

# MOUNTRAIL COUNTY CORRECTIONAL CENTER POLICY AND PROCEDURE MANUAL

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**POLICY:**

The Mountrail County Correctional Center (MCCC) will have written policy and procedures mandating zero-tolerance towards all forms of sexual abuse and sexual harassment. MCCC will describe in detail approaches taken to prevent, detect, and respond to such conduct. Policy & Procedure will be in accordance with the DOJ Title 28 Code of Federal Regulations, Part 115, and National Standards, to prevent, detect, and respond to prison rape.

**DEFINITIONS:**

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

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

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

- ❖ Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- ❖ Contact between the mouth and the penis, vulva, or anus;
- ❖ Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- ❖ Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- ❖ Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties, or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- ❖ 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;
- ❖ Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and

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- ❖ Voyeurism by a staff member, contractor, or volunteer.

### ***Sexual harassment:***

- ❖ 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.

***Substantiated:*** Allegation that was investigated and determined to have occurred.

***Unsubstantiated:*** Allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

***Unfounded:*** Allegation that was investigated and determined not to have occurred.

### **ALLEGATIONS OF SEXUAL ABUSE OR SEXUAL HARASSMENT**

- ❖ MCCC will ensure an administrative or criminal investigation is completed for **ALL** allegations of sexual abuse and sexual harassment.
  - If the allegation is criminal in nature it will be referred to the BCI for investigation.
    - All referrals to BCI will be documented in an investigative report by the MCCC PREA coordinator.
- ❖ Allegations that do not involve potentially criminal behavior will be investigated internally (Administrative Investigation) by the MCCC PREA coordinator or designee.

### **COORDINATED RESPONSE**

- ❖ Actions will be coordinated in response to an incident of sexual abuse, among staff first responders, shift supervisors, medical & behavioral health practitioners, investigators, and administration {See policy 8.09}.

### **CRIMINAL AND ADMINISTRATIVE AGENCY INVESTIGATIONS**

- ❖ When MCCC conducts its own investigations into allegations of sexual abuse and sexual harassment, it will initiate a thorough and objective investigation for all allegations within 24 hours or as circumstances dictate, including third-party and anonymous reports.
- ❖ Where sexual abuse is alleged, MCCC shall utilize investigators who have received specialized training in sexual abuse investigations pursuant to §115.34.
- ❖ Investigators shall:
  - Gather and preserve direct and circumstantial evidence, including available physical and DNA evidence and available electronic monitoring data
  - Interview alleged victims
  - Interview suspected perpetrators
  - Interview witnesses
  - Review prior complaints and reports of sexual abuse involving the alleged perpetrator
- ❖ When the quality of evidence appears to support criminal prosecution, MCCC will cease any administrative investigation while the criminal investigation is being conducted.
- ❖ 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 an inmate or staff. MCCC will 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.
- ❖ Administrative Investigations:
  - Must include an effort to determine whether staff actions or failures to act contributed to the abuse; and
  - Must be documented in written reports that include the description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings.
- ❖ 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.
- ❖ Substantiated allegations of conduct that appears to be criminal shall be referred for prosecution.
- ❖ MCCC shall retain all administrative and criminal written reports referenced for as long as the alleged abuse is incarcerated or employed by the agency, plus 5 years.

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- ❖ Investigations are completed regardless of employee status or inmate custody status.
- ❖ When BCI investigates sexual abuse, MCCC staff shall cooperate with outside investigators and shall remain informed about the progress of the investigation.

## **EVIDENTIARY STANDARD FOR ADMINISTRATIVE INVESTIGATIONS**

- ❖ MCCC may not impose a standard higher than a preponderance (>50%) of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

## **EVIDENCE PROTOCOL**

- ❖ To the extent MCCC is responsible for investigating allegations of sexual abuse, MCCC will follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.
- ❖ Protocol is based on North Dakota's Sexual Assault Evidence Collection Protocol 5<sup>th</sup> Ed.

## **REPORTING TO INMATES**

- ❖ Following an investigation, the PREA coordinator or designee will inform the inmate or inmates verbally whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded. The PREA coordinator will deliver in person a statement of findings which will require the signature of the inmate(s). If the inmate(s) refuse to sign the findings form, the PREA coordinator will document the refusal and have a staff member witness and sign the refusal.
- ❖ If BCI conducts the investigation, MCCC shall request the relevant information in order to inform the inmate of the outcome of the investigation.
- ❖ 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:
  - The staff member is no longer posted within the inmate's unit;
  - The staff member is no longer employed at the facility;
  - MCCC learns that the staff member has been charged or convicted on an offense related to sexual abuse within the facility
- ❖ Following an inmate's allegation that he or she has been sexually abused by another inmate while at MCCC, MCCC subsequently informs the alleged victim whenever:
  - MCCC learns that the alleged abuse has been indicted or convicted on a charge related to sexual abuse within a facility.
- ❖ All notifications or attempted notifications of the final determination of an allegation is documented and stored by the PREA coordinator.
- ❖ MCCC's obligation to report under this standard terminates if the inmate is released from MCCC custody.

## **DISCIPLINARY SANCTIONS FOR INMATES**

- ❖ MCCC will impose sanctions pursuant to MCCC disciplinary processes to inmates found guilty of engaging in inmate-on-inmate sexual abuse.
- ❖ Sanctions shall 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.
- ❖ 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.
- ❖ MCCC may discipline an inmate for sexual contact with a staff member only upon finding the staff member did not consent to the contact.
- ❖ Reports made in good faith may not constitute falsely reporting an incident or lying, even if the investigation does not establish evidence sufficient to substantiate the allegation.