

## PRISON RAPE ELIMINATION ACT (PREA) DEFINITIONS

Sexual misconduct includes offender-on-offender sexual assault, sexual abuse, sexual harassment, and consensual sex acts. It also includes staff-on-offender sexual harassment, staff sexual misconduct, and staff misconduct of a sexual nature.

Staff include Department employees, volunteers, contract personnel, and any other person providing services in Department facilities or offices.

The following definitions are applicable to Department policies relating to sexual misconduct:

- A. **Offender-on-Offender Sexual Misconduct** is an incident in which one or more offenders are engaged in, are attempting to engage in, or have completed a consensual sexual act with another offender.
- B. **Offender-on-Offender Sexual Assault** is an incident in which one or more of the following acts occurs between 2 or more offenders without an offender's consent or when an offender is unable to consent or refuse:
  - 1. Contact between genitalia (i.e., penis, vagina) or between genitalia and the anus involving penetration, however slight. This does not include kicking, grabbing, or punching genitals when the intent is to harm or debilitate rather than sexually exploit.
  - 2. Contact between the mouth and the penis, vagina, or anus.
  - 3. Penetration of the anal or genital opening of another person by a hand, finger, or other object.
- C. **Offender-on-Offender Sexual Abuse** includes sexual contact between 2 or more offenders without an offender's consent or when an offender is unable to consent or refuse, including intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of the victim. This does not include kicking, grabbing, or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.
- D. **Custodial Sexual Misconduct or Staff Sexual Misconduct** shall mean the following acts when performed by Department employees, contract workers, or volunteers and directed toward any offender under Department jurisdiction:
  - 1. Engaging in sexual intercourse with an offender. Sexual intercourse shall include:
    - a. Vaginal intercourse, anal intercourse, and oral intercourse, as well as the penetration of an offender's vagina or anus with an object, when such penetration is not performed for the purpose of providing medical care or is not authorized by Department policy for the purpose of maintaining security, or
    - b. Allowing an offender to engage in sexual intercourse as defined above with an employee, contract worker, or volunteer.

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2. Intentionally physically touching, either directly or through clothing, the genitalia, anus, groin, thighs, or buttocks of an offender or the breasts of a female offender without a legitimate penological purpose.
  3. Compelling or permitting an offender to touch, either directly or through clothing the genitalia, breasts, or buttocks of an employee, contract worker, or volunteer without a legitimate penological purpose.
  4. Kissing an offender, or allowing oneself to be kissed by an offender ("allowing oneself" does not include an uninvited surprise kiss by an offender).
  5. Knowingly exposing one's genitals, breasts, or buttocks to an offender.
  6. Observing an offender's partially or fully naked body or an offender engaging in a sexual act with him/herself or another offender (not including inadvertent or unavoidable observation) without legitimate penological purpose.
  7. Making threats, bribes, or acts of coercion toward an offender for the purpose of causing an offender to engage in any of the acts prohibited in this section.
  8. Taking one or more substantial steps toward engaging in or performing any of the acts prohibited in this section.
  9. Helping another person perform any of the acts prohibited in this section by acting or failing to act to aid in the commission of the act, with the knowledge that the action taken or the inaction will promote or facilitate the prohibited act.
- E. **Staff Misconduct of a Sexual Nature** shall mean the following acts when performed by Department employees, contract workers, or volunteers and directed at any offender under Department jurisdiction for the purpose of gratifying the sexual desire(s) of any person or getting an offender to engage in staff sexual misconduct, or that have sexual undertones:
1. Making any of the following:
    - a. Comments about an offender's body intended to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person,
    - b. Sexually oriented statements or gestures in the presence of an offender, and/or
    - c. Demeaning statements based on gender in the presence of an offender.
  2. Exchanging personal letters, pictures, phone calls, or contact information with an individual known to be under Department jurisdiction, or his/her immediate family, without the express authorization of the Appointing Authority.
  3. Exchanging personal information with an offender known to be under Department jurisdiction, or his/her immediate family, intended to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person and/or in an effort to

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get an offender to engage in staff sexual misconduct or other conduct prohibited by this section.

4. Engaging in an unauthorized personal relationship with an individual known to be under Department jurisdiction including, but not limited to, residing with such an offender without express authorization by the Secretary/designee.
  5. Threatening, intimidating, coercing, or using abusive language toward an individual under Department jurisdiction. This does not include non-retaliatory threatening or coercive statements made for safety and security reasons or statement made in the furtherance of informing or enforcing Department rules pertaining to offender conduct.
  6. Dealing, offering, receiving, or giving favors or anything of value to an individual known to be under Department jurisdiction for purposes of bribing, grooming, or otherwise seeking to engage the individual in illegal activities prohibited by policy, or for purposes otherwise prohibited in this section.
  7. Discouraging or preventing offenders, employees, contract workers, and/or volunteers from:
    - a. Making good faith reports of staff sexual misconduct or staff misconduct where an offender is the alleged victim, or
    - b. Providing, in good faith, information regarding sexual misconduct or staff misconduct where an offender is the alleged victim. This could include, but is not limited to, making threats, bribes, or acts of coercion toward an offender, employee, contract worker, or volunteer. This does not include short-term temporary delays in reporting necessary to ensure safety or security in the facility or instances where the employee, contract worker, or volunteer would not reasonably have known under the circumstances that s/he was in violation of this section.
  8. Pat searches conducted in violation of DOC 420.310 Searches of Offenders, DOC 420.325 Searches and Contraband for Work Release, and/or DOC 420.390 Arrest and Search, operational memorandums, and/or Jordan v. Gardner, 986 F.2d 1521, 9<sup>th</sup> Cir. 1993.
  9. Attempting to perform the acts prohibited in this section.
  10. Aiding or abetting another person to perform the acts prohibited in this section. This would include intentionally failing to report knowledge of another staff, contract worker, or volunteer engaging in staff sexual misconduct or the acts prohibited in this section.
- F. **Sexual Harassment** shall mean deliberate or repeated, unsolicited verbal statements or comments of a sexual nature directed to any individual, including demeaning references to gender or derogatory comments about body or clothing, or repeated profane or obscene language or gestures.