

DATE:	MAY 2, 2022
NUMBER:	F.16
SUBJECT:	SEXUAL MISCONDUCT CASE ASSIGNMENTS & INVESTIGATIONS
RELATED SECTIONS:	M.9 ; R.13 ; SDSD P&P 6.33, 6.71, 6.125, & 6.127

PURPOSE

To standardize case assignment, investigation and notification procedures for a variety of sexual misconduct incidents encountered in a detention facility, in compliance with the Prison Rape Elimination Act (PREA).

POLICY

The San Diego County Sheriff's Department has a zero-tolerance policy on sexual misconduct towards incarcerated persons. This zero-tolerance policy applies to all facilities and extends to all programs providing services to clients under the jurisdiction of the San Diego Sheriff's Department.

Whenever an allegation of sexual misconduct against an incarcerated person is reported, whether from an incarcerated person/detainee, volunteer, contractor, Sheriff's employee or any outside source, the allegation shall be documented and investigated in a timely manner.

Sexual misconduct includes, but is not limited to, sexual abuse and sexual harassment. For purposes of PREA, refer to the definitions below.

DEFINITIONS

- I. The following definitions, taken from PREA, shall apply to this section.
 - A. Sexual abuse of an incarcerated person, detainee, or resident by another incarcerated person, 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:
 1. Contact between the penis and the vulva, or the penis and the 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 another instrument.
 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.

- B. Sexual abuse of an incarcerated person, detainee, or resident by a staff member, contractor, or volunteer includes any of the following acts, with or without the consent of the incarcerated person, detainee, or resident:
1. Contact between the penis and the vulva, or the penis and the 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, however slight, by a hand, finger, object, or another 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 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.
 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 their uncovered genitalia, buttocks, or breast in the presence of an incarcerated person, detainee, or resident.
 8. Voyeurism by a staff member, contractor, or volunteer. Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an incarcerated person, detainee, or resident by staff for reasons unrelated to official duties. This may include things such as peering at an incarcerated person who is using a toilet in their cell to perform bodily functions; requiring an incarcerated person to expose their buttocks, genitals, or breasts; or taking images of all or part of an incarcerated person's naked body or of an incarcerated person performing bodily functions.
- C. Sexual harassment includes:
1. Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one incarcerated person, detainee, or resident directed toward another.
 2. Repeated verbal comments or gestures of a sexual nature to an incarcerated person, 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.

D. Substantiated allegation: An allegation that was investigated and determined to have

occurred.

- E. Unsubstantiated allegation: An allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.
- F. Unfounded allegation: An allegation that was investigated and determined not to have occurred.

PROCEDURE

The deputy whom the sexual misconduct was reported to is responsible for writing the initial crime/incident report or appropriate report as noted below, and charging the applicable penal code section, based on the circumstances of the incident (refer to Sheriff's P&P section 6.71 regarding report documentation). The Detention Investigation Unit (DIU) and/or Sexual Assault Unit (SAU) will be responsible for follow-up investigations as appropriate.

In all cases, if the alleged incident took place within the last 120 hours, immediate notification to the appropriate investigative body is required, via the communications center. The communications center has contact information for outside agency notifications.

I. CASE ASSIGNMENTS

- A. Incarcerated person on incarcerated person sexual abuse or sexual harassment: Follow up investigations, and PREA tracking will be handled by DIU.
- B. Sheriff's employees, contractors or volunteers sexual abuse on incarcerated person: Investigations will be handled by the SAU and DIU (support) unless otherwise directed.
- C. Sheriff's employees, contractors or volunteers sexual harassment on incarcerated person: In the detention facilities, non-criminal sexual harassment allegations will be investigated by the command and/or handled via an administrative investigation as appropriate.
- D. Sheriff's employees on detainee: Incidents occurring outside of the detention facilities will be investigated by the SAU. The detentions watch commander will notify the on-call SAU sergeant. SAU will be responsible for PREA reporting to DIU and command notifications. The effected command will decide if an administrative investigation is warranted.
- E. SDSD jurisdiction or community: If the abuse occurred within the last 120 hours, immediately contact SAU for investigation/direction. If SAU/DIU declines to respond, the deputy taking the preliminary report will be responsible for completing the initial crime/incident report in NetRMS to document the allegation and deputy's actions. The report will then be forwarded to the SAU for investigation.
- F. Outside jurisdiction, community: If the abuse occurred within the last 120 hours, immediately contact the agency of jurisdiction for investigation/direction. If the agency declines to respond, a deputy will take the initial report and complete a "courtesy" report in NetRMS following Sheriff's P&P 6.71. If the case occurred out of the country, complete the courtesy report and contact the appropriate consulate.

- G. Outside jurisdiction detention facility with a nexus to SDSO (e.g., RRC or other): If the abuse occurred within the last 120 hours, immediately contact DIU for investigation/direction. The deputy taking the initial report will be responsible for completing the initial crime report in NetRMS to document the allegation and deputy actions. The report will then be forwarded to the DIU for investigation as deemed appropriate.
- H. Sexual misconduct by other law enforcement officers: The watch commander will immediately contact the relevant agency watch commander for investigation. SDSO deputies will complete a "981000-ZZ-Miscellaneous Incident Report," in NetRMS, print it out and forward it to the station/agency watch commander for investigation.

II. RESPONDING TO SEXUAL HARASSMENT BETWEEN INCARCERATED INDIVIDUALS

- A. The watch commander will assign a deputy to determine if a report was written. If a report has not been written, the deputy will conduct the investigation and write the incident report.
- B. The deputy conducting the investigation and document their findings in a "981000-ZZ-Miscellaneous Incident Report," in NetRMS. Depending on the findings, the deputy should write a "Keep Separate" incarcerated person status report (ISR) in the Jail Information Management System (JIMS) and notify the Jail Population Management Unit (JPMU). The deputy should reference the NetRMS case number in the ISR. Upon the conclusion of the investigation, the deputy should write in their report how the incident was resolved.
- C. DIU will be responsible for tracking the incident and the follow-up investigation as appropriate. DIU will determine if the incident was substantiated, unsubstantiated, or unfounded.
- D. The level of incarcerated person's sobriety/intoxication and mental status should be considered in determining the evidentiary value or credibility of the allegation. A follow-up interview should be considered when the incarcerated person has recovered from alcohol or substance intoxication. A supervisor should be informed if there is any significant delay in the investigation.

III. RESPONDING TO SEXUAL ABUSE BETWEEN INCARCERATED INDIVIDUALS

California Penal Code 293(a): *Any employee of a law enforcement agency who personally receives a report from any person, alleging that they have been the victim of a sex offense, shall inform that person that his or her name will become a matter of public record unless he or she requests that it not become a matter of public record, pursuant to Section 6254 of the Government Code.*

When a victim of a sexual abuse requests their name be confidential, the deputy will fill out the victim information on the report. The very first sentence, above the synopsis, should be bold-typed and contain the sentence, "THE VICTIM IN THIS REPORT REQUESTS TO REMAIN CONFIDENTIAL PURSUANT TO CALIFORNIA PENAL CODE 293(a) AND CALIFORNIA GOVERNMENT CODE 6254."

When sworn staff first becomes aware or informed that a sexual abuse has occurred, and determined that a DIU response is necessary, the following steps shall be taken:

- A. Secure the safety of the victim away from the suspect. Instruct the victim not to take any actions that could destroy physical evidence: showering, brushing their teeth, changing their clothes, urinating, defecating, drinking or eating.
- B. Lockdown the housing unit or suspend operations in the affected area.
- C. Notify the supervisor and request additional staff for assistance.
- D. Secure the scene to ensure evidence is not destroyed or tampered with.
- E. Do not attempt to collect evidence (absent exigent circumstances) until directed by DIU/SAU.
- F. Separate all witnesses and/or suspect(s). Place known suspect(s) in an area where their ability to destroy evidence is limited (example: an area without a sink, shower, toilet etc.)
- G. Prepare a synopsis of the incident and be prepared to brief DIU upon their arrival.
- H. Do not process the scene, conduct suspect/witness interviews, or arrange for a sexual assault response team (SART) exam unless directed by DIU.
- I. Conduct a preliminary interview with the victim to obtain the elements of the crime. The report should document the following:
 - 1. When and where the sexual abuse took place.
 - 2. Specific details of how they were sexually abused.
 - 3. Can the victim identify the suspect and any possible witnesses?
 - 4. Does the victim complain of any injuries or pain, even if there are no visible injuries?
 - 5. What is the victim and the suspect's condition and demeanor (apologetic, afraid, etc.)?
 - 6. Document torn clothing, bodily fluids, and areas in disarray.
 - 7. Document the initial evidence of injury (description, photographs, etc.).
 - 8. If necessary, take photographs of the scene making sure not to disturb anything.
- J. Once DIU detectives arrive on the scene, they will assess the sexual abuse and arrange for a SART exam, if needed. SART exams should not be initiated or attempted by detention facility health staff. These exams must be done at a recognized medical facility by a SART nurse. It is the detention facility's responsibility to transport the victim and the suspect to the examining facility and provide security during the exam. A DIU detective will be present during the exam.
- K. The DIU case agent will write a follow-up report to the initial report and submit the case to the district attorney's office for review and possible case issuance.
- L. Refer to the sexual abuse checklist attached to this policy.

- IV. RESPONDING TO SEXUAL HARASSMENT OF AN INCARCERATED PERSON BY A STAFF MEMBER
- A. If an incarcerated person alleges a sexual harassment complaint against a staff member, notify the watch commander immediately.
 - B. Non-criminal sexual harassment allegations will be investigated by the command and/or handled via an administrative investigation as appropriate.
- V. RESPONDING TO SEXUAL ABUSE STAFF OF AN INCARCERATED PERSON BY A STAFF MEMBER
- A. If the incarcerated person alleges a sexual abuse complaint against a staff member, notify the watch commander immediately. If the alleged incident occurred within the last 120 hours and there is an evidentiary value that can be obtained (video, soiled clothing, injury etc.) immediately contact the SAU sergeant for direction.
 - B. If SAU declines to respond to the incident, the deputy notified of the alleged incident will take the initial report and document how they became aware of the incident. This incident be documented in a crime report using "miscellaneous report" and assign the case to the SAU. The affected command will be notified by SAU and decide if an administrative investigation is warranted.
 - C. Refer to the sexual abuse checklist attached to this policy.
- VI. PROCEDURE PURSUANT TO INTAKE/RECEIVING SCREENING
- A. If during the PREA receiving screening questions, an individual chooses to disclose to sworn staff that they have been a previous victim of sexual abuse, the following procedures shall be followed.
 - 1. If the sexual abuse occurred within the last 120 hours, request the alleged victim not take any actions that could destroy physical evidence, including, as appropriate: washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating.
 - 2. Health staff will notify the watch commander and the Jail Population Management Unit (JPMU) and refer the individual to the mental health clinician.
 - 3. The watch commander will notify their respective sexual abuse investigator as identified above in section I of this policy.
 - B. Allegations of an incarcerated person on incarcerated person sexual abuse occurring in SDSO detention facilities
 - 1. The watch commander will assign a deputy to conduct the initial investigation to determine if a report has been written. If a report has not been written, the deputy will write the crime/incident report and forward the case to DIU for follow-up. If

the incident was previously documented, deputies will write an ISR using the PREA dropdown and include the following information:

- a. Reference to the original case number.
- b. Synopsis of how they became aware of allegations and notifications they made.

C. Outside jurisdiction, institution, or confinement facility

1. The watch commander will assign a deputy to conduct the initial investigation to determine if a report has been written.
2. If the incident was previously documented, deputies will write an ISR using the PREA dropdown and include the following information:
 - a. Reference to the original case number.
 - b. Synopsis of how they became aware of allegations and notifications they made.
3. If the incident has not been previously documented:
 - a. JPMU will contact the agency/facility where the sexual abuse occurred and inform them of the allegation. The JPMU deputy will obtain the name and identification number of the employee contacted. In addition, the JPMU deputy will obtain the facility commander's name, e-mail and/or physical address for written notification.
 - b. The watch commander will assign a deputy to complete a courtesy report in NetRMS, using the Offense code "990000 - ZZ - COURTESY REPORTS" to document the allegation and deputy's actions. The deputy completing the administrative tab of the report should not use the assigned facility's location and beat number. The location and beat number should be from the originating location of the incident.
 - c. The assigned deputy will print the completed report, scan it, and send it to the facility commander, via e-mail.
 - d. The facility commander must notify, in writing, the facility commander of the facility where the sexual abuse is alleged to have occurred no later than 72 hours after receiving the allegation. (PREA 115.63)

D. Refer to the sexual abuse checklist attached to this policy.



Sexual Abuse Checklist

The below terms and definitions will play an important role when evaluating any **PREA** related incident.

Definitions of Sexual Violence:

Nonconsensual sexual acts: Contact of any person **without** their **consent**, or of a person who is **unable to consent or refuse**; and Contact between the penis and the vagina or the penis and the anus including penetration, however slight; Contact between the mouth and the penis, vagina or anus; Penetration of the anal or genital opening of another person by a hand, finger or other object.

Abusive sexual contacts: Contact of any person **without** their **consent**, or of a person who is **unable to consent or refuse**; and Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person. Exclude incidents in which the intent of the sexual contact is to harm or debilitate rather than to sexually exploit.

Date Reported: _____

Time Reported: _____

Reporting Source: _____
(Grievance, medical request, etc.)

To whom the report was made: _____

Reporting Party: _____
(Other than Victim)

Victim Name: _____
(If multiple victims, list on separate sheet of paper)

Interview Location: _____

Witnesses: _____

Time lapse between incident and reporting: _____

Location of Incident: _____

Date / Time of Incident: _____

Video Available: Yes No

To preserve evidence, determine if the incident occurred within 120 hours. Contact Detentions Investigation Unit (DIU) or Sexual Assault Unit (SAU) and they will decide if a Sexual Assault Response Team (SART) examination is needed. Because of the time sensitivity, this information needs to be relayed to DIU as soon as possible. If the incident occurred longer than 120 hours and there is no obtainable evidence (fluids etc.) simply document the facts of the case and actions of the deputy. No immediate notification to DIU/SAU is required. If you are unsure, immediately contact DIU/SAU as appropriate for direction.

Suspect(s) Name: _____
(If multiple suspects, list on separate sheet of paper)

Crime Scene Secured: Yes No

(Note the date, time and deputy securing the scene). Do not allow the victims and/or suspects to clean up in anyway, urinate, defecate, drink or eat. Deputies should not make any attempt to collect evidence (absent exigent circumstances) until directed by DIU or SAU.

Victim Separated: Yes No
(Do not allow victim to change clothes use restroom, wash, shower, eat or drink)

Witness Separated: Yes No **Suspect Separated:** Yes No

Time DIU Notified: _____

Time DIS Notified: _____ **Time SAU Notified:** _____

Notified via Communication Center *Notification of SAU will be at the discretion of DIU*

Reporting deputy will need to prepare a short synopsis of the incident and brief the responding DIU and/or SAU staff.

Synopsis/ DIU Brief: _____

293 PC Notifications: Yes No

(Note the date, time and deputy giving notification). Notification must be given either verbally or in writing:

"Pursuant to California Penal Code Section 293 and 293.5, you have a right to request that your name not become part of a public record pursuant to California Government Code Section 6254. Before criminal proceedings are initiated in your case, a prosecutor from the District Attorney's Office will fully explain the advantages and disadvantages of electing to keep your name out of public records."

Document notification of the victim in the narrative section of the report with the victim's response as follows:

'On (Date) at (Time) I advised (Victim's name) regarding their rights pursuant to California Penal Code Section 293 and 293.5. Their response was (.....).'

When a victim of a sexual abuse requests their name be confidential, the deputy will fill out the victim information on the report. The very first sentence, above the synopsis should be bold typed and contain the sentence, ***'THE VICTIM IN THIS REPORT REQUESTS TO REMAIN CONFIDENTIAL PURSUANT TO CALIFORNIA PENAL CODE 293(a) AND CALIFORNIA GOVERNMENT CODE 6254.'***

Report:

The crime report will be written by the deputy that the sexual abuse was reported to. The deputy will need to ensure the appropriate Penal Code Section(s) are charged based on the circumstances of the sexual abuse. The initial report should document the following:

- **Preliminarily interview the victim to obtain elements of the crime, explain SART Exam and ask victim if they will consent to a SART exam.**
- **When and where the sexual abuse took place.**
- **Specific details of how they were sexually abused.**
- **Can the victim identify the suspect and any possible witnesses?**
- **Does the victim complain of any injuries or pain, even if there are no visible injuries?**
- **What is the victim and suspect's condition and demeanor (apologetic, afraid, etc.)?**
- **Document torn/soiled clothing, bodily fluids, area in disarray.**
- **Document the initial evidence of injury (description, photographs, etc.).**
- **If necessary, take photographs of the scene making sure not to disturb anything.**
- **Document if victim has done anything that could affect evidence collection; i.e changed clothes, showered, brushed teeth, washed, used restroom, eaten or drank anything.**
- **Document if victim has disclosed to anyone else.**

References:

- Detentions P&P Section R.13
- Detentions P&P Section M.9
- Department P&P Section 6.33 Major Crimes
- Department P&P Section 6.71 Crime Case Reports
- Department P&P Section 6.125 Sexual Assault
- Department P&P Section 6.127 Prison Rape Elimination Act (PREA)