF (unit) _____ <input type="checkbox"/> SP/M (unit) _____ <input type="checkbox"/> THU (unit) _____ <input type="checkbox"/> SP/W (unit) _____ <input type="checkbox"/> N/A _____

\*Additional victims  yes  no (fill section 1 only of a separate form for each and attach)

**3. Suspect: last name:** \_\_\_\_\_ **first name:** \_\_\_\_\_ **CORIS ID** \_\_\_\_\_

Ht & Wt.	Sex	Age	Custody level at time of incident	Housed at time of incident	Race	Sexual Orientation Reported	Diagnose d MH Disorder	Previous PREA	Housed after Move due to PREA? <input type="checkbox"/> yes <input type="checkbox"/> No
H _____ W _____	<input type="checkbox"/> M <input type="checkbox"/> F	<input type="checkbox"/> Under 18 <input type="checkbox"/> 18 – 24 <input type="checkbox"/> 25 – 29 <input type="checkbox"/> 30 – 34 <input type="checkbox"/> 35 – 39 <input type="checkbox"/> 40 – 44 <input type="checkbox"/> 45 +	<input type="checkbox"/> C1 <input type="checkbox"/> C2 <input type="checkbox"/> C3 <input type="checkbox"/> C4 <input type="checkbox"/> C5 <input type="checkbox"/> Paroled <input type="checkbox"/> AHC	<input type="checkbox"/> NCF (unit) _____ <input type="checkbox"/> SP/M (unit) _____ <input type="checkbox"/> THU (unit) _____ <input type="checkbox"/> SP/W (unit) _____ <input type="checkbox"/> N/A _____	<input type="checkbox"/> White <input type="checkbox"/> Hispanic <input type="checkbox"/> Black <input type="checkbox"/> Native Hawaiian/ Pacific Islander <input type="checkbox"/> Asian <input type="checkbox"/> Native Am./Alaska <input type="checkbox"/> Other	<input type="checkbox"/> heterosexual <input type="checkbox"/> homosexual <input type="checkbox"/> bisexual <input type="checkbox"/> transgender <input type="checkbox"/> not sure	Yes _____ No _____ <input type="checkbox"/> not sure	Yes _____ No _____ <input type="checkbox"/> not sure	<input type="checkbox"/> NCF (unit) _____ <input type="checkbox"/> SP/M (unit) _____ <input type="checkbox"/> THU (unit) _____ <input type="checkbox"/> SP/W (unit) _____ <input type="checkbox"/> N/A _____

Exact Location Of incident	Date & time	Reported by:	Medical-check all that apply	Level	Nature	Disposition Date_____
		<input type="checkbox"/> Victim <input type="checkbox"/> Another offender <input type="checkbox"/> Family of victim <input type="checkbox"/> Correctional officer <input type="checkbox"/> Other staff <input type="checkbox"/> Health Services <input type="checkbox"/> Instructor/teacher <input type="checkbox"/> Counselor <input type="checkbox"/> Chaplain/ religious <input type="checkbox"/> Other	<input type="checkbox"/> No Injury detected <input type="checkbox"/> Injury <input type="checkbox"/> Treated <input type="checkbox"/> Refused Tx	<input type="checkbox"/> Forced * <input type="checkbox"/> Coerced * <input type="checkbox"/> Strategic * <input type="checkbox"/> Willing	<input type="checkbox"/> Penetration <input type="checkbox"/> object <input type="checkbox"/> finger (s) <input type="checkbox"/> penis <input type="checkbox"/> Oral contact <input type="checkbox"/> Fondling <input type="checkbox"/> Verbal	<input type="checkbox"/> Substantiated <input type="checkbox"/> Unsubstantiated <input type="checkbox"/> Unfounded <input type="checkbox"/> Ongoing <b>Services rendered</b> <input type="checkbox"/> Hospitalized <input type="checkbox"/> Rape kit <input type="checkbox"/> Counseling <input type="checkbox"/> Victim Ad. <input type="checkbox"/> STI testing

**3. Incident details**  Attempted  Completed

\* Coerced = threat of harm \* Strategic = promise of reward \* Forced = physical force



## **DEFINITIONS**

The following definitions refer to terms contained within this policy and terms that are important for staff know in order to respond to sexual victimization of offenders.

**Allegation:** An oral, written, or electronic statement that sexual abuse has occurred or may be occurring or a report that there is significant risk of it occurring that is provided to a staff member or outside agency.

**Audit:** A review of information, including written records and interviews with staff and offenders, to determine the extent to which NHDOC policies, practices, and protocols comply with the PREA standards

**Contractor:** A person who provides services to NHDOC facilities or to offenders on a one time basis or on a recurring basis according to a contractual agreement.

**Credibility assessment:** An investigator's process of conducting interviews and weighing evidence to determine the truthfulness of victim, witness, and suspect statements.

**Employee/ Staff:** A person who works directly for NHDOC or a person who provides direct services to offenders in a facility acting as a staff member on a fulltime or part time permanent basis according to a contractual agreement with the NHDOC (e.g., contracted mental health providers etc.)

**Facility/ Facility head:** The Warden of an NHDOC prison facility or the chief authority over a transitional housing unit, probation and parole district office or a facility contracted or charged with housing to housing NHDOC offenders (local correctional or law enforcement agency or by a private entity (whether for-profit or nonprofit).

**Gender identity:** A person's internal, deeply felt sense of social identity of being male or female, regardless of the person's sex at birth.

**Gender nonconforming:** A person whose gender identity and/or expression do not conform to gender stereotypes generally associated with his or her birth sex. This can include characteristics that appear feminine in men or masculine in women, whether they are heterosexual or homosexual, and despite a gender identity.

**Intersex:** A condition usually present at birth that involves reproductive, genetic, or sexual anatomy that does not seem to fit the typical definitions of female or male.

**Medical practitioner:** 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, such as nurses, doctors, physicians assistants.

**SANE Nurse or Sexual Assault Nurse Examiner:** Specialized medical practitioner (nurse) that has specialized training for treating sexual abuse victims.

**Mental health practitioner:** A mental health professional credentialed and permitted by law to evaluate and care for patients within the scope of his or her professional practice.

**Need to know:** A criterion for limiting access of certain sensitive information to individuals who require the information to make decisions or take action with regard to an offender's safety or treatment or to the investigative process.

**Offender:** For the purposes of this policy and offender in any individual under the care and custody of NH Department of Corrections. This includes offenders of DOC prison facilities, residents of NHDOC transitional housing units, those on administrative home confinement, those residing in facilities that have been contracted to house DOC offenders and those on probation and parole. All these categories of offenders have the right to remain free from sexual victimization by other offenders or by DOC staff while residing in or while reporting to any DOC facility.

**PREA Staff:** PREA compliance managers, PREA coordinators or designees, and designated staff of the Bureau of Victim's Services including DOC PREA victim advocates, responsible for developing, implementing, and overseeing compliance with PREA standards and NHDOC PREA policies as well as PREA investigative staff as designated by the Director of Professional Standards.

**Recent Assault:** A reported incident of a sexual assault alleged to have taken place within the past 120 hours. **Past Assault** refers to an incident alleged to have taken place more than 120 hours from the time it is reported.

**Report:** Any allegation of sexual abuse including all reports covered in the definition of allegation above and any reports by witnesses, staff, family members or volunteers; included reports of PREA incidences to other agencies such as rape crisis centers or the Attorney General's Office

**Review:** An analysis of the department's response to a reported incident of sexual victimization, formerly undertaken by the Sexual Assault Review Panel, or informally by staff of the Office of Victim's Services.

### **TYPES OF SEXUAL ASSAULT & VICTIMIZATION COVERED BY PREA**

**Sexual victimization:** Encompasses all acts listed below and any act perpetrated by an offender that involves unwanted sexual attention or solicitation, whether forced or coerced, physical or verbal as well as any consensual act that is committed by a person with authority over or control of another individual.

**Sexual Solicitation:** Any request of a sexual nature; a request for sexual contact or for performance of sexual act, or a request to allow another to perform a sexual act, includes requests to watch or be watch while a any act is performed for the purpose of sexual gratification, or while sexual contact is initiated or while a body part is exposed for the purpose of sexual gratification.

**Sexual Coercion:** Any attempt to influence an individual to consent or participant in sexual contact including bribes, promises of remuneration or special consideration and threats of force or violence or harm to others and or repercussions such as deprivation of privileges. Any sexual relationship between an offender and a NHDOC staff member constitutes sexual coercion.

#### **1. Offender-On-Offender Sexual Abuse**

**Offender-on-offender sexually abusive contact:** Non-penetrative touching (either directly or through the clothing) of genitalia, anus, groin, breast, inner thigh, or buttocks without penetration by an offender of another offender without the latter's consent, or of an offender who is coerced into sexual contact by threats of violence, or of an offender who is unable to consent or refuse.

**Offender-on-offender sexually abusive penetration or sexual assault:** Penetration by an offender of another offender without the latter's consent, or of an offender coerced into sexually abusive penetration by threats of violence, or of an offender who is unable to consent or refuse. The sexual acts included are:

- Contact between the penis and the vagina or the anus;
- Contact between the mouth and the penis, vagina, or anus; or
- Penetration of the anal or genital opening of another person by a hand, finger, or other object.

**Offender-on-offender sexual harassment:** Repeated and unwelcome sexual advances, requests for sexual favors, verbal comments, or gestures or actions of a derogatory or offensive sexual nature by one offender directed toward another; includes intentional indecent exposure, voyeurism or masturbation that is intentionally in the presence of another offender despite the offender's objections or requests for privacy.

#### **2. Staff Sexual Misconduct**

**Staff-on-offender sexual abuse:** Encompasses all occurrences of staff-on-offender sexually abusive contact, staff-on-offender sexually abusive penetration, staff-on-offender indecent exposure, and staff-on-offender voyeurism. Staff solicitations of offenders to engage in sexual contact or penetration constitute attempted staff-on-offender sexual abuse.

**Staff-on-offender sexually abusive contact:** Non-penetrative touching (either directly or through the clothing) of the genitalia, anus, groin, breast, inner thigh, or buttocks by a staff member of an offender with or without the latter's consent that is unrelated to official duties.

**Staff-on-offender sexually abusive penetration:** Penetration by a staff member of an offender with or without the latter's consent. The sexual acts included are:

- Contact between the penis and the vagina or the anus;
- Contact between the mouth and the penis, vagina, or anus; or
- Penetration of the anal or genital opening of another person by a hand, finger, or other object.

**Staff-on-offender indecent exposure:** The display by a staff member of his or her uncovered genitalia, buttocks, or breast in the presence of an offender.

**Staff-on-offender voyeurism:** An invasion of an offender's privacy by staff for reasons unrelated to official duties or when otherwise not necessary for safety and security reasons, such as peering at an offender who is using a toilet in his or her cell; 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 and distributing or publishing them.

**Staff-on-offender sexual harassment:** Repeated verbal comments or gestures of a sexual nature to an offender by a staff member. Such statements include demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures. This includes all offenders no matter what their offense.

**Sexual Assault Review Definition and Duties:** All cases of sexual assault will be evaluated by the PREA Sexual Assault Resource Team (SART) or by a subcommittee of that group. All of the following NH DOC disciplines should be represented at all case review sessions: Investigations, Medical, Mental Health, Victim Services Advocate and (if applicable) Community Crisis Center Advocates. In some cases, the NH State Police, the NH Office of the Attorney General and other professionals involved in the case may also attend. A report of the findings and recommendations for improvement will be submitted to the facility head, the PREA Coordinator or designee, and the Commissioner. Cases will be reviewed using the six criteria outlined in Federal Statute (PREA, P.L. 108-79).

**Sexual Assault Resource Team Definition and Duties:** A group of trained and experienced NHDOC staff including forensics and medical, victims' services, investigations, security and executive staff members, and in some cases, the NH State Police, the NH Office of the Attorney General and other professionals involved in the case.

**Substantiated allegation:** An allegation that was investigated and the investigation determined that the alleged event was more likely to have occurred than to have not occurred.

**Transgender:** A term describing persons whose gender identity and/or expression do not conform to the gender roles assigned to them at birth.

**Unfounded allegation:** An allegation of a PREA incident that upon investigated was determined not to have occurred. Unfounded allegations may be reports of incidents perceived by the victim as sexually abusive, but are not found to meet the criteria of an event covered under PREA law. Allegation found to be intentional misrepresentations can be followed up by criminal charges or based on agreement between PREA staff and PREA investigators or by disciplinary action.

**Unsubstantiated allegation:** An allegation that upon investigation produced insufficient evidence to make a final determination as to whether or not the event occurred and/or can be classified as a substantiated prohibited act under PREA law.

**Victim advocate:** An individual, who may or may not be affiliated with the agency, who provides victims with a range of services during the forensic exam and investigatory process. These services may include emotional support, crisis intervention, information and referrals, and advocacy to ensure that victim interests are represented, their wishes respected, and their rights upheld. (see Victim Services Protocol Addendum # 3 for definitions of various types victim advocates)

**Visitor:** Any person granted official entry into a DOC facility for the purposes of meeting with an offender or staff member (s), excluding persons performing a service to the facility,

**Volunteer:** An individual who donates his or her time and effort on a one time or recurring basis to enhance the activities and programs of the agency.

## **OVERVIEW OF SEXUAL MISCONDUCT**

### **I. Definition of Sexual Misconduct**

Sexual Misconduct (as it relates to NHDOC) is conduct of a sexual nature that is directed by staff toward offenders, by offenders toward other offenders, or by offenders toward staff. An “offender” is anyone under the care, custody and supervision of the Department of Corrections. “Staff” or “staff member” is anyone employed by, contracted by or volunteering for the Department of Corrections. Sexual misconduct includes, but is not limited to the following acts or attempted acts:

1. Sexual contact and/or intercourse
2. Requiring or allowing an offender to engage in sexual contact, sexual intercourse, or other sexual conduct for any reason (e.g., the sexual gratification of a staff member).
3. Any action designed for sexual gratification of an offender or staff member, such as masturbating in front of another person
4. Making or encouraging obscene or sexual advances, gestures or comments or exposing genitalia, buttocks or female breasts.
5. Touching of self in a sexually provocative way
6. Beginning any form or type of communication of a sexual nature
7. Influencing or making promises regarding safety, custody, parole status, privacy, housing, privileges, work assignments, program status, etc., in exchange for sexual favors. This includes an exchange of anything of value between staff and offender or offender and offender.
8. Threats, intimidation or retaliation for reporting an incident of sexual assault.

**Under NH law, an offender cannot legally consent to sexual activity with anyone while incarcerated.**

- It is never appropriate for a staff member to make sexual advances or comments, or to engage in sexual contact with an offender.
- A staff member would be committing a criminal offense by participating in any sexual activity with an offender.
- It is not appropriate for an offender to approach a staff member in a sexual manner. This type of behavior is prohibited and corrective action will be taken to stop such behavior from occurring.
- No one has the right to pressure anyone to engage in sexual acts.

### **II. Steps offenders can take to reduce the possibility of sexual assault/victimization:**

- **Trust your instincts** – If you sense a situation is dangerous, it probably is.
- **Do not accept gifts or favors from others** – Most gifts come with strings attached.
- **Choose your associates wisely** – Look for people involved in positive groups & activities.
- **Be Alert!** Contraband substances such as drugs & alcohol will weaken your ability to stay alert and stay safe.
- **Avoid High Risk Places** – These are places where it is difficult for others to see. Learn these places and avoid them.
- **Do not share personal information** – This information can be used to threaten or intimidate.

### **III. What to do if you have just been sexually assaulted:**

- Verbally request immediate medical attention
- Report the assault immediately to a trusted staff member
- Do not wash, brush your teeth, use the toilet, change your clothes, eat, smoke or drink
- **IT IS NEVER TOO LATE TO SEEK MEDICAL ATTENTION**

### **IV. Medical Attention:**

- If the sexual incident was recent, you will be asked to consent to a sexual assault exam by a qualified health care professional at a local hospital.
- Your consent is needed for this type of exam.
- You will be examined for injuries that may or may not be obvious to you.

- They may also perform further examinations to gather physical evidence of the assault and to check for sexually transmitted diseases.
- You have the right to refuse any examination. However, if you have been the victim of sexual assault, it is critical to allow medical professionals to collect as much evidence as possible.
- You can receive medical attention and/or pregnancy testing for any injuries without submitting to a sexual assault examination. The medical care is for the purpose of treating injuries and keeping you healthy. Medical information gathered during treatment is confidential.
- You must sign a medical release in order for the medical information to be used as evidence in sexual misconduct.
- You have the right to refuse to sign the medical release.
- You also have the right to receive support services.

**If you are unable to report a sexual assault within 4 days, you have additional reporting options:**

- Report the incident to any trusted staff member
- Report to NHDOC Investigators by Request Slip
- Contact the PREA Victim Advocate by Request Slip or by letter to:  
NHDOC Victim Services Office  
PO Box 1806  
Concord, NH 03302
- Send privileged mail to the **Commissioner of Corrections, NH Department of Corrections**
- Send privileged mail to the **NH Attorney General, NH Department of Justice**

Any form of sexual misconduct is degrading and may result in psychological distress. Appropriate referrals for support and treatment will be made by Health Services and/or a Health care professional at a local hospital. Mental health staff within the institution is available to help survivors recover from the emotional impact of sexual assault.

**V. What happens to reports of sexual misconduct?  
Investigation**

All allegations of sexual misconduct, sexual harassment, over-familiarity and retaliation will be investigated.

Retaliation is intimidation to prevent an offender from filing a complaint or participation in an investigation of sexual misconduct. The DOC prohibits anyone from interfering with an investigation, including by intimidation or retaliation against witnesses or victims. Any form of retaliation should be reported to a trusted staff member, the warden or investigations.

Anyone who sexually abuses or assaults an offender will be disciplined and may be criminally prosecuted. Discipline and criminal prosecution are more likely to be successful if the abuse is reported immediately; but regardless of when the assault occurred, it should be reported.

I have read and received a copy of this document.

\_\_\_\_\_  
Offender Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Staff Signature

\_\_\_\_\_  
Date

## **CASE REVIEW PROTOCOL NH DOC PREA SART TEAM**

### **I. PURPOSE**

An effective DOC response to reports of sexual harassment, sexual abuse, and sexual assault requires the collaboration of all department disciplines: security, investigations, victim services, mental health, and medical. Case Review protocols provide a system to review system-wide responses and to support the PREA SART Team's mission statement:

To support the prevention and response to sexual assault by fostering a collaborative, victim-centered approach which includes zero tolerance, intimidation-free reporting, avoidance of re-victimization, and offender accountability.

The Case Review Protocol outlines procedures to review cases, to ensure inmate/victim confidentiality, to conduct a case review meeting, and to choose an appropriate review format. An effective case review will accomplish the following:

- Acknowledge effective department responses to reports of sexual abuse.
- Problem-solve techniques for difficult cases.
- Discuss the multi-disciplinary response to a report.
- Recommend system improvements.
- Recommend improvements in the delivery of services to inmate/victims.
- Identify risk factors that contribute to victimization as defined by the Federal Revised Standards to PREA.

These protocols are designed in accordance with the following Federal Standards related to sexual assault case reviews:

- A. Paragraph 115.86; pp 98-100: Sexual Abuse Incident Reviews
  - (a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded.
  - (b) Such review shall ordinarily occur within 30 days of the conclusion of the investigation.
  - (c) The review team shall include upper management officials, with input from line supervisors, investigators, and medical or mental health practitioners.
  - (d) The review team shall:
    - (1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse.
    - (2) Consider whether the incident or allegation was motivated or otherwise caused by the perpetrator or victim's race, ethnicity, sexual orientation, gang affiliation, or 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 staff; and
    - (6) Prepare a report of its finding, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1)-(d)(5) of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager.
  - (e) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so.

## II. CASE REVIEW SELECTION AND ATTENDEES

Any DOC staff person can request that a case of sexual assault be reviewed by the Team. Requests should be submitted verbally or in writing to the Director of Professional Standards. Those attending the case review will be selected by the facilitator (the Director of Professional Standards or his designee) based on their involvement with the case. The staff person will coordinate with other disciplines involved in the case to gather all available information to present at the review. Prior to the case review meeting, the staff person will complete a Case Review Worksheet (Attachment #1) and submit it to the Director of Professional Standards. In selecting a case for review, the impact on the victim and whether the inmate/victim could be harmed by the information shared should be considered.

All cases of sexual assault will be evaluated by the PREA SART Team or by a subcommittee of that group using the criteria outlined in the Federal Standards. Such review shall ordinarily occur within 30 days of the conclusion of the investigation. This information will be recorded in a PREA case review report and the results of these evaluations will be presented to the Commissioner, Warden and PREA Coordinator or designee.

## III. SYSTEMIC CASE REVIEW

In a systemic case review, the focus is on the system's response to victims, rather than on any individual victim. By addressing questions like: "What is missing from the protocol?" or "Why was the protocol not followed in this instance?" the following can be evaluated:

- How the system implements protocols.
- How protocols address victim/case needs.
- How or whether the protocols are appropriately written.

Ensure that no single person or discipline is inappropriately singled out for blame. It is likely that as problems arise, some team members may feel put on the spot. It is important to remember that no one discipline or individual should be inappropriately targeted. No one should feel personally "attacked." The focus needs to remain on ensuring a victim-centered outcome.

Policies need to ensure victim privacy. If possible, ask victims for permission to bring questions relevant to their case to the team. If that is not possible, present issues to the team without identifying the victim. Understandably, others at the table may identify a victim by the details of the case. This is still no invitation to use the victim's name in the discussion about case issues.

Requesting a systemic case review: who and when. Any PREA SART Team member or any DOC staff person can request a systemic case review of a case. The person bringing the issue should prepare for the meeting by doing the following:

- Maintain the confidentiality of the victim.
- Address the issue prior to the meeting with the involved parties/disciplines so that there are no "gotchas."
- Focus on the agency-level approach – not the individual.
- Gather as many facts as possible and complete a Case Review Worksheet, using the system as the subject for discussion.
- Stay focused – present the issue concisely and carefully. Avoid jargon, accusatory statements, or falling back on history. Look for resolution or steps toward resolution. The solution is not necessarily what will make this circumstance okay, but how this can be avoided with future case/victims.

The facilitator's role: The facilitator will ask the person bringing the issue for review to frame the discussion for the team. The facilitator will monitor the discussion and make sure it moves from framing the issue to problem solving. It is important to assist the team in being specific about what course of action to follow, who is doing what, and how follow-up will occur. Team members will be asked to assist in these remedial actions.

System issue or individual staff issue? Sometimes, issues related to how a particular victim was responded to or how a case proceeded are not system issues but have to do with a particular person's job performance. These are often dealt with by talking to the supervisor. This could become a system's issue if the supervisor refuses to intervene or where significant differences of perspective persist. If/when that becomes clear; the overall issue should be brought to the team.

#### IV. **INDIVIDUAL CASE REVIEW**

In an individual case review, the focus is on an individual case of sexual abuse and the victim or victims. The goals of this format are:

- To ensure that the victim's needs were met and appropriate services provided.
- To review the immediate response in individual cases in order to improve overall department performance.
- To increase understanding of the roles and role boundaries of the various disciplines
- To identify barriers to successful victim care and case management.
- To encourage sharing of expertise with other disciplines.
- To encourage a process to continually improve the system response.

Ensure that no single person or discipline is inappropriately singled out for blame. See above: Systemic Case Review.

Policies need to ensure victim privacy. In an individual case review, it is essential for the Victim Advocate to meet with the inmate/victim and to have the full discussion as outlined above resulting in a signed confidentiality waiver.

Requesting an individual case review: who and when. The same principles apply as for those described above in Systemic Case Review. The focus, of course, is on the individual case and victim and not primarily on the system.

The facilitator's role: The tasks of the facilitator of an individual case review are similar to those in a systemic case review. The facilitator will monitor the discussion to ensure that it remains within the parameters of the confidentiality waiver.

#### V. **A SYSTEMS CONSULTATION**

- A. Systemic case reviews versus systems consultations. A Systems Consultation creates an opportunity for the Team to discuss problems with protocol even if the case is open and even if the case has not been submitted for a case review. Typically, these are short, informal discussions about systems issues at the beginning or end of each meeting

#### VI. **CONFIDENTIALITY**

- A. *Ethical considerations.* We believe that inmate/victims are most able to give informed consent when they receive the support and services of a trained victim advocate.

Informed consent must be a voluntary, well-considered decision that an inmate/victim makes on the basis of options, information, and an understanding of the process. It is particularly important that inmate/victims understand the potential use and misuse of confidential information and that records may become public if subpoenaed as the result of a court order.

We require that an inmate/victim give informed consent for his/her case to be presented at a case review meeting. It is understood that a systemic case review can be done under the following circumstances:

- When the inmate has deceased.



- When the inmate is no longer under the supervision of the department and cannot be located.
- When the inmate declines to sign the waiver.

- B. *Policies by discipline.* We recommend that PREA SART Team members inform each other regarding the various confidentiality issues relevant to their profession or discipline.
- Victim Services Victim Advocate: See Attachment #2 for relevant guidelines.
  - Medical Services and Mental Health Services: See Attachment #3 for HIPPA regulations.
  - Crisis Center Advocates. See Attachment #4 for a copy of NH RSA173-C that describes the confidentiality law that pertains to Crisis Center Advocates.
- C. *Policies on how inmate/victims may choose to waive confidentiality.* The Victim Services Advocate will meet with the inmate/victim to determine willingness for his/her case to be presented for review. This requirement will not apply in instances of a systemic case review.

An inmate/victim can give permission for his/her case to be presented only by both receiving a verbal description of the process and by signing a Confidentiality Waiver (See Attachment #5). The Advocate will:

- Federal law requires the NH DOC to review all cases of sexual assault unless the allegation has been determined to be unfounded. The department's PREA Sexual Assault Resource Team is responsible for these case reviews.
- Explain the case review process, including who will be in attendance.
- Explain to the inmate/victim what specific aspects of his/her case which led to the Team's wish to present it to the multi-disciplinary Team.
- Inform the inmate/victim of his/her privacy rights.
- Discuss the benefits and drawbacks to waiving his/her confidentiality.
- Specify what information will be shared, date at which the waiver will expire, who will have access to this information, how it will be recorded, and who is responsible for keeping the information secure.

If the inmate/victim chooses to sign the waiver, the Victim Advocate will notify the Director of Professional Standards and submit copies of the waiver to the inmate/victim and to the Director for submission into RADAR.

- D. *Policies for professionals presenting the case and for those in attendance at the case review meeting.* The following procedures will be followed by all attendees at a meeting:
- Attendees will sign the Group Confidentiality Agreement (See Attachment #7).
  - When cases are reviewed, all identifying information will be removed.
  - Any and all notes taken by attendees during the meeting will be given to the facilitator at the end of the meeting and will be shredded following the meeting.
  - Any case documents, including the Case Review Worksheet, used during the meeting will be returned to the Director of Professional Standards.
  - Specific details of individual cases will not be discussed outside the meeting room.
- E. *Policies regarding record retention.* All records and paperwork related to case reviews will be given to the Director of Professional Standards who will enter a copy of the Case Review Worksheet into RADAR and destroy all other materials at the end of the case review meeting, unless they are part of the case file.

## VII. CONDUCTING A CASE REVIEW MEETING

- A. *Important Consideration.* It is essential that all aspects of the case review stay within the parameters of the victim's authorized consent.
- B. *Who is present, how often, who facilitates.* It is recommended that only those DOC staff members directly involved in the case plus those directly involved from the community such as SANE nurses, community crisis center advocates, and representatives from the Attorney General's office attend the case review meetings. The case review meeting will be facilitated by the Director of Professional Standards or his designee.

- C. Expectations of Attendees: Reviewing cases orients the team to take an objective, problem-solving approach rather than having discussions that polarize and blame. The following suggestions support this goal:
- Come prepared with information on the sexual assault to be reviewed.
  - No original documents should be brought to the meeting.
  - Share information openly and honestly and be respectful of others' perspectives.
  - Seek solutions instead of blame.
  - All attendees will sign a group confidentiality form.
- D. Facilitator responsibilities. The facilitator is the Director of Professional Standards or his designee. If the facilitator is involved in the case being reviewed, he can still direct the meeting, but reserves the option of delegating this to another PREA SART Team member. Team members are notified by the facilitator before a meeting as to which case(s) will be reviewed. This is not done by email due to confidentiality considerations. During the meeting, the facilitator:
- Ensures that the discussion does not exceed the limits of the inmate/victim's confidentiality waiver and the limits of confidentiality as defined by each discipline participating.
  - Ensures that the discussion remains focused on the case review objectives.
  - Ensures that the discussion does not become destructive.
- E. The facilitator's role. The facilitator's role is the same in this type of discussion. It is particularly important for the facilitator to assist the team in being specific about what course of action is to follow, who is doing what, and how follow-up will occur. And, as above, Team members will be asked to assist in these remedial actions.

New Hampshire Department of Corrections  
PREA Case Review Protocols

### **CONFIDENTIALITY AND THE NH DOC VICTIM ADVOCATE**

The role of the NH DOC Victim Services Advocate is as follows (PPD 5.19):

- Treat the victim with fairness and compassion.
- Respect for their dignity and privacy throughout the investigative process.
- Inform the victim of the PREA Victim Advocate's limits of confidentiality\*.
- Provide emotion support and information
- Offer the victim information about available resources, financial assistance, and mental health services.
- Inform the victim about the investigative process and how it progresses
- Ensure that the victim is reasonably protected from the accused throughout the investigative process through the security measures of protective custody, keep separates, and re-classification boards.

\* Confidentiality and the NH DOC Victim Services Advocate: The Victim Advocate explains to each inmate/victim that because she is a NH DEPARTMENT OF CORRECTIONS employee, she does not have confidentiality. Consequently, what the inmate/victim shares with her may have to be shared with Investigations.

New Hampshire Department of Corrections  
PREA Case Review Protocols

## HIPAA RULES: THE DEPARTMENT OF FORENSIC AND MEDICAL SERVICES

The following are portions of the HIPAA Regulations that apply to services provided by Forensic and Medical Services (source: US Department of Health and Human Services, 1996).

\*\*\*\*\*

### Summary of the HIPAA Privacy Rule



This is a summary of key elements of the Privacy Rule including who is covered, what information is protected, and how protected health information can be used and disclosed. Because it is an overview of the Privacy Rule, it does not address every detail of each provision.

**Summary of the Privacy Rule - ([PDF](#))**

### Introduction

The *Standards for Privacy of Individually Identifiable Health Information* (“Privacy Rule”) establishes, for the first time, a set of national standards for the protection of certain health information. The U.S. Department of Health and Human Services (“HHS”) issued the Privacy Rule to implement the requirement of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).<sup>1</sup> The Privacy Rule standards address the use and disclosure of individuals’ health information—called “protected health information” by organizations subject to the Privacy Rule — called “covered entities,” as well as standards for individuals’ privacy rights to understand and control how their health information is used. Within HHS, the Office for Civil Rights (“OCR”) has responsibility for implementing and enforcing the Privacy Rule with respect to voluntary compliance activities and civil money penalties.

A major goal of the Privacy Rule is to assure that individuals’ health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public’s health and well being. The Rule strikes a balance that permits important uses of information, while protecting the privacy of people who seek care and healing. Given that the health care marketplace is diverse, the Rule is designed to be flexible and comprehensive to cover the variety of uses and disclosures that need to be addressed.

This is a summary of key elements of the Privacy Rule and not a complete or comprehensive guide to compliance. Entities regulated by the Rule are obligated to comply with all of its applicable requirements and should not rely on this summary as a source of legal information or advice. To make it easier for entities to review the complete requirements of the Rule, provisions of the Rule referenced in this summary are cited in the [end notes](#). Visit our [Privacy Rule](#) section to view the entire Rule, and for other additional helpful information about how the Rule applies. In the event of a conflict between this summary and the Rule, the Rule governs.

### Statutory and Regulatory Background

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, was enacted on August 21, 1996. Sections 261 through 264 of HIPAA require the Secretary of HHS to publicize standards for the electronic exchange, privacy and security of health information. Collectively these are known as the *Administrative Simplification* provisions.

HIPAA required the Secretary to issue privacy regulations governing individually identifiable health information, if Congress did not enact privacy legislation within three years of the passage of HIPAA. Because Congress did not enact privacy legislation, HHS developed a proposed rule and released it for public comment on November 3, 1999. The Department received over 52,000 public comments. The final regulation, the Privacy Rule, was published December 28, 2000.<sup>2</sup>

In March 2002, the Department proposed and released for public comment modifications to the Privacy Rule. The Department received over 11,000 comments. The final modifications were published in final form on August 14, 2002.<sup>3</sup> A text combining the final regulation and the modifications can be found at 45 CFR [Part 160](#) and [Part 164](#), Subparts A and E.

**Health Care Providers.** Every health care provider, regardless of size, who electronically transmits health information in connection with certain transactions, is a covered entity. These transactions include claims, benefit eligibility inquiries, referral authorization requests, or other transactions for which HHS has established standards under the HIPAA Transactions Rule.<sup>6</sup> Using electronic technology, such as email, does not mean a health care provider is a covered entity; the transmission must be in connection with a standard transaction. The Privacy Rule covers a health care provider whether it electronically transmits these transactions directly or uses a billing service or other third party to do so on its behalf. Health care providers include all “providers of services” (e.g., institutional providers such as hospitals) and “providers of medical or health services” (e.g., non-institutional providers such as physicians, dentists and other practitioners) as defined by Medicare, and any other person or organization that furnishes, bills, or is paid for health care.

New Hampshire Department of Corrections  
PREA Case Review Protocols

# TITLE XII

## PUBLIC SAFETY AND WELFARE

### CHAPTER 173-C

### CONFIDENTIAL COMMUNICATIONS BETWEEN VICTIMS AND COUNSELORS

#### Section 173-C:1

**173-C:1 Definitions.** – In this chapter:

- I. "Confidential communication" means information transmitted between a victim, as defined in paragraph VI, of an alleged sexual assault, alleged domestic abuse, alleged sexual harassment, or alleged stalking, and a sexual assault or domestic violence counselor in the course of that relationship and in confidence by means which, so far as the victim is aware, does not disclose the information to a third person. The presence of an interpreter for the hearing impaired, a foreign language interpreter, or any other interpreter necessary for that communication to take place shall not affect the confidentiality of the communication nor shall it be deemed a waiver of the privilege. The term includes all information received by the sexual assault or domestic violence counselor in the course of that relationship.
- II. "Domestic violence center" means any organization or agency which would qualify as a direct service grantee under RSA 173-B:21.
- III. "Domestic violence counselor" means any person who is employed or appointed or who volunteers in a domestic violence center who renders support, counseling, or assistance to victims of domestic abuse or attempted domestic abuse, who has satisfactorily completed 30 hours of training in a bona fide program which has been developed by a center as defined in RSA 173-C:1, II.
- IV. "Rape crisis center" means any public or private agency, office, or center that primarily offers assistance to victims of sexual assault and their families and provides all the following services:
- (a) Crisis intervention to victims of sexual assault 24 hours per day.
  - (b) Support services to victims of sexual assault by trained volunteers during the hospital examination, police investigation, and court proceedings.
  - (c) Referral of victims of sexual assault to public and private agencies offering needed services.
  - (d) The establishment of peer counseling services for the victims of sexual assault.
  - (e) The development of training programs and the standardization of procedures for law enforcement, hospital, legal and social service personnel to enable them to respond appropriately to the needs of victims.
  - (f) The coordination of services which are being provided by existing agencies.
  - (g) Education of the public about the nature and scope of sexual assault and the services which are available.
  - (h) Development of services to meet the needs of special populations, for example, children, the elderly, and minorities.
  - (i) Court advocacy through the criminal justice system.
- V. "Sexual assault counselor" means any person who is employed or appointed or who volunteers in a rape crisis center who renders support, counseling, or assistance to victims of sexual assault or attempted sexual assault, who has satisfactorily completed 30 hours of training in a bona fide program which has been developed by a rape crisis center as defined in RSA 173-C:1, IV.
- VI. "Victim" means any person alleging sexual assault under RSA 632-A, domestic abuse as defined in RSA 173-B:1, stalking under RSA 633:3-a, or sexual harassment as defined under state or federal law, who consults a sexual assault counselor or a domestic violence counselor for the purpose of securing support, counseling or assistance concerning a mental, physical, emotional, legal, housing, medical, or financial problem caused by an alleged act of sexual assault or domestic abuse, stalking, or sexual harassment, or an alleged attempted sexual assault or domestic abuse.

**Source.** 1985, 98:1. 1990, 241:7. 1998, 345:1, 2. 1999, 240:4, eff. Jan. 1, 2000.

## Section 173-C:2

### **173-C:2 Privilege.** –

I. A victim has the privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made by the victim to a sexual assault counselor or a domestic violence counselor, including any record made in the course of support, counseling, or assistance of the victim. Any confidential communication or record may be disclosed only with the prior written consent of the victim. This privilege terminates upon the death of the victim.

I-a. The privilege and confidentiality under paragraph I shall extend to:

- (a) A third person present to assist communication with the victim.
- (b) A third person present to assist a victim who is physically challenged.
- (c) Co-participants in support group counseling of the victim.

II. Persons prevented from disclosing a confidential communication or record pursuant to paragraph I shall be exempt from the provisions of RSA 631:6.

**Source.** 1985, 98:1. 1990, 241:8. 1994, 259:10, eff. June 2, 1994.

## Section 173-C:3

**173-C:3 Assertion or Waiver of Privilege.** – The privilege may be claimed or waived in all civil, administrative, and criminal legal proceedings, including discovery proceedings, by the following persons:

I. The victim or an attorney on the victim's behalf.

II. The guardian of the victim, if the victim has been found incompetent by a court of competent jurisdiction.

III. A minor victim who is emancipated, married, or over the age of 15, unless, in the opinion of the court, the minor is incapable of knowingly waiving the privilege. A guardian ad litem shall be appointed in all cases in which there is a potential conflict of interest between a victim under the age of 18 and his parent or guardian.

**Source.** 1985, 98:1, eff. May 10, 1985.

## Section 173-C:4

**173-C:4 Partial Waiver.** – Waiver as to a specific portion of communication between the victim and the counselor shall not constitute a waiver of the privilege as to other portions of the confidential communication between victim and counselor, relating to the alleged crime.

**Source.** 1985, 98:1, eff. May 10, 1985.

## Section 173-C:5

**173-C:5 Limitation on the Privilege; Criminal Proceedings.** – In criminal proceedings when a defendant seeks information privileged under this chapter in discovery or at trial, the procedure below shall be followed:

I. A written pretrial motion shall be made by the defendant to the court stating that the defendant seeks discovery of records of a rape crisis center or domestic violence center or testimony of a sexual assault counselor or domestic violence counselor. The written motion shall be accompanied by an affidavit setting forth specific grounds as to why discovery is requested and showing that there is a substantial likelihood that favorable and admissible information would be obtained through discovery or testimony. No discovery or hearing shall occur pursuant to the information sought to be disclosed for at least 3 business days after the filing of a motion for disclosure.

II. The only information subject to discovery from the records of a rape crisis center or a domestic violence center or which may be elicited during the testimony of a sexual assault or domestic violence counselor are those statements of the victim which relate to the alleged crime being prosecuted in the instant trial.

III. Prior to admission of information at deposition, trial, or other legal proceeding, when a claim of privilege has been asserted and whether or not the information was obtained through discovery, the burden of proof shall be upon the defendant to establish by a preponderance of the evidence that:

- (a) The probative value of the information, in the context of the particular case, outweighs its prejudicial effect on the victim's emotional or physical recovery, privacy, or relationship with the counselor or the rape crisis or domestic violence center.
- (b) That the information sought is unavailable from any other source.

(c) That there is a substantial probability that the failure to disclose that information will interfere with the defendant's right to confront the witnesses against him and his right to a fair trial.

IV. The trial court shall review each motion for disclosure of information on a case by case basis and determine on the totality of the circumstances that the information sought is or is not subject to the privilege established in RSA 173-C:2. In finding that the privilege shall not apply in a particular case, the trial court shall make written findings as to its reasons therefore.

V. The records and testimony of a rape crisis center or domestic violence center shall be disclosed solely to the trial judge to determine, as a matter of law, whether the information contained in the records or testimony is admissible under this chapter.

VI. That portion of any record and testimony of a rape crisis center or domestic violence center which is not disclosed to the defendant shall be preserved by the court under seal for appeal. For the purpose of preservation, a copy of the record shall be retained with the original released to the center. Costs of duplication shall be borne by the defendant.

VII. If, after disclosure of privileged information, the court upholds the privilege claim, the court shall impose a protective order against revealing any of the information without the consent of the person authorized to permit disclosure.

**Source.** 1985, 98:1, eff. May 10, 1985.

### **Section 173-C:6**

**173-C:6 Locations of Centers Privileged.** – Notwithstanding any other provisions of this chapter, the location and the street address of a rape crisis center or domestic violence center are absolutely privileged.

**Source.** 1985, 98:1, eff. May 10, 1985.

### **Section 173-C:7**

**173-C:7 Involuntary Waiver.** – The privilege established by this chapter shall not apply when the sexual assault counselor or the domestic violence counselor has knowledge that the victim has given perjured testimony and when the defendant has made an offer of proof that there is probable cause to believe that perjury has been committed.

**Source.** 1985, 98:1, eff. May 10, 1985.

### **Section 173-C:8**

**173-C:8 Failure to Testify.** – Failure of any person to testify as a witness pursuant to the provisions of this chapter shall not give rise to an inference unfavorable to the prosecution or the defense.

**Source.** 1985, 98:1, eff. May 10, 1985.

### **Section 173-C:9**

**173-C:9 Appeal.** – The victim shall have a right to interlocutory appeal to the supreme court from any decision by a court to require the disclosure of records or testimony of a rape crisis or domestic violence center or sexual assault or domestic violence counselor.

**Source.** 1985, 98:1, eff. May 10, 1985.

### **Section 173-C:10**

**173-C:10 Counselor's Duty to Report Child Abuse.** – The domestic violence or sexual assault counselor shall have the same reporting duties under RSA 169-C:29 as other professionals, providing that this duty shall not apply where a minor is seeking relief pursuant to RSA 173-B:3 for abuse by a spouse or former spouse of the minor, or by an intimate partner who is not related to the minor by consanguinity or affinity. As used in this section, "abuse" and "intimate partners" shall be as defined in RSA 173-B:1.

**Source.** 1985, 98:1. 1994, 259:11, eff. June 2, 1994.



New Hampshire Department of Corrections  
PREA Case Review Protocols

**CONSENT TO RELEASE INFORMATION TO THE PREA SART TEAM  
A WAIVER OF CONFIDENTIALITY**

<p><b>Information about The PREA SART Team:</b></p>	<p>PREA SART means Prison Rape Elimination Act Sexual Abuse Resource Team. This NH Department of Corrections Team was formed to examine the department’s response to inmate victims of sexual assault, sexual harassment, or sexual coercion. Team members include representatives from Medical, Mental Health, Investigations, Security, Victim Services, and other DOC staff. It may also include law enforcement, the Attorney General’s Office, SANE nurses, Victim Advocates from community crisis centers, and any other professionals who may have been involved in your case.</p>
<p><b>The Mission Statement of the PREA SART Team</b></p>	<p>Our mission is to support the prevention and response to sexual assault by fostering a collaborative, victim-centered approach that includes:</p> <ul style="list-style-type: none"> <li>• Zero Tolerance</li> <li>• Intimidation-free reporting</li> <li>• The avoidance of re-victimization</li> </ul> <p>And offender accountability.</p>
<p><b>READ THIS CAREFULLY!</b></p>	<p>Before you decide whether to let the NH DOC share some of your confidential information with another agency or person during a PREA Case Review, the NH DOC Victim Advocate will discuss with you:</p> <ul style="list-style-type: none"> <li>• All of your alternatives</li> <li>• Potential implications that could result from sharing your confidential information.</li> </ul> <p>If, after fully considering the drawbacks and benefits, you decide you want the NH DOC to release some of your confidential information for the purposes of a PREA case review, use this form to choose what is shared, and for how long.</p> <p style="text-align: center;">INITIAL HERE _____</p>
<p><b>BENEFITS AND DRAWBACKS</b></p>	<p><b>BENEFITS:</b> If a Team member shares pertinent information with the PREA SART Team, this communication can improve the services provided to you and to future victims of sexual assault, sexual harassment, or sexual coercion at our facilities. Sharing information can also give you a way to offer feedback about the investigation and any treatment you have received since the assault incident. Many victims report this to be an empowering experience. The following measures will be taken to protect your confidentiality:</p> <ul style="list-style-type: none"> <li>• Any Team member present during your case review will be required to sign a confidentiality agreement stating that he/she will not talk about your case outside the meeting room.</li> <li>• The Team will be permitted to discuss <b>ONLY</b> the information that you specify (below) to be shared.</li> <li>• If you choose to sign this confidentiality waiver, it is effective only for a limited period of time and you can, at any time, withdraw your consent.</li> </ul> <p><b>DRAWBACKS:</b> If you consent, members of the PREA SART Team will know that you received services from NH DOC. Although Team members at the case review may sign the confidentiality form, there is no absolute guarantee that members will maintain this confidentiality. Finally, It is important that you understand that it is possible that information you release for this case review could be used against you in a court proceeding.</p>

<p><b>I understand all of the following:</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> That I do not have to sign a release form. I do not have to allow the NH Department of Corrections to share my information. Signing a release form is completely voluntary.</li> <li><input type="checkbox"/> That releasing information about me could give another agency or person information about my location and/or services that I have been receiving.</li> <li><input type="checkbox"/> The risks and benefits of releasing the confidential information.</li> <li><input type="checkbox"/> That this release is limited to what I have written above. If I would like the NH Department of corrections to release information about me in the future, I will need to sign another written, time-limited release.</li> <li><input type="checkbox"/> The information will only be shared in person during the PREA case review meeting.</li> <li><input type="checkbox"/> All documentation used during the case review will be returned to the NH DOC Director of Professional Standards or his designee.</li> </ul> <p style="text-align: right; margin-top: 20px;">INITIAL HERE _____</p>
--------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

I, \_\_\_\_\_, hereby authorize the NH Department of Corrections to release to the PREA SART Team the following information relevant to the sexual assault that happened to me on \_\_\_\_\_ .

<p><b>What information about me may be shared:</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Investigations Information</li> <li><input type="checkbox"/> VH DOC Victim Services and Advocate Information</li> <li><input type="checkbox"/> Medical Information</li> <li><input type="checkbox"/> SANE Nurse Information</li> <li><input type="checkbox"/> Mental Health Information</li> <li><input type="checkbox"/> Community Crisis Center Information</li> <li><input type="checkbox"/> Office of the NH Attorney General Information</li> <li><input type="checkbox"/> NH State Police Information</li> </ul> <p style="text-align: right; margin-top: 20px;">INITIAL HERE _____</p>
--------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**This release is valid for a period of: \_\_\_\_\_ minutes, \_\_\_\_\_ hours OR \_\_\_\_\_ days (not to exceed 15 days).**

If additional time is necessary to meet the purpose of this release, I will need to sign a new release form or choose to extend this same release form by signing this same form again and adding a new expiration date.

<b>RELEASE EXPIRES:</b>	
_____	_____
Date	Time

**I understand that this release is valid when I sign it, and that I may withdraw my consent to this release at any time either verbally or in writing.**

**Signed:** \_\_\_\_\_

**Date & Time:** \_\_\_\_\_

**Witness:** \_\_\_\_\_

**Date & Time:** \_\_\_\_\_







**New Hampshire Department of Corrections: Division of Medical & Forensic Services  
PREA Risk Assessment**

Offender Name:		CORIS ID#:	Date:
Reason for Assessment:	<input type="checkbox"/> Initial	Physical Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	Institution: <input type="checkbox"/> NNHCF <input type="checkbox"/> NHSP-M <input type="checkbox"/> NHCF/W <input type="checkbox"/> SPU/RTU <input type="checkbox"/> COMM COR
	<input type="checkbox"/> Transfer		
	<input type="checkbox"/> Follow-Up		

**SEXUAL VICTIMIZATION POTENTIAL**

		Comments
<input type="checkbox"/> Yes(2)	<input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	First incarceration (Adult, prison only)
<input type="checkbox"/> Yes(1)	<input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Age less than 21 years or over 65 years
<input type="checkbox"/> Yes(1)	<input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Size & Stature Male: less than 5'6'' and/or 130 lbs. Females: less than 5'0'' and/or 80 lbs
<input type="checkbox"/> Yes(3)	<input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Previous or current commitment for sex offense/crime with sexual motivation in which the victim was a child of 13 years or younger or elderly person of 65 years or older (If 'Yes', narrative required)
<input type="checkbox"/> Yes(8)	<input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Mental impairment-developmentally or intellectually disabled, mentally ill, or physical disability(If 'Yes' narrative required in medical record)
<input type="checkbox"/> Yes(8)	<input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	History of sexual abuse-victimization
<input type="checkbox"/> Yes(11)	<input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Victim of sexual assault in confinement (If 'Yes', narrative required)
<input type="checkbox"/> Yes(6)	<input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Behavior characteristics or display of sexual orientation in a way that projects vulnerability (is perceived to be gay, lesbian, transgender, intersex, or gender non-conforming) (If 'Yes', narrative required)
<input type="checkbox"/> Yes(1)	<input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Criminal history is exclusively non-violent
<input type="checkbox"/> Yes(1)	<input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Offender perceives themselves as vulnerable (If 'Yes', narrative required)
<b>Score:</b>		
Risk Level for Sexual Victimization Potential		A score of 11 or more is at risk for Sexual Victimization

**SEXUAL PREDATION POTENTIAL**

<input type="checkbox"/> Yes(8)	<input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Previous sexual abuse, sexual harassment or sexual solicitation in confinement verified by investigative or disciplinary reports to include jails and county correctional facilities.
<input type="checkbox"/> Yes(2)	<input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	One or more prior incarcerations(s) (Adult, Prison Only)
<input type="checkbox"/> Yes(2)	<input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Prior violence in prison, to include other state prisons with equivalent behavior descriptions
<input type="checkbox"/> Yes(2)	<input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Convictions for sexual offense/crimes with motivation in which the victim was 14 years or older (If 'Yes', narrative required)
<input type="checkbox"/> Yes(2)	<input type="checkbox"/> No <input type="checkbox"/> Information Unavailable	Previously or currently assessed as high violence potential (If 'Yes', narrative required)
<b>Score:</b>		
Risk Level for Sexual Predation Potential		A score of 8 or more is a Potential Predator

**Overall Outcome:**

- Prey
- Predator
- Neutral

\_\_\_\_\_  
Reviewer's Signature

\_\_\_\_\_  
Reviewer's Name (Print)

\_\_\_\_\_  
Date

Follow up required: YES or NO

Next scheduled appointment date

Distribution: Original- Mental Health file; Copy- Classifications