

### 6.127 PRISON RAPE ELIMINATION ACT

The Prison Rape Elimination Act (PREA) of 2003 is a federal law that provides guidelines to detect, prevent, identify and deter incidents of sexual abuse and sexual assault in detention facilities. The law was enacted to establish a zero tolerance standard for incidence of sexual assault/rape in correctional facilities and establishes national standards for the detection, prevention, reduction, and punishment of sexual assault/rape in a correctional setting.

The San Diego Sheriff's Department has zero tolerance for all forms of sexual abuse, conduct and assault. This includes sexual harassment between clients, staff, volunteers, contractors, visitors and inmates. The zero tolerance on sexual conduct applies to all facilities and programs providing services to clients under the jurisdiction of the San Diego Sheriff's Department. All allegations of sexual conduct will be investigated. The department will impose appropriate disciplinary sanctions and initiate criminal charges against individuals committing sexual assault/rape.

#### DEFINITIONS

**Community Confinement Facility:** a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential re-entry centers), other than a juvenile facility, in which individuals reside as part of a term of imprisonment or as a condition or pre-trial release or post-release supervision, while participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility approved programs during nonresidential hours.

**Contractor:** a person who provides services on a recurring basis pursuant to a contract.

**Cultural Competence:** the ability to work and communicate effectively with people of diverse racial, ethnic, religious and social groups based on awareness and understanding of differences in thoughts, communications, actions, customs, beliefs and values.

**Detainee:** any person detained in a lockup, regardless of adjudication status.

**Gender:** a socially constructed concept classifying behavior as either "masculine" or "feminine," unrelated to one's external genitalia.

**Gender Expression:** a person's expression of their gender identity, including appearance, dress, mannerisms, speech and social interaction.

**Gender Identity:** distinct from sexual orientation and refers to a person's internal, deeply felt sense of being male or female.

**Gender Non-Conforming:** gender characteristics and /or behaviors that do not conform to those typically associated with a person's biological sex.

**Gender "Norms":** the expectations associated with "masculine" or "feminine" conduct, based on how society commonly believes males and females should behave.

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**Immigration Detainee:** any person who is in the actual or constructive custody of the Department of Homeland Security's Immigration and Customs Enforcement (ICE), Customs and Border Protection, or the Office of Refugee Resettlement (ORR) pending conclusion of immigration proceedings. ICE houses some detainees in facilities that it owns and operates and contracts with local, State, Federal, and private facilities to hold others. Unaccompanied minors in immigration detention are under the care and custody of ORR and are housed in foster care, shelters, group homes, and secure juvenile detention centers. Customs and Border Protection detains both adults and youth for short periods of time in holding cells before they are moved into ICE custody.

**Intersex:** a condition in which a person is born with external genitalia, internal reproductive organs, chromosome patterns, and/or an endocrine system that does not fit typical definitions of male or female.

**LGBTI:** acronym for a group of sexual minorities including lesbian, gay, bisexual, transgender, and intersex individuals.

**Lockup:** a temporary holding facility of a federal, state, or local law enforcement agency. Lockups include locked rooms, holding cells, cell blocks, or other secure enclosures under control of a law enforcement, court, or custodial officer. Lockups are primarily used for the temporary confinement of individuals who have recently been arrested or are being transported to or from a court, local jail, state prison or other facility.

**Medical Practitioner/Mental Health Practitioner:** a medical practitioner or mental health practitioner are professionals 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. A qualified medical practitioner or qualified mental health practitioner refers to such a professional who has also successfully completed specialized training for treating sexual abuse victims.

**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 inmate's safety or treatment or to the investigative process.

**Sex:** one's anatomical make-up, including external genitalia, chromosomes and reproductive system.

**Sexual Identity:** the sex that a person sees themselves as. This can include refusing to label oneself with a sex.

**Sexual Orientation:** romantic and/or physical attraction to members of the same or different sex.

**Transgender:** a person whose gender identity differs from their sex at birth.

**Transgender Female:** a person whose birth sex was male, but understands herself to and desires to live her life as female.

**Transgender Male:** a person whose birth sex was female, but understands himself to be and desires to live his life as a male.

**Transsexual:** a person whose physical anatomy does not match his or her gender identity, and seeks medical treatment (sex reassignment surgery or hormones or combination thereof).

**Transvestite:** a person who engages in gender non-conforming behavior, such as adopting the gender expression of the opposite sex for purposes of sexual or emotional gratification, but does not necessarily consider their gender identity to be different from their sex.

**Victim Advocate:** an individual, who may or may not be affiliated with the department that provides victims 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's interests are represented, their wishes respected and their rights upheld.

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

### PREA COORDINATOR

The San Diego Sheriff's Department Command staff shall designate a PREA Coordinator to oversee department compliance efforts. The person selected for this position shall be trained on PREA, as well as have the knowledge and skills necessary to evaluate and implement PREA compliance policies and protocols.

The duties of the PREA Coordinator shall include:

- Development and revision of existing policy and training to better prevent detect and respond to incidents of sexual abuse.
- Assembling a team of subject matter experts to ensure all department division entities are represented to ensure overall compliance.
- Oversee all PREA training, tracking and documentation of all staff.
- Review all complaints, grievances and reports related to incidents of sexual abuse.
- Ensure all relevant data is collected, recorded and submitted for the annual DOJ Survey of Sexual Violence and PREA survey.
- Serve as the chairperson of the sexual incident review board. Ensure review and report of findings and corrective actions is completed following each incident.
- Ensure all detainees/inmates are informed of department policy and are afforded multiple avenues for reporting incidents of sexual harassment and abuse.
- Work with auditing entity and provide necessary information.
- Provide ongoing efforts to maintain compliance.
- Develop a Department zero tolerance policy for all forms of sexual conduct. Bureaus operating a lockup as defined will be responsible for evaluating and revising any relevant operations or policies specific to their respective operations.

### PREA MANAGERS

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Individual station commands shall designate a PREA Manager for each detention facility, patrol station, court house, division and/or specialized unit to represent their respective area. The person selected for each of these positions shall be trained on PREA, and will report directly to the department's PREA Coordinator with regard to PREA audits and compliance protocols and policies.

### **PREVENTION PLANNING**

The following pro-active measures and operations have been implemented, with the intent of preventing and establishing methods to prevent sexual abuse:

- When staff learns that a detainee/inmate is subject to a substantial risk of imminent sexual abuse, immediate action will be taken to protect the detainee.
- Any new contract or contract renewal shall provide for agency monitoring to ensure the contractor is complying with PREA standards.
- Utilize a staffing plan that provides for adequate staffing and video monitoring to protect detainees against sexual abuse.
- Establish separate holding for juveniles from adult detainees.
- Limit cross-gender viewing and searches.
- Ensure detainees with physical, intellectual or psychiatric disabilities have an equal opportunity to participate in, or benefit from all aspects of prevention, detection and response to sexual abuse and harassment.
- Conduct extensive criminal background and records checks to prevent hiring and promoting of anyone who has attempted, engaged, been civilly or administratively adjudicated or convicted of sexual abuse in an institutional setting or in the community facilitated by force, or coercion. A polygraph check and psychological evaluation will also be conducted prior to the hiring of any new employees.
- Upon designing planning, modification or expansion of new or existing lockup, consider the effect of the design's ability to protect detainees from sexual abuse. Consideration of staffing levels, placement of video monitoring systems and assignment of staff, in areas where they may be monitoring inmates of the opposite gender.
- Ensure any contracting agreements for confinement of detainees contains language in the MOU that the entity must comply with the department's zero tolerance of all forms of sexual conduct.

### **RESPONSIVE PLANNING**

An administrative and/or criminal investigation will be conducted for all allegations of sexual abuse and sexual harassment. The department shall employ multiple protection measures, such as housing changes or facility transfers for detainee victims or abusers, removal of alleged staff or detainee abusers from contact with victims and emotional support services for staff that fear retaliation for reporting sexual abuse or harassment or for cooperating with investigations.

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### TRAINING AND EDUCATION

All employees, volunteers and contractors who may have contact with detainees, will be trained on zero tolerance for sexual conduct, abuse and assault. Employees and volunteers will be able to fulfill their responsibilities under sexual abuse prevention, detection and response. All sheriff's employees, volunteers and contractors will receive PREA training, upon new hire/contract, and then on a yearly basis.

PREA Training will be included in the academy curriculum and employee orientation, as well as through briefing training, the Learning Management System (LMS) and training bulletins. A department PREA website has also been established for use as a reference.

A PREA sign in-sheet (or PREA waiver) will also be utilized in various DSB areas like Food Services, Work Release and the Detentions Volunteer Program. This will serve as a reminder and acknowledgment of the Department's zero tolerance PREA policy.

Staff training shall consist of and include the following:

- Department's zero tolerance policy for sexual abuse and sexual harassment.
- Prevention, consciousness of detainee vulnerability characteristics and "red flags."
- Ensure the rights of staff and inmates to be free of retaliation for reporting sexual harassment or sexual abuse.
- Professional behavior and effective communication methods with detainees, including LGBTI individuals.
- Dynamics of sexual abuse in facilities and common reactions of victims.
- Reporting and response duties.

All investigators shall receive specialized training in techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings and the criteria and evidence required to substantiate a case for administrative action or prosecution referral. Each bureau will be responsible for ensuring investigators responding to incidents of sexual abuse have received specialized training in responding to incidents of sexual abuse.

Training shall be documented through employee/volunteer/contractor/visitor signature that they understand the training they received.

Inmates shall receive sexual harassment and abuse training which will consist of and include the following:

During the intake process, detainees will be informed of the department's zero-tolerance policy regarding sexual harassment and abuse via the inmate orientation video and posted signage. All information in the video and postings will be provided in English and in Spanish. The orientation video will also have a sign language interpreter. Signage will also be posted in inmate housing, as well as conspicuous areas throughout the facility.

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Upon hiring an inmate worker, they will be required to sign a contract (DSB Form J-114) among other items, the form advises the inmate worker of the Department's zero tolerance for sexual harassment and sexual abuse.

### **SCREENING FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS**

All detainees will be screened to assess their risk of being sexually abused by other detainees or sexually abusive towards other detainees. The screening will be completed within 72 hours of the inmate's arrival utilizing an objective screening instrument. The Jail Population Management Unit (JPMU) and the Medical Services Division (MSD) will share information obtained, on a need to know basis, to ensure inmates are assessed and identified appropriately, in order to ensure their safety and initiate any necessary support services. MSD has developed their own protocol for operational procedures and response.

Prior to placing detainees together in a holding cell, staff shall consider whether, based on the information before them, a detainee may be at a high risk of being sexually abused and, when appropriate, take necessary steps to mitigate any such danger to the detainee.

During the classification interview, detainees will be asked their own perception of vulnerability to assess appropriate housing. Factors to take into consideration are the detainee's physical characteristics (build and appearance), age, previous assignment in specialized housing, alleged offense and criminal history or concerns expressed by the detainee. Inmates may not be disciplined for refusing to answer or failing to provide information in response to screening questions.

Involuntary segregated housing (Protective Custody) is to be used only after review of all available housing alternatives has shown that there are no other means of protecting the inmate. If segregated housing is used, the inmate should have all possible access to programs and services for which he/she is otherwise eligible and the facility should document any restrictions imposed. A review will be conducted every 30 days to determine if ongoing involuntary segregated housing is needed.

Lesbian, Gay, Bisexual, Transgender or Intersex (LGBTI) inmates will have housing and programs assigned by individual assessment. LGBTI inmates will not be classified into facilities or housing units solely based on their identification as LGBTI, unless such a dedicated unit exists for the purpose of protecting such inmates.

Housing and programming will be reassessed at least twice a year to review any threats to safety experienced by the inmate. LGBTI inmates will have the same opportunities and access to programming as other inmates, providing the facility is able to maintain and afford these individuals the same level of security to maintain their safety.

Intersex or transgender inmates will not be strip searched for the sole purpose of determining their genital status.

### **REPORTING**

All staff is required to immediately or as soon as reasonably practical report any knowledge, suspicion, instances of retaliation, staff neglect or violation of responsibilities, or information regarding an incident of sexual harassment or sexual abuse that occurred in a facility or program providing services to detainees/inmates under the jurisdiction of the San Diego Sheriff's Department.

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Responsibilities include:

- Staff shall accept reports made verbally, in writing, anonymously and/or from third parties, and promptly document any of these verbal reports.
- The Department will provide staff with a method to privately report sexual harassment and abuse of detainees. Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified to make treatment and investigative decisions.
- If the alleged victim is under the age of 18 or considered a vulnerable adult under a state or local vulnerable person's statute, the Department will report the allegation to the designated state or local services agency under applicable mandatory reporting laws.

Detainees/Inmates:

- Detainees/inmates can privately report sexual harassment and sexual abuse, retaliation by other detainees or staff for reporting sexual harassment and abuse and staff neglect or violation of responsibilities that may have contributed to such incidents.
- Detainees/inmates will have at least one way to report harassment or abuse to a public or private entity or office that is not part of the department and is able to receive and immediately forward detainee reports of sexual harassment and sexual abuse to department officials, allowing the detainee to remain anonymous upon request. Housing unit postings will have the telephone numbers of outside agencies and resources.
- Detainees/inmates with disabilities or limited in English proficiency, have equal opportunity to participate in or benefit from all aspects of our efforts to prevent, detect and respond to sexual abuse and sexual harassment. Interpreters will be provided to ensure effective communication. Inmates will receive information verbally, through the inmate orientation video, housing posted signs and upon individual request made to staff.

### **RESPONSE TO INCIDENTS OF SEXUAL ABUSE**

Sworn first responders learning of an allegation that a detainee/inmate was sexually abused shall:

- Separate the alleged victim and abuser.
- Notify their respective sexual abuse investigators or area detectives.
- Notify the Division of Inspection Services.
- If the alleged sexual assault is reported or discovered prior to 72 hours after the incident, secure and preserve any crime scene until appropriate steps can be taken to collect any evidence. In addition, the victim should be asked if they retained any evidence of the assault (e.g., soiled bedding, clothing, etc.)
- Notify facility medical staff to coordinate necessary medical and social services. If the abuse occurred within 120 hours, the alleged victim shall be taken to an appropriate medical facility for a Sexual Assault Response Team (SART) examination.

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- If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate: washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating.

If the first responder is not a sworn staff member, the responder shall be required to request the alleged victim not take any actions that could destroy physical evidence, then notify sworn staff.

Medical and Mental Health Care:

Victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment. Treatment services shall be provided to the victim regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

### **INVESTIGATIONS**

All allegations of sexual abuse and harassment will be conducted promptly, thoroughly and objectively, including third-party and anonymous reports.

- The Detentions Investigation Unit (DIU) will investigate and conduct criminal investigations conducted within detention facilities and areas which house inmates in our custody that are supervised by the Sheriff's CPAC unit.
- Any responding investigator, from their respective bureau, will have completed specialized training in conducting sexual abuse investigations.
- The Internal Affairs Division will conduct administrative investigations.
- All criminal and administrative reports relating sexual abuse of detainees/ inmates shall be retained as long as the alleged abuser is incarcerated or employed by the Department, plus five years.

If a criminal investigation is warranted, investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

When the quality of evidence appears to support criminal prosecution, the Department shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as a detainee or staff.

No detainee who alleges sexual abuse will be required to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of such an investigation.

Administrative investigations shall include an effort to determine whether staff actions or failures to act contributed to the abuse. They shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments and investigative facts and findings. Substantiated allegations of conduct that appears to be criminal shall be referred for

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prosecution. The departure of an alleged abuser or victim from the employment or control of the department shall not provide basis for terminating an investigation.

Following an investigation into a detainee's allegation of sexual abuse, the detainee shall be notified as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. Following a detainee's allegation that a staff member has committed sexual abuse; the Department shall inform the client of the following:

- Whether or not the staff member is assigned to the detainee's housing area.
- Whether or not the staff member is assigned to that facility.
- The Department learns that the staff member has been indicted on a charge related to sexual abuse within the facility.
- The Department learns that the staff member has been convicted on a charge related to sexual abuse within the facility. This requirement shall not apply to allegations that have been determined to be unfounded.

### **DISCIPLINE**

Staff shall be subject to disciplinary sanctions up to and including termination for violating Department sexual abuse or sexual harassment policies. Termination shall be the presumptive disciplinary sanction for staff who has engaged in sexual abuse.

Disciplinary sanctions for violations of policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history and the sanctions imposed for comparable offenses by other staff with similar histories.

Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with detainees and be reported, unless the activity was clearly not criminal.

### **REVIEW**

A review will be conducted upon conclusion of every sexual abuse investigation by the Critical Incident Review Board (CIRB). This is to include allegations which have not been sustained, unless the allegation has been determined to be unfounded. Reviews shall ordinarily occur within 30 days of the conclusion of the investigation. The review team shall include upper-level management officials, with input from line supervisors and investigators.

CIRB shall:

- Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect or respond to sexual abuse
- Consider whether the incident or allegation was motivated by race, ethnicity, gender identity, LGBTI status, or perceived status, gang affiliation, or was motivated or otherwise caused by other group dynamics at the facility.

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- Examine the area where the incident allegedly occurred to assess whether physical barriers in the area enabled abuse.
- Assess the adequacy of staffing levels in that area during different shifts.
- Assess whether monitoring technology should be deployed or augmented supplement supervision by staff.
- The Division of Inspectional Services (DIS) will prepare a report of findings: (DIS)
- Provide the report to the Department PREA Coordinator, and the respective Facility Commander and PREA Manager where the incident occurred. The recipient Facility Commander shall implement recommendations for improvement or shall document reasons for not doing so.

### **DATA COLLECTION**

Data will be collected by DIU for every allegation of sexual abuse under the direct control of the department and shall be aggregated at least annually. The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Local Jail Jurisdictions Survey of Sexual Violence conducted by the Department of Justice, or any subsequent form developed and designated for jails.

DIU shall maintain, review and collect data as needed from all available incident based documents, including reports, investigation files and sexual abuse incident reviews. The Department shall obtain incident-base and aggregate data from any private agency with which it contracts for confinement of its detainees. Upon request, the Department shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

Data collected by DIU will be reviewed by DIS in order to improve the effectiveness of its sexual abuse prevention, detection and response policies, practices and training including:

- Identifying problem areas.
- Taking corrective action on an ongoing basis.
- Preparing an annual report of its finding and corrective actions for each facility, relevant operational area, as well as the Department as a whole.
- The final report shall be approved by the Sheriff and made available to the public via the public website.
- The Department may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of the Department, but must indicate the nature of the material redacted.

The Department shall ensure all data collected is securely retained. All aggregated sexual abuse data from facilities, relevant operational area and private agencies with which the Department contract shall be readily available to the public annually via the public website. Any personal identifiers shall be removed prior to posting.

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All sexual abuse data collected as listed shall be maintained at least ten years after the date of the initial collection unless federal, state or local law requires otherwise.

### **AUDITING AND CORRECTIVE ACTION**

All PREA audits will occur during a three year audit cycle starting on August 20, 2013, as well as during each three-year audit cycle thereafter. During these audit cycles, the Department of Justice (DOJ) shall ensure each facility operated by the respective department, or private organization on behalf of the department, is audited at least once.

The Department of Justice may send a recommendation for an expedited audit if the DOJ has reason to believe that a particular facility may be experiencing problems relating to sexual abuse. This recommendation may also include referrals and resources that may assist with PREA related issues.

The Division of Inspectional Services shall organize and facilitate PREA inspections with all Sheriff's detention facilities, patrol stations, court holding and/or any other sites requiring review. They shall provide the PREA auditor with any requested information. Additionally, DIS will review data and each incident of sexual harassment and sexual abuse. They will prepare a report of their findings and recommendation for a plan of corrective action for the department PREA Coordinator.

The PREA Auditor shall:

- Have access to and shall observe all areas of the audited facilities.
- Be permitted to request and receive copies of any relevant documents (including electronically stored information).
- Shall be permitted to conduct private interviews with detainees and inmates who shall be permitted to send confidential information or correspondence to the auditor as if they were communicating with legal counsel.

The auditor's final report shall be posted on the Sheriff's public website.

A PREA audit finding of "Does Not Meet Standards," with one or more standards shall trigger a 180 day corrective action period. The auditor and Department shall jointly develop a corrective action plan to achieve compliance.

After the 180 day corrective action period ends, the auditor shall issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action.

If the Department does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it has achieved compliance.

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### **APPEALS**

The Sheriff's Department may lodge an appeal with the Department of Justice regarding any specific audit finding that is believed to be incorrect. Such appeals must be lodged within 90 days of the auditor's final determination.

If the DOJ believes the Department has stated good cause for a reevaluation, the Department may commission a re-audit by another auditor mutually agreed upon by both agencies. The Department shall bear the costs of this re-audit. The findings of the re-audit shall be final. (04-02-14)