



PRISON RAPE ELIMINATION ACT (PREA)
GENERAL ORDER #22.05

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Persons Affected: All personnel

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IALCEA Standards:

Revision History

New SUDPS General Order

PURPOSE

The purpose of this Order is to provide guidance for complying with the Prison Rape Prevention Act (PREA). The standards established by PREA are to prevent, detect and respond to sexual abuse, harassment and retaliation against an arrestee detained in a custody facility.

POLICY

SUDPS has a zero tolerance for all forms of sexual abuse, sexual harassment, as well as retaliation against any person who reports sexual abuse or harassment, or participates with an associated investigation. The department shall operate the temporary holding facility (THF) in accordance with applicable rules and regulations as set forth by the California Board of State and Community Correction (BSCC) and PREA standards as established by the US Department of Justice (USDOJ). SUDPS personnel will take immediate action to protect arrestees who are in their custody including those who are reasonably believed to be subject to a substantial risk of imminent sexual abuse.

The SUDPS Director of Public Safety shall designate an upper-level manager as the department's PREA Coordinator. Any questions regarding this general order or PREA



standards as they apply to the THF, SUDPS personnel, contractors or volunteers are to be directed to the PREA Coordinator. SUDPS personnel interacting with arrestees in the THF shall receive annual training pertaining to PREA Standards. They shall also ensure that all persons providing services in the THF who might encounter an arrestee will receive PREA training.

DEFINITIONS

TERMS	DEFINITIONS
Contractor	A person who provides services on a recurring basis pursuant to a contractual agreement with the agency. (28 CFR 115.5)
Gender Nonconforming	Means a person whose appearance or manner does not conform to traditional societal gender expectations. (28 CFR 115.5)
Intersex	A person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development. (28 CFR 115.5)
Pat-down Search	Running of the hands over the clothed body of an inmate, detainee, or resident by an employee to determine whether the individual possesses contraband. (28 CFR 115.5)
Sexual Abuse	<p>Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident; and sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer.</p> <p>Includes any of the following acts between individuals in custody when consent was not given or a person who is coerced into such act by overt or implied threats of violence or is unable to consent or refuse:</p> <ul style="list-style-type: none">• Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;• Contact between the mouth and the penis, vulva or anus;• Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument;• Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh or buttocks of another person, excluding contact incidental to a physical altercation (28 CFR 115.6).



	<p>Sexual abuse also includes abuse by an employee, contractor or volunteer as follows, with or without consent of the individual in custody:</p> <ul style="list-style-type: none">• Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;• Contact between the mouth and the penis, vulva or anus;• Contact between the mouth and any body part where the employee, contractor or volunteer has the intent to abuse, arouse or gratify sexual desire (28 CFR 115.6);• Penetration of the anal or genital opening, however slight, by hand, finger, object or other instrument, that is unrelated to official duties, or where the employee, contractor or volunteer has the intent to abuse, arouse or gratify sexual desire;• Any other intentional contact, either directly or through the clothing, or with the genitalia, anus, groin, breast, inner thigh or the buttocks, that is unrelated to official duties, or where the employee, contractor or volunteer has the intent to abuse, arouse or gratify sexual desire;• Any attempt, threat or request by an employee, contractor or volunteer to engage in the activities described above;• Any display by an employee, contractor or volunteer of his/her uncovered genitalia, buttocks or breasts in the presence of an individual in custody;• Voyeurism by an employee, 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/her cell to perform bodily functions; requiring an inmate to expose his/her buttocks or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions. (28 CFR 115.6)
Sexual Harassment	<p>Repeated and unwelcome sexual advances; requests for sexual favors; verbal comments, gestures or actions of a derogatory or offensive sexual nature by one individual in custody that is directed toward another; repeated verbal comments or gestures of a sexual nature to an individual in custody prisoner or resident by an employee, contractor or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures. (28 CFR 115.6)</p>
Strip Search	<p>A search that requires a person to remove or rearrange some or all clothing so as to permit a visual inspection of the person's breasts, buttocks or genitalia.</p>



Transgender	A person whose gender identity (i.e. internal sense of feeling male or female) is different from the person's assigned sex at birth. (28 CFR 115.5)
Volunteer	An individual who donates time and effort on a reoccurring basis to enhance the activities and programs of an agency. SUDPS Explorers are considered volunteers; however, they are not allowed to enter the THF or areas of the department when arrestees are present. Explorers under the age of 18 are not to be in the proximity of arrestees without a SUDPS employee present.

PROCEDURE

A. PREA COORDINATOR

The ISD Lieutenant shall be designated as the PREA Coordinator. As the PREA Coordinator, he/she will have responsibility for developing, implementing and overseeing department efforts to comply with PREA standards as they apply to the THF.

The PREA Coordinator's responsibilities shall include:

1. Developing and maintaining procedures to comply with PREA standards as they apply to a temporary holding facility.
2. Developing a staffing plan to provide adequate levels of staffing and video monitoring in order to protect arrestees in custody from sexual abuse. Ensuring there is documentation of the deviations from the staffing plan and the reason(s) for the deviation(s).
3. Reviewing the staffing plan a minimum of once a year.
4. Developing methods for employees to privately report sexual abuse and sexual harassment of arrestees in custody.
5. Ensuring protocols are in place for conducting investigations of allegations of sexual abuse in the THF facility to include: evidence collection practices; ensuring a criminal or administrative investigation is completed; documenting referrals to other law enforcement agencies; access to forensic medical examinations, without financial cost, for all victims of sexual abuse, where appropriate; permit, to the extent available, in accordance with security needs, arrestee access to victim advocacy services if they are transported for a forensic examination to a hospital that offers such services.
6. Ensuring that arrestees in custody with limited English proficiency or disabilities (e.g. limited reading skills, intellectual, hearing speech, or vision disabilities) have an equal



opportunity to understand and benefit from efforts to prevent, detect and respond to sexual abuse and sexual harassment by use of interpreters and written materials in various formats. Interpreters do not include other arrestees in custody except in limited circumstances where delaying could compromise the arrestee's safety or the investigation of the allegations of sexual abuse, harassment or retaliation.

7. Collection of data pertaining to every allegation of sexual abuse that was alleged to have occurred in the THF. Information gathered will be in conformance with the most recent version of the Survey of Sexual Violence conducted by DOJ or any other subsequent form developed by DOJ and designated for lockups. The data collected shall be aggregated annually.
8. Ensure that contractors or others who perform work in the THF are informed of the Department's zero tolerance policy regarding sexual abuse and harassment.
9. Ensure signage is posted in the THF regarding:
 - a. SUDPS's zero tolerance policy
 - b. Multiple methods for arrestees to privately report sexual abuse, sexual harassment and retaliation by other arrestees or department staff and staff neglect or violation of responsibilities that may have contributed to such incidents
 - c. A method for uninvolved arrestees, family, community members, and other interested third parties to report sexual abuse or sexual harassment.
10. The PREA Coordinator shall ensure the following information is provided on the Department's website:
 - a. Information on how to report sexual abuse and sexual harassment on behalf of an individual who is taken into custody by SUDPS
 - b. A protocol describing the responsibilities of Department personnel in relation to conducting of sexual abuse or sexual harassment investigations that are alleged to have occurred in the custody of SUDPS or while in the custody of another agency.

B. SUPERVISION AND MONITORING

The SUDPS THF is designed to facilitate the processing of arrestees. Confinement of arrestees is limited in duration and, as a general rule, will be for the period of time it takes to complete paperwork needed to facilitate release or transfer to another agency. Supervision of arrestees in the THF will be performed in accordance with General Order 22.04 Temporary Holding Facility.

Monitoring of arrestees will be accomplished through both direct visual observations by personnel and remote observation via audio and video equipment. Monitoring of arrestees shall comply with General Order 22.04 Temporary Holding Facility.



C. REPORTING SEXUAL ABUSE AND HARRASSMENT

1. During intake, deputies shall advise the arrestee of the SUDPS's zero-tolerance policy for sexual abuse and sexual harassment. In order to allow for anonymity, deputies will also notify the arrestee of at least one way he/she can make a report to a public or private entity that is not part of the SUDPS and is able to forward reports to the appropriate agency's officials as soon as possible and no later than 72 hours after receiving the allegation.
2. Arrestees in custody may make reports verbally, in writing, privately or anonymously of any of the following:
 - Sexual abuse
 - Sexual harassment
 - Retaliation by other individuals in custody or employees for reporting sexual abuse or harassment
 - Employee's neglect or violation of responsibilities that may have contributed to sexual abuse or harassment

3. Employee Responsibilities

Department employees shall accept reports from arrestees and third parties that allege sexual abuse or harassment that occurred in the THF or while they were incarcerated at another custodial facility. Deputies will be responsible for promptly notifying the Watch Commander/Shift Supervisor and documenting the incident in an IR report.

All employees shall immediately report to the Watch Commander/Shift Supervisor any knowledge, suspicion or information regarding:

- An incident of sexual abuse or harassment that occurred in the SUDPS THF or another custodial facility
- Retaliation against an arrestee in custody or an employee who reports such an incident
- Any neglect or violation of responsibilities on the part of any SUDPS employee, contractor or volunteer who may have contributed to an incident of sexual abuse or retaliation.

SUDPS employees, contractors or volunteers shall not reveal any information related to a sexual abuse or harassment report to anyone other than to the extent necessary to arrange for treatment or for the purpose of a criminal investigation, administrative investigation or administrative review.

4. Watch Commander/Shift Supervisor Responsibilities

The Watch Commander/Shift Supervisor shall report to the ISD Lieutenant and the Director of Public Safety all allegations of sexual abuse, harassment, retaliation, neglect



or violations leading to sexual abuse, harassment or retaliation that occurred in the THF or other custodial facility. This includes third-party and anonymous reports.

The Watch Commander notification requirement includes when the arrestee making the allegation is under the age of 18 years or considered a dependent. The PREA Coordinator will ensure that mandatory reporting laws and department policy are complied with.

- a. Upon receiving notification that an arrestee in SUDPS custody is alleging he/she was sexually abused while confined at another facility, the Watch Commander/Shift Supervisor shall notify the appropriate office of the agency where the alleged abuse occurred. The notification shall be made as soon as possible but no later than 72 hours after receiving the allegation. The Watch Commander/Shift Supervisor shall ensure that the notification made to the other agency is documented in an IR report. The IR report will be a separate document. The alleged PREA incident will not be included in the report associated with the arrest for which the person was taken into custody by SUDPS. Incidents of alleged abuse that occurred at another custodial facility will be documented in an IR report titled "Out of Custody Report."

If the arrestee alleging sexual abuse is transferred to another custody facility or medical facility, the Watch Commander/Shift Supervisor shall ensure that, as permitted by law, the receiving facility is informed of the incident and the arrestee's potential need for medical or social services.

The Watch Commander/Shift Supervisor will document the incident in the shift log by noting the case number assigned to report and referencing it as a "PREA INCIDENT." Identifiers of those alleged to have been involved in the incident will not be included in the shift log. If the incident is alleged to have occurred in the SUDPS THF, it shall also be recorded in the THF activity log using the assigned case number and wording "PREA INCIDENT."

D. INVESTIGATIONS

SUDPS shall promptly, thoroughly, and objectively investigate all allegations, including third-party and anonymous reports, of sexual abuse or sexual harassment that are alleged to have occurred in the SUDPS THF or perpetrated by an SUDPS employee. In cases where the incident involved a SUDPS employee or occurred in the SUDPS THF, the Sheriff's Office Liaison Captain will be notified to determine if the SCCSO will conduct the investigation. If the alleged crime occurred outside of SUDPS's jurisdiction, the local law enforcement agency with jurisdiction shall be notified. The agency where the crime occurred has the responsibility for conducting the investigation. SUDPS personnel will gather preliminary information and forward it the agency with jurisdiction. SUDPS personnel conducting sexual assault investigations will do so in accordance with the Santa Clara County Sexual Assault Protocol. The SUDPS Director of Public Safety may authorize investigative assistance from another law enforcement agency should the scope



of the investigation require additional resources. If SUDPS conducts the investigation, only deputies who have received Department-approved sexual assault investigation training shall perform the sexual abuse investigation.

1. First Responder Responsibilities

The first deputy to respond to the report of sexual abuse or a sexual assault that occurred in the THF shall:

- a. Separate the involved parties, if still present
- b. Establish a crime scene to preserve and protect evidence
- c. Identify and secure witnesses until steps can be taken to collect evidence and conduct interviews
- d. If the abuse occurred within a time frame that still allows for the collection of physical evidence, request 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.
- e. If the first person to make contact with the alleged victim is a non-sworn employee, he/she shall immediately request a deputy if one is not already present and ask the alleged victim not take any actions that could destroy physical evidence.

2. Investigator Responsibilities

The responsibilities of deputy/deputies conducting the investigation shall include, but not be limited to the following:

- a. Gather and preserve direct and circumstantial evidence, including any available physical and biological evidence and any available electronic monitoring data.
- b. Interview alleged victim(s), suspect(s) and witness(es).
- c. Review any prior complaints and reports of sexual abuse involving the suspect.
- d. Consult with Santa Clara County District Attorney's Office (SCCDA) before conducting a compelled interview of department employee since a compelled interview may be an obstacle for subsequent criminal prosecution.
- e. Assess the credibility of the alleged victim, suspect and witnesses not by the person's status as a person incarcerated or an employee, volunteer of SUDPS, or a contractor hired to perform work in the THF. Credibility should be based on all available facts. Investigators should be attentive to not making assumptions about credibility based on a person's status; e.g. sworn, arrestee or civilian.



- f. Document in an IR report a description of the physical, testimonial, documentary and other evidence, the reasoning behind any credibility assessments, and investigative facts and findings.
- g. Refer allegations of conduct that may be criminal to the SCCDA for possible prosecution, including any time there is probable cause to believe an arrestee in custody sexually abused another person in custody while in custody in the THF.
- h. Cooperate with the SCCSO or an outside agency's investigators and remain informed on the progress of any outside investigation as it relates to SUDPS.

3. Administrative Investigations

An administrative investigation will occur whenever an allegation of sexual abuse is made. The purpose of the administrative investigation shall be to determine whether there was a violation of policy. The departure of the alleged abuser or victim from employment at the agency shall not be used as a basis for terminating the administrative investigation.

In situations where the alleged abuser is a deputy, the Director of Public Safety shall notify the SCCSO Liaison Captain. The SCCSO will determine who conducts the administrative investigation.

4. Sexual Abuse and Sexual Assault Victims

No arrestee in custody who alleges sexual abuse shall be required to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.

An arrestee in custody who is the victim of sexual abuse shall receive timely, unimpeded access to emergency medical treatment. Treatment services applicable to the assault 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. Conclusions and Findings

The administrative investigation shall be forwarded to the Director of Public Safety upon completion. The Director of Public Safety shall review the investigation and determine whether the allegations of sexual abuse or sexual harassment have been substantiated by a preponderance of evidence.

SUDPS employees shall be subject to disciplinary sanctions up to and including termination for violating this Order. Termination shall be the presumptive disciplinary sanction for department employees who have engaged in sexual abuse. Discipline shall be commensurate with the nature and circumstances of the act(s) committed, the employee's disciplinary history, and the sanctions imposed for comparable offenses by other employees with similar histories. The disciplinary



process will be performed in compliance with any Collective Bargaining Agreement, applicable to the employee, in effect at the time.

Terminations for violations of this Order, or resignations by employees who would have been terminated if not for their resignation, shall be criminally investigated unless the activity was clearly not criminal, and shall be reported to any relevant licensing body.

Any contractor or volunteer who is determined through a fair and impartial investigation to have engaged in sexual abuse shall be prohibited from contact with arrestees in custody and reported to any relevant licensing bodies. If SUDPS is aware of a contractor or volunteer who has engaged in a sexual assault who comes to work/repair the THF, they must be prohibited from contact with any arrestee.

E. RETALIATION PROHIBITED

All arrestees and employees who report sexual abuse or sexual harassment or who cooperate with sexual abuse or sexual harassment investigations shall be protected from retaliation. If any arrestee or employee who cooperates with an investigation expresses a fear of retaliation, appropriate measures shall be taken to protect that individual.

F. REVIEWS, RECORDS AND TRAINING

1. Incident Review Board

An incident review shall be conducted at the conclusion of every sexual abuse investigation that is alleged to have occurred in the THF unless the allegation was determined to have been unfounded. The review should occur within 30 days of the conclusion of the investigation. The Incident Review Board shall be composed of the following: Captain, Sheriff's Office Liaison Captain, SUDPS PREA Coordinator, and a Watch Commander or Shift Supervisor. The Board may seek input from line supervisors, deputies, investigators and non-sworn personnel. An ongoing investigation pertaining to the incident that is being conducted by another agency may be cause for postponing the Incident Review Board review.

The purpose of the review is to:

- a. Consider whether the allegations or investigation indicates a need to change policy or procedure to better prevent, detect or respond to sexual abuse.
- b. Consider whether the incident or allegation was motivated by race, ethnicity, gender identity or perceived gender identity, gang affiliation, or was motivated or otherwise caused by other group dynamics in the THF.
- c. Examine the area of the THF where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse.



- d. Assess the adequacy of staffing levels pertaining to the supervision and monitoring of arrestees while being processed in the THF during different shifts.
- e. Assess whether monitoring technology should be augmented to supplement supervision of arrestees in the THF.

The Incident Review Board shall prepare a report of its findings and any recommendations for improvement. The report will be forwarded to the Director of Public Safety for review and concurrence with the Board's recommendations. The Director of Public Safety shall implement the Board's recommendations or document the reasons for not doing so. The Director of Public Safety will forward the report and his/her recommendations to the PREA Coordinator. The PREA Coordinator will implement the approved recommendation(s) and shall retain the report for future reference.

2. Data Review

The PREA Coordinator shall conduct an annual review of collected and aggregated incidents of sexual abuse that have occurred in the THF. The review should include, as needed, reports, investigations and incident reviews conducted by the Incident Review Board.

The purpose of the review is to assess and improve the effectiveness of sexual abuse prevention, detection, response, policies, procedures and training. A report shall be prepared and provided to the Director of Public Safety. The report shall include:

- Identification of any potential problems areas in the THF
- Identification of any corrective action taken
- Recommendation for any additional corrective action
- A comparison of the current year's data and corrective actions with those from prior years
- An assessment of the Department's progress in addressing sexual abuse in the THF.

The report shall be reviewed and approved by the Director of Public Safety and made readily available to the public through the Department's website. Material may be redacted from the report to remove personal identifiers or when publication would present a clear and specific threat to the safety and security of the THF. When a report is redacted, it shall be clearly indicated.

3. Records

SUDPS shall retain all reports from administrative or criminal investigations or Incident Review Boards conducted by it or shared with it by an outside agency pursuant to this Order. Retention shall be for as long as an alleged abuser is employed



by the Department plus five years, or in compliance with any Collective Bargaining Agreement applicable to the employee, in effect at the time.

Other data collected pursuant to the Order shall be securely retained for at least 10 years after the initial collection unless federal, state or local law requires otherwise.

4. Training

- a. SUDPS employees, volunteers and contractors who may have contact with arrestees in custody shall receive PREA training on the prevention and detection of sexual abuse and sexual harassment within the THF. The Department Training Manager shall be responsible for developing and administering the training. Training shall be consistent with recommendations from BSCC and PREA regulations.

SUDPS employees, contractors and volunteers who may have contact with arrestees in custody shall be trained within one (1) year of the effective date of the PREA standards. SUDPS employees, contractors and volunteers who have not been trained or are pending training should not have contact with arrestees. If duties/work must be performed where contact with an arrestee may take place, the employee, contractor or vendor will be physically escorted and monitored by a PREA-trained employee for the duration of the work. Refresher training shall be provided annually to ensure these persons understand the current sexual abuse and sexual harassment policies and procedures.

Topics to be covered will, at a minimum, include:

- 1) The Department's zero-tolerance policy and the right of arrestees in custody to be free from sexual abuse, sexual harassment, and retaliation for reporting sexual abuse or harassment
 - 2) The dynamics of sexual abuse and harassment in confinement settings including which individuals in custody are most vulnerable
 - 3) The right of arrestees in custody and employees to be free from sexual abuse, sexual harassment and retaliation for reporting sexual abuse or harassment
 - 4) Detecting and responding to signs of threatened and actual abuse
 - 5) Communicating effectively and professionally with all arrestees in custody
 - 6) Compliance with relevant laws related to mandatory reporting of sexual abuse to outside agencies.
- b. Investigative Services Division (ISD) deputies assigned to conduct sexual assault investigations shall also receive training in conducting investigations in confinement settings. Training should include:
 - 1) Techniques for interviewing sexual abuse victims



- 2) Proper use of Miranda and Garrity Warnings
- 3) Sexual abuse evidence collection in confinement settings
- 4) Criteria and evidence required to substantiate a case for administrative action or referral for prosecution.

The Department Training Manager shall maintain training records of personnel, contractors and volunteers to verify compliance with training requirements. Training may be conducted by use of PowerDMS or in-person instruction.