

 <p>CD-150100</p>	<p>NEW MEXICO CORRECTIONS DEPARTMENT</p> <p><i>"We commit to the safety and well-being of the people of New Mexico by doing the right thing, always."</i></p> <p>Courage Responsibility Ethics Dedication - CREDibly serving the public safety of New Mexico</p>
	<p>ISSUE DATE: 06/05//85 REVIEW/REVISED: 02/10/14</p> <p>EFFECTIVE DATE: 06/19//85</p>
	<p>TITLE: Offender Protection Against Abuse and Sexual Misconduct; Reporting Procedures</p>

AUTHORITY:

- A. NMSA 1978, Sections 30-9-11, 30-9-12, and 33-1-6, as amended.
- B. Policy *CD-010100*, *CD-031801*, *CD-070700*, *CD-170100*, and *CD-181000*.
- C. Prison Rape Elimination Act of 2003, 42 USCA § 15601 et seq.

REFERENCES:

- A. ACA Standard 2-CO-3C-01, *Standards for the Administration of Correctional Agencies*, 2nd Edition.
- B. ACA Standard 4-4281, 4-4281-1 thru 4-4281-8 *Standards for Adult Correctional Institutions*, 4th Edition and Standards Supplement 2004.
- C. ACA Standard 2-CI-5A-2, *Standards for Correctional Industries*, 2nd Edition.
- D. Prison Rape Elimination Act Standards §115.11 through §115.89
- E. NMSA 1978, Section 31-5-20 as amended, Interstate Compact for Adult Offender Supervision.
- F. Use of force (*CD-130600*).
- G. Prison Security Level V and VI (*CD-143000*).
- H. Allegations from Inmates against Corrections Department Staff or Other Inmates (*CD-150600*).

PURPOSE:

To ensure:

1. The safety and well-being of offenders to the extent reasonably possible and protect offenders from abuse and sexual misconduct while under correctional supervision.
[2-CO-3C-01]
2. All actions taken in response to an incident of sexual assault are coordinated among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

3. Victims receive all necessary immediate and ongoing medical, mental health, and support services.
4. Investigators are able to obtain usable evidence to substantiate allegations and hold perpetrators accountable.

APPLICABILITY:

All employees of the New Mexico Corrections Department (NMCD), all those who contract or volunteer to perform services for the NMCD, visitors, NMCD representatives and to all persons committed to or under the supervision of the NMCD.

FORMS:

Facility Response to Sexual Assault Checklist form (*CD-150102.1*)

ATTACHMENTS:

None

DEFINITIONS:

- A. Abuse: The unlawful or unjustified use of force or other actions that jeopardize the physical or mental well-being of an inmate.
- B. Criminal Sexual Penetration: The unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio, or anal intercourse or the causing of penetration, to any extent and with any object, of the genitalia or anal openings of another, whether or not there is any emission.
- C. Criminal Sexual Contact: The unlawful and intentional touching of or application of force, without consent, to the unclothed intimate parts of another who has reached his eighteenth birthday, or intentionally causing another who has reached his eighteenth birthday to touch one's intimate parts.
- D. False allegations: Any false report or falsification during an investigation of sexual assault, sexual contact, sexual harassment or sexual misconduct. Knowingly making a false statement or knowingly swearing or affirming the truth of a false statement previously made.
- E. Investigation: The process of gathering, obtaining, collecting, compiling, and reporting all evidence surrounding an alleged incident of sexual misconduct.

- F. Offender: An adult placed under, or made subject to, supervision, probation and/or parole, as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies, and who is required to request transfer of supervision under the provisions of the Interstate Compact for Adult Offender Supervision.
- G. Sexual Abuse: Includes, but is not limited to, subjecting another person to any sexual act or contact between an employee, volunteer, contractor, or agency representative, and an inmate by force, persuasion, inducement, or enticement; any criminal sexual penetration or contact (under NM Law; subjecting another person who is incapable of giving consent by reason of their custodial status, physical or mental state to sexual contact; or rape, sexual molestation, prostitution or other form of sexual exploitation).
- H. Sexual Assault: Includes, but is not limited to, subjecting another person to any sexual act or contact between an employee, volunteer, contractor, or agency representative, and an inmates by force, persuasion, inducement, or enticement; any criminal sexual penetration or contact, (under New Mexico law; subjecting another person who is incapable of giving consent by reason of their custodial status, physical or mental state to sexual contact; or rape, sexual molestation, prostitution, or other form of sexual exploitation).
- I. Sexual Coercion: Compelling or inducing another person to engage in sexual activity by deceit, threats, force or intimidation or for personal favors.
- J. Sexual Contact: Behavior that includes, but is not limited to, all forms of sexual contact, intentional sexual touching or physical contact in a sexual manner, either directly or through clothing, of the genitalia, anus, groin, breasts, thighs or buttocks, with or without the consent of the person; or any touching or inappropriate viewing with intent to arouse, humiliate, harass, degrade, or gratify the sexual desire of any person. Sexual contact does not include searches of the person, to include strip searches.
- K. Sexual Harassment: Includes, but is not limited to, all of the following, whether by staff, volunteers, contractors, other agency representatives, or inmates: sexual advances; sexually offensive language, comments or gestures; influencing, promising or threatening any inmate's (or staffs') safety, custody status, privacy, housing, privileges, work or program status, in exchange for personal gain or favor of a sexual nature; creating or encouraging an atmosphere of intimidation, hostility or offensiveness as perceived by any individual who observes the sexually offensive behavior or language.

- L. Sexual Misconduct: Any behavior or act of a sexual nature directed towards an offender by another offender, a department employee, contractor, volunteer, visitor or department representative. This includes acts or attempt to commit acts including, but not limited to: criminal sexual penetration, sexual abuse, sexual harassment, and sexual contact, conduct of a sexual nature or implication, kissing, hugging, sexual gratification of any party, obscenity or unreasonable invasion of privacy by the act of observing, attempting to observe, or interfering in an offender's personal, intimate routines unrelated to the necessary performance of required job duties. Sexual misconduct also includes, but is not limited to: conversations or correspondence of a romantic or sexual nature between an offender and any department employee, contractor, volunteer, visitor, or department representative.
- M. NPSAMFE: National Protocol for Sexual Assault Medical Forensic Examinations Adult/Adolescent.

POLICY:

- A. The NMCD has a **“zero tolerance”** policy regarding abuse and sexual misconduct directed towards offenders. [§115.11]
- B. No person under the jurisdiction of the NMCD shall be arbitrarily exposed to physical or mental abuse, including disease or medical experimentation.
- C. In the event that physical force is necessary, the limitations of the NMCD's policy on Use of Force, (*Policy CD-130600*), will be strictly observed.
- D. Any employee, inmate or other person who in good faith reports abuse or sexual misconduct will not be subject to retaliation. Information will be kept confidential. Wardens or their designee's will monitor those who report sexual abuse or cooperate with investigations for ninety (90) days and take appropriate steps to protect individuals from retaliation, including periodic status checks on inmates. [§115.67]
- E. It is mandatory that staff, vendors, contractors or any offenders who witness or are the subject of abuse or sexual misconduct, who witness retaliation against those who report such incidents, or who witness any staff neglect or violation of responsibilities that may have contributed to an incident, must immediately report such conduct to one or more of the following persons: The Secretary of Corrections, the Office of Professional Standards, the Warden, the Shift Supervisor, the Institutional Investigator, District Supervisor or any other employee of the NMCD. [§115.61]

- F. Information shall be provided to offenders about sexual abuse/assault including: **[4-4281-1]**
- Prevention/intervention;
 - Self-protection,
 - Reporting sexual abuse/assault; and,
 - Treatment/counseling.
- G. This information shall be communicated orally and in writing, in a language clearly understood by the offender, upon arrival at a facility. **[\$115.33]**
- H. Inmates shall be screened within 24 hours of arrival at the facility and reassessed 30 days after the inmate's arrival, for potential vulnerabilities or tendencies of acting out with sexually aggressive behavior. Inmates will be reassessed thereafter due to a referral, request, incident of sexual abuse, or receipt of additional information that bears upon an inmate's risk of sexual victimization or abusiveness. Housing and program assignments will be made accordingly. The placement of inmates determined to be at high risk of sexual victimization into Level VI shall cite the basis for the facility's concern for the inmate's safety and the reason why no alternative placements are appropriate consistent with policy *CD-143001*. Inmates shall not be disciplined for refusing to participate in the screening process. **[4-4281-2] [\$115.41] [\$115.43]**
- J. Transgender and intersex inmates shall not be searched or examined by non-medical staff for the sole purpose of determining the inmate's genital status. Genital status shall be determined by interviews or medical records reviews. A transgender or intersex inmate's on views with respect to his or her own safety shall be given serious consideration. **[\$115.15] [\$115.42]**
- K. An investigation shall be conducted and documented whenever a sexual assault or threat is reported. At the conclusion of an investigation into an inmate's allegations against a staff member, the inmate will be informed in writing (unless the investigation determines that the allegation is unfounded) whether:
- The staff member continues to be posted in the inmate's unit;
 - The staff member continues to be employed;
 - The staff member has been indicted; and,
 - The staff member has been convicted.

At the conclusion of an investigation into an inmate's allegation against another inmate, the alleged victim will be informed in writing:

- Whether the alleged abuser has been indicted on a charge related to the sexual abuse in the facility; and,
 - Upon the agency learning that the abuser has been convicted on a charge related to sexual abuse within the facility. **[4-4281-3] [§115.73]**
- L. Inmates that are identified as high risk with a history of criminally sexual behavior shall be assessed by a mental health or other qualified professional. Inmates with a history of criminally sexual behavior shall be identified, monitored, and counseled. **[4-4281-4] [§115.81]**
- M. Inmates identified as at risk for sexual victimization shall be assessed by a mental health or other qualified professional. Inmates at risk for sexual victimization shall be identified, monitored, and counseled. **[4-4281-5] [§115.81]**
- N. Sexual conduct between staff and inmates, volunteers, or contract personnel and inmates, regardless of consensual status, is prohibited and subject to administrative discipline, up to and including termination, and criminal sanctions and referral to local law enforcement authorities for possible criminal prosecution. Licensed professionals engaging in sexual conduct with inmates will be reported to any relevant licensing body. **[4-4281-6] [§115.76] [§115.77]**
- O. Inmates that are victims of sexual abuse shall have an option to report the incident to a designated staff member other than an immediate point-of-contact line officer. **[4-4281-7]**
- P. Inmates under the age of eighteen (18) years old will not be assigned to housing in the same housing unit as adult offenders but will be housed in the Youthful Offenders Management Unit at Central New Mexico Facility. Offenders under the age of eighteen (18) will have direct sight/sound contact with staff in areas outside of the housing unit. **[§115.14]**
- Q. Inmates with disabilities and inmates who are limited English proficient shall have access to all aspects of the Department's efforts to prevent, detect and respond to sexual abuse and sexual harassment. **[§115.16]**

- R. The use of inmate interpreters to assist disabled or limited English proficient inmates in participating in efforts to prevent, detect, and respond to sexual abuse and sexual harassment, except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first responders, or investigation of the inmate's allegations, is prohibited. [**§115.16**]



Gregg Marcantel. Secretary of Corrections
New Mexico Corrections Department

02/10/14

Date

 CD-150101	NEW MEXICO CORRECTIONS DEPARTMENT	
	<small>"We commit to the safety and well-being of the people of New Mexico by doing the right thing, always." Courage Responsibility Ethics Dedication - CREDibly serving the public safety of New Mexico</small>	
	ISSUE DATE: 06/05//85	REVIEW/REVISED: 02/10/14
EFFECTIVE DATE: 06/19//85		TITLE: Offender Protection Against Abuse and Sexual Misconduct; Reporting Procedures

AUTHORITY:

Policy *CD-150100*

PROCEDURES: [2-CO-3C-01]

A. General Information

1. Inmates shall be protected from sexual misconduct, personal abuse, corporal or unusual punishment, humiliation, mental abuse, personal injury, disease, property damage, harassment or punitive interference with the daily functions of living, such as eating and sleeping. Shift supervisors shall make unannounced rounds in housing units to deter staff sexual abuse. Staff members are prohibited from alerting other staff members that supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility **[4-4281] [2-CI-5A-2] [§115.13]**
2. An investigation shall be conducted and documented whenever a criminal sexual behavior, sexual misconduct or threat is reported. **[4-4281-3]**
3. All case records associated with claims of sexual abuse, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings and recommendations for post-release treatment and/or counseling shall be retained in a confidential manner and are retained for ten years. **[4-4281-8] [§115.89]**

B. Staff Reporting: [4-4281-6]

1. Any employee who witnesses or receives information regarding the physical abuse, mental abuse or any sexual misconduct directed towards an offender shall immediately report the abuse to his or her immediate supervisor, who shall forward the report to the applicable disciplinary authority (e.g., Warden, Region Manager, Bureau Chief, or Division Director) and the Office of Professional Standards (OPS).

2. Failure to report or knowingly submitting a false report may result in disciplinary action, up to and including dismissal.
3. Employees are encouraged to report misconduct to a higher authority if their direct supervisor may be involved or if the report has not been given the appropriate attention at the reported level. Multiple channels will be made available for reporting including, but not limited to, other disciplinary authorities (e.g., Warden, Region Managers, etc.).
4. Where abuse is found to have occurred, appropriate administrative action against the offending party will be initiated, up to and including dismissal.

B. Inmate Reporting:

Inmate(s) who are a witness to or the victim of abuse or sexual misconduct, humiliation, personal injury, disease, property damage, harassment or punitive interference with the daily functions are encouraged to immediately report the incident by: **[4-4281-7]**

- Reporting the incident to any staff member or employee, correctional officer, contract staff or volunteer.
- Filing a grievance.
- Placing a note or memo in any drop box located throughout the facility for classification, medical or mental health staff and/or even mail boxes (please be as specific as possible when submitting information in writing).
- Providing the information either verbally or in writing by any means and to any person with whom the inmate is comfortable making the report.
- Sending the information directly to the Secretary, the Office of Professional Standards, Wardens, Shift Commanders, or District Supervisors and /or Region Managers in the case of probation and parole.

All such reports shall be handled in a confidential manner.

Failure to report or knowingly submitting a false report may result in disciplinary action and will be handled in accordance with *Policy CD-150600 Allegations from Inmates against Corrections Department Staff or Other Inmates*.



Gregg Marcantel, Secretary of Corrections
New Mexico Corrections Department

02/10/14
Date

 <p>CD-150102</p>	<p>NEW MEXICO CORRECTIONS DEPARTMENT</p> <p><i>"We commit to the safety and well-being of the people of New Mexico by doing the right thing, always."</i></p> <p>Courage Responsibility Ethics Dedication - CREDibly serving the public safety of New Mexico</p>	
	<p>ISSUE DATE: 06/05//85</p> <p>EFFECTIVE DATE: 06/19//85</p>	<p>REVIEW/REVISED: 02/10/14</p>
	<p>TITLE: Coordinated Response to Sexual Assaults</p>	

AUTHORITY:

Policy *CD-150100*

PROCEDURES: [OR-4]

A. Initial Disclosure Within 72 Hours of a Sexual Assault Incident

Within the first 72 hours of a sexual assault incident in the prison population, the following actions will be taken:

1. The affected unit shall be placed on a Type I lock-down and suspension of program services for an appropriate time, (*CD-070701.K.b*).
2. Upon identification of the victim and assailant(s), the facility or program administrator will assure the separation of the victim from his or her assailant(s) (*CD-170100.MM*). The victim will be instructed not to shower, wash their clothes, brush their teeth, or relieve him or herself in order to preserve evidence.
3. A facility health care professional will take a history and conduct an examination to document the extent of physical injury and to determine if there are injuries that merit transfer to another medical facility (*CD-170100.MM*). The purpose of the examination is to determine the patient's stability for transfer to a site that provides forensic examinations. The facility examiner is to be mindful of the need to preserve any objective forensic evidence during the examination.
4. The shift supervisor shall make an immediate verbal report to the Warden, and the Warden shall in turn make an immediate report to the Director of Adult Prisons and the Director of Health Services (*CD-070701.A.1, CD-070701.E*). The Warden will also complete the **Referral for Investigation** form to Office of Professional Standards (OPS) as a Level I investigation (*CD-031801.A*).

5. The shift supervisor will use the **Serious Incident Checklist** (*CD-070701.5*) form to ensure that all pertinent documentation of a major incident is completed.
6. The shift supervisor will contact the designated victim advocate in accordance with the *National Protocol for Sexual Assault Medical Forensic Examinations Adult/Adolescent*.
7. The shift supervisor shall complete section I of the **Facility Response to Sexual Assault Checklist** form (*CD-150102.1*) and submit to the Warden's office. The Warden should complete sections II and III of the checklist and submit it to the Director of Adult Prisons or designee within seven (7) calendar days after the incident.

B. Investigation

1. A thorough and objective investigation of an incident involving sexual misconduct shall be completed by an assigned investigator.
2. The assigned investigator shall gather and examine all physical and documentary evidence including reports, records, photographs, equipment, or any other pertinent information, (*CD-031801.D.9*).
3. The assigned investigator will contact all witnesses and schedule an interview with them. The interviews shall be conducted in a thorough, predetermined, and systematic manner regarding all of the allegations, (*CD-031801.D.6*).
4. Investigations involving represented employees will be conducted in accordance with applicable provisions of the Collective Bargaining Agreement (CBA).
5. All allegations of criminal conduct including criminal sexual penetration of an inmate by a staff member must be reported to the appropriate law enforcement authorities by the investigations officer, (*CD-031801.A.4*). The investigations officer will serve as the liaison between the New Mexico Corrections Department (NMCD) and the appropriate law enforcement agency during the course of any continuing investigation, (*CD-031801.G.3*). [4-4281-6]
6. Once evidence collection and witness interviews are complete, the Warden must prepare a step down plan and submit it to the Director of Adult Prisons for approval. This plan will include time that provides a gradual release such as visits for non-affected areas, pod restrictions, phone calls, etc. This plan will include the date and time frames as well as any extra security staff required, (*CD-070700.K.1*).

7. The assigned investigator will complete the investigation report, form (*CD-031801.2*) within twenty-three (23) calendar days, as per (*CD-031800*).
8. If it is found that an allegation of sexual misconduct was false, the case may be referred to law enforcement for prosecution. Any inmate who files a false allegation is subject to disciplinary action (*CD-150600.1*)

C. Forensic Examination

1. The Warden or designee will ensure that victims of sexual assault are promptly transferred under appropriate security provisions By Emergency Medical Services or NMCD personnel as is medically appropriate to a community health care facility for treatment and gathering of evidence, (*CD-170100.OO*). This will be at no charge to the inmate.
2. The consent of the victim shall be required for any routine emergency examination and treatment offered at the community health care facility, which is not otherwise required by law.
3. The examiner will prepare consent forms, etc. for the examination, (NPSAMFE).
4. The examiner will establish the medical forensic history, (NPSAMFE).
5. The examiner will photograph medical evidence, (NPSAMFE).
6. The examiner will perform the examination and collect medical evidence (NPSAMFE).
7. The examiner will gather toxicology samples for drug testing, (NPSAMFE).
8. The examiner will perform an sexually transmitted infection evaluation and provide for treatment, (NPSAMFE).
9. The examiner will perform a pregnancy risk evaluation and schedule follow-up care, (NPSAMFE).
10. The examiner will provide follow up instructions and release the victim for discharge, (NPSAMFE).

D. After Action and Follow-Up Care

1. The Warden will develop a victim safety action plan consistent with (CD-143000).
2. The facility medical director will initiate the 48-hour medical treatment review of the victim (NPSAMFE).
3. A facility mental health professional will perform an evaluation to assess the need for crisis intervention and long-term follow-up, (CD-170100.MM).
4. The facility medical director and mental health supervisor will develop a treatment plan for follow-up services, (CD-170100.G).
5. The assigned investigator shall perform a follow-up interview with the victim, (NPSAMFE).
6. The assigned mental health provider will provide access to counseling and advocacy services (NPSAMFE).
7. The classification officer will initiate the reclassification review process for the perpetrator(s), (CD-143000).
8. An inmate identified as high risk for sexually assaultive behavior or who has a history of sexually assaultive behavior will be assessed by a mental health or other qualified professional. Inmates with a history of sexually assaultive behavior will be identified, monitored, and counseled. (CD-181000.B).

E. Court Referral/Presentation

1. When, during the course of an investigation, the Investigations Officer becomes aware that the facts discovered indicate a violation of criminal law, the Investigations Officer shall immediately report the violations to the Bureau Chief of OPS, and the appropriate disciplinary authority and Deputy Secretary of Operations, (CD-031801.G.1).
2. Upon a belief that probable cause for criminal prosecution exists, the Bureau Chief of OPS shall conduct a review to determine the admissibility of compelled statements (CD-031801).

3. If, upon completion of review for probable cause and the admissibility of compelled statements, the investigator believes a referral can be made for prosecution, the Bureau Chief of OPS shall consult with the NMCD General Counsel to determine whether reasonable cause exists to believe that a violation of state or federal criminal law has occurred, and, if so, shall immediately notify the law enforcement agency with the appropriate jurisdiction, (*CD-031801.G.2*).
4. The assigned investigator will notify the examiner that the case is being referred for prosecution.
5. The assigned investigator shall be required to be adequately prepared to testify in hearings or a court of law regarding investigation cases. (*CD-031801.B.*)

F. After Action Review

The Adult Prisons Director will assign personnel to conduct a Critical Incident Review that will be completed in 14 calendar days, unless otherwise determined by the Director of Adult Prisons. The reporting employee will use the Critical Incident Review form (*CD-070701.3*), and, include all related documentation will be submitted to the Office of General Counsel, (*CD-070701.H*). The review will include input from line supervisors, investigators, and medical/mental health practitioners to:

1. Review the details of the incident of sexual assault;
2. Identify and recommend any policy or training changes to better prevent, detect, or respond to incidents of sexual assault;
3. Determine if any incidents of sexual assault were motivated by racial dynamics or any existing racial tensions at the facility;
4. When racial dynamics or existing tensions are found to be a factor in the sexual assault, make recommendations to rectify the problem.
5. Prepare a report of its findings and recommendations for improvements and submit it to the facility Warden.



Gregg Marcantel, Secretary of Corrections
New Mexico Corrections Department

02/10/14
Date

**NEW MEXICO CORRECTIONS DEPARTMENT
Facility Response to Sexual Assault Check-list**

Facility: _____

Date of Incident: _____

I.	Shift Supervisor
Initials	Action
	Place unit on Type-I lockdown and suspend programming (CD-070701.K.b)
	Shift Supervisor separate victim from assailant (CD-170100.MM)
	Advise victim not to shower, brush teeth, wash clothes, relieve themselves (CD-150100)
	Escort victim to medical for acute injury evaluation and treatment (CD-170100MM)
	Shift Supervisor report incident immediately to Warden (CD-170100)
	Shift Supervisor complete the <i>Serious Incident Checklist</i> (CD-070701.5)

Shift Supervisor: _____
Print/Sign

Date: _____

II.	Warden
Initials	Action
	Warden secures transport for victim to local medical facility for Rape Kit Test (CD-170100.MM)
	Warden report incident to Director of Adult Prisons and Director of Health Services (CD-070701.A.1)
	Warden complete the <i>Referral for Investigation</i> form to OPS (CD-031801.A)
	Warden alert local law enforcement (CD-031801.A.4)
	Warden develop step-down plan (CD-070700.K.1)
	Warden develops a victim safety action plan (CD-150102).
	Facility medical director initiates the 48-hour medical treatment review of the victim (CD-150102)
	Facility mental health provider evaluate need for crisis intervention and long-term follow-up care (CD-170100.MM)
	Facility medical director and mental health supervisor develop treatment plan for follow-up services (CD-170100.G)
	Classification Officer initiates re-classification review process for perpetrator (CD-143000)
	Facility mental health provider assesses perpetrator for monitoring/counseling (CD-181000.B)

Warden: _____
Print/Sign

Date: _____

III.	Director of Adult Prison Division
Initials	Action
	Director of Adult Prisons assigns personnel to conduct a Critical Incident Review (CD-070701.3)
	The Critical Incident Review is submitted to the Office of General Counsel (CD-070701.H)

**Director of Adult Prison
Division/Designee:** _____
Print/Sign

Date: _____