


<p style="text-align: center;">POLICY AND PROCEDURES</p>  <p style="text-align: center;">BARNES COUNTY CORRECTIONAL FACILITY</p>	<p>POLICY AND PROCEDURE NUMBER:</p> <p>6-10</p>
	<p>RELATED STANDARDS:</p> <p>§115.11, §115.12, §115.13, §115.14, §115.15, §115.16, §115.17, §115.18, §115.21, §115.22, §115.31, §115.32, §115.33, §115.34, §115.35, §115.41, §115.42, §115.43, §115.51, §115.52, §115.53, §115.54, §115.61, §115.62, §115.63, §115.64, §115.65, §115.66, §115.67, §115.68, §115.71, §115.72, §115.73, §115.76, §115.77, §115.78, §115.81, §115.82, §115.83, §115.86, §115.87, §115.88, §115.89, §115.93, §115.401, §115.402, §115.403, §115.404, §115.405, 115.501</p>
<p>CHAPTER TITLE: 6. Health Care</p>	<p>SUBJECT: 10. (PREA) Prison Rape Elimination Act of 2003</p>


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Revision/Review History

Revised:

Reviewed:

Summary of Revision

 BARNES COUNTY CORRECTIONAL FACILITY	POLICY AND PROCEDURES	PROCEDURE NUMBER: 6-10
		APPENDICES:
		RELATED STANDARDS: §115.11, §115.12, §115.13, §115.14, §115.15, §115.16, §115.17, §115.18, §115.21, §115.22, §115.31, §115.32, §115.33, §115.34, §115.35, §115.41, §115.42, §115.43, §115.51, §115.52, §115.53, §115.54, §115.61, §115.62, §115.63, §115.64, §115.65, §115.66, §115.67, §115.68, §115.71, §115.72, §115.73, §115.76, §115.77, §115.78, §115.81, §115.82, §115.83, §115.86, §115.87, §115.88, §115.89, §115.93, §115.401, §115.402, §115.403, §115.404, §115.405, §115.501
CHAPTER TITLE: 6. Health Care	SUBJECT: 10. PREA Prison Rape Elimination Act of 2003	

1. **AUTHORITY:** Authority for this policy with procedures is found in chapter 12-44.1 of the North Dakota Century Code and part 115 of Title 28 of the Code of Federal Regulations.
2. **APPLICABILITY:** All employees and inmates of the Barnes County Correctional Facility
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. CIS: Computer Information System.
 - D. Contractor: A person who provides services on a recurring basis pursuant to a contractual agreement with the agency.
 - E. Deoxyribonucleic Acid or DNA: A nucleic 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 institutional order of the facility.

- G. Gender Non-Conforming: A person whose appearance or manner does not conform to traditional societal gender expectations.
- H. Inmate: Any individual, whether in pretrial, sentenced, or sentenced status, who is confined in the Barnes County Correctional Facility.
- I. Intersex: A person who's sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male and female. Intersex medical conditions are sometimes referred to as disorders of sex development.
- J. JMS: Jail management system.
- K. Medical Practitioner: Any person practicing medicine to include any contracted physicians, nurse practitioners, and physician assistants.
- L. 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.
- M. 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 checklist in compliance with Prison Rape Elimination Act standards.
- O. Prison Rape Elimination Act Investigator(s): A mid-level position(s) that reports directly to the Prison Rape Elimination Act Coordinator. The Prison Rape Elimination Act Investigator's responsibilities include investigate allegations of sexual abuse, interview sexual abuse victims, proper use of Miranda and Garrity warnings, and sexual abuse evidence collection.
- P. 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 or 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.
 - 1. Contact between the penis and 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 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.
- Q. Sexual Abuse or 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 breasts in the presence of an inmate, detainee, or juvenile; and
 8. Voyeurism by a staff member, contractor, or volunteer.
- R. Sexual Harassment: Includes:
1. Unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of the derogatory or offensive sexual nature by one inmate, detainee or juvenile directed toward another; and
 2. Verbal comments or gestures of a sexual nature to an inmate, detainee or juvenile, 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.
- S. 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.
- T. Substantiated Allegation: Allegation that was investigated and determined to have occurred.

- U. Transgender: A person whose gender identity (internal sense of feeling male or female) is different from the person's assigned sex at birth.
 - V. Unfounded Allegation: Allegation that was investigated and determined not to have occurred.
 - W. Unsubstantiated Allegation: Allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.
 - X. Volunteer: An individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency.
 - Y. 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 the Barnes County Correctional Facility unescorted or unsupervised. Volunteer and contractor acknowledgement forms shall be retained in the volunteer/contractor's file by designated facility staff.
 - Z. 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 or all or part of an inmate's naked body or of an inmate or juvenile performing bodily functions.
 - AA. DOJ: Department of Justice
 - BB. HIV: Human Immune Deficiency Virus
 - CC. PREA: Prison Rape Elimination Act of 2003
 - DD. SAFE: Sexual Assault Forensic Examiner
 - EE. SANE: Sexual Assault Nurse Examiner
 - FF. BCCF: Barnes County Correctional Facility
 - GG. STD: Sexually Transmitted Disease
4. **POLICY:** The Barnes County Correctional Facility will have written policy and procedures mandating zero-tolerance towards all forms of sexual abuse, and sexual harassment and outlining the correctional center's approach to prevention, detection, and response to such conduct. Policy and procedure 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. The BCCF has a zero tolerance toward all forms of sexual abuse and sexual harassment within its facilities. **[115.11 (a)]**
- b. This policy outlines how the BCCF will implement the agency's zero tolerance approach to preventing, detecting, and responding to sexual abuse and sexual harassment. **[115.11 (a)]**
- c. The BCCF identifies disciplinary sanctions for those found to have participated in prohibited behaviors **[115.11 (a)]**
 - 1.) Disciplinary sanctions are identified under standards § 115.76, § 115.77, and § 115.78.
- d. The BCCF has a designated upper-level, PREA Coordinator who has sufficient time and authority and authority to implement and oversee BCCF efforts to comply with PREA standards in all of its facilities. **[115.11 (b)]**
 - 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.) Coordinate audit preparations.
 - f.) Coordinate corrective action plans and ensure follow-up.
 - g.) Oversee monitoring of PREA compliance with private and non-department public entities contracted for offender and inmate confinement.
 - h.) Keep the Sheriff informed on PREA-related issues.
 - i.) Maintain a memorandum of understanding for external victim advocacy.
 - j.) Perform a monthly functionality test of random sample of inmate telephones to verify the toll-free number is operational.

- k.) Perform monthly checks to verify posters are posted in areas accessible to inmates and the public.
- l.) Monitor and provide technical resources to the PREA investigator(s).
- m.) Coordinate training of PREA investigator(s).

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

- a. Agencies under contract with BCCF will include in any new contract or contract renewal to adopt and comply with the PREA standards. **[115.12 (a)]**
- b. All new contracts or contract renewals provide for BCCF contract monitoring to ensure compliance with the PREA standards. **[115.12 (a)]**

3. § 115.13 Supervision and Monitoring:

- a. The BCCF 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 BCCF policy and procedure 2A-6, Staffing Requirements. **[115.13 (a)]**
- b. Each time the staffing plan is not complied with, the facility documents and justifies all deviations from the staffing plan. **[115.13 (b)]**
 - 1.) The Administrator or designee will ensure each shift is at or above the minimum staffing levels.
 - 2.) The shift supervisor will ensure staff are assigned to each fixed security post.
 - 3.) There will be written justification for all deviations from the staffing plan.
 - a.) 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 (c)]**
 - 1.) The staffing plan.
 - 2.) The addition of monitoring technology.
 - 3.) The allocation of BCCF resources to commit to the staffing plan to ensure compliance.

c. 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.) The unannounced rounds are documented in the control room electronic log. The entry will be logged as "ADMINSTRATION ROUNDS"

a.) Unannounced supervisor rounds will be conducted on all shifts.

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.

4. § 115.14 Youthful Inmates:

a. Adjudicated delinquent youths charged with offenses are not housed in the BCCF.

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

a. BCCF employees will not conduct cross-gender strip or cross-gender visual body cavity searches (anal or genital opening). Refer to BCCF policy and procedure 2C-1, Facility and Inmate Searches. **[115.15 (a)]**

b. 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)]**

c. Female staff will announce "Female Entering" when entering a male inmate populated housing unit where inmates may be seen using the shower, toilet, or different stages of undress. **[115.15 (d)]**

1.) The announcement shall be logged in the control room log.

- d. Male staff will announce "Male Entering" when entering a female inmate populated housing unit where inmates may be seen using the shower, toilet, or different stages of undress. [115.15 {d}]
 - 1.) The announcement shall be logged in the control room log.
 - e. Staff will not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. [155.15 {e}]
 - 1.) If the inmate's genital status is unknown, it may be determined through conversation with the inmate, by prior incarceration files to include past medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.
 - a.) During the initial intake/booking with a transgender or intersex inmate, staff will ask the inmate if they prefer to be searched by a male or female officer. This information will be recorded in the facility JMS under Inmate Log.
 - f. During initial orientation security 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}]
6. § 115.16 Inmates with disabilities and inmates who are limited English proficient (LEP):
- 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 facility'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 11 of the Americans with Disabilities Act 28 CFR 35.164. [115.16 {a}] [115.16 {b}]
 - 1.) See BCCF policies 6-01 Inmates with Disabilities and 6-02 Limited English Proficient (LEP) Inmates.
 - b. The BCCF 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 {c}]
 - 1.) The inmate's safety;

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

7. § 115.17 Hiring and Promotion Decisions:

- a. The BCCF 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.) 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. The BCCF 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)]**
- c. Before hiring new employees who may have contact with inmates, the BCCF will: **[115.17 (c)]**
 - 1.) Perform a criminal background records check;
 - a.) Records will be maintained in personnel file.
 - 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.
 - a.) Efforts will be documented on the new employee's applicant questionnaire and maintained in personnel file.
- d. The BCCF will conduct criminal background records check before enlisting the service of any contractor or volunteer who may have contact with inmates. **[115.17 (d)]**
- e. Criminal background checks will be conducted at least every five years on all current employees, volunteers, and contractors who may have contact with inmates. **[115.17 (e)]**

- 1.) The BCCF deputy administrator at a minimum will conduct an NCIC check and finger print check.
 - 2.) Criminal background checks will be filed in staff personal files.
- f. The BCCF requires all applicants and employees to disclose any misconduct described in paragraph (a) of this section **[115.17 (f)]**
- 1.) New Applicants and Promotions:
 - a.) Are required to complete a New Employee/Promotion PREA Questionnaire **[115.17 (f)]** at the time of interview.
 - 2.) Written self-evaluations conducted as part of current employee reviews.
- g. Material omissions regarding such misconduct or the provision of materially false information shall be grounds for termination of employment. **[115.17 (g)]**
- h. Unless prohibited by law, the BCCF 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. **[115.17 (h)]**

8. § 115.18 Upgrades to Facilities and Technologies:

- a. The BCCF 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. **[115.15 (a)]**
 - 1.) The BCCF 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.) The BCCF 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 Jail Administrator will conduct an assessment to determine technology capabilities to further protect inmates from sexual abuse. **[115.18 (b)]**
 - 1.) When conducting an assessment, the Jail Administrator will give consideration to cost, functionality, findings of inadequacy from state 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. The BCCF is responsible for conducting administrative investigations into allegations of sexual abuse. **[115.21 (a)]**
- b. The Barnes County Sheriff's Office conducts criminal investigations of sexual abuse for the BCCF. **[115.21 (a)]**
 - 1.) The Barnes County Sheriff's Office 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)] [115.21 (b)]**
- c. All victims of sexual abuse will be offered access to forensic medical examinations. **[115.21 (c)]**
 - 1.) Forensic medical examinations will be offered without financial cost to the victim. Forensic examinations will be conducted at Sanford Health ER in Fargo, ND unless exigent circumstances exist. **[115.21 (c)]**
- d. Forensic medical exams are conducted by a SAFE or SANE within 96 hours of the incident. **[115.21 (c)]**
 - 1.) When a SAFE or SANE is not available, the examination may be performed by other qualified medical practitioners. The BCCF medical staff will document its efforts to provide SAFE or SANE. **[115.21 (c)]**
- e. The staff will attempt to make a victim advocate from a rape crisis center available to the victim in person or by other means as soon as possible. **[115.21 (d)]**
 - 1.) Staff will follow the Coordinated Response to Report of Sexual Abuse.
 - a.) All related information will be documented on the PREA Checklist – Sexual Abuse/Harassment form.
 - 2.) The PREA Coordinator will attempt to establish a Memorandum of Understanding with a rape crisis center.
 - a.) The PREA Coordinator will document MOU's or efforts to obtain them. **[115.21 (d)]**
 - 3.) The BCCF staff will contact the PREA Coordinator and they will contact the designated medical provider, who will initiate the Sexual Assault Response Team and request a victim advocate.

- f. If or when a rape crisis center 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)]**
- 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)]**

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

- a. The BCCF will ensure an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment. **[115.22 (a)]**
 - 1.) For procedures see § 115.71 Criminal and Administrative Agency Investigations.
- b. The BCCF will ensure criminal allegations of sexual abuse or sexual harassment are referred to the Valley City Police dept Office unless the allegation does not involve potentially criminal behavior. **[115.22 (b)]**
 - 1.) The PREA investigator will document all referrals to the Barnes County Sheriff's Officer. This information will be forwarded to the PREA Coordinator. **[115.22 (b)]**
- c. The BCCF PREA policy is available on the Barnes County Correctional Facility link on the Barnes County website. PREA statistics will be posted annually. **[115.22 (b)]**

11. § 115.31 Employee Training:

- a. The BCCF trains all employees during orientation and every year thereafter, on the following matters: **[115.31 (a)]**
 - 1.) Zero-tolerance policy for sexual abuse and sexual harassment;
 - 2.) How to fulfill employee responsibilities under BCCF sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;
 - 3.) Inmate's 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)]**
- c. Employees are provided with information about current policies regarding sexual abuse and sexual harassment policies through: **[115.31 (c)]**
- 1.) BCCF PREA training,
 - 2.) Coordinated response posters,
 - 3.) PREA materials posted throughout the facility.
- d. The BCCF documents that employees understand the training they have received through employee signature or electronic verification. **[115.31 (d)]**

12. § 115.32 Volunteer and Contractor Training:

- a. The BCCF Training 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.) 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)]**
 - a.) Unescorted or unsupervised contractors or volunteers will receive 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.) The training is approved by the PREA Coordinator and is conducted in a classroom environment. The Training Coordinator will track this information in the BCCF training files.

b. Volunteers will be trained on policy and procedures relative to PREA. This training will be repeated every two years.

c. The BCCF Training Coordinator will maintain documentation confirming volunteers and contractors understand the training they have received. [115.32 {c}]

13. § 115.33 Inmate Education:

a. During intake, inmates will receive information explaining the agency's zero tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment. [115.33 {a}]

b. Within 30 days of intake, the facility will provide comprehensive education to all inmates. The comprehensive education will explain the following: [115.33 {b}{c}]

1.) The BCCF's 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 facility's policies and procedures for responding to such incidents.

c. 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.) See BCCF policies 4D-2 Inmates with Disabilities and 4D-3 Limited English Proficient (LEP) Inmates.

d. The BCCF shall maintain documentation of inmate participation in these education sessions. [115.33 {e}]

1.) Documentation of participation will be maintained in each inmate's file.

e. The BCCF ensures key information is continuously and readily available or visible to inmates through posters and inmate handbooks. [115.33 {f}]

14. § 115.34 Specialized Training: Investigations:

- a. Investigators who investigate allegations of sexual abuse are trained in conducting sexual abuse investigations in confinement settings. This includes: **[115.34 (a)]**
 - 1.) Department of Justice 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 confinement settings;
 - c.) Criteria and evidence required to substantiate a case for administrative action or for prosecution referral.
 - 2.) The BCCF Training Coordinator maintains documentation agency investigators have completed the required specialized training in conducting sexual abuse investigations. **[115.34 {c}]**

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

- a. All BCCF medical and behavioral health care practitioners are trained in the following: **[115.35 (a)]**
 - 1.) How to detect and assess signs of sexual abuse and sexual harassment;
 - 2.) How to preserve physical evidence or sexual abuse;
 - 3.) How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and
 - 4.) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment.
- b. Forensic exams will be conducted at Sanford Health ER in Fargo, ND. BCCF medical staff will not conduct forensic exams except in exigent circumstances. **[115.35 (b)]**

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

- a. Intake Risk Assessment/Screening:
 - 1.) An intake risk assessment/screening will be completed within 24 hours of arrival at the facility for risk of being sexually abused by other inmates or sexually abusive toward other inmates. Housing assignments are made

accordingly. **[115.41 (a)] [115.41 (b)] [115.41 (c)] (4-ALDF-40-22-1)**

- 2.) The intake risk assessment/screening shall consider the following criteria to assess inmates for risk of sexual victimization: **[115.41 (d)] [115.41 (e)]**
 - a.) Whether the inmate has a mental, physical, or developmental disability;
 - b.) The age of the inmate;
 - c.) The physical build of the inmate;
 - d.) Whether the inmate has previously been incarcerated;
 - e.) Whether the inmate's criminal history is exclusively nonviolent;
 - f.) Whether the inmate has prior convictions for sex offenses against an adult or child;
 - g.) Whether the inmate is or perceived to be gay; lesbian; bisexual; transgender; intersex; or gender nonconforming;
 - h.) Whether the inmate has previously experienced sexual victimization;
 - i.) The inmate's own perception of vulnerability; and
 - j.) Whether the inmate is detained solely for civil immigration purposes.

b. Re-Assessments:

- 1.) The PREA Reassessment form is completed by the PREA Coordinator within 30 days of the inmate's arrival to determine risk of sexual victimization and sexual abusiveness. **[115.41 (f)]**
- 2.) An inmate's risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness. **[115.41 (g)]**
 - a.) The PREA Coordinator will utilize the PREA Reassessment form to complete the reassessment.

- (1) Reassessments will be maintained in the inmate file.
- 3.) Inmates may not be disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked during the intake screening or assessment. **[115.41 (h)]**
- 4.) The BCCF will implement appropriate controls on the dissemination within the facility of responses to questions asked in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates. **[115.41 (i)]**

17. § 115.42 Use of Screening Information:

- a. Prior to housing and Trustee work staff will review alerts within CIS to keep separate inmates who have been identified as high-risk of being sexually victimized inmates from inmates identified as high-risk of being sexually abusive to ensure sexual safety of identified groups. **[115.42 (a)]**
 - 1.) Known sexual aggressors and potential sexual aggressors will not be assigned to the same cell, cell block, or dormitory as a known victim or potential victim.
 - a.) The shift supervisor will approve or change housing placement requests for known sexual aggressors, potential sexual aggressors, known victim, or potential victim.
 - (1) As indicated in section [115.41(d)] and [115.41(e)] PREA Coordinator is required to sign the "Screening Form"
 - (a) The PREA Coordinator signature will be documentation that he/she approved the housing placement of known sexual aggressor, potential sexual aggressor, known victim, or potential victim.
- b. The BCCF shall make individualized determinations about how to ensure the safety of each inmate by utilizing the intake risk assessment/screening and alerts in CIS. **[115.42 (b)]**
- c. Transgender or Intersex Inmates:
 - 1.) In deciding whether to assign a transgender or intersex inmate to a housing unit for male or female inmates, and in making other housing and programming assignments, the supervisory 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)]**

- 2.) The shift supervisor will take into consideration before housing placement:
 - a.) The inmates request to where they would like to be housed,
 - b.) Any information provided by the inmate that may support their request of being recognized as male or female.
 - (1) All information used to determine housing placement will be documented in inmate behavioral log in CIS.
- 3.) The shift supervisor will notify the PREA coordinator and deputy administrator of all transgender or intersex inmate housing placements.
 - a.) The PREA coordinator will at their earliest convenience review the housing placement.
 - (1) The review will be documented in inmate behavioral log in CIS.
- 4.) Housing placement and programming assignments for each transgender or intersex inmate shall be reassessed at least every month from the date of intake to review any threats to safety experienced by the inmate. **[115.42 (d)]**
 - a.) The PREA coordinator will complete the reassessments using a Transgender and Intersex Inmate Housing and Program Placement Reassessment form. Form will be maintained in inmate file.

- b.) The reassessments will be documented in inmate behavioral log in CIS.
 - c.) A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration. **[115.42 (e)]**
- 5.) Transgender and intersex inmates must have the opportunity to shower separately from other inmates. **[115.42 (f)]**
- a.) Inmates who identify themselves as transgender or intersex during the intake screening may request to shower separately from other inmates.
- 6.) Lesbian, gay, bisexual, transgender, or intersex inmates shall not be placed in dedicated facilities, units, or wings solely on the basis of such identification or status unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates. **[115.42 (g)]**

18. § 115.43 Protective Custody:

- a. Inmates at high risk for sexual victimization will not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers. If assessment can't be completed immediately, the inmates may be held in involuntary segregated housing for less than 24 hours while assigned staff completes the assessment. **[115.43 (a)]**
- b. Inmates placed in segregated housing for his purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If access is restricted to programs, privileges, education, or work opportunities, staff will document: **[115.42 (b)]**
 - 1.) The opportunities that have been limited;
 - 2.) The duration of the limitation; and
 - 3.) The reasons for such limitations.
- c. Inmates will only be assigned to involuntary segregated housing until an alternative means of separation from likely abusers can be arranged. The assignment may not ordinarily exceed a period of 30 days. **[115.43 (c)]**
- d. If an involuntary segregated housing assignment is made pursuant to substandard [115.43 (a)] of this section, the facility 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.
- e. Every 30 days, the Administrative Sergeant will afford each inmate a review to determine whether there is a continuing need for separation from the general population. **[115.43 (e)]**

19. § 115.51 Inmate Reporting:

- a. The BCCF allows for internal reporting, by inmates, to report privately to agency officials about sexual abuse, sexual harassment, staff neglect or 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.) Verbal reporting to any staff member
 - a.) Staff will document the verbal report immediately on an incident report and forward to appropriate investigator.
 - 2.) Electronic request or grievance
 - 3.) Electronic PREA report
 - 4.) Third party reporting
- b. The BCCF 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.) Safe Shelter 112 5th Street S.E. Jamestown, ND 58401 (701) 251-2300
 - 2.) Valley City Police Dept, 216 2nd Ave NE, Valley City, ND 58072 (701) 845-3110
 - 3.) BOP and USM Inmates; Office of Inspector General, U.S. Department of Justice, 950 Pennsylvania Ave. Room 4705, Washington D.C. 20530 1-800-859-4499
 - 4.) Inmates detained solely for civil immigration purpose are provided information on how to contact relevant consular officials and relevant officials of the Department of Homeland Security. This information is posted in the booking area, and available in the inmate handbook.

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 (c)-1]**
- b. The BCCF 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)]**
 - 2.) Such Grievance is not referred to a staff member who is the subject of the complaint. **[115.52 (c)]**
- c. The PREA Coordinator will issue a final decision on the merits of any portion of a grievance alleging sexual abuse within 90 days or 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. **[115.52 (d)-2]**
- d. The PREA Coordinator 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)-3]**
 - 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)-3]**
- e. Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of inmates. **[115.52 (e)-1]**
- f. If a third party files such a request on behalf of an inmate, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process. **[115.52 (e)-2]**
 - 1.) If the inmate declines to have the request processed on his or her behalf, the assigned investigator shall document the inmate's decision and verify by inmate signature. This document will be placed in inmate's file. **[115.52 (e)-3]**
- 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 PREA Coordinator for which immediate corrective action may be taken. **[115.52 (f)-2]**
 - 2.) The PREA Coordinator will provide an initial response within 48 hours, and will issue a final decision within five (5) calendar days. **[115.52 (f)-2]**
 - 3.) The initial response and final decision will document the BCCF's determination whether the inmate is in substantial risk or imminent sexual abuse and the action taken in response to the emergency grievance. This document will be placed in inmate's file. **[115.52 (f)-2]**
- 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)]**

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 to the organization listed below. In the event of sexual abuse, a trained behavioral health practitioner 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.) Safe Shelter 112 5th Street S.E. Jamestown, ND 58401 (701) 251-2300
 - 2.) APOC, P.O. Box 508 Valley City ND, 58072 (701) 845-0072
 - 3.) SCHSC 520 3rd
- 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)]**
- c. The BCCF maintains or attempts to enter into memorandum of understanding with community service providers able to provide inmates with confidential emotional support services related to sexual abuse. The BCCF shall maintain copies of these agreements or documentation showing attempts to enter into such agreements. **[115.53 (c)]**

22. § 115.54 Third-Party Reporting:

- a. The BCCF publicly distributes, on its website, information on how to report inmate sexual abuse or sexual harassment on behalf of inmates. **[115.54]**

23. § 115.61 Staff and agency reporting duties:

- a. All BCCF 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 the BCCF. **[115.61 (a)]**
 - 1.) All BCCF staff shall immediately report any retaliation against inmates or staff who reported such an incident; any staff neglect or violations of responsibilities that may have contributed to an incident or retaliation. **[115.61 (a)]**
 - 2.) Staff shall immediately notify the PREA Coordinator of any verbal report of sexual abuse or sexual harassment against inmates or staff.
 - a.) BCCF staff may privately report sexual abuse or sexual harassment of inmates to the PREA Coordinator or the Valley City Police Department. **[115.51 (d)]**
- 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)]**
- 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)]**
- d. If the alleged victim is considered a vulnerable adult under a state or local vulnerable persons' statute, administrative or medical staff shall report the allegation to the Department of Human Services under applicable mandatory reporting laws. **[115.61 (d)]**
- e. The PREA Coordinator shall assign an investigator for all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports. **[115.61 (e)]**

24. § 115.62 Agency Protection Duties:

- a. When BCCF staff learns an inmate is subject to a substantial risk of imminent sexual abuse, staff shall take immediate action to protect the inmate. **[115.52]**
 - 1.) Initiate § 115.65 Coordinated Response, as applicable.

25. § 115.63 Reporting to other confinement facilities:

- a. Upon receiving an allegation that an inmate was sexually abused while confined at another facility, the Jail Administrator that received the allegation shall notify the PREA Coordinator.
- b. Such notification shall be provided as soon as possible, but no later than 72 hours after receiving the allegation. **[115.63 (b)]**
- c. The BCCF shall document that it has provided such notification. **[115.63 (c)]**
- d. The BCCF PREA Coordinator shall ensure the allegation is investigated in accordance with this policy. **[115.63 (d)]**

26. § 115.65 Coordinated Response – Investigations of Sexual Abuse or Sexual Harassment:

- a. The BCCF 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)]**
- b. Sexual abuse/Harassment by an inmate, staff member, contractor, or volunteer:

1.) First Responder:

- a.) Upon learning of an allegation that an inmate was sexually abused, the first staff member to respond shall: **[115.64 (a)]**

- (1) Separate the alleged victim from the alleged abuser.
- (2) Notify the PREA Coordinator of alleged incident.
- (3) Preserve and protect any crime scene until appropriate steps can be taken to collect evidence.
- (4) If the alleged abuse occurred within 120 hours from the time the incident was reported, **request 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.

- (a) Staff will initiate the PREA Checklist – Sexual Abuse/Harassment form.

- (b) Staff will forward checklist to assigned investigator and PREA Coordinator.

- (5) Inform victim of access to external victim advocate services (APOC 701-845-0072).
- (6) Complete Incident Report before end of shift and deliver to PREA Coordinator.

2.) PREA Coordinator:

- a.) Initiate appropriate PREA Checklist - Sexual Abuse form.
- b.) Notify facility Administrator of the incident (In cases of staff, contractor, or volunteer on inmate).
 - (1) Administrator will:
 - (a) Notify the Sheriff.
 - (b) Notify the DOCR Office of Facility Inspections (Refer to BCCF policy and procedure 1C-4, Notification).
- c.) Notify a PREA investigator (in cases of inmate on inmate abuse).
- d.) Ensure duties of first responder are completed.
- e.) Ensure victim received access to external victim advocate services (APOC 701-845-0072)
 - (1) Initiate retaliation monitoring form.
- f.) Notify medical staff:
 - (1) If on duty have alleged victim escorted to the visitation room. Notify medical staff an investigator will be assigned.
 - (2) Contact Sheriff's Office to escort alleged victim to Sanford Medical Center Fargo a staff member will stay with alleged victim.
- g.) 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.

- h.) Notify facility Administrator of the name of the assigned investigator (in cases of inmate on inmate abuse).
 - j.) Monitor and provide technical resources to the PREA investigator.
- 4.) PREA Investigator:
- a.) Will conduct an initial interview with the reporting victim to determine if the allegation meets the defined criteria of sexual abuse.
 - b.) If the allegation is determined to meet the defined criteria of sexual abuse/harassment, the investigator will notify the PREA Coordinator. The investigator will proceed with the investigation.
 - c.) If the allegation is determined to NOT meet the defined criteria of sexual abuse/harassment, the investigator will notify the PREA Coordinator and complete an incident report before the end of shift.
- 5.) 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 the 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, medical staff shall document the refusal in inmate medical file.
 - d.) In the event transportation is necessary, it will be in accordance with transport policy. The PREA Coordinator will approve any exceptions.

- (1) If the alleged victim must change to transport clothes the following process will be followed:
 - (a) The alleged victim must undress on exam paper. Each item of clothing must be placed in a paper bag (no plastic) and closed with evidence tape. Each item and folded paper the victim undressed on must be placed in separate paper bags sealed with evidence tape. Staff shall start a Chain of Possession of Evidence on the evidence.
- (2) Communicate the facts known about the incident, including the infectious disease status of the aggressor, if known, to the outside medical staff.
- (3) Contact the designated medical provider, who will initiate the Sexual Assault Response Team.
- (4) Contact the Sheriff's Office to make arrangements for transporting the inmate to the outside medical facility.
- (5) Document all actions taken and communications with the inmate in the medical record.
- (6) Ensure STD testing has occurred and prophylactic treatment is completed.
- (7) Ensure pre- and post-HIV counseling has been conducted.
 - (a) Ensure follow-up infectious disease testing is completed and that infectious disease testing is completed on the abuser if the allegation is substantiated.

6.) Final Determination of Allegation:

- a.) The allegation will be considered **substantiated** if a preponderance (more than 50 percent) of the evidence supports this finding. **[115.72]**
- 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.
- e.) Following the investigation, 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 Notice of Prison Rape Elimination Act (PREA) Investigation Status, 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)] [115.73 (e)]**
- f.) At the completion of the investigation, the staff investigator will compile all documentation, including the PREA Check list – Sexual Abuse/harassment, investigative report, misconduct reports with disposition, medical and counseling findings, and send this information to the PREA coordinator. The PREA Coordinator will ensure the documentation is scanned for retention.
- g.) False accusations:
 - (1) If the investigation reveals an inmate made a false allegation, disciplinary action may be imposed.
- h.) Employees, contractors, volunteers, official visitors, or Agency representatives who are found to have committed staff sexual

27. § 115.66 Preservation of Ability to Protect Inmates from Contact with Abusers:

- a. Standard § 115.66 does not apply to Barnes County since there are no collective bargaining agreements. North Dakota is a right to work state.

28. § 115.67 Agency Protection against Retaliation:

- a. The administrator will ensure 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.) The administrator will ensure multiple protection measures are available, including housing changes or transfers (BOP and USM inmates) 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 cooperating with investigations. **[115.67 (b)]**

b. For at least 90 days following a report of sexual abuse or sexual harassment, the PREA Coordinator will monitor the conduct and treatment of inmates or staff who reported the sexual abuse or sexual harassment or inmates who were reported to have suffered sexual abuse or sexual harassment to determine if there are changes that may suggest possible retaliation by inmates or staff, and shall act promptly to remedy any such retaliation. **[115.67 (c)]**

1.) Items the facility should monitor include inmate misconduct reports, housing, or programs, or negative performance reviews or reassignments of staff. The PREA compliance manager will continue monitoring beyond 90 days if the initial monitoring indicates a continuing need. **[115.67 (c)]**

c. In the case of inmates, monitoring shall also include periodic status checks. **[115.67 (d)]**

d. If any other individual who cooperates with an investigation expresses a fear of retaliation, the PREA Coordinator will take appropriate measures to protect that individual against retaliation. **[115.67 (e)]**

e. The BCCF's obligation to monitor terminates if the BCCF 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 the BCCF conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall initiate a thorough and objective investigation for all allegations within **24 hours** or as circumstances dictate, including third-party and anonymous reports. **[115.71 (a)]**

- b. Where sexual abuse is alleged, the BCCF 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, the BCCF investigator will stop the administrative investigation while the criminal investigation is being conducted, unless otherwise directed by the administrator. 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. The BCCF 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, that 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)]**
- i. The BCCF shall retain all administrative and criminal written reports referenced for as long as the alleged abuser is incarcerated or employed by the agency, plus five years. **[115.71 (i)]**
- j. Investigations are completed regardless of employee status or inmate custody status. **[115.71 (j)]**
- k. When the Barnes County Sheriff's Officer investigates sexual abuse, BCCF investigators will cooperate with outside

investigators and will remain informed about the progress of the investigation. [115.71 (l)]

31. § 115.72 Evidentiary Standard for Administrative Investigations:

- a. The BCCF 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)]

32. § 115.73 Reporting to Inmates:

- a. Following the investigation, 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 the 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)]
- b. If the Barnes County Sheriff's Office conducts an investigation, the BCCF shall request the relevant information in order to inform the inmate of the outcome of the investigation. [115.73 (b)]
- c. If there has been substantiated or unsubstantiated complaint of sexual abuse committed by a staff member against an inmate, the BCCF must subsequently inform the inmate whenever: [115.73 (c)]
 - 1.) The staff member is no longer posted within the inmate's unit;
 - 2.) The staff member is no longer employed at the facility;
 - 3.) The BCCF 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, the BCCF must subsequently inform the alleged victim whenever: [115.73 (d)]
 - 1.) The BCCF 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 placed in inmate file. [115.73 (e)]
- f. The BCCF's obligation to report under this standard terminates if the inmate is released from the BCCF's custody. [115.73 (f)]

B. Discipline: Sexual conduct between staff and detainees, volunteers or

contract personnel and detainees, regardless of consensual status, is prohibited and subject to administrative and criminal disciplinary sanctions. **(4-ALDF-40-22-4)**

1. § 115.76 Disciplinary Sanctions for 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.) 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. **[115.76 (b)]**
- c. Disciplinary sanctions for violations of BCCF 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 the other staff with similar histories. **[115.76 (c)]**
- d. All terminations for violations of BCCF sexual abuse or sexual harassment policies, or resignations by 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)]**

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)]**
- b. The administrator shall take appropriate remedial measures, and shall consider whether to prohibit further contact with inmates, in the case of any other violation of BCCF sexual abuse or sexual harassment policies by a contractor or volunteer. **[115.77 (b)]**

3. 115.78 Disciplinary Sanctions for Inmates:

- a. Inmates shall be subject to disciplinary sanctions pursuant to the BCCF disciplinary process following an administrative or criminal finding or guilt that the inmate engaged in inmate-on-inmate sexual abuse. **[115.78 (a)]**

- 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 sanctions, if any, should be imposed. **[115.78 (c)]**
 - 1.) The Disciplinary Committee Chair will:
 - a.) Request facility nursing staff to complete a Mental Disability/Mental Illness Review before Disciplinary Committee.
- d. The BCCF 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)]**
- e. 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)]**

C. Medical and Mental Health Care

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

- a. If the screening pursuant to § 115.41 indicates an inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening. **[115.81 (a)(c)]**
 - 1.) The booking officer will:
 - a.) Offer access to facility medical staff for follow-up appointment.
 - b.) Document "YES" if inmate accepts the appointment.
 - (1) Forward a copy of the intake risk Screening Form to the facility nurse, and place a copy in inmate file.
 - c.) Document "NO" if inmate refuses the appointment.
 - (1) Maintain intake risk Screening Form in inmate file.

- d.) Document in the Explanation box if inmate is referred by staff to the nurse, indicating the reason(s) for the referral.
 - (1) Forward a copy of the intake risk Screening Form to the facility nurse, and place a copy in inmate file.
- 2.) Nursing staff will:
 - a.) Clearly document the offender was seen within 14 days of intake due to reporting history of sexual victimization during the PREA screening.
- b. If the screening indicates pursuant to § 115.41 indicates an inmates has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening. **[115.81 (b)]**
 - 1.) The booking officer will:
 - a.) Offer access to facility medical staff for follow-up appointment.
 - b.) Document "YES" if inmate accepts the appointment.
 - (1) Forward a copy of the intake risk Screening Form to the facility nurse, and place a copy in inmate file.
 - b.) Document "NO" if inmate refuses the appointment.
 - (1) Maintain intake risk Screening Form in inmate file.
 - d.) Document in the Explanation box if inmate is referred by staff to the nurse, indicating the reason(s) for the referral.
 - (1) Forward a copy of the intake risk Screening Form to the facility nurse, and place a copy in inmate file.
 - 2.) Nursing staff will:
 - a.) Clearly document the offender was seen within 14 days of intake due to reporting history of previously perpetrating sexual abuse during the PREA screening.
 - c. Any information related to sexual victimization or abusiveness that occurred in an institutional setting shall be strictly limited to medical and mental health practitioners and other staff, as

necessary, to inform treatment plans and security and management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by federal, state, or local law. **[115.81 (d)]**

- d. Medical and mental health practitioners shall obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18. **[115.81 (e)]**

2. § 115.82 Access to Emergency Medical and Mental 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 mental health practitioners according to their professional judgement. **[115.82 (a)]**
- b. If qualified medical or mental health practitioners are not on duty at the time a report of recent abuse is made, security staff first responders shall take preliminary steps to protect the victim and shall immediately notify the appropriate medical and mental 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)]**
- d. Mental health services shall be provided to the victim 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)]**

3. § 115.83 Ongoing Medical and Mental Health Care for Sexual Abuse Victims and Abusers:

- a. The facility shall offer medical and mental 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)]**
- 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 (b)]**
- c. The facility shall provide such victims with medical and mental health services consistent with the community level of care. **[115.83 (c)]**

- d. Inmates of sexually abuse vaginal penetration while incarcerated shall be offered pregnancy tests. **[115.83 (d)]**
- e. If pregnancy results from the conduct described in (d) of this section, such victims shall receive timely and comprehensive information about the timely access to all lawful pregnancy-related medical services. **[115.83 (e)]**
- f. Inmate victims of sexual abuse while incarcerated shall be offered tests for sexually transmitted infections as medically appropriate. **[115.83 (f)]**
- g. Mental health services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. **[115.83 (g)]**

D. Data Collection and Review

1. § 115.86 Sexual Abuse Incident Reviews:

- a. The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded. **[115.86 (a)]**
- b. The review shall ordinarily occur within 30 days of the conclusion of the investigation. The review team may include PREA coordinator, PREA compliance manager, deputy administrator, investigators, and medical and mental health staff. The results of the review will be provided to the Sheriff. **[115.86(b)(c)]**
- c. The review team shall:
 - 1.) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse. **[115.86 (d)-1]**
 - 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. **[115.86 (d)-2]**
 - 3.) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse. **[115.86 (d)-3]**
 - 4.) Assess the adequacy of staffing levels in that area during different shifts. **[115.86 (d)-4]**

- 5.) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff. **[115.86 (d)-5]**
 - 6.) Prepare a report of its findings, including determinations and any recommendations for improvement and submit such report to the PREA compliance manager, jail administration, and Sheriff. **[115.86 (d)-6]**
- d. The administrator shall implement the recommendations for improvement, or document reasons for not doing so. **[115.86 (e)]**

2. § 115.87 Data Collection:

- a. The BCCF shall collect accurate, uniform data for every allegation of sexual abuse using a standardized instrument and set of definitions. **[115.87 (a)(c)]**
 - 1.) The BCCF utilizes the Department of Justice, Bureau of Justice Statistics form SSV-3, Survey of Sexual Violence for Local Jail Jurisdictions. **[115.87 (a)(c)]**
- b. The BCCF PREA Coordinator shall aggregate the incident based sexual abuse data at least annually. **[115.87 (b)]**
- c. The BCCF 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.) The PREA Coordinator shall maintain all completed PREA investigations.
 - 2.) The PREA Coordinator will compile data and statistics on the number of sexual abuse and sexual harassment incidents that occurred the prior calendar year. These statistics will be forwarded to the Department of Justice annually, upon request.
- d. Upon request, the BCCF shall provide the data from the previous calendar year to the Department of Justice no later than June 30.

3. § 115.88 Data Review for Correction Action:

- a. The PREA Coordinator 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.) Identifying problem areas; **[115.88 (a)-1]**
 - 2.) Taking corrective action on an ongoing basis; and

[115.88 (a)-2]

- 3.) Preparing an annual report of its findings and corrective actions. **[115.88 (a)-3]**
 - a.) The report must include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the BCCF progress in addressing sexual abuse. **[115.88 (b)]**
 - b.) The BCCF's report shall be approved by the Sheriff and made readily available to the public through its website or other means. **[115.88 (c)]**
 - c.) The BCCF 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)]**

4. § 115.89 Data Storage, Publication and Destruction:

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

E. Audits

1. § 115.93, 115.401 Audits of Standards:

- a. Effective August 20, 2013 and during each three-year period thereafter, the BCCF shall ensure it is audited at least once. **[115.401 (a)]**
- b. The BCCF will utilize an audit instrument developed by the Department of Justice to provide guidance on the conduct of and contents of the audit. **[115.401 (d)]**
- c. The auditor shall review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility type. **[115.401 (f)]**

- d. The auditor shall review, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period. **[115.401 {g}]**
- e. The auditor shall have access to, and shall observe, all areas of the audited facility. **[115.401 {h}]**
- f. The auditor shall be permitted to request and receive copies of any relevant documents (including electronically stored information). **[115.401 {i}]**
- g. The auditor shall retain and preserve all documentation including, video tapes and interview notes relied upon in making audit determinations. Such documentation shall be provided to the Department of Justice upon request. **[115.401 U]**
- h. The auditor shall interview a representative sample of inmates, residents, and detainees, and of staff, supervisors, and administrators. **[115.401 {k}]**
- i. The auditor shall review a sampling of any available videotapes and other electronically available data that may be relevant to the provisions being audited. **[115.401 {l}]**
- j. The auditor shall be permitted to conduct private interviews with inmates, residents, and detainees. **[115.401 {m}]**
- k. Inmates, residents, and detainees shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel. **[115.401 {n}]**
- l. Auditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility. **[115.401 {O}]**

2. § 115.402 Auditor Qualifications:

- a. An audit shall be conducted by: **[115.402 (a)-1,2,3]**
 - 1.) A member of a correctional monitoring body that is not part of, or under the authority of, the BCCF but may be part of, or authorized by, state or local government;
 - 2.) A member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the BCCF;
 - 3.) Other outside individuals with relevant experience.
- b. All auditors shall be certified by the Department of Justice. **[115.402 (b)]**
- c. No audit may be conducted by an auditor who has received financial compensation from the BCCF (except for

compensation received for conducting prior PREA audits) within three years prior to the BCCF's retention of the auditor. **[115.402 (c)]**

- d. The BCCF shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the BCCF's retention of the auditor, with the exception of contracting for subsequent PREA audits. **[115.402 (d)]**

3. § 115.403 Audit Contents 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 on the BCCF. **[115.403 (a)]**
- b. Audit reports must state whether BCCF directives, policies and procedures comply with relevant PREA standards. **[115.403 (b)]**
- c. For each PREA standard, the auditor shall determine whether the audited facility reaches one of the following findings: **[115.403 (c)]**
 - 1.) Exceeds Standards:
 - a.) Substantially exceeds requirements of the standard.
 - 2.) Meets Standards:
 - a.) Substantial compliance; complies in all material ways with the standard for the relevant review period.
 - 3.) Does Not Meet Standards:
 - 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.
- d. The audit reports shall describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each audited facility, and shall include recommendations for any required corrective action. **[115.403 (d)]**
- e. Auditors shall redact any personally identifiable inmate or staff information from their reports, but shall provide such information to the agency upon request, and may provide such information to the Department of Justice. **[115.403 (e)]**
- f. The BCCF shall ensure that the auditor's final report is published on the BCCF website or provide other means so the report is readily available to the public. **[115.403 (f)]**

4. § 115.404 Audit Corrective Action Plan:

- a. A finding of "Does Not Meet Standards" with one or more standards shall trigger a 180-day corrective action period. **[115.404 (a)]**
- b. The auditor and the BCCF shall jointly develop a corrective action plan to achieve compliance. **[115.404 (b)]**
- c. The auditor shall take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of the facility. **[115.404 (c)]**
- d. After the 180-day corrective action period ends, the auditor shall issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action. **[115.404 (d)]**
- e. If the BCCF does not achieve compliance with each standard, it may (at BCCF discretion and cost) request a subsequent audit once it believes compliance has been achieved. **[115.404 (e)]**

5. § 115.405 Audit Appeals:

- a. The BCCF may lodge an appeal with the Department of Justice regarding any specific audit finding that it believes to be incorrect. The appeal must be lodged within 90 days of the auditor's final determination. **[115.405 (a)]**
- b. If the Department of Justice determines that the BCCF has stated good cause for a re-evaluation, the BCCF may commission a re-audit by an auditor mutually agreed upon by the Department of Justice and BCCF. The BCCF shall bear the costs of this re-audit. **[115.405 (b)]**
- c. The findings of the re-audit shall be considered final. **[115.405 (c)]**

F. State Compliance

1. § 115.501 State Determination and Certification of Full Compliance:

- a. In determining pursuant to 42 U.S.C. 15607(c)(2) whether the State is in full compliance with the PREA standards, the Governor shall consider the results of the most recent agency audits. **[115.501 (a)]**
- b. The Governor's certification shall apply to all facilities in the State under the operational control of the State's executive branch, including facilities operated by private entities on behalf of the State's executive branch. **[115.501 (b)]**

SIGNATURE: This policy becomes effective when signed by the Administrator and Sheriff of the Barnes County Correctional Facility.

Randy McClafin, Sheriff _____

Date _____