

BERKSHIRE COUNTY SHERIFF'S OFFICE
JAIL AND HOUSE OF CORRECTION

Policies and Procedures

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Subject: Prevention of Sexual Abuse and Sexual Harassment of Inmates

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POLICY:

The Berkshire County Sheriff's Office (BCSO) has a **ZERO TOLERANCE** policy prohibiting sexual abuse, sexual harassment or any other form of sexual misconduct involving an inmate, a staff member, a visitor, a contractor or a volunteer. § 115.11(a)

It is the policy of the BCSO that sexual conduct between inmates, whether consensual or not, is not permitted under any circumstances. Similarly, any conduct of a sexual nature between an inmate and any other person (e.g. a staff member, contractor, visitor, vendor, volunteer or any other person coming into contact with an inmate in BCSO custody) is strictly prohibited. This policy applies to all inmates (pre-arraignment and post-arraignment detainees, sentenced inmates, civil commitments or any other person committed to our care and custody or whom we are required by Court to transport). Compliance with this policy is essential to a safe and secure correctional environment.

Under Massachusetts law, inmates are by law deemed incapable of consenting to sex (intentional, inappropriate contact of a sexual nature) with any person who is employed by or contracts with a correctional facility. **Engaging in sexual relations with an inmate is a FELONY under state law punishable by up to five years in state prison and/or \$10,000 fine for each such act.** M.G.L. c. 268, 21A.

Retaliation against an inmate who refuses to submit to sexual advances, or any person who reports sexual misconduct or who cooperates with any investigation into allegations of sexual misconduct is also prohibited. § 115.67

The BCSO employs an upper-level, agency-wide PREA Coordinator to oversee agency efforts to comply with the PREA Standards in all of its facilities. § 115.11(b)

DEFINITIONS - § 115.6 Definitions related to sexual abuse and harassment

Sexual abuse includes—

- (a) Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident; and
- (b) Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer.

Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- (a) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (b) Contact between the mouth and the penis, vulva, or anus;
- (c) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- (d) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the inmate, detainee, or resident:

- (a) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (b) Contact between the mouth and the penis, vulva, or anus;
- (c) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (d) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (e) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- (f) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1)-(5) of this section;
- (g) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and
- (h) Voyeurism by a staff member, contractor, or volunteer.

Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

For PREA purposes Sexual harassment includes—

- (a) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and
- (b) Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

Under the BCSO sexual harassment policy, any conduct of a sexual nature (whether physical, verbal or otherwise) may constitute sexual harassment and/or other prohibited sexual misconduct regardless of whether it is repeated or unwelcome. Sexual conduct by staff, contractors, volunteers, visitors or inmates will not be tolerated.

PROCEDURES

I. INMATE EDUCATION - § 115.33

- 1) Upon admission to BCSO custody, each inmate will receive and sign for a copy of the inmate handbook which contains information about the BCSO's Zero-Tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.
- 2) Within thirty days after intake, the BCSO shall provide comprehensive education to inmates in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents. A written record of inmate participation shall be maintained by the BCSO.
- 3) Postings concerning key information about PREA are posted throughout the facility.

II. INMATE EVALUATION - §§ 115.41 & 115.42

- 1) All inmates will be assessed upon coming into the custody of the BCSO (including those transferring from another correctional facility) to determine whether they meet specific criteria indicating either vulnerability to sexual abuse or a history of sexually aggressive behavior. § 115.41(a)

A. Sexually Vulnerable Inmates [§ 115.41(d)]:

All inmates shall be evaluated upon coming into the custody of the BCSO to determine their vulnerability to sexual abuse taking into consideration the following risk factors:

- (1) Whether the inmate has a mental, physical, or developmental disability;
- (2) The age of the inmate;
- (3) The physical build of the inmate;
- (4) Whether the inmate has previously been incarcerated;
- (5) Whether the inmate's criminal history is exclusively nonviolent;
- (6) Whether the inmate has prior convictions for sex offenses against an adult or child;
- (7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
- (8) Whether the inmate has previously experienced sexual victimization;
- (9) The inmate's own perception of vulnerability; and
- (10) Whether the inmate is detained solely for civil immigration purposes.

If, based on a review of the above factors and any other relevant information, the Shift Supervisor determines that the inmate may be to be vulnerable to a possible sexual assault, documentation shall be made in the inmate's file and shall be taken into consideration when assigning the inmate to a housing unit.

B. Sexually Aggressive Inmates [§ 115.41(e)]:

All inmates shall be evaluated upon coming into the custody of the BCSO to determine if there are indicators that an inmate is prone to victimize other inmates, especially in regard to sexual behavior, including the following:

- (1) Prior acts of sexual abuse;
- (2) Prior convictions for violent offenses; and
- (3) History of prior institutional violence or sexual abuse, as known to the BCSO.

- 2) Inmates identified as sexually aggressive or sexually vulnerable shall be followed up with by a mental health clinician for assessment, monitoring, and counseling within 14 days of intake.
- 3) When an inmate reports having been sexually abused in another correctional facility not under BCSO jurisdiction, a written report shall be made by the Shift Supervisor to the Sheriff and PREA Coordinator and the Mental Health Department. The Sheriff or his designee will then notify the head of the facility where the abuse occurred within 72 hours. This notification shall be documented. § 115.63
- 4) Within 14 days of the intake screening, any inmate who has experienced sexual victimization, whether it occurred in an institutional setting or in the community, shall be offered a follow-up meeting with a mental health clinician. § 115.81(c)
- 5) Within a set time period, not to exceed 30 days from the inmate's arrival at the facility, the facility will reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening. § 115.41(f) When conducting a reassessment, the case manager should refer to the initial *PREA Screening Scale*, the *Supervisor's Intake Screening and Initial Classification* form, the *Initial Orientation Checklist* and any additional information that may be available. Any modification of the risk assessment (for SA or SV status) shall be documented on the *PREA Screening Scale* and entered in the Offenders Management System (OMS).
- 6) An inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness. § 115.41(g)

In conducting screening/rescreening staff shall not discipline or take any other adverse action against an inmate for refusing to answer any of the following: physical disabilities, mental illness, vulnerable, request for PC pc status, LGBTQI status, or history of sexual victimization

- 7) Inmates identified as sexually aggressive or sexually vulnerable shall have an appropriate indicator entered in the OMS. § 115.41(h) However, the underlying information used to classify an inmate as sexually aggressive or sexually vulnerable shall only be available to staff who have a need to know that information. § 115.41(i) Further, any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education and program assignments, or as otherwise required by Federal, State or local law. § 115.81(d)
- 8) Whenever an inmate is identified as sexually vulnerable or sexually aggressive (during the initial intake or during any subsequent review), the staff member identifying the inmate as such shall notify mental health.
- 9) Screening information shall be used to inform housing, bed, work, education and program assignments with the goal of keeping separate those inmates identified as Sexually Vulnerable from those inmates identified as Sexually Aggressive. § 115.42(a)
- 10) Individualized determinations shall be made about how to insure the safety of each inmate. § 115.42(b)
- 11) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making housing and programming assignments, the BCSO shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would represent management or security problems. § 115.42(c)
- 12) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate. § 115.42(d)
- 13) A transgender or intersex inmate's own view with respect to his or her own safety shall be given serious consideration. § 115.42(e)

- 14) The Berkshire County Sheriff's Office will not place lesbian, gay, bisexual, transgender or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates. § 115.42(g)

III. INMATE RESPONSIBILITIES & REPORTING § 115.51

Inmates have the right to serve their time without fear of sexual abuse or sexual harassment from any source. All inmates are responsible for familiarizing themselves with the PREA information provided to them. Each inmate is required to refrain from sexual activity or conduct while in the custody of the Berkshire County Sheriff's Office. Inmates who engage in sexual conduct (verbal, physical or otherwise) will be subject to disciplinary sanctions and referral for prosecution.

Inmate Reporting Obligations:

- 1) Inmates shall report any sexual activity or conduct directed towards them.
- 2) Inmates shall report sexual activity by anyone else occurring in their presence or that they have knowledge of from any source.
- 3) Inmates shall report any retaliation by other inmates and staff against anyone who has reported sexual abuse or sexual harassment.
- 4) Inmates shall report any staff neglect or violation of responsibilities that may have contributed to sexual abuse, sexual harassment or retaliation.

Inmates can report any of the above incidents by telling any staff member. Inmates can also call the PREA toll-free hotline (413-555-1234) from any inmate phone in the housing units. Inmates can write to the Director of Security, Superintendent or the Assistant Superintendent to report sexual abuse or sexual harassment. Inmates can also submit an emergency grievance if an inmate is subject to a substantial risk of imminent sexual abuse. (See BCSO-115R – Grievance Procedure). The grievance shall be placed in a sealed envelope, marked "emergency grievance" and handed to any BCSO staff member.

Inmates can also contact the Berkshire District Attorney's office (413) 443-5951 to report sexual abuse.

Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.

Inmates who are victims of sexual abuse may consult with a victim advocate for emotional support services related to sexual abuse by contacting the Elizabeth Freeman Center, 43 Francis Avenue, Pittsfield, MA 01201. The Elizabeth Freeman Center maintains a toll-free hotline at (866) 401-2425 or *333 no pin required. Such communications are confidential and will not result in a sexual abuse report being made to the BCSO or a BCSO investigation of sexual abuse. §§ 115.21(b), 115.53

Where evidentiary or medically appropriate, inmates who are victims of sexual abuse shall be offered a forensic medical examination at Berkshire Medical Center without financial cost. § 115.21(c)

IV. TRAINING AND EDUCATION

A. Employee Training §115.31

The BCSO shall train all employees who may have contact with inmates on:

- 1) BCSO zero-tolerance policy for sexual abuse and sexual harassment;
- 2) How to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
- 3) Inmates' right to be free from sexual abuse and sexual harassment;
- 4) The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment;

- 5) The dynamics of sexual abuse and sexual harassment in confinement;
- 6) The common reactions of sexual abuse and sexual harassment victims;
- 7) How to detect and respond to signs of threatened and actual sexual abuse;
- 8) How to avoid inappropriate relationships with inmates;
- 9) How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and
- 10) How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities.

Such training shall be tailored to the gender of the inmates at the employee's facility. The employee shall receive additional training if the employee is reassigned from a facility that houses only male inmates to a facility that houses only female inmates, or vice versa.

All current employees who have not received such training shall be trained within one year of the effective date of the PREA standards, and the agency shall provide each employee with refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures. In years in which an employee does not receive refresher training, the agency shall provide refresher information on current sexual abuse and sexual harassment policies.

The agency shall document, through employee signature or electronic verification that employees understand the training they have received.

B. Volunteer and Contractor Training § 115.32

- (1) The agency shall ensure that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection, and response policies and procedures.
- (2) The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with inmates, but all volunteers and contractors who have contact with inmates shall be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.
- (3) The agency shall maintain documentation confirming that volunteers and contractors understand the training they have received.

C. Specialized Training for Investigators § 115.34

1. In addition to the general training provided to all employees pursuant to 115.31, BCSO shall ensure that, investigations are conducted by individuals with specific and relevant training.
2. This training shall include 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.
3. BCSO shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.
4. Any State entity or Department of Justice component that investigates sexual abuse in confinement settings shall provide such training to its agents and investigators who conduct such investigations.

D. Specialized Training for Medical and Mental Health Staff §115.35

All full-time and part time medical and mental health care practitioners who regularly work in BCSO facilities shall have specialized training in;

1. How to detect and assess signs of sexual abuse and sexual harassment;
2. How to preserve physical evidence of sexual abuse;
3. How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and
4. How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.

B. STAFF RESPONSIBILITIES

- 1) All BCSO staff (employees, contractors and volunteers) are responsible for contributing to the prevention of sexual abuse and sexual harassment.
- 2) All BCSO staff are responsible for familiarizing themselves with and complying with all BCSO policies and procedures including those pertaining to PREA, sexual abuse, and sexual harassment.
- 3) All BCSO staff are responsible for insuring that no person (staff, inmate, visitor, etc.) is retaliated against in any manner for having made a report in good faith about sexual abuse, sexual harassment, or for cooperating with an investigation into such matters.
- 4) All BCSO staff shall participate in annual training on sexual abuse and sexual harassment and related subjects. (See BCSO 915.01 et seq.)
- 5) Staff must refrain from any conduct of a sexual nature while on the job, or while at any BCSO facility, or while attending any BCSO-affiliated function.
- 6) All staff, including but not limited to medical staff, mental health staff and clergy, must immediately report to the Shift Commander any knowledge, suspicion, or information regarding an incident of;
 - a. sexual abuse,
 - b. sexual harassment;
 - c. other sexual misconduct.
 - d. retaliation against any person for having reported sexual abuse or sexual harassment or for having cooperated with an investigation into such matters,
 - e. any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation or
 - f. sexual abuse that any staff member suspects may be about to occur.

Even a rumor or suspicion or information from an anonymous source that such conduct may have occurred or is about to occur must be immediately reported. It is not your job to assess the credibility of the information – just report it. If the Shift Commander is allegedly involved in the misconduct, the staff member must immediately report the incident to the Director of Security, Assistant Superintendent, the Superintendent or on-call administrator.

7) **First Responder Duties** § 115.64

- a. The first security staff member to respond to any incident of sexual abuse or suspicion of imminent sexual abuse shall immediately separate the alleged victim from the alleged abuser, secure both inmates, notify the Shift Commander, preserve and secure any potential crime scene

until appropriate steps can be taken to collect any evidence and await further instructions from the Shift Commander.

- b. 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; and
 - c. If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.
 - d. 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.
- 8) After receiving the initial report, the Shift Commander must complete a *Berkshire County PREA Incident Form* whenever an inmate is the alleged subject of sexual abuse or sexual harassment (Attachment 1). This form must be submitted to the PREA mailing group as soon as possible and not later than the end of the shift. If the Alleged abuser is a recipient of the PREA mailing group, the Shift Commander will **NOT** submit the form electronically but will notify the Director of Security or an Assistant Superintendent.
 - 9) All staff shall immediately contact the Shift Commander upon receipt of an emergency grievance.
 - 10) Upon being notified of an alleged incident of sexual abuse, the Shift Commander shall implement the *Sexual Abuse Response Plan*.
 - 11) The Administrator receiving notice of any alleged incident of sexual harassment or sexual abuse shall direct the BCSO investigative unit to conduct an investigation.
 - 12) All staff must fully cooperate with any investigation into alleged sexual abuse or harassment.
 - 13) Staff shall not reveal any information related to a sexual abuse report to anyone other than those involved in the investigation.

C. ACCESS TO EMERGENCY MEDICAL AND MENTAL HEALTH SERVICES §§ 115.82, 115.83

- 1) Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.
- 2) If no qualified medical or mental health practitioners are on duty at the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim as noted above in Section IV and shall immediately notify the appropriate medical and mental health practitioners.
- 3) Inmate victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate.
- 4) Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.
- 5) The facility shall offer medical and mental health evaluation and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility.
- 6) The evaluation and treatment of such victims shall include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody.
- 7) The BCSO shall provide such victims with medical and mental health services consistent with the community level of care.

- 8) Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests.
- 9) If pregnancy results from sexual abuse, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services.
- 10) Inmate victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate.

D. POST INCIDENT MONITORING & PROTECTION AGAINST RETALIATION § 115.67

All inmates and staff who report sexual abuse or sexual harassment or who cooperate with sexual abuse or sexual harassment investigations will be protected against retaliation by other inmates or staff. Unit Managers shall be charged with monitoring their respective units for any evidence of retaliation against inmates. The ADS of Human Services shall be responsible for monitoring for any evidence of retaliation against staff. For at least 90 days following a report of sexual abuse, unit managers shall monitor the conduct and treatment of inmates who were reported to have suffered sexual abuse or who have reported sexual abuse to see if there are any changes that may suggest possible relation by inmates or staff. At a minimum, unit managers shall monitor inmate disciplinary reports, housing or program changes Or possible evidence of retaliation. Such monitoring shall also include speaking directly with the inmate on a regular basis during any monitoring period. For at least 90 days following a report of sexual abuse, the ADS of Human Services shall monitor the conduct and treatment of staff who have reported minimum, the ADS of Human Services shall monitor disciplinary action, negative performance reviews or reassignment of staff for possible retaliation. Any information concerning alleged retaliation shall be immediately reported and remedied. If circumstances indicate a need for continued monitoring, the unit managers and ADS of Human Services shall continue to monitor for, document and report any retaliation for as long as there is a need.

The BCSO employs multiple protection measures such as housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperation with investigations.

The monitoring obligation shall terminate if the allegation is determined to be unfounded.

E. INVESTIGATIONS

- 1) All allegations of sexual abuse, sexual harassment or other sexual misconduct involving any staff or inmate shall be promptly, thoroughly and objectively investigated.
- 2) Allegations of sexual abuse shall be investigated by investigators who have received specialized training in sexual abuse investigations in confinement.
- 3) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.
- 4) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.
- 5) 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 inmate or staff. The BCSO shall not require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.
- 6) Administrative investigations:
 - a. Shall include an effort to determine whether staff actions or failures to act contributed to the abuse; and

- b. 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.
- 7) Criminal investigations (done by outside agencies), shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible.
- 8) Substantiated allegations of conduct that appear to be criminal shall be referred for prosecution.
- 9) The agency shall retain all written investigation reports for as long as the alleged abuser is incarcerated or employed by the agency, plus five years.
- 10) The departure of the alleged abuser or victim from the employment or control of the BCSO shall not provide a basis for terminating an investigation.
- 11) Any State entity or Department of Justice component that conducts such investigations shall do so pursuant to the above requirements.
- 12) When outside agencies investigate sexual abuse, the facility shall cooperate with outside investigators and shall endeavor to remain informed about the progress of the investigation.
- 13) Allegations of sexual abuse or sexual harassment shall result in one of the following:
 - a. **Substantiated allegation** – allegation was investigated and determined to have occurred
 - b. **Unsubstantiated allegation** – allegation was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.
 - c. **Unfounded allegation** – allegation was investigated and determined not to have occurred.
 - d. **Substantiated allegation of sexual misconduct, not covered by PREA** – allegation was substantiated but sexual misconduct involved was not covered by PREA (sexual harassment not repeated, sexual misconduct not involving an inmate as the victim, etc.) along with substantiated we should add unsubstantiated and unfounded. (see me if questions)
 - e. **Unsubstantiated allegation, not covered by PREA** – allegation was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.
 - f. **Unfounded allegation, not covered by PREA** – allegation was investigated and determined not to have occurred.
- 14) The standard of proof for making a determination as to whether allegations of sexual harassment or sexual abuse are substantiated shall be a preponderance of the evidence.
- 15) If the investigation reveals that an inmate has made false allegations or made a material statement which he/she, in good faith, could not have believed to be true, then the department may take appropriate disciplinary action.

F. CORRECTIVE ACTION

Employees who engage in conduct in violation of this policy subject themselves to disciplinary action up to and including dismissal, civil liability and criminal prosecution. Termination is the presumptive disciplinary sanction for staff who engage in sexual abuse. § 115.76(b) Any contractor or volunteer who engages in sexual misconduct, shall be prohibited from contact with inmates, shall be reported to relevant licensing bodies, and shall be reported to law enforcement agencies, unless the conduct was clearly not criminal. Such contractors and volunteers may also be subject to termination of their affiliation with the BCSO and barred from entering BCSO premises. § 115.77 Inmates who violate this policy shall be subject the disciplinary action, civil liability and criminal prosecution. § 115.78 Visitors who violate this policy may be barred from entering BCSO premises, and subject to civil liability and criminal prosecution.

The BCSO will not enter into any collective bargaining agreement that limits the agency's ability to remove alleged staff sexual abusers from contact with any inmates pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted. § 115.66(a)

G. REPORTING TO INMATES § 115.73

- 1) Following an investigation into an inmate's allegation that he or she suffered sexual abuse in a BCSO facility, the BCSO shall inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.
- 2) If the BCSO did not conduct the investigation, it shall request the relevant information from the investigative agency in order to inform the inmate.
- 3) Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, the BCSO shall subsequently inform the inmate (unless the agency has determined that the allegation is unfounded) whenever:
 - a. The staff member is no longer posted within the inmate's unit;
 - b. The staff member is no longer employed at the facility;
 - c. The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or
 - d. The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.
- 4) Following an inmate's allegation that he or she has been sexually abused by another inmate, the BCSO shall subsequently inform the alleged victim whenever:
 - a. The BCSO learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility; or
 - b. The BCSO learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility.
 - c. All such notifications or attempted notifications shall be documented.
 - d. An agency's obligation to report under this standard shall terminate if the inmate is released from the BCSO's custody.

H. DATA COLLECTION AND ANALYSIS §§ 115.86, 115.87, 115.88

Sexual Abuse Incident Review §115.86

- 1) The BCSO 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.
- 2) Such review shall ordinarily occur within 30 days of the conclusion of the investigation.
- 3) The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners.
- 4) The review team shall:
 - a. Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
 - b. Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;
 - c. Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
 - d. Assess the adequacy of staffing levels in that area during different shifts;
 - e. Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and

- f. Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to Section VII, #13a-13d of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager.
- 5) The BCSO shall implement the recommendations for improvement, or shall document its reasons for not doing so.

Data collection § 115.87

- 1) The BCSO shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.
- 2) The BCSO will aggregate the incident-based sexual abuse data at least annually.
- 3) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence (aka Survey of Sexual Victimization) conducted by the Department of Justice.
- 4) The BCSO will maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.
- 5) The BCSO also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates.
- 6) Upon request, the BCSO shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

Data review for corrective action § 115.88

- 1) The BCSO shall review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by:
 - (a) Identifying problem areas;
 - (b) Taking corrective action on an ongoing basis; and
 - (c) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.
- 2) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the BCSO's progress in addressing sexual abuse.
- 3) The BCSO's report shall be approved by the Sheriff and made readily available to the public through its website.
- 4) The BCSO may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.

Data storage, publication, and destruction § 115.89

- 1) The BCSO shall ensure that data collected pursuant to § 115.87 are securely retained.
- 2) The BCSO shall make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its website.
- 3) Before making aggregated sexual abuse data publicly available, all personal identifiers will be removed.
- 4) The BCSO shall maintain sexual abuse data collected pursuant to § 115.87 for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.

ATTACHMENT 1
BERKSHIRE COUNTY SHERIFF'S OFFICE
PREA INCIDENT FORM

Time/Date of incident: _____ on _____

Location of Incident: _____

Victim(s): _____

Aggressor: _____

Witnesses (if applicable): _____

Weapons (if applicable): _____

Receiving Source:

Shift Commander _____

Time/Date Notified: _____ on _____

Brief Description of Incident (continue on next page is applicable):

Sexual Abuse (voyeurism/physical contact)

Unit Manager notified

Email Form To PREA Mailing Group

**ATTACHMENT 2
PREA 90 DAY INMATE REVIEW FORM**

Inmate's Name _____ Start Date: _____ End Date: _____
Initial PREA Status: SA SV Current PREA Status: SA SV

DATE: _____
Any Informatives (new): Yes No
Any D-Reports (new) Yes No
Any new Enemies (new) Yes No
Any Grievances (new) Yes No

COMMENTS: _____

DATE: _____
Any Informatives (new): Yes No
Any D-Reports (new) Yes No
Any new Enemies (new) Yes No
Any Grievances (new) Yes No

COMMENTS: _____

DATE: _____
Any Informatives (new): Yes No
Any D-Reports (new) Yes No
Any new Enemies (new) Yes No
Any Grievances (new) Yes No

COMMENTS: _____

DATE: _____
Any Informatives (new): Yes No
Any D-Reports (new) Yes No
Any new Enemies (new) Yes No
Any Grievances (new) Yes No

COMMENTS: _____

DATE: _____
Any Informatives (new): Yes No
Any D-Reports (new) Yes No
Any new Enemies (new) Yes No
Any Grievances (new) Yes No

COMMENTS: _____

DATE: _____
Any Informatives (new): Yes No
Any D-Reports (new) Yes No
Any new Enemies (new) Yes No
Any Grievances (new) Yes No

COMMENTS: _____

**ATTACHMENT 2
PREA 90 DAY INMATE REVIEW FORM (Cont'd)**

DATE: _____
Any Informatives (new): Yes No
Any D-Reports (new) Yes No
Any new Enemies (new) Yes No
Any Grievances (new) Yes No

COMMENTS: _____

DATE: _____
Any Informatives (new): Yes No
Any D-Reports (new) Yes No
Any new Enemies (new) Yes No
Any Grievances (new) Yes No

COMMENTS: _____

DATE: _____
Any Informatives (new): Yes No
Any D-Reports (new) Yes No
Any new Enemies (new) Yes No
Any Grievances (new) Yes No

COMMENTS: _____

DATE: _____
Any Informatives (new): Yes No
Any D-Reports (new) Yes No
Any new Enemies (new) Yes No
Any Grievances (new) Yes No

COMMENTS: _____

DATE: _____
Any Informatives (new): Yes No
Any D-Reports (new) Yes No
Any new Enemies (new) Yes No
Any Grievances (new) Yes No

COMMENTS: _____

DATE: _____
Any Informatives (new): Yes No
Any D-Reports (new) Yes No
Any new Enemies (new) Yes No
Any Grievances (new) Yes No

COMMENTS: _____

SIGNATURE:

PREA Reviewer Assistant Superintendent Director of Security/Investigator

**ATTACHMENT 3
PREA 90 DAY REVIEW FOR STAFF REPORTING SEXUAL ABUSE**

Reporting Employee's Name: _____ Start Date: _____ End Date: _____
Shift: _____

DATE: _____

Any New Disciplinary Action	___ Yes	___ No
Any New Adverse Performance Reviews	___ Yes	___ No
Any New Change of Shift	___ Yes	___ No
Any Change of Assignment (new)	___ Yes	___ No

COMMENTS: _____

DATE: _____

Any New Disciplinary Action	___ Yes	___ No
Any New Adverse Performance Reviews	___ Yes	___ No
Any New Change of Shift	___ Yes	___ No
Any Change of Assignment (new)	___ Yes	___ No

COMMENTS: _____

DATE: _____

Any New Disciplinary Action	___ Yes	___ No
Any New Adverse Performance Reviews	___ Yes	___ No
Any New Change of Shift	___ Yes	___ No
Any Change of Assignment (new)	___ Yes	___ No

COMMENTS: _____

DATE: _____

Any New Disciplinary Action	___ Yes	___ No
Any New Adverse Performance Reviews	___ Yes	___ No
Any New Change of Shift	___ Yes	___ No
Any Change of Assignment (new)	___ Yes	___ No

COMMENTS: _____

DATE: _____

Any New Disciplinary Action	___ Yes	___ No
Any New Adverse Performance Reviews	___ Yes	___ No
Any New Change of Shift	___ Yes	___ No
Any Change of Assignment (new)	___ Yes	___ No

COMMENTS: _____

DATE: _____

Any New Disciplinary Action	___ Yes	___ No
Any New Adverse Performance Reviews	___ Yes	___ No
Any New Change of Shift	___ Yes	___ No
Any Change of Assignment (new)	___ Yes	___ No

COMMENTS: _____

ATTACHMENT 3
PREA 90 DAY REVIEW FOR STAFF REPORTING SEXUAL ABUSE (Cont'd)

DATE: _____

Any New Disciplinary Action	___ Yes	___ No
Any New Adverse Performance Reviews	___ Yes	___ No
Any New Change of Shift	___ Yes	___ No
Any Change of Assignment (new)	___ Yes	___ No

COMMENTS: _____

DATE: _____

Any New Disciplinary Action	___ Yes	___ No
Any New Adverse Performance Reviews	___ Yes	___ No
Any New Change of Shift	___ Yes	___ No
Any Change of Assignment (new)	___ Yes	___ No

COMMENTS: _____

DATE: _____

Any New Disciplinary Action	___ Yes	___ No
Any New Adverse Performance Reviews	___ Yes	___ No
Any New Change of Shift	___ Yes	___ No
Any Change of Assignment (new)	___ Yes	___ No

COMMENTS: _____

DATE: _____

Any New Disciplinary Action	___ Yes	___ No
Any New Adverse Performance Reviews	___ Yes	___ No
Any New Change of Shift	___ Yes	___ No
Any Change of Assignment (new)	___ Yes	___ No

COMMENTS: _____

DATE: _____

Any New Disciplinary Action	___ Yes	___ No
Any New Adverse Performance Reviews	___ Yes	___ No
Any New Change of Shift	___ Yes	___ No
Any Change of Assignment (new)	___ Yes	___ No

COMMENTS: _____

DATE: _____

Any New Disciplinary Action	___ Yes	___ No
Any New Adverse Performance Reviews	___ Yes	___ No
Any New Change of Shift	___ Yes	___ No
Any Change of Assignment (new)	___ Yes	___ No

COMMENTS: _____

SIGNATURE: _____

Assistant Superintendent of
Human Resources

Assistant Superintendent

Director of Security/Investigator

