

PRISON RAPE ELIMINATION ACT (PREA) DEFINITIONS

Sexual Misconduct includes aggravated sexual assault, individual-on-individual sexual assault, sexual abuse, and sexual harassment. It also includes staff-on-individual sexual harassment and staff sexual misconduct.

Staff include Department employees, contract staff, volunteers, and any other person providing services in Department facilities or offices.

Consensual, non-coerced sexual activity between individuals under the Department's jurisdiction is prohibited by Department rule but is not defined as a violation of PREA policies.

The following definitions are applicable to Department policies relating to sexual misconduct:

- A. **Aggravated Sexual Assault** includes sexual acts perpetrated by either staff or an individual that occurred within the previous 120 hours and involve penetration or exchange of body fluids.
- B. **Individual-on-Individual Sexual Assault** is an incident in which one or more of the following acts occurs between 2 or more individuals 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:
 - 1. Contact between genitalia (i.e., penis, vulva, vagina) or between genitalia and the anus involving penetration, however slight. This does not include kicking, grabbing, or punching genitals when the intent is to harm or debilitate rather than sexually exploit.
 - 2. Contact between the mouth and the penis, vagina, vulva, or anus.
 - 3. Penetration of the anal or genital opening of another individual, however slight, by a hand, finger, or other instrument.
 - 4. Coerced sexual activity in response to pressuring, offer of protection, payment of debt, etc.
- C. **Individual-on-Individual Sexual Abuse** includes sexual contact between 2 or more individuals 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, including any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttock of another person excluding contact incidental to a physical altercation. This does not include kicking, grabbing, or punching when the intent is to harm or debilitate rather than sexually exploit.
- D. **Staff Sexual Misconduct** includes the following acts when performed by staff:
 - 1. Engaging in sexual intercourse with an individual.
 - a. Sexual intercourse includes vaginal, anal, and oral intercourse, as well as the penetration of an individual's anal or genital opening, however slight, by a hand, finger, object, or other instrument. Penetration with an object is not considered sexual intercourse when it is done for the purpose of a legitimate medical procedure.

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2. Allowing an individual to engage in sexual intercourse as defined above with another staff.
3. Intentional contact either directly or through clothing, of or with the genitalia, anus, groin, breast, inner thigh, or buttock of an individual that is unrelated to official duties or where the staff has the intent to abuse, arouse, or gratify sexual desire.
4. Compelling or allowing an individual to touch the genitalia, anus, groin, thigh, breast, or buttock of any staff or another individual, either directly or through clothing, that is unrelated to official duties or where the staff has the intent to abuse, arouse, or gratify sexual desire.
5. Kissing an individual or allowing oneself to be kissed by an individual.
6. Any display by a staff of the staff's uncovered genitalia, breast, or buttock in the presence of an individual.
7. Voyeurism - An invasion of privacy of an individual by staff for reasons unrelated to official duties, such as peering at an individual who is using a toilet in the individual's cell to perform bodily functions, requiring an individual to expose buttocks, genitals, or breasts, or taking images of all or part of an individual's naked body or of an individual performing bodily functions.
8. Engaging in any of the following acts for the purpose of gratifying the sexual desire(s) of any person or getting an individual to engage in staff sexual misconduct, or when the act has sexual undertones (i.e., can reasonably be inferred to be sexual in nature, judged according to a reasonable person's reaction to a similar act under similar circumstances):
 - a. Writing letters, showing pictures, or offering gifts or special privileges to an individual.
 - b. Engaging in a personal relationship with an individual known to be under Department jurisdiction, without legitimate penological purpose unless expressly authorized by the Secretary/designee.
 - c. Pat or strip searches conducted in violation of DOC 420.310 Searches of Offenders, DOC 420.325 Searches and Contraband for Work/Training Release, DOC 420.390 Arrest and Search, and/or operational memorandums.
9. Threatening, bribing, or coercing an individual to engage in staff sexual misconduct.
10. Any attempt or request to engage in sexual misconduct.
11. Purposefully helping another person engage in staff sexual misconduct.
12. Discouraging or preventing individuals and/or staff from making good faith reports of staff sexual misconduct in a timely manner.

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E. **Sexual Harassment** includes:

1. Repeated and unwelcome sexual advances, requests for sexual favors, verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one individual directed toward another, or
2. Deliberate and repeated verbal comments or gestures of a sexual nature to an individual by staff, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures, to include:
 - a. Comments made by staff about an individual's body intended to abuse, humiliate, harass, degrade, or arouse any person.
 - b. Demeaning or sexually oriented statements/gestures made by staff in the presence of an individual.

Department of Justice PREA Resource Center, (FAQ 06/02/2015) states, "Repeated, in the context of this provision, means more than one incident. Please note that the seriousness of the conduct should be taken into account in determining the appropriate commensurate response by the agency or facility. Serious misconduct along these lines, even if committed once, should still be addressed by the agency or facility."