

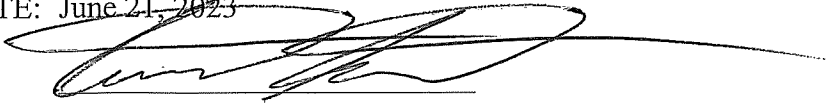
MERCER COUNTY JAIL (SHERIFF'S OFFICE) GENERAL ORDER

NUMBER: C-270

SUBJECT: PRISON RAPE ELIMINATION ACT OF 2003

EFFECTIVE DATE: June 21, 2023

APPROVED:



Sheriff Terry Ternes

NOTE: This rule or regulation is for internal use only, and does not enlarge a correctional officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by this agency, and then only in a non-judicial administrative setting.

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1. **AUTHORITY:** Authority for this policy with procedures is found in chapters 54-23.3 and 12-47 of the North Dakota Century Code and part 115 of Title 28 of the Code of Federal Regulations.
 2. **APPLICABILITY:** Applies to all employees and inmates within and working for MCSO.
 3. **DEFINITIONS AND ACRONYMS: [115.11 (a)-3]**
 - A. Abuse: The improper use or treatment of an inmate that directly or indirectly affects the inmate negatively; any intentional act that causes physical, mental or emotional injury to an inmate.
 - B. Behavioral Health Practitioner: A person who, by education and experience, is professionally qualified to provide counseling interventions designed to facilitate individual achievement of human development goals and mediate mental, emotional or behavioral disorders, and associated distresses which interfere with behavioral health and development.
 - C. Contractor: A person who provides services on a recurring basis pursuant to a contractual agreement with the agency.
 - D. Criminal Record Check: A criminal record check may include comprehensive identifier information and both confidential and public information to be collected

and run against laws enforcement indices, and may include completion of fingerprint cards and submitting to the Bureau of Criminal Investigation.

- E. DNA: Deoxyribonucleic Acid that contains the genetic instructions used in the development and functioning of all known living organisms.
- F. Exigent Circumstances: Any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or order of the jail.
- G. Premier One Records: Report Management System
- H. Gender Non-Conforming: A person whose appearance or manner does not conform to traditional societal gender expectations.
- I. Inmate: A person in the legal and physical custody of MCSO, or persons transferred to the physical custody of MCSO by another state or the federal government.
- J. Intern: An individual receiving academic credit or fulfilling an academic requirement of an accredited educational institution through work experience.
- K. Intersex: A person who's 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.
- L. TurnKey Corrections: Kiosk tool for inmate account management
- M. Medical Practitioner: Any person practicing medicine to include MCSO Nurse, physicians, nurse practitioners, and physician assistants.
- N. Prison Rape Elimination Act of 2003: Federal law that prohibits and seeks to eliminate sexual assaults and sexual misconduct in correctional institutions and community corrections settings.
- O. Intermediate or Higher-Level Staff: Sheriff, Jail Administrator, Chief Deputy, PREA Coordinator, and other assigned Supervisors.
- P. Prison Rape Elimination Act Coordinator: A senior-level position that reports directly to the agency head. The Prison Rape Elimination Act coordinator's responsibilities include developing, implementing, and overseeing the agency's plan to comply with the Prison Rape Elimination Act standards. He or she is also responsible for ensuring the completion of the assessment checklists in compliance with Prison Rape Elimination Act standards.

Q. Sexual Abuse of an Inmate, Detainee, or Juvenile by another Inmate, Detainee, or Juvenile: 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: which may include: persuasion, inducement, enticement or forcible compulsion, subjecting to sexual contact another person who is incapable of giving consent by reason of custodial status; subjecting another person to sexual contact who is incapable of consenting by reason of being physically helpless, physically restrained or mentally incapacitated; prostituting or otherwise sexually exploiting another person includes:

1. Contact between the penis and vulva or the penis and anus, including penetration, however slight;
2. Contact between the mouth and the penis, vulva, or anus.
3. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument; and
4. 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.

R. Sexual Abuse of an Inmate, Detainee, or Juvenile by a Staff Member, Contractor, or Volunteer: Includes any of the following acts, with or without consent of the inmate, detainee or juvenile:

1. Contact between the penis and vulva or the penis and anus, including penetration, however slight;
2. Contact between the mouth and the penis, vulva, or anus.
3. 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;
4. Penetration of the anal or genital opening of another person, 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;
5. Any other intentional touching, 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;

6. 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;
 7. 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 juvenile and Voyeurism by a staff member, contractor, or volunteer.
- S. Sexual Harassment (for PREA use only): Includes: 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 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.
- T. Sexually Transmitted Diseases: Any of various diseases, including cancrroid, chlamydia, gonorrhea, and syphilis, that are usually contracted through sexual intercourse or other intimate sexual contact.
- U. Substantiated Allegation: Allegation that was investigated and determined to have occurred.
- V. Transgender; a person whose gender identity (internal sense of feeling male or female) is different from the person's assigned sex at birth.
- W. Unfounded Allegation: Allegation that was investigated and determined not to have occurred.
- X. Unsubstantiated Allegation: Allegation that was investigated and the investigation produce insufficient evidence to make a final determination as to whether or not the event occurred.
- Y. Volunteer: An individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency.
- Z. Volunteer and Contractor Inmate Contact: Any contact with inmates that occurs while the volunteer or contractor is not escorted or observed by staff. These persons will receive Prison Rape Elimination Act training prior to entering MCSO unescorted or unsupervised. Volunteer and contractor acknowledgement forms shall be retained in the volunteer/ contractor's file by designated staff.
- AA. Voyeurism by a Staff Member, Contractor, or Volunteer: An invasion of privacy of an inmate, detainee, juvenile or resident by staff for reasons unrelated to

official duties, such as peering at an inmate or juvenile who is using a toilet in his or her cell to perform bodily functions; requiring an inmate or juvenile to expose their buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate or juvenile performing bodily functions.

- BB. DOJ: Department of Justice
- CC. P1: Premier One Records
- DD. HIV: Human Immune Deficiency Virus
- EE. PREA: Prison Rape Elimination Act of 2003
- FF. SAFE: Sexual Assault Forensic Examiner
- GG. SANE: Sexual Assault Nurse Examiner
- II. STD: Sexually Transmitted Disease
- JJ. CJIS: Criminal Justice Information Sharing
- KK. WARC: Women's Action Resource Center

4. **POLICY:** MCSO facility will have a written policy and procedures mandating zero-tolerance towards all forms of sexual abuse, and sexual harassment and outlining MCSO approach to prevention, detection, and response to such conduct. Policy and procedures will be in accordance with the DOJ Title 28 Code of Federal Regulations, Part 115, National Standards, to prevent, detect, and respond to prison rape.

5. **PROCEDURES:**

A. Prevention Planning

1. § 115.11 Zero tolerance of sexual abuse and sexual harassment; PREA Coordinator
 - a. MCSO has a zero tolerance toward all forms of sexual abuse and sexual harassment within its facility. [115.11 (a)-1]
 - b. This policy outlines how MCSO will implement the agency's zero tolerance approach to preventing, detection, and responding to sexual abuse and sexual harassment. [115.11(a)-2]
 - c. MCSO identifies disciplinary sanctions for those found to have participated in prohibited behaviors. [115.11(a)-4]

- 1) Staff disciplinary sanctions are identified under standards § 115.76, §115.77, and § 115.78.
 - 2) Refer to the Inmate Handbook for information pertaining to disciplinary sanctions for inmates.
- d. MCSO has a designated upper-level, agency-wide PREA Coordinator who has sufficient time and authority to implement and oversee MCSO efforts to comply with PREA standards in its facility.
- 1) The PREA Coordinator's responsibilities:
 - a. Assist with the development and implementation of PREA-related policies.
 - b. Develop and coordinate procedures to triage allegations received and identify, monitor, and track incidents of sexual abuse.
 - c. Identify and track referrals of allegations to law enforcement and prosecutors.
 - d. Develop and implement a comprehensive system to audit compliance with PREA policies and applicable laws.
 - e. Oversee monitoring of PREA compliance with private and non-department public entities
 - f. Keep management informed on PREA-related issues.
 - g. Maintain a memorandum of understanding for external victim advocacy or maintain documentation of attempts to enter into a memorandum of understanding.
 - h. Maintain PREA content for the department website, including publication of required information and documents.
 - i. Serve as the PREA liaison for MCSO.
 - j. Coordinate training of PREA investigators at the facility.
 - k. Coordinate PREA Audit preparations.
 - l. Coordinate corrective action plans and ensure follow up

- m. Track completion of Incident Reports for all allegations of sexual abuse or sexual harassment.
- n. Ensure checks are performed to verify the PREA reporting telephone number is posted on or near all inmate telephones.
- o. Perform functionality tests of a random sample of inmate telephones to verify the reporting number at McLean County Jail and Women's Action Resource is operational.
- p. Perform checks to verify posters are posted in area of accessible to inmates, staff, and public.

2. **§ 115.12 Contracting with other entities for the confinement of inmates.**

- a. Agencies under contract with MCSO will include in any new contract or contract renewal to adopt and comply with the PREA standards [115.12 (a)-1]
- b. All new contracts or contract renewals provide for MCSO contract monitoring to ensure compliance with the PREA standards. [115.12 (a)-2]
 - 1.) Contract managers will monitor compliance through reported offenses and facility inspections.

3. **§ 115.13 Supervision and Monitoring**

- a. MCSO facility will develop, document, and make the best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring, to protect inmates against sexual abuse. Refer to MCSO Policy. [115.13 (a)-1]
- b. Each time the Policy is not complied with. The facility documents and justifies all deviations from the staffing plan. [115.13 (b)-1]
 - 1) The Jail Administrator will update the shift schedules to ensure staff are assigned to each fixed post.
 - 2) It is the responsibility of the Jail Administrator to keep the shift schedule updated.
 - 3) There will be written justification for all deviations from the staffing plan.

- c. At least once every year the Sheriff in collaboration with the PREA Coordinator, will review, determine, and document whether any adjustments are needed in: [115.13 (d)-1]
 - 1) The deployment of monitoring technology.
 - 2) The allocation of MCSO resources to commit to the staffing plan to ensure compliance.
- d. Intermediate or high-level supervisors will conduct unannounced rounds of the facility to identify and deter staff sexual abuse and sexual harassment [115.13 (d)-1]
 - 1) The unannounced rounds are documented as an electronic log entry in P1. The entry will be logged in Shift Remarks as Captain Walk Through. [115.13 (d)-2]
 - a) Unannounced supervisor rounds will be conducted on all shifts. [115.13 (d)-3]
 - b) Staff will not alert other staff members when a supervisor is conducting these unannounced rounds, unless such announcement is related to the legitimate operational functions of the facility. [115.13 (d)-4]

4. **§ 115.14 Youthful Inmates**

- a. Adjudicated delinquent youths charged with offenses and youth convicted of a crime in adult court are not housed at MCSO facility.

5. **§ 115.15 Limits to cross-gender viewing and searches**

- a. MCSO employees will not conduct cross-gender unclothed searches or cross-gender visual body cavity searches (anal or genital opening) except in exigent circumstances or when performed by medical practitioners. Efforts will be made in exigent circumstances to obtain Sheriff's prior approval. [115.15 (a)-1]
- b. Employees will document in the electronic log all cross-gender unclothed searches and cross-gender visual body cavity searches.
- c. Inmates will be allowed to shower, perform bodily functions, and change clothing without non-medical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell/dorm checks. [115.15 (d)-1]

- d. Female staff will announce “Female on the Floor” when entering a male inmate’s housing unit, and Male staff will announce “Male on the Floor”, when entering a female inmate’s housing unit where inmates may be seen using the shower, toilet, or different stages of undress. [115.15 (d)-1]
 - 1) This announcement will be documented as an electronic log entry in shift remarks or each shift daily. The entry will be logged in the Jail shift remarks as “Cross-gender Supervision.”
 - 2) Non-uniformed female or male staff will announce prior to entering an inmate’s housing unit where inmates may be seen using the shower, toilet, or different stages of undress.
- e. Staff will not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate’s genital status. [115.15 (e)-1]
 - 1) If the inmate’s genital status is unknown, it may be determined through conversation with the inmate, by reviewing medical records, or if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.
- f. During initial orientation, staff are trained to conduct cross-gender pat-down searches and searches of transgender and intersex inmates in a professional and respectful manner and in the least intrusive manner possible, consistent with security needs, [115.15 (f)-1]

6. **§ 115.16 Inmate with disabilities and inmates who are limited English proficient**

- a. The following services have been established to provide disabled and limited English proficient inmates equal opportunity to participate in or benefit from all aspects of the agency’s efforts to prevent, detect, and respond to sexual abuse and sexual harassment. All inmate education materials will be in formats accessible to all inmates in accordance with Title II of the Americans with Disabilities Act, 28 CFR 35.164. [115.16 (a)-1] [115.16 (b)-1]
 - 1) Interpreter services for the deaf, blind or hard of hearing inmates, and Non-English-speaking inmates.
 - a) 1-877-650-8027
 - 2) Inmates who have intellectual, psychiatric, or speech disabilities will review materials with staff to ensure comprehension.
- b. MCSO will not rely on inmate interpreters, inmate readers, or other types of inmate assistants except in limited circumstances, and must be fully documented,

where an extended delay in obtaining an effective interpreter could compromise:
[115.16 (a)-1] [115.16 (a)-2]

- 1) The inmate's safety;
- 2) The performance of first responder duties under § 115.64; or
- 3) The investigation of the inmate's allegations.

7. § 115.17 Hiring and Promotion Decisions

- a. MCSO will not hire or promote anyone who may have contact with inmates, and will not enlist the services of any contractor or volunteer who may have contact with inmates, who: [115.17 (a)-1]
 - 1) Has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997).
 - 2) Has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or
 - 3) Has been civilly or administratively adjudicated to have engaged in the activity described in paragraph a. or b. of this section.
- b. MCSO considers any incidents of sexual harassment when determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with inmates. [115.17 (b)-1]
- c. Initial criminal records checks shall include fingerprints. Follow up criminal records checks may not require fingerprints.
- d. Before hiring new employees who may have contact with inmates, MCSO will: [115.17 (c)-1]
 - 1) Perform a criminal record check
 - 2) Consistent with federal, state and local law, make the best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.
- e. MCSO will conduct a criminal record check before enlisting the service of any contractor or volunteer who may have contact with inmates. [115.17 (d)-1]

- f. Criminal record checks will be conducted by CJIS at least every five years on all current employees. Volunteers and contractors who may have contact with inmates will have criminal background checks conducted by NCIC trained staff. [115.17 (e)-1]
- g. MCSO requires all applicants and employees to disclose any misconduct described in paragraph 1.a.; b; and c. of this section through the following ways:
 - 1) Written applications or interviews for hiring or promotions;
- h. Criminal record checks shall be conducted on all employees prior to hire and may be done prior to any promotion.
- i. Material omissions regarding such misconduct or the provision of materially false information shall be grounds for termination of employment. [115.17 (g)-1]
- j. Unless prohibited by law, MCSO shall provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer with whom the employee has applied to work.

8. § 115.18 Upgrades to Facility and Technologies

- a. MCSO will consider the effect of the design, acquisition, expansion, or modification in reference to the agency's ability to protect inmates from sexual abuse during any planned expansions, modifications, or video equipment updates to the facility. [115.18 (a)-1]
 - 1) MCSO requires the architect or engineer meet the qualifications outlined in the request for statement of qualifications document, to include familiarization with the PREA standards.
 - 2) MCSO PREA Coordinator consults with the architect or engineer design team during the planning and construction phase.
- b. Prior to installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the Sheriff will conduct an assessment to determine technology capabilities to further protect inmates from sexual abuse. [115.18 (b)-1]
 - 1) When conducting an assessment, the Sheriff will consider cost, functionality, findings of inadequacy from judicial or federal investigative agencies, blind spots throughout the facility, and the prevalence of sexual abuse.

9. **§ 115.21 Evidence Protocol and Forensic Medical Examinations**

- a. MCSO is responsible for conducting administrative investigations into allegations of sexual abuse. [115.21 (a)-1]
- b. A MCSO assigned investigator/ deputy will conduct criminal investigations of sexual abuse for MCSO.
 - 1) MCSO evidence protocol will be based on the North Dakota Sexual Assault Evidence Collection Protocol 5th edition adapted from the Sexual Assault Protocol developed by the United States Department of Justice. [115.21 (a)-3] [115.21 (a)-2]
- c. All victims of sexual abuse will be offered access to forensic medical examinations. [115.21 (c)-1]
 - 1) Forensic medical examinations will be offered without financial cost to the victim. Forensic examinations will be conducted at the facility, unless exigent circumstances exist. [115.21 (c)-2]
- d. Forensic medical exams are conducted by a SANE or SAFE within 120 hours of the incident. [115.21 (c)-3]
 - 1) When a SANE or SAFE is not available, the examination may be performed by other qualified medical practitioners. MCSO staff will document its efforts to provide a SAFE or SANE. [115.21 (c)-4] [115.21 (c)-5]
- e. The PREA Coordinator will attempt to make a victim advocate from WARC available to the victim in person or by other means. [115.21 (d)-1]
 - 1) The PREA Coordinator will attempt to establish a Memorandum of Understanding with WARC.
 - a.) The PREA Coordinator will document MOU's or efforts to obtain them. [115.21 (d)-2]
 - 2) MCSO Nurse will contact the designated medical provider, who will initiate the Sexual Assault Response Team and request a victim advocate.
- f. If, or when, WARC personnel is not available to provide victim advocate services, the facility provides a qualified agency staff member, or qualified community-based organization staff member. [115.21 (d)-3]

- g. If requested by the victim, a victim advocate, qualified agency staff member or qualified community – based organization staff member will accompany and support the victim through the forensic medical examination process and investigatory interviews and provides emotional support, crisis intervention, information, and referrals. [115.21 (e)-1]

10. **§ 115.22 Policies to ensure referrals of allegations for investigations**

- a. MCSO will ensure an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment. [115.22 (a)-1]
 - 1) For procedures see §115.71 Criminal and Administrative Agency Investigations
- b. MCSO will ensure criminal allegations of sexual abuse or sexual harassment are referred to MCSO Chief Deputy unless the allegation does not involve potentially criminal behavior. [115.22 (b)-1]
 - 1) The PREA Investigator will document all referrals to MCSO Chief Deputy in the investigative report. This information will be forwarded to the PREA Coordinator. [115.22 (b)-3]
- c. MCSO PREA policy is available on MCSO website. PREA statistics will be posted annually. [115.22 (b)-2]

11. **§ 115.31 Employee Training**

- a. MCSO trains all employees during orientation and every two years thereafter, on the following matters: [115.31 (a)-1]
 - 1) Zero-tolerance policy for sexual abuse and sexual harassment;
 - 2) How to fulfill employee responsibilities under MCSO 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.
- b. Training is tailored to the gender of the inmates in the facility. [115.31 (b)-1]
 - c. Employees are provided with information about current policies regarding sexual abuse and sexual harassment policies through: [115.31 (c)-3]
 - 1) MCSO online PREA training
 - 2) Coordinated response posters,
 - 3) PREA materials posted throughout the facility'
 - 4) Annual performance evaluations require acknowledgement of the PREA policy.
 - d. MCSO documents that employees understand the training they have received through employee signature or electronic verification [115.31 (d)-1]

12. **§ 115.32 Volunteer and Contractor Training**

- a. The PREA Coordinator will ensure all volunteers and contractors who have contact with inmates will be trained on their responsibilities regarding sexual abuse and sexual harassment with inmates. [115.32 (a)-1]
 - 1) The type and level of training is based on the services they provide and the level of contact they have with inmates [115.32 (b)-1]
 - a) Unescorted or unsupervised contractors or volunteers will receive online training on PREA.
 - b) Escorted or supervised contractors will review and acknowledge understanding of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents by signing the PREA Acknowledgement Form. [115.32 (b)-2]

- 2) Training is approved by the PREA Coordinator and is conducted thru online training. The PREA Coordinator will manage this information and keep records.
- b. Volunteers will be trained on policy and procedures relative to PREA. This training will be repeated every two years.
- c. Administration shall maintain documentation confirming volunteers and contractors understand the training they have received and document each contractor or volunteer has completed the PREA training and signed the acknowledgement form, based on their level of contact with inmates.
[115.32 (c)-1]

13. **§ 115.33 Inmate Education**

- a. Within 30 days of the inmate booking or inmate transfer, MCSO jail staff will provide comprehensive education to all inmates by showing the video. PREA: What You Need To Know and providing a verbal comprehensive explanation of the video. The comprehensive education will explain the following:
[115.31 (a)-1] [115.33 (c)-3]
 - 1) MCSO zero-tolerance policy regarding sexual abuse and sexual harassment;
 - 2) Their right to be free from sexual abuse or sexual harassment;
 - 3) How to report incidents or suspicions of sexual abuse or sexual harassment;
 - 4) Their right to be free from retaliation;
 - 5) The jail policies and procedures for responding to such incidents.
 - 6) An Inmate PREA Information sheet is provided to each inmate at the time of booking with information on definitions and reporting methods.
- b. Inmate PREA education is available in accessible formats for all inmates including those who are limited English proficient; deaf; hearing impaired; visually impaired or otherwise disabled or limited in their reading skills.
[115.33 (d)-1]
 - 1) Deaf or hearing impaired- Training materials are available through print.
 - 2) Visually impaired- Training is available thru staff directed verbal assistance.

- 3) Limited English proficiency- Interpreter services provided.
 - a) 1-877-650-8027
- 4) Otherwise disabled or limited reading skills - training is provided by education and assistance from assigned MCSO social service personnel.
- c. MC Jail shall maintain documentation of inmate participation in these education sessions. [115.33 (e)-1]
 - 1) Documentation of PREA training will be kept in P1 Record Management System and Turnkey Corrections.
- d. The MC Jail ensures key information is continuously and readily available or visible to inmates through posters and the inmate handbook. [115.33 (f)-1]

14. **§ 115.34 Specialized training: Investigations**

- a. Investigators who investigate allegations of sexual abuse are trained in conducting sexual abuse investigations in jail settings. This includes: [115.34 (a)-1]
 - 1) DOJ approved PREA investigator training. [115.34 (b)]
 - a) Techniques for interviewing sexual abuse victims; and proper use of **Miranda** and **Garrity** Warnings;
 - b) Sexual abuse evidence collection in jail settings;
 - c) Criteria and evidence required to substantiate a case for administrative action or for prosecution referral.
- b. MCSO administration maintains documentation of investigators that have completed the required specialized training in conduction sexual abuse investigations. [115.34 (c)-1]

15. **§ 115.35 Specialized Training: Medical and Behavioral Health Care**

- a. Forensic exams will be conducted at MCSO by MCSO SANE nurse. [115.35 (b)-1]
- b. MCSO medical practitioner is trained in the following disciplines: [115.35 (a)]
 - 1) MCSO approved PREA training.
 - a) PREA medical care for sexual assault victims in a jail setting.
 - 2) How to detect and assess signs of sexual abuse and sexual harassment;

- 3) How to preserve physical evidence of sexual abuse;
 - 4) How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and
 - 5) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment
- c. MCSO Administration maintains documentation medical and behavioral health practitioners that have received the training as mentioned in this standard.
[115.35(c)-1]

16. **§ 115.41 Screening for risk of sexual victimization and abusiveness**

- a. The Prison Rape Elimination Act (PREA) Screening must be completed within 24 hours of booking for admission for risk of being sexually abused by other inmates or being sexually abusive toward other inmates. Housing assignments are made accordingly. [115.41 (a)-1] [115.41 (b)-1] [115.41 (c)-1]
- b. The PREA Screening considers the following criteria to assess inmates for risk of sexual victimization and sexual abusiveness: [115.41 (d)] [115.41 (e)]
 - 1) Whether the inmate has a behavioral, 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 identifies their sexual orientation, or is perceived to be heterosexual; gay; lesbian; bisexual or asexual.
 - 8) Whether the inmate identifies their sexual identifies their sexual identity, or is perceived to be gender non-conforming, cisgender, transgender, gender fluid or intersex.
 - 9) The inmate's own perception of vulnerability.

- c. Upon completion of the Prison Rape Elimination Act Screening, MCSO staff must review for housing assignment.
- d. PREA Reassessment Screening and viewing of the video will be conducted within 30 days of initial booking by supervisory staff or Jail Nurse. The video is also available to the inmate for viewing on the Turnkey Corrections kiosk. Changes will be entered on the PREA screening form and kept in the inmate's medical file. Further screening into levels of mental disability, physical disability, and developmental disability will be conducted by medical and mental health staff. An affirmative response to PREA Screening question #5 regarding LGBTI status will be further assessed by the PREA Coordinator and Jail Administrator. An additional reassessment will be done annually and whenever there is a triggering event such as a substantiated or unsubstantiated PREA related incident or the inmate self-discloses an act of sexual predation or victimization. If an inmate is identified as transgender or intersex, a reassessment shall be completed every 6 months. [115.41 (f)-1, (f)-2]
 - 1) A reassessment is warranted because of a referral, request, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness any staff member may refer an inmate for reassessment. [115.41 (g)-1]
 - 2) Inmates may not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked during screening or assessment. [115.41 (h)-1]
 - a) MCSO maintains information within P1 that limits access to MCSO staff and ensures information is not exploited to the inmate's detriment by staff or other inmates. Staff is required to follow MCSO confidentiality agreement. [115.41 (i)-1]

17. **§ 115.42 Use of Screening Information**

- a. All inmates work, education, and program assignments will be adequately supervised. [115.42 (a)-1]
- b. Prior to housing and bed assignments, staff will review alerts within P1 to keep separate inmates who have been identified as potential victims or known victims from known aggressors or potential aggressors. [115.42 (a)-1]
- c. The jail staff shall make individualized determinations about how to ensure the safety of each inmate by utilizing alerts within P1. [115.42 (b)-1]

- d. In deciding whether to assign a transgender or intersex inmate to a housing unit for males or female inmates, and in making other housing and programming assignments, a multi-disciplinary team including jail security staff, medical, supervisory, behavioral health and administration shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety and whether the placement would present management or security problems. [115.42 (c)-1]
- 1) 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)]
 - a) Supervisory staff will complete this task and record in the inmate's Booking Folder within P1.
 - b) A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration. [115.42 (e)]
- e. Transgender and intersex inmates must have the opportunity to shower separately from other inmates. [115.42 (f)]
- 1) Inmates who identify themselves as transgender or intersex during the PREA Intake Screening will be advised they can request the opportunity to shower separately from other inmates.
- f. MCSO shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated housing units solely on the basis of such identification or status unless such placement is in a dedicated housing unit established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates. [115.42 (g)].
1. PREA requirements:
 - Staff may not search or physically examine a transgender or intersex inmate for the sole purpose of determining the resident's genital status.
 - If the inmate's genital status is unknown, it may be determined through conversation with the resident, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.
 - If it is determined either through assessment or through admission by the inmate that they are transgender or intersex, the person responsible for the screening or the search shall ask the inmate if they prefer to be searched by a male or female officer and document the response.

- If the inmate does not have a preference or if a search must be completed due to security concerns, available staff may conduct the search and document the reason the person was searched by someone not of the resident's preferred gender.

18. **§ 115.43 Protective Custody**

- a. Inmates at high-risk for sexual victimization may not be placed in involuntary segregated housing unless an assessment of all available alternative has been made and a determination has been made there is no available alternative means of separation from likely abusers. If assessment can't be completed immediately, the inmate may be held in involuntary segregated housing for less than 24 hours while assigned staff completes the assessment. [115.43 (a)-1]
- b. Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document:
 - 1) The opportunities that have been limited;
 - 2) The duration of the limitation; and
 - 3) The reasons for any limitations.
- c. Inmates will only be assigned to involuntary segregated housing until and alternative means of separation from likely abusers can be arranged. The assignment may not ordinarily exceed a period of 30 days. [115.43 (c)]
 - 1) Every effort shall be made to keep the victim in the victim's normal housing unit to prevent re-traumatization.
- d. If an involuntary segregated housing assignment is made pursuant to substandard [115.43 (a)-1] of this section, the supervisory staff member shall clearly document: [115.43 (d)]
 - 1) The basis for the concern for the inmate's safety; and
 - 2) The reason why no alternative means of separation can be arranged.
 - 3) Every seven days for the first two months and then every 30 days thereafter, the Jail Administrator shall allow each inmate a review to determine whether there is a continuing need for separation from the general population.

19. **§ 115.51 Inmate Reporting**

- a. MCSO allows for internal reporting by inmates to report privately to agency officials about sexual abuse, sexual harassment, staff neglect of responsibilities contributing to sexual abuse or sexual harassment, and retaliation by other inmates or staff for reporting sexual abuse or sexual harassment. Inmates can report in the following ways; [115.51 (a)-1]
 - 1) Verbal reporting to any staff member
 - 2) Third party reporting
 - 3) Inmate request forms
 - 4) Inmate grievance forms
- b. MCSO allows for inmates to report sexual abuse or sexual harassment to a public or private entity or office that is not part of the agency in the following ways: [115.51 (b)-1]
 - 1) Inmate can call McLean County Sheriff's Office at 701-462-8103 using PIN #4898 Option 1 Inmate Wallet at no cost to the inmate. This resource is located outside Mercer County Sheriff's Office and you can remain anonymous upon request.

20. **§ 115.52 Exhaustion of Administrative Remedies**

- a. There is no time limit on when an inmate may submit a grievance regarding an allegation of sexual abuse. Inmates are not required to use an informal grievance process or to otherwise attempt to resolve with staff an alleged incident of sexual abuse. [115.52 (b)-1] [115.52 (b)-2]
- b. MCSO ensures that:
 - 1) An inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint; [115.52(c)-1]
 - 2) Such grievance is not referred to a staff member who is the subject of the complaint. [115.52 (c)-2]
 - a) Refer to section 115.61 (a) for response steps
- c. The Sheriff will issue a final decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance. [115.52 (d)-1]

- 1) Computation of the 90-day time period must not include time consumed by inmates in preparing any administrative appeal.
- d. The Sheriff may claim an extension of time to respond, up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. [115.52 (d)-5]
- 1) The investigating officer shall notify the inmate in writing of any extension and provide a date by which a decision will be made. [115.52(d)-6]
- e. Third parties, including inmates, staff members, family members, attorneys, and outside advocates, may assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and to file such requests on behalf of inmates. [115.52(e)-1]
- f. If a third-party file is requested on behalf of an inmate, the alleged victim must agree to have the request filed on the victim's behalf. The alleged victim must also agree to personally pursue any subsequent steps in the administrative remedy process.
- 1) If the inmate declines to have the request processed on his behalf, the assigned investigator shall document the inmate's decision and verify by the inmate signature. [115.52(e)-2]
- g. An inmate may file an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse. [115.52(f)-1]
- 1) Once received, staff shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to the Sheriff for which immediate corrective action may be taken.
 - 2) The Sheriff will provide an initial response within 48 hours. [115.52(f)-2]
 - 3) The Sheriff will issue a final decision within five calendar days. [115.52(f)-5]
 - 4) The initial response and final decision will document MCSOs' determination whether the inmate is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance. This documentation will be retained in a case folder at MCSO.
 - 5) After an agency's decision is made, a copy of the emergency grievance and all responses will be forwarded to the PREA Coordinator.

- h. An inmate may be disciplined for filing a grievance related to alleged sexual abuse only when there is determination the inmate filed the grievance in bad faith. [115.52(g)-1]

21. **§ 115.53 Inmate access to outside confidential support services**

- a. Inmates are provided with access to outside victim advocates for emotional support services related to sexual abuse through mailing addresses and telephone numbers, including toll-free hotline numbers to the organizations listed below. In the event of sexual abuse, a trained behavioral health staff member will be available to provide support services. The facility shall enable reasonable communication between inmates and these organizations and agencies in as confidential a manner as possible. [115.53(a)-1]
 - 1) MCSO Behavioral Health Staff (Mercer County Youth Bureau) 873-4284
 - 2) Women's Action and Resource Center (WARC) 873-2274
 - 3) Write to MCSO PREA Coordinator, PO Box 39 Stanton, ND 58571
- b. Staff shall inform inmates, prior to giving them access to outside victim advocates, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws. [115.53(b)-1] [115.53(b)-2]
- c. MCSO maintains or attempts to enter into memorandum of understanding or other agreements with community service providers able to provide inmates with confidential emotional support services related to sexual abuse. MCSO shall maintain copies of these agreements or documentation showing attempts to enter into such agreements. [115.53(c)-1] [115.53(c)-2] [115.53(c)-3] [115.53(c)-4]

22. **§ 115.54 Third Party Reporting**

- a. MCSO publicly distributes, on its website, information on how to report inmate sexual abuse or sexual harassment on behalf of inmates. [115.54 (a)-1] [115.54(a)-2]
 - 1. Any concerned party that has information or concerns about allegations of sexual assault or sexual harassment involving a MCSO inmate, please contact the MCSO at 701-745-3333 and report your concerns or mail concerns to PO Box 39 Stanton, ND 58571.

23. **§ 115.61 Staff and agency reporting duties**

- a. All MCSO staff are required to report immediately any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of MCSO. [115.61(a)-1]
 - 1) Staff shall accept reports of sexual abuse and sexual harassment made; verbally, in writing, anonymously, and from third parties. [115.51(c)-1]
 - 2) Staff shall immediately notify the jail shift supervisor of any verbal report of sexual abuse or sexual harassment against inmates or staff. Documentation of inmate verbal reports will be completed and turned in to the shift supervisor by the end of shift. [115.51(c)-2] [115.61(a)-2]
 - 3) All MCSO employees shall immediately report any staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse or sexual harassment or retaliation. [115.61(a)-3]
 - a. MCSO employees may privately report sexual abuse and sexual harassment of inmates to their supervisor. [115.51(d)-1]
 - 1) For response procedures see § 115.65 Coordinated Response.
 - b. Apart from reporting to designated supervisors or officials, staff may not reveal any information related to a sexual abuse report to anyone other than to the extent necessary to make treatment, investigation, and other security and management decisions. [115.61(b)-1]
 - c. Unless otherwise precluded by federal, state, or local law, medical and behavioral health practitioners shall report sexual abuse and inform inmates of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services. [115.61(c)-1]
 - d. If the alleged victim is considered a vulnerable adult under a state or local vulnerable persons' statute, behavioral health or medical staff shall report the allegation to the Department of Human Services under applicable mandatory reporting laws. [115.61(d)-1]
 - e. The Jail Administrator will coordinate with the Chief Deputy to assign an investigator for all allegations of sexual abuse and sexual harassment involving Staff-on- Inmate, and allegations of

Inmate-on- Inmate sexual assault, including third-party and anonymous reports.

f. The Jail Administrator will coordinate with the PREA Coordinator to assign the PREA Investigator for allegations of Sexual Harassment involving Inmate – on Inmate [115.61€-1]24.

24. **§ 115.62 Agency Protection Duties**

a. When facility staff learn an inmate is subject to a substantial risk of imminent sexual abuse, staff shall take immediate action to protect the inmate. [115.62(a)-1]

1) Initiate §115.65 Coordinated Response, as applicable.

25. **§ 115.63 Reporting to other confinement facilities**

a. Upon receiving an allegation an inmate was sexually abused while confined at another facility, the MCSO Jail Administrator or Sheriff who received the allegation shall notify the head of the Jail Administrator or Sheriff of the agency where the alleged abuse occurred. [115.63(a)-1]

b. Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation. [115.63(b)-1]

c. MCSO shall document using P1 reports that it has provided such notification. [115.63(c)-1]

d. MCSO Administer or Sheriff who receives such notification shall ensure the allegation is investigated in accordance with this policy. [115.63(d)-1]

26. **§115.64 § 115.65 Coordinated Response- Investigations of sexual abuse or sexual harassment**

a. MCSO facility shall use this procedure as a plan to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and behavioral health practitioners, investigators, and facility leadership. [115.65(a)-1]

b. Sexual Abuse by an inmate, staff member, contractor, or volunteer:

1) Staff First Responder:

a) The first staff member responding to an allegation of sexual abuse must separate the alleged victim from the alleged abuser.

- b) Notify the Jail Administrator of the alleged incident.
 - c) Preserve and protect any crime scene until appropriate steps can be taken to collect evidence.
 - d) If the alleged abuse occurred within the past 120 hours, request that the alleged victim not take any action that could destroy physical evidence including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, eating, or drinking.
 - e) If the alleged abuse occurred within the past 120 hours staff will ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate washing, brushing teeth, changing clothes, urinating, defecation, smoking, eating or drinking.
- 2) Jail Administrator:
- a) Notify the facility PREA Coordinator
 - b) Assign PREA Investigator
 - c) Notify medical staff and have alleged victim escorted to the medical room. Notify medical staff an investigator will be assigned.
 - d) Preserve and protect any crime scene until appropriate steps can be taken to collect evidence. The area will remain secured as a crime scene until released by the PREA Coordinator or Investigator.
- 3) PREA Coordinator:
- a) Coordinate investigative and monitoring procedures.
 - b) Coordinate with medical staff and Jail Administrator.
 - c) Monitor and provide technical resources to the PREA investigator.
 - d) Contact external victim advocate services, if there is no need for external medical services.
 - 1) External unavailable, will utilize internal behavioral health staff
 - e) Notify the behavioral health staff or on-call counselor, inform them of the alleged incident, and request they immediately assess the

victim to counsel and provide support. Notify behavioral health staff there will be an investigator assigned. The behavioral health staff may sit in on interviews with the victim if requested to do so by the victim or by a law enforcement officer.

4) Medical Staff:

- a) Reassure the alleged victim medical services are involved only to ensure that the proper evaluation and treatment of any injuries is obtained and psychological support is offered.
- b) If a sexual assault examination is appropriate, explain the necessity and process of a sexual assault examination to the victim. Sexual assault examinations must be performed by a trained SANE or SAFE. The examination may include a DNA mouth swab test, so the victim should not have anything to eat or drink. The victim must avoid using the bathroom before an examination. The victim must be advised to not wipe or touch the areas of injury or sexual contact or apply any treatment, including ointment, or ice to the area of injury or sexual contact.
- c) If the alleged victim refuses to be examined, staff shall document the refusal and have the inmate sign an Against Medical Advice Release from the Responsibility form.
- d) In the event transportation is necessary, it will be in accordance with transport policy. The Sheriff will approve any exceptions.
 - 1) If the inmate victim must change to transport clothes, the following process will be followed.
 - a) The inmate must undress on exam paper. Each item of clothing must be placed in a separate paper bag (no plastic) and closed with evidence tape. The folded paper the victim undressed on must be placed in a separate paper bag and sealed with evidence tape. Staff shall start a Chain of Possession of Evidence on the evidence.
- e) Communicate the facts known about the incident, including the infectious disease status of the aggressor, if known, to the outside medical staff.

- f) Contact the designated medical staff, who will request a victim advocate.
 - g) Contact the shift supervisor to make arrangements for transporting the inmate to the outside medical facility.
 - h) Ensure qualified behavioral health staff is available to provide services to the inmate, if requested.
 - i) Document all actions taken and communications with the inmate in the medical record.
 - j) Ensure STD testing has occurred and prophylactic treatment is completed.
 - k) Ensure pre-and post- HIV counseling has been conducted.
 - l) Ensure follow-up infectious disease testing is completed and that infectious disease testing is completed on the abuser if the allegation is substantiated.
- 5) PREA Investigator:
- a) Initiate the Investigative Report or P1 report within 24 hours of notification.
 - b) Following the investigation, the PREA investigator or a staff member designated by the PREA investigator will inform the inmate or inmates verbally whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. The investigator will deliver in person a statement of findings which will require a signature of the inmate or inmates. If the inmate refuses to sign the findings form, the investigator will document the refusal and have a staff member witness and sign the refusal. [115.73(a)-1] [115.73(e)-1]
 - c) At completion of the investigation, the staff investigator will compile all documentation, including the investigative report, incident reports with disposition, medical and counseling findings, recommendations for post-release treatment, and send this information to the PREA Coordinator. The PREA Coordinator will ensure the documentation is filed accordingly.

- d) If a MCSO PREA investigator is not available the Jail Administrator may assign a MCSO deputy to conduct the investigation.
- 6) Final determination of allegation:
- a) The allegation will be considered substantiated if a preponderance (More than 50 percent) of the credible evidence supports this finding. [115.72(a)-1]
 - b) If the investigation produced insufficient evidence to make a final determination as to whether or not the incident occurred, it will be considered unsubstantiated.
 - c) If the investigation determines the incident did not occur, the allegation will be considered unfounded.
 - d) If it is determined an inmate made a false accusation of sexual abuse or sexual harassment, the inmate may be subject to appropriate disciplinary action.
- c. Sexual Harassment by an inmate, staff member, contractor, or volunteer:
- 1) All allegations of staff sexual harassment will be handled internally.
 - 2) Any employee who receives information about staff on inmate sexual harassment or inmate on inmate sexual harassment will immediately inform their shift supervisor or Jail Administrator who shall notify the Sheriff. Information may include rumors from staff or inmates. The shift supervisor shall notify the PREA Coordinator. Failure to report information about staff sexual harassment may result in disciplinary action, up to and including termination.
 - 3) First Responder:
 - a) The first staff member responding to an allegation of sexual abuse must separate the alleged victim from the alleged abuser and stop the harassment immediately.
 - b) Notify the Jail Administrator of the alleged incident.
 - 4) Jail Administrator:
 - a) Ensure duties of the first responder are completed.

- b) Contact the facility PREA Coordinator to determine if an investigation is warranted.
- 5) PREA Coordinator:
- a) Determine if the alleged sexual harassment allegation meets the definition as applied to PREA standards.
 - b) If determined the definition is met:
 - 1) Notify the Sheriff of the allegation to determine a course of action (In cases of staff, contractor, or volunteer.)
 - 2) Notify the Sheriff of the name of the assigned investigator.
 - a) The Sheriff and the PREA Coordinator shall ensure there is separation between the inmate and the affected staff during the investigation. This separation does not represent a form of punishment for the inmate or affected staff (In cases of staff, contractor, or volunteer.)
 - b) Offer the alleged victim the opportunity to speak with a behavioral health member for counseling.
 - 3) Monitor and provide technical resources to the PREA investigator.
- 6) PREA Investigator:
- a) Complete the Case Report in P1 within 24 hours of notification.
 - b) The PREA Administrative Investigator will meet with the inmate and review the inmate's statement.
 - c) If it is determined a crime may have been committed, the Administrative investigator shall document as such and notify the PREA Coordinator for reassignment of the case to the PREA Criminal Investigator.
 - d) If it is determined a crime has not been committed, the investigator shall interview the staff member.
 - e) During the investigation, employees shall cooperate fully by providing all pertinent information. Failure of an employee to answer any inquiry will be grounds for disciplinary action.

- f) Alleged suspect employees interviewed or implicated may not make any attempt to contact the inmate victim for the time the allegation is first made until the completion of the investigation.
 - g) Employees are prohibited from any form of retaliation against an inmate who makes an allegation of staff sexual misconduct or staff sexual harassment.
 - h) Following the investigation, the PREA investigator or a staff person designated by the PREA investigator will inform the inmate or inmates verbally whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. The investigator or designated employee will deliver in person a statement of finding which will require a signature of the inmate or inmates. If the inmate refuses to sign the findings form, the investigator will document the refusal and have a staff member witness and sign the refusal.
 - i) At the completion of the investigation, the staff investigator will compile all documentation, including the investigative report, incident reports with disposition, medical and counseling findings, recommendations for post-release treatment, and send this information to the PREA Coordinator.
- 7) Final determination of allegation:
- a) The allegation will be considered substantiated if a preponderance (More than 50 percent) of the credible evidence supports this finding.
[115.72(a)-1]
 - b) If the investigation produced insufficient evidence to make a final determination as to whether or not the incident occurred, it will be considered unsubstantiated.
 - c) If the investigation determines the incident did not occur, the allegation will be considered unfounded.
 - d) If it is determined an inmate made a false accusation of sexual abuse or sexual harassment, the inmate may be subject to appropriate disciplinary action.
 - 1) False accusations:

- a) If the investigation reveals an inmate made a false allegation, disciplinary action may be imposed.
 - e) Employees, contractors, volunteers, official visitors, or agency representatives who are found to have committed staff sexual harassment as defined in these procedures will be subject to internal discipline in accordance with MCSO personnel policies.
27. **§ 115.66 Preservation of ability to protect inmates from contact with abusers**
- a. Standard § 115.66 does not apply to North Dakota since there are no collective bargaining agreements. North Dakota is a right to work state.
28. **§ 115.67 Agency Protection against Retaliation**
- a. MCSO PREA Coordinator protects all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff.
[115.67(a)-1] [115.67(a)-2]
 - 1) The PREA Coordinator in conjunction with the Sheriff of the facility shall ensure multiple protection measures area available, including 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 that fear retaliation for reporting sexual abuse or sexual harassment or for cooperation with investigations. [115.67(b)]
 - b. For at least 90 days following a report of sexual abuse or sexual harassment, the PREA Coordinator shall monitor the conduct and treatment of inmates or staff who reported the sexual abuse or sexual harassment of inmates who were reported to have suffered sexual abuse or sexual harassment to determine if there are changes that may suggest possible retaliation by inmate or staff, and shall act promptly to remedy any such retaliation. [115.67(c)-1]
 - 1) Items the facility should monitor include inmate disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. MCSO shall continue monitoring beyond 90 days if the initial monitoring indicates a continuing need. [115.67(c)-4]
 - c. In the case of inmates, monitoring shall also include monthly status checks documented in the inmate's booking folder. [115.67(d)]

- d. If any other individual who cooperates with an investigation expresses a fear of retaliation, the Sheriff and PREA Coordinator shall take appropriate measures to protect that individual against retaliation. [115.67(e)]
- e. A MCSO's obligation to monitor terminates if MCSO determines that the allegation is unfounded. [115.67(f)]

29. **§115.68 Post –Allegation Protective Custody**

- a. Any use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse shall be subject to the requirements of standard § 115.43 Protective Custody.

30. **§ 115.71 Criminal and Administrative Agency Investigations**

- a. When MCSO conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall initiate a thorough and objective investigation for all allegations with 24 hours or as circumstances dictate, including third-party and anonymous reports. [115.71(a)-1]
- b. Where sexual abuse is alleged, MCSO shall utilize investigators who have received Department of Justice approved sexual abuse investigation training. [115.71(b)]
- c. Investigators shall gather and preserve direct and circumstantial evidence, including available physical and DNA evidence and 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. [115.71(c)]
- d. When the quality of evidence appears to support criminal prosecution, MCSO Administrative Investigator will stop the administrative investigation while the criminal investigation is being conducted, unless otherwise directed by the Sheriff. Information obtained during the investigation will not be shared between the criminal and administrative investigators. [115.71(d)]
- e. 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. MCSO may 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. [115.71(e)]
- f. Administrative investigations: [115.71(f)]

- 1) Must include an effort to determine whether staff actions or failures to act contributed to the abuse; and
 - 2) Must 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.
- g. Criminal investigations must 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. [115.71(g)]
 - h. Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution. [115.71 (h)-1]
 - i. MCSO shall retain all administrative and criminal written reports referenced for as long as the alleged abuser is incarcerated or employed by the agency, plus ten years or in accordance with state statute. [115.71(i)-1]
 - j. Investigations are completed regardless of employee status or inmate custody status. [115.71(j)]
 - k. When an outside agency investigates sexual abuse, MCSO investigators shall cooperate with the outside investigators and shall remain informed about the progress of the investigation. [115.71(l)]

31. **§ 115.72 Evidentiary standard for administrative investigations**

- a. MCSO may not impose a standard higher than a preponderance (More than 50 percent) of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated. [115.72(a)-1]

32. **§ 115.73 Reporting to inmates**

- a. Following an investigation, the PREA investigator or PREA Coordinator will inform the inmate or inmates verbally whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. The investigator will deliver in person a statement of findings which will require the signature of the inmate or inmates. If the inmate refuses to sign the finds form, the investigator will document the refusal and have a staff member witness and sign the refusal. [115.73(a)-1]
- b. If an outside agency investigates, MCSO shall request the relevant information in order to inform the inmate of the outcome of the investigation. [115.73(b)-1]

- c. If there has been a substantiated or unsubstantiated complaint of sexual abuse committed by a staff member against an inmate, the agency must subsequently inform the inmate whenever: [115.73(c)-1]
 - 1) The staff member is no longer posted within the inmates' unit;
 - 2) The staff member is no longer employed at the facility;
 - 3) MCSO learns that the staff member has been charged or convicted on an offense related to sexual abuse within the facility.
 - d. Following an inmate's allegation that he or she has been sexually abused by another inmate in MCSO facility, MCSO subsequently informs the alleged victim whenever: [115.73(d)-1]
 - 1) MCSO learns that the alleged abuser has been indicted or convicted on a charge related to sexual abuse within the facility.
 - e. All notifications or attempted notifications of the final determination of the allegation are documented and stored in the P1 Report. [115.73(e)-1]
 - f. MCSO's obligation to report under this standard terminates if the inmate is released from MCSO's custody. [115.73(f)]
- B. Discipline: Any sexual contact or sexual harassment behavior between staff and inmate, volunteer and inmate, or contract personnel and inmate, regardless of consent, is prohibited and subject to administrative disciplinary and criminal sanctions.

1. **§ 115.76 Disciplinary sanctions for MCSO staff**

- a. Staff are subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies. [115.76(a)-1].
 - 1) Employees shall cooperate fully by providing all pertinent information during the investigation. Failure of an employee to answer any inquiry fully will be grounds for disciplinary action. Employees may not make any attempt to contact the inmate victim from the time the allegation is first made, until the completion of the investigation.
- b. Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse with an inmate or ward of the state of North Dakota. [115.76(b)]

- c. Disciplinary sanctions for violations of MCSO policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) must be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories. [115.76(c)-1]
- d. All terminations for violations of MCSO sexual abuse or sexual harassment policies, or resignations for staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies. [115.76(d)-1]

2. **§ 115.77 Corrective action for contractors and volunteers**

- a. Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies. [115.77(a)-1] [115.77(a)-2]
- b. The Jail Administrator shall take appropriate remedial measures, and shall consider whether to prohibit further contact with inmates, in the case of any other violation of MCSO sexual abuse or sexual harassment policies by a contractor or volunteer. [115.77(b)-1]

3. **§ 115.78 Disciplinary sanctions for inmates**

- a. Inmates shall be subject to disciplinary sanctions pursuant to MCSO disciplinary process following an administrative or criminal finding of guilt that the inmate engaged in inmate-on-inmate sexual abuse [115.78(a)-1] [115.78(a)-2]
- b. Sanctions must be commensurate with the nature and circumstances of the abuse committed the inmate's disciplinary history. And the sanctions imposed for comparable offenses by other inmates with similar histories. [115.78(b)]
- c. The disciplinary process shall consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed. [115.78(c)]
- d. Behavior health staff shall consider, as a condition of access to programming or other benefits, whether to require the offending inmate to participate in therapy, counseling or other interventions designed to

address and correct underlying reasons or motivations for the abuse.
[15.78(d)-1] [115.78(d)-2]

- e. MCSO may discipline an inmate for sexual contact with staff only upon a finding the staff member did not consent to the contact. [115.78(e)-1]
- f. For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred may not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation. [115.78(f)-1]

C. Medical and Mental Health Care

1. § 115.81 Medical and Mental Health Screenings; history of sexual abuse

- a. If the screening indicates an inmate has experienced prior sexual victimization or perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure the inmate is offered a follow-up meeting with a medical or behavioral health practitioner with 14 days of the booking screening. [115.81(a)/(c)-1] [115.81(a)/(c)-2] [115.81(b)-2]
- b. Disclosure of information related to sexual victimization or abuse that occurred in an institutional setting must be strictly limited to staff, as necessary, to make security and management decisions, including treatment plans, housing, bed, work, education, and program assignments, or as required by federal, state, or local law. [115.81(d)-2]
- c. Medical and behavioral health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting. [115.81(e)-1]

2. **§ 115.82 Access to emergency medical and behavioral health services**

- a. Inmate victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope determined by medical and behavioral health practitioner's according to their professional judgment. [115.82(a)-1] [115.82(a)-2]
- b. If qualified medical or behavioral health practitioners are not on duty at the time a report of recent abuse is made, jail staff first responders shall take preliminary steps to protect the victim and shall immediately notify the appropriate medical and behavioral health practitioners. [115.82(b)]

- c. 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. [115.82(c)-1] [115.83(f)-1]
- d. Medical and behavioral health services shall be provided to the victim and abuser without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. [115.82(d)-1] [115.83(f)-1]

3. **§ 115.83 Ongoing medical and behavioral health care for sexual abuse victims and abusers**

- a. The facility shall offer medical and behavioral health evaluation and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility. [115.83(a)-1]
- b. The evaluation and treatment of such victims must 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. [115.83(c)]
- c. The facility shall provide such victims with medical and behavioral health services consistent with the community level of care. [115.83(c)]
- d. Inmate victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests. [115.83(d)-1]
- e. If pregnancy results from the conduct described in (4) above in this section, such victims shall receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services. [115.83(e)-1]
- f. Behavioral health staff will complete an evaluation of all known inmate-on-inmate abusers within 60 days of learning of such abuse history and offer treatment when appropriate. [115.83(h)-1]

4. **§ 115.86 Data Collection and Incident Reviews**

- a. The facility shall conduct a sexual abuse incident review pursuant to PREA Standard 115.87 at the conclusion of every sexual abuse investigation, including when the allegation has not been substantiated, unless the allegation has been determined to be unfounded. [115.86(a)-1]

- b. The review shall ordinarily occur within 30 days of the conclusion of the investigation. The review team may include the Jail Administrator, PREA coordinator, behavior health staff, investigator, and assigned facility staff. The results of the review will be provided to the Sheriff. [115.86(c)-1]
- c. The review team shall: [115.86(d)-1-(d)-5]
 - 1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;
 - 2) 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;
 - 3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;
 - 4.) Assess the adequacy of staffing levels in that area during different shifts;
 - 5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and
 - 6) Prepare a report of its findings, including determinations and any recommendations for improvement and submit such report to the PREA Coordinator, Jail Administrator, and Sheriff.
 - 7) The PREA Coordinator shall provide a written response to the Sheriff within 60 days of receiving the findings report of the review team. The Jail Administrator's response must include an implementation plan of recommendations and the justification for not implementing recommendations. The report and response will be stored in a P1 Case Report File.

5. **§ 115.87 Data Collection**

- a. MCSO shall collect accurate, uniform data for every allegation of sexual abuse at the jail using a standardized instrument and set of definitions. [115.87(a)/(c)-1]

- 1) MCSO utilizes the Department of Justice, Bureau of Justice Statistics form SSV-2, Survey of Sexual Violence for State Prison Systems. [115.87(a)/(c)-2]
- 2) In addition, data is collected in P1 Record Management System.
- b. MCSO PREA Coordinator shall aggregate the incident-based sexual abuse data at least annually. [115.87(b)-1]
- c. MCSO shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews. [115.87(d)-1]
 - 1) The PREA Compliance Manager will forward all completed PREA investigations to the PREA Coordinator. Reports will be kept in a PREA Folder in the PREA Coordinator's Office.
 - 2) The PREA Coordinator will compile data and statistics on the number of sexual abuse and sexual harassment incidents that occur the prior calendar year. These statistics will be forwarded to the Department of Justice annually, upon request.
- d. MCSO obtains incident-based and aggregated data from every contract facility with which it contracts for the confinement of its inmates. [115.87(e)-1]
 - 1) Contract agencies are to comply with SSV-2 reporting regarding content. [115.87 (e)-2]
- e. Upon request, MCSO shall provide the data from the previous calendar year to the DOJ no later than June 30th. [115.87(f)-1]

6. **§ 115.88 Data review for correction action**

- a. The PREA Coordinator in conjunction with the Jail Administrator shall review data collected and aggregated pursuant to PREA Standard 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training to include: [115.88(a)-1]
 - 1) Identifying problem areas;
 - 2) Taking corrective action on an ongoing basis; and

- 3) Preparing an annual report of its findings and corrective actions for jail.
 - a) The report must include a comparison of the current year's data and corrective actions with those from prior years and provide an assessment of the agency's progress in addressing sexual abuse. [115.88(b)-1] [115.88(b)-2]
 - b) MCSO's report shall be approved by the Sheriff and made readily available to the public through its website or other means. [115.88(c)-1] [115.88(c)-3]
 - c) MCSO may redact specific material from the reports when publication presents a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted. [115.88(d)-1] [115.88(d)-2]

7. **§ 115.89 Data storage, publication and destruction**

- a. MCSO ensures that data collected pursuant to §115.87 are securely retained by Administration. [115.89(a)-1]
- b. MCSO shall make all aggregated sexual abuse data readily available to the public at least annually through its website or other means. [115.89(b)-1]
- c. Before making aggregated sexual abuse data publicly available, MCSO shall remove all person identifiers. [115.89(c)-1]
- d. The jail shall maintain sexual abuse data collected pursuant to § 115.87 for at least 10 years after the date of initial collection, unless federal, state, or local law requires otherwise. [115.89(d)-1]

8. **§ 115.93, 115.401 Audits of Standards**

- a. Effective May 5th, 2018 and during each three-year period thereafter, MCSO shall ensure it is audited at least once.
- b. MCSO will utilize an audit instrument developed by the DOJ to provide guidance on the conduct of and contents of the audit.
- c. The PREA auditor shall review all relevant policies, procedures, reports, internal and external audits, and accreditations for the jail.

- d. The PREA auditor shall review, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period.
- e. The PREA auditor shall have access to, and shall observe, all areas of the jail.
- f. The PREA auditor shall be permitted to request and receive copies of any relevant documents (including electronically stored information.)
- g. The PREA auditor shall retain and preserve all documentation including, video tapes and interview notes released upon in making audit determinations. Such documentation shall be provided to the DOJ upon request.
- h. The PREA auditor shall interview a representative sample of inmates, staff, supervisors, and administrators.
- i. The PREA auditor shall review a sampling of any available videotapes and other electronically available data that may be relevant to the provisions being audited.
- j. The PREA auditor shall be permitted to conduct private interviews with inmates.
- k. Inmates shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communication with legal counsel.
- l. Auditors shall attempt to communicate with community -based or victim advocates who may have insight into relevant condition in the jail.

9. **§ 115.402 Auditor Qualifications**

- a. Auditors must be certified by the DOJ.
- b. An auditor must be a member of a correctional monitoring body that is not part of, or under the authority of, MCSO but may be part of, or authorized by, North Dakota state or local government
- c. A PREA auditor must be a member of an auditing entity such as an inspector general's or ombudsperson's (an official appointed to investigate individuals' complaints against maladministration, especially that of public authorities.) office that is external to MCSO.

- d. PREA Auditors may be other outside individuals with relevant experience.
- e. No audit may be conducted by an auditor who has received financial compensation from MCSO within three years prior to MCSO retention of the auditor.
- f. MCSO shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to MCSO's retention of the auditor, with the exception of contracting for subsequent PREA audits.

10. **§ 115.403 Audit Content and Findings**

- a. Each audit must include a certification by the auditor that no conflict of interest exists with respect to their ability to conduct an audit of MCSO.
- b. Audit reports must state whether MCSO policies and procedures comply with relevant PREA standards.
- c. For each PREA standard, the auditor shall determine whether the audited facility reaches one of the following findings:
 - 1) Exceeds Standard:
 - a) Substantially exceeds requirements of the standard.
 - 2) Meets Standard:
 - a) Substantial compliance; complies in all material ways with the standard for the relevant review period.
 - 3) Does Not Meet Standard:
 - a) Requires corrective action.
 - 4) The audit summary must indicate, among other things, the number of provisions the facility has achieved at each grade level.
 - 5) The audit reports must describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for the facility, and must include recommendations for any required corrective action.
 - 6) Auditors shall redact any personally identifiable inmate or staff information from their reports, but shall provide such information to MCSO upon request, and may provide such information to the DOJ.

- 7) MCSO shall ensure that the auditor's report is published on MCSO website or provide other means so the report is readily available to the public.

11. **§ 115.404 Audit corrective action plan**

- a. A finding of "Does Not Meet Standard" with one or more standards shall trigger a 180-day corrective action period.
- b. The auditor and MCSO shall jointly develop a corrective action plan to achieve compliance.
- c. The audit shall take necessary and appropriate steps to verify implementation of the corrective action plan including reviewing updated policies and procedures or re-inspecting portions of the jail.
- d. After the 180-day corrective action period ends, the auditor shall issue a final determination whether the facility has achieved compliance with those standards requiring corrective action.
- e. If MCSO does not achieve compliance with each standard, it may (at MCSO's discretion and cost) request a subsequent audit once it believes compliance has been achieved.

12. **§ 115.405 Audit Appeal**

- a. MCSO may lodge an appeal with the DOJ regarding a specific audit finding it believes is incorrect. The appeal must be lodged within 90 days of the auditor's final determination.
- b. If the DOJ determines MCSO has stated for good cause for a re-evaluation, MCSO may commission a re-audit by an auditor mutually agreed upon by the DOJ and MCSO. MCSO shall bear the costs of this re-audit.
- c. The findings of the re-audit shall be considered final.

13. **Audit Requirements:**

1. MCSO will comply with all audit requirements from the Department of Justice.

6. **SIGNATURE:** This policy with procedures becomes effective when signed by the Mercer County Sheriff. The Sheriff is the Jail Administrator and these Policies and Procedures are subject to change and revision at the discretion of the Sheriff.