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State of Wisconsin Department of Corrections

EXECUTIVE DIRECTIVE #72

June, 2008 (Revised)

SUBJECT: Federal Prison Rape Elimination Act of 2003 (PREA)

I. Background

The Prison Rape Elimination Act of 2003 (PREA) was enacted to address the problem of sexual assault of persons in the custody of U.S. correctional agencies. To be in compliance with PREA, the Wisconsin Department of Corrections must assure that all applicable state and federal laws and policies on sexual assault of adult and juvenile offenders are enforced.

Under Public Law 108-79, 42 USC Chapter 147 (signed September 4, 2003), the Prison Rape Elimination Act of 2003 (PREA):

- 1) establishes a zero-tolerance standard for the incidence of prison rape in the United States;
- 2) makes the prevention of prison rape a top priority in each prison system;
- 3) develops and implements national standards for the detention, prevention, reduction and punishment of prison rape;
- 4) increases available data and information on the incidence of prison rape, consequently improving the management and administration of correctional facilities;
- 5) standardizes the definitions used for collecting data on the incidence of prison rape;
- 6) increases the accountability of prison officials who fail to detect, prevent, reduce and punish prison rape;
- 7) protects the Eighth Amendment rights of Federal, State and local prisoners;
- 8) increases the efficiency and effectiveness of Federal expenditures through grant programs; and
- 9) reduces the cost that prison rape imposes on interstate commerce.

PREA supports the elimination, reduction and prevention of sexual assault and rape within corrections systems; mandates national data collections efforts; provides funding for program development and research; creates a national commission to develop standards and accountability measures; applies to all federal, state, and local prisons, jails, police lock-ups, private facilities and community settings such as residential facilities.

II. Policy

The Wisconsin Department of Corrections (DOC) has a zero-tolerance standard regarding sexual contact, sexual assault and sexual harassment of adult and juvenile offenders. Federal law, State law, the DOC and sound correctional practice prohibit:

- adult and juvenile offenders from engaging in any type of sexual behavior with each other while in custody.
- corrections employees from engaging in any sexual behavior with offenders while under the custody and control of the Department [WI DOC Executive Directive 16-A: Staff Sexual Assault of Offenders and Wisconsin Statute 940.225(2) (h)].

The DOC recognizes the seriousness of prison rape, the impact this has on the victim, the correctional environment, the community and society as a whole. The Department considers the detection, prevention, reduction and punishment of prison rape a priority and an integral component of operating safe and secure correctional facilities.

The Department's response to allegations of sexual assault will be consistent with the following goals:

- Investigate and respond in a timely, humane, respectful and comprehensive manner;
- Facilitate education and training of staff, offenders and youth regarding reporting procedures;
- Maintain confidentiality of investigations and sensitivity towards alleged victims;
- Provide the victim with follow-up medical and mental health services as appropriate;
- Provide protection from and prohibition of retaliation;
- Hold accountable those in violation of sexual assault laws; and
- Improve facility and program management by collecting and analyzing data on sexual assault in correctional settings.

The PREA Review Committee will serve as an oversight body to ensure that the DOC is in full compliance with PREA.

III. Definitions

- A. ***Offender*** means any person who is under the supervision of the Department of Corrections, including juveniles, inmates, probationers, parolees, or persons on extended supervision.
- B. ***Sexual assault*** means any sexual contact or sexual intercourse as defined by §940.225 and §939.22 Wis. Stats.

Sexual Contact

1. Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading; or for the purpose of sexually humiliating the victim or sexually arousing or gratifying the perpetrator or if the touching contains the elements of actual or attempted battery under s. 940.19 (1):

- a. Intentional touching by the perpetrator or, upon the perpetrator's instruction, by another person, by the use of any body part or object, of the victim's intimate parts.
 - b. Intentional touching by the victim, by the use of any body part or object, of the perpetrator's intimate parts or, if done upon the perpetrator's instructions, the intimate parts of another person.
2. Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the perpetrator or, upon the perpetrator's instruction, by another person upon any part of the body clothed or unclothed of the victim if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the victim or for the purpose of sexually arousing or gratifying the perpetrator.
 3. For the purpose of sexually degrading or humiliating the victim or sexually arousing or gratifying the perpetrator, intentionally causing the victim to ejaculate or emit urine or feces on any part of the perpetrator's body, whether clothed or unclothed.
 4. Touching by the intimate parts of one person to any part of another person whether clothed or unclothed.
 5. Any touching by any part of one person or with any object or device of the intimate parts of another person or any other parts of the body that may result in sexual arousal or gratification for either party.

Although Wisconsin Administrative Code DOC 303.02(19) expands the definition of sexual contact to include kissing and handholding (except for that allowed under institutional policies and procedures), these incidents do not fall under PREA.

Sexual Intercourse includes vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the perpetrator or upon the perpetrator's instruction. The emission of semen is not required.

C. *Staff member* means:

1. An individual who works for the Wisconsin Department of Corrections, including volunteers, contract employees and mentors;
2. Any probation, parole or extended supervision agent who supervises the offender, either directly or through a subordinate in his or her capacity as a probation, parole or extended supervision agent, or who has influenced or has attempted to influence another probation, parole or extended supervision agent's supervision of the offender.

D. *Prison Rape* for purposes of this policy is synonymous with the term sexual assault and includes sexual contact and/or sexual intercourse as defined above.

E. *Sexual Harassment* includes unwelcome sexual advances, unwelcome physical contact, or unwelcome verbal or physical conduct of a sexual nature as defined in DOC Executive Directive 7.

IV. Procedures

The following procedures apply to alleged sexual incidents between offenders. Refer to Executive Directive 16A for procedures that apply to allegations of staff sexual misconduct.

A. Report of Alleged Incident

Confidentiality

Information concerning a reported sexual assault shall be limited to those who have a need to know in order to make decisions concerning the victim's welfare and for law enforcement and investigative purposes. Preserving confidentiality is a priority.

Offender Reporting Procedure

Offenders may report any act of sexual assault or sexual harassment in writing or verbally. To submit a report in writing, the offender may use the Offender/Youth Complaint form (Adult form DOC-400 and Juvenile forms DOC-2051 or DOC-2179 per WI Admin Code § DOC 310 and § DOC 380 respectively). The form will be forwarded to the Warden/Superintendent/Regional Chief or their designee, for investigation. Offenders may also write to the Warden/Superintendent/Regional Chief directly.

Offenders may also choose to verbally report the incident to staff. A staff member who becomes aware of an alleged sexual incident between offenders will immediately report the incident to her/his supervisor. The supervisor will then be responsible for the immediate management of the alleged victim and alleged perpetrator. The supervisor or Security Supervisor/Supervising Youth Counselor will be responsible for notifying the Warden/Superintendent/Regional Chief or their designee, for direction on how to proceed with the investigation and/or referral process.

Offenders who are under the age of 18, including those in adult facilities or under adult supervision, are considered children and minors when investigating cases of sexual assault, and invoke mandatory reporting requirements to the county human service agency or local law enforcement. No person under 18 may give consent to sexual intercourse and no person under age 16 may give consent to sexual contact.

B. Internal Investigation Process

PREA Investigators/Investigations

Staff members who have been provided with special training as PREA investigators shall be responsible for investigating incidents of sexual assault between offenders. Each DOC correctional institution and community corrections region shall have trained PREA investigator(s) available to them.

The DOC investigation of allegations of offender-on-offender sexual assault will proceed whether or not a law enforcement investigation is opened. If a law enforcement investigation is opened, DOC will coordinate the timing and processing of their investigations with law enforcement, to ensure the integrity of the internal and law enforcement investigations.

The DOC inmate disciplinary process may proceed prior to the conclusion of a criminal investigation. DOC shall take whatever inmate disciplinary action deemed appropriate based on the outcome of the institution investigation, regardless of the outcome of any criminal investigation or proceeding.

Offenders who are found to have committed sexual assault, or have been found to have provided false information to investigators will be disciplined in accordance with DOC 303 or DOC 373. Offenders found to have engaged in other prohibited forms of sexual conduct will also be subject to discipline.

The Administrator of each Division will designate staff to maintain central records of all allegations, investigations, and dispositions involving offender-on-offender sexual assault.

Offender-on-offender sexual assault cases will be reviewed each year by the PREA Review Committee as a quality control measure, and to identify any useful patterns and trends.

Law Enforcement Notification

The Warden, Regional Chief, Superintendent or their designee, will notify local law enforcement of the allegations and the known facts. All staff shall cooperate with law enforcement to ensure that the evidence needed by law enforcement is secured and preserved.

The Division Administrator shall be notified when law enforcement is notified of allegations of offender-on-offender sexual assault and when further formal steps in the criminal process occur. The Divisions shall maintain records of all law enforcement contacts related to offender-on-offender sexual assault.

An offender allegation of staff sexual contact involving a personal (pat) search authorized under Administrative Code Section DOC 306.17 shall be reported to law enforcement only if the Department's internal investigation substantiates a violation of this Executive Directive. The internal investigation shall commence promptly. The authority responsible for making the determination regarding referral to law enforcement shall be the Institution Warden, Superintendent, Regional Chief, or their designee, as applicable.

In cases that meet the definition of sexual assault of a child or child abuse, law enforcement is to be notified as soon as there is reasonable cause to believe that a sexual assault or abuse has occurred. The Warden, Superintendent, or their designee will determine who will notify law enforcement. Staff members who are mandatory reporters will complete a DOC 1681 (Report of Suspected Child Abuse form) if child abuse to law enforcement without supervisory approval, but must inform his/her supervisor.

Notification of Parents and County Liaison

In cases of alleged sexual assault or abuse of a child, the involved supervisor will contact the custodial parent or guardian of the alleged juvenile victim and notify them of the incident after preliminary information has been obtained. This task may be delegated to the juvenile's assigned social worker.

In cases of alleged sexual assault or child abuse, where the alleged perpetrator is a minor, the involved unit manager/supervisor will contact the committing county liaison or supervising case worker of the alleged perpetrator to make the county agency aware of the incident.

C. SANE Programs

The alleged victim will be referred to a facility with a Sexual Assault Nurse Examiner (SANE) by Health Services staff or law enforcement when appropriate and necessary as outlined in Health Services Policy and Procedure 300.19: Responding to Incidents of Sexual Contact of Inmates/Youth. In certain circumstances, the alleged perpetrator may also be referred to SANE.

D. Victim Services

Each DOC correctional institution shall appoint a PREA Victim Services Coordinator who will provide offender sexual assault victims with assistance in accessing services. Victim Services Coordinators will be provided with training regarding PREA policies and procedures, victim sensitivity, sexual assault services, and local resources. The Office of Victim Services and Programs will work cooperatively with the Wisconsin Coalition Against Sexual Assault to provide training and technical assistance. Victim Services Coordinators are charged with strengthening partnerships with the local sexual assault service providers and ensuring that inmate victims have access to sexual assault services.

The Department recognizes the work and expertise of local community agencies involved in sexual assault prevention and victim services. In so doing, PREA committee representatives, Division contacts and DOC employees will be encouraged to partner with these local community agencies in order to strengthen the Department's response to, and prevention of, sexual assault.

E. Offender Orientation/Education

During the orientation process for offenders entering the Wisconsin correctional system, and/or during the first meeting between the Probation and Parole Agent and offender, each offender will be given a handbook informing him/her of PREA and the Department's zero-tolerance standard. The handbook contains information on how to report a sexual incident, what do to if he/she is assaulted, what happens during an investigation, ways to prevent sexual violence, and appropriate Wisconsin Statutes and definitions. Additional copies of the handbook are available to offenders upon request, and will also be available for review and reference in institutional libraries.

F. Education and Training

New Employee Training

Information on PREA and this Executive Directive will be disseminated to all new employees during the following training:

- Orientation to the Department
- Orientation to Security
- Correctional Officer Pre-Service
- Agent Basic Training
- Supervisor Development
- BHS Orientation

Current Employee Training

The PREA Steering Committee will design and coordinate training for staff trainers who will be responsible for providing PREA training to all DOC employees at their respective institutions, facilities or field units.

DOC volunteers will also receive training about PREA and Department of Corrections expectations regarding professional behavior within the workplace.

G. Data Collection and Federal Reports

PREA Database & Reporting

At the close of each PREA investigation, Wardens, Superintendent's, Regional Chiefs or their designees are responsible for submitting PREA case/incident information to designated staff at the Wisconsin Department of Corrections Central Office for input into the PREA database. The number of people with access to the database is limited to ensure that appropriate levels of confidentiality are maintained. The database serves as an electronic repository for all data related to sexual assault incidents within the entire Department of Corrections.

V. References

42 USC Chapter 147: Prison Rape Elimination Act of 2003 (PREA)

WI Stats § 48.02 Definitions

WI Stats § 48.981(2) Persons Required to Report (child abuse or neglect)

WI Stats § 940.225 Sexual Assault

WI Stats § 948 Crimes Against Children

WI Admin Code § DOC 303

WI Admin Code § DOC 307

WI Admin Code § DOC 308

WI Admin Code § DOC 310

WI DOC Bureau of Health Services Policy and Procedures 300:19: Responding to Incidents of Sexual Contact

WI DOC DJC Internal Management Procedures 20: Sexual Conduct (Youth) – Management of Allegations

WI DOC Executive Directive 7: Harassment and Hazing

WI DOC Executive Directive 16: Fraternalization

WI DOC Executive Directive 16-A: Staff Sexual Assault of Offenders

WI DOC Executive Directive 23: Duty to Report Sexual Abuse by Therapist

WI DOC Executive Directive 35: Confidentiality of Health Care Information Relating to Offenders

WI DOC Executive Directive 48: Confidentiality of Information Rendered to Treatment Staff

Originated by: Office of the Secretary



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June 2, 2008
Date