

PENOBSCOT COUNTY SHERIFF'S OFFICE

TITLE: **SEXUAL MISCONDUCT (PREA AND MAINE STATUTES),
GENERAL**

NO. F- 324

EFFECTIVE DATE: **November 1, 2016**

Page 1 of 7

APPROVED BY: *Sheriff Troy Morton* TM

STANDARDS:

I. POLICY

In accordance with the United States Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. Sections 15601 *et seq.*, and 17-A M.R.S.A Sections 251, 253, 255-A, 260, and 760, it is the policy of the Penobscot County Sheriff's Office to prohibit staff (which includes Sheriff's Office employees and persons in Sheriff's Office facilities providing services to inmates by agreement with or under contract with the Sheriff's Office), volunteers, and student interns from engaging in sexual misconduct with an inmate or sexual harassment of an inmate. It is also the policy of the Sheriff's Office to prohibit any inmate or resident from engaging in sexual misconduct with another inmate or resident. It is also the policy of the Sheriff's Office to require the reporting of any sexual misconduct or sexual harassment or suspicion of either.

Any staff, volunteer, or student intern who engages in or threatens to engage in, fails to report, or otherwise fails to take appropriate steps in response to sexual misconduct with an inmate or sexual harassment of an inmate by any staff, volunteer, or student intern is subject to appropriate action, up to possible criminal prosecution. Any staff, volunteer, or student intern who fails to report or otherwise fails to take appropriate steps in response to sexual misconduct between inmates or residents is subject to appropriate action, up to possible criminal prosecution.

The Sheriff's Office has zero tolerance toward all forms of sexual misconduct or sexual harassment, regardless of whether there is a violation of federal or state law.

II. DEFINITIONS OF SEXUAL MISCONDUCT AND RELATED CRIMES

"Sexual misconduct" is defined to include a "sexual act" as set out in 17-A MRSA §251(1) (C), "sexual contact" as set out in 17-A M.R.S.A. Section 251 (1) (D), and "sexual touching" as set out in 17-A M.R.S.A. Section 251(1)(G) or the threat of any of the above. These definitions also include attempt, solicitation, or participation as an accessory. For the purpose of this policy, "sexual misconduct" is also defined to include any other act, criminal or non-criminal, for the purpose of arousing or gratifying sexual desire, including, but not limited to, kissing, exposure of genitals or buttocks, and, in the case of a female, and exposure of breasts or soliciting another person to engage in any of these acts. It also includes peering at or taking images of a person's naked body or of a person performing bodily functions for reasons unrelated to official duties. Any conduct falling within any of these definitions is prohibited regardless of any claim that the prisoner or resident consented.

MAINE STATUTORY PROVISIONS TITLE 17-A CHAPTER 11

§251. Definitions and general provisions

1) In this chapter the following definitions apply.

C. "Sexual act" means:

(1) Any act between 2 persons involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other;

- (2) Any act between a person and an animal being used by another person which act involves direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other; or
- (3) Any act involving direct physical contact between the genitals or anus of one and an instrument or device manipulated by another person when that act is done for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.

A sexual act may be proved without allegation or proof of penetration.

D. "Sexual contact" means any touching of the genitals or anus, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.

G. "Sexual touching" means any touching of the breasts, buttocks, groin or inner thigh, directly or through clothing, for the purpose of arousing or gratifying sexual desire.

§253. Gross Sexual Assault

2) A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:

E. the other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class B crime.

§255-A. Unlawful Sexual Contact

1) A person is guilty of unlawful sexual contact if the actor intentionally subjects another person to any sexual contact and:

I. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class D crime.

J. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person and the sexual contact included penetration. Violation of this paragraph is a Class C crime.

§260. Unlawful Sexual Touching

1) A person is guilty of unlawful sexual touching if the actor intentionally subjects another person to any sexual touching and:

E. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class D crime.

TITLE 17-A CHAPTER 31

§760. Failure to report sexual assault of person in custody

1) A person is guilty of failure to report a sexual assault of a person in custody if that person is a member of the staff of a hospital, prison or other institution and that staff person knows that a person detained in that institution is the victim of a crime of sexual assault that occurred while the detained person was in the institution and, in fact, that staff person does not report that crime to an appropriate criminal justice agency.

2) For purposes of this section, "sexual assault" means a crime under chapter 11.

2 -A. It is an affirmative defense to prosecution under this section that the defendant knew that the crime of sexual assault had already been reported to an appropriate criminal justice agency by another mandated reporter.

3) Failure to report a sexual assault of a person in custody is a Class E crime.

Procedure A: Sexual Misconduct and Sexual Harassment, General

- 1) This policy and related policies implement the U.S. Prison Rape Elimination Act of 2003 (PREA), 42 U.S.C. Sections 15601 *et seq.*, and the Maine Criminal Code, 17-A M.R.S.A Sections 251, 253, 255-A, 260, and 760, by, among other things, prohibiting sexual misconduct and sexual harassment toward inmates, residents, and persons under the supervision of the Sheriff's Office in the community and requiring the reporting of any such sexual misconduct and sexual harassment.
- 2) All Sheriff's Office sexual misconduct policies shall be posted on the Penobscot County Sheriff's Office website.
- 3) The following constitute PREA violations by staff, volunteers, or student interns:
 - a) Staff, Volunteer, or Intern Sexual Misconduct – Any act of a sexual nature directed toward an inmate or resident by staff, volunteer, or student intern. Sexual relationships of a romantic nature with an inmate or resident are included in this definition. Prohibited acts, whether consensual or nonconsensual, include: contact with or intentional touching of, directly or through clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks that is unrelated to official duties or with the intent to abuse, arouse, or gratify sexual desire. It includes such acts regardless of whether the contact or touching is by a body part or through the use of an instrument or animal and regardless of whether there is any penetration. PREA prohibits completed, attempted, threatened, or requested sexual acts. Also prohibited is indecent exposure, invasion of the privacy of an unclothed or partially clothed inmate or resident, or voyeurism for reasons unrelated to official duties or for the purpose of arousing or gratifying sexual desire.
 - b) Staff, Volunteer, or Intern Sexual Harassment – Repeated verbal statements, comments, or gestures of a sexual nature directed to an inmate or resident by staff, volunteer, or student intern. Prohibited acts, whether or not welcome, include: demeaning references to a gender, sexually suggestive or derogatory comments about body or clothing, or repeated obscene language or gestures.
- 4) The following constitute PREA violations by inmates or residents:
 - a) Nonconsensual Sexual Acts -- Contact between the penis and the vulva or the penis and the anus, with penetration, however slight; contact between the mouth and the penis, vulva or anus;

- or penetration of the anal or genital opening of another inmate or resident, however slight, by a hand, finger, object, or other instrument. PREA prohibits completed, attempted, threatened, or requested sexual acts.
- b) Abusive (Nonconsensual) Sexual Contact -- Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another inmate or resident, without penetration. PREA prohibits completed, attempted, threatened, or requested sexual contact.
 - c) Sexual Harassment -- Repeated or unwanted sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate or resident directed toward another.
- 5) The following constitute violations of Maine criminal law by staff with supervisory or disciplinary authority over an inmate, resident, or person under the supervision of the Sheriff's Office in the community (regardless of whether they also constitute PREA violations):
- a) Gross Sexual Assault – A sexual act directed toward an inmate, resident, or person under the supervision of the Sheriff's Office in the community by staff with supervisory or disciplinary authority over the person. Prohibited sexual acts, whether consensual or nonconsensual, include: any act between person involving direct physical contact between the genitals of one and the mouth or anus of the other or direct physical contact between the genitals of one and the genitals of the other; any act between a person and an animal being used by another person involving direct physical contact between the genitals of one and the mouth or anus of the other or direct physical contact between the genitals of one and the genitals of the other; and direct physical contact between the genitals or anus of one person and an instrument being used by another person for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact. It includes such acts regardless of whether there is any penetration. Maine criminal law prohibits completed or attempted sexual acts, as well as solicitation, conspiracy, and participation as an accessory.
 - b) Unlawful Sexual Contact – Any other intentional touching, consensual or nonconsensual, of the genitals or anus, directly or through clothing, directed toward an inmate, resident, or person under the supervision of the Sheriff's Office in the community by staff with supervisory or disciplinary authority over the person for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact. It includes such contact regardless of whether there is any penetration. Maine criminal law prohibits completed or attempted unlawful sexual contact, as well as solicitation, conspiracy, and participation as an accessory.
 - c) Unlawful Sexual Touching -- Any intentional touching, consensual or nonconsensual, of the groin, breast, inner thigh, or buttocks, directly or through clothing, directed toward a inmate, resident, or person under the supervision of the Sheriff's Office in the community by staff with supervisory or disciplinary authority over the person for the purpose of arousing or gratifying sexual desire. Maine criminal law prohibits completed or attempted unlawful sexual touching, as well as solicitation, conspiracy, and participation as an accessory.
- 6) The following constitute violations of Maine criminal law by staff without supervisory or disciplinary authority over an inmate, resident, or person under the supervision of the Sheriff's Office in the community, as well as by volunteers or student interns (regardless of whether they also constitute PREA violations): sexual act, sexual contact, or sexual touching as defined above, provided it is nonconsensual. Maine criminal law prohibits completed or attempted gross sexual assault, unlawful sexual contact, or unlawful sexual touching, as well as solicitation, conspiracy, and participation as an accessory.

- 7) The following constitute violations of Maine criminal law by inmates or residents (regardless of whether they also constitute PREA violations): sexual act, sexual contact, or sexual touching as defined above, provided it is nonconsensual. Maine criminal law prohibits completed or attempted gross sexual assault, unlawful sexual contact, or unlawful sexual touching, as well as solicitation, conspiracy, and participation as an accessory.
- 8) The following constitute violations of Maine criminal law by any person (regardless of whether they also constitute PREA violations): indecent conduct (exposure of genitals with the intent it be seen by another person under circumstances that the person knows are likely to cause affront or alarm); and invasion of privacy (installing or using a device to observe, hear, photograph, or record any other person, without that person's consent, in a bathroom, dressing or changing room, shower, or other place where the person can reasonably expect to be free from surveillance for reasons unrelated to official duties). Maine criminal law prohibits completed or attempted indecent conduct or invasion of privacy, as well as solicitation, conspiracy, and participation as an accessory.
- 9) All of the above acts are violations of this Sheriff's Office policy, regardless of whether they are consensual or nonconsensual. In addition to the above, the following constitute violations of this policy by staff, volunteers, or student interns, regardless of whether they are consensual or nonconsensual: any act done for the purpose of arousing or gratifying sexual desire, including, but not limited to, exposure of buttocks or of female breasts; kissing; and romantic acts, sexual and nonsexual, directed toward an inmate, resident, or person under the supervision of the Sheriff's Office in the community. Sheriff's Office policy prohibits completed or attempted violations, as well as solicitation, conspiracy, and participation as an accessory.
- 10) All of the above acts are violations of this Sheriff's Office policy, regardless of whether they are consensual or nonconsensual. In addition to the above, the following constitute violations of Sheriff's Office policy by inmates or residents: consensual sexual act, sexual contact, or sexual touching. The following also constitute violations of Sheriff's Office policy by inmates or residents, regardless of whether they are consensual or nonconsensual: any act done for the purpose of arousing or gratifying sexual desire, including, but not limited to, exposure of buttocks or of female breasts; kissing; and romantic acts, sexual and nonsexual, directed toward another inmate or resident. Sheriff's Office policy prohibits completed or attempted violations, as well as solicitation, conspiracy, and participation as an accessory.
- 11) The Sheriff, or designee, shall ensure that all staff, volunteers, and student interns are informed and acknowledge that sexual misconduct and sexual harassment between inmates or residents is prohibited, that sexual misconduct with and sexual harassment of an inmate, resident or person under supervision of the Sheriff's Office is prohibited, that a claim of consent shall not be accepted as an excuse for engaging in any form of sexual misconduct, and that an inmate, resident or person under supervision has a right to report if sexual misconduct or sexual harassment occurs.

Procedure B: Sheriff's Office PREA Coordinator and PREA Monitors

- 1) The Sheriff's Office PREA Coordinator shall develop, implement, and oversee the Sheriff's Office efforts to comply with PREA standards in its facility and other release programs and shall receive reports and track responses to reports of sexual misconduct.
- 2) Duties of this position include, but are not limited to:
 - a) Serving as the primary contact and resource for the Sheriff's Office on PREA related inquiries;
 - b) Collaborating with the Sheriff or his designee to develop policy and procedures in compliance with federal and state statutes and Sheriff's Office goals concerning PREA issues;

- c) Receiving reports of complaints and alleged incidents of PREA violations from the facility PREA monitors;
 - d) Reviewing PREA investigations as well as the resolution of complaints and alleged incidents; (Form 324.1)
 - e) Assisting in the development, implementation, and evaluation of all PREA related training;
 - f) Collaborating with the Sheriff's Office Policy Development Coordinator to provide updates regarding law, policy, or services related to PREA;
 - g) Collaborating with the Sheriff or his designee, to ensure that all new contracts and contract renewals for the confinement of inmates or residents outside the Sheriff's Office includes the other agencies obligation to adopt and comply with PREA Standards and monitoring by the Sheriff's Office for compliance;
 - h) Collaborating with the Sheriff or his designee, to ensure that when a new facility is designed or an existing facility is expanded or modified or facility monitoring technology is installed or updated, consideration is given to ways of enhancing protection of inmates or residents from sexual misconduct and harassment;
 - i) Collaborating with the Sheriff's Office Medical Vendor and Training Sergeant to ensure that all facility health care staff have been trained in the prevention of, detection of, preservation of evidence, response to, and reporting of sexual misconduct; and
 - j) Maintaining a memorandum of understanding with Rape Response Services for the provision of support services to inmates and residents.
- 3) The Penobscot County Sheriff's shall designate PREA monitors to coordinate the facility's compliance with PREA standards. The designated PREA monitor must be a staff person who has a supervisory position at the facility.
- 4) The PREA monitor's duties shall also include, but are not limited to, the following:
- a) Ensuring that all inmates or residents are screened for risk of sexual victimization or abusiveness, in accordance with the timeframes established in Sheriff's Office policy;
 - b) Ensuring that all inmates or residents are provided timely, comprehensive education, through written materials and/or video, regarding their rights to be free from sexual misconduct and sexual harassment and to be free from retaliation for reporting such incidents, as well as Sheriff's Office policies and procedures for reporting and responding to such incidents. This education shall also include prevention, self-protection, and the availability of treatment and counseling;
 - c) Ensuring that key information is continuously and readily available to inmates or residents through posters, inmate handbooks, or other written materials;
 - d) Reporting of all PREA related complaints and alleged incidents to the PREA Coordinator immediately after learning of the complaint or allegation;
 - e) Working with the facility's investigator to ensure that all complaints/allegations of PREA violations are appropriately investigated;
 - f) Submitting a detailed incident report to the PREA Coordinator from the date of the complaint or allegation, to include a thorough description of the alleged incident, as well as any other actions taken; to include Tracking each complaint/allegation of sexual misconduct on an ongoing basis using the PREA Monitor Check List (Form 324.1A);

- g) Conducting and documenting unannounced rounds to identify and deter staff sexual misconduct and sexual harassment. These rounds shall be conducted on all shifts and shall be documented in the Intake log. The PREA monitor shall ensure that staff are not alerted that these rounds are occurring;
- h) Assisting in review and data collection relating to alleged incidents of sexual misconduct;
- i) Developing and, as necessary, revising a plan, to be reviewed at least once a year with the PREA Coordinator, to protect inmates or residents against sexual misconduct. When developing the facility's plan, the following shall be considered:
 - i. Generally accepted correctional practices;
 - ii. Any findings of inadequacy by courts or by federal or state investigative or oversight agencies;
 - iii. All components of the facility's physical plant (including "blind-spots" or areas where staff or inmates or residents may be isolated) and availability of video monitoring;
 - iv. The composition of the inmate or resident population;
 - v. The number and placement of staff, including supervisory staff;
 - vi. Facility programs occurring on a particular shift;
 - vii. Any applicable state laws, regulations, or standards; and
 - viii. The prevalence of substantiated and unsubstantiated incidents of sexual misconduct; and any other relevant factors.
- j) Developing a written facility plan (F-324.5.1 Response Plan) to coordinate actions taken in response to an incident of sexual misconduct or sexual harassment among security staff, first responders, medical and mental health staff, investigators and facility management, and
- k) Monitoring compliance with the plans to ensure that they are not deviated from except in emergencies and to ensure that the reasons for any deviations are documented (Form F-324.1).